

THIRTY-SECOND DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Thursday, August 7, 1947.

The commission met at 9:20 a.m.

Presents:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Walter J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William K. Lamm, junior, U. S. Marine Corps,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Ryan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates,
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the thirty-first day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

An accused, Kamehara, Hiroyuki, was, at his own request, duly sworn as
a witness in his own behalf.

Examined by the judge advocates:

1. Q. State your name and former rank.
A. Corporal Chief Petty Officer Kamehara, Hiroyuki.
2. Q. Are you an accused in this case?
A. Yes.

Examined by the accused:

3. Q. When did you enter the navy?
A. I entered the Yokosuka Naval Barracks as a volunteer on the first of June,
1940.
4. Q. Did you ever have duty at Truk?
A. Yes.
5. Q. What unit were you attached to?
A. The Fourth Naval Hospital.

IDENTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

6. Q. Through what period of time were you attached to the Fourth Naval Hospital?

A. From the twenty-second of November, 1943, till the first of January, 1944, when I was taken into custody at the Moon stockade.

7. Q. Were you demobilized?

A. No.

8. Q. What was your duty at the Fourth Naval Hospital?

A. I was head of the enlisted men in the X-ray room in the hospital.

9. Q. Do you know of the incident concerning the prisoners which occurred in July of 1944?

A. Yes.

10. Q. When and where did you see these prisoners?

A. As I went to get the prisoners, I know about them.

11. Q. Where did you go to get the prisoners?

A. The Forty-first Naval Guard Unit.

12. Q. What did you do after you brought the prisoners to the hospital?

A. I brought the prisoners from the hospital and stopped in front of the entrance to the hospital, and Petty Officer Tanaka, getting down from the truck, went through the entrance into the hospital, and from the head of the hospital's room, the orderly or the seaman on duty at the information desk, said that the truck was to be sent around to the front of the ship's store and when Petty Officer Tanaka called out again to confirm this order, he was told that it was the order of the head of the hospital, and the truck stopped in front of the ship's store. At this time an officer, and four or five enlisted men came down the hill, and we were told, "Bring them up this way"; and we were shown up the hill.

13. Q. Then, what did you do?

A. When we arrived at the top of the hill, I saw thirty to forty enlisted men and seven to eight officers assembled, and so I stopped. At this time, the persons who had come for the prisoners took them away, and Petty Officer Tanaka went to report to the officer, so I went with him. After we had finished reporting from there, I stepped down to a road which was just a little ways down from where everybody was assembled. At this time, someone said to Petty Officer Tanaka, "It is a general assembly." At this time myself and the other person who was with me, as we had left our work just as it was, we started down to continue our work and had gone about fifteen steps, when we looked back and saw Petty Officer Tanaka was not following us, we went back up the hill.

14. Q. Who was the other person who was with you?

A. According to my recollection, it was Superior Carpenter Ihaya.

15. Q. Then what did you do?

A. At first myself and Ihaya mingled among the persons who were grouped around at the scene, and from there, as I saw Hamatani, I went toward him and then from Hamatani, I went toward the prisoners.

CERTIFIED TO BE A TRUE COPY.

James P. Kenny
JAMES P. KENNY,
Lieutenant, U.S. Navy,
Judge Advocate.

16. Q. What did you do after going by the prisoners?

A. When I was standing by the prisoners, Petty Officer Yoshizawa came and said, "Is there anyone who has some cigarettes?" So I, without saying anything, handed him my cigarettes. Senior Petty Officer Yoshizawa was letting the prisoner to the left facing them smoke a cigarette. And then, just as I was I remained there to guard the prisoners.

17. Q. Didn't you enter the column of stabbers?

A. No.

18. Q. Didn't you stab the prisoners?

A. No.

19. Q. When you gave the prisoners the cigarettes, what were the prisoners doing?

A. The two prisoners were sitting.

20. Q. Then what happened to the prisoners?

A. I do not know the time, but I think it was about thirty minutes later that the prisoners were ordered tied and the prisoners were tied.

21. Q. How were the prisoners tied?

A. The hands were already tied at the naval guard unit, and just as their hands were tied, they were tied to this cross-bar so they would not fall down.

22. Q. Were the prisoners dangling from this cross-bar or were their feet on the ground?

A. They were not tied as if dangling, but their feet were on the ground.

23. Q. When Yoshizawa said, "Isn't there anyone who has any cigarettes?" did you notice anything unusual, anything about how Yoshizawa was dressed at this time?

A. All he had on was a G-string. He had a sun helmet on his head and he looked as if he had come from some sort of work.

24. Q. How is it that you were ordered to go and get prisoners?

A. On a day which I do not remember, after the afternoon work, they had lined up for the afternoon work and we had started to work, I was developing X-ray film in the X-ray room. I do not know who it was, but someone came to the developing room and said, "We have to go to the naval guard unit. It is necessary to go the naval guard unit right away, and we want you to go," and I said that I was working and I could not go, but I was told that everyone else is also working and as I could not reject it further, I stopped my work and went to the information room. The time was after we had lined up for the afternoon duty. I had been working for about an hour, so I think it was about two o'clock in the afternoon.

25. Q. How long did it take you to get from the Forty-first Guard Unit to the hospital?

A. I think about fifty minutes. The road was bad and the truck went very slowly.

TESTIFIED TO BE A TRUE COPY:

James D. Kenny
James D. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

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26. Q. Did you look at the prisoners while you were riding with them from the guard unit to the hospital?

A. Yes. The hands of the prisoners were tied in back of them and they were blindfolded when they were handed over to us at the guard unit.

27. Q. Did you keep the blindfolds on the prisoners all the time?

A. On the way, while we were talking, Petty Officer Tanaka was saying that the scenery is very good, we talked and he agreed to take the blindfolds off and we took the blindfolds off. As at this time we were smoking, I asked Petty Officer Tanaka if we could give them some cigarettes and he said, "All right," so I gave them cigarettes, and during the conversation on this trip, I asked Tanaka what is the matter with these prisoners and Tanaka replied, "The head of the hospital is going to make a physical examination on them."

28. Q. Did you at that time know if they were American prisoners?

A. I did not know. According to my recollection one prisoner's hair was red-brown; the other was fatter and he had black whiskers and hair; and, therefore, I could not say what nationality they were. As I had never seen anyone, any other kind of people other to Japanese, I could not say. I could tell that they were different from Japanese, but I could not say what nationality they were.

29. Q. Do you know where this person Ikaya is?

A. I do not know.

Cross-examined by the judge advocate:

30. Q. In July of 1944, what was your rate?

A. I was a corpsman petty officer second class.

31. Q. On this day in July when you were sent for the prisoners, don't you remember the name of the petty officer who came to tell you that you had to go and get them?

A. As he had suddenly come to the developing room and said this, I do not remember.

32. Q. Was it Tanaka that came to tell you?

A. Whether it was Tanaka or Chief Petty Officer Komma, I do not know.

33. Q. When you went out and got on that truck, did you have your rifle with you?

A. Yes.

34. Q. Did you take your rifle with you from the X-ray room?

A. No.

35. Q. Where did you get the rifle?

A. When I first went to the information room, I was told to bring my rifle, so I went back to where I worked and picked up my rifle.

36. Q. Who told you to go and get your rifle?

A. The officer who was in front of the information room.

PREPARED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

37. Q. Who was that officer?

A. I do not remember.

38. Q. When you got aboard that truck, were there any officers in the vicinity of that truck?

A. Yes.

39. Q. Who were they?

A. There were two or three men in front of the entrance to the hospital.

40. Q. Who were they?

A. The head of the hospital was there.

41. Q. Who were the officers that were in front of that hospital when you got aboard the truck?

A. According to my recollection was the officer-of-the-day.

42. Q. That is one, who was he?

A. As I recall, the officer-of-the-day was Lieutenant Oishi.

43. Q. Now, who were the other officers who were there?

A. The junior officer-of-the-day.

44. Q. Who was he?

A. This, I do not remember.

45. Q. Who else?

A. The others I do not remember.

46. Q. Did you remember on May 11 of this year, who those other officers were?

A. No, I do not remember distinctly.

The judge advocate moved to strike out these questions and answers which referred to this statement.

The accused made no reply.

The commission directed that the questions and answers be stricken.

47. Q. Well, other than the officer-of-the-day, who was Lieutenant Oishi, and the junior officer-of-the-day, whose name you do not remember, who else was there when you got into the truck?

A. The head of the hospital.

48. Q. Was there any other officer there?

A. There was, but I do not remember them.

49. Q. How many men were together with the prisoners?

A. Together with the person in charge, three.

50. Q. When you returned to the Fourth Naval Hospital with the prisoners, did you report to anyone that you had returned?

A. When we stopped at the entrance of the hospital, Petty Officer Tanaka got off the truck and went in through the entrance to the hospital. I think he reported.

TESTIFIED TO BE A TRUE COPY:

James P. Kennedy
James P. Kennedy,
Lieutenant, U. S. Navy,
Judge Advocate.

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51. Q. Do you know to whom he reported?

This question was objected to by the accused on the ground that it called for the opinion of the witness.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. As myself and the other persons were staying in the truck, I do not know which part of the hospital he went to. The only thing that we found out at that time was that a person came from the head of the hospital's room, a seaman on duty, the orderly, and said to take the truck around to the front of the ships' store.

52. Q. When you did take the truck around to the front of the ships' store, were you ordered to take the prisoners up the hill?

A. No.

53. Q. Did you take the prisoners up the hill?

A. After we heard this we still waited on the truck. Tanaka came back and we went to the front of the ships' store and stopped there.

54. Q. What happened after that?

A. When we stopped in front of the ships' store an officer and four or five enlisted men came down from the top of the hill.

55. Q. Who was that officer?

This question was objected to by the accused on the ground that it was irrelevant and immaterial.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. I do not remember distinctly. Because I have taken the oath before this commission, I cannot testify to something which I am not sure, which I do not know, because that would not be telling the truth. I am testifying what I think to be the truth.

The commission directed the witness to answer the question.

A. (cont.) I do not remember distinctly.

56. Q. What do you remember?

A. I just remember that an officer came.

57. Q. Who was the officer?

A. I do not remember distinctly.

58. Q. Did you follow this officer up the hill?

A. Yes.

TESTIFIED TO BE A TRUE COPY:
James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

59. Q. What happened after you got to the top of this hill?

A. After I arrived at the top of the hill, I went down the hill again to get Superior Corporal Ikaya, and then went up the hill again, and went by the prisoners and stayed there.

60. Q. When you went back with Ikaya to the top of that hill, did you see that officer that you had followed up the hill still on the hill?

A. On the hill were some officers.

61. Q. I am asking, did you notice that particular officer on the hill?

A. After we were led up the hill by this officer in a group of four or five petty officers that took the prisoners away and went down the hill and I did not notice if he was still there or not.

62. Q. When were the prisoners tied up to the cross-bar?

A. I think it was the orders of the head of the hospital that the workers, three or four persons who were working nearby, tied the prisoners to the cross-bar and at that time there were two or three officers that were by them.

63. Q. Who were the two or three officers that were by them?

A. I do not remember their names. I just recall that they were standing by and talking.

64. Q. When this incident occurred in July of 1944, how long had you been at the Fourth Naval Hospital?

A. About eight months.

65. Q. Do you know Hasegawa?

A. Yes.

66. Q. Do you know Hamada?

A. I did not know Hamada well at that time.

67. Q. Do you know the native Sanichi Hosenibiki?

A. I have never seen that native before.

68. Q. Have you ever quarreled with the native Sanichi Hosenibiki?

A. I have never seen him before and I have never quarreled with him.

69. Q. Can you give this commission any reason why the native Sanichi Hosenibiki and one of your compatriots, Hamada, would say that they actually saw you stab the prisoners if they did not see you stab them?

A. I will explain. The native I have never seen before, nor have I seen him working on Dublin. That the native may know my name is maybe because that in the latter part of May, 1945, I was dispatched to the branch hospital at Uman Island and I treated the natives once a week. Because of this he may know my name, because I saw many on Uman, but I have never seen him on Uman Island or on Dublin. On Uman while treating the natives, as there are a great many of them, I may have avoided them many times, but I do not remember seeing that native. As for Hamada, I do not remember him well. As I remember, I remember that he was a person who was dispatched to the hospital from another unit. As I was very busy in the X-ray room, I seldom went out on working details. I had very little chance of meeting the corporals. The only times I would probably meet them was during the meals or when we lined up for work and also we were in different divisions. We had very little chance to meet each other.

CERTIFIED TO BE A TRUE COPY:

James P. Kennedy
James P. Kennedy,
Lieutenant, U. S. Navy,
Judge Advocate.

The commission then, at 10:25 a.m., took a recess until 10:45 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

An accused, Kamehara, Hiroyuki, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

70. Q. Did you remain on that hill while the stabbing took place?
A. Yes.

71. Q. How many men were in the stabbers line?
A. As I remember eight or ten.

72. Q. Were you one of them?
A. No.

73. Q. Was Ikaya, who went to get the prisoners with you, on the hill while the stabbing took place?
A. I think he was.

74. Q. Were you in front of Ikaya?
A. I am not very friendly with him, but I know him because I went to pick up the prisoners together with him, and after we arrived at the hill, Ikaya was by the prisoners, but I do not know where he went after that.

75. Q. Do you know that Ikaya stated, referring to prosecution's Exhibit 2 which has been introduced into evidence, that Ikaya stated that you were in the line of stabbers?
A. I do not know exactly.

76. Q. Do you know any particular reason why Ikaya would say that you were in the line of stabbers if you weren't?
A. I do not know.

Reexamined by the accused:

77. Q. You testified that when you went to pick up the prisoners at the naval guard unit, by the truck was standing the head of the hospital and the officer-of-the-day, Lieutenant Oishi, and the junior officer-of-the-day. Did you have a conversation with Lieutenant Oishi at this time?
A. I did not have a conversation with him. No, I did not have a conversation with anyone. The only time I was told anything was when I was called at the X-ray room and told to get on the truck and I was just on the truck, that was all.

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James P. Kennedy
James P. Kennedy, Jr.
Lieutenant, U. S. Navy,
Judge Advocate.

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78. Q. Then, do you mean that the officer-of-the-day and the junior officer-of-the-day and the head of the hospital were just at the entrance of the hospital. Is this what you mean when the truck left?

A. Yes.

79. Q. Then, were you ever told by Lieutenant Oishi directly to go and pick up the prisoners?

A. No.

80. Q. You testified that when you brought the prisoners and stopped the truck in front of the ship's store, that an officer came down from the top of the hill. Do you remember if it was anyone of the persons that were in front of the entrance of the hospital when you left the head of the hospital, the officer-of-the-day - Lieutenant Oishi, or the junior officer-of-the-day - whose name you do not remember?

A. I have no definite recollection.

81. Q. You testified that you do not remember distinctly who that officer was, but can you say definitely that it was none of the three persons who were in front of the hospital when you left?

A. I think he was different from the officers who were at the entrance when I left.

Recross-examined by the judge advocate:

82. Q. Don't you know as a matter of fact that the officer who came down from the hill and that you followed up the hill was not the head of the hospital, Lieutenant Oishi, or the junior officer-of-the-day?

A. When I was watching the officers in front of the entrance, I just wondered if an officer was going along with us, and I do not remember distinctly who came down from the hill.

83. Q. Don't you know that that officer wasn't Captain Iwanami?

A. I know that it wasn't Captain Iwanami.

84. Q. Don't you know that that officer was not Lieutenant Oishi?

A. I do not have a distinct recollection.

85. Q. Don't you know that that officer was a lieutenant?

A. I just remember that he was an officer.

86. Q. Was he above or below the rank of lieutenant?

A. I have no distinct recollection.

Neither the accused nor the judge advocate desired further to examine this witness.

The commission did not desire to examine this witness.

The witness made the following statement:

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James P. Tamm
James P. Tamm,
Lieutenant, U. S. Navy
Nagasaki, Japan.

When we went to the Forty-first Naval Guard Unit, Petty Officer Tunka went to the guard there and said that, "We have come from the hospital and would like to have the prisoners. I was told if I came here and asked, we would be handed the prisoners." A person at the information desk called up on the telephone and a person came from the guard unit and handed over the prisoners. The second time we went up the hill, myself and Ikeya were talking that as it is a general assembly, we would have to go to the top of the hill. Ikeya did not want to go to the hill as he was busy, but this I remember distinctly. While I was guarding the prisoners, I remember the paymasters coming up in a group and other to this I saw persons coming up in groups scattered, one by one, and after this, I think gunnery, a great number of gunnery came up talking among themselves, but they were sent back. Then, after this about ten persons who were given strict orders to act as guards in guarding the road leading up to the hills and around and while watching them, I remember that most of the spears, when stabbed, bent. The persons around the prisoners who were digging the hole; there were seven or eight persons, four digging the hole and about three around the prisoners. After I had gone I remember it being ordered that the hole had to be larger than six feet, and they started to dig again. There was a speech of the head of the hospital; I remember the contents of his speech also. Actually, when they finished digging the hole, was just at the time when the stabbing started, and when the stabbing started, I backed down from the prisoners and I know that many of them had not stabbed. After the stabbing had begun, I guarded the slopes, I acted as a watchman on the slopes of the hill. Before the speech was made, I did not know what was going to happen. The reason for this being that I did not see the spears and rifles which were at the scene, up to this time. When the stabbing was about to begin, the spears were about ten meters away from where the prisoner on the left was standing, and they were to pick up the spears and hand them to the persons who were lined up. Many of the persons are testifying about stabbers and spectators as if they are separate and distinct groups, but they were just grouped about and some places they lined up by three, some places by two, and a division became a part of this designated as stabbers. The others were told to go over there and watch. And in my recollection, I think the guards were increased later on. After the stabbings were over and after the cutting of the necks, the guards came back to the scene. There is nothing further I have to state.

The judge advocate requested permission to cross-examine the witness on this statement.

The commission announced that permission was granted.

Cross-examined by the judge advocate:

87. Q. You said that you noticed the paymasters came up in a group. Did the paymasters remain together all the time while they were on top of that hill?
A. A short time after I had gone by the prisoners, I saw this paymaster group come up the hill and according to my recollection, they were made to line up in two rows in back of where the corpses were lined up.

88. Q. Don't you remember that after the two lines of men had been placed in a position facing the prisoners that some of the paymasters came out from their ranks and lined up with the stabbers?
A. I have no distinct recollection, but I remember their being at the scene.

TESTIFIED TO BE A TRUE COPY:

James P. Kenney
James P. Kenney,
Lieutenant, U. S. Navy,
Judge Advocate.

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89. Q. Weren't there some of the paymasters in that line of stabbers?
A. I have no distinct recollection.

90. Q. What do you remember, if you do not remember exactly?
A. What I remember about the paymasters is that I saw them coming up the hill in formation and also that one of the petty officers from the paymasters became very sick and pale.

91. Q. Don't you also remember that after Oishi made this division of petty officers that some of the paymasters were added to the stabbers line?
A. I have no distinct recollection. I have no distinct recollection concerning this. What recollection I have concerning the column of stabbers is that the column on the right facing the prisoners had spears, and the column on the left had rifles and bayonets, but according to the order of the head of the hospital, ordering them to become alternated, rifles and spear, spear and rifle, there was confusion.

92. Q. I want you to concentrate your recollection on just one thing. When the line of stabbers was made up, weren't some paymasters taken from the ranks of the paymasters and put in the line of stabbers?
A. I have no recollection that division was made in the paymasters.

93. Q. Then are you telling us that this group of paymasters, once they came up the hill always stayed in a group?
A. Yes. And the corporals who were lined up in front of the paymasters after the division was made, they were shoved over to the right and the paymasters were lined up in a row directly horizontal in front of the prisoners.

94. Q. Has your recollection that the paymasters always remained in a group and none of them got into the line of stabbers always been the same?
A. I have the recollection that the paymasters came up in a group and that they lined up in a group. I have no recollection that a division was made in them.

95. Q. How many statements have you written for the judge advocates?
A. I have never been investigated on Guam and I have written no statements for the judge advocates.

Neither the accused nor the judge advocates desired further to examine this witness.

The commission did not desire to examine this witness.

The witness resumed his status as an accused.

The commission then, at 11:16 a.m., took a recess until 2 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Robert H. Miller, yeoman first class, U. S. Navy, reporter.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

No witnesses not otherwise connected with the trial were present.

Counsel for the accused requested the commission to take judicial notice of the publication "Dispensatory of the United States of America," 22nd edition, particularly those articles dealing with Belladonna, pages 218-221 inclusive, the articles dealing with scopalamine, pages 965 to 967 inclusive, the articles dealing with strychnine nitrate pages 1038 to 1042 inclusive. A copy of this publication was made available to the commission.

There being no objection the commission announced that it would take judicial notice of the publication.

Counsel for the accused requested that the commission direct the judge advocate to produce the record of the Board of Investigation which had been conducted into the circumstances surrounding the deaths of the prosecution witnesses Nakamura and Ikaya.

The accused waived the reading of this request in Japanese in open court at this time.

The judge advocate replied.

The commission was cleared. The commission was opened and all parties to the trial entered.

The commission announced that insofar as the board of investigation was concerned the request of the defense was denied, the judge advocate was however directed by the commission to bring before the commission and enter into evidence the death certificate or other evidence indicating the cause of death of Nakamura, Shigeyoshi.

Counsel for the accused moved for a directed verdict of acquittal for the accused Hamikawa, Michio; Sakagami, Shinji; Watanabe, Mitsuo; Tanabe, Kameo; Ikai, Yoshihisa; Sawada, Tameo; Hamatani, Kazuo; and Hamabara, Hiroyuki.

The accused waived the reading of the motion in Japanese in open court at this time.

The judge advocate replied.

The commission announced that the motions were denied.

The defense rested.

The rebuttal began.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name.
- A. Ito, Takaoji.

CERTIFIED TO BE A TRUE COPY.

James D. Kenny
James D. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

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2. Q. If you recognize any of these accused, tell us their names and ranks.
A. Surgeon Captain Iwanami, Surgeon Lieutenant Commander Kamikawa. I do not remember the name of the next person. Corporal Warrant Officer Hama, Surgeon Design Yoshizawa.

3. Q. Do you remember any of the others?
A. I remember their faces, but I forget their names.

4. Q. Have you ever worked at Truk?
A. Yes.

5. Q. Where did you work there?
A. The Fourth Naval Hospital at Truk.

6. Q. Between what dates were you employed at the Fourth Naval Hospital on Truk?
A. From the twenty-fourth of December 1943 till the eighteenth of December 1945.

7. Q. And what were your duties at the hospital?
A. I was the driver for the head of the hospital.

8. Q. Were you in the Japanese armed services?
A. Yes.

9. Q. Were you attached to the Japanese armed services while you were at Truk?
A. I was attached to the service as a gunnery.

10. Q. Was your only duty at that hospital to act as chauffeur for Captain Iwanami?
A. Yes.

11. Q. During January and February 1944 can you tell us about how many times you drove Captain Iwanami to the Forty-first Naval Guard Unit?
A. As I remember I went about thirty times.

12. Q. Did you ever go more than once a day to that place?
A. There were times when I went two times a day.

13. Q. Was Captain Iwanami always in the car when you went to the guard unit?
A. Yes, he was always in the car and he went toward the information room.

Cross-examined by the accused:

14. Q. You testified that in January 1944 you drove Captain Iwanami about thirty times. Do you know if Captain Iwanami went to examine Vice Admiral Wakabayashi?
A. I have no recollection.

15. Q. Do you mean that you went every day in January? There are thirty days in January.
A. I would like to have the question repeated.

CERTIFIED TO BE A TRUE COPY:
James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

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16. Q. When you say thirty times in that month do you mean that you went every day?

A. As I remember I went about thirty times during the period of January and February.

17. Q. From what day in January till what day in February?

A. From the beginning of January to the end of February I think I went about thirty times.

18. Q. What time did you usually go to the guard unit?

A. As I remember when he went in the morning it was about 8:30. When he went in the afternoon it was about one in the afternoon.

19. Q. Was this as if like a schedule that when he went in the morning it was at 8:30, if he went in the afternoon it was one o'clock?

A. It was not always on schedule.

20. Q. You testified that he went about thirty times in the months of January and February. In which month did you go the greater number of times?

A. As I remember it was about the same.

21. Q. Did he go many times near the end of February?

A. This I do not remember distinctly.

22. Q. When you testified the Forty-first Naval Guard Unit, are you sure that it is not a mistake for the Fourth Naval Base Force?

A. It is no mistake.

Reexamined by the judge advocate:

23. Q. Do you know where Admiral Wakabayashi had his headquarters?

A. I do not know exactly where his room is but I think it is the room next after turning to the right from the information room.

24. Q. Was Admiral Wakabayashi's headquarters at the Forty-first Naval Guard Unit?

A. I do not know exactly.

Reexamined by the accused:

25. Q. Did you drive the head of the hospital to the Forty-first Naval Guard Unit and then return directly to the hospital?

A. There are many instances, some in which I waited for him, some in which I drove him directly back to the hospital.

26. Q. Have you ever stopped at any other place instead of going directly back to the hospital?

This question was objected to by the judge advocate on the ground that it was beyond the scope of the redirect examination.

The accused withdrew the question.

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Lieutenant, U. S. Navy,
Judge Advocate.

27. Q. Do you know Admiral Wakabayashi?

A. No.

28. Q. Was Admiral Wakabayashi the commanding officer of the Forty-first Naval Guard Unit?

A. I do not know anything definite.

Examined by the commission:

29. Q. At these various times that you drove Captain Inman to the Forty-first Naval Guard Unit do you know what parts of that guard unit he visited?

A. I have seen him walk toward the sick bay but I do not know anything about what his actions were.

30. Q. Do you mean by that that you have seen him go into the sick bay?

A. I mean that I saw him walking toward the direction of the sick bay.

31. Q. But that is far as you know. Is that correct?

A. Yes, I just saw him walking toward the entrance.

Neither the judge advocate, the accused, nor the commission desired further to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 3:45 p.m., took a recess until 4:02 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the ^{trial} were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.

A. Former Surgeon Commander Lane, Chicago.

2. Q. If you recognize these accused state their names and ranks.

A. Surgeon Captain Inman, Surgeon Lieutenant Commander Rindheim, Surgeon Lieutenant Oishi. The rest most of them I remember their faces but do not remember their names.

3. Q. Have you ever served on Truk?

A. Yes.

4. Q. Where were you attached at Truk?

A. I was attached to the Fourth Fleet Headquarters and from there I was sent to the Forty-first Naval Guard Unit and was the acting head medical officer there.

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Judge Advocate.

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5. Q. Between what dates were you the acting head medical officer at the Forty-first Naval Guard Unit?

A. I became the acting head medical officer on the sixteenth or seventeenth of May 1944. I acted in this capacity until the twenty-seventh of May 1945 when I was dispatched as head of the Fufun branch of the Fourth Naval Hospital. I still had the title of acting head medical officer of the Forty-first Naval Guard Unit. I was on Fufun as head of the branch hospital until the third of December 1945 when this hospital was dissolved and I returned to the Forty-first Naval Guard Unit till the fifth of February 1946 when I was brought to Guam.

6. Q. Did you ever have a conversation with Captain Inanami concerning prisoners?

A. Yes.

7. Q. When and where was this?

A. It was in the beginning of July 1944. I think it was the first. The conversation took place on the road leading from the entrance of the sick bay to the entrance of the Forty-first Naval Guard Unit.

8. Q. Tell us what you said to Captain Inanami and what Captain Inanami said to you.

A. The main reason why Captain Inanami had come that day was on a medical inspection and while at the sick bay I was asked many questions and answered them. He was on his way to the sick bay at the Eighty-first Submarine Base, he had sent his automobile on before and as we walked he said to me, "Will you walk with me to the entrance?" The contents of that conversation was Captain Inanami said, "I would like some research done on the kidneys on the prisoners and I would like you to do that research." I said to him, "This can not be done at the Forty-first Naval Guard Unit and I do not have the skill or ability to do it." Then Captain Inanami said, "There is a person who is eagerly awaiting the results of such research." I do not remember the name of the person who was waiting and then Captain Inanami said to me, "If you are not going to do the research will you talk to the commanding officer, Annon, to have the prisoners handed over to the hospital - I will also talk to him about this but I would like to have you ask him about it also." We had this conversation on the road.

The counsel moved to strike this answer on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion to strike was denied.

9. Q. When you had this conversation with Captain Inanami did he use the word "research" or did he use the word "experiment"?

A. He used the Japanese word which means, "I would like to investigate."

10. Q. In this conversation Inanami asked you to inform Annon that he desired some prisoners. Is that correct?

A. Yes.

11. Q. Did you ever bring this information to the attention of Annon?

A. I told him this on the same day.

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Judge Advocate.

12. Q. Did you have any further conversations with Captain Iwanami concerning prisoners?

A. No conversations were had concerning prisoners after this but after the end of the war there was a little conversation concerning prisoners.

13. Q. Did you take any actions concerning prisoners after you had this conversation with Iwanami?

A. Do you mean after this conversation?

14. Q. Yes.

A. No.

15. Q. Were any prisoners sent to the Fourth Naval Hospital from the Forty-first Naval Guard Unit?

This question was objected to by the accused on the ground that it was leading.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

16. Q. Tell us about that.

A. In the middle of July, I do not remember the exact dates, two prisoners were sent to the Forty-first Naval Guard Unit by the army through the Fourth Fleet Headquarters. It was in the afternoon that I saw the prisoners arrive and I was watching them together with other officers when they arrived at the entrance of the guard unit. When I watched them was just when they arrived. During this day or the next day I forget which, the executive officer asked me if I would ask the hospital if any prisoners were needed there and I complied with his request. I telephoned the hospital. According to my recollection it was not an enlisted man but the adjutant of the officer-of-the-day. As the telephone could not be connected with the head of the hospital's room I did not hear the reply. As I recall the prisoners stayed just one night at the guard unit. A truck came from the hospital to pick them up. I do not know what occurred between the hospital and the Forty-first Naval Guard Unit concerning the picking up of the prisoners. I was watching the handing over of the prisoners from my quarters. The executive officer went toward the entrance and as I recall there was one officer from the hospital on the truck. They saluted each other and the prisoners were handed over.

The witness was duly warned.

The commission then, at 4:27 p.m., adjourned until 9 a.m., tomorrow, Friday, August 8, 1947.

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James D. Kenny
James D. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

THIRTY-THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, August 8, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry E. Roscoe, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Colonel William K. Lanman, junior, U. S. Marine Corps,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the thirty-second day of the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

Ueno, Chisato, the witness under examination when the adjournment was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

Cross-examined by the accused:

17. Q. You testified that you were the acting head of the dispensary of the Forty-first Guard Unit. Why did you say acting head?

A. I was sent out to Truk to be attached to the Fourth Fleet Headquarters, and my regular orders did not come out ordering me to be the head medical officer of the Forty-first Naval Guard Unit. Therefore, my period of duty was only that of acting head medical officer.

18. Q. Who designated you as the acting head medical officer of the Forty-first Guard Unit?

A. The Commander in Chief of the Fourth Fleet.

19. Q. Did you work at the Forty-first Guard Unit Dispensary every day?

A. Mainly, yes.

20. Q. Were you required to report to the commanding officer of the guard unit as to the conditions of the guard unit dispensary?

A. I was responsible for all the medical and sanitation conditions at the guard unit, and whether there was any change in that or not, monthly reports were submitted every month.

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21. Q. To whom were these reports submitted?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied,

The commission announced that the objection was not sustained.

A. It consists of two sheets. One I submit through the executive officer and one I reported directly to the commanding officer.

22. Q. Now, these prisoners of war which you testified that you saw on an afternoon in the middle of July, were they ever entered as patients in the Forty-first Naval Guard Unit dispensary?

A. No.

23. Q. Why, then, did the executive officer ask you to telephone to the hospital and ask them if they needed any prisoners of war there?

A. I do not know why he determined this.

24. Q. But, you did telephone to the hospital at the request of the executive officer?

A. Yes.

25. Q. Do you remember just what you said?

A. I do.

26. Q. What did you say?

A. I stated this is from the executive officer, but he was stating that as prisoners were needed at the hospital, I would like your reply.

27. Q. Were you talking to the head of the hospital at that time?

A. As the telephone could not be connected directly with the head of the hospital's room, I was not talking with the head of the hospital.

28. Q. You said you saw two prisoners turned over to persons in a truck from the hospital. Do you know who turned these two prisoners over to the people in the truck from the hospital?

A. The executive officer handed them over.

29. Q. This inspection at the dispensary that you testified about that Captain Iwanami made, in what capacity did he inspect this dispensary at the guard unit?

A. I think it was in the capacity of chief surgeon of the Fourth Fleet.

30. Q. When was this inspection made?

A. It was made regularly about once or twice a month.

31. Q. Was this the first inspection of the dispensary that Captain Iwanami had made?

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Judge Advocate.

A. I think this was the first time after I arrived there to take up duty. Concerning this medical inspection, it was mostly questions concerning the general sanitary condition usually, and the adjutant or a doctor of the Fourth Fleet Headquarters would come together with them and they would look at statistics and also would ask questions whether there were many flies or a small number, and if the drainage was well. I would answer questions concerning this to the head of the hospital, to Captain Iwanami.

32. Q. Were these two prisoners then at the dispensary when Captain Iwanami made his inspection?

A. At this time there were no prisoners in the guard unit.

Neither the judge advocate nor the accused desired further to examine this witness, *withdraw*.

The commission did not desire to examine this witness.

The witness made the following statement:

Concerning my reply in yesterday's testimony when I stated that I was asked by Captain Iwanami to ask the commanding officer, Asano, concerning this, I testified that on the same day I asked him. At this time, the commanding officer, Asano, did not give me any reply whether it was all right or whether it was bad, and replied to neither effect. At this time there were no prisoners at the guard unit and I did not carry out what Captain Iwanami said to me. Much later, when suddenly some prisoners came to the guard unit, they only stayed over there one night and then they were taken away. This much I would like to add to my testimony.

The witness was duly warned and withdrew.

The judge advocate requested a short recess before calling the next witness.

The commission then, at 9:32 a.m., took a recess until 9:40 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.

A. Herbert L. Ogden, commander, U. S. Navy.

2. Q. If you recognize any of the accused, will you tell us their names and ranks?

A. I recognize Captain Iwanami, Lieutenant Sakagami, and the other accused by sight only.

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Judge Advocate.

3. Q. To what office are you presently attached?
A. Director of War Crimes, Pacific Fleet.

4. Q. And what are your duties in that office?
A. Investigator.

5. Q. Did you conduct an investigation of the accused, Sakagami?
A. I worked on the case, yes sir.

6. Q. And during your investigation, did you have occasion to converse with the accused, Sakagami?
A. I interrogated Sakagami on four or five different occasions.

7. Q. Would you tell this commission what Sakagami, in his various conversations, told you concerning his activities in January and February of 1944?

This question was objected to by the accused on the ground that it was irrelevant and immaterial.

The judge advocate withdrew the question.

8. Q. During any of the conversations that you had with the accused, Sakagami, did Sakagami ever mention to you the terms "acopolamine opium bromide" or "strychnine nitrate"?

This question was objected to by the accused on the ground that it was leading.

The judge advocate replied,

The commission announced that the objection was not sustained.

A. Lieutenant Sakagami told me in response to my questions that he had on this occasion obtained certain medicine or drugs for Commander Okuyama. He stated to me that he was unable to remember what the medicine or drugs were or from whom he obtained them.

Cross-examined by the accused:

9. Q. While you were interrogating Sakagami, Lieutenant Sakagami, did you ever have the Commander in Chief, Fourth Fleet, Admiral Hara, present and tell him to tell Sakagami that if he had committed a crime to state concerning it?

A. On one occasion we had Admiral Hara present, and Admiral Hara, on that occasion, told Sakagami to tell us the truth of what he knows in this matter.

Neither the judge advocate nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness made the following statement:

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Judge Advocate.

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The only thing that I could add would be that Lieutenant Sakagami on the same occasion told me that he delivered the drug to Commander Ohguma he followed him to the top of the hill and when he arrived at the top of the hill, he saw two prisoners that he had first believed were dead, but later was not certain, and he became frightened and immediately returned to his quarters.

The witness was duly warned and withdrew.

The rebuttal ended.

The accused did not desire to offer any evidence in surrebuttal.

The judge advocate informed the commission that, pursuant to the request of the commission, he was endeavoring to produce evidence as to the cause of death of the witness Nakamura. He stated, however, that the medical witness, who was to be called for this purpose, was ill and requested permission to call him at a later point in the trial.

The commission announced that the judge advocate would be permitted to introduce this evidence when available.

The defense requested a recess to finish the interpretation of the statements of the accused.

The commission then, at 9:50 a.m., took a recess until 10:16 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

An accused, Mitsuhashi, Kichigoro, read a written statement, appended marked "EE."

An interpreter read an English translation of the statement of the accused, Mitsuhashi, appended marked "FF."

An accused, Takaishi, Susumu, read a written statement, appended marked "GG."

An interpreter read an English translation of the statement of the accused, Takaishi, appended marked "HH."

An accused, Hamatani, Etsuo, read a written statement, appended marked "II."

An interpreter read an English translation of the statement of the accused, Hamatani, appended marked "JJ."

Mr. Hamata, Hideo, a counsel for the accused, read a written statement of an accused, Totsui, Kichiro, appended marked "KK."

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Judge Advocate.

An interpreter read an English translation of the statement of the accused, Totsui, appended marked "LL."

The commission noted that the statements that had been read contained much evidentiary matter and called the attention of the defense to Section 419, Naval Courts and Boards.

The commission then, at 11 a.m., took a recess until 2 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Robert R. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

An accused, Akabori, Teichiro, read a written statement, appended marked "MM."

An interpreter read an English translation of the statement of the accused, Akabori, appended marked "MM."

An accused, Tanaka, Tokunosuke, read a written statement, appended marked "OO."

An interpreter read an English translation of the statement of the accused, Tanaka, appended marked "PP."

An accused, Sawada, Tsuneo, read a written statement, appended marked "QQ."

An interpreter read an English translation of the statement of the accused, Sawada, appended marked "RR."

An accused, Kawashima, Tatsusaburo, read a written statement, appended marked "SS."

An interpreter read an English translation of the statement of the accused, Kawashima, appended marked "TT."

The commission then, at 3:21 p.m., took a recess until 3:40 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

An accused, ^{Kumabara} Kumabara, Hiroyuki, read a written statement, appended marked "UU."

An interpreter read an English translation of the statement of the accused, Kumabara, appended marked "VV."

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An accused, Mukai, Yoshihisa, read a written statement, appended marked "XV."

An interpreter read an English translation of the statement of the accused, Mukai, appended marked "IX."

An accused, Tanabe, Mamoru, read a written statement, appended marked "XII."

An interpreter read an English translation of the statement of the accused, Tanabe, appended marked "XII."

The commission then, at 4:20 p.m., adjourned until 9 a.m., tomorrow, Saturday, August 9, 1947.

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Judge Advocate.

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THIRTY-FOURTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Saturday, August 9, 1947.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William K. Lanman, junior, U. S. Marine Corps,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the thirty-third day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

An accused, Watanabe, Mitsuo, read a written statement, appended marked
"AAA."

An interpreter read an English translation of the statement of the
accused, Watanabe, appended marked "BBB."

An accused, Nomma, Hachiro, read a written statement, appended marked
"CCC."

The commission then, at 10:26 a.m., took a recess until 10:45 a.m., at
which time it reconvened.

Present: All the members, the judge advocates, the reporter, the
accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

An interpreter read an English translation of the statement of the
accused, Nomma, appended marked "DDD."

The commission then, at 11:30 a.m., adjourned until 9 a.m., Monday,
August 11, 1947.

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James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

THIRTY-FIFTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Monday, August 11, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William F. Lamm, junior, U. S. Marine Corps,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the thirty-fourth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

An accused, Yoshizawa, Keneburo, read a written statement, appended
marked "XXX."

An interpreter read an English translation of the statement of
Yoshizawa, Keneburo, appended marked "YYY."

The judge advocate stated that the matter just read contained such
improperly introduced evidentiary matter and opinion and requested the
commission to disregard such statements.

The commission announced that it had so noted and stated that it would
disregard such improper evidence.

An accused, Sakagami, Shinji, read a written statement, appended marked
"GGG."

An interpreter read an English translation of the statement of Sakagami,
Shinji, appended marked "HHH."

An accused, Asamura, Shunpei, read a written statement, appended marked
"III."

An interpreter read an English translation of the statement of Asamura,
Shunpei, appended marked "JJJ."

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JAMES P. KENNY
Lieutenant, U. S. Navy,
Judge Advocate.

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The commission then, at 10:18 a.m., took a recess until 10:43 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

An accused, Oishi, Tetsuo, read a written statement, appended marked "KKK."

An interpreter read an English translation of the statement of Oishi, Tetsuo, appended marked "LLL."

An accused, Kamikawa, Hidehiro, read a written statement, appended marked "MMN."

An interpreter read an English translation of the statement of Kamikawa, Hidehiro, appended marked "NNN."

The commission then, at 11:29 a.m., took a recess until 2 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

An accused, Iwanami, Hiroshi, read a written statement, appended marked "OOO."

An interpreter read an English translation of the statement of the accused, Iwanami, Hiroshi, appended marked "PPP."

The judge advocate requested that he be allowed to reopen the prosecution's case to present evidence on the cause of death of the witness Nakamura, Shigayoshi.

The commission directed the judge advocate to proceed.

The prosecution reopened.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you please state your name and rank?

A. Lieutenant (junior grade) Joseph J. Kaufman, Medical Corps, U. S. Naval Reserve.

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Lieutenant, U.S. Navy,
Judge Advocate.

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2. Q. If you recognize any of these accused, will you tell us their names and ranks?

A. I recognize none.

3. Q. Do you have in your possession a copy of the death certificate of one Shigeyoshi Nakamura?

A. I do.

4. Q. Was this death certificate made out by yourself?

A. It was.

The death certificate of Nakamura, Shigeyoshi, was submitted to the accused and to the commission, and by the Judge advocate was offered in evidence.

There being no objection, it was so received.

5. Q. Will you read that document, please?

The witness read the death certificate of Nakamura, Shigeyoshi, appended marked "Exhibit 6."

An interpreter read the death certificate in Japanese.

Cross-examined by the accused:

6. Q. Was this death certificate made up by a law of the United States government or was it drawn up by the local laws of Guam?

A. The ruling regarding this death certificate is given by the International Red Cross.

7. Q. Was the body of this deceased person dissected after his death?

A. It was.

8. Q. As a result of this dissection and other circumstances, was it determined if there was any mental changes in this person?

This question was objected to by the judge advocate on the ground that this witness made out the death certificate after the death of Nakamura and he did not examine Nakamura while he was alive, and therefore was unable to answer such a question.

The accused replied.

The commission announced that the objection was not sustained.

A. There was no evidence of organic brain diseases on the post-mortem examination. The statement in the death certificate that the deceased committed suicide during a depression following testimony was derived from conversations with witnesses who associated with the deceased sometime before his demise.

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Lieutenant, U.S. Navy,
Judge Advocate.

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9. Q. Were you present at this dissection?

A. No, I was not.

10. Q. Did you testify to the contents of this death certificate at the board of investigation?

A. Will you clarify that? Which board of investigation?

11. Q. Was there a board of investigation on the death of this witness?

A. Yes, there was.

12. Q. At this board of investigation, did you testify as to the cause of death of the witness?

A. I was a member of this board of investigation. The hospital pathologist who performed the dissection testified before me and the rest of the board as to the cause of death.

13. Q. Who was this pathologist who testified before this board of investigation?

A. What was his name?

14. Q. Name and what his position was.

A. His name is Lieutenant (junior grade) Phelps. His position is the hospital pathologist and autopsy surgeon at the United States Naval Medical Center, Guam.

15. Q. Then, was this the person who performed the dissection?

A. This was.

16. Q. Then, what he testified to was the same as is stated in this death certificate?

A. That is correct.

Neither the judge advocate nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The prosecution had no further evidence to offer.

Mr. Shimoto, Taichiro, a counsel for the accused, requested that the commission allow Mr. Kunita, Hideo, counsel for the accused, Sakagami, Shinji, to take the stand to testify in rebuttal to the evidence presented by the prosecution's rebuttal witness, Commander Herbert L. Ogden. Mr. Shimoto stated that Commander Ogden had testified to matters which Sakagami had related to him, and to rebut this testimony, it was imperative that Mr. Kunita take the stand to testify to matters which Sakagami had also related to him.

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James P. Kenny
JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate.

651

0071

The judge advocate objected to defense counsel, Mr. Kuwata, Hideo, taking the stand to testify to what Sakagami had told him on the ground that it was irrelevant and immaterial in that Commander Ogden had testified that Sakagami did not tell him what drugs he had given to Commander Okuyama in the January incident, and nothing Sakagami said to his counsel concerning these drugs would have any bearing on the fact that Sakagami did not tell Commander Ogden the names of these drugs; and that Mr. Kuwata's taking the stand would be in violation of the confidence between counsel and the defendant.

The commission was cleared. The commission was opened and all parties to the trial entered.

The commission announced that it would permit Mr. Kuwata, Hideo, to take the stand, provided the request is made by the accused, Sakagami, Shinji.

The commission then, at 3:20 p.m., took a recess until 3:32 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

The accused, Sakagami, Shinji, made the following statement:

I give my permission for my defense counsel, Mr. Kuwata, to take the stand to speak concerning what I have confided in him.

The surrebuttal began.

Mr. Kuwata, Hideo, counsel for the accused, Sakagami, Shinji, was called as a witness for the defense and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name, please?
- A. Kuwata, Hideo.

Examined by the accused:

2. Q. Are you a defense counsel for the defendant, Sakagami, Shinji?
- A. Yes.
3. Q. Did Sakagami ever talk to you about the facts in this case?
- A. Yes.
4. Q. When was this?

This line of questioning was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

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James P. Kenny
JAMES P. KENNY,
Lieutenant, U.S. Navy,
Judge Advocate.

652

0072

A. When I first talked to the defendant, Sakagami, it was, as I remember, in the afternoon of the sixth of June of this year.

5. Q. When you first talked to Sakagami did he tell you about any drugs which Oniyama and Nakamura injected into the prisoners?

This line of questioning was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

The accused did not desire further to examine this witness.

Neither the judge advocate nor the commission desired to examine this witness.

In view of the fact that the witness adduced no evidence, no statement was made.

The witness resumed his status as a counsel for the accused.

The surrebuttal ended.

The commission then, at 3:57 p.m., took a recess until 4:07 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, made the following requests:

May it please the commission. The defense requests an adjournment until Tuesday morning, nine o'clock, in order that the defense counsel may prepare their final arguments. We feel that a delay until Tuesday morning is necessary in view of the fact that in this trial there are nineteen accused. This is the thirty-fifth day of the trial; the testimony and the evidence has been voluminous; much of it is very complicated, and it will require a great deal of time to study the evidence which has been submitted both by the prosecution and the defense in these thirty-five days of trial, and also the final arguments of the Japanese defense counsel must all be translated. For these reasons we request an adjournment until Tuesday morning, nine o'clock.

An interpreter read the request of Commander Carlson in Japanese.

The judge advocate made the following statement:

The judge advocate believes that the application of the defense counsel is well founded.

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James P. Kenny
JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate,

653

0073

The commission made the following announcement:

The request by the defense for an adjournment is granted by the commission.

The commission then, at 4:12 a.m., adjourned until 9 a.m., Tuesday, August 19, 1947.

CERTIFIED TO BE A TRUE COPY.

James P. Kenny
JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate.

654

0074

THIRTY-SEVEN DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Monday, August 18, 1947.

The commission met at 9:10 a.m.

Present:

Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Colonel William K. Lamm, junior, U. S. Marine Corps,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, members, and,
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Joseph Kase, junior, yeoman second class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The commission made the following announcements:

Due to the illness of the President, the commission was reduced below the legal quorum as required by paragraph 2 of the precept; therefore, the commission would adjourn until 9 a.m., Friday morning, August 22, 1947.

The commission then, at 9:11 a.m., adjourned until 9 a.m., Friday, August 22, 1947.

CERTIFIED TO BE A TRUE COPY.

James P. Kenny
JAMES P. KENNY
Lieutenant, U. S. Navy,
Judge Advocate.

655

0075

THIRTY-SEVENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, August 22, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry E. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William E. Lamm, junior, U. S. Marine Corps,
Lieutenant Commander Bradford W. Lee, junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
The accused, their counsel, and the interpreters.

The judge advocate introduced John L. Orr, seaman second class, U. S.
Navy, as reporter and he was duly sworn.

The record of proceedings of the thirty-fifth and thirty-sixth days of
the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

The judge advocate read his written opening argument, appended marked
"QQQ."

An interpreter read a Japanese translation of the opening argument of
the judge advocate.

Mr. Suzuki, Saino, a counsel for the accused began reading a written
argument, appended marked "RRR."

The commission then, at 10:25 a.m., took a recess until 10:45 a.m., at
which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused,
their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

An interpreter read an English translation of that portion of Mr. Suzuki's
argument which was read, appended marked "SSS."

Mr. Suzuki, Saino, a counsel for the accused, continued reading a
written argument, appended marked "RRR."

CERTIFIED TO BE A TRUE COPY
The commission then, at 11:30 a.m., took a recess until 2 p.m., at which
time it reconvened.

JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate.

656

0076

Present: All the members, Lieutenant Commander Regan, the reporter, the accused, their counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

An interpreter read an English translation of that portion of Mr. Suzuki's argument which was read, appended marked "SSS."

Mr. Suzuki, Seiso, a counsel for the accused, continued reading a written argument, appended, marked "RRR."

An interpreter read an English translation of that portion of Mr. Suzuki's argument which was read, appended marked "SSS."

The commission then, at 3:15 p.m., took a recess until 3:35 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

An interpreter read an English translation of that portion of Mr. Suzuki's argument which was read, appended marked "SSS."

Mr. Suzuki, Seiso, a counsel for the accused, concluded reading a written argument, appended marked "RRR."

An interpreter read an English translation of that portion of Mr. Suzuki's argument which was read, appended marked "SSS."

The commission then, at 4:15 p.m., adjourned until 9 a.m., tomorrow, Saturday, August 23, 1947.

CERTIFIED TO BE A TRUE COPY.

James P. Kenny
JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate.

657

0077

THIRTY-EIGHTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Saturday, August 23, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Colonel William K. Lanman, junior, U. S. Marine Corps,
Lieutenant Commander Bradford W. Lee, junior, U. S. Naval Reserve, members, and,
Lieutenant James P. Kenny, U. S. Navy, judge advocate.
John L. Orr, seaman second class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the thirty-seventh day of the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

Mr. Karasawa, Takami, a counsel for the accused, read a written argument, appended marked "TTT."

The commission then, at 10:05 a.m., took a recess until 10:30 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the reporter, the accused, their counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

An interpreter read an English translation of Mr. Karasawa's argument, appended marked "UUU."

The judge advocate called the attention of the commission to the fact that Mr. Karasawa's argument contained much matter that was improper in that it contained reference to incidents and conversations about which there had been no evidence or which had been properly excluded from evidence by the commission. The judge advocate requested that the commission disregard such matters.

An interpreter translated the remarks of the judge advocate.

The commission stated that it had noted the matters referred to by the interpreter and all reference to them would be disregarded by the commission.

The commission then, at 11:25 a.m., adjourned until 9 a.m., Monday,
James P. Kenny
Lieutenant, U. S. Navy,
Judge Advocate.

THIRTY-NINTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Monday, August 25, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William K. Lanman, junior, U. S. Marine Corps,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
John L. Orr, seaman second class, U. S. Navy, reporter.

The accused, their counsel, and the interpreters.

The record of proceedings of the thirty-eighth day of the trial was
read and approved.

No witnesses not otherwise connected with the trial were present.

Mr. Kuwata, Hideo, a counsel for the accused, began reading a written
argument, appended marked "VVV."

An interpreter read an English translation of that portion of Mr. Kuwata's
argument which had been read, appended marked "WWW."

Mr. Kuwata, Hideo, a counsel for the accused, continued reading a written
argument, appended marked "VVV."

An interpreter read an English translation of that portion of Mr.
Kuwata's argument which had been read, appended marked "WWW."

Mr. Kuwata, Hideo, a counsel for the accused, continued reading a
written argument appended marked "VVV."

The commission then, at 10:17 a.m., took a recess until 10:40 a.m., at
which time it reconvened.

Present: All the members; Lieutenant Commander Joseph A. Regan, U.S.
Navy, judge advocate, the reporter, the accused, their counsel and the
interpreters.

No witnesses not otherwise connected with the trial were present.

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James P. Kenny
JAMES P. KENNY
Lieutenant, U.S.
Judge Advocate, avy,

659

0079

An interpreter read an English translation of that portion of Mr. Kuwata's argument which had been read, appended marked "WWW."

Mr. Kuwata, Hideo, a counsel for the accused, continued reading a written argument, appended marked "VVV."

An interpreter read an English translation of that portion of Mr. Kuwata's argument which had been read, appended marked "WWW."

The commission then, at 11:30 a.m., took a recess until 2 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the reporter, the accused, their counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Mr. Kuwata, Hideo, a counsel for the accused, continued reading a written argument, appended marked "VVV."

An interpreter read an English translation of that portion of Mr. Kuwata's argument which had been read, appended marked "WWW."

Mr. Kuwata, Hideo, a counsel for the accused, continued reading a written argument, appended marked "VVV."

An interpreter read an English translation of that portion of Mr. Kuwata's argument which had been read, appended marked "WWW."

Mr. Kuwata, Hideo, a counsel for the accused, concluded reading a written argument, appended marked "VVV."

An interpreter read an English translation of that portion of Mr. Kuwata's argument which had been read, appended marked "WWW."

The commission then, at 3:10 p.m., took a recess until 3:30 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the reporter, the accused, their counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Mr. Akimoto, Taisiro, a counsel for the accused, began reading a written argument, appended marked "XXX."

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Tuesday, August 26, 1947.

CERTIFIED TO BE A TRUE COPY.

James P. Kenny
JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate.

660

0080

PORTLAND DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Tuesday, August 26, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William K. Lamm, junior, U. S. Marine Corps,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
John L. Orr, seaman second class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the thirty-ninth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

An interpreter read an English translation of that portion of Mr.
Akinoto's argument which had been read, appended marked "IXI."

Mr. Akinoto, a counsel for the accused, continued reading a written
argument, appended marked "IXI."

The commission then, at 10:10 a.m., took a recess until 10:35 a.m., at
which time it reconvened.

Present: All the members, the judge advocate, the reporter, the
accused, their counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Mr. Akinoto, a counsel for the accused, continued reading a written
argument, appended marked "IXI."

An interpreter read an English translation of that portion of Mr.
Akinoto's argument which had been read, appended marked "IXI."

The commission then, at 11:30 a.m., took a recess until 2 p.m., at which
time it reconvened.

Present: All the members, the judge advocate, the reporter, the accused,
their counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

CERTIFIED TO BE A TRUE COPY.

James P. Kenny
JAMES P. KENNY,
Lieutenant, U.S. Navy,
Judge Advocate.

661

0081

An interpreter read an English translation of that portion of Mr. Akimoto's argument which had been read, appended marked "YYY."

Mr. Akimoto, a counsel for the accused, continued reading a written argument, appended marked "XXX."

The commission then, at 2:55 p.m., took a recess until 3 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the reporter, the accused, their counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

An interpreter read an English translation of that portion of Mr. Akimoto's argument which had been read, appended marked "YYY."

The commission then, at 3:15 p.m., adjourned until 9 a.m., tomorrow, Wednesday, August 27, 1947.

CERTIFIED TO BE A TRUE COPY.

James P. Kenny
JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate.

662

0082

FOURTY-FIRST DAY

United States Pacific Fleet,
Commander Marianne,
Guam, Marianas Islands,
Wednesday, August 27, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Reese, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William K. Lamm, junior, U. S. Marine Corps,
Lieutenant Commander Bradford W. Lee, junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
John L. Orr, seaman second class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the fortieth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

Mr. Akinoto, counsel for the accused, continued reading a written
argument, appended marked "XXX."

The commission then, at 10:15 a.m., took a recess until 10:45 a.m., at
which time it reconvened.

Present: All the members, the judge advocate, the reporter, the accused,
their counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

An interpreter read an English translation of that portion of Mr. Akinoto's
argument which had been read, appended marked "XXX."

The commission then, at 11:30 a.m., took a recess until 2 p.m., at
which time it reconvened.

Present: All the members, the judge advocate, the reporter, the
accused, their counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Mr. Akinoto, a counsel for the accused, continued reading a written
argument, appended marked "XXX."

An interpreter read an English translation of that portion of Mr.
Akinoto's argument which had been read, appended marked "XXX."

CERTIFIED TO BE A TRUE COPY

James P. Kenny
JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate.

663

0083

Mr. Akimoto, a counsel for the accused, concluded reading a written argument, appended marked "XXI."

An interpreter read an English translation of that portion of Mr. Akimoto's argument which had been read, appended marked "XXY."

The commission then, at 3:30 p.m., took a recess until 3:45 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the reporter, the accused, their counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, USNR, a counsel for the accused, began reading a written argument, appended marked "XXZ."

The commission then, at 4:20 p.m., adjourned until 9 a.m., tomorrow, Thursday, August 28, 1947.

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James P. Kenny
JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate.

664

0084

~~CONFIDENTIAL~~

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Thursday, August 28, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garterino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William K. Lamm, Junior, U. S. Marine Corps,
Lieutenant Commander Bradner W. Lee, Junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Ryan, U. S. Navy, judge advocate.
John L. Orr, seaman second class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the forty-first day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

Mr. Hamata, a counsel for the accused, read a Japanese translation of
that portion of Commander Carlson's argument which was read.

Commander Carlson, a counsel for the accused, continued reading a
written argument, appended marked "XXX."

The commission then, at 10:10 a.m., took a recess until 10:30 a.m.,
at which time it reconvened.

Present: All the members, the judge advocate, the reporter, the
accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

Mr. Hamata, a counsel for the accused, read a Japanese translation of
that portion of Commander Carlson's argument which was read.

Commander Carlson, a counsel for the accused, continued reading a
written argument, appended marked "XXX."

Mr. Hamata, a counsel for the accused, read a Japanese translation of
that portion of Commander Carlson's argument which was read.

The commission then, at 11:30 a.m., took a recess until 2 p.m., at which
time it reconvened.

Present: All the members, the judge advocate, the reporter, the
accused, their counsel, and the interpreters.

CERTIFIED TO BE A TRUE COPY.

James P. Kennedy
JAMES P. KENNEDY
Lieutenant, U.S. Navy,
Judge Advocate.

665

0085

No witnesses not otherwise connected with the trial were present.

Commander Carlson, a counsel for the accused, continued reading a written argument, appended marked "ZZZ."

Mr. Kuwata, a counsel for the accused, read a Japanese translation of that portion of Commander Carlson's argument which was read.

The commission then, at 3:30 p.m., took a recess until 3:45 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

Commander Carlson, a counsel for the accused, continued reading a written argument, appended marked "ZZZ."

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Friday, August 29, 1947.

CERTIFIED TO BE A TRUE COPY.

James P. Kenny
JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate.

666

0086

FOURTY-THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, August 29, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William K. Laman, junior, U. S. Marine Corps,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Ragan, U. S. Navy, judge advocate.
John L. Orr, seaman second class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the forty-second day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

Mr. Kawata, a counsel for the accused, read a Japanese translation of
that portion of Commander Carlson's argument which had been read.

Commander Carlson, a counsel for the accused, continued reading a
written argument, appended marked "222."

Mr. Kawata, a counsel for the accused, read a Japanese translation of
that portion of Commander Carlson's argument which had been read.

The commission then, at 10:05 a.m., took a recess until 10:30 a.m., at
which time it reconvened.

Present: All the members, the judge advocate, the reporter, the accused,
their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

Commander Carlson, a counsel for the accused, continued reading a
written argument, appended marked "222."

Commander Carlson waived the reading in Japanese in open court of that
portion of his argument which had just been read.

The commission then, at 11:30 a.m., took a recess until 2 p.m., at which
time it reconvened.

CERTIFIED TO BE A TRUE COPY.

James P. Kenny
JAMES P. KENNY,
Lieutenant, U.S. Navy,
Judge Advocate.

667

0087

Present: All the members, Lieutenant Commander Joseph A. Regan, U. S. Navy and Lieutenant James P. Kenny, U. S. Navy, judge advocates, the accused, their counsel, and the interpreters.

Robert R. Miller, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Commander Carlson, a counsel for the accused, completed reading a written argument, appended marked "XXX."

Mr. Kuwata, a counsel for the accused, read a Japanese translation of that portion of Commander Carlson's argument which had been read.

The commission then, at 3:10 p.m., took a recess until 3:31 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

Lieutenant Commander Joseph A. Regan, U. S. Navy, a judge advocate, read a written closing argument, appended marked "AAAA."

The commission then, at 4:25 p.m., adjourned until 9 a.m., tomorrow, Saturday, August 30, 1947.

CERTIFIED TO BE A TRUE COPY.

James P. Kenny
JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate.

668

0088

FORTY-THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Saturday, August 30, 1947.

The commission met at 9:20 a.m.

Presents:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William K. Lamm, junior, U. S. Marine Corps,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert H. Miller, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the forty-third of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

An interpreter began reading a Japanese translation of the final argument
of Lieutenant Commander Regan, judge advocate.

The commission then, at 9:58 a.m., took a recess until 10:17 a.m., at
which time it reconvened.

Presents: All the members, the judge advocates, the reporter, the
accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

An interpreter completed reading a Japanese translation of the final
argument of Lieutenant Commander Regan, judge advocate.

The trial was finished.

The commission then, at 10:32 a.m., adjourned until 9 a.m., Tuesday,
September 2, 1947.

CERTIFIED TO BE A TRUE COPY.

James P. Kenny
JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate.

FORTY-FIFTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Tuesday, September 2, 1947.

The commission met at 9 a.m.

Present:

Hear Admiral Arthur J. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William K. Lanman, junior, U. S. Marine Corps,
Lieutenant Commander Bradnar W. Lee, junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the forty-fourth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

The commission was cleared.

The judge advocates were recalled and directed to record the following
findings:

As to the accused, Iwanami, Hiroshi:
The first specification of the first charge proved.
The second specification of the first charge not proved.
The third specification of the first charge proved.
And that the accused, Iwanami, Hiroshi, is of the first charge guilty.

The first specification of the second charge proved.
The second specification of the second charge proved.
The third specification of the second charge proved.
The fourth specification of the second charge proved.
The fifth specification of the second charge proved.
The sixth specification of the second charge proved.
And that the accused, Iwanami, Hiroshi, is of the second charge guilty.

As to the accused, Kamikawa, Hidehiro:
The third specification of the first charge proved.
And that the accused, Kamikawa, Hidehiro, is of the first charge guilty.

As to the accused, Oishi, Tetsuo:
The third specification of the first charge proved.
And that the accused, Oishi, Tetsuo, is of the first charge guilty.

As to the accused, Asamura, Shunpei:
The third specification of the first charge proved.
And that the accused, Asamura, Shunpei, is of the first charge guilty.

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Judge Advocate

As to the accused, Sakagami, Shinji:
The second specification of the first charge proved in part, proved except the words "IWANAMI, Hiroshi, then a Surgeon Captain, Imperial Japanese Navy, Commanding Officer of the Fourth Naval Hospital and" and the word "both," which words are not proved.
And that the accused, Sakagami, Shinji, is of the first charge guilty.

As to the accused, Yoshinawa, Kensaburo:
The third specification of the first charge proved.
And that the accused, Yoshinawa, Kensaburo, is of the first charge guilty.

As to the accused, Nomura, Kachiro:
The third specification of the first charge proved.
And that the accused, Nomura, Kachiro, is of the first charge guilty.

As to the accused, Watanabe, Mitsuo:
The third specification of the first charge proved.
And that the accused, Watanabe, Mitsuo, is of the first charge guilty.

As to the accused, Tanabe, Mamoru:
The third specification of the first charge proved.
And that the accused, Tanabe, Mamoru, is of the first charge guilty.

As to the accused, Nakai, Yoshihisa:
The third specification of the first charge proved.
And that the accused, Nakai, Yoshihisa, is of the first charge guilty.

As to the accused, Kawashima, Tatsuzaburo:
The third specification of the first charge proved.
And that the accused, Kawashima, Tatsuzaburo, is of the first charge guilty.

As to the accused, Sawada, Tsunao:
The third specification of the first charge proved.
And that the accused, Sawada, Tsunao, is of the first charge guilty.

As to the accused, Tanaka, Tokumasa:
The third specification of the first charge proved.
And that the accused, Tanaka, Tokumasa, is of the first charge guilty.

As to the accused, Hamabara, Hiroyuki:
The third specification of the first charge proved.
And that the accused, Hamabara, Hiroyuki, is of the first charge guilty.

As to the accused, Totsui, Kinsaburo:
The third specification of the first charge proved.
And that the accused, Totsui, Kinsaburo, is of the first charge guilty.

As to the accused, Hamatani, Kameo:
The third specification of the first charge proved.
And that the accused, Hamatani, Kameo, is of the first charge guilty.

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Judge Advocate.

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As to the accused, Takaishi, Susumu:
The third specification of the first charge proved.
And that the accused, Takaishi, Susumu, is of the first charge guilty.

As to the accused, Mitsuhashi, Kichigoro:
The third specification of the first charge proved.
And that the accused, Mitsuhashi, Kichigoro, is of the first charge guilty.

The commission was opened. All parties to the trial entered.

No witnesses not otherwise connected with the trial were present.

The commission announced its findings.

The commission then, at 4:34 p.m., adjourned until 9 a.m., tomorrow, Wednesday, September 3, 1947.

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Judge Advocate.

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FOURTY-SIXTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Wednesday, September 3, 1947.

The commission met at 9 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William K. Lanman, junior, U. S. Marine Corps,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the forty-fifth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

A witness for the defense as to matters in mitigation entered and was
duly sworn.

Examined by the judge advocates:

1. Q. State your name and former rank.
A. Captain Inoue, Kenichi, Imperial Japanese Navy.
2. Q. If you recognize any of the accused tell us their names and ranks.
A. Captain Iwanami, Hiroshi, is the only one I know.

Examined by the accused:

3. Q. You just testified that you knew the defendant Iwanami. What was
your relationship with him?
A. I worked together with him for seven months on Truk. The last two months
of those seven months I was sick at the hospital and I met him every day and
I feel that I came to know him very well.
4. Q. Tell the commission what you know of Captain Iwanami's general
reputation, character, and any meritorious deeds that he has performed which
are within your knowledge?
A. I will state a few acts concerning his character. One, he had a very
strong sense of responsibility and a deep love for his patients. As an
example, while I was entered in the hospital in the months of April and May

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of 1944 the hospital which could only take care of five hundred patients was taking care of one thousand, therefore there was much confusion. At this time when they were over ten air raids a day the patients had to take shelter in the air raid shelters. Captain Iwanami would always take care of the patients and have them take shelter before he would take shelter himself. He would go through the hospital wards and the air raid shelters himself to see that everyone was taken care of. If this was only for a few days this can be done by anyone but for a long time this can only be done by a person who has a strong sense of responsibility. By the time I left the hospital and returned to Japan in the end of May of 1944 Captain Iwanami was very worried because he could not take care of the patients well and the sickness became heavier and about this time Captain Iwanami was very deeply worried about the treatment of his patients. Captain Iwanami had a strong feeling for research and he was of a kind nature. As an example, after I was sent to Japan, I was entered at the Naval Hospital at Bessu and Kure. While I was in these hospitals I heard much talk concerning Captain Iwanami. Almost all of the doctors there stated that Captain Iwanami's feeling for research was very strong and that he was kind to patients and people and there was no one, especially among the persons who had served under Captain Iwanami, who said anything bad about him, and through my experience with Captain Iwanami he was the only doctor who treated me with kindness and carefulness. He even advised me as to the sort of duties I should take up after I recovered from my sickness and the reason I returned to Japan in May 1944 was because I took heed of this serious advice of Captain Iwanami. In summarizing what I have stated, Captain Iwanami was a person who sympathized deeply and loved patients and other persons. He had a strong sense of responsibility and a very strong feeling for research.

5. Q. If you know anything about the integrity of Captain Iwanami, his sincerity or what his general reputation was concerning this, whether he was a person who tried to shirk his responsibility or whether he told lies, please tell the commission.

A. As I stated before, his sense of responsibility was very strong. Therefore I feel that he is not a person who would shirk his responsibility. Concerning his integrity, I know of nothing special.

Neither the judge advocate nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the defense as to matters in mitigation entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.

A. Higuchi, Nobuo, captain, Imperial Japanese Navy.

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2. Q. If you recognize any of these accused, state as whom.
A. Captain Iwanami, the adjutant, Lieutenant Oishi, Lieutenant Asamura, Lieutenant (junior grade) Sakagami, Warrant Officer Homma, Paymaster Warrant Officer Watanabe, Warrant Officer Tanabe, Warrant Officer Mukai, Chief Petty Officer Tanaka and Petty Officer Kuwabara. The rest I do not know.

3. Q. Do you know the name of the party you have identified as the adjutant?
A. I forget his name.

Examined by the accused:

4. Q. What was your relationship with Captain Iwanami?
A. When Captain Iwanami arrived to take up duties at Truk I was the staff officer at the Fourth Base Force and I have had duty together with him at Truk till the end of the war.

5. Q. Tell us what you know of Captain Iwanami in his official capacity or as a person.
A. As a person he was a warm, kind and sympathetic gentleman. On the other hand he was a person with a strong patriotic feeling and as a doctor he had a strong feeling for research. While he was head of the naval hospital at Truk he was believed in by his patients and the patients had a grateful feeling for his kindness. As an example, in the autumn of 1944 the food situation on Truk became very critical. There were times when several people would die from malnutrition. Captain Iwanami forgetting even to sleep and eat tried his best to get food, nutritional food, for the patients who were very sick. He inspected the various beds of the various units and tried his best to improve the sanitary conditions. Also he assembled the various doctors of the various units, conferred with them and tried his best to counteract malnutrition. After the air raids became very frequent Captain Iwanami was very worried about the patients taking shelter. He came to the headquarters many times to try to get labor and materials to construct good air raid shelters for them.

6. Q. What was Captain Iwanami's general reputation among his superiors and among his subordinates?
A. Captain Iwanami was thought to be a reliable person by his superiors and he was looked up to by his subordinates.

Neither the judge advocate nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the defense as to matters in mitigation entered and was duly sworn.

Examined by the judge advocate:

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1. Q. State your name and former rank.
A. Arima, Kaoru, vice admiral, Imperial Japanese Navy.

2. Q. If you recognize any of these accused, tell us their names and former ranks.

A. Captain Iwanami, Hiroshi. The next person is called Kanikawa, but I do not know his rank or his first name. The rest I recall their faces but I do not remember their names.

Examined by the accused:

3. Q. You testified that you recognize the defendant Iwanami. What was your relationship with Captain Iwanami?

A. I knew him because I had duty together with him at Truk from February to August 1944. In the first two months of our acquaintance I knew him in my capacity as the Commanding Officer of the Fourth Base Force, the other four months I knew him in my capacity as Chief of Staff of the Fourth Fleet.

4. Q. Tell the commission what you know about Captain Iwanami's character and personality officially and as a person.

A. I have heard that he was a doctor who was very good in internal medicine and he was a person who did not know widely about medicine but he was very well versed in his speciality and knew it well. He was a person with a well developed common sense. He was a person who worked tirelessly at his work and energetically. He was a person who having once started a thing carried it out to the finish. I know of an example that after the air raids became very frequent the sanitary conditions at the various units became very bad and I know of his personally going out to the various units and supervising the disposal of these unsanitary conditions and prevention of contagious diseases. I saw him as a person who was sincere, good natured, and a little introspective. He knew his bad faults very well and tried his best to correct his faults and he was a little indecisive. He was not a sort of a person who could take anything as it comes and a person who could not very well command others. Even though he had others do something for him he would always give instructions to them, therefore among some of his subordinates, he may have been thought to interfere a little too much with their work. This was his real character and rather than a fault I believe these to be his good points. After 1944 it became very necessary to fortify the land fortifications on Truk and each unit made strenuous efforts toward this end but Captain Iwanami was a person who I thought exerted great effort in this line and succeeded. I felt that Captain Iwanami was not a cold and inhuman person but a warm and kind one. I have seen him laugh without reserve many times and he was a person who held shows and movies for the patients. At the headquarters there was a navy band whose members were also code men and even though they were code men I know of him coming to the adjutant and asking him to have the band play at the hospital. He looked after the health and sanitation of his men and I felt that he looked after his subordinates in a large sense. I have never seen him speak in a loud voice to anyone, he always spoke quietly and I never thought he was a person who would speak excitedly. I have experienced many times that Captain Iwanami was a very sensitive person. Things that would have no effect on ordinary persons always affected Captain Iwanami very much. In June and July of 1944 after the fall

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of Saipan especially Captain Iwanami seemed to be under a spell of complex war psychology and as one of the examples of this psychology he felt strongly about the way the medical units had fought together on Attu Island, Saipan and Tinian and he was determined to do the same. Also as a unit in which there were nurses he felt this strongly since the position where the hospital was located was a place where the army said the invading units would land. Because of their position Captain Iwanami was always very worried and unsettled. Next was Captain Iwanami's worries about air raid shelters of which there were not a sufficient number and they were not effective. As they dug air raid shelters in the side of the mountains the entrance of the air raid shelter would be very far from the hospital. It was in April and May the air raid shelters were very few, the shelter in which the staff of the hospital took shelter was an open hole in the ground. I remember at a conference when he spoke earnestly concerning this to the head of the construction unit and asked him to send laborers to help in digging air raid shelters but at this time almost all effort was spent in making air fields and I remember his saying, "I will do it myself." I remember two daylight bombings, several incendiary bombs were dropped. Nurses and everyone worked in extinguishing this fire. At this time I was in charge of anti-aircraft prevention and I remember praising them for their fine work. I remember another time when two or three large bombs fell at the hospital and I went to inspect. One was right by the room of the head of the hospital.....

The commission directed that the question be repeated to the witness in Japanese and directed the witness to keep a little closer to the question in making his answer.

The question was repeated in Japanese.

A. (Cont'd) As I stated above, he was affected very deeply by small things and they affected him very much. He spoke many times about what he had decided and what he had resolved and I would like to finish my statement by saying that he was under an unusual psychology in July 1944.

5. Q. What was Captain Iwanami's general reputation among his superiors and his subordinates?

A. There was very little social life but officially he was a person who was thought a very good person by his superiors. I do not know what the feeling was among his subordinates.

6. Q. What was his reputation as a doctor among the patients?

A. I do not know very well about this.

Neither the judge advocate nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

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Judge Advocate.

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The commission then, at 10:20 a. m., took a recess until 10:40 a. m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

Mr. Akimoto, Yuichiro, a counsel for the accused, was called as a witness for the defense as to matters in mitigation, and was duly sworn.

Examined by the judge advocate:

1. Q. Will you please state your name?
A. Akimoto, Yuichiro.

Examined by the accused:

2. Q. Are you a defense counsel in this case?
A. Yes.

3. Q. Do you have certain documents in your possession which you wish to enter into the record as character evidence in mitigation?
A. Yes.

4. Q. Are these documents in Japanese or English?
A. There are some in which the original is in Japanese and which have been translated into English and there are some in which the original is in English and which have been translated into Japanese.

5. Q. Are these documents evidence as to the character of the defendants to be used as evidence in mitigation?
A. Yes.

6. Q. Do you wish to enter these documents into evidence in behalf of Captain Iwanami?
A. Yes.

7. Q. Have you documents to be offered into evidence in behalf of any of the other accused?
A. There are also some for the other defendants.

8. Q. Which other defendants?
A. The ones in my possession other to Captain Iwanami are for Kanikawa, Sakagami, Tanabe and Wukai.

9. Q. Have you read and examined all these documents?
A. Yes.

10. Q. What have you found as a result of reading and examining all these documents?

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A. The persons who wrote these petitions were persons who were relatives, friends, comrades in arms of various defendants, and all of them I believe to be true.

11. Q. Has the judge advocate had access to these documents?
A. I think they have had a chance to see the documents.

The witness produced forty-three documents in Japanese in mitigation and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 7" through "Exhibit 49".

The witness produced forty-three documents, the English translations of "Exhibit 7" through "Exhibit 49" in behalf of the accused in mitigation, and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 7(a)" through "Exhibit 49(a)".

12. Q. I ask you to refer to these documents and read them in Japanese and after they are read in Japanese I ask the interpreter to translate them and read them in English.

The witness read six petitions in behalf of the accused Iwanami, appended marked "Exhibit 7" through "Exhibit 12".

An interpreter read the English translation of "Exhibit 7", through "Exhibit 12", appended marked "Exhibit 7(a)" through "Exhibit 12(a)".

The commission then, at 11:30 a. m., took a recess until 2 p. m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

John L. Orr, seaman second class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Mr. Akinoto, Yuichiro, the witness under examination when the recess was taken, resumed his seat as a witness for the defense as to matters in mitigation. He was warned that the oath previously taken was still binding and continued his testimony.

(Examination continued)

The witness read twelve petitions in behalf of the accused Iwanami and four petitions in behalf of the accused Kanikawa, appended marked "Exhibit 13" through "Exhibit 26".

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An interpreter read the English translation of "Exhibit 13" through "Exhibit 28", appended marked "Exhibit 13(a)" through "Exhibit 28(a)".

The commission then, at 3:15 p. m., took a recess until 3:30 p. m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

Mr. Akimoto, Yuichiro, the witness under examination when the recess was taken, resumed his seat as a witness for the defense as to matters in mitigation. He was warned that the oath previously taken was still binding and continued his testimony.

(Examination continued)

The witness read four petitions in behalf of the accused Kanikawa and three petitions in behalf of the accused Sakagami, appended marked "Exhibit 29" through "Exhibit 35".

An interpreter read the English translation of "Exhibit 29" through "Exhibit 35", appended marked "Exhibit 29(a)" through "Exhibit 35(a)".

The commission then, at 4:30 p. m., adjourned until 9 a. m., tomorrow, Thursday, September 4, 1947.

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FORTY-SEVENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Thursday, September 4, 1947.

The commission met at 9 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William K. Lanman, junior, U. S. Marine Corps,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the forty-sixth day of the trial was read
and approved.

No witnesses not otherwise connected with the trial were present.

Mr. Akinoto, Yuichiro, a counsel for the accused, the witness on the
stand as to matters in mitigation when the adjournment was taken, entered.
He was warned that the oath previously taken was still binding, and continued
his testimony.

(Examination continued)

The witness read six petitions in behalf of the accused Tanabe and eight
petitions in behalf of the accused Mukai, appended marked "Exhibit 36"
through "Exhibit 49".

An interpreter read the English translation of "Exhibit 36" through
"Exhibit 49" appended marked "Exhibit 36(a) through "Exhibit 49(a)".

Neither the judge advocate nor the accused desired further to examine
this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as a counsel for the accused.

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Judge Advocate.

Mr. Suzuki, Saise, a counsel for the accused, was called as a witness for the defense as to matters in mitigation, and was duly sworn.

Examined by the judge advocate:

1. Q. Will you please state your name?
A. Suzuki, Saise.

Examined by the accused:

2. Q. Are you a defense counsel in this case?
A. Yes.

3. Q. Do you have certain documents in your possession that you wish to introduce into the record as character evidence in mitigation?
A. Yes.

4. Q. How many documents have you?
A. Sixty-six.

5. Q. Have these documents been translated into English?
A. Yes.

6. Q. Are these documents in behalf of Oishi, Asamura, Yoshizawa and Tanaka to be used as evidence in mitigation?
A. Yes.

7. Q. Do you wish to offer these documents into evidence in behalf of Oishi, Asamura, Yoshizawa and Tanaka?
A. Yes.

8. Q. Have you read and examined all these documents?
A. Yes.

9. Q. Has the judge advocate had access to these documents?
A. Yes.

The witness produced sixty-six documents in Japanese in mitigation and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection, the documents were so received and are appended marked "Exhibit 90" through "Exhibit 115".

The witness produced sixty-six documents, the English translations of "Exhibit 90" through "Exhibit 115" in behalf of the accused in mitigation, and they were submitted to the judge advocate and to the commission, and by the accused were offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 90(a)" through "Exhibit 115(a)".

10. Q. Please read these documents.

The witness read six petitions in behalf of the accused Asamura, appended marked "Exhibit 90" through "Exhibit 95".

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An interpreter read the English translation of "Exhibit 50" through "Exhibit 55" appended marked "Exhibit 50(a)" through "Exhibit 55(a)".

The commission then, at 10:15 a.m., took a recess until 10:32 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

Mr. Suzuki, Saiso, the witness under examination when the recess was taken, resumed his seat as a witness for the defense as to matters in mitigation. He was warned that the oath previously taken was still binding and continued his testimony.

(Examination continued)

The witness read twenty-nine petitions in behalf of the accused Oishi, appended marked "Exhibit 56" through "Exhibit 84".

An interpreter read the English translation of "Exhibit 56" through "Exhibit 84", appended marked "Exhibit 56(a)" through "Exhibit 84(a)".

The commission then, at 11:26 a.m., took a recess until 2 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

Mr. Suzuki, Saiso, the witness under examination when the recess was taken, resumed his seat as a witness for the defense as to matters in mitigation. He was warned that the oath previously taken was still binding and continued his testimony.

(Examination continued)

The witness read nineteen petitions in behalf of the accused Yoshinawa and twelve petitions in behalf of the accused Tanaka, appended marked "Exhibit 85" through "Exhibit 115".

An interpreter read the English translation of "Exhibit 85" through "Exhibit 115" appended marked "Exhibit 85(a)" through "Exhibit 115(a)".

Neither the judge advocate nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

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Judge Advocate.

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The witness resumed his status as a counsel for the accused.

Mr. Kume, Hideo, a counsel for the accused, was recalled as a witness for the defense as to matters in mitigation and was warned that the oath previously taken was still binding.

Examined by the judge advocate:

1. Q. Will you please state your name?
A. Kume, Hideo.

Examined by the accused:

2. Q. Are you a defense counsel in this case?
A. Yes.

3. Q. Do you have certain documents in your possession which you wish to introduce into the record as character evidence in mitigation?
A. Yes.

4. Q. Are these documents in Japanese?
A. The original are in Japanese but have been translated into English.

5. Q. For what defendants are these documents in mitigation to be submitted?
A. The documents I have in my possession are in behalf of Kuma, Kawashima, Akahori, Tsurui, Takashi, and Mitohashi.

6. Q. How many documents do you have?
A. Thirty-one.

7. Q. Do you wish to offer these documents in mitigation?
A. Yes.

8. Q. Have you read these documents?
A. Yes.

9. Q. What have you found out as a result of your reading these documents?
A. These documents were submitted by friends, relatives, instructors and persons who have had deep relationship with those accused in the past and they concern the character of these defendants.

10. Q. Did the judge advocate have access to these documents?
A. Yes.

The witness produced thirty-one documents in Japanese in mitigation and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 116" through "Exhibit 146".

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The witness produced thirty-one documents, the English translations of "Exhibit 116" through "Exhibit 146" in behalf of the accused in mitigation, and they were submitted to the judge advocate and to the commission, and by the accused were offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 116(a)" through "Exhibit 146(a)".

11. Q. Please read these documents.

The witness read eleven petitions in behalf of the accused Hama, nine petitions in behalf of the accused Kawashima, and two petitions in behalf of the accused Akabari, appended marked "Exhibit 116" through "Exhibit 137".

An interpreter read the English translation of "Exhibit 116" through "Exhibit 137" appended marked "Exhibit 116(a)" through "Exhibit 137(a)".

The commission then, at 3:16 p.m., took a recess until 3:30 p.m., at which time it reconvened.

Presents All the members, the judge advocates, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

Mr. Kunita, Hideo, the witness under examination when the recess was taken, resumed his seat as a witness for the defense as to matters in mitigation. He was warned that the oath previously taken was still binding and continued his testimony.

(Examination continued)

The witness read three petitions in behalf of the accused Tetsui, one petition in behalf of the accused Mitsubishi, and five petitions in behalf of the accused Takashi, appended marked "Exhibit 138" through "Exhibit 146".

An interpreter read the English translation of "Exhibit 138" through "Exhibit 146", appended marked "Exhibit 138(a)" through "Exhibit 146(a)".

Neither the judge advocate nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as a counsel for the accused.

Mr. Karamura, Takumi, a counsel for the accused, was called as a witness for the defense as to matters in mitigation, and was duly sworn.

Examined by the judge advocate:

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James P. Kenny
JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate.

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0105

1. Q. Will you please state your name?
A. Karasawa, Takami.

Examined by the accused:

2. Q. Are you a defense counsel in this case?
A. Yes.

3. Q. Do you have certain documents in your possession which you wish to introduce into the record as character evidence in mitigation?
A. Yes.

4. Q. Have these documents been translated into English?
A. Yes.

5. Q. Are these documents evidence of the character of the defendants to be submitted as evidence in mitigation?
A. Yes.

6. Q. In behalf of what defendants are these documents to be submitted?
A. Watanabe, Sawada, Kuwabara and Hamatani.

7. Q. How many documents do you have?
A. Twenty-three.

8. Q. Do you wish to offer all of these documents in evidence in mitigation?
A. Yes.

9. Q. Have you read these documents?
A. Yes.

10. Q. What have you found out as a result of your reading these documents?
A. They are documents which concern the character of the defendants which were submitted by persons who had close relationship with the defendants and know about his character, such as teachers, friends, relatives and so forth.

11. Q. Has the judge advocate had access to these documents?
A. Yes.

The witness produced twenty-three documents in Japanese in mitigation and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 147" through "Exhibit 169".

The witness produced twenty-three documents, the English translations of "Exhibit 147" through "Exhibit 169" in behalf of the accused in mitigation and they were submitted to the judge advocate and to the commission, and by the accused were offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 147(a)" through "Exhibit 169(a)".

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James P. Kenny
JAMES P. KENNY,
Lieutenant, U.S. Navy,
Judge Advocate.

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0106

The witness read three petitions in behalf of the accused Watanabe, two petitions in behalf of the accused Sawada, and fourteen petitions in behalf of the accused Kuwabara, appended marked "Exhibit 147" through "Exhibit 165".

An interpreter read the English translations of "Exhibit 147" through "Exhibit 165," appended marked "Exhibit 147(a)" through "Exhibit 165(a)".

The commission then, at 4:00 p.m., adjourned until 9 a.m., tomorrow, Friday, September 5, 1947.

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James P. Kenny
JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate.

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0107

FOURTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, September 5, 1947.

The commission met at 9 a.m.

Presents

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry E. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Colonel William K. Lamm, junior, U. S. Marine Corps,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
members, and,
Lieutenant Commander Joseph A. Ragan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Robert R. Miller, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the forty-seventh day of the trial was
read and approved.

No witnesses not otherwise connected with the trial were present.

Mr. Karamura, Tahiti, a counsel for the accused, the witness under
examination as to matters in mitigation when the adjournment was taken,
entered. He was warned that the oath previously taken was still binding,
and continued his testimony.

(Examination continued.)

The witness read four petitions in behalf of the accused Karamura,
appended marked "Exhibit 166" through "Exhibit 169".

An interpreter read the English translation of "Exhibit 166" through
"Exhibit 169," appended marked "Exhibit 166 (a)" through "Exhibit 169(a)."

Neither the judge advocate nor the accused desired further to examine
this witness.

The commission did not desire to examine this witness.

The witness resumed his status as a counsel for the accused.

The commission was cleared to consider the sentences.

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James P. Kenny
JAMES P. KENNY,
Lieutenant, U.S. Navy,
Judge Advocate.

9/5/47

The judge advocates were recalled and directed to record the sentences of the commission as follows:

The commission, therefore, sentences him, Iwanami, Hiroshi, to be hanged by the neck until dead, two-thirds of the members concurring.

The commission, therefore, sentences him, Hamakawa, Hidehiro, to be confined for a period of twenty (20) years.

The commission, therefore, sentences him, Oishi, Tetsuo, to be confined for a period of twenty (20) years.

The commission, therefore, sentences him, Asamura, Shunpei, to be confined for a period of ten (10) years.

The commission, therefore, sentences him, Sakaguchi, Shinji, to be confined for the term of his natural life.

The commission, therefore, sentences him, Yoshizawa, Kensaburo, to be confined for a period of fifteen (15) years.

The commission, therefore, sentences him, Kama, Kachiro, to be confined for a period of ten (10) years.

The commission, therefore, sentences him, Watanabe, Mitsuo, to be confined for a period of ten (10) years.

The commission, therefore, sentences him, Tanabe, Kenji, to be confined for a period of ten (10) years.

ARTHUR C. ROBINSON,
Rear Admiral, U. S. Navy,
President.

BRADNER W. LEE, junior,
Lieutenant Commander,
U. S. Naval Reserve, Member.

HENRY K. ROSCOE,
Lieutenant Colonel, Coast Artillery Corps,
United States Army, Member.

JOSEPH A. RUFE,
Lieutenant Commander,
U. S. Navy, Judge Advocate.

VICTOR J. GAMBARINO,
Lieutenant Colonel, Coast Artillery Corps,
United States Army, Member.

JAMES P. KENNY,
Lieutenant,
U. S. Navy, Judge Advocate.

WILLIAM K. LAMMAN, junior,
Lieutenant Colonel, U. S. Marine Corps,
Member.

CERTIFIED TO (First Page of two pages recording the sentences.)

James P. Kenny
JAMES P. KENNY,
Lieutenant, U. S. Navy,
Judge Advocate.

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0109

9/5/47

The commission, therefore, sentences him, Nakai, Yoshihisa, to be confined for a period of ten (10) years.

The commission, therefore, sentences him, Kawashima, Tatsusaburo, to be confined for a period of ten (10) years.

The commission, therefore, sentences him, Sawada, Tsunao, to be confined for a period of ten (10) years.

The commission, therefore, sentences him, Tanaka, Tekunosuke, to be confined for a period of ten (10) years.

The commission, therefore, sentences him, Akabori, Teishiro, to be confined for a period of ten (10) years.

The commission, therefore, sentences him, Rumbara, Hironuki, to be confined for a period of ten (10) years.

The commission, therefore, sentences him, Tsurui, Kichiro, to be confined for a period of ten (10) years.

The commission, therefore, sentences him, Hamatani, Kozo, to be confined for a period of ten (10) years.

The commission, therefore, sentences him, Takaishi, Susumu, to be confined for a period of ten (10) years.

The commission, therefore, sentences him, Nitcheshi, Kichigoro, to be confined for a period of ten (10) years.

ARTHUR G. ROBINSON,
Rear Admiral, U. S. Navy,
President.

BRANIFF W. LEE, Junior,
Lieutenant Commander,
U. S. Naval Reserve, Member.

HENRY K. ROSSON,
Lieutenant Colonel, Coast Artillery Corps,
United States Army, Member.

JOSEPH A. MORGAN,
Lieutenant Commander,
U. S. Navy, Judge Advocate.

VICTOR J. GARDARINO,
Lieutenant Colonel, Coast Artillery Corps,
United States Army, Member.

JAMES P. KENNY,
Lieutenant,
U. S. Navy, Judge Advocate.

WILLIAM E. LAMMAN, Junior,
Lieutenant Colonel, U. S. Marine Corps,
Member.

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(Second page of the pages recording the sentences.)

James P. Kenny
JAMES P. KENNY
Lieutenant, U. S. Navy,
Judge Advocate.

690

0110

The commission was opened. All parties to the trial entered.
The commission then read and pronounced the sentences to the accused.
The commission, having no more cases before it, adjourned to await the
action of the convening authority.

ARTHUR G. ROBINSON,
Rear Admiral, U. S. Navy,

JOSEPH A. REGAN,
Lieutenant Commander, U. S. Navy,

JAMES P. KENNY,
Lieutenant, U. S. Navy.

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James P. Kenny
JAMES P. KENNY
Lieutenant, U. S. Navy,
Judge Advocate.

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0111

IWANAMI, et al;

Q

Special Plea to the Jurisdiction of the Military Commission to try:

Captain Iwanami, Hiroshi
Lt. Commander Kanikawa, Hidehiro
Lieutenant Oishi, Tetsuo
Lieutenant Asamura, Shinpei
Lieutenant (jg) Sakagami, Shinji
Ensign Yoshizawa, Kensaburo
Warrant Officer Homma, Hachiro
Warrant Officer Watanabe, Mitsuo
Warrant Officer Tanabe, Mamoru
Warrant Officer Mukai, Yoshihisa
Chief Petty Officer Corpsman Kawashina, Tatsusaburo
Chief Petty Officer Corpsman Sawada, Tsuneo
Chief Petty Officer Corpsman Tanaka, Tokunosuke
Chief Petty Officer Corpsman Akabori, Toichiro
Chief Petty Officer Corpsman Kuwabara, Hiroyuki
Chief Petty Officer Corpsman Tsutsui, Kisaburo
Chief Petty Officer Corpsman Nanatani, Kazuo
Chief Petty Officer Corpsman Takaishi, Susumu
Chief Petty Officer Corpsman Mitsuhashi, Kichigoro,

all of the Imperial Japanese Navy;

Delivered by Commander Martin E. Carlson, United States
Naval Reserve, at Guam, Marianas Islands on Tuesday June 24, 1947.

These nineteen accused object to being tried by this Military Commission. All of the accused are Japanese Nationals. The following are still technically officers and chief petty officers of the Imperial Japanese Navy, never having been demobilized: Captain Iwanami, Hiroshi, Lt.(jg) Sakagami, Shinji, Warrant Corpsman Homma, Hachiro, Chief Corpsman Kawashina, Tatsusaburo, Chief Corpsman Sawada, Tsuneo, Chief Corpsman Tanaka, Tokunosuke, Chief Corpsman Kuwabara, Hiroyuki, Chief Corpsman Tsutsui, Kisaburo, Chief Corpsman Takaishi, Susumu.

The above persons are still prisoners of war never having been released.

The following ten persons although prisoners of war at one time were released from custody, returned to Japan and demobilized:

Lt. Commander Kanikawa, Hidehiro;
Lieutenant Oishi, Tetsuo;
Lieutenant Asamura, Shinpei;
Ensign Yoshizawa, Kensaburo;
Warrant Paymaster, Watanabe, Mitsuo;
Warrant Corpsman Tanabe, Mamoru;
Warrant Corpsman Mukai, Yoshihisa;
Chief Corpsman Akabori, Toichiro;
Chief Corpsman Nanatani, Kazuo;
Chief Corpsman Mitsuhashi, Kichigoro.

In the case of the above ten persons their return to the custody of the United States follows the same pattern. A Japanese policeman appeared at their home one day and told them to come along with him to the police station. From the police station these persons were sent to Sugamo prison which is staffed and operated by the United States Army. After a short stay at Sugamo prison they were turned over to the custody of the United States Navy and sent to Guam where they have been kept in close confinement. We question the legality of the process by which these ten persons were returned to the custody of the United States Navy Department.

"Q(1)"

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James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0112

IWANAMI, et al;
Q

Simply because these persons are not citizens of the United States does not put them outside the protection of the Constitution of the United States of America when we take them into custody to try them in our courts. Article IV Amendment to the Constitution reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Each of these ten persons states that no warrant was ever served upon them. They were told by the Japanese police to come along with them; they were taken to a Japanese police station and from there taken to the United States Army prison, Sugamo at Tokyo, Japan.

How did these ten persons get to Guam? Is it enough to merely say that they were properly extradited? We hold that there was no proper extradition. International Extradition is governed by considerations of comity and the provisions of treaties with foreign nations. In footnote one par. 1 on page 243 of volume 22, American Jurisprudence we read:

"Since the United States cannot as a matter of comity, surrender to a foreign government a citizen of the United States whose extradition is sought it does not seek the extradition, as a matter of comity, of citizens of other nations. See infra, par. 4. Sec. 4, Moore, International Law Digest, p. 246 P. 580."

We realize full well that the validity of extradition proceedings is usually tested by means of the writ of habeas corpus but in this case we hold that it is necessary for this commission in deciding whether they have jurisdiction to try these ten persons that they decide the validity of the extradition proceedings by which the ten accused were removed from Japan to Guam. To do so it is necessary that the judge advocate produce the extradition papers in the case of these ten persons. We ask that such papers be made available to defense counsel in order that we may properly point out to the commission our grounds for objection. Not to produce these extradition papers at this time is most prejudicial to the substantive rights of these ten accused.

In vol. 22, American Jurisprudence page 245: "In the United States the early cases indicated that extradition was generally declined in the absence of a conventional or legislative provision, citing *Valentine v. U.S.* 299 U.S. 5., 81 Led. 5, 578. ct. 100; *Factor v. Laubenhainer*, 290 U.S. 276, 78 Led. 315, 54 S. Ct. 191; *Terlunden v. Arnes*, 184 U.S. 270, 46 Led. 534, 22 S. Ct. 484; *U.S. v. Rauscher*, 119 U.S. 407, 30 Led. 425, 75 Ct. 234.

Later cases, however, have made it clear that in the absence of such conventional or legislative provision, the Executive has no power to surrender the fugitive criminal to a foreign government. Citing *Valentine v. U.S.* 299 U.S. 5, 81 Led 5, 57 S.Ct. 100. See also *Factor v. Laubenhainer*, 290 U.S. 276, 78 Led. 315, 54 S. Ct. 191."

In footnote 9 page 249 of volume 22 of American Jurisprudence:

"Extradition proceedings being based upon an act of Congress and the Federal Courts having decided that such act must be strictly construed and that all of its requirements must be respected courts are without the power

"Q(2)"

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James D. Kenny
James D. Kenny,
Lieutenant, U. S. Navy.
Judge Advocate.

0113

IWANAMI, et al;
Q

Simply because these persons are not citizens of the United States does not put them outside the protection of the Constitution of the United States of America when we take them into custody to try them in our courts. Article IV Amendment to the Constitution reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Each of these ten persons states that no warrant was ever served upon them. They were told by the Japanese police to come along with them; they were taken to a Japanese police station and from there taken to the United States Army prison, Sugamo at Tokyo, Japan.

How did these ten persons get to Guam? Is it enough to merely say that they were properly extradited? We hold that there was no proper extradition. International Extradition is governed by considerations of comity and the provisions of treaties with foreign nations. In footnote one par. 1 on page 243 of volume 22, American Jurisprudence we read:

"Since the United States cannot as a matter of comity, surrender to a foreign government a citizen of the United States whose extradition is sought it does not seek the extradition, as a matter of comity, of citizens of other nations. See infra, par. 4. Sec. 4, Moore, International Law Digest, p. 246 P. 580."

We realize full well that the validity of extradition proceedings is usually tested by means of the writ of habeas corpus but in this case we hold that it is necessary for this commission in deciding whether they have jurisdiction to try these ten persons that they decide the validity of the extradition proceedings by which the ten accused were removed from Japan to Guam. To do so it is necessary that the judge advocate produce the extradition papers in the case of these ten persons. We ask that such papers be made available to defense counsel in order that we may properly point out to the commission our grounds for objection. Not to produce these extradition papers at this time is most prejudicial to the substantive rights of these ten accused.

In vol. 22, American Jurisprudence page 245: "In the United States the early cases indicated that extradition was generally declined in the absence of a conventional or legislative provision, citing *Valentine v. U.S.* 299 U.S. 5., 81 Led. 5, 57S. ct. 100; *Factor v. Laubenhimer*, 290 U.S. 276, 78 Led. 315, 54 S. Ct. 191; *Terlunden v. Ames*, 184 U.S. 270, 46 Led. 534, 22 S. Ct. 484; *U.S. v. Rauscher*, 119 U.S. 407, 30 Led. 425, 7S. Ct. 234.

Later cases, however, have made it clear that in the absence of such conventional or legislative provision, the Executive has no power to surrender the fugitive criminal to a foreign government. Citing *Valentine v. U.S.* 299 U.S. 5, 81 Led 5, 57 S.Ct. 100. See also *Factor v. Laubenhimer*, 290 U.S. 276, 78 Led. 315, 54 S. Ct. 191."

In footnote 9 page 249 of volume 22 of American Jurisprudence:

"Extradition proceedings being based upon an act of Congress and the Federal Courts having decided that such act must be strictly construed and that all of its requirements must be respected courts are without the power

"Q(2)"

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Lieutenant, U. S. Navy,
Judge Advocate.

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IWANAMI, et al;

Q

or authority to construe such act liberally, but will be compelled to follow the rule laid down by the Federal Court and require that all of the provisions of the Federal law relating to requisitions must be strictly observed and respected. Ex parte Owen, 10 Okla. Crim Rep. 284, 136 P. 197, Ann. Cas. 1916 A, 522. See also Courts, Vol. 14, p. 337 Par. 117."

It is well that we consider who may be extradited. On page 255 of vol. 22 of American Jurisprudence we read: "The persons against whom extradition proceedings are directed must, of course, be fugitives from justice." citing Jones v. Tobin, 240 U.S. 127, 60 L.ed. 562, 36 S. Ct. 290; Tennessee v. Jackson (D.C.) 36 F. 258, 1 L.R.A. 370; Jones v. Leonard, 50 Iowa, 106, 32 Am. Rep. 116; Keller v. Butter, 246 N.Y. 249, 158 N.E. 510, 55 A.L.R. 394; State ex rel. Lea v Brown, 166 Tenn. 669, 64 G.W. (2d) 841, 91 A.L.R. 1246, writ of certiorari denied in 292 US 638, 78 L.ed. 1491, 54 S. Ct. 717; Ex parte McDaniel, 76 Tex Crim Rep. 184, 173 S.W. 1018, Am. Cas 1917 B. 335.

Annotation: 7 Ann. Cas. 1076; 13 Ann. Cas. 907.

The surrender of a person in one state for removal to another as a fugitive is expressly or by necessary implication prohibited by U.S. Rev. Stat. Para 5278, 18 U.S.C.A. Para 662, where it clearly appears that the person was not, and could not have been, a fugitive from justice of the demanding state. Jones v. Tobin, 240 U.S. 127, 60 L.ed. 562, 36 S.Ct. 290.

We call the Commission's attention that these two persons were released as prisoners of war by the United States and returned to Japan where they were demobilized from the Japanese Navy. Clearly therefore they are not fugitives from justice nor did they flee from the custody of the United States or were they personally present at the time the crime was committed within the demanding state, the United States.

We continue to quote from 22 Am Jurisprudence page 255: "the language of the Federal statutes seems to contemplate that the crime shall have been committed by one, who, at the time, was personally present within the demanding state. Thus, it refers to a demand by the Executive of a state for the surrender of a person as a fugitive from justice to the executive of a state "to which such person has fled," and it requires the production of a copy of the indictment found, or the affidavit made, before a magistrate, containing the necessary charges and properly certified by the executive of the state or territory "from which the person so charged has fled, ..."

Can it be said that any of these ten persons were personally present within the United States or the territories over which they claimed jurisdiction at the time the crime was committed, January, February, and July 1944. This seems to be one of the requirements of the Federal statute.

It is a universal rule that a person to be extradited must be charged with a crime against the laws of the state from whose justice he is alleged to have fled. These ten persons did not flee; they were demobilized after having been turned over as released prisoners of war to the Japanese authorities. Even now they are not charged with crimes against the United States but are charged with violations of the law and customs of war.

"Q(3)"

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James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0115

IWANAMI, et al;
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Page 265 volume 22, American Jurisprudence:

"It is the universal rule that it must appear to the governor of the asylum state to whom a demand for an alleged fugitive from justice is presented, before he can lawfully comply with the demand, that the person demanded is substantially charged with a crime against the laws of the state from whose justice he is alleged to have fled, by an indictment or an affidavit certified as authentic by the governor making the demand. It is thus not only the right but the duty of the governor to determine whether a crime against the laws of the demanding state has been substantially charged." citing many cases such as: *Marbles v. Creecy*, 215 U.S. 63, 54 L.ed. 92, 30 S.Ct. 32; *Compton v. Alabama*, 214 U.S. 1, 53 L.ed. 885, 29 S. Ct. 605, 16 Ann. Cas. 1098; *Pierce v. Creecy*, 210 U.S. 387, 52 L.ed. 1113, 288. Ct. 714 (rule recognized); *Illinois ex rel McNicholas v. Pease*, 207 U.S. 100, 52 L.ed. 121, 28 S. Ct. 58 (dictum); *Appleyard v. Mass.* 203 U.S. 222, 51 L.ed. 161, 27 S. Ct. 122, 7 Ann. Cas. 1073. Annotation: 81 A.L.R. 555; 1 L.R.A. 371; 28 L.R.A. 801; 11 L.R.A. (N.S.) 426.

Persons cannot be extradited for political crimes and most treaties expressly so provide. There is no question but that all crimes associated with actual conflict of armed forces are of a political character and that the perpetrators of them cannot be extradited. All the specifications allege and particularly specification 3 of Charge I that those ten persons were "all attached to and serving at the Fourth Naval Hospital, attached to the military installations of the Imperial Japanese Navy at Dublon Island, Truk Atoll, Caroline Islands, at a time when a state of war existed between the United States of America, its Allies and Dependencios, and the Imperial Japanese Empire," These ten persons are charged with a political crime.

I would like to read to you what is said in Volume 22, American Jurisprudence on page 271:

EXTRADITION

"31. Political Crimes. - The development of extradition has evolved the principle that there shall be no international extradition for political crimes and offenses. 20 (Cite: "Annotation: 112 Am. St. Rep. 127. See 1 Moore, Extradition, p. 303, 205; 4 Moore, International Law Digest, p. 332, 604.") In keeping with this tenet of international law, most extradition treaties with foreign governments expressly provide that they do not apply to charges of political crimes. 1 (Cite: "Annotations: 41 L. ed. 1047. See 1 Moore, Extradition, p. 306, 207.") Many of the treaties, however, between the United States and foreign countries expressly provide for extradition of persons charged as assassins or murderers of the heads of the various governments where, although such murder may be classed as one in furtherance of a political move, it is accomplished when there is no state of open revolt or war in existence. 2. (Cite: "See 1 Moore, Extradition, p. 310, 208; 4 Moore, International Law Digest, p. 332, 604.") While the question of what constitutes a crime of a political character has not as yet been fully determined by judicial authority, yet fugitive criminals are not to be surrendered for crimes specified in the treaty as extraditable, if such crimes are incidental and formed a part of political disturbances. 3 (Cite: "Annotation: 12 Am. St. Rep. 126.") Accordingly, during the progress of a revolution crimes of an atrocious and inhuman character may be committed by the contending forces,

"Q (4)"

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James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

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IWANAMI, et al;

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and still the perpetrators of such crimes may escape punishment as fugitives beyond the reach of extradition. It does not devolve on the courts in extradition proceedings to determine what acts are, or are not, within the rules of civilized warfare; and, while men in heated blood often do things which are against and contrary to reason, none the less, acts of this description may be done for the purpose of furthering a political rising even though the acts may be deplored as cruel and against all reason. Hence, all crimes associated with the actual conflict of armed forces are of a political character, and the perpetrators of them cannot be extradited. 4 (Cite: "Annotation: 112 Am. St. Rep. 126") An extradition magistrate has the jurisdiction and it is his duty to decide, with competent legal evidence before him, whether an offense charged is political crimes. 5 (Cite: "Ornelas v. Ruiz 161 U.S. 502, 40 L.ed. 787, 16 S. Ct. 689.") And a decision by a commissioner in favor of the extradition of persons charged with murder and other crimes during a raid into an adjoining country, even though there is some evidence that their purpose was to fight against the foreign government, cannot be reviewed on the weight of the evidence and is final for purpose of the preliminary examination unless palpably erroneous in law. 6 (Cite: "Ibid.") "

Since these ten persons are charged with political crimes and extradition is expressly forbidden of persons charged with political crimes we maintain their extradition is illegal and therefore this commission has no jurisdiction of these ten persons. Since we object to the jurisdiction on these grounds we insist that the judge advocate produce the extradition papers so that we may inspect them. We feel that this commission cannot legally decide this question without seeing the extradition papers. Unless such extradition papers and warrants are produced by the judge advocate for our inspection we hold that the burden of proof is upon the judge advocate to prove that these ten persons are legally before this commission.

We have pointed out to the Commission and the judge advocates have alleged it in the specifications that these ten persons were on Truk in January, February and July 1944 and that the Japanese government still held control of Truk on those dates. These ten persons were not within the United States when the crimes were committed and this commission should discharge these ten persons.

I again cite for you the ruling in vol. 22 in American Jurisprudence on page 294:

"although if it is clearly shown that he was not within the demanding state when the crime was alleged to have been committed, and his extradition is sought on the ground of constructive presence only, the court will ordinarily discharge him. citing: South Carolina v. Bailey, 289 U.S. 412, 77 L.ed. 1292, 53 S.Ct. 667; Hyatt v. New York, 188 U.S. 691, 47 L.ed. 657, 23 S.Ct. 456, affirming 172 N.Y. 176, 64 N.E. 825, 60 L.R.A. 774, 92 Am. St. Rep. 706; Ex parte Jowell, 87 Tex. Crim. Rep. 556, 223 S. W. 456, 11 A.L.R. 1407. Annotation: 51 A.L.R. 804, S. 61 A.L.R. 716"

Until we see the extradition papers we cannot know for what offense these ten persons were extradited. The rule is now well settled that a person who has been brought within the jurisdiction of a court by virtue of proceedings under an extradition treaty can only be tried for one of the offenses described in the treaty and for the offense with which he is charged in the proceedings for his extradition, until a reasonable time and opportunity have been given him after his release or trial on such charge to return to the country from which he was taken for the purpose

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alone of trial for the offense specified in the demand for his surrender. Both English and Canadian cases are in accord with the modern American view, the rule being that they limit the prosecution to the crime for which the fugitive was extradited. citing *Buck v. Rex*, 55 Can. S.C. 133, 38 D.L.R. 548, Am. Cas. 1913 D. 1023. See page 299 of Volume 22 American Jurisprudence.

What is the crime for which these ten persons were extradited? Unless we have the opportunity to see the extradition papers we cannot know. Not to produce the extradition papers is prejudicial to the substantive rights of these ten accused.

Once having been demobilized, these ten persons are no longer individuals of the enemy's army or navy. They are therefore not subject to the jurisdiction of this commission.

Winthrop in his book *Military Law and Precedents* on page 838 states:

"As to persons. From what has heretofore been said in regard to the application of the laws of war to enemies in arms, and their operation under a state of military government or martial law, it will have been seen that the classes of persons who in our law may become subject to the jurisdiction of military commissions are the following: (1) Individuals of the enemy's army who have been guilty of illegitimate warfare or other offenses in violation of the laws of war; (2) Inhabitants of enemy's country occupied and held by right of conquest; (3) Inhabitants of places or districts under martial law; (4) Officers and soldiers of our own army, or persons serving with it in the field, who, in time of war, become chargeable with crimes or offenses not cognizable, or triable, by the criminal courts or under the Articles of War."

Once having been demobilized we hold that the commission lost any jurisdiction they may ever have had over these ten persons: Lt. Condr. Kanikawa, Lt. Oishi, Lt. Asanura, Ensign Yoshizawa, Warrant Officer Paymaster Watanabe, Warrant Officer Corporal Tanabe, Warrant Officer Corporal Mukai, Chief Petty Officer Corporal Namatano, and Chief Petty Officer Corporal Mitsuhashi.

Winthrop on page 837 *Ibid*, says: "As to time. An offense, to be brought within the cognizance of a military commission, must have been committed within the period of the war or of the exercise of military government or martial law. As in the ordinary criminal law one cannot legally be punished for what is not an offense at the time of the sentence (citing *Con v. Duane*, 1 Burney, 601; *Anon*, 1 Washington, 84; *U.S. v. Tynen*, 11 Wallace, 88; *U.S. v. Finlay*, 1 Abbott, U.S.R., 364.) so a military commission cannot, (in the absence of specific statutory authority,) legally assume jurisdiction of, or impose a punishment for, an offense committed before or after the war or other exigency authorizing the exercise of military power. (citing *See Finalson*, Cons. on Mar. Law., 53; *Glode*, M.L. 189; *Thurong*, Crim. Law of Navy, 42-3; *Wells on Jurisdiction*, 577; 12 Opins. At Gen., 200 G.O. 26 of 1866; Do. 12, Dept of the South, 1868; Do. 9 First Mil. Dist., 1870; *Digest*, 507. "Martial law is not retrospective. An offender cannot be tried for a crime committed before martial law was proclaimed." Pratt, 216. And see *Jone*, 12. The jurisdiction of such a tribunal is determined and limited by the period (and territorial extent) of the military occupation. G.O. 125, Second Mil. Dist. 1867") Thus a military commander, in the exercise of military government over enemy's territory occupied by his army cannot, with whatever good intention, legally bring to trial before military commissions ordered by him offenders

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whose crimes were committed prior to the occupation."

The alleged crimes are said to have been committed January 30, 1944, February 1, 1944 and Feb. 3, 1944, July 20, 1944. Truk was not occupied by the American forces until after the cessation of hostilities, August 14, 1945.

We hold that Commander Marianas cannot legally assume jurisdiction because Truk was not within the field of command of the convening authority at the time the offense was committed. The precept, serial 3785 dated Feb. 21, 1947 states: Pursuant to the authority vested in me by virtue of my office as Commander Marianas Area and Deputy Military Governor Marianas Area." The specifications of both charges one and two allege the crimes were committed January 30, 1944, February 1, 1944, July 20, 1944 and February 3, 1944. On these dates Commander Marianas did not have jurisdiction of Truk either as Commander Marianas or as Deputy Military Governor Marianas Area. The precept further states: "and by the specific authority vested in me by the Commander in Chief, U.S. Pacific Fleet (Circ Pac conf. serial 0558 of March 8, 1946), and Pacific Ocean Areas." But the confidential serial 0558 is dated March 8, 1946 and the offenses were committed Jan. 30, 1944, Feb. 1, 1944, Feb. 3, 1944 and July 20, 1944. Thus neither by virtue of his office or by authority of the confidential serial 0558 dated March 8, 1946 did the Commander Marianas Area have authority legally to assume jurisdiction of Truk on Jan. 30, 1944, Feb. 1, 1944, Feb. 3, 1944 or July 20, 1944. Neither did Commander in Chief, U.S. Pacific Fleet and Pacific Ocean Areas legally have jurisdiction of Truk on these dates.

We repeat what Winthrop said about jurisdiction as to time: "so a Military Commission cannot, (in the absence of specific statutory authority, legally assume jurisdiction of or impose a punishment for, an offense committed either before or after the war or other exigency authorizing the exercising of military power Martial law is not retrospective. An offender cannot be tried for a crime committed before martial law was proclaimed ... The jurisdiction of such a tribunal is determined and limited by the period (and territorial extent) of the Military occupation ... Thus a military commander in the exercise of military government over enemy's territory occupied by his army cannot, with whatever good intention, legally bring to trial before Military Commissions, ordered by him offenders whose crimes were committed prior to the occupation" Winthrop Military Law and Precedents, page 837.

We hold therefore that since the specifications of both Charge I and II allege offenses committed January 30, 1944, Feb. 1, 1944, Feb. 3, 1944 and July 20, 1944 there is no jurisdiction of this Commission since Commander Marianas did not occupy Truk until after August 14, 1945, and did not assume the functions of military government until after that date.

This is further borne out by Section D. 18, Appendix D, Naval Courts and Boards:

"Convening authority of Exceptional Military Courts.

The authority to convene the above mentioned exceptional military courts vests only in the military commander or in case there is a military governor then in the military governor of an occupied territory, and all such courts may be ordered only in the name of such Commander or Governor. When a military commander or governor desires to authorize an officer under his command to convene any of the above courts he may delegate such authority to a subordinate, but the latter may so act only as a representative and in the name of the military Commander or governor."

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The Commission should take judicial notice that Truk was a possession of Japan in 1944 and the military and naval forces of Japan were in full possession and control of Truk notwithstanding our many bombings all during the time these crimes are alleged to have been committed January, February and July 1944. Also that the United States did not take over or assume any jurisdiction as to Truk until after August 14, 1945, more than a year after these crimes were committed.

This commission can therefore have no jurisdiction of these accused for the offenses charged.

The accused are all charged with murder under Charge I. The murder charged is common law murder otherwise the statute violated should be alleged and set out in full. There are no common law offenses against the United States and therefore there is no jurisdiction over the common law offense of murder. We quote from page 158 of the American Jurisprudence Criminal Law:

"There are no common law offenses against the United States and the crime of murder or manslaughter as such is not known to the Federal Government except in places over which it may exercise exclusive jurisdiction and where by Act of Congress such offenses are recognized and made punishable. Citing 194 U.S. 205, Pettit v. Walshe; 18 U.S.A. Para 451 et seq.

It is common knowledge that this Commission had no jurisdiction on Truk in January, February, or July of 1944. This Commission should take judicial notice of this fact and also of the fact that there is no Act of Congress giving the Navy Department of the United States exclusive judicial jurisdiction on Truk in January, February, and July of 1944.

Murder as an offense is provided for as follows. Section 53 Naval Courts and Boards.

"Murder. This is provided for in the 6th A.G.N. It must have been committed by a person belonging to a public vessel of the United States and outside the territorial jurisdiction thereof."

Section 336 N.C. & B. reads as follows:

"The 6th A.G.N. provides that "if any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court-martial and punished with death." This precludes a court-martial taking jurisdiction of murder committed within the territorial jurisdiction of the United States. If the crime is committed on the high seas or within a foreign country there is no doubt that courts martial having assumed jurisdiction thereof may proceed to a final judgment."

Article 6 A.G.N. before it was amended read:

"Murder - If any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court martial and punished with death. (R.S. sec. 1624, art. 6)."

This must be law applicable because Article 6 A.G.N. was amended by Public Law 245 on Dec. 4, 1945. "Alnav 420 - 45 - 1843 Amendment to Articles for Government of Navy, J.A.G. 8 Dec. 1945.

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Article 6, A.G.N. was amended by Public Law 245 on 4 December 1945 to read, "If any person subject to the Articles for the Government of the Navy commits the crime of murder without the territorial jurisdiction of any particular state or the District of Columbia he may be tried by court martial and punished with death". signed SecNav. A. L. Gates.

Since this was not law until Dec. 4, 1945 these accused cannot be tried under this charge for offenses committed January, February and July 1944 because it would be a violation of the ex post facto rule.

We hold that these accused cannot be punished for these offenses because limitations as to trials. We ask that the Commission take judicial notice in accordance with Section 309 of Naval Courts and Boards of Article 61, Title 34, U.S.C., Section 1200 which reads as follows:

"Limitation of trials; offenses in general. No person shall be tried by court-martial or otherwise punished for any offense, except as provided in the following article, which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself, or of some other manifest impediment he shall not have been amenable to justice within that period. (R.S. Section 1624, article 61, Feb. 25, 1895, c 128, 28 Stat. 680)"

In accordance with this statute there is no jurisdiction in this commission to punish any of these nineteen accused. Nine of these accused: Captain Iwanami, Hiroshi; Lt.(jg) Sakagami, Shinji; Warrant Officer Homma, Hachiro; and Chief Petty Officers Kawashima, Tatsusaburo; Sawada, Tsunoo; Tanaka, Tokunosuke; Kuwabara, Hiroyuki; Tsutsui, Kisaburo, and Takaishi, Susumu have all been held in close confinement as suspect war criminals since the cessation of hostilities August 14, 1945.

The ten accused Lt. Comdr. Kanikawa, Hidohiro, Lt. Oishi, Tetsuo; Lt. Asamura, Shimpei; Ensign Yoshizawa, Kensaburo; Warrant Officers Watanabe, Mitsuo; Tanabe, Manoru; Mukai, Yoshihisa; and chief petty officers Akabori, Fochiro; Namatane, Kazuo; and Mitsuhashi, Kichigoro, were all returned by the United States Navy Department as prisoners of war, turned over to the duly constituted and accredited Japanese authorities and regularly demobilized.

The order for this trial was originally dated May 8, 1947; the offenses are said to have been committed January 30, 1944, Feb. 1, 1944, Feb. 3, 1944 and July 20, 1944 and the offenses are all committed more than two years before the issuing of the order for the trial. All of the nine were amenable at any time during the almost two years they have been held in confinement.

The ten accused who were regularly demobilized after having been returned to Japan were always amenable to justice during this period in which they lived as civilians in Japan. To try these nineteen accused for offenses committed in January, February, and July 1944 is strictly against the statute of limitations as set forth in the R. S. Section 1624, article 61; Feb. 25, 1895, c 128, 28 Stat. 680.

Section D-13 of Appendix D, Naval Courts and Boards requires: "such specification should show on its face the circumstances conferring jurisdiction, ..." Since there is no jurisdiction of course the specifications cannot show the circumstances conferring jurisdiction.

This present case is in point with the celebrated Raymond Fomage case. In Moore Digest of International Law, Volume II, page 260, we read not dicta, but a clear statement of the law on the facts in issue.

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"I have said that crimes committed outside of the national territory by foreigners against citizens or subjects are not punished under any circumstances or conditions by France, Germany, Belgium, Denmark, Great Britain, Luxembourg, the Netherlands, Portugal, Spain, or Switzerland. Before showing this I pronounced the Mexican contention that the claim to punish foreigners for offenses committed against Mexicans outside of the National Territory was sustained by the French Code, to be wholly unfounded. I shall now show that such a claim has been pronounced by the highest judicial tribunal in France to be unwarranted by the principles of international law.

I refer to the case of Raymond Fornage, decided by the court of cassation, or supreme court of France, at Paris in 1873, and reported in the Journal du Palais (p. 299 et seq.) for that year. This court being the highest judicial tribunal in France, its decisions in respect to the French law are not to be questioned. The circumstances of the case of Fornage are as follows: The prisoner was indicted by the 'Chambre des mises en accusation' (grand jury) of the court of appeal of Chambéry for the crime of larceny, which was described in the indictment as having been committed in the Canton of Vaud, Switzerland; and the case was referred for trial before a jury to the court of assizes (composed, in departments where there are court of appeal, of three judges of that court) sitting at Haute-Savoie. The prisoner did not take an appeal, as he had a legal right to do, from the judgment of reference, but proposed before the court of assizes an exception to the competency of that court, based on the ground that, having the quality of a foreigner, the French tribunals could not try him for a crime committed in a foreign country. But the court of assizes, regarding itself as irrevocably clothed with jurisdiction by the judgment of reference from the court of appeal, which had not been attacked declared that the exception of the accused was not receivable. Upon these facts the case was argued at length before the court of cassation by M. Requier, a counsellor and reporter of the court, and M. Bodarrides, advocate-general, both of whom, while admitting that the rule was settled that a court of assizes could not declare itself incompetent to take cognizance of a case of which it had been possessed by a judgment of reference from which no appeal was taken within the periods established by law, nevertheless argued that there were considerations of higher order in the case of Fornage, which ought to make it an exception to the general rule. In this relation I quote from the argument of M. Requier, the following passage:

"The right to punish has no foundation except the right of sovereignty, which expires at the frontier. If the French law permits the prosecution of Frenchmen for crimes or misdemeanors committed abroad, it is because the criminal law has something of the character at the same time of a personal statute and of a territorial statute. A Frenchman, when he has reached a foreign country, does not remain the less of a citizen of his own country, and, as such, subject to the French law, which holds him again when he re-enters France. But the law can not give to the French tribunals the power to judge foreigners for crimes or misdemeanors committed outside of the territory of France; that exorbitant jurisdiction, which would be founded neither on the personal statute nor on the territorial statute, would constitute a violation of international law and an attempt against the sovereignty of neighboring nations. There exists a single exception to that rule of the law of nations. When a foreigner has committed, even outside of the territory, a crime against the safety of the state, he can be prosecuted, judged and punished in France. But, save that exception, founded on the right of legitimate self-defense foreigners are justiciable only by the tribunals of their own country for acts done by them outside of the territory. The French tribunals, in punishing an act of that nature, would commit a veritable usurpation of sovereignty, which might disturb the good

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relations of France with neighboring nations.....When a crime has been committed outside of the territory by a foreigner the culprit is not subjected by the act to the French law; the French tribunals have no jurisdiction over him; the incompetence is radical and absolute. The criminal court, in punishing the act, would commit an abuse of powers; it would usurp a right of sovereignty appertaining to a foreign power. Would it not be contrary to all the principles of justice to oblige the magistrates to render themselves guilty of an arbitrary act, of a violation of international law?

"Not only did the court of cassation adopt this view, but in its judgment the full text of which is given herewith as Exhibit B) the rule of international law, as laid down by the Government of the United States in the Cutting case, is expressed in terms which, for force, precision, and freedom from doubt or qualification, have not been surpassed. Translated, the material parts of the judgment are as follows:

"Whereas, if, as a general principal, the courts of assizes, possessed of a case by a judgment of the chamber of indictments not attacked within the times fixed by article 296 of the Code of Criminal Procedure, cannot declare themselves incompetent,... this rule is founded on this, that the courts of assizes, being invested with full jurisdiction in criminal matters can, without committing any excess of power and without transgressing the limits of their attributes, take cognizance of all acts punished by the French law; but this jurisdiction, however general it may be, cannot extend to offenses committed outside of the territory by foreigners, who by reason of such acts, are not justiciable by the French tribunals, seeing that, indeed, the right to punish emanates from the right of sovereignty, which does not extend beyond the limits of the territory, that except in the cases specified by article 7 of the Code of Criminal Procedure, the provision of which is founded on the right of legitimate defense, the French tribunals are without power to judge foreigners for acts committed by them in a foreign country; that their incompetence in this regard is absolute and permanent; that it can be waived, neither by the silence nor by the consent of the accused; that it exists always the same, at every stage of the proceedings; whereas, indeed, Raymond Fornage was brought before the court of assizes of Haute Savoie, accused of larceny committed in the canton of Vaud, Switzerland;...and, in ordering the trial to proceed, without passing upon the question of nationality raised by the accused, it (the court) violated article 408 of the code, and disregarded the rights of the defense.

This case was an attempt by a French court to exercise jurisdiction over a crime committed in Switzerland. The Supreme Court of France said it could not be done.

This present case is an attempt by a U.S. Military Commission to exercise jurisdiction over a crime committed by a Japanese national in Truk, a possession over which Japan had exercised sovereignty since 1914. On Jan. 30, 1944, Feb. 1, 1944 and Feb. 3, 1944 and July 20, 1944, Japan was still in possession of Truk.

We hold that the United States cannot by this Military Commission exercise jurisdiction over a crime committed on Truk in 1944. What an occupying power can do because of the doctrine that might makes right is also immaterial. The United States of America is not attempting to try this case on any such basis and we feel that this Commission should not listen to or consider any argument that even infers that such a doctrine is the basis for jurisdiction in this case.

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This judgment of the Supreme Court of France may be regarded as finally and conclusively answering the contention that a precedent for article 186 may be found in the French code."

"In the United States the territorial principle is the basis of criminal jurisprudence, and the place of the commission of an offense is generally recognized as the proper and only place for its punishment.

"The earliest bestowal by Congress upon the Federal courts of jurisdiction of offenses committed outside of the territory, actual or constructive, of the United States, was in the crimes act of 1790, which, as read in the text, has sometimes been supposed by writers to have conferred a far more extensive jurisdiction on the courts of the United States than the decisions of those tribunals have attributed to it."

Mr. Justice Story speaking for the United States Supreme Court in 1824 in the case of Appollon, 9 Wharton 362 again stated the rule of law that the laws of a nation have no binding force, except as to citizens, outside of the national territory actual or constructive. Our Supreme Court held:

"The Laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."

In the case of crimes committed aboard ship the rule is:

"The crimes of murder and robbery, committed by foreigners on board a foreign vessel, on the high seas, are not justiciable in the tribunals of another country than that to which the vessel belongs." Quoting Wharton in Elements of International Law cited by Moore, A digest of International Law Volume II page 264.

Mr. Justice Story in the case of United States v Davis, 1837, 2 Sumner cc 482 had occasion to consider and decide the question of jurisdiction over offenses committed outside of the national territory.

"Of offenses committed on the high seas on board of foreign vessels not being piratical vessel, but belonging to persons under the acknowledged government of a foreign country, this court has no jurisdiction under the act of 1790, ch. 36.

That was the doctrine of the Supreme Court in United States v Palmer, 3 Wheat R 610, and United States v. Holmes, 5 Wheat, 412, and United States v Klinton, 5 Wheat 144, applied it is true, to another class of cases, but in its scope embracing the present..."

Hackworth in his Digest of International Law paragraph 135, Extraterritorial American Territorial Theory of Criminal Jurisprudence, page 179 says "An American citizen disappeared in China in the summer of 1905, under circumstances pointing to the suspicion that he had been murdered by a French citizen, E. H. LeVerger. In response to an inquiry by the brother of the deceased as to whether LeVerger might be apprehended and returned to China from Algiers for trial, the department of State said that the United States government does not exercise jurisdiction over crimes committed beyond the territorial limits of this country, except a few involving extraordinary elements in which category the one mentioned by you is not included."

In 1909 the German Foreign Office addressed a note verbale to the American Embassy in Berlin with regard to one Max Runge who was being sought by the New York police. The note pointed out that the individual in question would not seem to be extraditable as the offense against him was not

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included in the extradition treaty of June 16, 1852 but that if he was a German subject he might be prosecuted before the German courts, if this was requested by the United States government and the assurance given of reciprocal treatment on the part of the United States in similar cases. The Department of State instructed the ambassador as follows:

"Inasmuch as, under Anglo-Saxon legal theory, crime is territorial, not personal, and therefore the criminal jurisdiction of the United States does not, as a general rule, extend to crimes committed outside of its jurisdiction, whether by American citizens or aliens, it is not possible to meet the suggestion of the German note verbale that this government guarantee, in such cases the criminal prosecution in this country of an American citizen charged with the commission of a crime in Germany."

Charge Hitt to Secretary Knox No. 527, December 6, 1909 and Assistant Secretary Wilson to Ambassador Hill, No. 299, January 11, 1910 M.S. Department of State, file 22867. See also 1910 For. Rel. 517-518.

In the case of the United States v. Bowman brought to the Supreme Court of the United States on writ of error for a review of the ruling of the District Court of the United States for the Southern District of New York, Chief Justice Taft speaking for the court said:

"We have in this case a question of statutory construction Crimes against private individuals or their property, like assaults, murder, burglary, larceny, robbery, arson, embezzlement, and frauds of all kinds which effect the peace and good order of the community, must of course, be committed within the territorial jurisdiction of the government where it may properly exercise it. If punishment of them is to be extended to include those committed outside of the strict territorial jurisdiction, it is natural for Congress to say so in the statute, and failure to do so will negative the purpose of Congress in this regard. "Hackworth Digest of International Law, Volume II pp. 197-198.

In Moore's A Digest of International Law, Volume II (1906) page 4 we find the opinion regarding the supremacy of a sovereign nation within its own territory:

"The jurisdiction of the nation within its territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source."

Article 22, The Covenant of the League of Nations, Treaty of Peace, June 28, 1919 provides that the South Pacific Islands mandated to Japan shall be administered under the laws of Japan as integral portions of Japan.

Chapter VI Digest of International Law by Green Haywood Hackworth Vol. II is National Jurisdiction - Supremacy of Territorial Sovereign - Jurisdiction. The Nation's Absolute and Exclusive Right. We quote from page 1.

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"The jurisdiction of a state extends over not only the land within its territorial limits and the marginal sea or territorial waters, as well as the air space above them, but also over all persons and things within such territory....."

The S.S. Lotus case decided by the Permanent Court of International Justice is but another instance of the rights of sovereignty. Justice John Bassett Moore in his dissenting opinion said:

"1. It is an admitted principle of international law that a nation possesses and exercises within its own territory an absolute and exclusive jurisdiction, and that any exception to this right must be traced to the consent of the nation, either express or implied. (Schooner Exchange v. McFaddon (1812), 7 Cranch 116, 136) The benefit of this principle equally enures to all independent and sovereign states and is attended with a corresponding responsibility for what takes place within the national territory." Hackworth, Digest of International Law Vol. II pp. 1-2.

Now, just what is this celebrated case. I shall quote from Charles Cheney H. International Law, Vol. II page 825.

"In 1812 Chief Justice Marshall, in the case of The Schooner Exchange v. McFaddon, the Supreme Court of the United States rendered a decision which has since guided the legislature and the judicial departments of the government. The case raised the question whether a vessel commissioned as a man-of-war by the French government was, upon entering a port of the United States, subject to the jurisdiction of a local court, whose aid was invoked by former owners of the vessel to determine whether their title had been lawfully divested by French authority. Chief Justice Marshall, in the opinion of the court, adverted to the exclusive and absolute jurisdiction of a State within its own territory. He declared that any restriction thereof was to be derived from the nations consent; that such consent might be expressed or implied, and might in some instances be tested by common usage, and by common opinion growing out of that usage. He said that a public armed vessel constitutes a part of the military force of her nation; acts under the immediate and direct command of the sovereign; is employed by him in national objects. He has many and powerful motives for preventing those objects from being defeated by the interference of a foreign state. Such interference cannot take place without affecting his power and his dignity. The implied license therefore under which such vessel enters a friendly port, may reasonably be construed, and it seems to the court, ought to be construed, as containing an exemption from the jurisdiction of the sovereign, within whose territory she claims the rights of hospitality. ...Without a doubt, the sovereign of the place is capable of destroying this implication. He may claim and exercise jurisdiction either by employing force, or by subjecting such vessels to the ordinary tribunals but until such power be exerted in a manner not to be misunderstood, the sovereign cannot be considered as having imparted to the ordinary tribunals a jurisdiction, which it would be a breach of faith to exercise. 7 Cranch, 144-145

This case settled the law with respect to the United States. Since the decision there has been no disposition on the part of the Congress to assert jurisdiction over foreign vessels of war."

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This was in 1812 and has as Mr. C.C. Hyde said been the law with respect to the United States. We maintain it is still the law. The Schooner Exchange v. McFaddon case is exactly in point and no one can hold that there is any jurisdiction for this Military Court to try these accused after reading the Schooner Exchange v. McFaddon Case.

Chief Justice Marshall pointed out that his decision dealt with the normal peacetime relations of friendly sovereigns. Professor Sheldon Glueck in his article "The Nuremberg Trial and Aggressive War" published in Volume LIX No. 3 The Harvard Law Review, February 1946 page 423, now published in book form, says, "The immunity which a sovereign and his agents enjoy by virtue of the privilege granted him and them by other sovereigns is based upon international comity and courtesy;".... In the footnote he quotes from Coker Sovereignty in 14 Enyc. Soc. Sci (1937) 266 (italics supplied). "International law....speaking very generally recognizes that every state has, as a sovereign community, the legal right to select its own form of government and to regulate as it chooses its own territory and the personal and property relations of its citizens and subjects - insofar as it does not exercise this right in such a way as to endanger the peace and safety of other states."

We grant that peace has not been signed with Japan, but Japan has by the Instrument of Surrender signed September 2, 1945 placed herself under the power of the conquering nations including the United States. The Peace Treaty is now up to the United States and the other Allied Powers. Can it not be said therefore that present conditions are abnormal only because the Allied Powers have not yet seen fit to terminate the present state of affairs by a Peace Treaty?

Is the United States of America to refuse to recognize the absolute and complete jurisdiction of Japan within Truk in 1944 simply because we do not see fit to terminate the present condition by a formal peace treaty. We do not believe America will do this.

We ask therefore that both charge I and charge II be dismissed as against these nineteen accused.

More, A Digest of International Law volume II on page 362 says:

A sovereign, according to modern international law, can not exercise the prerogatives of sovereignty in any dominions but his own."

The above rulings from leading cases on jurisdiction and opinions of international lawyers, are applicable to charge one, and also to charge two because the offenses are the same identical offenses as are charged in charge two.

This commission should not consider any reference to the SCAP letter, Regulations Governing the Trials of Accused War Criminals AG 000.5 (5 Dec. 45) LG, as applicable or conferring jurisdiction on this commission to try the accused. We call the commission's attention to paragraph 2 of the above SCAP letters which reads: "2. Jurisdiction a. Over Persons. The military commission appointed hereunder shall have jurisdiction...." Certainly this commission is not appointed by the Supreme Commander Allied Powers.

This commission is convened by the Commander Marianas Area by Serial 3785 dated February 21, 1947.

"Q(15) "

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0127

IWANAMI, et al;

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It is therefore immaterial and irrelevant what the provisions of SCAP letter AG 000.5 (5 Dec. 45) says about jurisdiction because this commission is not appointed by the Supreme Commander Allied Powers.

This allegation "in violation of the laws and customs of war" is a conclusion of the pleader.

What laws and what customs of war were violated?

These nineteen accused urge that they are deprived of the rights of a fair trial in that the specifications of both Charge I and Charge II are incomplete as to material and necessary elements, and therefore fail to apprise any of the nineteen accused of the nature of the charges and deprive them all of the opportunity to properly prepare their defense.

The nineteen accused are not subject to the jurisdiction of this military commission for a violation of the Hague Convention of 1907 or of the Geneva Prisoners of War Convention or the Geneva Red Cross Convention of July 27, 1929.

International Law such as the Hague Convention provides neither courts or punishments for individuals who violate the laws and customs of war. The prosecution must show by what authority the law of nations permits the trial of individuals and what punishment is provided for the violation of the laws and customs of war. We hold that the state and not the soldier is liable for violation of the laws and customs of war. The burden is upon the prosecution to furnish legal authority and/or specific rulings in order that this commission may hold otherwise.

We can only anticipate and ask if the accused is charged with having violated the Hague Convention No. IV of 18 October 1907. If so then we cite Article 2 of this convention:

"The provisions contained in the Regulations referred to in Article 1, as well as in the present convention, do not apply except between Contracting Powers, and then only if all the belligerents and parties to the convention."

Since neither Italy nor Bulgaria has ever ratified the 1907 Hague Convention the accused claims neither Japan nor he as an officer of the Japanese army is bound by the convention although Japan did sign the convention.

Suppose at some state of the trial the prosecution decide that what they mean by "violation of the laws and customs of war" is the Geneva Prisoners of War Convention of July 27, 1929 then we say this military commission has not jurisdiction because Japan has not ratified or formally adhered to this Geneva Prisoner of War Convention.

But, you ask, if this commission has no jurisdiction to try these nineteen accused for offenses committed on Truk during the bombing of Truk by the Americans in 1944, then what court does have jurisdiction. This question is highly irrelevant and this commission should hear no argument or permit any evidence on this subject whatsoever.

We object to any argument which shows that on and after January 5, 1946 Commander Marianas abolished all existing law courts on Truk and took over the responsibility for the enforcement of law thereafter. Such argument is as we stated irrelevant and immaterial because the alleged crimes for which these nineteen accused are being tried is said to have been committed in 1944. The only argument which this commission should listen to is, what was the law and how was it enforced on Truk on Jan. 30, 1944, Feb. 1, 1944, Feb. 3, 1944 and July 20, 1944.

"Q(16)"

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IWANAMI, et al;

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Of what importance and how can any law, or proclamations issued after July 20, 1944 affect or be material to the issues before this commission. Any such laws can only be ex post facto laws if applied to a crime committed before the proclamation was made or the law passed.

And what does the Constitution of the United States of America say about ex post facto laws. Section 9 paragraph 3 of Article I reads:

"No Bill of Attainder or ex post facto Law shall be passed."

If a United States Military Commission did not have jurisdiction over these nineteen accused and the alleged crime in 1944 then no proclamations or laws passed after those dates can give this or any other United States Military Commission such jurisdiction. This is fundamental.

"We the people of the United States, in order to ... establish justice; established a Constitution. As we pointed out the Constitution specifically provides that no ex post facto law shall be passed. The only effective law therefore was the law in force on Jan. 30, 1944, Feb. 1, 1944, Feb. 3, 1944, and July 20, 1944. We maintain that the laws so in effect give this commission no jurisdiction to try these nineteen accused. Also highly irrelevant and immaterial is the question of the necessity for the United States of America to establish courts, at Truk. This commission should not listen to any such arguments. This question is not in issue.

The Charter of the International Tribunal at Nuernberg or at Tokyo is also irrelevant and immaterial. This is a military commission convened by the Navy Department. It was given no powers or do any of the powers of the International Tribunal granted by the Charter to the International Tribunal stem to this military commission. What powers the International Tribunal has and what the provisions of the Charters were which established these International Tribunals is immaterial and irrelevant and this commission should not be required to listen to such argument.

The same must be said about the Cairo Conference of November 1943. It may have been the purpose of the Cairo Conference to strip Japan of all her islands in the Pacific, but this was not accomplished because Japan still was in possession of Truk. The Cairo Conference is immaterial to the issues in this trial and we object to the interjection of the Cairo Conference into this trial.

Likewise is the Potsdam Declaration immaterial and irrelevant.

So too is the Instrument of Surrender signed September 2, 1945, Remember Japan was then a defeated nation.

This commission can only be concerned with what was the effective law on 1944 on Truk. All that has happened since these dates in 1944 is immaterial because subsequent laws can only be ex post facto laws and such laws are in these United States of America forbidden.

What our present intentions are at Truk is also immaterial and irrelevant. Whether Japan is now sovereign over Truk is also immaterial.

"Q(17)"

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Judge Advocate.

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IWANAMI, et al;

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What were the facts on Jan. 30, 1944, Feb. 1, 1944, Feb. 3, 1944 and July 20, 1944. That only is material to the issues in this trial. There can be sovereignty or quasi-sovereignty of the United States over Truk in 1944.

It is immaterial what the status of the United States is at Truk today, whether the United States now possesses the power and the duty to establish military courts at Truk or whether the United States has quasi-sovereignty in Truk today.

It does not necessarily follow that because this Military Commission does not have jurisdiction over a crime committed on Truk in 1944 that there is a hiatus in the law. It is not for this commission to determine where jurisdiction in this present case. It is only material at this time for this commission to determine if they have jurisdiction to try these nineteen accused for an alleged crime committed on Truk in 1944.

This commission should carefully consider what was said in the case of *Pettit v. Walshe* 18 U.S. C.A. paragraph 451 et seq as cited on page 158 American Jurisprudence Criminal Law.

"There are no common law offenses against the United States and the crime of murder or manslaughter as such is not known to the Federal Government except in places over which it may exercise exclusive jurisdiction and where by Act of Congress such offenses are recognized and made punishable."

We feel that any opinions from the Judge Advocate General's office of the United States Navy Department should be carefully considered. Is the opinion based on all the facts of this case and second is the opinion an out and out opinion that definitely states that this military commission has jurisdiction to try the accused and/or of the alleged crime? Since the reference in the precept containing the opinion is classified it is impossible to bring this opinion into open court so we ask that the members of the Military Commission read it most carefully and determine if it is binding on this commission in view of our pleas to the jurisdiction of this Military Commission to try these nineteen accused for the alleged crimes committed at Truk in 1944.

Martin Eilius Carlson,
Commander, U. S. Naval Reserve.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

"Q(18)"

0130

IWAMANI, et al;
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OPENING STATEMENT FOR THE PROSECUTION

The charges and specifications in the instant case allege the murders of ten captive American prisoners of war by and through the actual participation of the nineteen defendants presently before this Commission. While there are a great number of accused, still the case itself is not complicated by their numbers.

The ten murders can be broken up into three incidents, all of which involve the accused, Iwanani, one of which concerns itself with Sakagani, and the other with the remainder of the accused. Again for clarity sake - the three incidents could be referred to as the Experiment case involving eight prisoners - of which six died, the Dynamiting case where two prisoners were dynamited and then strangled to death, and the Hill case in July when two prisoners were bayoneted, speared and cut with swords.

The proof which the Judge Advocate will offer shows that in January of 1944 the 41st Guard Unit of Truk had in custody several American prisoners of war. This information was known to Captain Iwanani, the Commanding Officer of the 4th Naval Hospital, which was situated some few miles distant from the Guard Unit. For some reason known only to himself, Iwanani decided to conduct experiments on these helpless prisoners. He mentioned it a few nights before the experiments began in the ward-room of the hospital. Some of the doctors present declined to participate in the experiments, but apparently Drs. Nabetani and Okuyama had no qualms at the prospect of experimenting on living human beings.

In the latter part of January, Iwanani in the company of Okuyama paid a visit to the Commanding Officer of the 41st Guard Unit, Captain Tanaka. Iwanani made a formal request to Captain Tanaka for the use of the Guard Unit dispensary in which to conduct the experiments and also for the use of the American prisoners then in the custody of the Guard Unit for the purpose of having them act as guinea pigs. Iwanani at that time assured Tanaka that he had the permission of higher authorities for both of his requests. The Guard Unit dispensary was made available and eight prisoners were placed at the disposal of Doctors Iwanani, Okuyama and Nabetani. On the evening of the day in which this request was made, Iwanani at the hospital informed Doctor Nakamura that he was to accompany them to the 41st Guard Unit and there act as recorder of the experiments. The following morning shortly before eight o'clock Iwanani, Nabetani, Okuyama and Nakamura went to the Guard Unit Dispensary and there found eight alive and presumably healthy American prisoners of war. The previous evening Doctor Hasegawa on the Staff of the 41st Guard Unit had moved seven of the prisoners from the Guard Unit Brig to the Dispensary where they joined the eighth prisoner who was already there as a patient. Apparently this eighth prisoner has been shot in the leg but other than for this minor wound, he was in good health. Iwanani started the morning off by showing the other doctors how to make blood tests by extracting blood from the lobes of the prisoners' ears. The tests showed that the prisoners were in a normal condition and then, either at the instigation of Iwanani or Okuyama the eight Americans were divided into two groups of four each. One group was tended by Doctor Okuyama and a record of the experiments performed upon them kept by Doctor Nakamura. The other group was led into an adjoining room of the dispensary by Doctor Nabetani who was accompanied by Doctor Iwanani. The experiments performed by Okuyama consisted of tying tourniquets on the arms and legs of the helpless prisoners. The tourniquets were tied in such a fashion that they completely arrested

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the normal flow of blood through the portion of the body to which they were attached. In the case of two of the Americans the tourniquets were kept on for a period of between seven and eight hours. At the expiration of that time the tourniquets were released and within ten minutes the two prisoners were dead from the shock induced by the application of the tourniquets for that great length of time.

The other two prisoners who also had tourniquets placed on them, were fortunate, or possibly not so fortunate as the Commission will discover, in that the tourniquets were only kept on for a period of a few hours and then released. When the prisoners stopped showing evidences of pain, after the tourniquets were released, the tourniquets were again applied. This was done all through one day and through the morning of the second day.

Let us leave these patients of Doctor Okuyama's for a moment and consider what occurred in the adjoining room into which Doctor Nabatani had taken his four prisoners. Iwanami remained there for a period of over two hours. The Judge Advocate is unable to inform the Commission as to exactly what time Nabatani's experiments began but in any event, they did begin and they consisted of injecting virulent streptococcus bacteria into the veins of the four prisoners. This bacteria caused the prisoners to develop a high fever. It caused them great pain and ultimately within two or three days it caused their death. For once the injections were made no medication to alleviate their condition was given.

On the second morning of the experiments Iwanami returned to the dispensary and there Okuyama reported to him, after having first consulted Nakamura's notes, the fact of the death of two Americans and the condition of the survivors. Around noon of the second day the two survivors of Okuyama's experiments were taken to a hill in back of the officers' quarters of the 4th Naval Hospital. The Judge Advocate is unable to advise the Commission as to how they were transported from the dispensary to the hospital, however, in the early afternoon of the second day they were on that hill both tied to a single stake. Under the direction of Doctor Okuyama, Corpsman Warrant Officer Sakagami separated the prisoners and tied each man separately to a single stake. They were tied with their hands behind them and their feet extended. They were in an upright position as a halter was tied about their necks. They were also alive. There Doctor Nakamura, who has left the dispensary under the orders of Okuyama to report to this hill, saw them and with them were Doctor Okuyama and the accused corpsman, Warrant Officer Sakagami. A hole was dug about a foot in front of the extended feet of each prisoner and a charge of dynamite planted in the hole. The holes were dug by Sakagami and the fused dynamite planted in these holes by him. Under instructions of Okuyama Nakamura left the hill in order to avoid the blast of the dynamite. He looked back and there saw Sakagami light the fuses of the two sticks of dynamite and then on the slope of the hill Okuyama and Sakagami joined him. After the blast of the dynamite Nakamura and Okuyama examined the prisoners and ascertained that while the explosions had mangled the feet of the two men but had not killed them. There is some testimony that they were even conscious and the skin of their feet had been broken and burned and in one instance some of the toes of one of the prisoners had been torn off.

Okuyama sent Nakamura for some morphine and this morphine was injected into the two prisoners. While the intent was obviously to alleviate their pain Okuyama did not wait for the morphine to take effect, for approximately ten minutes after it was injected he ordered the accused Sakagami to "put the prisoners out of their misery" and this Sakagami did by strangling them with his bare hands. There will be direct testimony that before Sakagami touched them the prisoners were alive, and that when he took his hands from about their necks they were dead.

"R(2)"

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Judge Advocate.

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IWANAMI, et al
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That same afternoon the bodies of these two men killed on the hill and the bodies of the two prisoners who had died from the tourniquet treatment on the first day of the experiments were dissected in the morgue of the 4th Naval Hospital. This dissection was attended by Okuyama, Nabotani, Nakamura and by four corpsmen. It was performed by Iwanami. The bodies were laid open by Iwanami, assisted by Okuyama, and various of the organs removed and examined. All of the organs were not returned to the bodies, for there will be direct evidence that certain portions of their bodies were kept as specimens under the orders of Iwanami. Not content with stealing certain portions of their bodies, Iwanami decided to keep the skulls of the four Americans as curios to be sent to the Naval Medical School in Japan. He personally severed the heads from all four bodies and caused one of the corpsmen to boil them in order that the skin, hair and interior contents of the heads would be removed. Iwanami himself admits removing the heads and shipping the skulls to Japan. His explanation for this is that the Americans were a great people and he wished the Japanese medical authorities to have a chance to study the skulls of Americans.

The next morning the four headless bodies were taken to a nearby crematorium and burned. Iwanami's instructions concerning the heads were carried out. In fact, he saw to it, for during that day on several occasions he visited the spot where one of the corpsmen was boiling the heads.

The following day the victims of Nabotani were also dissected and by the same doctor, namely, Iwanami. Okuyama, Nabotani and Nakamura were present. The dissection of these bodies showed that they had died as a result of the injections of virulent streptococcus bacteria. For some reason, apparently neither specimens from these bodies nor even their heads were desired by Iwanami and after the bodies had been cut open and notes made of the condition of the organs therein, all the organs were returned to the bodies.

The following morning the bodies were removed from the morgue by natives under the direction of Sakagami. They were taken to a hill a short distance from the hospital and thrown over the edge. Some loose dirt was thrown over the bodies and later they were completely covered by the huge amount of earth removed through the construction of air-raid shelters. No doubt Iwanami later repented of his having buried these bodies quite so deeply for when the war ended and it was realized that too many people knew that the bodies were buried in that location, Iwanami was forced to turn all of his men to to recover the bones of his victims. They were dug up and the bones taken to sea and buried there.

These incidents involve the death of eight of the ten prisoners. In July of 1944 again the 41st Guard Unit, which was the custodian of all prisoners on the island, had confined two Americans. Iwanami decided upon their death but this time not even the guise of experiments was used. He called the executive officer of the Guard Unit and advised him that he desired to have a physical examination made of the prisoners and for that reason requested that they be released to the hospital. Nakase agreed to this and a hospital truck with armed corpsmen came for them. The hour of the day is doubtful but in reality is not important for some time on the same day that the Guard Unit released the prisoners they were taken to a hill in back of the officers' quarters at the hospital -- the same hill which had served so well earlier that year when it was the scene of the dynamite explosions. All preparations had been made for their reception, for Kamikawa, the Adjutant, Iwanami had assembled nearly the entire hospital personnel on that day. A special general assembly had been called that afternoon and the enlisted men marched by petty officers to the hill. The occasion was so important for Iwanami that nearly all the officers of the hospital were forced to attend.

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Judge Advocate.

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IWANAMI, et al
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It is interesting to note that on that day Admiral Hara, the Commanding Officer of the 4th Fleet, had paid a visit to the hospital and was standing on the veranda talking to Iwanami and Captain Tanoda when the truck with the prisoners passed. While that conversation was going on the preparations were being completed for the physical examinations of these two prisoners. Tanoda and Iwanami, after having been approached by Kamikawa, went to the top of the hill and there found the two Americans with their hands tied behind their backs and with blindfolds on, each suspended by a rope around his shoulders from a cross-bar set between two trees. Although this case has been investigated for well over a year and although nearly all the hospital personnel have been examined, it is still difficult to find any agreement as to the sequence of events on the hill top that afternoon. The witnesses which the Judge Advocate will produce do not themselves agree on the minor details; however, they all agree that Captain Iwanami made a speech in which he accused the prisoners of having wantonly bombed the hospital and upon the conclusion of his speech he ordered their execution. The prisoners were confronted with two lines of men, all of them armed with either spears or bayonets, and nearly all of them present here today in this courtroom.

The men in those lines were the high-ranking petty officers of the hospital. There is some testimony that they were reluctant to participate in what they knew was coming. However, there is no doubt but that they all did participate and all did follow the orders of Iwanami, Kamikawa and Lieutenant Oishi who was directly in charge of the armed men. Iwanami ordered the blindfolds to be removed and the lines to charge, and Oishi saw that these orders were carried out. All of the enlisted personnel here today either stuck a bayonet or a spear into the two swinging bodies. After each man had charged, then again under orders of Iwanami various attempts were made by Oishi, Asamura and Yoshizawa with swords to sever the heads of the dangling prisoners.

The swords were used rather ineptly, for none of the heads were completely severed. After the futile attempts had been completed the bloody bodies were cut down, the clothing removed and burned, and the mangled remains buried in a hole a short distance from where they had been killed. Again after the war, under the orders of Iwanami, the evidence of his crimes was dug up and the bodies taken by a fishing vessel into the lagoon at Truk and there cast into the sea.

All of the statements that the Judge Advocate has made will be proved by witnesses produced by him. However, let the court be cautioned that nearly all of the witnesses who shall be shortly produced before this court are compatriots of the accused. Nearly all of them were onlookers, either in the dispensary or on the hill. Nearly all of them know a complete and full story, and nearly all of them can be counted on to produce only a fragment of the tale which has just been unfolded. Some of the witnesses will not tell all that they know, some of the witnesses through possible fear of implication may twist their version of the events recounted by the Judge Advocate. Few of the witnesses are motivated by any great desire that this Commission should know exactly what transpired on Dublon Island, Truk Atoll.

However, this Commission through its experience will be able to evaluate the testimony of these witnesses and know when they are telling the truth and when their memory fails them through a desire to protect their fellow country men or themselves.

Joseph A. Hogan,
Lieutenant Commander, U. S. Navy,
Judge Advocate. "R(4)"

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James P. Kenney
Lieutenant, U. S. Navy,
Judge Advocate.

0134

OBJECTION TO RECEIVING INTO EVIDENCE EXHIBITS TWO AND THREE
DELIVERED BY KUNATA, HIRSH.

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "T."

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James P. Kenny,
Lieutenant, U. S. Navy,
Algo. & Co. Co.

0135

OBJECTION TO THE STATEMENT OF IKKIA, KYOICHI

From the testimony of this witness it is revealed that the author of this statement IKKIA died on July 2, 1947. The statement of the deceased is in now way admissible under the established theory of the hearsay rule. We have come upon the following hearsay rule as final and authoritative and the culmination of American and English law, with regard to the present issue.

"The term hearsay is primarily applicable to what a witness has heard another person say with respect to facts in dispute. But it is extended to all statements, whether reduced to writing or not, which are brought before the court, not by the authors of the statement, but by persons to whose knowledge the statements have been brought. The reasons for excluding such statements are, first, that they are not made on oath; and secondly, that the person to be affected by the statement has no opportunity to cross-examine the author. The rule has been often criticized on the ground that it sometimes excludes the only means of proof obtainable in the circumstances; but its utility in excluding irresponsible proof is obvious.

"Hearsay evidence, as a general rule, is not admissible, and it is not admissible because one knows to what extent people will be and are disposed to speak untruly, even without any motive whatever, and one knows what little importance can be attached to any rumor or anything stated as a mere hearsay."

In Section 201 of the N.C. & B., it is also stated:

"Where the author of a document does not appear as a witness, it remains only a hearsay statement and can be received only under some exception to the hearsay rule. Thus, in general, ex parte affidavits, letters from members of the family of an accused, certificates from a physician that an accused has been under medical treatment, etc., the admission of which would, in effect, permit the author to testify without submitting him to cross-examination, are mere hearsay statements and are inadmissible in evidence. Entries in books of account of a deceased person and official records and certificates are the most common examples of statements admissible as an exception to the hearsay rule."

On glancing at the writing of the statement in Japanese, we are doubtful about the identity of the handwriting as to the contents and the last line certifying the contents and signature because there appears to be a difference between the two as to whether the same person wrote both. Therefore if it is to be admitted into evidence we request an expert opinion of the handwriting in the two places.

Therefore we object to the statement of IKKIA and ask it not be admitted into evidence.

Hideo KUNATA

I certify the foregoing to be a true and complete translation of the original document.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

HUGH E. KERRICK, Jr.,
Lieutenant, U.S.N.R.,
Interpreter.

OBJECTION TO THE STATEMENT OF IKKYA, KYOICHI

The accused objects to this document being received into evidence for the following reasons:

Section 204, Naval Courts and Boards states: "It is a general rule that private documents of an ex parte nature, such as affidavits, are not admissible, if objected to, as evidence of the subject matter therein contained. They are mere self-serving statements."

The crime charged in this case is alleged to have taken place in July 1944. This document is dated July 1, 1947. It was certainly not made therefore at the time the event occurred. Neither was it made in a professional capacity. The writing is not against the interest of the maker because he was supposed to be a witness for the prosecution against these accused.

To admit this document into evidence it is necessary that the judge advocate show that the document contains and is the dying declaration of Ikkyu, Kyoichi, otherwise it is clearly hearsay evidence and as such not admissible.

Underhill says in his book Criminal Evidence, Fourth Edition Page 381: "The certainty of the declarant's belief that he is in extremis, and that, in a very short time, those immortal and spiritual elements which inhabit the body will forsake it, to encounter the dread possibilities of the unknown and supernatural world beyond the grave, is deemed to furnish a sanction equivalent to that of a solemn and positive oath administered in a court of justice."

Underhill cites in footnote 4, the following: Law. "If the deceased was an infidel and had a contempt for the church or was totally irreligious, so that he had no apprehension of punishment for lying and no belief in a state of future rewards and punishments that fact, while not rendering his declaration inadmissible (People v Sanford, 43 Cal.29), because to permit this would be to disqualify a witness because of his religious belief or want of it, is competent to go to the jury as affecting the credit to be given to it. People v. Chin Mook Sow, 51 Cal. 597."

He cites many cases on dying declarations. He further states: "The absence of an opportunity to cross-examine the declarant or for the jury to observe his demeanor upon the witness stand, detracts from their credibility as evidence, not from their competency. People v. Kraft, 148 N.Y. 631, 43 N.E. 80."

Underhill continues: "English. The earliest case is Rex v. Ely, in 1720, 12 Vinels Abr. 118. "The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth. A situation so solemn and so awful is considered as creating an obligation equal to that imposed by a positive oath administered in a court of justice. Myre, J., in Woodcock's Case, 2 Leach C Law 563."

On page 382 Underhill says: "The fear of punishment for perjury in this world is wholly absent. Unless, therefore, the dying man possesses and is

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James P. Kenny
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controlled by a vivid and conscientious feeling of accountability to God, in whose presence he expects soon to appear, it is very probable that he will be materially influenced in his utterances by the passions of anger and revenge. Hence, these declarations ought to be received with the greatest caution as respects the primary facts admitting them. All men are prone to excuse and justify their own conduct and to endeavor to revenge themselves in those who have injured them. These proclivities, however, in the case of dying declarations, are supposed to have been overcome by the apprehension of immediate death which will deprive the dying man of all opportunity for repentance if he lies, and subject him to severe punishment beyond the grave." citing: Alabama. Marshall v. State, 219 Ala. 83, 121 So. 72, 63 A.L.R. 560. California People v. Sanchez, 24 Cal. 17; People v. Hedgdon, 55 Cal. 72, 36 Am Rep. 30. People v. Lin Foon, 29 Cal. App. 270, 155 Pac 477. Illinois. North v. People. 139 Ill. 81, 28 N.E. 966.

Many other cases are cited in connection with dying declarations. Underhill continues.

"The main ground for admitting dying declarations being that the danger of immediate death and the belief of the declarant that he is in extremis are regarded as equivalent to an oath, it follows that every dying declaration will be presumed, until the contrary appears, to be made under a solemn and religious sense of responsibility to a Deity who will punish perjury." citing many cases. We continue to quote.

"But accused may show on cross-examination that deceased in making the statement, was in a reckless, irreverent state of mind, and entertained feelings of malice and hostility toward accused." citing many cases:

Section 211 Underhill reads: "To admit a dying declaration in evidence it must be shown to the court that the decedent was possessed with a consciousness of impending death." In footnote 9 on p. 383 we read:

United States The declaration is not admissible as a dying declaration if the setting of the occasion satisfies the judge, or in reason ought to satisfy him, that the speaker is giving expression to suspicion or conjecture, and not to known facts." Shepard v. U.S., 290 U.S. 96, 78 L.ed. 196, 54 Sup. Ct. 22

We read on in Underhill. "The burden is on the one offering a dying declaration in evidence to show that such declaration was made under a sense of death." Citing Mathis v. State 15 Ala. App. 245. Bruinlett v. State 184 Ark. 808."

On page 384 of Underhill: "A predicate laid to admit a dying declaration in evidence is not sufficient to introduce a dying declaration made on a later date, citing Centney v. State 61 Fla. 19, 55 So. 285, unless declarant was then under belief of impending dissolution."

In this present instance the witness testified he knew Ikaya wrote this statement at the request of Lt. Comdr. Regan, a war crimes investigator, sometime in May 1947. Then the statement is held until as the witness says 29 June 1947. Ikaya was still in custody and was asked to sign it. The witness testified he saw Ikaya sign the statement. The papers are dated July 1, 1947.

CERTIFIED TO BE A TRUE COPY:

James P. Kennedy
James P. Kennedy,
Lieutenant, U. S. Navy,
Algo Avocado.

75(2)

0138

All the circumstances clearly show that this statement was signed under duress. In military law no document may be admitted into evidence which was not made voluntarily. Ikaya, a Japanese sailor was being held here at Guam and had been in the custody of the U.S. since the end of the war. After about two years confinement he is asked to make a statement. Can any such statement be said to be made voluntarily. We hold not unless the judge advocate prove it.

In his article "Developments in Naval Law Since Pearl Harbor" appearing in the June 1947 volume 73 No. 532 of the U.S. Naval Institute Proceedings, Colonel Snedeker relates the law regarding the admission of confessions as laid down in the McNabb case. In the McNabb case the defendant was arrested about 0200 on Thursday and not brought before the magistrate until Saturday. Federal Law requires that an arrested person be taken immediately before a committing law enforcement officer. During this interval McNabb was questioned "for many hours under psychological pressure" by officers and he made a confession which was used in evidence against him. The usual test of admissibility would be whether the confession was voluntary or involuntary.

The McNabb decision evoked considerable criticism. It was held not binding by some State courts, and was treated in others as a matter of compelled testimony. Then the Mitchell case tested the scope of the decision of the McNabb case. Colonel Snedeker says: "Neither the McNabb decision nor the Mitchell decision, however made quite clear whether a confession obtained during a period of illegal detention but not necessarily procured because of that detention is or is not admissible."

We hold that the only reason Ikaya was in detention was to get a confession from him. He was illegally being held. He did write out a statement, a self serving statement in a way, in order to avoid responsibility for the incident, and a statement implicating others. He himself was on the hill and can therefore be said to be an accomplice because all were ordered to be there. How can his statement be admitted into evidence under any rules of evidence particularly when he committed suicide. His statement is clearly not admissible.

The statement was made in May 1947 according to the witness. On July 2 the writer was found, dead, a suicide. In this statement prepared in May 1947 a dying declaration even if it were signed July 1, 1947.

Section 212. The deceased, at the time of the declaration, must have been under a sense of approaching death without any hope of recovery. He must believe that there is no possibility of his recovery or his statement will not be competent." citing footnote 14 United States.

Fear or even belief that illness will end in death will not avail of itself to make a dying declaration. There must be a settled hopeless expectation that death is near at hand, and what is said must have been spoken in the hush of its impending presence. Shepard v. U.S. 290 U.S. 96, 78 L. ed. 196, 54 Sup Ct. 22."

"An undoubted belief in the mind of the declarant at the time the declarations are made, that the finger of death is upon him is indispensable." People v. Sanchez, 24 Cal. 17.

CERTIFIED TO BE A TRUE COPY:

James P. Kennedy
James P. Kennedy
Lieutenant, U. S. Navy,
Judge Advocate.

"B"(3)

0139

Page 387, Underhill: Dying declarations to be admissible must be the utterance of a sane mind, conscious of his dying condition."

We hold that even if living, Ikaya would not be a competent witness being himself an accomplice having been present at the scene as were the others, all being then and there by superior orders.

For these many reasons we hold that it is most prejudicial to admit the statement of Ikaya into evidence against these accused.

Respectfully,

Martin Eilius Carlson,
Commander, U.S.N.R.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

U(4)

0140

REQUEST FOR DIRECTION OF ACQUITTAL DELIVERED BY MR. SUZUKI, SAIZO.

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "W."

CERTIFIED TO BE A TRUE COPY:
James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0141

REQUEST FOR DIRECTION OF ACQUITTAL

It is the principle of American and English law that the accused is presumed to be innocent until he is proved to be guilty, and that the burden of proof rests upon the prosecution. Unless, therefore, the guilt of the accused has been proved beyond reasonable doubt, the accused must be acquitted, as the prosecution has failed to sustain adequately the burden of proving his guilt.

The Judge Advocate has not proved the guilt of the accused YOSHIZAWA for murder beyond this reasonable doubt.

In order to constitute a crime of murder, it must be established that the person assaulted was a living human being. The crime of murder can not be constituted against a dead person. We find in the testimony of the witnesses that YOSHIZAWA cut the neck of one prisoner. But there is no testimony establishing the material fact that the prisoner which YOSHIZAWA cut was alive.

Rather, there is influential evidence, acknowledging the fact that when YOSHIZAWA cut the prisoner, the prisoner had already been dead.

Therefore, a prima facie case is not yet established against the accused YOSHIZAWA and we ask your acquittal of the accused YOSHIZAWA.

We request the commission's directed acquittal of the accused TANAKA, MUKAI AND TANABE. The Judge Advocate has not proved the guilt of the above accused beyond a reasonable doubt.

According to the evidence presented before the court, there is evidence that the accused TANAKA, MUKAI and TANABE, with deadly weapons in hand, were in the columns of some men facing the prisoners, and we find some evidence that the above three accused, with weapon in hand, charged the prisoners. But there is no apparent evidence as to what kind of weapons these three accused had. Moreover, what is still material is the fact that it is not established that the prisoners, that the above accused charged against, were living human beings. Furthermore, there is no testimony that the weapons of the above accused touched the living body of the prisoners, not to speak of the weapons inflicting wounds upon them.

Therefore, we request your directed acquittal of the above accused TANAKA, MUKAI and TANABE.

SAITO SUZUKI

I certify the foregoing to be a true and complete translation of the original document, to the best of my ability.

Eugene E. Kerrick, junior, CERTIFIED TO BE A TRUE COPY:
Lieutenant, U. S. Navy Reserve,
Interpreter.

James D. Kennen,
Lieutenant, U. S. Navy,
Judge Advocate.

0142

Iwanami, et al.

REQUEST FOR DIRECTION OF ACQUITTAL. DELIVERED BY MR. KARASAWA. TAKAMI. TOKYO. JAPAN

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "Y."

CERTIFIED TO BE A TRUE COPY:

James D. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0143

**REQUEST FOR DIRECTED ACQUITTAL OF THE DEFENDANTS WATANABE AND SAWADA DELIVERED
BY MR. KARASAWA.**

I ask the commission that a directed acquittal be given the defendants Watanabe and Sawada.

The prosecution has not proved any logical proof of these two defendants. According to the evidence of the prosecution there has been some evidence that these two defendants were lined up in front of the prisoners with dangerous weapons. But this is not sufficient to prove what they have been alleged to have done in the charges and specifications.

Especially these two defendants were of the paymaster corps and there has been evidence to the effect that the paymaster corps acted separately. It also has not been clearly proved that they were lined up in front of the prisoners.

Also it has not in the least been proved that the bodies of the prisoners in this case were actually pierced.

We request your directed acquittal for the accused KAWABARA and HAMATANI.

The prosecution has not established beyond reasonable doubt the guilt of the above two accused. Up to this time, numerous facts have been presented by the witnesses for the prosecution, but the testimony against the accused KAWABARA was brought out only once and as for the other accused merely twice. But even then, this testimony only indicated that they were among the armed persons. There is no testimony that the above two accused charged the prisoners with deadly weapons.

Mr. Takami Karasawa

I certify the above to be a true and complete translation of the original document to the best of my ability.

EUGENE E. KERRICK,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0144

REQUEST FOR DIRECTION OF ACQUITTAL -- DELIVERED BY MR. KUNATA, HIDEO.

Original document appended to the original record.
Certified translation appended herewith marked "AA."

CERTIFIED TO BE A TRUE COPY:

James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0145

**REQUEST FOR DIRECTED ACQUITTAL OF THE DEFENDANTS HONMA, KAWASHIMA, AKABORI,
TSUTSUI, TAKAISHI AND MITSUNASHI.**

As the facts of the crime is not established against the accused HONMA, KAWASHIMA, AKABORI, TSUTSUI, TAKAISHI and MITSUNASHI, I request that the trial procedure is discontinued and the above accused immediately acquitted.

In specification these of charge I it is maintained that the above accused together with INANAMI and others, stab with bayonet or spears, two American prisoners at the Fourth Naval Hospital in Truk. That is, those witnesses that referred to the accused AKABORI, TSUTSUI, TAKAISHI and MITSUNASHI were only NASEGAWA, Masano, HAYASHI, Masatsugu, HAMADA, Toshikisa, and the witnesses TAKAHASHI, Masayoshi, KIKUCHI, Goro referred to some of the accused mentioned above, but their testimony did not agree. However, all these witnesses merely stated that they recall seeing the above accused in the line of stabbers and there is no testimony as to whether they were in the right column or the left, or their order in the column or what weapons they possessed. Particularly, they have not testified that they actually saw them stab.

It is not allowed in any criminal procedure of any civilized country, not to speak of the criminal procedure of the U.S.A., a democratic country that has always respected the rights of the individual, to acknowledge the facts of a crime by such circumstantial evidence and such ambiguous testimony.

Among the witnesses of the prosecution, those who referred to the crime of the accused KAWASHIMA were the following four persons: KIKUCHI, Goro, NASEGAWA, Masano, HAYASHI, Masatsugu and HAMADA, Toshikisa. Especially the witness HAYASHI testified that the accused KAWASHIMA had been at the top of the right column and that he had stabbed with an iron spear. But the other witnesses did not testify anything about his column, his order in the column and the weapon he had. If KAWASHIMA had been at the top of the right column, he would have caught the attentions of the other witnesses like HONMA who was alleged to have been at the top of the left column. However, other witnesses did not refer to the fact that KAWASHIMA did actually stab. Therefore, I think that it is an improper acception of evidence to determine the crime of the accused KAWASHIMA only by the testimony of the said witness HAYASHI.

As to the accused HONMA, almost all witnesses testified that he had been at the top of the left column and stabbed with a fixed bayonet. These witnesses, testifying that they witnessed the same fact on the same day and at the same place, remembers very vaguely as to what other conspirator did. Yet they can recall very clearly what the accused HONMA did. Such an inconsistency can not be imagined in the normal state of mind of a human being. I think that the testimonies of all the above mentioned witnesses are incredible and can not prove the guilt of the accused HONMA. Especially some of the native witnesses testified clearly that HONMA did not stab. Considering these points, the evidence to prove the guilt of the accused HONMA is still less sufficient.

On the ground I have just stated, I request the Commission will acquit them.

Mr. Hideo KUNATA

I certify the above to be a true and complete translation of the original document to the best of my ability.

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

"AA"

RECEIVED TO BE A TRUE COPY:
James P. Kennedy
Lieutenant, U. S. Navy
Nago, Ryukyu.

0146

Iwanami, et al.
"BB"

OPENING STATEMENT FOR THE DEFENSE DELIVERED BY MR. KUNATA, HIDEO, A
COUNSEL FOR THE ACCUSED

Original statement appended to the original record.
Certified translation appended herewith marked "CC."

CERTIFIED TO BE A TRUE COPY:

JAMES D. KERRY,
Lieutenant, U. S. Navy,
Judge Advocate.

TRUE COPY:

0147

OPENING STATEMENT FOR THE DEFENSE

The accused who are charged in the instant case are numerous, nineteen to be exact, but the case can be divided into three incidents. That is, first the so-called experiment incident alleged in Specification 1 of Charge I. In this incident it is alleged that the accused IWANAMI together with OKUYAMA, TOKIKAZU and NABETANI, REIJIRO, both deceased, killed six American prisoners of war by injecting virulent bacteria and by other means. The Judge Advocate in order to prove this, called as witnesses TANAKA, Masaharu, HASEGAWA, Tomio, NAKAMURA, Shigeyoshi and others. By the testimony of these witnesses it has been established to some extent that OKUYAMA and NABETANI killed these American prisoners by injecting virulent bacteria and by other means, but it has not been shown that IWANAMI worked together with them concerning this incident. OKUYAMA and NABETANI who were parties concerned are both dead, and NAKAMURA who was deeply involved in this incident has committed suicide during the course of examination. Therefore evidence is hard to produce and our case is difficult, but we intend to utilize our last method of proof by venturing to have the accused IWANAMI take the stand and show that he had nothing to do with this incident.

Secondly, is the so-called dynamite incident alleged in Specification 2 of Charge I. It is alleged that the accused IWANAMI and SAKAGAMI together with the above mentioned OKUYAMA killed two American prisoners of war by explosion of dynamite and strangulation, and to prove this allegation the Judge Advocate produced NAKAMURA as a witness. But the defense has reason to rebut firmly the testimony of NAKAMURA. But the witness NAKAMURA committed suicide and we were deprived of the opportunity to complete our cross-examination and moreover, we cannot recall him as a defense witness. Therefore this incident as in the previous one, is difficult to prove. But the accused IWANAMI will show that he did not have anything to do with this incident. And particularly the accused SAKAGAMI will also take the stand in his own behalf and testify to the fact that he did not strangle these prisoners.

Lastly, is the so-called incident which occurred at the hill in back of the hospital on July 1944. In this incident, the Judge Advocate maintains that the accused IWANAMI with the accused KARIKAWA and the seventeen others, excepting SAKAGAMI, killed by stabbing and beheading with spears, bayonets and swords two American prisoners of war. But the defense will show that this incident was wholly planned, prepared and carried out by the accused IWANAMI alone, and that the other accused were not on an equal status or in an equal position in participating in the plot or its execution, and furthermore we will show that these accused merely unavoidably obeyed by carrying out superior orders. They had no criminal intent that they merely participated in the stabbing and beheading as IWANAMI's hands and feet. In other words as robots or puppets. Particularly, we intend to show that some of these accused did not in any way participate in the incident. To show this, the accused themselves, in some cases, will take the witness stand and in other cases, other witnesses will testify to the above facts.

KUWATA, Hideo.

I certify the foregoing to be a true and complete translation of the original document to the best of my ability.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

EUGENE E. KERRICK, Jr.,
Lieutenant, U.S. Naval Reserve,
Interpreter.

0148

OPENING STATEMENT FOR THE DEFENSE

In this present case the defense will show by testimony that the accused, Captain Iwanami, did not join with one Okuyama, Tokikazu and one Nabetani, Raijire both alleged to be deceased, and kill by experimenting with injections of virulent bacteria and with exposures to shock, six American prisoners of war as he is alleged to have done in specification one of Charge I.

We shall show by testimony that neither Captain Iwanami or Lieut.(jg) Sakagami, Shinji acted with one Okuyama, Tokikazu blast and kill by explosions of dynamite and strangulation two American prisoners of war as alleged in specification 2 of Charge I.

As to specification 3 of Charge I we shall show that one prisoner was dead after the first man stabbed him and that there is every reason to believe that the other prisoner was dead after he was stabbed the first time and that he was definitely dead after he was stabbed the second time. Thus it was impossible for all eighteen of the accused to have killed these two prisoners as they are charged with having done in specification 3 of Charge I.

We shall further show that these accused did not have the criminal intent that is necessary in order to found guilty of murder nor did they willfully, feloniously, with premeditation and malice aforethought and without justifiable cause assault, strike and kill two American prisoners of war.

Since the prosecution offered no evidence whatsoever showing a duty imposed upon Captain Iwanami as the Medical Officer in Command of Fourth Fleet Hospital by the law and customs of war to control Surgeon Commander Okuyama and Surgeon Lieutenant Nabetani as alleged in specification one of Charge II or to control the operations of Surgeon Commander Okuyama, and Warrant Corporal Sakagami, Shinji as alleged in specification 2 of Charge II or a duty to take measures to protect two American prisoners of war as alleged in specification 3 of Charge II or a duty to control the operations of members of his command namely Lt. Kamikawa, Hidehiro, Lt. Oishi, Tetsuo, Ensign Asamura, Shunpei, Corporal Chief Petty Officer Yoshizawa, Kensaburo, Corporal Chief Petty Officer Nomma, Hashiro, Paymaster Chief Petty Officer Watanabe, Mitsuo, Corporal Chief Petty Officer Tanabe, Masoru, Corporal Chief Petty Officer Mukai, Yoshihisa, Corporal Petty Officer First Class Sawada, Tsunao, Corporal Petty Officer First Class Tanaka, Tokumitsu, Corporal Petty Officer Second Class Hamatani, Kazuo, Corporal Petty Officer First Class Takashi, Susumu, Corporal Petty Officer Second Class Akabori, Teichiro, Corporal Petty Officer Second Class Hamabara, Hiroyuki, Corporal Petty Officer Second Class Tsutsui, Hisaburo, Corporal Petty Officer Second Class Mitsuhashi, Michigoro and Petty Officer First Class Takarada, Yoshie as alleged in specification 4 of Charge II or a duty to take measures to protect two American prisoners of war as is alleged in specification 5 of Charge II. It is not our present intention to offer any affirmative evidence to show he had any such duty. The burden of proof is on the prosecution and since they have offered no evidence as relates to specifications 1, 2, 3, 4, and 5 of Charge II the Commission must find these specifications not proved and therefore acquit Captain Iwanami of this Charge II as set forth under specifications 1, 2, 3, 4, and 5.

CERTIFIED TO BE A TRUE COPY:

James M. Kenny
James M. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

"DD(1)"

0149

We shall show by competent evidence Captain Iwanami did not join with Commander Okuyama and Lieut. Nabetani, Reijiro in preventing the honorable burial of eight American prisoners of war by dissection and mutilation and thus the Commission must acquit Captain Iwanami of Charge II.

Respectfully,

Martin William Carlson,
Commander, U.S.M.R.

CERTIFIED TO BE A TRUE COPY:
James P. Kenny
James P. Kenny,
Lieutenant, U.S. Navy,
Judge Advocate.

"10(2)"

0150

STATEMENT OF MITSUHASHI, KICHIGORO

Original document appended to the original record.
Certified translation appended herewith marked "FF."

CERTIFIED TO BE A TRUE COPY:

James D. Karp
James D. Karp,
Lieutenant, U. S. Navy,
Algo Alvarado.

0151

STATEMENT OF MITSUNASHI, KICHIGORO, FORMER CORPSMAN CHIEF PETTY OFFICER,
IMPERIAL JAPANESE NAVY.

I was born on 2 December 1918, as the third son of Hidetoshi, head of my family, who was engaged in agriculture at 1585 Kukuta, Toudamama-machi, Chiba-gun, Chiba-ken. I entered the Toudamama-machi Primary and Junior High School, Chiba-ken in April, 1925, and graduated March, 1932. After that, I helped in the business of my family till around May, 1936, when I was employed as a worker in refining of the Nakuche Drugs Manufacturing Company. I resigned from the company in December, 1939, in order to enter the Navy, and on 10 January 1940, I entered the Yokosuka Training Center as a Corpsman. After finishing my recruits' training, I entered the Yokosuka Naval Hospital as one of the 53 students in the normal nursing course. I finished the course on the 30th of November and was transferred to the Minato Naval Hospital, Kano-gun, Shizuoka-ken, on the same day. I worked at the tuberculosis ward for one year and then at the surgical ward for eight months. I was ordered to be a member of the 4th Naval Hospital, Truk Atoll, in August, 1942, and arrived there on the 9th of October of the same year. SMK

At that time, the hospital was under construction. I worked in a temporary ward and was attached to the dental room and dissection room. In August, 1943, the new building was almost finished. Some wards and the administration office moved to the new building, while I remained in the old ward. On 31 December of the same year, I was transferred to the 3rd surgical ward at the new building. I was appointed to be an officer's orderly in April, 1944, was transferred to the farming squad at Tel in January, 1945, and returned to Dublin in December, 1945. I left Truk on the 27th of the month on the destroyer Hibiki, arrived at the demobilization camp on the 3rd of January 1946, and was demobilized on the fifth of the month.

My family are: father, mother, eldest brother, his wife and his child. They are engaged in tenant farming. Since my parents are old, they cannot work at the farm, and my eldest brother and his wife are working in order to make their living. My second brother has a family in Tokyo and my fourth brother was adopted in another family. Shortly after my demobilization, I married, and was living with my wife's family. My wife lost her father, and her family consists of her mother who has bad eyes and five brothers and sisters, the eldest of whom is twenty. On the 9th of January, 1947, I had a child. But I was summoned to the police station on the nineteenth of the month as a war criminal suspect, and was put in the Sugamo Prison on the twenty-first of the same month. I entered the Sugamo stockade on the seventh of February. I left my wife and child, her mother with her bad eyes and many brothers and sisters. My wife's mother, having bad eyes, can not work. Her brothers and sisters are all young and cannot help our family. My wife has a child, and I know she cannot work. Therefore, I must look after my wife and child, her mother with bad eyes and brothers and sisters. I beg you will release me as soon as possible.

25 July 1947.

Respectfully,

I certify the foregoing to be a true and complete translation of the original document, to the best of my ability.

Eugene E. Harriek, junior,
Lieutenant, U. S. Naval Reserve,

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0152

STATEMENT OF TAKAISHI, SUSUMU

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "HH."

CERTIFIED TO BE A TRUE COPY:

James D. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0153

STATEMENT OF TAKAISHI, SUSUMU, FORMER CORPSMAN SUPERIOR PETTY OFFICER,
IMPERIAL JAPANESE NAVY.

1. Personal History.

I was born at 1 of 1693, Kamishisu, Shizu-gun, Chi-baken. After graduating from the primary school, I entered the Meirin Middle School which was in my neighborhood. When I finished the course in the third grade of that school, I entered the Navy on 1 June 1938 as a volunteer and had recruit training. Then I served at the Yokosuka Naval Hospital, the Hyakurihara Naval Air Squadron, Special Hospital Ship Kankomaru, Warship Nagara, and then I was attached to the 4th Naval Hospital on the 5th of August 1943. On 28 June 1945, I was transferred to the Uman Detachment of the hospital, and came back to the principal hospital of Dublin on 27 December 1945. I was put in the stockade at Moan, Truk Atoll, on 7 January 1946, and was transferred to Guam on 12 August of the same year.

2. Condition of my Family.

My family are: my father Bin, my mother Teye, my brother-in-law Jun, my sister-in-law Iku, two children of my brother-in-law and my sister Mitsuki. My father is engaged in lumbering, and my mother and sister-in-law, in agriculture.

Both of my parents are old, my brother-in-law was called to the front and my sister-in-law has children, so no one can work. My sister is too young to work for our living. This was my family condition when I left Japan in August, 1943, and I can not know how they are now, but I know that they will find it hard to make their living unless I return, because I know that they are in the same poor condition still. I beg that you will release me as soon as possible so that my family will be at ease.

Respectfully,

/s/ TAKAISHI, SUSUMU

I certify the foregoing to be a true and complete translation of the original document, to the best of my ability:

Eugene E. Kerrick, Junior,
Lieutenant, U. S. Naval Reserve,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

James W. Kenny
James W. Kenny,
Lieutenant, U. S. Navy,
Interpreter.

0154

FINAL STATEMENT OF NAMATANE, KAZUO.

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "JJ."

CERTIFIED TO BE A TRUE COPY:

James D. Kenny,
Lieutenant, U. S. Navy,
Also Appointed.

TO BE A TRUE COPY:

James D. Kenny,
Lieutenant, U. S. Navy,

"II"

0155

STATEMENT

HAMATANE, Kazuo

1 June 1940. Entered Yokosuka Recruit Station.

1 September 1940. Entered Yokosuka Naval Hospital, as a primary corpsman student. Graduated in March of 1941 and was transferred to TSUCHIURA Naval Air Corps. Transferred to OII Naval Air Corps on March, 1942. Arrived at the Fourth Naval Hospital, Truk, on 15 December 1942. At the same day I was ordered to work in the statistic report room. Left the hospital on 19 December 1945 to be repatriated. Demobilized on 2 January 1946.

On September, 1944, I received a notice of my promotion to second class petty officer (corpsman). From the notice, I found out that I was promoted on 1 May 1944. Because of the air-raids, papers and documents arrived late.

Before the first air-raid of February, 1944, I worked in the office in the morning and in the afternoon. After the raid, in the morning I worked in the office while in the afternoon I worked in digging air-raid shelters or doing ordinary jobs; so the work in the office piled up and I had to work late in the night filing papers. Sometimes I had to do this in the air-raid shelter under candle light. Every day our work at the office would pile up on us. I think it was in the afternoon on a day in July, 1944. I have forgotten the time or who it was, it being three years ago, as I was very busy with my work, but we four or five men were ordered to dig a hole; so we left our shirts at our office and taking out the shovels and picks from the gear locker, we went to where we were ordered to go--the hill behind the officers' quarters. The place and size was shown us; so we four or five men started digging. We finished digging in about one hour and a half or two hours. Its size was about six feet long, four feet wide, three feet and a half deep. While we were resting near the hole, we saw the men of the paymaster section drilling in front of the former female nurses' quarters. About ten minutes later, many persons started to come up the hill where we were. Two prisoners came also. At this time I have forgotten who it was, but some one came near us and said that the hole wasn't deep enough; so we started to dig again. We were made to hurry; so two of us took turns digging the hole. After we had dug about four and a half feet or about five feet and we had all come out of the hole (I was the last one), I saw the two prisoners tied cross-wise to a log between two trees and in front of them were two columns of men with rifles with fixed bayonets and steel spears facing the prisoners. I recall petty officer Kusakura was about two to three paces in front of the two columns. Right after the order to stab was given, the two men in front of the two columns started stabbing. I was watching near the hole from which I had come up with the shovel still in my hands. After they finished stabbing the persons who were looking gathered near the prisoners. The head of the hospital came near the hole and I think he was giving some directions. Someone put the corpses into the hole. With the order to "cover it with dirt," we covered it with dirt and cleaned the place and then we sprinkled it with the water in the bucket. When we finished, there were only a few persons left. As I felt bad and ill, I hurriedly returned the shovel to the gear locker and went back to my post.

"33(1)"

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny, JAGC
Lieutenant, U. S. Navy.
J. Edgar Hoover.

0156

What I stated above is my personal history since entering the navy and my action on a certain day of July, 1944, when an incident took place on the hill in back of the officers' quarters of the Fourth Naval Hospital, and I also stated what I knew about it. On top of the hill I was never in the lines of the petty officers and enlisted men nor did I have a rifle with fixed bayonet or a spear in my hands at any time.

When I came out of the hole (I was the last one out), there were already two columns of men with rifles with fixed bayonets and steel spears standing in front of the prisoners and the action started right away. In the past, the three witnesses TAKAHASHI, HASEGAWA, AND HAMADA, who took the stand, testified that I was in the column in front of the prisoners. As for HAMADA, he testified as if all the accused who were petty officers at that time stabbed, but I absolutely was not in the column nor did I have rifle with fixed bayonet or a steel spear in my hands at any time. Furthermore, HAMADA and two or three other witnesses testified that the hole was not dug that day, but that they were buried in a dugout look out post which was there from a previous time, but this is a false statement. One can easily see with one glance if the hole had been dug that day or was a look out post. I regret very much to think why they did not tell the truth and that no one of the many witnesses saw us digging the hole until just before the action started. If I knew the person who told us to dig deeper at the persons who dug the hole with me, they would know that I was digging the hole until just before the stabbing and was looking at it from near the hole, but I regret very much that I cannot as yet recall their names.

I think that the persons who took the witness stand in the past in order to settle this as soon as possible, testified from their imagination and gave the various falsehood as such and such a person stabbed, etc., that they heard. I believe that they testified to unthinkable things as such because he is one of the leading petty officers, he must have stabbed. In regard to the hole, there was no one who testified that it was a newly dug hole. I regret this very much.

At that time the discipline of the hospital was very strict. The enlisted men were the most numerous among the officers, petty officers and enlisted men, and Gunzokus at the hospital, and as the discipline was very strict, the work of a leading seaman was very great and important. I was the second highest ranking leading seaman; so I took special notice, even on small points, of the language and acts of the men so that they would not be notified of it from the outside. I tried very hard to better the discipline of the hospital by calling all the men once a week or more with the consent of the senior corporal of the guards to talk over and point out the bad points and to hear their opinion. They worked very well. They were absolutely obedient to the orders of their superior; they did not say things which they wanted to say, and with very little rest worked very hard in building air-raid shelters and they were at their posts every day. I think the fact as to whether the discipline of a division was good or not rested on the senior corporal of the guards and the leading seaman. The persons who are usually hated by the enlisted men are also the senior corporal of the guards and the leading seaman. I recall when I first worked at the TSUCHIURA Air Corps, I was so afraid of the leading seaman that I could not go near him. This is a phrase which was often uttered by the leading seamen of that time, "It is better to hit a person once than to give one hundred lectures." This was a tradition of our Navy. I was demobilized on 2 January 1946 and went back to my country

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James P. Kenney
James P. Kenney,
Lieutenant, U. S. Navy,
J. P. Advocate.

"JJ(2)"

0157

in TOCHIGI-Ken, NASU-Gun, UZUKAMI-MURA, OAZA-SARADO. Our occupation is farming. My father died in 1930 and my grandmother died when I was working at the Fourth Naval Hospital. My elder brother was called into service in 1941 and went to Manchuria and we do not know whether he is dead or alive. My sister is married and has gone to Tokyo; so my mother, my elder brother's wife, and three children are at home and a girl from my elder brother's wife's family was also at our home helping. In all there were six living at home. I went home; so the girl went back. I did not go back to my job which I had before I went into the navy and was helping at home. Around September, we farmers are not very busy; so I went to Tokyo to call on a friend. His occupation was the same as mine before I went into the navy, that is we were sellers and makers of machine; so he was very glad to have me. I was thinking of going back to our farm when it became busy there; but I was taken into custody on 21 January 1947.

I certify the foregoing to be a true and complete translation of the original document, to the best of my ability:

Eugene E. Kerriek, junior,
Lieutenant, U. S. Naval Reserve,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

James D. Kenny
James D. Kenny,
Lieutenant, U. S. Navy,
Interpreter.

STATEMENT OF TSUTSUI, KISABURO

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "LL."

"K"

CERTIFIED TO BE A TRUE COPY:

James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

APPROVED AND FORWARDED:
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0159

STATEMENT OF TSUTSUI, KISABURO, FORMER CORPSMAN SUPERIOR PETTY OFFICER,
IMPERIAL JAPANESE NAVY

Personal History.

I was born on 30 September 1919 at Mikawadai-machi, Asabu-ku, Tokyo. I graduated from junior high school in March, 1934. As I stammered, I helped the business of my family for one year after my graduation, and after that I was employed in the Matsumoto Iron Works which was at Kashiwagi-cho, Yodobashi-ku, Tokyo. 58*

On 10 January 1940, I entered the Yokosuka Naval Training Center, where I had three months' recruit training. Then I became a member of the Yokosuka Naval Hospital as a student in the normal nursing course; after finishing the course, I worked at the hospital continuously. I left the hospital on 7 October 1942, and was attached to the Fourth Naval Hospital, Truk, on the twenty-third of the same month.

My Service at the Fourth Naval Hospital.

At the Fourth Naval Hospital, I was attached to the Internal Section first, and then to the Pharmacy Section. Since I entered the Naval Training Center, I had had strict training to promote military discipline. We were especially required to obey orders of our superiors absolutely. We were not at all permitted to criticize as to whether the orders were right or wrong. Military discipline at the Fourth Naval Hospital was very strict. I think it became especially strict after Captain Iwanami was appointed to be the head of the hospital in November, 1942.

My Family Condition.

My father is called Shosaburo and my mother Aki. I have two elder brothers, two elder sisters and one younger brother. My father was working at a company, but he died in the year I entered primary school. After that I was brought up mostly by my mother. At present, my two elder brothers are working at companies, one of my elder sisters married and another elder sister is helping in our house keeping. My younger brother is a student. We have no property, and we manage to support our mother with the salaries of my elder brothers. My mother is now sixty-five years old. Although many of my comrades have already been demobilized, I have been retained for two years after the termination of the war without being demobilized. I know that my elder mother is very anxious about me. 58*

I beg your sympathy for my family condition and my old mother and that you will release me as soon as possible.

Respectfully,

/s/ Tsutsumi, Kisaburo.

I certify the foregoing to be a true and complete translation of the original document, to the best of my ability.

Eugene E. Kerrick, junior,
Lieutenant, U. S. Naval Reserve,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

James D. Kenney
James D. Kenney,
Lieutenant, U. S. Navy,
Judge Advocate.

"LL"

0160

STATEMENT OF AKABORI, TOICHIRO

Original document in Japanese appended to the original record.

Certified translation appended herewith marked "EN."

CERTIFIED TO BE A TRUE COPY:

**JAMES P. KENNEDY,
Lieutenant, U. S. Navy,
Algo. & Events.**

0161

STATEMENT OF AKABORI, TOCHIRO, FORMER CHIEF NETH OFFICER, I.J.N.

1. Personal history.

I was born at Tochigi City, Tochigi-ken, on the 8th of March 1919. After graduating from the 1st Tochigi Junior High School, I was conscripted and entered the Yokosuka Training center in January 1940. I was attached to the Corpman Division where I had strict training for three months. After that I was given lessons and training necessary for a corpman at the Yokosuka Naval Hospital for 7 months. I then served at the Minato Naval Hospital and then transferred to the 4th Naval Hospital, Truk Atoll, in October, 1942.

2. My service at the 4th Naval Hospital.

At the 4th Naval Hospital, I worked at the surgical ward, contagious ward and the Ships' store, as the chief of the orderlies. After that I became a deck petty officer from March 1944 till October of the same year, and then worked at the surgical ward for about half a month. I then left the hospital in order to help in the construction of its branch at Moen. It was in November 1945 that I was demobilized.

3. The July incident that I saw as petty officer.

I think that my timidity regarding even such things as puncturing a patient with a needle is what any corpman would experience so for the first time I felt very badly when I had to stick an injection needle into the patient's flesh, so I used to ask the nurse to do it in my place and escape from the scene. I became accustomed to the injection about two or three months later. As I was such a person, I felt very sorry for the prisoners when I first saw them so lonely. Not only I but almost all the petty officers and enlisted men felt the same way that day. I think anyone that did stab did it because they thought that the execution was proper and lawful. For the head of the hospital made his speech before many officers, and he stated that he was going to execute the prisoners as they had unlawfully bombed the hospital. So the stabbers stabbed them according to the strict order of the head of the hospital. In the Japanese military forces, orders of superiors are absolute. Any violation of the superior orders in time of war or at the front would have been punished by death. Never in all our life and training had we ever been told to question orders. But the superiors never issue unlawful orders. At least we, petty officers and enlisted men had been taught as such and were convinced of that. I never had a misgiving about whether or not I should carry out an order. Besides, this incident took place openly in the daytime with all of the eyes of the hospital personnel fixed upon it. Therefore, I think it is natural that the petty officers did not think that it was unlawful to carry out the orders of the head of the hospital or the orders of any officer who gave the orders that day. But even if they had believed that the orders were unlawful they would have been unable to disobey the order in that case, because they were always taught that the orders of the superiors were absolute and that they had to believe it. We petty officers had never been taught about international law, and we did not know that prisoners had to be given great care. If our superior said that he was about to execute prisoners and ordered us to stab

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James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

"NN(1)"

0162

prisoners, we must instantly obey it without thinking whether the order were lawful or not. Therefore, I think, the head of the hospital who gave the order should take the responsibility of this incident, and he has so testified, but there is no responsibility for the petty officers who stabbed the prisoners. They had no intent to commit murder. In this court room it is the first time that I have heard of unlawful orders.

4. Condition of my family.

I lost my father in 1942. I was to complete my service at the end of 1942, but on account of the war my demobilization was postponed and I could not go home. My family had little savings so when my father died, I, the eldest son did not come back and my younger brother went to the front, so my family has no one to work for them. It became more and more difficult for my family to make their living. My remaining family consists of my younger brother, sister and my mother, both my brother and sister go to school and there is no one to work. I think that they will be in a hard way. Especially prices have gone up recently I wonder how they are making their living.

In November 1945, I was demobilized and went home but on account of my malnutrition I suffered from skin disease and could not work for two months. After that I began my work but I could not continue it long. On the 25th of June of the next year, I was put in Sugamo prison. After my arrest, I knew by a letter that my mother had become seriously ill as she was anxious about me. The inflation became more and more intense after that. When I think of my sick mother, I really do not know what to do. It may be my fate. But it is painful for me to trouble my mother any further, because I made her worry about me for a long time after I had gone to the front. I am praying every day that my mother may be well even if the living conditions of my family might be very poor.

Your Honor the president and the members of the commission, I sincerely beg that you will sympathize with my poor family condition and that you will release me as soon as possible so that I shall have a chance to look after my family.

Respectfully,

AKABORI, Teichiro.

I certify the above, consisting of two (2) pages, to be a true and complete translation of the original statement of the accused Akabori.

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Nago, P. W. O. O. S.

ENC(2)

0163

STATEMENT OF TANAKA, TOKUNOSUKE

Original document in Japanese appended to the original record.

Certified translation appended herewith marked "PP."

CERTIFIED TO BE A TRUE COPY:

"00"

James P. Kennen,
Lieutenant, U. S. Navy
Judge Advocate

0164

STATEMENT OF TANAKA, TOKIOSUKE, FORMER CORPSMAN CHIEF PETTY OFFICER, I.J.N.

I was born on the 20th of April 1919, and am 29 years old this year. After graduating from grammar school, I went to work in a pharmacy at a hospital in my native place, because my family was poor. Then I volunteered to enter the Yokosuka Training Center in June of 1937 and was appointed to be a corpsman 4th class. In March 1942, I was selected to become a student of the higher corpsman training course and entered the training section of the Yokosuka Naval Hospital. I was graduated from the course as a leading student, and had the honor of receiving a prize from the Navy Minister. In May 1943, I was ordered to become a member of the 4th Naval Hospital and arrived on Truk. I worked at the hospital as a corpsman petty officer until I was put in the stockade at Moen, Truk Atoll, by the American forces as a war criminal suspect after the end of the war.

At the time when the incident concerning the execution of two prisoners happened on the hill behind the hospital, I was a corpsman 1st class and was the 6th petty officer among those corpsmen according to the seniority. My duty was a chief of the dissection room and also the chief of a room of the surgical ward.

I am one of the petty officers who received an order on the day of the incident to go and get the prisoners and went to the 41st Naval Guard Unit to get the prisoners. I would like to tell you the whole circumstances about that.

It was in some afternoon in July 1944. I received the following order: "We shall have a physical examination of the prisoners at the hospital. Go at once to the 41st Naval Guard Unit to take two prisoners with two enlisted men armed with a rifle and a bayonet. Everything is arranged at the Guard Unit. So you must only tell at the reception room of the unit that you have come from the 4th Naval Hospital to take the prisoners. Go by truck."

When I received the order, I had no suspicion about that, for I was told that the prisoners would have a physical examination. I got on a truck which was prepared in front of the administration building of the hospital and went out for the guard unit. As I arrived, I told what I had been ordered to the petty officer of the day. He went to the administration building of the guard unit and came back with the officer-of-the-day and two prisoners who were blindfolded with their hands tied behind them. They gave us the prisoners. We had then get on the truck and left for the hospital.

On the way to the hospital, the scenery at the beach was very beautiful. So I took off the blindfolds and let them look at the scenery. Sumabara asked me if he could give some cigarettes to the prisoners. I allowed it and gave a piece of lighted cigarette to each of the prisoners. They smiled and said something to me, but I did not understand what they said. I stared at the figures of the prisoners who were smoking a cigarette pleasantly. This was the first time I had seen a prisoner. Both of them looked gentle and it seemed to me that they had been well educated. The longer I looked at them the more pity I felt for them. Around that time, we had air raids every day and our hospital had often been damaged. We felt a strong hatred when we saw

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James P. Kenney
James P. Kenney,
Lieutenant, U. S. Navy,
Judge Advocate.

"PP(1)"

0165

the enemy's planes, and we felt furious hostile feelings toward the enemy. However, when I saw the prisoners face to face who were blindfolded and with their hands tied behind them, only because they were going to have a physical examination, I felt no hatred against them. On the contrary, I felt much pity for them. I became impulsive and wished that I could have untied and released them. I had heard that Saipan had fallen and that Truk would be the next victim. If I were the prisoner, what would become of me in case of the enemy's landing. While thinking such various things, our truck stopped in front of the administration building of the hospital.

From 1940 till now, I have had no chance to go home, so I do not know exactly how my family is. I lost my father 8 years ago, and have my mother who is 54 years old now. I hear that she is living with my elder brother who was born of a different mother. I am very uneasy about her because she was weak. She the step-mother of my elder brother, and I am her only son. I think that she will be looking forward to my return, I sincerely beg that you will deal leniently with me and that you will let me go back to my mother as soon as possible when I have missed for seven long years.

7 August 1947

/s/ Tanaka, Tokunosuke.

To Your Honor, the President and Members of the Commission.

I certify the above, consisting of two (2) pages, to be a true and complete translation of the original statement of Tanaka, Tokunosuke, to the best of my ability.

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

77(2)

STATEMENT OF SAWADA, TSUNEO

Original document in Japanese appended to the original record.

Certified translation appended herewith marked "TR."

CERTIFIED TO BE A TRUE COPY:

James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

"QQ"

0167

STATEMENT OF PAYMASTER CHIEF PETTY OFFICER SAWADA, HIDEO, I.J.N.

1. Personal history.

I was born on 17 September 1915 and am at present 32 years old. I graduated from the grade school at Nagano-ken, Shinotakai-gun, Hirano-mura. After I graduated I helped at home until I was drafted on 30 June 1936 at which time I entered the Yokosuka Recruit Station as a paymaster seaman. Since then I have worked in various organizations and on 5 August 1943 was transferred to the Fourth Naval Hospital on Truk.

2. My duty at the hospital.

I was head of the galley. The work of the members of the galley was to prepare and allot foods for the patients and men working at the hospital and to handle clothing and provisions.

3. Conditions of the Paymaster Section when I entered the hospital.

When I entered the 4th Naval Hospital on August 1943, the Paymaster Section was in disorder. In regard to the handling of clothing and provisions, it was in such a state as there was no one supervising these with any responsibility. Especially it is a fact that the former head of the galley was sent to the Yokosuka Military Court Martial because he lacked adequate supervision in handling preserved commodities. I entered the hospital as a successor to such a head of the galley. At first I did not know how I was going to right this disordered paymaster section. At that time as the divisional officer and sub-divisional officer of the paymaster section were officers of the corpsman section, I could not rely on these officers in regard to the duties of the paymaster section and because if I left it as it was, I too would meet the same fate as the former head of the galley, I took this opportunity upon entering and made up my mind to carry out the duties of the paymaster section by making new plans and making a thorough investigation of the whole section. I recall it was around the end of the year 1943 when I completed my first investigation. As a result of the investigation there were many problems which I, only being a petty officer, could not straighten out, but during this time Paymaster Warrant Officer Ota arrived so we were able to complete a solution for the problems pertaining to clothing. Next, in regard to personnel as a result of various negotiations with the personnel department, finally around April or May of 1944 we were able to control the members of the paymaster section. I received much criticism from the petty officers and enlisted men of the corpsman section against the action I took in clearing up this situation to the effect as, "He is a stubborn person," or "He is an unsuitable brat." But I thought it was for the good of the hospital and of the paymaster section, so I disregarded these criticisms and went on with its execution.

4. The condition of the paymaster section at the time of the incident.

I recall that the total number of the persons of the paymaster section at that time was about 30 in all. The entire command of the paymaster section was taken over by Paymaster Warrant Officer Ota. In the muster for work

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James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

"RR(1)"

0168

5. Our doings on the day of the incident.

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CERTIFIED TO BE A TRUE
James P. Henry
 James P. Henry,
 Lieutenant, 7th U. S. Cavalry,
 Major & Adjutant.

DECLARED TO BE A TRUE COPY:

0169

Paymaster Warrant Officer Ota was standing a few paces to the left of our ranks. I think the period in which the execution took place was very short. Furthermore as we were standing in back of the stabbers and as I was thinking about the sight which would occur next, I did not have the presence of mind to ascertain who stabbed or who was in the column, when the stabbing began. I felt that someone said something in back of me; so I turned my head and saw Petty Officer Takarada, who was in the back line. He was pale and he was bent over and looking down. I turned my head the second time and saw that Petty Officer Takarada had stepped back out of the rank about one pace and Paymaster Warrant Officer Inoue was beside him taking care of him. Petty Officer Takarada seemed as if he was sick with cerebral anemia, being pale and he had slumped down. Petty Officer Watanabe who was behind me seemed pale and he had his head down. After the stabbing was finished I think Paymaster Warrant Officer Ota went out front to see. In a little while he came back, and we were led by him down the hill, and we dispersed after we came back to the galley. The others were still on the hill, but I do not know what happened after this. Our doings that day are as I have stated above. It has been over three years since the incident, and I think there are many things which I have forgotten or things I can not recall, but I recall definitely my own doings.

6. My present mental state.

I can not help but deplore the irresponsible testimony of each witness who took the witness stand swearing to tell the truth. I think I would have liked for them to have stated the true facts of the incident with a fair and just feeling without any selfishness, hatred nor egotistical feelings. In regard to this incident I have been told at the hospital by the head of the hospital and other officers many times not to talk about it and that as all the members of the paymaster section had watched the incident, I was ordered to tell the younger men about this too. Do not feel such as "I do not care" because the paymaster section did not have anything to do with it. Even if the corpsman section abided by this, if the men of the paymaster section did not abide by it it is just the same as not abiding by it at all and it will be of no avail. I was also told not to think from the standpoint of the paymaster section, but to think of the paymaster and corpsman section as one - in other words for the hospital, "Do not say a word of this incident no matter what happens." I was one of the high ranking petty officers and I understood very well the meaning of this; so after I was confined at Hoon in January last year until this date, I have not said anything. The enlisted men who took the witness stand were also confined at Hoon before I was, and two or three of them were sent to the stockade on Guam. And they were saying that we the higher ranking petty officers did not certify their position earlier or that we the higher ranking petty officers did not think about them a bit. In fact I thought it was only right that they complain about it from the way we were worked at the Truk stockade. I was with them, and as a fact, the paymaster section had nothing to do with the incident; I myself could not do anything about it. I made up my mind not to open my mouth until the personnel of the corpsman section spoke of the incident and voluntarily went forward and explained the truth. The revenge they had in their heart because of my above attitude appeared as the testimony they gave

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James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Mago, Iwo Jima.

"22(3)"

0170

the other day. Furthermore they might have other reasons but I would like to state as follows: We did not act independently. We were in a formation and we were led and acted according to the orders of the commanding officers.

When we went up the hill and when we formed a formation on the hill, the division commanding officer was always with us and the fifteen to sixteen members of the paymaster section always took the same action, and as we went up the hill during our drilling period, we were all armed. At that time the discipline of the hospital was very strict, and the head of the hospital always told us to make the discipline of the hospital a model for the discipline of all the troops on Truk. In front of the head of the hospital who said this, we, the petty officers and men were not allowed to do what we pleased. The witnesses have taken the side of the corpsman section against the paymaster section and I think they have testified from their own point of view that as it was performed under a general assembly, the paymaster section should take half the responsibility. This incident was carried out with the commanding officer of the organization present who called his subordinates together and in front of them gave his orders; therefore the petty officers and enlisted men could not have acted freely. Moreover, how could I be in the columns of the stabbers in the middle when I was led by my own commanding officer. We, the soldiers, must act according to orders given to us. Because we were soldiers in this event as under the conditions of that time, I think we can not even have imagined doing such a thing as leaving the line of our own free will. If I, myself, had actually stabbed, I would not say anything. If the testimony is true and just, I must be thankful to this testimony. Why would I be giving such an explanation as I have stated above. I only await your fair judgment. I have lived ten years of military life as a navy man. Right now when I recall what I have done in my past, I am proud of my self for not doing any acts of which to be ashamed as a naval man. I still do not have any egoistical feeling whatsoever. Please your honor, the president of the commission, please seek the truth in this incident and I pray for a fair trial and a just verdict. My home is in Nagano-ken, Shimo-takei-gun, Hirano-mura. At home my mother, Miyo, age 67, elder brother, Masao, age 42, and my sister-in-law, age 35 are working on the farm and doing sericulture. Because of this long war, I am still single. I do not know the present conditions at home because I have not received any letters from home since the end of the war.

Sawada, Hideo

I certify the above, to be a true and complete translation of the statement of Sawada, Hideo, consisting of four (4) typewritten pages.

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

"HR(4)"

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0171

STATEMENT OF KAWASHIMA

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "TT."

CERTIFIED TO BE A TRUE COPY:

James P. Kennv,
Lieutenant, U. S. Navy,
Judge Advocate.

"22"

0172

STATEMENT OF KAWASHIMA, TATSUSABURO, FORMER CORPSMAN SUPERIOR PETTY OFFICER,
IMPERIAL JAPANESE NAVY

1. Personal History.

I entered the Yokosuka Naval Training Center on 1 June 1936 and finished the recruit training. Then I served at the Yokosuka Naval Hospital, the Yokosuka Naval Gunnery School and the Ominato Naval Hospital, and then I was transferred to the Fourth Naval Hospital on 5 August 1943. During that time I was promoted to be a corpsman petty officer first class on 1 November 1943, and after I arrived at Truk I was promoted to be a corpsman chief petty officer on 1 November 1944.

2. My duty at the Fourth Naval Hospital.

At the time when I entered the hospital I was attached to the Autopsy Section. On 1 November 1943, I was attached to the First Contagious Disease Ward and worked there until the end of the war.

3. My service at the Fourth Naval Hospital.

When I became a member of the Fourth Naval Hospital, my work was very busy, but I was feeling easy in my heart. The greater part of my work was epidemic prevention. I had to get up at 3:00 in the morning and could not go to bed before 10:00 p.m. In spite of that, I felt some pleasure in my work. But after Captain Iwanami was appointed to the head of the hospital, I was obliged to be attentive all the time. Necessarily, I became restless and I could not be self-possessed. As soon as we finished medical treatment of the patients, we were ordered to dig air raid shelters and after they were completed we had to do farming. Immediately after the general assembly in the morning, we went to the farm and worked there for one hour till the morning chow. During our work, many mosquitoes and sand-flies stung us badly and our work did not progress. When their stings itched too much, I felt as if my breath had stopped. We were sometimes ordered to carry sweet potatoes to the place which was five kilometers in distance before we had our breakfast or to go out to take fuel. Most of our days were spent in farming and we were ordered to work till the sun set and be become unable to work. Toward that time I was suffering from amoebic dysentery, but I was not permitted to be absent from work. In spite of my illness our farming work continued. Thus all petty officers and enlisted men were forced to work like machines under the command of the head of the hospital.

The head of the hospital made us perform anything he thought of. If he once gave an order he forced us to fulfill it even if it was a very tough work. If we failed to fulfill it he became very angry. Besides his anger was very terrible, so everybody trembled with fear before him. As the war became more intense our officers became more excited. Our position on Truk was hopeless.

4. Orders of superiors.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Rear Admiral.

11(1)

In all cases an order of a superior is the order of His Majesty the Emperor. Therefore, when it was once issued, we, petty officers and enlisted men had to carry it out without thinking whether it was right or not. I felt that way. If we failed to carry out an order we should be heavily punished even in time of peace. Especially, in time of war or at the front we should be condemned to death. We had to go even into fire or water, if it was the order of our superior to do so. We could not care about ourselves even when our lives were in danger. The orders of superiors were thus absolute, and no one could resist or disobey them. The fundamental military spirit was approximately as I have mentioned above. We were taught and taught every day about this military spirit from the time we entered the training center till the end of the war, and we had to observe its spirit. I only knew obedience to orders I never realized it was possible to question an order. Such a terrible life continued until the war ended. We were hopeful and delighted that we should have no more officers who would treat us like machines and that we could have lives which an ordinary man could enjoy. But my delight was not long before I was prevented from being demobilized at Truk. Since then I have had no chance to go home.

5. The circumstances on the day of the incident.

While I was working at my post on the day of the incident I heard the call of general assembly around 2:30 or 3:00 in the afternoon, so I went as usual to the front of the administration building though I was not aware of the purpose of the assembly. There was no one in front of the administration building so I asked the soldier at the information desk, "Where is this general assembly?" He replied, "On the hill in back of the officers' quarters." So immediately I went there. I went because I knew in time of war especially, all orders must be fulfilled.

When I got to the scene, two prisoners were already tied to the cross-bar, and to the right facing these prisoners were lined up a great number of petty officers and to the left the head of the hospital and the officers. It was at this time that I first noticed that there were prisoners present. I felt sorry for the prisoners when I saw their pitiful situation. A short time later, the head of the hospital started a speech in a fiery tone. I first knew from this speech that these prisoners were to be executed.

As I was taught implicit obedience to superior order from the time I entered the navy, I could not possibly have refused to go to the hill. The petty officers at that time merely obeyed the orders of the head of the hospital and did not think that they were doing a wrong thing. Therefore I believe they are in no way responsible. Yet we are now being tried before this court because we were petty officers. Truly I cannot make out what life really is.

No enlisted man I am sure would have gone to the hill that afternoon as a spectator. I know I would not have gone even as a spectator. It was only because we were ordered to go that we went there. I had no idea what was to take place until I got there and heard the head of the hospital say there was to be an execution. I thought he meant a lawful execution. I never had any idea but that what the head of the hospital said was lawful. All my life I had been taught to respect authority and obey orders.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Alleged Advocate.

"TT(2)"

0174

6. My family condition.

My home is at 148 Aza-Shinchiyo, Katsushimura, Uryu-Gun, Hokkaido. My father is called Shinakichi and is 65 years old now, and my mother Asano is 62 years old. I have ten brothers and I am a third son. When I was at home, we were living peacefully. But as I have not heard of them for some time past, I do not know in detail about my family. I only know that some of my brothers entered the military forces during the war, but I do not know whether they are demobilized or not. It may seem strange to you that I have not heard about my family but this is not unusual especially among those of us that are being kept as prisoners. No one cares about our feelings. We are almost as if we be dead. I pray you to have mercy on us poor enlisted men. Our burden is even now greater than it ever was before.

Respectfully,

Kawashima, Tatsusaburo

I certify the above, consisting of three (3) typewritten pages, to be a true and complete translation of the original statement of Kawashima, Tatsusaburo, to the best of my ability.

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Nagasaki, Japan.

"TT(3)"

0175

STATEMENT OF KUWABARA, HIROYUKI

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "VV."

CERTIFIED TO BE A TRUE COPY:

James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0176

STATEMENT OF KUNABARA, HIROYUKI

Personal history of my navy life.

I entered the Yokosuka Recruit Station of 1 June, 1940 as a volunteer. After three months of basic military training, on 1 September, 1940, I entered the primary corpsman training school. On 3 March, 1941, after receiving necessary training as a corpsman I worked in the scientific treatment department at the Yokosuka Naval Hospital. For one year and a half I worked here learning that art and on about August, 1942 I was transferred to the otorhinology ward of the same hospital. On March 1943 I was transferred to the "SUZUKA" Naval Air Corps and worked in the X-ray department. On 15 July of the same year I entered the Yokosuka Naval Hospital as an advanced corpsman student. On 22 November, 1943, after learning the advanced aspects of corpsmanship, I was sent to the Fourth Naval Hospital on Truk and worked there as head of the X-ray room. On 26 June, 1945, I was sent to Uman a branch hospital there and helped in building the hospital and worked in the field under frequent bombings. On 27 December, 1945, the Uman Branch Naval Hospital was closed; so I went back to the main hospital.

My work at the time of the incident. I was head of the scientific treatment department room. At this time I was Corpsman Petty Officer Second Class and was 24 years old. I worked on X-ray photographs, electrical treatment and ordinary photographs. It was just after all the female nurses were sent back to Japan, and with the interchange of our work and having only one man where we had three men, we were very very busy. I was in a situation where I had to do all the work by myself.

Conditions under which I was taken into custody.

On 27 December 1945 I returned to the main hospital after the Uman Branch Naval Hospital was closed. On 12 January 1946 I was working in packing medical equipment to be turned in. Around 2 O'clock in the afternoon an American officer came and took five of us together and we were put into the stockade on Moen. On 12 August 1946 I came to the Guam stockade from the Moen stockade, Truk. Here on Guam I was not questioned even once by the judge advocate. I was only questioned once by an interpreter Savory, around October 1946.

My action during the day of the incident.

Around the latter part of July 1944 after the muster for the afternoon was over, I went to the dark room and was developing X-ray photographs. About one hour later, I do not know exactly who, but he said that he wanted me to go to the Guard Unit. I refused, saying that I was right in the middle of my work, but he said that everyone is busy; so will you go? I could not refuse further, so I stopped my work and went to the information desk. I was told that we are going to leave right away, so to get on the truck right away. I got on the truck (the truck was already out on the road) and soon Corpsman Petty Officer First Class Tanaka got on and we left.

CERTIFIED TO BE A TRUE COPY:

James P. Henry
James P. Henry,
Lieutenant, U. S. Navy,
Adj. Adv. Sec.

W(1)

0177

We arrived at the Forty-first Naval Guard Unit and Corporal Petty Officer First Class Tanaka went to the petty officer at the information desk and said that we were from the hospital and that he was told that if we went we will find out what to do. This petty officer telephoned and then went to the administration building. He came back right away with an officer and went into the hut behind the information hut and brought two prisoners blindfolded and with their hands tied behind their back. They were put on the truck. We left right away and on the way I asked Corporal Petty Officer First Class Tanaka what was wrong with them, and he replied that he heard the head of the hospital was going to perform a physical examination on them. As we were able to see the sea and as the view was good Tanaka said that it was all right to take their blindfolds off; so I took them off for them. We were smoking cigarettes; so I asked him if it was all right to let them smoke and he said that it was all right, so I gave them cigarettes and let them smoke. When we reached the corner near the Fourth Fleet Headquarters we put the blindfolds back on. We arrived safely at the front entrance of the hospital. Tanaka got off the truck and someone whom I do not distinctly remember came from the direction of the head of the hospital's office and said that the head of the hospital said that he wanted the truck brought to the front of the PX. The truck stopped in front of the PX and about five or six persons came down from the hill and led the prisoners up. We handed over the prisoners to the persons who came to get them. When Tanaka and I started to return, someone said to Tanaka that it was a general assembly. I told Tanaka that I would go back to work because I stopped working right in the middle of my work, and went down fifteen or sixteen steps and when I looked back, I could not see Tanaka. I was worried about the general assembly; so I went up the hill. I went to where everyone was and then I went to where Namatani was. Then I went near the prisoners. Senior Petty Officer Yoshizawa asked if anyone had any cigarettes so I gave the cigarette to the prisoners nearest me and Senior Petty Officer Yoshizawa gave it to the prisoner on the right.

The head of the hospital's speech I have testified to so I will not repeat what I heard him say.

Just before the stabbing Senior Petty Officer Yoshizawa started to give the prisoners water. There were no cups so a cup was made out of leaves of weeds but they could not drink very well. I also made a cup from a big leaf of a weed and helped him give water to the prisoners. At this time the prisoners were lined in columns by order of the head of the hospital. At this time the prisoner on the right fainted, so Senior Petty Officer Yoshizawa massaged his neck and shoulder, but the prisoner did not move. Namatani was about five or six paces away from me near the hall. I was worried about my work which I left, so I did not stay to see what happened to the last but went back.

Family conditions.

Address: Hokkaido, Kushiro-gun, Ryoshi-mura, Ass-Archinal 2 Shon 177.

Occupation: Farmer.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
 JAMES P. KENNY,
 Lieutenant, U. S. Navy,
 Alaska Division.

evv(a)

Family:	Father	Kuwabara, Chonosuke	Age	59
	First son(myself)	" Hiryuki	"	27
	Second son	" Sumitaka	"	23
	Fourth daughter	" Chiyocho	"	19
	Third son	" Tadashi	"	15
	Fifth daughter	" Yoko	"	11
	Fourth son	" Katsuo	"	9

My mother died on 8 February 1937. I do not know the present detailed condition of my family. Since I entered the navy I have had no leave and I was sent to the Fourth Naval Hospital on 22 November 1943 and stayed there until the end of the war and I am here at present. Therefore I did not have the opportunity to get married, and am still single.

I entreat you to release me as soon as possible in order to return to my family where I am greatly needed.

Respectfully,

Kuwabara, Hiryuki

I certify the above, consisting of three (3) typewritten pages, to be a true and complete translation of the original statement of Kuwabara, Hiryuki, to the best of my ability.

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

Eugene E. Kerrick
Eugene E. Kerrick,
Lieutenant, U. S. Navy,
Navy Liaison Officer.

"W(3)"

0179

STATEMENT OF MUKAI, YOSHINISA

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "IX."

CERTIFIED TO BE A TRUE COPY:

James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0180

STATEMENT OF MUKAI, YOSHINISA, FORMER CORPSMAN WARRANT OFFICER, I. J. M.

I was attached to the Fourth Naval Hospital, Truk Atoll, in August 1943, and served there until December 1945. On the 28th of December, 1945, I was demobilized and worked as a farmer. But on 8 March 1947, I was suddenly put in Sugamo prison as a war criminal, then transferred to Guam and have been charged in this trial.

However, I cannot understand why I have been charged, I did not stab any prisoners of war whatsoever. I tried to explain my innocence as best I could to the judge advocate, but he did not believe me.

Some witnesses have testified that I had stabbed, but this is a pure fabrication. Everybody knows that I did not stab, particularly Surgeon Lieutenant Oishi knows I did not stab. I am very regretful that some testified that I stabbed. I affirm before man and God that I am innocent, although of course I went to the hill behind the officers' quarters in accordance with the command of general assembly with the other petty officers and enlisted men and saw the scene and the prisoners.

I went up the hill from the front of the nurses quarters. I went to the right side facing the prisoners. As I had not seen a prisoner before and I was curious, I left the line to see them. I was standing to the left behind the officers and watched the prisoners. In the meantime the head of the hospital began his speech. Then I heard the command of Lieutenant Oishi, but since I did not want to do anything with the prisoners, I kept standing in the same place and was looking at what was going on without going back to my division.

Of course, if I had returned to my division, I probably would have been ordered to stab, and I should have had to obey it. I do not know whether it was fortunate or unfortunate, I was not with my division and I did not have to obey the order. Naturally, I was blamed by my comrades and those who wanted me to take the blame called me a coward. Since I was a senior petty officer, I think I was selected to take the responsibility for it but I did not stab.

I did not disobey the order. I was not in my line at that time. I did not want to stab the prisoners. I could not do that. If they blame me as a coward on that account, I cannot help it. However, is it right that a man who did not stab take the responsibility as a stabber? Someone maintains that the senior petty officers ought to take the responsibility even if they did not stab. Under such circumstances, although I was innocent, it was thought that I was a stabber. But it is a false testimony, I did not stab at all. I am innocent. I swear this before God. I am certainly innocent and anyone who testified against me and said I stabbed is not telling the truth. I am also convinced that some testified before the examination of the judge advocate that I did not stab.

From any point of view, I can not take the responsibility because I am innocent.

I beg your thorough consultation about this incident and that you will give me a fair verdict. I am innocent.

CERTIFIED TO BE A TRUE COPY:

James P. Kenney
James P. Kenney,
Lieutenant, U. S. Navy,
Judge Advocate.

EX(1)

I am a head of my family and I have a wife, a daughter five years old and a son one year old. If I do not work for them they will starve. I again beg your kind consideration for the condition of my family.

Mukai, Yoshihisa

I certify the above, consisting of two (2) typewritten pages, to be a true and complete translation of the original statement of Mukai, Yoshihisa, to the best of my ability.

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Alleged Interpreter.

"X(2)"

STATEMENT OF TANABE. MANORI

Original document appended to the original record.
Certified translation appended herewith marked "X."

CERTIFIED TO BE A TRUE COPY:

James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0183

STATEMENT OF TANABE, MANDRU, FORMER CORPSEMAN WARRANT OFFICER, I. J. N.

I was born at Oaza-Kawanata, Shinononura, Higashibaragi-gun, Ibaragi-ken, and was graduated from a primary school of the village. I intended to be an official of the Government Railway, and was attached to the Sakimoto Station on the first of April 1933 which was under the control of the Tokyo Government Railway Bureau.

When I reached conscription age, I was ordered to enter the Yokosuka Training center as a corpsman, and was conscripted on 30 June 1935. I was given recruit training of three weeks at the Training Center, and training as a corpsman at the Yokosuka Naval Hospital of about six months. I worked as a corpsman in the navy ever since.

On 31 May 1938, I completed my service in the navy, but my demobilization was postponed.

On 15 December 1942, I was transferred to the Fourth Naval Hospital, Truk Atoll, where I worked in the following position: Chief of a room of the out-patients dispensary, deck officer, member of the PX (selling daily necessities), chief of a room in the surgical ward, again chief of a room of the out-patients dispensary and chief of a room in the internal ward. In May 1945, I was transferred to the Branch Hospital at Tel where I worked until 20 December 1945. I returned to the main hospital on the 20th of December for demobilization. I was discharged from the hospital and got on the demobilization ship on the same day.

On 27 December 1945, I arrived at the Yokosuka District Demobilization Camp. I was demobilized on the 30th of the same month and came home. On the 12th of January 1946, I became a member of the Hitachitashi Railway Dispensary, the Tokyo Government Railway Bureau, and I worked for epidemic prevention and medical treatment of the railway personnel and their families.

I was arrested by a Japanese policeman on the 15th of June 1946, and was sent to Guam where I was confined.

I shall never forget that on the 13th of July 1944, the last hospital ship entered the port of Truk Atoll. Many patients of the hospital were embarked on the hospital ship, and we had busy days. On account of that, I suffered from a high temperature toward evening, and on the next morning, I consulted Lieutenant Kanikawa, a chief of the out-patients dispensary. He said that my temperature was so high that I had to rest in a room of the surgical ward. I soon reported it to the senior petty officer and had a rest on a bed by the east window of the Surgical Ward which was close to the out-patients dispensary. My bed was near the veranda where there were dining tables.

I recall that it was on Monday morning, 24 July 1944, that I recovered my health and began my work again. I recall that I was given medical treatment on Saturday when the chief of the out-patient dispensary said to me to take a rest for a few days more because the next day was Sunday and to begin my work on Monday morning.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Adj. Adv. Sec.

"EE(1)"

On the morning of the 24th as I recovered my health, I reported it to the senior petty officer when I heard about the prisoners, so I know nothing of what happened on the day of the incident.

I really don't know on what ground I was charged. Some of the witnesses testified that I stabbed. Some of them said that all the hospital personnel were assembled on that day and that the petty officers were ordered by the head of the hospital to step forward and were lined up. At that time, I was a petty officer of a higher rank and was acting as a petty officer of a division. I imagine, that these witnesses, without knowing that I was ill and in sick bay at that time, must have thought that I was also at the scene or that they must have thought that I had to take responsibility because I was a senior petty officer at that time.

In fact, someone stressed that senior petty officers had to take responsibility whether or not they had participated in the incident. I think that this is the ground of my accusation. As for me, I was delighted that I was ill on the day of the incident.

However, I was suddenly arrested by a Japanese policeman on the 15th of June 1946. I was sent to Guam and have been charged. I am very regretful about this.

There was the following opinion maintained by somebody: Many days have elapsed since the incident, and no one knows the real fact about it. That is the reason why the incident is not yet settled. I hope that five or six senior petty officers of the Self Defense Unit will take the responsibility thought it may be pitiable for those who had no connection with the incident. I said to him, "Since I was ill at that time, I know nothing about the incident, so I have not any responsibility at all. I think it is not permissible by law that an innocent person receive punishment for other's crimes." I firmly objected to that opinion and plan but they did not listen to me. I found that some young petty officers became aggressive toward me and insisted that I take the responsibility.

I, of course, did not witness this incident, so I do not know how it was performed nor can I take any responsibility thereof. No matter how the witnesses might testify against me, their testimony was false.

From my birth and now I am 34 years of age, I have never thought of killing or injuring other persons. Swearing before God, I am stating the truth and explaining my innocence.

Lastly, I would like to refer to my family condition. I have a father-in-law, mother-in-law, and wife whom I must support. They are now living at Oaza-Hirate, Shimoonomura, Higashibaragi-gun, Ibaragi-ken. Mother is physically weak, and my father is too old, so both of them can not work. They are maintaining a poor living by the meager salary of my wife.

Prices are high now on account of inflation, and I think that they have found it more and more difficult to live. I am very worried about it.

CERTIFIED TO BE A TRUE COPY:
James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Algo. Advocate.

"22(2)"

I beg your fair judgment.

Tanabe, Mamoru

I certify the above, consisting of three (3) typewritten pages, to be a true and complete translation of the original statement of Tanabe, Mamoru, to the best of my ability.

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Navy Interpreter.

"EE(3)"

0186

STATEMENT OF WATANABE, HISAO

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "BBB."

"AAA"

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Navy Advocate.

0187

STATEMENT OF WATANABE, MITSUO, FORMER PAYMASTER WARRANT OFFICER, IMPERIAL
JAPANESE NAVY

I graduated from the Tokyo Ritssho Commercial School in March, 1933. I was conscripted and entered the Yokosuka Naval Training Center on 30 June 1936 and was appointed to be a paymaster seaman. After that, I served on the warships Yamashiro, the Takao, the Yakumo, the Soryu, at the Yokosuka Garrison, and then was transferred to the Fourth Naval Hospital, Dublin, Truk Atoll, and had duty there from 18 July 1943. On 11 January 1946, I was discharged from the hospital, embarked on the repatriation ship, arrived at the Yokosuka District Demobilization Center on the 16th and was demobilized on the eighteenth.

On 31 May 1939, I completed my service as an enlisted man. But as there was the Sino-Japanese Incident at that time, my discharge was postponed. Before that time, in 1938, I was selected at the Yokosuka Naval Station to enter the Paymasters' School. I finished the course in August of the same year, and was appointed as a writer. The duty of a writer on board a war ship is to take charge of general affairs, accounting and supply. It is largely mental work at a desk. It was very wide in scope and I was very busy, as writers were very few in number. Therefore, we had to work until late at night in order to accomplish our duty.

At the Fourth Naval Hospital, I was the only writer, and was ordered to take charge of both general affairs and accounting and supply. I took charge of receiving, circulating and filing documents, making drafts and neat copies and sending out-going documents, making reports of changes of personnel and other reports at the beginning and the end of each month, making supply sheets, and receiving and paying money. My job was such and it seemed to me very hard to fulfill completely, but I encouraged myself and did the best I could.

In November, 1943, Paymaster Warrant Officer Ota became a member of the hospital. He became a chief of general affairs and supply, chief of the clothing section and an officer of the paymasters division. This was the first time that I had a direct superior as a warrant officer of the paymasters section.

As the hospital grew large, members of the paymasters section increased, and we had four writers. But our work increased in proportion to the numbers of writers, and we were as busy as ever. While carrying out my duty as a writer, I, as a senior petty officer of the paymasters division, worked for harmony, unity and completion of the duty of thirty paymasters, in cooperation with Paymaster Petty Officer Sawada, Chief of the Mess Hall, under the direction of Paymaster Warrant Officer Ota.

Since both paymasters and corporals were on special duties, our acts were sometimes not in harmony with theirs, and we could not keep mental unity with them. At the beginning of July, 1944, fifteen paymasters, all men of paymasters section, organized a platoon for its self defense, and I was attached to the platoon. A defense platoon of corporals had already been organized about two months before, and had repeated considerable training. In order to catch up with their training, we continued our training for about a month and a half from 1 p. m., except on Saturdays and Sundays.

"END(1)"

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
A. J. C. Wood, Jr.

0188

On the day of the July, 1944, incident, all the paymasters platoon were practicing at rifle training under the direction of Platoon Leader Ota at the ground in front of the nurses' quarters which was located beneath the hill of the hospital. We had a recess toward 2:30 p. m., and recommenced the training at 3:00 p. m. Twenty or thirty minutes after, a young corpsman came to Platoon Leader Ota and seemed to tell him something. The Platoon Leader stopped our training and ordered us to assemble. We assembled in two lines in platoon formation. The Platoon Leader changed our formation into two columns and conducted the platoon. I thought that some urgent business had happened and that we were to stop the training and break up. But we did not march along the road which led to the administration building as usual but crossed the road. I wondered where we were going. The Platoon Leader conducted us to the hill behind the officers' quarters. On top of the hill, I saw about sixty or seventy petty officers and enlisted men of corpsmen lined up in five or six lines. They were rather disordered and excited. We arrived at a point about two meters behind the corpsmen and changed our formation into two lines. Then I saw about twenty-two or twenty-three officers and warrant officers standing confusedly to our left front. I also saw the Head of the Hospital standing, holding a cane in his hand in front of the officers and warrant officers. Facing toward us there were two white men who appeared to have their hands tied behind their back and the ropes were connected to a bar which was tied across two trees. About ten minutes after our arrival, the Head of the Hospital made a speech in a violent voice and shook his cane. I recall that he addressed the crowd approximately as follows: That these prisoners had bombed a hospital which had had the marks of the Red Cross and had cause serious damage and that the soldiers should stab the prisoners with all their might. I was standing at the head of the back line of the paymasters platoon. In front of me, there was Paymaster Petty Officer Sawada and to my left, Paymaster Petty Officer Takarada.

The Platoon Leader was around the top of our lines. During the speech, every body was quiet. But after the speech, they were getting excited. Enlisted men from the corpsmen stepped one or one and a half meters back. But still there was a clear distinction between corpsmen and paymasters. I recall that, during that time, some of the corpsmen moved toward other directions.

As I was standing behind the men, I could not see clearly. So I was standing on my toes watching the prisoners. Suddenly I heard a command in a loud voice. I did not hear what it was, but in the meantime, I saw a man charging against the left prisoner with a fixed bayonet. He was not armed except with a fixed bayonet and he wore a tropical uniform. I felt as if my blood was rushing to my head and I shuddered. I felt bad. Being unable to see the scene, I dropped my eyes and looked down and I avoided seeing what was going on before me. In a few moments, I heard a voice shout, Paymaster Petty Officer Takarada who was standing by me stopped and became very pale as soon as he heard the voice. I said to him as I looked down, "If you feel bad, let us leave here." Takarada said, "I am all right." But he soon threw up and looked pained. I think that when the second shout was heard, my talk with Takarada was over.

In the meantime, I heard a loud voice saying, "Stop it," and after that it became silent and nothing was heard. When our Platoon Leader changed our formation into columns, I looked up before me. I saw several officer-like persons in front of the prisoners, but I could not see the prisoners. We were

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

"222(2)"

conducted by the Platoon Leader, went down the hill, and arrived in front of our mess-hall as usual where I and the platoon leader inspected our rifles. Nothing was the matter with our rifles and we broke up.

Paymasters who were at the scene behaved systematically. I, a petty officer attached to the platoon leader, had not received any order concerning the stabbing, nor did I give any order to the members of the platoon. Our platoon was standing at the place where it had arrived and never moved from the place.

At the beginning of January, 1947, there was a conversation in the war crimes stockade, Guam. An American officer, Interpreter Savory, Corporman Ensign Ieshinawa, Corporman Warrant Officer Nomma, I, Corporman C/O Odanaka, Corporman PO second class Yamamoto, Corporman PO second class Kikuchi, Corporman PO second class Sugawara and Corporman PO 2/c Imagawa were present. Interpreter Savory told us at the conversation that he wanted to know the names of the stabbers. Among them, Odanaka, Yamamoto and Kikuchi bore witness in this court. Corporman Ensign Ieshinawa said, "The incident took place in that afternoon involving all members of the hospital. Besides the names of the stabbers are not certain. I hope that the senior petty officers of the division will take the responsibility as to whether he stabbed or not in order to settle the case." Corporman O Nomma said, "If you want me to take the responsibility, I will take it." But I said, "Those who stabbed have the responsibility whether or not they were in responsible positions. As I did not stab, I cannot take the responsibility." Petty Officer Second Class Yamamoto stressed that the Head of the Hospital had to take the responsibility for everything about the hospital but that senior petty officer of each division had to take the responsibility of what petty officers and enlisted men did. He in an excited tone still insisted that the paymasters section should naturally have the responsibility. Therefore, the conversation ended without any result.

Several days after that, Petty Officer Second Class Yamamoto and Petty Officer Second Class Kikuchi were moved to the witnesses' room of the stockade, and Petty Officer Second Class Nomada a few days later. They were able to get their liberty because of their behaviour and speech. They consulted and plotted with each other, realized the problem of responsibility and made out that I, who did nothing, was a criminal. I think their testimony in this court is well explained by these circumstances.

In the English judicial world, there is a saying, "It is worse to condemn one innocent person as a criminal than to release one hundred criminals." I affirm that this statement is nothing but the truth. I am innocent. I did not stab.

My family consists of my wife (26), oldest son (5), oldest daughter (2) and sister of my wife (22), and they are living now at Takemura, Akasuyama, Toyosatomura, Tomai-gun, Miyagi-ken. In June, 1945, when the enemy's air raids upon Japan proper were intense, my family was forced to evacuate this place and left our dear old home which was located 1842 Hemi-nashi, Yokosuka-shi, Kanagawa-ken. I have no experience in farming. So when I was demobilized, I had to seek my job, but no one wanted to employ me in the farming village. Besides, I could not go up to the town, and I was quite at a loss. Luckily,

END(5)

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Navy Advocate.

I found my job in mining, and I could manage to maintain our living in spite of the high prices of inflation. Nine months have already elapsed since I entered the Sugamo Prison on 3 October 1946. How have my family, only women and children, been able to maintain their livelihood since then? I was nothing but a petty officer and have no property. The parents of my wife are already dead. My father is dead and I have only my mother. They have no one to rely upon, and are living in a place where they are not known. I am afraid that they are on the verge of starvation in this increasing inflation. I am filled with deep grief when I think of the home.

I know that this commission will weigh the evidence well and can decide that certain of the prosecution witnesses were only testifying in order to hide their own part in the incident. It grieves me greatly that certain persons who fought side by side at Truk would testify falsely against innocent persons. Such false testimony if believed might well condemn certain of us who are innocent.

I affirm that I am innocent. I did not stab with either a spear or a bayonet. I only went to the scene under orders and took no part in the execution.

I beg that you will give me a fair judgment.

Respectfully,

/s/ Watanabe, Mitsuo.

I certify the foregoing to be a true and complete translation of the original document, to the best of my ability.

Eugene E. Kerrick, Junior,
Lieutenant, U. S. Naval Reserve,
Interpreter.

"END(A)"

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Interpreter.

0191

STATEMENT OF HOMMA, HACHIRO

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "DDO."

CERTIFIED TO BE A TRUE COPY:

James D. Kenny,
Lieutenant, U. S. Navy,
Major I. Wood, Jr.

"DDO"

0192

STATEMENT BY HONMA, HACHIRO, FORMER CORPSMAN WARRANT OFFICER, I. J. N.

Born 2 January 1919.

1. History. Permanent address, Akita-ken, Senboku-gun, Karima no-cho, Awa-hitomuro, 232. After graduating from the lower and higher grammar school, I entered the Young men's school at my permanent address and while going to this school, I volunteered and enlisted in the navy. From the time I entered the Yokosuka training center as a corpsman I have had duty at following units.

1 June 1936. I entered the Yokosuka naval training center.

15 November 1936. I completed boot training; the same day I was assigned to duty at the Yokosuka Naval Hospital.

June, 1937. I passed the requirements for corpsman school and entered the training section of the same hospital.

October, 1937. I graduated from the corpsman school course and was assigned regular duty as a member of the autopsy room of the hospital.

October, 1938. I was transferred to the Sasebo naval air station dispensary.

October, 1939. I boarded the battleship Fushimi (which had the duty of patrolling the Yangtze River.).

May, 1940. I passed requirements for a higher course of corpsmen training and re-entered the Yokosuka naval hospital.

November, 1940. I graduated from the higher course and was transferred to the Kure Naval Air Station dispensary.

October, 1941. I was ordered to be an instructor in instructing the newly inducted men and was transferred to the first Yokosuka training center.

March, 1943. I was relieved as instructor for the newly inducted men and ordered to be an instructor in the higher corpsmen's training course and entered the Yokosuka naval hospital.

May, 1943. I was transferred to the Fourth Naval Hospital as a person experienced in autopsy work.

On the twenty-ninth of May, 1943, I arrived at Truk. On the same day I entered the hospital where I was till the end of the war on August 15, 1945.

2. Military Spirit.

Since the time I entered the navy in 1936, I worked hard with every thing in me to grasp this military spirit which was pounded into me from the time I entered the navy by strict instructors and older men. With the beginning of the China incident, discipline became all the stricter. The every day duties that we performed, the training and instructions that we experienced are more than can be expressed with mere words. Because of the fact that during my period of ten years in the navy, most of it was spent in training new men or in training centers, my duties seem like an extension of my training period, and I have never experienced free and easy duty during my life in the navy. Therefore, I have had many chances in which to study what a soldier should do and again I have applied what I have learned. My training during this period was how to perform my duties as a good soldier. From the time I was a green recruit the main points of my training were as follows:

CERTIFIED AS METATYPED COPY:

James P. Keene
James P. Keene,
Lieutenant, U. S. Navy,
Hague, New Jersey.

100(1)

1. Whether they be armed or not, a group of two persons or more is a unit; therefore, the protoplasm of the military service is the individual soldier. Only by having a group of healthy men can the country be defended and are the people able to lead lawful and peaceful lives and work at their various occupations. We were selected out of the many people in that we were capable of becoming this healthy cell; therefore, think about this and realize the heavy responsibility we have to train physically and mentally so that we would be able to carry out our responsibilities.

2. A soldier must always be a person who is capable of carrying out the five Imperial teachings. Loyalty, courage, propriety, faithfulness and simplicity. Also what ever you do, it should be done with sincerity.

3. The prime duty of a soldier is to be loyal, on other words, it is the spirit of love of country and Emperor.

4. The love of country and Emperor is the prime duty of the soldier and this spirit can only be fostered by obedience to orders.

5. The essence of the military service is the obedience to orders, and through this only can the armed forces of a nation act together as one person without one person being out of line. Therefore, without this, there can be no armed forces.

3. Order and its obedience.

(1) All orders are issued by superiors in their official capacity. All those who give orders let their men carry out what they ordered as partakers in the duty of His Imperial Majesty. At any time and in any place, those who receive orders must bear in mind that the orders they received are directly issued from His Majesty the Emperor and try not to fail their fulfillment.

(2) Orders are issued only by officers, and petty officers and enlisted men have no authority to issue them. At any time and in any place, petty officers and enlisted men are in position of receiving orders.

(3) Orders differ according to the duty or capacity of the giver, but whether the order is important or not, the giver and the receiver of the orders have an equal responsibility, and the order is transmitted to the receiver through the formal chain and route.

(4) At any time and in any place, orders should be obeyed and carried out. Even when it is inconvenient or disadvantageous for the receiver to carry out the order, he cannot state any wishes or objections.

(5) Although the receiver of the order has a better idea concerning the order and although it be advantageous in its result, he cannot state his idea before carrying out the order.

(6) But after he carried out the order, he may state what was disadvantageous and what he wishes as a matter of information.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

END(2)

0194

(7) When a giver of an order lets his men carry out the order, he may ask for the opinions of the people concerned. In such a case, only those who attend the consultation may state their opinion before fulfillment of the order. (But no such chance is granted to petty officers and enlisted men.)

(8) For violations of orders there are naturally imposed heavy punishments. At the front, the punishment is heavier than in Japan, and especially for the violation of orders during the battle, a person will be shot to death.

(9) Order and its obedience is also applied in our attitudes toward our superiors (salutation, speech, behavior, etc.) and in our conduct on duty. Lower ranking men must obey their superiors. Even among the people of the same rank, juniors must obey seniors. When we failed to observe it, even in our trifling deeds, we shall be openly struck on our body.

Therefore, in the Japanese military forces, the receiver of the order has an absolute duty to obey the order as that issued by His Majesty the Emperor. In order to carry out this duty, we must take any dangerous mission with delight even at the risk of our lives and we must be able to die with a smile. Then we can really say that the military spirit is promoted.

Those who are dedicated in the Yasukuni Shrine are absolute obeyers of orders who died in order to perform orders. It is not loyalty only to die. We must not violently abandon our precious lives when it is unnecessary to die. When they were carrying out the orders, they forgot their parents, families, wives and children, even themselves and their own lives, and obeyed the orders and faithfully carried them out. And they died.

Lately, people are apt to scorn at the idea of the death of suicide attack pilots as reckless, crazy behavior. But can we simply regard their deaths as reckless, crazy behavior? It might be better to say that they abandoned their lives by their blind obedience. People of the new age might say so. But those who have experienced and known the military spirit of the past will admire them as absolute obeyers of orders and as honorable embodiments of the Japanese military spirit.

4. Service at the Fourth Naval Hospital.

I arrived at Truk on 29 May 1943, became a member of the Fourth Naval Hospital on the same day and was appointed to be the chief of the autopsy room. As an assistant to the medical officers, I took charge of injured and sick persons entering the hospital, medical treatment, especially clinical examination of patients and out-patients which required special techniques, sanitary examinations, bacteriological autopsies of all inhabitants and navy personnel on Truk, blood inspections, other various examinations and anti-epidemic operations of the ships at anchor.

At the time when I became the member of the hospital, a few months had elapsed since it had been established. Personnel was short and equipment was insufficient, and we were in very inconvenient circumstances. But, in August of that year, the new hospital was built, and the circumstances became convenient for the discharge of the duty of the hospital. The hospital was able to attain its purpose.

CERTIFIED TO BE A TRUE COPY:

James P. Kenney
James P. Kenney,
Lieutenant, 7, U. S. Navy,
Adm. Hospital.

100(3)

When divisions were organized, my duties were a chief of a squad, senior petty officer of a division, or sometimes a senior corporal. I tried to fulfill the work completely and to maintain strict military discipline of my men and other members of the hospital until the end of the war.

5. Strict maintenance of military discipline of the petty officers and the enlisted men.

Petty officers and enlisted men who were working at the hospital were always bearing in mind that they were working at the front, and as first appointed personnel of the Fourth Naval Hospital were aware of their grave responsibility that their good tradition or bad habits in the future depended upon their service. Immediately after the establishment of the hospital building, much work of consolidation remained to be done. Members of the Army and the Navy units on Truk increased. Truk was a port of call of the Fleet. On account of hot weather, epidemics and local diseases increased. Under these circumstances, the patients of the hospital increased day by day. At the end of 1943, the Kikukawa-maru sank. In January, 1944, a submarine sank. In February and May of the same year, the American task forces attacked the Atoll. After that we suffered under the day and night air raids. Many persons became injured or ill, and our work at the hospital further increased.

However, we, petty officers and enlisted men, strictly maintained military discipline. Helping each other, we followed the orders of our superiors, and willingly and completely performed our duty.

I would like to show you some of the instances in our daily services.

1. Strict saluting. It was said that saluting was an expression of a military spirit. In ordinary units, saluting could be omitted from 8 a. m. to sunset, but in the hospital we were required to observe strict saluting day and night, whether we were indoors or outdoors. Visitors were especially frequent at the hospital. We strictly observed saluting not only to our superiors of the hospital but also to those of the visitors.

2. Speech and behavior. We bore in mind that performance of our official duty was the continuance of our recruit training. We spoke courteously, acted in a lively way and behaved rigidly.

3. Harmony. When our official duty was over and we had time to spare, we tried to be peaceful. On holidays, we had parties or conversations in the parlors of each position to restore our energies for the narrow's work.

As I stated before, the military discipline of the petty officers and enlisted men of the hospital was the embodiment of the typical military spirit and was the model of all other units. Captain Inoué, the head of the hospital, praised it very much and felt very content with it.

6. Captain Inoué, the head of the hospital, and petty officers and enlisted men.

Captain Inoué was the second head of the Fourth Naval Hospital and was appointed to that office at the end of 1943. He was a man of strict, violent temper, so we, petty officers and enlisted men, were afraid of open seeing his face.

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James P. Kennedy
James P. Kennedy,
Lieutenant, U. S. Navy,
Judge Advocate.

"END(4)"

0196

He endeavored first to establish a good tradition at the newly established hospital. He thought that this good tradition would be established by the petty officers and enlisted men who were his subordinates, and instructed us very strictly. Therefore, he warned us even a trifling fault in our daily services on the spot, and corrected it while he was watching. Sometimes, he directly commanded petty officers and enlisted men to do minute work. If they did not do it then and there, he admonished them violently. If they made mistakes in performance of the work or delayed in finishing it, he, although he was a navy captain, often hit them with his fist. Therefore, whatever urgent work we were engaged in, we had to stop it when the head of the hospital gave us an order or an instruction and do what we were ordered. We were also instructed to report the result of the work.

As I have mentioned, the head of the hospital was different from normal officers in character. But when a work required many men to do it, namely the functions of the hospital, etc., he never gave orders to the petty officers and enlisted men directly. He listened to various advice and the orders were given to us through the normal chain of command. In such cases, we had no difference from other units.

7. The condition of our war equipment on Truk.

In the days when I arrived on Truk in 1943, we had no attacks of the American forces. Though we were on the front, we enjoyed peaceful service. Toward January, 1944, our submarine was attacked near Truk Atoll. This was the first enemy's attack we had experienced. In February of the same year, we were attacked by an enemy's task force and almost all the ships which were at anchor in the atoll were sunk or damaged. After that, we were continuously bombed by B-29s day and night. The remaining ships were sunk, airbases were made unusable, airplanes were burnt, weapons and ammunition which were evacuated to various places were destroyed and much clothing and provisions were bombed into nothing.

In order to maintain the lives of military personnel and animals, each unit tried to fortify itself. They engaged in hard labor everyday to make air-raid shelters, etc. But at the end of May of the year, we were attacked again by the enemy's task force. Our houses were burnt and not only the remaining small ships but also even tiny boats used for fishing were destroyed. We came to have no house to live in and no food to eat. In the meantime, many islands in the central Pacific fell to the enemy. At the time when we heard the sorrowful news of Saipan, our transportation of materials to and from Japan was entirely cut off. We could only use hospital ships for the repatriation of a few inhabitants, women and patients of Truk.

We had no communication after July, 1944. Our only hope was the hospital ship. But she could not sail any further after the last repatriation of patients and women on 13 July of the year. The atoll became a speck of solitary island in the vast ocean, and we had no other way to maintain our life than to support ourselves.

In such circumstances, the air raids became more and more intense. We thought that we were on the verge of annihilation by the enemy, and could not even dream that we should go home at some future time.

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James D. Kenny
James D. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

"END(S)"

We resolved to fight till the last man as did the garrison at Saipan.

8. Air raids of the hospital and the conditions of the patients.

At the time when the enemy's task force attacked us in February, 1944, we were swept by machine gun fire many times. After that, dozens of bombs were dropped on the hospital by B-29s. Our main damage was the destruction of the internal ward when dozens of patients were crushed under the building.

By their bombings in the day time, some of us were buried under the ground. We suffered serious damage by their hundreds of incendiary shells. On account of their machine gun fire against the ward, many men were injured and lots of clothing, provisions and materials were damaged. They thus openly attacked our hospital in the day time, though it was marked by a red cross.

Owing to the air raids of such long duration, our materials fell short, work did not progress and transportation to Japan was entirely cut off. Especially, we had to lead unhealthy lives in the air raid shelters at night, and yet we were burdened by excessive labors. The health of many military men was spoiled and patients increased in every unit. Epidemics (especially A-type paratyphoids, ansebic dysentery and bacteriological dysentery) and local diseases were prevalent, and many people fell ill because of malnutrition. Sickness of the patients in the hospital, though they were trying to recover from the sickness, grew worse and worse till at last they became to have no way of recovery, and numerous patients died.

We carried two or three dead bodies, sometimes seven or eight, to the temple of the hospital. But on account of the continuous bombings by both American and English, we had no time to bury them, our dead. We could not help leaving them to rot. So it can well be said that our Japanese dead were prevented from having an honorable burial because of the unlawful bombings of the hospital by Americans and English.

9. My sentiments and the state of my mind at the time of the slitting.

Having considered the contents of the speech of the head of the hospital and that he said that the prisoners should be executed, I thought that these prisoners were properly sentenced to be executed, I thought that these prisoners were properly sentenced to be executed through legal procedure. Only because the hospital had been bombed could I think the execution was proper at the hospital.

a. All men of the hospital were openly assembled in the daytime, and the execution was carried out publicly with solemnity and as execution in due order.

b. At that time, I was thinking that IWANAMI, head of the hospital, was a violent man, but I was not thinking that he would abuse his official authority in order to kill human beings. I was rather of the opinion that he was fit for a leader of a unit at the front because he could encourage his men, even in a lawful execution of prisoners.

"END(4)"

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy, J. P. V.
J. P. V.

9. I could not believe that such a high ranking officer as Captain Imanami, the head of the hospital, would give an illegal, reckless order. Each person who has the authority to issue orders is taking partial charge of the duty of His Imperial Majesty; therefore, in the Japanese army how can a superior force his men to perform unlawful orders? This is why we must trust our superiors, and this is what we were taught in the military service under our teachings, all orders are lawful.

10. My sentiments for the families of petty officers.

On 15 August 1945, His Majesty the Emperor, in view of the future of his country and subjects, announced the imperial command that he resolved to stop the war and endeavor for the reconstruction of his country bearing every bitter hardship that might fall upon him and his subjects. We thus surrendered and the war ended.

We have lost our military and economic power of the past and have no military forces. Under the occupation of the Allied Forces, according to the directions of victorious nations and with their positive assistance in our government, thought and culture, we are exerting ourselves for the establishment of a peaceful country. However, economic conditions have grown terribly worse. Our houses and foods are short; many persons are out of work and it is hard to find employment; inflation has arrived at a critical stage. It is really difficult to re-establish the lives of people.

Morale is low. It is very regretful that violent abuse is heard everywhere. Of course, the military men lost people's confidence after the end of the war. But some people are apt to regard even petty officers and enlisted men as traitors who had to discharge one of the big three duties of the Japanese. Then are petty officers and enlisted men who carried out their national duty traitors as they say?

The petty officers who are now in the court had finished their military service of either three years (conscripted men) or five years (volunteers). But they had no chance to be discharged and their demobilization was postponed. Some of them served in the military six or seven years beyond their assigned periods.

During that time, we forgot our private affairs in order to perform our duty. Some of them had no chance to marry, and some of them were ordered to go to the front only several weeks or several months after their marriage. During their service, if their parents died or if the wives, children, brothers or sisters fell ill, they could not even nurse them and only worked on their official duty.

But, at that time, we could serve in the military without any uneasiness about our families, because the government protected our families and our neighbors were kind to us. Now all such kindnesses are gone. People not only look at the families of war criminal suspects with indifference, but not a few of them try to deprive us of our rights and properties, taking advantage of our weak points. Even if we are war criminals, our family ought to be protected by the government as they did during the war, because we are charged with war crimes for our acts committed during the war. Of course, we can not say positively that the government has no intention to do so, but observing the conditions of Japan, I cannot find any measures taken for that purpose.

CERTIFIED TO BE A TRUE COPY:

James A. Kinn
James A. Kinn,
Lieutenant, U. S. Navy,
Judge Advocate.

100(7)

0199

Our relatives, friends and thoughtful persons will naturally sympathize with us, but their help is only spiritual. It is difficult under the present economic conditions in Japan to give us material support. After all, even such persons can hardly support their own families. How can they support others' families?

When I think of such circumstances in the world, I doubt if there is one among the defendants in this court but who has to worry about his family.

Especially, we petty officers served at the Fourth Naval Hospital together for nearly three years. We know each others' personal affairs better than anyone. We can fully understand each others' agonies, yet we can do nothing.

These defendants must go home immediately and they have the duty to support their parents, wives, children, younger brothers and sisters. These more than ten petty officers except a few of them have served at the front for three years and have lived in the confinement for one and a half years as suspects after they were arrested by the American forces. They have had no chance to go home. Now the inflation in Japan is growing worse and worse. On account of the damage during the war, houses are short, many men are out of work and it is difficult to be employed. I wonder how the families of the defendants can maintain their livelihood. They are uneasy about their husbands or sons who are not yet back and are suffering from the stern realities of their lives. They want to work, yet they cannot find a job. Especially old persons, women or children cannot know what to do. They exchange their ornaments, their souvenirs of the past, for money. Still they had to barter their furniture and clothing for their living. If these conditions continue, what will become of these families and their lives in the future? When I think of these things, I keenly feel that our military spirit which had been promoted in our lives without any uneasiness during the war will not change into our earnest exertion of fulfilling our duties in supporting our families. We are willing to bear any unbearable hardships in order to fulfill this duty.

Each of the defendants in this court has several persons in his family to support. If the defendant does not go home to support them, they cannot have any hope in their future lives. This sense of duty and this uneasiness sticks in our minds and cannot be forgotten for a moment.

II. The Japanese and the influence of Buddhism upon the Japanese.

In this case, the petty officers are alleged to have feloniously participated in the incident with intent to commit murder acting jointly with the head of the hospital. But no one had an intent to commit murder.

Especially, we were born in a country of Buddhism. From the time we were young, we used to go with our parents to shrines and temples to worship. We were taught not to destroy the lives of the creature. We were taught that we had to love anything which was alive even such as a tree or grass. The spirit of "Ichinyo" has been in the blood of the Japanese for one thousand and some hundred years from the time Buddhism was introduced in our country till now. (The "Ichinyo" in its literal sense means "same." It means that every single creature has the heart of Buddha.) I would like to show you an instance of "Ichinyo" and explain that we have no intent to kill others but have gentle feelings on the contrary.

END(S)

CERTIFIED TO BE A TRUE COPY:

James P. Kenney
James P. Kenney
Lieutenant, T. S. Navy,
Judge Advocate.

0200

This is a story told by Tokima, Daitai, a doctor of literature:

In the suburb of Nanso, Kotosu-kuni, there is an old temple called Wakam-in, and outside the entrance of this temple, there is a mound called "Ushi no Iuka," or mound of a cow. After earnest investigations, someone discovered a story about the mound.

In 1873, Maeda, a feudal lord of Kaga, built a shipyard at Nanso, Koto, in view of the conditions of the world. (This is a predecessor of the present Kawasaki Dockyard.) After he built the yard, he managed it himself, and invited an Englishman called Osben to be an engineer and an English teacher. Since Osben was an Englishman, he liked to eat beef. But, at that time, the Japanese hated badly to eat animals. When a person ate beef, he or she was often ostracised or divorced. So there was no store which sold beef. If he wanted to eat it on any account, he had to kill a cow. He sent a man to a cowherd and told him that he wanted some beef. The cowherd said, "Why?" "Because a foreigner wants to eat it." "Oh! Dear! Not any reason can I kill my lovely cow for other's food." He said that he would pay any amount of money the cowherd wanted, but the latter did not approve of the deal. Helplessly, he went to Anamisu, a village a few miles away from there, and brought a cow without saying that he was intending to serve its meat for foreigner's food. He came back with the cow and served the beef for the foreigner.

Several days after that, the cowherd heard that a foreigner at Nanso had sent a man to him in order to get the cow to eat. He thought that the cow he had sold several days before would be killed and eaten. He could not endure it. He took the money and went out to get the cow back, but the cow had already been killed. The cowherd felt very sorry for it but he could not help it. So he made a tiny mound at the place where the cow had been killed and consoled its soul. When Osben heard the story, he admired the Japanese who had such a beautiful heart for animals very much. He offered his money and built a big mound. This is "Ushino Iuka" which still exists now. We have inherited the same spirit as the cowherd from our ancestors even though we are not aware of it.

It is a custom of my family not to eat the flesh of animals and birds. We even dislike to keep animals except horses and cats. This is my family custom and it still remains. I have been told the reason by my parents from the time I was young.

They said: "Indeed, the flesh of animals and birds will be delicious. If we come to eat them, we shall first be entertained them by others. Then we shall buy them and eat them; we shall buy those which are raised by others and eat them; till at last we shall kill those which are raised by ourselves and eat them. This is very horrible."

I think that the spirit of this story and that of the story of cowherd is quite the same. As I have stated, not of the Japanese are believers of Buddhism. Even if they are not the believers, they have inherited the spirit. The Japanese and the influence of Buddhism upon the Japanese. (continued)

"222(9)"

CERTIFIED TO BE A TRUE COPY:

James P. Henry
James P. Henry
Lieutenant, U. S. Navy,
Judge Advocate

0201

On the day of the incident, from the time when the prisoners were brought to the top of the hill till the time of their execution, petty officers treated the prisoners without any hatred and showed a very kind attitude. I shall show you some of the instances:

1. When the prisoners arrived on the hill, they were blindfolded with their hands tied behind, so they could not walk well. The petty officer who was then in charge of watching the prisoners took one arm of the prisoners, led them kindly and let them sit on the grass. This attitude of his was not different from that which corporals or nurses used to show toward blind or crippled patients.

2. After they let the prisoners sit on the grass, they retied their hands again so that they would not feel pain. Petty officers and enlisted men standing around the prisoners gave them water to drink and some cigarettes. When the prisoners smoked the cigarettes, they could not hold the cigarettes because their hands were tied. Those who were nearby, held the cigarettes for them so that they could smoke easily.

3. We wanted to speak to them in English as best as we knew, but they could not understand what we said. They said thank you with a smile when they smoked.

At that time, among the Japanese, it was a habit to openly hit the others face when in the military education or when a father instructed his son. In this case, these prisoners were our enemy. They were military men of another country. Besides we had experienced enemy's air raids every day. But we did not show any hatred toward our enemy before us. We never touched them, but on the contrary we felt very sorry for them. I think this was the embodiment of war spirit of "Ichinyo" in our hearts.

12. Conclusion.

In this incident, when the general assembly was ordered, officers and warrant officers who were present at the scene were department leaders, section leaders, chiefs or members in each of our post. If divisions were organized, they were division officers or officers of division, the persons who took charge of our personal affairs. In the presence of such officers, after the speech of the head of the hospital, we were openly ordered in the daytime to stab by one who was our commander and the orders were issued through an officer. We were military men. We did not question the order. We had no right to stop and question it in such a case. We could not help carrying out what we were ordered.

If we had failed to obey the order before we were going to stab, we would have been severely punished as violating an order. We were at the front, and furthermore, we were afraid that the US Forces might attack our position. We were fully aware that if we violated orders in such circumstances our crime deserved the death sentence like the violation of orders during the battle. But we never had any idea we could question the legality of orders or refuse to carry out orders.

As I have already mentioned concerning the order and its obedience, we used to abandon our private feeling, to forget ourselves, to attack the enemy's position with that heroic spirit of suicide squad and thus to perform our duty.

CERTIFIED TO BE A TRUE COPY:

"END(10)"

James D. Henry
James D. Henry,
Lieutenant, U. S. Navy,
Judge Advocate.

0202

as a military man. As the result of that, we came to kill the prisoners, but not as murderers. If our actions were wrong, the orders of the Japanese military forces would not have been carried out.

At that time, selected men of every unit were organized in a special defense unit in preparations for the U. S. Forces' landing on Truk. I heard that the Commander in Chief Hara assembled the members of the unit at the headquarters and personally addressed them that they had to swear to die with the death of Truk. He ordered the military band to compose a song in praise of the brave spirit of the special defense unit, and every one was told that he had to defend the island with the spirit of the special defense unit and that he had to perform his duty. Everybody used to sing the song. Indeed, there is not a bit of difference of our spirit when we perform the "Last suicide attack" advocated in the special defense unit and the order to "Charge."

If this be admitted as an unlawful act, the head of the hospital who ordered the execution and the officers and warrant officers of the hospital especially the chiefs of sections who had the right to stop it out to be blamed for their neglect of duty. I am convinced that the petty officers who carried out the order are not guilty of murder.

This incident is different from ordinary homicide. Because we had no intent to commit murder, we received no rewards for our acts, and we did not kill them with our personal hatred for the revenge of their bombing of the hospital. On account of the military training we, petty officers and enlisted men, had received since we had entered the Navy, we could not consider whether the order of the head of the hospital was right or wrong. We only carried out what we were ordered.

This is how I felt and I know that is exactly how all the other men who stabbed felt about this affair.

I know of an American episode concerning the order and its obedience. I would like to cite it here and compare it with the spirit of obedience which we had long maintained.

Abraham Lincoln was the sixteenth president of the United States of America who brought about a historical event, the abolishment of slavery. On account of that, the Civil War began which continued for four years till at last he restored peace. But he was killed by a bullet of a young man of his opponent's party the evening of the celebration.

At the time of the Civil War, in the government forces, there was a soldier named Scott. He took the sentry duty in place of a sick comrade. On the next day, it was his own duty. So he was a sentry for two days. Having become too tired, he fell asleep while he was on duty and was discovered by an officer. Since he was asleep while on duty of sentry during the war, he was sentenced to death by military law. His comrades and officers tried to petition for his mitigation which soon was made known to the President. Lincoln rejected their petition for his mitigation once saying that he had only to follow the military law, but he could not endure to lose this private. Although he was busy in his affairs of state, he went to the front on the next day and met Scott in the jail.

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James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Adm. Reports.

"200(11)"

0203

After asking him various details, he understood the circumstances and he released him. He said to the soldier, "Scott, I am going to release you. Your responsibility is, however, very grave. In the future, you must fulfill your trust for the sake of our state and for the sake of God. Can you swear it before me?" After that, Scott performed many exploits in his various battles till he was shot by enemy's bullet. When he was about to die, he said, "I can die fulfilling my appointment with the President and discharging my duty. Please tell it to the President." This is a story of a soldier and Lincoln who is the father of democracy, the government "by the people, of the people and for the people." This story praises the deep humane and gentle feeling that Lincoln extended down to the lowest soldier.

Scott was sentenced to death for sleeping on sentry duty. It did not matter what the circumstances there were. Lincoln sympathized with Scott's fatigue in that he had continued sentry duty for two days in place of his sick friend. I believe it was a pardon that was inevitable. In comparing this incident with the petty officers in this case there may be a different in the conditions, but there is no different in that it was an order. Scott's orders for sentry duty and our orders to stab were the same in that they were both in the front lines and the violation of them would result in a sentence equivalent to death. In this case, even though Scott had violated military law, the fact that he was tired from standing on sentry duty in place of the sick friend the previous night was taken into consideration and he was pardoned. If we are to be condemned for having carried out this order, in other words having complied with military law, as in the case of Lincoln's pardoning Scott, we wish you would try to understand the position of the Japanese enlisted men, who, under the conditions at that time when orders were absolute, and even though the results of that act was not good, as in the case of Scott, did not have the authority to evade it and objections could not be made. Thereafter, Scott swore faithfulness to God and country. He fought bravely in many battles at various places, during which time he was killed in action. In other words, Scott was a person who carried out his orders and his story is praised for his reply to the teachings of Lincoln. Scott is a person who did not think about death. He obeyed his orders absolutely and carried out his duties as a soldier. Scott was able to carry out the duties of a soldier by his obedience to orders. Considering this case on this point, both the petty officers and Scott were only being faithful in obeying orders. In our case, we were able to avoid death by attacking these prisoners even if we had known beforehand that we would lose our lives by performing this act. I think we would have thrown away our lives by obeying the orders.

I confessed the fact that I stabbed a year and a half ago and I intend to face the law of the American forces manfully. There is just one request, even though there is a difference in the various countries, I wish you would recognize the fact that this was done by the order of the Japanese military forces in the field and in a time of war. Please try to understand the position of a person receiving orders in the Japanese military service under the

"END(12)"

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James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

0204

conditions existing at that time. Please understand that this was done by persons who had no intent to kill and was done because there was no way out but to obey orders. I request that you will understand the position of us, the petty officers.

10 August 1947.

HONMA, HACHIRO.

I certify the foregoing to be a true and complete translation of the original document in Japanese, to the best of my ability.

Eugene E. Kerrick, junior,
Lieutenant, U. S. Navy,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

James L. Henry
James L. Henry,
Lieutenant, U. S. Navy,
Judge Advocate.

"200(13)"

0205

STATEMENT OF YOSHIZAWA KENJIARUO

Original document in Japanese appended to the original record.

Certified translation appended herewith marked "FFF."

CERTIFIED TO BE A TRUE COPY:

James H. Lenny
James H. Lenny
Lieutenant, U. S. Navy,
Judge Advocate.

0206

STATEMENT OF YOSHIZAWA, KENSABURO, FORMER MEDICAL ENGINEER, IMPERIAL JAPANESE NAVY.

I volunteered to enter the Yokosuka Naval Training Center as a corpsman fourth class in the navy on the 1st of July 1934, and I have served as a navy corpsman ever since. In September 1942 I was attached to the Fourth Naval Hospital, Truk Atoll. After that I worked at the hospital, was transferred to the branch at Tol in September 1944 and was transferred again to the 43rd Naval Guard Unit in January 1945 where I served till the termination of the war. I left Truk Atoll on 20 December 1945 and was demobilized and came home on the 1st of January 1946. On 18 March 1946, I was put in the Sugamo Prison as a war criminal suspect and was transferred to the Gun stockade on the 1st of April of the same year where I have been up till now.

In the third specification of the 1st charge, I am alleged to have committed murder against two American prisoners.

I stated that I did on that day when I took the witness stand in my own behalf. I knew nothing about the incident before I arrived on the scene on that day. I was working to repair a road. When I arrived at the scene I saw almost all the personnel of the hospital assembled there. I gave some cigarettes and water to the prisoners. One of the prisoners fainted when he had his blindfold removed, so I tapped his neck gently. After the stabbing was over, according to the order of the head of the hospital, I ritually cut the neck of the prisoner who seemed to me apparently dead. That is all I did at the scene. I never plotted or prepared beforehand to kill the prisoners.

I would like to tell you a little about the circumstances when I cut the neck of the prisoner.

After the stabbing was over, the head of the hospital said to officers and warrant officers, "Anyone want to behead them?", but no one replied, so he called Lieutenant Oishi and Ensign Asamura and ordered them to behead the prisoners. Ensign Asamura held his sword aloft but I do not remember how he cut. As I was almost naked, I kept myself away from the prisoners. Then Asamura came to me with a very pale face and handed his sword to me, saying, "Please hold it for a while." He left. Suddenly the head of the hospital ordered me "Senior Petty Officer, behead him. It is just a ritual. Do it nicely." I guess that the head of the hospital would make me do it as a ritual of execution, because he knew that I was good at fencing. As I was not formally dressed, I hesitated, but it was an order of the head of the hospital who was always strict as to orders. I could not disobey the order. With the sword I had received from Ensign Asamura, I approached to the prisoner, and looked at him. As I saw him, he completely stopped breathing. As a corpsman petty officer, I handled many dead persons. Since I had long experience, I could judge a person was dead or not by just looking at him. I prayed for the bliss of the dead prisoner. Feeling very regretful for my improper dress, according to the manners taught by my teacher of fencing, I held my sword aloft and struck his neck lightly as a ritual. I had no intention to behead him.

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James P. Henry
James P. Henry,
Lieutenant, U. S. Navy,
Judge Advocate.

CONFIDENTIAL

0207

I had been a senior petty officer since the establishment of the Fourth Naval Hospital. My duty was to maintain military discipline and the public morality of the members of the hospital and to assign and supervise all work except those at proper positions and of the self defense unit. I had heard from a surgeon that Iwanami was a very strict person before he became the head of the hospital, and I instructed my enlisted men thinking that I should never let him blame my men.

I trained my petty officers and enlisted men as recruits of the Naval Training Center and gunnery as ordinary seamen of a unit in Japan. So the training for these petty officers and enlisted men was pretty tough.

As I expected, the watch-word of the head of the hospital, when he was appointed to the position was "Carry out orders then and there." I corrected even a slight disorder in the name-plates if they were near the quarters of the head of the hospital. I took great care even as to the water in the washing stand, how to serve supper to a guest and how to receive them. I used to advocate, "Petty Officers must awaken themselves," or "Saluting, speech and attitude must be proper and polite."

I requested my men not to be late or early even by one minute when they assembled at the beginning of their daily routine. I ordered them to begin their eating by my order "Begin" and to break up from the table by my order "Carry on." The head of the hospital used to get up 15 minutes earlier than the petty officers and enlisted men. He used to come to the hall neatly dressed before our morning assembly. He used to work till past ten o'clock at night. Since the head of the hospital worked hard as his petty officers and enlisted men had to work very hard. They were fully occupied in medical treatment, keeping and arranging the inside of the hospital, in the work of digging air raid shelters, production of food, etc., and had little time to sleep. They worked more than three times as much as those of other organizations.

This incident happened in the hospital which maintained such a strict military discipline. Therefore, although the witnesses of the prosecution testified that they had not known who had assembled and dispersed, they should know it. It is very regretful that they testified as such.

I made up plans for the daily work. I wrote on the card the place and kind of work and the persons necessary for the work, and presented it to the adjutant and the executive officer every morning, afternoon and evening. Every time there was a change of the schedule, I corrected it on the card, and I never did any cheating about it.

Lastly, I would like to state the condition of my family. In my navy life, I served 2 and a half years at the Yokosuka Naval Hospital, 2 and a half years on the warship Hamul, and 3 and a half years at the Ominato Naval Hospital and 3 and a half years on Truck Itall. Therefore, I was able to go home only several times when I was serving at the Yokosuka Naval Hospital and only two or three times when I was serving at the Ominato Naval Hospital. I have led a remote existence from the acquaintances of my village. I married in the beginning of November, 1941, at my native village. But Ominato is a

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James P. Henry
James P. Henry,
Lieutenant, U. S. Navy,
Ago 1100000.

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0208

very snowy place in the north of Japan proper. So I called my wife to Ominato at the end of April of the next year when the snow of the winter melted away. Shortly after my marriage, namely on the 5th of August of the same year, I received an order to go to Truk, and I was temporarily attached to the Yokosuka Naval Barracks. I had no chance to deal with my family affairs. At that time, my wife was to have a baby in three months. With a lunch box, I had to go to the Yokosuka Naval Hospital from the Yokosuka Naval Barracks. For the Fourth Naval Hospital which was to be established, I had to request various equipment, medical instruments, etc. It took me all night through to write a letter of request, and then I submitted it. I had also to study about regulations, positions of the members of the hospital and construction work. I got aboard the Daisen-Tonan Maru on the 11th of August which left the harbor for Rabaul on the same day. I was really very busy in those days.

In the course of time, the war ended, I was demobilized on 1 January 1946 and came home. My family was living with the family of my wife's parents when I was at the front. The house was in the center of Utsunomiya City and they were managing a hotel. They thought that Utsunomiya would not be bombed and did not evacuate their properties and belongings (including my meager ones.) But the city was burnt by the air raid one month before the end of the war, and everything turned into ashes. So they took refuge with nothing but the clothing on their backs.

When I was demobilized and came home, my son who was born when I was at the front was already four years old and was very lovely. My wife was delighted very much that I, her dearest one, was back. I thought that I was discharged to become a member of the society. But I was soon put in the Sugamo Prison by an order of arresting war criminals issued by the Japanese Government.

As I had but little time when I was arrested, I left my family at my older brother's home where we had been living. My older brother is a farmer of the lower class and can only maintain the living of his family. How can he look after my family in addition to them? The family of my wife's parents had lost all their property (during the war), and besides they have a large family. They would find it more difficult to look after my family, so my wife's brother is living with my brother.

My wife married me when she was 19 years old. All she can do is only to cook or such kind of housekeeping which she used to do when I was at the front. She has no ability to find a job. She can do nothing but rely upon me.

We have no savings nor any property (on account of my little salary and the air raid.) When I wonder how she is able to live in the living hell of Japan with her brother and my son who will go to school now, I feel that our future is dark and miserable.

It has been about six years since we were married, but I have lived with my wife only six months, including my life after the end of the war. I always feel pity for my wife and son, thinking that they have really an unfortunate husband and father.

CERTIFIED TO BE A TRUE COPY:

James P. Keary
James P. Keary
Lieutenant, U. S. Navy,
Rangoon, Burma.

557(5)

0209

I think that it will be the same for the other defendants. I beg that you will give us a lenient sentence and benevolent judgment. I desire that I shall be sent to Japan even if I enter the Sugamo Prison.

Respectfully,

Yoshizawa, Kensaburo

I certify the above, consisting of four (4) typewritten pages, to be a true and complete translation of the original statement of Yoshizawa, Kensaburo.

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

John P. Kenny
John P. Kenny
Lieutenant, U. S. Navy,
Judge Advocate.

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02 10

STATEMENT OF SHIGAKUNI, SHIMIZU

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "HHH."

CERTIFIED TO BE A TRUE COPY:
James P. Henry
James P. Henry,
Lieutenant, U. S. Navy,
Algo L. V. 1000.

0211

STATEMENT OF SAKAGAMI, SHUNJI

I entered the navy in June 1930 as a carpenter fourth class. I was then attached to the Yokosuka Naval Hospital, several warships, the Naval Arsenal, and, after finishing the course at the Naval Medical Academy, was attached to the Fourth Naval Hospital in June, 1943. I arrived at Rabaul, Truk Atoll where I served as the deck officer of the hospital. In April, 1944, I was appointed to be construction chief and on the 8th of July of the same year I was despatched to Iai for the construction for the detachment of the hospital on that island and stayed there till the end of December 1945.

In January, 1946, I was put in the American stockade at Boen, and was transferred to Guam in August of the same year where I have been confined ever since.

One day, toward January, 1944, Commander Ohgama came to my room and asked me for a black powder which he wanted to use for an experiment on dogs, so I gave it to him. Commander Ohgama asked me various questions concerning the use of dynamite and I answered what I knew about it.

One afternoon, about one week after that, Commander Ohgama called on me about three o'clock and told me again that he wanted some more black powder for an experiment on a dog. Since I had heard about his previous experiment, I had no suspicion about what he was going to do. I went together with Commander Ohgama to the hill behind the officers' quarters where dynamite was kept. As we arrived at the place, Commander Ohgama told me that he wanted a long fuse for that dynamite, so I made it twice as long as an ordinary one. I attached a detonator to the dynamite so that it was ready to be exploded and I gave it to him.

I intended to make a round of inspection of the hospital as I usually did I was about to leave there when a surgeon, I did not know his name, came up the hill. I took no notice of him, left the hill and began my inspection of the epidemic wards. After finishing my inspection, I walked toward my room and arrived in front of the officers' quarters when I was called by Commander Ohgama who was coming to me from the officers' quarters. He said, "Deck Officer, will you bring me a box of Scopolamine Opium Hydrobromide and Strychnine Nitrate and a hypodermic syringe, please?" I had to go to the pharmacy to get them, but as Commander Ohgama looked to be in a hurry I dropped in at the First Internal Ward which was nearby and requested the drugs from Nurse Hattori who soon gave them to me after getting permission from Surgeon Lieutenant Fukuda. I ran around the slope of the hill and gave them to Ohgama at the water tank at the officers' quarters. Commander Ohgama left me going up to the hill with the drugs and the syringe and needle. I wondered what he was about to do, so out of curiosity I followed him to the hill. On the top of the hill, I saw two foreigners. They were sitting side by side, their legs stretched out in front of them. I guessed that they were tied with their hands behind, but I did not actually see if their hands were tied. Standing by the prisoners, there was Commander Ohgama and another surgeon whose name I did not know, and they were preparing an injection of the drugs I had given to Ohgama. In the meantime, Ohgama injected scopolamine and the young surgeon strychnine into the foreigners hearts, that is, in the vicinity of the heart.

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James P. Henry
James P. Henry
Lieutenant, U. S. Navy,
Judge Advocate.

100-11

0212

I thought that they were killing the prisoners with these poison drugs. Since I saw the prisoners at an unexpected place and since I witnessed them being injected with poison into their hearts, I was astonished, and I hurried to my quarters. I didn't want to be present if prisoners were being killed. I suspected for what purpose Commander Okuyama used the dynamite and why he injected a large amount of poison. It was a great trouble for me who took charge of dynamite, and was also a very uneasy matter. Up until then I had no idea that Commander Okuyama and the other surgeon who I now know as Lieutenant Nakamura since he testified falsely against me were probably killing prisoners.

About ten days or two weeks after that, at the officers mess hall, Surgeon Captain Iwanami told me after going to breakfast that he wanted to have several natives for a working party. I asked him where I should assemble them. He told me that there were four dead bodies covered in straw mats at the morgue and that I had to tell the natives to bury them at the slope behind the hospital. So saying, he went toward his room. I came back to my room, and, after checking the attendance sheets of the natives, I relayed his message to several male natives.

I wondered why the head of the hospital trusted the natives to bury the dead bodies and was afraid that the natives might make mistakes. So I went with the natives to the morgue. As I opened the door, I saw four dead bodies of foreigners. They were not covered by straw mats, but were petrified and smelled bad. Being surprised, both I and the natives stepped backward. For a while, I was stupefied with amazement not knowing why they had died and from where they had been brought to that room. Was it good to let these ignorant natives see such a dreadful scene? Who dealt with these prisoners? I wondered and wondered. But, anyhow, it was unbearable for a man to leave the corpses as they were who has a humane heart. It was clear that someone had to bury them. I had been ordered to do so. Ordinarily it is not the duty of the commanding officer of the hospital to bury dead persons. In war it is probably different so I carried out orders and buried persons as I was told to do so. So I ordered the natives to carry the dead bodies to the slope behind the hospital, divided the dead bodies in two groups of two each and buried them in the ground.

The natives, after finishing the burial, said to me, "Is that enough?" I ordered them to cover the dead bodies with much more soil and let them work again. While they were doing so, I went to my room to take some salt. When the graves were nicely made, I assembled the natives, sprayed the salt and cleaned the place. Then we prayed for the consolation of their souls according to my command. The natives who participated in the burial asked me after the prayer, "Why were the killed?" "I don't know why," I replied, but I recalled that when I had given the dynamite to Commander Okuyama, I had seen two prisoners being injected on the hill behind the officers' quarters. I imagined that Okuyama might have used the dynamite for the experiment of these prisoners, and told the natives what I imagined. Since I thought that it would be a disgrace to the hospital if the incident about these dead bodies was told to others, I told the natives as follows:

"Don't tell others about this burial. You may be absent yourselves from your work today so that you will pray for the consolation of the souls of these dead persons." After telling them so, I ordered them to break up.

After the end of the war, I heard that these four persons had died because they had been injected with poisonous bacteria. This was only rumored and I do not know of my own knowledge.

As I stated before, I was dispatched to Tai on 8 July 1944 where I engaged in the construction of the branch hospital. I called Bullon several times in regard to liaison about the transportation of materials to Tai.

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JAMES D. KERRY
JANUARY 11, 1985
JACO L. WOODWARD

0213

I have found the reason why I was charged with the dreadful crime of murder. In the first place, it is because Surgeon Lieutenant Nakamura (I knew his name for the first time in this court) gave false testimony, and next because that I had told the said natives what I had imagined when we had buried the four dead bodies. My imagination gave rise to their imagination and then it spread. This imagination of the natives became testimony in this court given by the natives. I think that is the reason why I have been accused.

I was put in the American stockade at Moen, Truk Atoll, on 12 January of last year, and was investigated by an American officer. At that time he told me that I was confined as a suspect who had murdered two prisoners with dynamite, so I told him that I was quite innocent and that I had nothing to do with the murder and begged him to release me as soon as possible after his investigation.

Toward July of the same year, I was investigated again. I explained as a matter of information that I had given dynamite to Commander Okuyama and that I had a surgeon as a witness as to my innocence. I begged the investigator to investigate these two surgeons at once so that he would find that I was innocent. I only knew the name of Okuyama.

In August of the same year, I was transferred to the Gun stockade, and, toward November of December, I was informed that Commander Okuyama was dead.

I was very much confused to hear the news, and requested again and again that the unknown surgeon lieutenant be found, thinking that if the surgeon were found my innocence would be known. Now eagerly I waited for that day.

After February of this year, I was told by the investigator every time I was investigated that the trial would start in the next month, that it would begin soon, that Okuyama had died and the other surgeon had not yet been located and that I would have to take all the responsibility. Since I knew nothing about the law and had no knowledge about the trial, I lived uneasy days. I could not understand why the death and disappearance of criminals would burden me with all of their responsibilities. I was innocent and knew it. Why couldn't the Americans know that I was innocent?

Toward March, when I was investigated, I was told that the surgeon who had acted with Commander Okuyama had been arrested. I begged him to show me his picture if it was available but I was not permitted to see his picture or see him or even told his name.

A long time had elapsed since this incident occurred, and, besides, I had never talked with this surgeon whose name I did not know. My recollection of his features was very vague, but I thought that I could identify him if I saw him. I was looking forward to the day when he would emerge in front of me. He would surely say I was innocent.

After that I was asked about what I had done, and I stated only what I had done. For the investigator told me that he knew all about other men's acts but that he was not certain of mine. So I did not tell what other men had done.

CERTIFIED TO BE A TRUE COPY:

James P. Keene
James P. Keene,
Lieutenant, U. S. Navy,
Admiral's Office.

"MM(3)"

0214

lastly, I would like to state some incomprehensible points in the testimony of the witnesses.

The testimony of Surgeon Lieutenant Nakamura was entirely false, and he disgraced the morality of human beings. I wonder why he testified like that. I am surely convinced that he was a surgeon lieutenant who, acting jointly with Commander Okuyama, murdered two foreigners by injection on the hill behind the officers' quarters.

In Surgeon Lieutenant Nakamura's testimony:

1. He said that the dynamite had been as large as a fist in thickness, but what I gave Okuyama was not so big. It was only about 3/4 inch in diameter, and wasn't even dynamite. I am sure if he used what I gave him I and not Nakamura can better describe it. Of course I did not see the dynamiting so anything is possible.

2. He said that the dynamite had been lit with a match. To light a fuse of dynamite is apt to burn one's hand, because the flame comes out from the fuse. Those who are experienced in the use of dynamite would never do that. It is usually lit with an incense-stick or a match cord.

3. He said that two pieces of dynamite were lighted. But like electric cord the fuse is a cotton cord in which the gunpowder is packed and the surface of the cord is painted and hard. So even when the gunpowder burns, the cotton cord remains unburned. And if one piece of dynamite explodes, the fuse of another one would be blown away by the explosion. Therefore, the other dynamite will usually not explode.

4. He said that the prisoners had their toes injured by the explosion. But since the dynamite had exploded about 10 cm. in the ground, it would spray stones, sand and soil which would cause serious injury on the bodies of the prisoners. He especially stated that two pieces of dynamite had exploded about one meter in front of the prisoners. If so, I think it would injure them very seriously. I also think that when dynamite is buried in the ground its explosion would extend upward and obliquely so the injuries in their faces and chests would have been greater than those in their legs. Considering from the positions of the prisoners which he gave in his testimony, the area of the surface of their bodies facing toward the dynamite was greater as to the upper part of their bodies than in their legs, so it is strange that they were injured only in their legs which was a smaller surface area. Such a simple matter is lectured about in the Medical Officers' School as a matter of common knowledge of surgeons.

5. He said that he had injected two ampules of morphine into each of the prisoners in order to remove their pain. But morphine used in the Japanese navy was never used in excess of an ampule at one time for any patients who had any serious pain. It is a matter of common knowledge of a surgeon that less than one ampule should be used according to the condition of the patient.

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James H. Kearney
James H. Kearney,
Lieutenant, U. S. Navy,
3, 220 L'Ange St.

"SECRET"

02 15

6. He said that he had injected it in the upper arm of the prisoners, but he also testified that their hands were tied behind them. Is it not technically difficult to inject the arm of a man whose hands are tied behind? This testimony is very doubtful. Generally speaking, the injection of morphine is made subcutaneously in the chest or the outside upper arm of a man.

7. He lastly testified that the prisoners had been strangled to death. I once learned that in cases of strangulation some visible changes are seen in the lungs. But he testified that he had found no visible changes after dissecting them.

I feel that the testimonies of the natives against me were nothing but a product of their uncertain imaginations and were pure fabrications.

Before Truk was bombed on 17 February 1944, the laundry and cleaning of the rooms of the officers and warrant officers were taken care of by our orderlies. After the air raid, the hospital became so busy and the orderlies became so few that we sometimes ordered the natives to wash our clothing. But before the air raid, we never ordered any natives to do so. Such testimony by them is false.

They testified that they had been weeding around my house, but since my house was beneath a very big mango tree there were no weeds around it.

A native called Takeo testified that he had seen a truck stop in front of my room with two prisoners and a guard with rifle and bayonet. But before the air raid there was not a single rifle in the hospital. Only because of American air raids did someone order rifles and a defense unit.

A native called Otis testified that I took two prisoners with Petty Officer Nomma. I wonder on what ground they gave such false testimony. It is a pure fabrication. I had nothing to do with such a thing. It is absolutely a lie.

As I have stated, I prayed from my heart for the souls of the four dead bodies, and I did not behave rudely as the Truk natives testified. I knew these dead bodies had an honorable burial.

As you see in what I have mentioned, I did neither kill the prisoners nor assist in the killing. I can firmly swear before man and God that I am innocent.

Your Honor, the President, I beg that you will clear this dreadful suspicion from me and that you will let me go home where my old parents and my two young children are waiting for me.

Sakagami, Shinji.

I certify the above, consisting of five (5) typewritten pages, to be a true and complete translation of the original statement of Sakagami, Shinji.

CERTIFIED TO BE A TRUE COPY:

James P. Kenney
James P. Kenney,
Lieutenant, 7. G. Div.,
Adgo Lagoon.

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

ENC(5)

02 16

STATEMENT OF ASANURA, SHUNKEI

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "JJJ."

CERTIFIED TO BE A TRUE COPY:

James P. Kew,
Lieutenant, U. S. Navy,
Judge Advocate.

0217

STATEMENT OF ASANUMA SHUNPEI

I entered the Naval Academy on the 1st of December, 1940, and graduated in September, 1943. Then I received the first term training of officer candidates on board the warship Yamashiro and the second term training on board the warship Chokai. I was attached to the Forty-first Naval Guard Unit, Truk Atoll, on the 10th of March 1944, and was appointed ensign on the 15th of March of the same year. At the beginning of June of that year, the enemy's air raids became especially intense, and we were afraid that the enemy might land on Truk. I think it was for that reason that I was ordered by the executive officer of the Guard Unit to become a leader of a unit for the defense of a peninsula jutting near the South Naval Hospital, Dublin Island. I was connected with the hospital after that time.

I received the order at the beginning of June 1944, and went to the hospital with two warrant officers and 50 petty officers and enlisted men. We were furnished with the theater of the hospital for our quarters, and our meals were served by the mess hall of the hospital. We three officers took our meals at the officers' wardroom of the hospital. When I was leaving the Guard Unit to go to the hospital, Lieutenant Commander Nakase, the executive officer of the Forty-first Naval Guard Unit, gave me the following advice: "Captain Iwanami, the head of the hospital, has a different character from ordinary surgeons. Since he is a very stubborn person, you must obey his directions well in doing anything." Therefore, I tried to meet the requests of the head of the hospital. Needless to say, according to the chain of command, I was under the command of the Forty-first Naval Guard Unit Commandant, and there was no connection which said that I had to observe the directions and orders of Captain Iwanami, the head of the hospital. However, I lived in a building of the Fourth Naval Hospital, and had my meals together with the officers of the hospital at the officers' wardroom. And, in reality, I was placed in a situation like a direct subordinate of the head of the hospital because of his peculiar character. At the beginning of January, 1945, two warrant officers and all petty officers and enlisted men of my unit were transferred to the Forty-third Naval Guard Unit of Sol, and I came back alone to the Forty-first Naval Guard Unit Headquarters where I served till the end of the war. After the war, I was engaged in work assisting the American forces, and was demobilized on the 3rd of December, 1945. After that I was put in Sugamo Prison, Tokyo, on 21 March 1947.

When I was serving at the hospital, I participated in an incident. At my first investigation by an investigator at Sugamo Prison, I related what I had done in this incident frankly and honestly.

The incident happened around July 1944. In the afternoon of that day, I was intending to go to the headquarters of the Guard Unit for some investigations of personal affairs. After the assembly for the afternoon work, everybody went to their work. I came back to my quarters and was arranging the documents for my investigation. As I worked with my documents, I dressed up myself and prepared to go, when I heard loud voices of patients who were permitted to rest in the neighboring room saying, "Two prisoners have just been taken to the top of the hill." As I had never seen prisoners before, I wished to see them once as a matter of interest, so I went up the hill which was behind the hospital. On the hill I saw two blindfolded prisoners. They were sitting and their hands were tied behind them. Someone was giving them water and cigarettes.

CERTIFIED TO BE A TRUE COPY:

James P. Keary
James P. Keary,
Lieutenant, U. S. Navy,
Judge Advocate.

"333(1)"

0218

In the meantime, I wanted to go to the headquarters of the Guard Unit, and walked down the hill. In front of the administration building, I met the head of the hospital. As I saluted, he ordered me, "Prisoners are going to be executed on the hill. Come and see it." So I went back again to the top of the hill.

The head of the hospital arrived right after me. Getting very excited and indignant, he told us the aim of the execution of the prisoners, and directly issued an order to stab them with fixed bayonets. In the meantime the stabbing was over. I thought that we should break up since the execution was over. But the head of the hospital ordered me to cut the neck of one of the prisoners according to the ritual. Forcibly encouraging myself, I stood in front of the prisoner. To my eyes, he was already dead. Spectators were staring at me, and I got excited. I could manage to strike him with my sword, but I could not do it well such as the ritual demanded. I could no longer strain myself and I became very bad. Being unable to stay there, I retreated to the rear, but I became worse and worse and I felt that I might throw up. So I handed my sword to Petty Officer Yoshizawa and hurried to the toilet behind the commanding officers room. What I did is just as I have mentioned above.

After the end of the war, I knew for the first time, from many instances of war crimes trials, that this incident had violated international law. However, in this incident, the head of the hospital stated the purpose of the execution in a dignified manner and gave orders directly to his men. So I had never thought before the end of the war whether this was in violation of international law.

Although I graduated from the Naval Academy, I never learned about international law during my life at the Academy of two years and nine months. At that time, the Japanese navy failed in the Midway operation and the Guadalcanal operation. Besides it was suffering from a death blow in that it lost Admiral Yamamoto, the Commander-in-Chief of the Combined Fleet. In such urgent circumstances, our normal course of four years was shortened to 2 years and 9 months, and our study was almost unfinished. I think that is the reason why we were not taught international law. Even after graduation, I never intended to study international law, because I did not know when I should die.

After I finished my work in cooperation with the American forces on Truk in December the year before last, I was demobilized and was able to see my family. I found my old father and mother who had been looking forward to the return of their only son. My father is 65 years old this year. He fell ill of paralysis in February of this year. He has been hemiplegic ever since and has been in bed. My mother also fell ill of paralysis several years ago when she was 55, and has been sick since then. I married my wife just before I was apprehended and confined in Sugamo Prison. She is now looking after the family which I left. I feel as if my heart were torn when I think that I caused my wife trouble in looking after them. Now I am confident that I can swear before God that I am a confessor who retreats his crime from the bottom of his heart.

CONFIRMED TO BE A TRUE COPY:

James P. Henry
James P. Henry,
Lieutenant, U. S. Navy,
Judge Advocate.

"333(a)"

0219

After the end of the war till November 19, last year, I was engaged in work on Moen in cooperation with the American forces. The work was engineering work. I made a sluice at the fountain head, draining ditches on the roads and worked as a garden keeper for an officers family. During that time, I had much confidence placed in me, especially by Ensign Sam Florman, 29th CB, United States forces. He named me Hoo and loved me very much. For that reason, I was very interested in engineering work.

My father devoted his whole life to engineering work. I am intending to work as an engineer when I am released. At present, I hope that I shall have a peaceful family and that there will be a peaceful world without war. I desire nothing else.

I beg that you will deal leniently with me.

Asamura, Shunpei.

I certify the above, consisting of three (3) typewritten pages, to be a true and complete translation of the statement of Asamura, Shunpei.

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

Eugene E. Kerrick, Jr.
Lieutenant, U.S. Navy,
Judge Advocate.

"JJJ(3)"

0220

STATEMENT OF SUSHI. TERAO

Original document in Japanese appended to the original record.
Certified translation appended herewith marked "LLL."

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

"LLL"

0221

STATEMENT OF SIEHL, REISER

As soon as I graduated from the medical department of the Keio University, on the 26th of September, 1942, I entered the navy as a surgeon probationary officer. After receiving strict military training for three months at Gensan, Korea, I was appointed a surgeon lieutenant junior grade in the navy on 15 January 1943. From January till April of the same year, I received more education at the Naval Medical Officers' School in Tokyo.

Immediately after my graduation from the Medical Officers' School, I was attached to the Fourth Naval Hospital. I arrived at the Fourth Naval Hospital, Truk Atoll, on the 27th of April, 1943, and served there till 5 April 1945. During that time, I was promoted to surgeon lieutenant in the navy on 1 May 1944.

On the 5th of April, 1945, I was transferred to the Fourth Construction Corps and worked at Pefan, Truk Atoll. I left Truk Atoll on 18 January 1945, and was demobilized on the first of February of the same year.

Although I was a surgeon lieutenant in July 1944, I had only one year and ten months experience in the navy at that time.

It was around July 1944, right after the conquest of the Marianas by the American forces. Truk was under very pressing circumstances. In addition to such circumstances, we were attacked several times almost every day by the planes of the Allied Forces, beginning in April of that year, and our hospital often suffered from these air raids. We were living under severe tension, feeling keenly that we were amidst battle at the front. Under such urgent conditions, this incident happened.

I have already testified about how I came to participate in the incident and what I did at that time when I took the witness stand in my own behalf. Now I would like to recall and relate to you my state of mind at that time as carefully and faithfully as I can.

On the day before the incident, I had had a talk with the adjutant. So when I went up the hill on the day of the incident, I could imagine that the execution of prisoners might take place, though I was rather doubtful that it would. I was convinced that I and the members of the Self Defense Unit would have nothing to do with the execution, because I had positively refused to do it as I had told the adjutant. As for my own feeling, I entirely objected to the execution of the prisoners. I went to the hill resolving that I should never take part in the execution of the prisoners if it were held.

The reason why I went back to my quarters to get a sword was that I desired to be dressed in the prescribed manner. As it is a formal way of dressing for a Japanese naval officer to wear a disk, in Japan proper, it is a general regulation for them to wear a sword at the front. I think you will understand this.

As the head of the hospital came, the prisoners were made to stand. Toward that time, I felt so much pity toward them that I could not even bear to see them. I was greatly excited.

CERTIFIED TO BE A TRUE COPY:

James P. Kenney
James P. Kenney
Lieutenant, U. S. Navy,
Hague, N. J.

"111(1)"

0222

When the head of the hospital shouted loudly, "Petty officers, step forward!", everybody became very silent, and even a cough could not be heard. Then my name was unexpectedly called by the head of the hospital, and I was ordered to have the petty officers step forward. I was suddenly given this order before the presence of almost all my superiors and subordinates at the hospital, and I could not refuse this order of the head of the hospital, anyhow. So I was obliged to carry out the order. The Petty Officers who stepped forward were absolutely forced to do so, only because they happened to be in the line which I had pointed out. I was thinking that was all I had to do.

Nevertheless, the head of the hospital called me again. He ordered me to stand by the petty officers and to give commands to them so that the execution would be performed systematically.

This order was so unexpected that I was very much astonished. I also felt that everybody was watching me and I became bewildered. Facing the severe look of the head of the hospital and thinking that everybody was staring at me, I felt that I was being put into a desperate position. Whereas, the atmosphere at the scene was full of solemnity, I was in such a state of mind as to be unable to recognize myself, and I was standing by the line of the petty officers.

As I was listening to the speech of the head of the hospital, I felt indignant at the thought of being selected in order to carry out such an order, and I was aware of an inexplicable irritating feeling. After the speech, the head of the hospital ordered the petty officers to stab at the hearts of the prisoners. He also ordered me to commence it at once. When I was ordered to do so, I looked at the petty officers. I could clearly see the excitement in their uneasy looks, and I lost my courage to give a command to them. I wished I could have calmed their hearts as well as mine. That feeling took the form of words and flew out of my mouth. I almost unexpectedly gave them a talk.

When I gave the command, the head of the hospital was shouting as he violently struck the ground with his cane. His words echoed in my brain very vehemently and I felt as if I had been shot by bullets of a machine gun. I was so confused at that time that I did not know what I was doing. I had no way but to give the command in accordance with the order of the head of the hospital.

Amidst the same kind of solemn atmosphere, before my superiors and subordinates of the hospital, I wounded the dead body of the prisoners. It was because I was directly named and ordered by the head of the hospital to do it.

At that time, he said to me, "Cut his neck with a sword. It is nothing but a ceremony. So you need not heed him."

In order to execute the ceremony properly, I formally used my sword only once. I had no intention of desecrating the dead body. I did it praying in order to console the souls of the prisoners.

CERTIFIED TO BE A TRUE COPY:

James P. Keary
James P. Keary
Lieutenant, U. S. Navy,
JAGC L. V. 000.00.

"ELL(2)"

0223

When I took the stand, I explained to you how the prisoner was at that time. When I used my sword, I did not intend to kill a living human being. Apparently the prisoner was dead. For your reference, I would like to tell you now how a man dies from bleeding.

From January till June of 1944, when many injured persons died on Truk, I was working at the surgical ward, and I witnessed at least fifty deaths because of bleeding. Therefore, at the time of the incident, I had an accurate conception of death from bleeding.

The face of the injured person becomes pale, and he is in a cold sweat. He becomes excited for a while, and soon his sense becomes confused. The pulse and the sound of the heart become slow and feeble. His breaths become deep and more frequent. Then we can not feel his pulse by touch and the sound of his heart becomes inaudible and irregular. Every time he breathes he jerks his jaw downward and puffs his mouth. This is called breathing through the mouth.

Then the heart sound becomes intirely inaudible, and this jaw breathing becomes slower till it stops. At this time, the pupils of the eyes of the patient are already dilated more than usual, and all reaction in his tendons disappears. That means the patient is dead.

The more rapid his bleeding is, the faster the above mentioned events occur. We listen, touch and look at the patients in order to determine his death, usually, but in case of death from bleeding, it is only necessary to look at the patient. We regard the time at which the patient stopped breathing through the mouth as the time of his death. There are four indications of such a death: they are dilation of the pupils, no reaction in the tendons, stoppage of the pulse and sound of heart, and a halt in the breathing of the individual. In case of death from bleeding, the stoppage of breathing appears last of all these indications.

I do not know whether this is written in the text books, but this is the ture experience of myself. Although only a few years have passed since I graduated from my medical school, I met many cases of death from bleeding at the hospital in such a short period, thought they are rare in the hospitals at the rear both in time of peace and war.

I testified that I had not found the prisoner breathing. Of course, by this "breathing" I mean breathing through the mouth, that is, that I had not found him breathing through the mouth.

It is an important indication of death that the person's body does not bleed when one cuts it.

As I have mentioned, everthing was suddenly determined after the arrival of the head of the hospital. He compelled us to do what he determined. Petty officers who participated in the incident had their will completely disregarded. They were made to step forward according to my direction, they were forced to take weapons, and they obeyed the order of the head of the hospital relayed to them by me. That is all that they did.

Your honor the president and members of the commission, I sincerely beg that you will consider these points.

CERTIFIED TO BE A TRUE COPY:

James A. Renny
James A. Renny
Lieutenant, U. S. Navy,
Judge Advocate.

0224

Lastly, I would like to refer to the condition of my family. I have a wife and a child who was born this January. They are in Japan and are looking forward to my return. Only two months after my marriage, I entered the navy, leaving my wife at home. In order to fulfill my military duty, we had to live separately. I had been separated from my wife for more than three years till I came back to Japan and I could have a peaceful life with my family. I chose a charitable hospital at Yokohama as my place to work. It is a hospital for air raid victims, repatriates and poor folks. On account of my little income, we were short of money every month, and as my job kept me busy, I came home usually at 9 or 9 p.m. But my wife did not complain about the job which I had chosen, and encouraged me.

My elder brother has his family at Shimoka. He is also a doctor, and has a wife, mother, two children and younger brother in his family. He has many in his family to support. His younger brother is going to junior high school. Besides his loss of properties during the air raids during the war, he is in a poor economic condition.

I have heard that prices in Japan are exceedingly high, but my wife and child have no income. When I think that there is nothing wrong in my wife and child, I am driven by self-accusation which makes me feel as if my heart were torn although it is quite inescapable.

My child who does not yet know my face; my wife who has to lead her solitary life again; and many poor patients whom I looked after as best I could at the hospital. How are they getting on? This anxiety sticks in my mind, and I shall not be able to get rid of it forever.

Respectfully,

Oishi, Tetsuo

I certify the above, consisting of four (4) typewritten pages; to be a true and complete translation of the statement of Oishi, Tetsuo.

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

James P. Kerry
James P. Kerry,
Lieutenant, U.S. Navy,
Judge Advocate.

"112(4)"

0225

STATEMENT OF KAMIKAWA, HINEMIRO,

Original document in Japanese appended to the original record.

Certified translation appended herewith marked "HNN."

CERTIFIED TO BE A TRUE COPY:

James D. Henry,
Lieutenant, U. S. Army,
Algo A. Vonabe.

0226

STATEMENT OF KANIKAWA, HISHIRO, FORMER SURGEON LIEUTENANT COMMANDER, I.J.N.

I was the adjutant and head of the out-patients dispensary of the Fourth Naval Hospital, Dublin, Truk Atoll, from 6 March 1944 till 26 May 1945. From 27 May 1945 till the end of the war, I was a head of the Uman Branch of the Fourth Naval Hospital. I came back to Japan in January, 1946, and was demobilized on the 23rd of the same month. After that I worked as the chief of the medical section, Otake Mine-Sweeping Department, 2nd Demobilization Bureau. On the 18th of September of the same year, I was summoned to the Otake Police Station and sent up to Tokyo at once and was put in the Sugamo Prison. I was transferred to the Guam War Criminal Stockade on the 29th of the same month, and have come to be tried in this court.

As for me, it is really unexpected, and I do not understand why I came to be suspected. I have no connection with the incident at all. I think that someone imagined that I should have done such and such a thing because I had been the adjutant. This imagination developed and became a rumor because of the hope for a favorable settlement of this incident.

What I directly know concerning the incidents of prisoners which is said to have taken place at the Fourth Naval Hospital at the end of July 1944 is as follows:

I recall that during one mealtime two or three days before the incident, Captain Iwanami, the head of the hospital, was talking to some senior officers who were sitting near him and said, "There are prisoners now at the Forty-first Naval Guard Unit who are to be executed. I think that they bombed our hospital, so they are to be taken to the hospital here and executed." I listened to his words without saying anything, but I thought that such a plan must not be. On the next day, when I met him near the reception of the administration building of the hospital, I said to him, "I have heard about the idea of execution of prisoners at the hospital here, but I should say you are wrong to execute them here at the hospital." At that time, I was only a surgeon lieutenant, and, of course, I did not resist his ideas. I only expressed my opinion which was contrary to what he was thinking, feeling that it was the responsibility of the adjutant to give opinions to the commanding officer. But the head of the hospital was not one to listen nor did he listen to my advice at this time. He said as if he were talking to himself, "I had better let the Self Defense Unit do it." "It is not good either, if you let them do it," I replied, "I hope you will think it over again," and we parted without further words.

On the next day, I think it was at the beginning of the afternoon work, Lieutenant Oishi approached me in front of the administration building. Thinking it would be better to inform him what the head of the hospital was intending, I told it to him briefly because at that time Lieutenant Oishi was the leader of the Self Defense Unit.

That evening, Surgeon Lieutenant Oishi together with Lieutenant Minato called me at my room in the officers' quarters and said, "I do not like to dispose of the prisoners or even have anything to do with them. Please tell the head of the hospital that I refuse to have anything to do with it." I told Oishi that I also objected to the proposal of the head of the hospital and said that I therefore understood Oishi's opinion.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U.S. Navy,
Advo. Advocate.

"(1)"

I recall that, on the next morning when I met the head of the hospital, I told him that Lieutenant Oishi also did not want to be involved in the incident. The head of the hospital left without saying anything to me.

After I had objected to the opinion of the head of the hospital, he did not say anything more to me concerning the incident.

On the day of the incident, I recall that I worked as usual and that I did nothing unusual. In the morning I saw out-patients and read books in the adjutant's room. In the afternoon, I was in the adjutant's room working on medical statistics and some minute affairs. At that time, we were busy on the work of changing the boiler, and I recall that I went out to see the work. In about two hours my work was over, and I came back to my room at the officers' quarters and had a rest.

At the time, I was a convalescent. I had been suffering from dysentery and had been taken care of at the epidemic ward from the beginning of June. Toward that time, the enemy's forces landed on Saipan, and Truk became dangerous. So I forced myself to leave my sick bed on the 17th or 18th of June though I was not quite all right. On account of my hard work after that, I became more and more weakened. So the head of the hospital allowed me to have a rest at my room after my work was over.

On the way to my room, I saw some petty officers and enlisted men walking toward the same direction in small groups, and I asked what they were going to do. They replied that prisoners had arrived on the hill behind the officers' quarters and that they were going to see them.

I purposely avoided going up the hill and went back to my room. I wanted nothing to do with an execution. About two hours later, many officers came back to the quarters and talked about the execution. I recall that I said to some one of them, I forget his name, "If the enemy comes toward me, I shall be able to fight with him because he is the enemy. But I can not kill an enemy who is a person who cannot defend himself."

I did not like to talk about the execution after that, and I did not ask anything about it.

After the incident, air raids became more and more furious, and we were afraid that the enemy might land on Truk. In such circumstances we were fully occupied with work everyday, and the incident was forgotten.

At the end of the war, I was at the Wan Branch Hospital. Then Surgeon Captain Iwanami was ill, and Surgeon Captain Tanada was acting as the head of the hospital and Surgeon Commander Osumura was assisting him. Since we were strictly forbidden to talk about the incident, we could not know the real story of the incident and what had been done in the way of settlement of it even after the end of the war.

On the 10th of January 1946, I was leaving the hospital to go back to Japan when Surgeon Captain Tanada said to me, "Although you had no connection with the incident, you have a responsibility for it as adjutant. You must not speak about the incident after you arrive in Japan on any account. Don't tell it even if you are killed."

CERTIFIED TO BE A TRUE COPY:
James P. Kenny
James P. Kenny,
Lieutenant, U.S. Navy,
Adm. L. 1000.13.

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0228

Now I am being tried for the murder of these two prisoners, and this Captain Taneda has come into this court and under oath to tell the truth has testified falsely against me. Never would I have believed this of Captain Taneda. What has he to hide that he should so testify against me?

After I returned to Japan, I worked at the Otake Mine-Sweeping Department of the Second Demobilization Bureau which was under the command of the American forces. I have never thought even in my dreams that I should be suspected in this incident, but I was suddenly arrested and was sent to the Guam stockade. I do not know what was plotted, what was falsely stated and what was misunderstood during that time.

As I said above, I really had nothing to do with the incident. I can affirm it before man and God with confidence.

The reason why I objected to the opinion of the head of the hospital concerning the incident is as I stated before. As for me, I could not bear to injure prisoners who had no means of resistance so that I purposely evaded participation in the incident. Even after the incident, I did not want to hear about it, nor did I feel it necessary to explain my situation, that is why I have been silent about the incident ever since.

The dark war is over and the joyous peace has come. Now that I have recovered my reason after my excited feelings in those days of battle, I think that not only should I have objected to the opinion of the head of the hospital but also I should have tried to stop his scheme despite all difficulties. At that time, I had never thought that I should come to be in such a situation as I now am. Therefore, when my advice was not accepted, I did not dare to give advice again to the head of the hospital who was furious with his hostile feeling against the enemy. All I could do was to keep silent and not to participate in the incident.

At that time we were suffering from intense air raids day and night, and we were besieged by the Allied Forces. We were afraid that the enemy might land on Truk and that we should be annihilated. The personnel of the hospital were stirred up and their hostile feelings were for morale purposes encouraged and again and again they were forced to obey the orders of the head of the hospital as superior absolute commands. When I think of these circumstances and these persons, I can not help having strong feelings of self-accusation for my evasive acts at the time of the incident although I was the adjutant at that time. I am also very sorry for those who have led bitter lives in confinement for more than one year and even nearly two years. For being adjutant, I will take any responsibility. But what I most regret is the fabrications testified to in this court, which made people misunderstand and believe that I was telling a lie. I would rather die than be known as a liar. The facts should be made clear as the facts.

My responsibility as the adjutant should be charged according to the real facts. I am convinced that it is utterly out of the question that the commission would allow false testimony in this sacred and solemn court in order to entrap others.

I am convinced that this sacred and fair court will surely understand what I mean and that it will tender me a fair finding.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Adm. & Voc. Sec.

100(3)

0229

Lastly, I would like to state what the condition of my family is. I am the head of my family, and I have my wife Kasuko (28), son Yukio (7) and daughter Junko (3). My family were living at Onaga-machi, Hiroshima, till August 1945 with the family of my father Noboru. Our house was burned by the atomic bomb dropped on Hiroshima on 6 August 1945, and we moved to our present domicile. At that time, my mother Chika and sister Yukie met a tragic death. The family of my wife's parents were also in Hiroshima, and her father died an unfortunate death and her mother died ten days later.

As I am not at home now, my wife and children whom I must support have no income at all. I imagine that their little savings will be used up on account of the terrible inflation of the post-war era. I am worrying about how they are making their living.

I have only a brother now. His house was burned too at Hiroshima. He lost his job and is living with the family of his wife's parents. He must support his wife's father who has been in a sick bed for six years suffering from cerebral hemorrhage. Therefore, it will be difficult for my family to hope for or expect the help of my elder brother.

When I came home from Truk in January 1946, I saw my wife who had lost our house and my parents. She was living a miserable life at our present domicile, the native place of her parents. After my repatriation, I took great pains to find a house to live in till at last I made a small temporary house and could get our place to live. But, in order to make the house, my little savings were almost used up. Since I have never thought that I should be arrested as a participant of this incident, I never saved my money. If my family can not get any help from others, I think they will not be able to live.

Being an air raid victim, my wife lost our parents, our house and all our properties, and further lost her husband, me. I think that she is now at the mercy of cruel destiny with her two children without knowing what to do. When I think how ill-fated my family is, I also think with tears of the miseries of the families of the other defendants who will also be in the same unfortunate situation.

If it is not improper to state my private feelings, I have herein discussed the condition of my family.

I respectfully submit this petition to you.

Kamikawa, Hidehiro.

I certify the above, consisting of four (4) typewritten pages, to be a true and complete translation of the original petition of Kamikawa, Hidehiro.

EUGENE S. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

CERTIFIED TO BE A TRUE COPY:

James P. Henry
James P. Henry,
Lieutenant, U.S. Navy,
Judge Advocate.

"END(4)"

0230

STATEMENT OF IWANAMI, HIROSHI.

Original statement in Japanese appended to the original record.

Certified translation appended herewith marked "FTP."

CERTIFIED TO BE A TRUE COPY:

James P. Henry
James P. Henry,
Lieutenant, U. S. Navy,
Judge Advocate.

0231

STATEMENT OF ISAMUNI KIKUCHI, SURGEON CAPTAIN, IMPERIAL JAPANESE NAVY.

Your Honor, the President and Members of the Commission:

I would like to express my gratitude for your careful examination and consultation in this case.

Since I was given an opportunity to state my acts, I have mentioned every detail of fact. Of course, as for my present feeling, I have many things to say, but I shall not say anything further. Nevertheless, what I thought right at that time was far too violent and action caused by the abnormal psychology of wartime now when I reflect on it in peace, I feel very regretful for it.

Now I am not of such cowardly thought as to escape from my responsibility.

However, the January incident was done by other people and I knew nothing about it when it was committed, therefore I cannot bear the onus of being regarded as an accomplice.

The incident was prepared intentionally by these other people no matter how the witnesses might testify, but, at any rate, it was my fault that I participated in the dissection and other actions after the incident. I am accusing myself now wondering why I participated in such actions knowing all the facts at this time. If I had known I would have not been assisting in the same.

I think I did this because I could not get rid of that temptation for scientific research as a doctor.

It is I who am to blame for the July incident. I could not bear to see my hospital which I established after hard exertion after my arrival broken to pieces and many patients killed or suffering from injury. I became indignant especially because the bombings were done by the United States which I had admired as a country of humanity. I thought it was righteous and lawful as a method of warning in order to resist these unlawful bombings and to protect the sacredness of the Red Cross. However, when I reflect upon it now, in a state of calmness, everything seems to me like a dream and every act I did was based upon a mistaken view of righteousness. Indeed, I did wrong things. I regret it so much.

This honest but mistaken belief of mine has brought about a grave result today. I have never expected that my many loving, fine subordinates should be brought to this court under the disgraceful name of "war criminals" and that they should suffer from hard mental and physical pain which are much more serious than the ones they had experienced during the war. As a man responsible for that, I not only feel that I must take all of the responsibility but also I am worrying every day and night thinking what words I shall say to them to beg their pardon for my fault.

They were forced to assemble without knowing anything about the incident, they were compulsorily ordered by me to hold a bayonet or a spear and acted in accordance with my absolute orders. These subordinates were indeed, nothing but instruments.

Two years have about gone by since the end of the war. Still they can not go home and must live their days in confinement as war criminals. Thinking of their situation and feelings, I feel as if my heart were torn to pieces. Thinking of the grief of their families, I heavily feel and I have already suffered a thousand deaths.

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JAMES H. LEWIS, J.
IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Court.
JAMES H. LEWIS, J.

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The troubles, sufferings and agonies of my subordinates stick in my mind every moment, and I feel my repentance and regret become stronger and stronger every day.

Your Honor, the President and Members of the Commission, I would respectfully like to beg you only one thing from the bottom of my heart.

My subordinates have met with the miseries and misfortunes of today as a result of the fact that they served with me, an overzealous but misguided person. On account of that, they have lost all hope of the future. As I have repeatedly stated, they had no intent to commit murder. Being unable to refuse strict military orders, they were given, they blindly obeyed the orders. That is all they did. In those days of war there was no such thing as disobedience or orders. I was never taught to question orders and certainly they were not.

I beg that you will understand their feelings, situation and what they did at that time and that you will deal leniently with them in this the fairest trial which I believe is being given to us Japanese by the United States.

Respectfully,

Iwanami, Hiroshi

I certify the above, consisting of two (2) typewritten pages, to be a true and complete translation of the original statement of Iwanami, Hiroshi, to the best of my ability.

EUGENE R. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

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James P. Henry
James P. Henry,
Lieutenant, U. S. Navy,
Judge Advocate.

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U. S. War Department

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WAR CRIMES OFFICE

Judge Advocate General's
Office

File No. 48-35-1 NAVY CASE PART 3
Sub. IWANAMI HIROSHI ET AL

See also Nos.

122
U. S. vs. Hiroshi IWANAMI et al

0236

CASE OF

ILJA TRAPI, ET AL

VOLUME III
2nd carbon Copy.

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OPENING ARGUMENT FOR THE PROSECUTION
DELIVERED BY
LIEUTENANT JAMES P. KENNY, USN

If it please the Commission:

In its opening statement the prosecution provided the commission with an outline of the charges against these nineteen accused and the proof that would be developed by the prosecution to substantiate the charges as made. It will be my purpose in this statement to point out how the prosecution has, in fact, substantiated all the charges that have been made and proved beyond any reasonable doubt the guilt of all nineteen.

In Charge I, under three specifications, these nineteen accused are charged with the murder of the ten American prisoners of war. Naval Courts and Boards, Section 53, defines Murder as "The unlawful killing of a human being with malice aforethought." A killing is unlawful if there is no legal justification or excuse for it. There must exist, in fact, such legal justification or excuse, it is not sufficient that one thought or assumed there was legal justification. Malice does not mean that there must be personal hatred toward the victim. American Jurisprudence, Vol. 26, p. 182, states "Malice in the sense of hatred or malevolence toward the deceased is not necessary to constitute murder in the first degree, nor is it necessary to show what motives, if any, inspired the killing." Legal malice is merely the intent to unlawfully take human life. In deciding on the guilt or innocence of these accused, their motives in taking part in these killings are irrelevant. They may or may not have some bearing on the question of mitigation after a finding of guilty. Since the evidence produced by the prosecution makes it evident that all nineteen intended to kill these American prisoners of war and that no legal justification existed for their acts, all nineteen are guilty of murder. The intent to kill having been present, these acts could not have amounted to Involuntary Manslaughter, which degree of homicide only exists when the killing is accidental. Nor could the acts amount to Voluntary Manslaughter since there existed malice aforethought, i.e., those accused intended to kill the American prisoners of war. "Mere use of a deadly weapon does not of itself raise a presumption of malice on the part of the accused; but where such a weapon is used in a manner likely to, and does, cause death, the law presumes malice from the act." (Wharton's Criminal Law Vol 1, Section 426.)

The unusual technical terms of common law pleading of homicide are used in the three specifications under Charge I. To allege that these killings were done "wilfully, feloniously, with premeditation and malice aforethought" means in the final analysis that the acts were intended. Since these nineteen accused intended to kill the ten American prisoners of war, they are guilty of the conduct implied in these legalistic terms.

Specification 1 on Charge I alleges that the accused Iwanami together with Surgeon Commander Okuyama and Surgeon Lieutenant Nabetani killed six American prisoners of war "by experimenting with injections of virulent bacteria, with exposures to shock and other methods." The prosecution has proved that injections of live (virulent) streptococcus bacteria were made on four of these six prisoners and that the other two were experimented upon by the application of tourniquets for a period of from seven to nine hours. The prosecution has proved through Doctor Nakamura that the four who were injected with live bacteria died from septicemia (blood poisoning) (Ans. 158 - 4th day) and that the other two died from shock (Ans. 129 - 4th day.) The causal relationship, therefore, between the acts and the deaths has definitely been

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James P. Kenny
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Judge Advocate

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established. We have shown that prior to the start of these experiments the accused Iwanami discussed with his subordinate Okuyama what was to be done (Ans. 117 and 118 - 4th day) and he, Iwanami, made the segregation of the prisoners for the different experiments (Ans. 51 - 4th day.) The prosecution therefore has established the position of the accused Iwanami as a principal and he is guilty of all that followed even if he were not physically present.

Did Iwanami, Okuyama and Nebotani intend to kill these six Americans? Any medical student knows that the injection of live bacteria into the blood stream of these prisoners would result in death from septicemia (blood poisoning). Almost every layman knows that the application of tourniquets to the limbs of a human being for a period of seven to nine hours will result in death after removal of the tourniquets. These Japanese doctors knew, and, furthermore, they knew as a well recognized fact of medical science that obliteration of circulation will produce a marked increase in tissue breakdown with the resultant production of histamine and tyramine, products which will cause profound shock to the human system on removal of the tourniquets. This was not experimentation or medical research - it was murder! It would be well to note here the attempt of the accused Iwanami to help his codefendant Sakagami during his, Iwanami's, testimony concerning the dissection of one of the victims of this experiment. He deliberately tried to leave the impression that the corpse of this victim was one of the two whom Sakagami is charged with dynamiting and strangling. Knowing that the feet would show the result of the blast and not wanting to admit there were no such signs on this corpse he said he did not see them because they were covered. Then having testified that all other findings were negative he tried to leave the inference with this commission that this victim must have died solely of dynamiting and that the story that Sakagami had strangled the victim could not be true. All this time Iwanami knew that this was the body of one of the victims of the seven to nine hour application of a tourniquet, that death had been due to a severe shock, and in such a case he was not surprised, in view of the history, to find no pathology to account for the death. As to the credibility of the testimony of the accused Iwanami we need only consider his statements on cross-examination that he neither knew or inquired as to what had happened to the victim whose body he had dissected and in which he had found no cause of death. It is so elementary that a doctor inquired first as to history that the only conclusion can be that Iwanami was telling a half truth. He did not inquire because he knew what had happened because of his participation in the "experiments."

Specification two of Charge I charges the accused Iwanami and Sakagami in conjunction with Okuyama with the murder of two American prisoners of war "by explosions of dynamite and strangulation." The prosecution has proved that the two prisoners were dynamited and then strangled by Sakagami. We have proved that the two died as a result of the shock from the explosion and the strangulation [testimony of Nakamura (Ans. 129 - 4th day)] In addition to the testimony of the witness Nakamura who was present we have produced circumstantial evidence against Sakagami in the testimony of the Trukese witnesses - Rose Willis and Marisi Henrik who heard the explosion and then saw Sakagami coming down from the hill and saying to them "we have killed two Americans (Answer 11 - 16th day); Takeo Etoman who saw Sakagami take dynamite from his home at about 3 p.m. (the time when the incident took place) and shortly thereafter heard an explosion. Takeo also related how some time later

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Judge Advocate

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Sakagami had told him and other natives that they would dynamite them the same as they had done with the Americans if they were not industrious in their work." This evidence in addition to being circumstantial against Sakagami is corroborative of the testimony of Nakamura. Sakagami denies his guilt and would have us believe that he was only a messenger boy. The credibility to be given to the testimony of Sakagami is for this commission to decide but the law states that you should take into consideration the fact that he is testifying in his own behalf. We also point out that Sakagami on cross-examination stated that things that he had written in connection with this incident and submitted to U.S. authorities were not true. He would now have this commission believe that Nakamura lied in order to cover up his own guilt. Let us analyze this contention. Nakamura in his testimony had admitted his connection with the January incident. Suppose, as Sakagami says, he had killed one of these prisoners by injections. Would it be likely that he would try to pass the blame to the living Sakagami rather than the dead Okuyama who could not speak out in denial. No, gentlemen, such a contention is not credible. The prosecution holds no brief for its late witness Nakamura but we do maintain that he told a true story of what occurred on that hill in back of the Fourth Naval Hospital in February 1944. We maintain that Sakagami's testimony has not created any reasonable doubt as to his guilt. In order to acquit him this commission would not only have to accept his testimony that he did not strangle the two Americans but also believe that he did not play a part in the dynamiting. We anticipate that the defense in its final argument will do much speculating on the reason for the suicide of Nakamura. The prosecution would no more attempt to speculate on the reason for that act than we would on why these Japanese officers - members of a profession that rightfully prides itself on saving life - would take away life in a series of stupid, aimless experiments. Iwanami is guilty under the second specification even though he was not physically present on the hill with Sakagami and his victims. These were two of the eight American prisoners of war whom Iwanami had suggested for shock experimentation. Wharton's Criminal Law, Vol 1, Sec 263 states: "The accessory is liable for all that ensues as incident to the unlawful act."

In the third specification of the first charge all these accused except Sakagami are charged with the murder of two American prisoners of war on the hill in back of the hospital in what has been referred to as the July incident. The prosecution brought before this commission a parade of witnesses who put the finger of guilt on these eighteen accused for the part they played in that bloody spectacle. Many of these accused have taken the stand to deny these accusations. Who were their accusers? Not Americans but fellow members of the Imperial Japanese Navy who served with them on Truk. Even the accused who took the witness stand could not, while they were under oath, give any reason why these fellow Japanese would, as they claimed, lie about them. However, in their unsworn statements at the close of the trial an attempt was made to have us believe that this was done because the prosecution witnesses were their juniors in service and were getting even for the discipline that they had been subjected to. Homma, himself an accused, testified that the division was made in the senior end of the petty officers' line by Oishi. Oishi also said this. Who have we here but the senior petty officers of the hospital? Gentlemen, to borrow a Japanese expression: there is no mistake here. It was Iwanami and his adjutant Kamikawa who presided; Oishi who gave the order to commence; these thirteen who bayoneted and sabered; Asamura, Yoshigawa and Oishi who cut the heads. Asamura, Oishi and Yoshigawa have in admitting their guilt related that they were motivated by fear of what might happen if they disobeyed the order of a superior, or that they were merely carrying out an old Japanese tradition or that they cut the heads rather than look timid before their fellow officers. We reiterate that their motives,

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whether they were good or bad, have no bearing on the question of their guilt. They all knew when they arrived on that hill or shortly thereafter that those two Americans were to be killed. When they stepped into that line or took some other part they knew that they were to take part in the killing. There existed no justifiable cause for the execution. The accused Iwanami has testified that he "thought that all procedure concerning the prisoners was over" and that therefore it was appropriate to execute them at the hospital. Even if such testimony were credible, it would make no difference since, in fact, no trial had been held and no legal justification existed for the executions.

We now turn to a consideration of Charge II in which the accused Iwanami is charged with a violation of the laws and customs of war. In specifications 1, 2, and 4 of this charge Iwanami is charged with a violation of the law and customs of war in that he did "unlawfully disregard and fail to discharge his duty as the commanding officer of the Fourth Naval Hospital to control the members of his command" by permitting them to commit the unlawful killings that were proved under the three specifications of the first charge. If the law of war imposed a duty on Iwanami to control the members of his command, then this commission should find these specifications proved. The Supreme Court of the United States has said, "It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates." (Matter of Yamashita, 14 USL Weekly 414, Feb 4, 1946). This commission has taken judicial notice of the Hague Convention of October 18, 1907, which concerns itself with the laws and customs of war. Article 1 of that convention lays down as a condition which an armed force must fulfill in order to be accorded the rights of lawful belligerents, that it must be "commanded by a person responsible for his subordinates." There can be no question that Iwanami was responsible for the unlawful actions of these eighteen subordinates who sit here with him - particularly when they were committed with his approval and in the case of the July incident, in his very presence. Article 23(c) of the Hague Convention above referred to says, "It is especially forbidden to kill or wound an enemy who, having laid down his arms, or having no longer any means of defense, has surrendered at discretion." It therefore, follows, that the accused Iwanami because he was the commanding officer of the Fourth Naval Hospital and also Chief Surgeon of the Fourth Fleet at the time of the July incident has breached the duty imposed upon him by the law of war and is guilty as charged in specifications 1, 2, and 4 of Charge II.

Specifications three and five charge the accused Iwanami with a failure to discharge his duty as a commanding officer in that he did not "take such measures as were within his power and appropriate in the circumstances to protect" prisoners of war. The basis of these two specifications is the hill incident of February and July. What violation of the law of war is here charged? The Supreme Court has this to say, "these provisions (article 1, 19, and 43 of the Fourth Hague Convention of 1907 and Article 26 of the Geneva Red Cross Convention of 1929) plainly imposed on petitioner.....an affirmative duty to take such measures as were within his power and appropriate in the circumstances to protect prisoners of war....." (Matter of Yamashita, 14 USL

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Judge Advocate

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Weekly 414 of Feb 4, 1946.) The accused Iwanami in his position as commanding officer of the Fourth Naval Hospital had the power to prevent these atrocities but did not exercise it. On the contrary he acquiesced in and ordered these crimes.

Finally, specification six of Charge II charges the accused Iwanami with Nabetani, Okuyama and others with a violation of the law and customs of war in that he did "prevent and cause to be prevented the honorable burial of eight (8) American prisoners of war." The evidence shows that the accused prevented an honorable burial of the eight Americans involved in the January incident by unnecessarily dissecting and mutilating their bodies and in the nature of the final disposal of the bodies. This was in clear violation of the duty imposed upon him by Title V art. 76 of the Geneva Prisoners of War Convention of July 27, 1929 which states, "Belligerents shall see that prisoners of war dying in captivity are honorably buried....."

In conclusion, gentlemen, the prosecution feels that it has proved every allegation of all nine specifications that have been lodged against these nineteen accused and that they all stand guilty as charged. Unlike the accused Iwanami in his speech to the bayoneteers and sabers of the two defenseless Americans, we do not appeal for revenge but for justice - justice for the unlawful killing of ten defenseless American prisoners of war. Justice demands that these violators of the law of war be punished.

JAMES P. KENNY,
Lieutenant, USN,
Judge Advocate.

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James P. Kenny
JAMES P. KENNY
Lieutenant, USN, Navy,
Judge Advocate

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ORIGINAL ARGUMENT OF SUZUKI, SAIZO, COUNSEL FOR THE ACCUSED, IN JAPANESE
(appended to the original record)

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JAMES P. KENNY
Lieutenant, U.S. Navy,
Judge Advocate

0243

CLOSING ARGUMENT IN THE CASE OF THE FOURTH NAVAL HOSPITAL DELIVERED BY
SUZUKI, SAIZO, TOKYO, IN BEHALF OF THE ACCUSED OISHI, TETSUO; ASAMURA,
SHUNPEI; YOSHIZAWA, KENSABURO; TANAKA, TOKUNOSUKE.

If it please the commission:

As I open my argument, I wish to express my sincere gratitude and appreciation for the impartial judicial procedure and dignity of a law court which this commission has maintained throughout the entire trial.

- PART ONE -

1. In the present case, an unprecedentedly large number of people, nineteen, occupy seats as accused and they are being tried together in a case in joinder. This case, however is clearly divisible into three incidents alleged in specifications 1, 2 and 3 of Charge I respectively. If we observe still more closely, I believe this case can be divided into two categories, namely, the experiment incident in which eight prisoners of war were experimented upon and in which the deceased Commander Okuyama was involved and the execution incident in which 2 prisoners of war were executed, in July 1944. Among the 19 accused with the exception of Iwanami and Sakagami, the remaining 17 accused are charged with the July execution incident and have no connection with the experiment incident whatsoever.

These two incidents I believe should not, in the first place, have been treated jointly. Joint trial may at times, according to the nature of the case, prove to be detrimental to the accused. As a matter of fact, we find the following remarks by the judge advocate in his opening statement of the present case:

"The charges and specifications in the instant case allege the murders of ten captive American prisoners of war by and through the actual participation of the nineteen defendants presently before this commission."

This statement, I believe can be regarded as the initial prejudice with which the accused, particularly Kamikawa and the other 16 connected with the July execution incident, have had to suffer for being jointly tried with the experiment incident. Furthermore, Medical Officer Nakamura, who suddenly disappeared in the course of cross-examination by the defense counsel, related before this commission such a horrible description of the experiment incident that it tends to produce goose-pimples on all those who listened to him. But this gruesome narrative had no connection whatever with the accused related to the July incident. I am sure it was a secret of the Fourth Naval Hospital which the nineteen accused, including Iwanami, heard for the first time in this court. This story revealed by the testimony of Nakamura produced an impression that the Fourth Naval Hospital as a whole had been pervaded by such a gruesome and dismal atmosphere and that it thereby operated in a most detrimental manner against the accused connected with the July incident. We definitely must not cloud our clear vision in judging the responsibilities of the accused connected with the July incident, by the emotional impression received from the testimony of the experiment incident. We must control our emotion, we must settle our currents of feeling, and with a calm attitude we must undertake a rational scrutiny concerning the nature of the July incident and the responsibilities of the accused in the war crime.

The experiment incident and the July execution incident both pertain to the killing of prisoners of war, and the accused Iwanami who was the head of

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James P. Kenny
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Judge Advocate.

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the hospital during the occurrence of both incidents, is charged for both incidents. But both incidents definitely must not be regarded as a series of killings of prisoners under the continuation of the same intent or will on the part of the accused Iwanami, who was the head of the hospital then. We must remember that a period of six months elapsed between the two and that the nature and events of the two incidents were entirely different. I believe those who have closely scrutinized the evidence produced before this court will without fail conclude the same opinion.

Medical Officer Okuyama who played the principal part in the so-called experiment incident, died in action. Medical Officer Nabetani committed suicide. (And from the date of suicide entered in the death certificate, I believe it was committed after he had learned that the incident was being inquired into as a war crime, or immediately prior to his being apprehended in Sugamo Prison.) Thus we cannot learn the truth of this experiment incident. But we can surmise without error, from the testimony of Medical Officer Nakamura, that this experiment was not conducted in the presence of all the medical officers in the hospital, but that it was performed in secret by three medical officers Nabetani, Nakamura and Okuyama. On the other hand, the July execution incident was one of the events of the hospital, conducted in broad daylight, before almost all of the hospital personnel who were mustered under the form of a general assembly on the hill within the hospital premises. Furthermore, the head of the hospital delivered a speech in an imposing style before all who were assembled, that the reason for executing the prisoners was that they had unlawfully bombed the hospital. Moreover, the persons who actually performed the execution were chosen by the head of the hospital Iwanami, from the persons who were assembled at the scene. This was not an incident planned by a particular group of men connected with the hospital, and secretly carried out by them. My colleague Mr. Akimoto who is in charge of the accused Iwanami's defense, will argue in detail concerning the responsibility of Iwanami. My argument will concern itself with the position and responsibility of the accused who were Iwanami's subordinates and who were ordered to do the actual act of execution at the scene.

2. It is alleged in the charges and specifications that both the experiment incident and the execution incident were incidents involving the killing of prisoners of war committed by the accused Iwanami together with his subordinates. But when we consider and summarize the evidence produced before this court, we find the relation between the defendant Iwanami and his subordinate Surgeon Commander Okuyama in the experiment incident, and the relation between the accused Iwanami and his subordinates who participated in the actual act in the execution incident, are quite different. That is, Surgeon Commander Okuyama played the principal part in the experiment incident. These words - principal part - perhaps are an understatement. Perhaps I should rather say that this incident was brought about by Okuyama without the head of the hospital Iwanami knowing of it. The intent of the accused Iwanami was not in action in the least in the occurrence of the incident.

It seems that Okuyama's character and disposition were eccentric, occasionally found in a scientist who is over-zealous in the spirit of research. Differing from the normal person it seems he was endowed in great measure with that characteristic of a certain type of scientist who transcends any idea of morality and sense of good or bad which predominate this secular world. From the standpoint of psychopathology, we might surmise that he might have been a person who had lost the equilibrium of mind and who was suffering from a sub-conscious disorder.

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That this experiment incident was brought about by Okuyama, who possessed an abnormal character, while Iwanami knew nothing about it, is the true picture of the incident. It is true that Iwanami performed a part of the blood test in the experiment incident and assisted in the dissection after the experiment, but the evidence is insufficient, or rather there is hardly any evidence to infer from the fact that Iwanami assisted in the blood test that Iwanami had from the beginning the intention of performing that horrible experiment together with Okuyama.

Once there was a child who was very fond of fishing. The child said he was going fishing, so his parents showed him how to adjust the rod and line. The child without knowing whether it was right or wrong, went and caught a fish in another person's pond. Bringing home the fish, the child proudly showed it to his parent and asked him to help cook the fish. The parent on learning how his child had come to get the fish, was embarrassed and became worried. But the parent could not very well go over to the neighbor and ask his pardon, because it would be a disgrace, and yet, he could not throw away the fish which his child had taken the trouble to catch, because it would be a wasteful thing to do. So the parent partly helped in cooking the fish; and lectured the child on the fact that it was not right to fish hereafter in other people's ponds without permission.

I believe the relation between Iwanami and his subordinates Okuyama, Nabetani and others, resembles the relation between the parent and the child about whom I have just told. The parent did not cooperate in catching the fish from other people's pond.

But, the relation between the accused Captain Iwanami and his subordinates in the July execution incident is quite the contrary to the above mentioned experiment incident. In the execution incident, Captain Iwanami, who was the head of the hospital and who was a department head took the initiative. His was the guiding hand and role. It was the defendant Iwanami who determined to kill the prisoners in an execution, and it was he who carried it out. His subordinates were utilized as instruments. Iwanami's subordinates in this incident were mere instruments completely deprived of their own free will. The subordinates were utilized as tools through the form of orders. The acts of the subordinates in the July incident entirely differ from the acts done pursuant to ordinary superior orders. I shall discuss this point in detail later.

If we should observe this July incident by confining the issue only to the relation between the accused Iwanami, the head of the hospital and the accused who were his subordinates, it seems that the opening statement of the judge advocate has hit upon the truth. I believe the judge advocate deserves admiration for the concise and vivid style in which he accounted for this situation. The judge advocate relates the gist of the July incident in his opening statement as follows:

"In July of 1944 again the 1st Guard Unit had confined two Americans. Iwanami decided upon their death.

"Iwanami had assembled nearly the entire hospital personnel on that day. A special assembly had been called that afternoon and the enlisted men marched by petty officers to the hill. The occasion was so important for Iwanami that nearly all the officers of the hospital were forced to attend.

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"Captain Iwanami made a speech in which he accused the prisoners of having wantonly bombed the hospital and upon the conclusion of his speech he ordered their execution.

"They were reluctant to participate in what they knew was coming. However, there is no doubt that they all did participate and all did follow the orders of Iwanami."

As an argument on the facts of the case, there is nothing to add or supplement to the above statement.

3. As a criminal case the July incident is a very simple one. But, what do we mean by the participants in the July incident? Specifically, who stabbed the prisoners with a bayonet or a spear? And for the death of the two prisoners what kind of responsibility should be imposed upon the persons who stabbed and cut with swords by order of Iwanami?

On these three issues we differ in opinion and interpretation with the judge advocate.

Specification three of Charge I reads as follows:

Iwanami, Kamikawa, Oishi, Asamura, Yoshizawa, Homma, Watanabe, Tanabe, Mukai, Kawashima, Sawada, Tanaka, Namatame, Takaishi, Akabori, Kuwabara, Tsutsui, and Mitsuhashi did each and together wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike and kill, by bayoneting with fixed bayonets, spearing with spears and by beheading with swords two (2) American prisoners of war, names to the relator unknown, both then and there held captive by the armed forces of Japan.

(1) From the face of the specification, it is not clear what persons among the 18 persons named above, stabbed and what persons beheaded with swords. So, on the face of the specification, it can be inferred that the judge advocate adopts the following interpretation: that those who stabbed and beheaded agreed with Iwanami to kill the prisoners and acted together under the concerted and common intent, and therefore those persons who speared and beheaded should conjointly take the responsibility for killing the prisoners with Iwanami who determined upon and ordered the execution. This interpretation, however, I believe is in error.

It was Iwanami, the head of the hospital who resolved on executing the prisoners in the July incident. In carrying out this resolution, Captain Iwanami ordered a general assembly of the hospital personnel, and performed in broad daylight before almost the entire hospital personnel, the execution of the prisoners, as if it were an event of the hospital. Those who stabbed with spears and bayonet that day, were unexpectedly picked by the orders of the head of the hospital, from among the petty officers, who assembled at the scene, pursuant to the order for general assembly without knowing what was going to happen. After the stabbing was over, Oishi, Asamura, Yoshizawa were then, also, unexpectedly appointed and ordered to cut the neck of the prisoners. The above facts can be ascertained beyond dispute by the testimony given in this court. But, there is no evidence whatsoever, showing that the persons who were ordered to stab or behead by Iwanami, had plotted in advance with him to execute the prisoners, or had determined in advance, with him what part each was going to have in the execution. There is also no evidence to prove the allegation that Iwanami together with those who stabbed and cut had organized a special crime group, with common intent and mutual understanding to kill the prisoners, and that through this group made preparations and carried out the execution.

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Therefore, the persons who stabbed or cut in the present case, did not have any intent to concert from the beginning in the killing of the prisoners. If there were intent to concert in killing the prisoners, they should all conjointly take the responsibility for the death which resulted, regardless of whether each person's act, had any direct relation with the prisoners death or not. In the present case, however, each person was separately ordered to stab, separately ordered to cut the neck of the prisoners, and they all acted according to these orders.

There was no mutual understanding or agreement to stab the prisoners between the persons who stabbed; nor was there any mutual understanding to kill between the stabbers and the persons who cut. According to the separate order of Iwanami who solely had the intention to perform the execution, each person, merely in a spasmodic manner acted like an instrument. It was only Iwanami who possessed a consistent and continued intent to kill the prisoners. Iwanami personally admitted this in his testimony.

At this point, we must note that the following classifications may be made, when the acts of two persons are connected in committing a certain crime.

The first is when two or more persons plotting to commit a certain crime, and under this mutual agreement, perpetrated the crime by concerted action in order to achieve their common end. For example, when several persons plotting to kill a person assault him with their pistol and carry out the plan and kill him. This case corresponds to the present classification. In this case there is no need of inquiring who actually fired the pistols, whose bullet hit the victim, or whose bullet inflicted the mortal wound and caused the victim's death. In this case, they all conjointly should bear the responsibility of the death and all should be guilty for murder.

The second classification is, when through the acts of two or more persons outwardly appears to be perpetrated in a certain crime, essentially there is no plotting or agreement in intent among each other. For example, A and B had a quarrel on the street which so provoked the indignation of A that A shot B with a pistol. But when A fired, simultaneously from another place C fired at B. C's intent was to kill B and rob him of his money. B died. In this case, it is necessary to investigate minutely and determine whether A's or C's bullet caused the death of B. If this decision cannot be made, then neither A nor C should be held responsible for the consummation of the crime. Because, in this case as there is no agreement to kill B by concerted action, it is not permissible to combine the actions of A and B and determine the causality concerning the death of B. The responsibility should be separately determined. According to the classification in American law, A's case would merely constitute voluntary manslaughter and B's case murder.

The third classification is when, though the acts of two or more persons are perpetrated in a certain crime, only one person has the intent to commit the crime and the others are totally free of any such intent. For example, when a doctor with an intent to kill a patient, deceives the nurse and has her inject poison and kills the patient. The nurse did the actual act of injection but did not have the intent to kill the patient and did not know that the injected medicine was poison. In this case, only the doctor is responsible for the murder and the nurse is not. The same can be said when a person makes another person who is totally lacking in intent to murder, realizes the former's intent to commit murder by imposing upon the latter mental and

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physical duress. Another example is, when A intends to kill B and rob him of his money. First, A has C who know nothing about this intent; induce B out into the field. Then, A gets D, an expert shot, and together shoot and kill B. After that A with another person E robs the dead body of its money. In this case, the person responsible for murder and robbery is A only, the responsibility of C, D and E should be determined respectively for their separate acts. Obviously, it would not be legally proper to hold all A, C, D and E responsible for murder and robbery.

I affirm that the relation between Iwanami and his subordinates who participated in the July incident, corresponds to the third classification mentioned above. This July incident is definitely not a case where Iwanami and his subordinates plotted and killed the prisoners as mentioned in the first classification. Therefore we must determine separately whether they are responsible for murder or not. In this case, it is not legally permissible to combine the acts of each individual and hold all responsible for the result of the death of the prisoners and there is no reason for a person who had no common intention of plotting to be held responsible for a consequence caused by another person's act.

Next, I shall argue upon the interpretation of participants in the July incident. The status of Captain Tanaka and the other officers and petty officers, who though assembling at the scene were not handed any spears or bayonets nor ordered to cut the neck, is entirely of a different nature as that of a passer-by who like a hooter, was just for fun watching, while a murder was taking place in the street. It is only proper to regard all who assembled at the scene of the July incident as participants in the execution. Because, this execution incident can be regarded as an event of the entire hospital. The actual situation at the scene that day, does not permit us to interpret that only those who stabbed or beheaded should be regarded as the participant in that execution incident. Therefore, if those who stabbed or cut are held responsible as Iwanami's accomplices, then all the persons who assembled at the scene should likewise be responsible. On the other hand, if Captain Tanaka and the others who by mere chance were ordered to watch the execution are considered as having no responsibility, then the persons who were ordered to stab or cut should be treated likewise. If not so, it would be illogical. Not only is it illogical but it would be unfair in view of assuming the responsibility of this incident.

If the petty officers, who were practically forced to take the bayonet and spear, and coerced to stab with the word of command, are responsible, then would not the responsibility of the ranking officers at that time, who though being at the scene did not stop Iwanami and who calmly watched be heavier?

The judge advocate, in spite of the realization in a fairly correct manner of the truth of this incident, I believe has committed a grave error in the interpretation of criminal responsibility.

I reiterate, if the petty officers who stabbed, and Oishi, Asamura, Yoshizawa, who cut with swords are responsible, then all those who assembled at the scene of the execution that day should be responsible and all should be indicted. And if the persons who were spectators at the scene of the general assembly, are responsible and are not indicted, then those who were ordered to stab or cut have no responsibility and are not guilty.

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