

DECLASSIFIED

Authority: NND 760050 (1945-1949)

By: NARA NARA Date: 1976

INOUE, FUMIO

(23 APR 1947)

(VOLUME I)

(159116)
PART 4 OF 5

0655

Case of
Inoue, Fumio,
captain,
Imperial Japanese Army.
April 23, 1947.

RECORD OF PROCEEDINGS
of a
MILITARY COMMISSION
Convened at
United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
by order of
Commander Marianas Area.

RECEIVED
4 SEP 1947

OFFY
ADVOC
S.C.M. SECTION

VOLUME I

Finished File 3 MAR 1948 159116
Smt

0656

JAG:1:RAD:ben
OS-INSUR, Punic/ALT-30/02
(7-20-48) 189118

- 3 MAR 1948

To: Commander Marianas Area.
Via: Commander in Chief,
United States Pacific Fleet.

Subj: Military Commission case of former Captain Inoue,
Punic, Imperial Japanese Army, tried by order of
the Commander Marianas Area, 25 April 1947.

1. The Military Commission before which the former Captain Inoue, Punic, Imperial Japanese Army, was tried, found him guilty of the Charges, I, Murder (2 specifications); and II, Violation of the Laws and Customs of War (2 specifications), and adjudged the following sentence:

"The Commission, therefore, sentences him,
Inoue, Punic, Captain, Imperial Japanese Army,
to be confined for the term of his natural
life."

2. The Commander Marianas Area, the convening authority, on 18 August 1947, subject to remarks, approved the proceedings, findings and sentence in this case.

3. The Commander in Chief Pacific and United States Pacific Fleet, the reviewing authority, on 29 August 1947, approved the proceedings, findings, the sentence, and the action of the convening authority thereon.

4. The Acting Secretary of the Navy, on 12 February 1948 approved the remarks and recommendation of the Judge Advocate General. Accordingly, the findings on Charge II and specifications 1 and 2 thereunder, and the actions of the convening and reviewing authorities thereon, were set aside.

O. S. GOLDSLOUGH
Judge Advocate General of the Navy.

Copy to:
Chief of Naval Operations.

Finished File - 3 MAR 1948

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SecNav
Action

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ADDRESS REPLY TO

NAVY DEPARTMENT

WASHINGTON 25, D. C.

AND REFER TO

JAG:I:HCL:ben

OO-INOUE, Fumio/A17-10/OQ
(1-30-48) 159116

12 FEB 1948

The remarks and recommendation of the Judge Advocate General, in the foregoing Military Commission case of former Captain Inoue, Fumio, Imperial Japanese Army, are approved. Accordingly, the findings on Charge II and specifications 1 and 2 thereunder, and the actions of the convening and reviewing authorities thereon, are set aside.

John H. Brown
Acting Secretary of the Navy

0659

In reply refer to Initials
and No.

Op22d/flf
Serial 104p22

NAVY DEPARTMENT
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON 25, D. C.



30 JAN 1948

FIRST ENDORSEMENT on
JAG Record of Proceedings
OO-INOUE, Fumio/A17-10
OQ (1-22-48) I,HNH:vll
159116 dtd 26 Jan. 1948.

RECEIVED
30 JAN 1948
OFFICE OF JUDGE
ADVOCATE GENERAL
O.C.M. SECTION

From: Chief of Naval Operations.
To: Judge Advocate General.

Subject: Record of Proceedings of Military Commission at
Guam in the case of Fumio Inoue.

1. Returned, contents noted.

W. F. Jennings
W. F. Jennings,
By direction.

0660

HHG
GKR
Dm
OO-INDUE, Fumio/A17-10
OQ (1-22-48) I:HNH:vll
159116

6. The definition of spies is contained in the Hague Convention of 1907, Convention IV, Article 29. The limitations set forth in that Article do not include any limitation based on the nationality of the spy. Article 30 of the same convention provides that no one shall be punished as a spy without previous trial. Cf. International Law by Charles Cheney Hyde, Vol. III, 2nd Revised Edition, sec. 677.

7. In view of the above, the commission had jurisdiction to try the accused for a violation of Japanese law and for a violation of the laws and customs of war.

8. The allegations of killing the named natives (specifications 1 and 2 of Charge I) and the allegations of punishing the same natives as spies without trial by killing them (specifications 1 and 2 of Charge II) being based as they were on the same circumstances, were preferred to provide for the contingencies of proof. Therefore, since the accused was convicted of four offenses growing out of but two acts, it is recommended that the findings on Charge II, and specifications 1 and 2 thereunder, and the actions of the convening and reviewing authorities thereon, be set aside. ✓

9. Subject to the foregoing remarks and recommendation, the proceedings, findings and sentence, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

10. Referred to the Chief of Naval Operations for information.

O. S. Colclough
O. S. COLCLOUGH

Judge Advocate General of the Navy.

*Copies furnished to:
Cdr. President, SCW;
ST. Hanson (2)
JmH*

BCD

0661

ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE GENERAL

AND REFER TO

NAVY DEPARTMENT
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON 25, D. C.



OO-INOUE, Fumio/A17-10
OQ (1-22-48) I:HNH:vll
159116

26 JAN 1948

1. The record of proceedings in the foregoing military commission case of former Captain Inoue, Fumio, Imperial Japanese Army, shows that he was convicted of I, Murder (2 specifications); and II, Violation of the Laws and Customs of War (2 specifications). He was sentenced to be confined for the term of his natural life. The convening authority, subject to remarks, approved the proceedings, findings and sentence. The reviewing authority approved the proceedings, findings, sentence and action of the convening authority thereon.

2. Specification 1 under Charge I alleges that the accused, then a captain, "attached to the military installations of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving * * *, did, on or about 8 April 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America * * * and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, with an instrument, a deadly weapon, * * *, seven unarmed native inhabitants of the Marshall Islands, * * *, this in violation of" a quoted article of the Criminal Code of Japan. Specification 2 under Charge I alleges that the accused while serving in the same capacity, at the same place and while the same state of war existed, on 13 April 1945 killed a named native of the Marshall Islands under the same circumstances as alleged in specification 1 of Charge I.

3. Specification 1 under Charge II alleges that the accused while serving in the same capacity, at the same time and place as alleged in specification 1 of Charge I, punished the same seven natives named therein as spies by killing them without first having a trial, this in violation of the laws and customs of war. Specification 2 under Charge II alleges that the accused while serving in the same capacity, at the same time and place as alleged in specification 2 of Charge I, punished the same native named therein as a spy by killing him without first having a trial, this in violation of the laws and customs of war.

4. The accused made a plea to the jurisdiction of the commission to try him for murder, because the offense was charged as a violation of the Criminal Code of Japan, contending that as a United States court it had no jurisdiction to try persons for offenses against "foreign" (Japanese) law. The accused also made a plea to the jurisdiction of the commission to try him for a violation of the laws and customs of war. The contention of the accused was that the Marshallese natives had been under the dominion of Japan as inhabitants of territory mandated to Japan, and, therefore, they were not within the class of spies protected by the Hague Convention of 1907.

5. The Hague Convention of 1907, which was ratified by Japan and the United States, provides, in Convention IV, Article 43, that "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country". (Underlining supplied). As an incident to the restoration of order in the occupied territory, the occupant should bring to trial those offenders who have heretofore escaped punishment by reason of the breakdown of the judicial machinery. The proper law to be applied was, therefore, the local law which was in force at the time of the commission of the offense, i.e., the criminal code of Japan. Cf. Oppenheim's International Law (Lauterpacht) Vol. II, sec. 172.



00-INOUE, Fumio, 7-10/00
HKG. (10/3/47) I:HHG:fld 159116

MILITARY COMMISSION CASE OF CAPTAIN INOUE,
FUMIO, IMPERIAL JAPANESE ARMY, TRIED 23 APRIL
1947.

	PLEA	FINDING	C/A ACTION
<u>CHARGE I - MURDER.</u>	NG	G	Approved
Spec. 1 - 8 APR 1945, 2nd Bn. 1st South Seas Detach. murder with deadly weapon on Jaluit Atoll, seven named unarmed natives of the Marshall Islands, in violation of the effective law, esp. Art. 199 of Criminal Code of Japan.	NG	Proved	Approved
Spec. 2 - 13 APR 1945, 2nd Bn. 1st South Seas Detach. murder with deadly weapon on Jaluit Atoll, one named unarmed native of the Marshall Islands, in violation of the effective law, esp. Art. 199 of Criminal Code of Japan.	NG	Proved	Approved
<u>CHARGE II - VIOLATION OF THE LAWS AND CUSTOMS OF WAR.</u>	NG	G	Approved
Spec. 1 - 8 APR 1945, 2nd Bn. 1st South Seas Detach., Jaluit Atoll, Marshall Islands, without trial punished seven named natives of the Marshall Island (same natives in spec. 1, Chg. I) by killing them.	NG	Proved	Approved
Spec. 2 - 13 APR 1945, 2nd Bn. 1st South Seas Detach., Jaluit Atoll, Marshall Islands, without trial punished one named native of the Marshall Islands, (same native in spec. 2 Chg. I), by killing him.	NG	Proved	Approved

SENTENCE: To be confined for the term of his natural life.

ACTION OF CONVENING AUTHORITY Subject to remarks, proceedings, findings and sentence approved.

ACTION OF REVIEWING AUTHORITY Proceedings, findings and sentence approved.

FACTS

On 31 March 1945, a party of eight native Marshallese drifted or purposefully came ashore on Jaluit Atoll. The party consisted of four men, two women and two children under fourteen but more than ten years of age, all of whom were captured. The accused, second highest ranking Army officer on Jaluit and head of the Military Police Division, was ordered by the senior officer on the island, Admiral Masuda, to investigate the natives and the facts surrounding their arrival on Jaluit. Clothing of a Japanese soldier was found in the boat used by the captured natives. About 18 April 1945, the accused, with several guards, placed seven of the natives (one having escaped) in a truck and drove off into the jungle, stopped the truck and after removing the three male natives from the truck, walked with them into the jungle. A short time later several shots were heard from the direction in which the accused and the three natives had entered the jungle. The accused

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returned to the truck alone, took the two women from the truck and into the jungle. Shortly thereafter several additional shots were heard. Upon returning once more to the truck, the accused took the two children into the jungle and several other shots were then heard. Shortly thereafter the accused called the guards to him, and upon their arrival at the side of the accused it was discovered that the bodies of the seven natives were lying in a large hole. All bore evidence of having been shot. The guards and the accused buried the natives. The accused remarked "They were executed after investigation as spies and because they committed murder at Mille, they had been consulted on and examined." About four days later the accused took the eighth native who had subsequently been re-captured, into the jungle. Several shots were heard to emanate from the jungle into which the accused and the native had disappeared. The guards were called and assisted the accused in burying the native whose body showed he had been shot. The accused informed the guards that this native had been executed by order of the commanding officer.

A statement of the accused, dated 28 December 1946, was entered in evidence. In the statement the accused stated that he executed the eight natives by shooting them with a pistol after they had been sentenced by the commanding officer of Jaluit. He stated that he performed the execution in accordance with orders from the commanding officer and that he carried out these orders on 8 and 13 April 1945.

Major Furuki, a witness for the defense, testified that eight natives had deserted from Mille Island and after an investigation was made by the accused, the Commanding Officer, Admiral Masuda, informed him that Lt. Comdr. Shintome and the witness, with Admiral Masuda, would act as judges and that the accused would act as judge advocate in a special examination and consultation to be held on the natives. The consultation was held from 3 April to 7 April 1945. Facts were gathered from three sources, (1) investigation and questioning of the natives and their confessions, (2) report of the commanding officer of the district where the natives came ashore and (3) from an examination of the boats and other material evidence. From all the evidence thus obtained it was found that the natives had committed the acts of spying, murder and other crimes. On 8 April 1945, the Admiral told the accused and the judges to give their opinion as to the punishment. The witness, Shintome and the accused agreed that the adults should be executed but that the children should be confined to another island. The Admiral said all should be put to death and ordered the accused to execute them.

The accused admitted the execution and testified substantially as did Furuki. Accused also testified that the consultation lasted 20 minutes to 1½ hours each day from 3 April to 8 April 1945, and that he had obtained a confession from the young girl by giving her candy. The accused testified that from the confessions and investigation he learned that the natives came from Mille; that they had killed a Japanese soldier enroute; that they were sent by the Americans to learn military secrets and that they had stolen a Japanese military boat. The accused testified that the execution of the natives had been published.

The deposition of the soldier who was thought to have been

killed was attached to the record. His description of the natives did not connect the eight executed natives with the ones who stole his boat and tried to kill him. The names and descriptions were all different.

The accused, on cross-examination, testified that he at no time heard Admiral Masuda tell the eight natives the charges against them; that the natives were not present at any time during the examination and consultation; that they were not represented by counsel and that no witnesses were sworn during the consultation.

The record of proceedings of a previous War Crimes Investigation containing testimony of the accused was introduced to show that the accused had previously testified that "They (the natives) did not have a trial here because even a Japanese soldier they never have a trial and they just investigate and decide what to do according to the report." Also read was a part of the investigation wherein the accused testified that the natives told him that they deserted in hope of being picked up by an American ship. Shintome, the acting executive officer of Jaluit at the time of the alleged offenses, testified that he had never been ordered to act as judge to consult on the natives and had never acted in such capacity. He testified that he heard the accused and Major Furuki express the opinion that the children should be confined and he agreed with them but that this was the only time he was present when the natives were discussed. He first learned that the natives were actually executed when the Admiral surrendered to the American forces. However, a former Japanese officer testified that near the end of April 1945, he received a circular letter stating that the natives had been executed for spying and murder. Another former officer testified that he heard Shintome read the same circular letter to an assembly of troops and natives.

EFFECT OF PREPARED ACTION Recommends that the findings on Charge II, specifications 1 and 2 thereunder and the action of the convening and reviewing authorities thereon, be set aside.

ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE GENERAL

AND REFER TO

NAVY DEPARTMENT
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON 25, D. C.

JAG:IMH:VLL
Mil. Com., FURUKI, Hidenaka (188819)
IMOUR, Fumio (188216)/
A17-20 (11-12-47)

15 NOV 1947

MEMORANDUM FOR FILE

Subj: Military Commission cases of Major Hidenaka FURUKI, Imperial Japanese Army, and Fumio IMOUR, former Captain, Imperial Japanese Army, tried by order of Commander, Marianas Area.

1. Counsel for the accused attacked the jurisdiction of a military commission to try the accused for the offenses alleged. The main contentions are: (a) that a court composed of officers of the United States armed forces is a United States court and has no jurisdiction to try persons for offenses against "foreign" (Japanese) law; (b) that the specifications of Charge II are too vague and indefinite to apprise the accused of the offenses with which he is charged; and (c) that there is no jurisdiction to try a Japanese national for a violation of the laws and customs of war when the victim was also a person subject to Japanese law.
2. The first contention is without merit. Prior to January, 1944, the duly constituted Japanese court for the trial of serious offenses (including murder) was located at Ponape. In 1944, Jaluit Atoll was completely isolated by Allied offensive action, and, therefore, it was not possible to transport offenders to Ponape for trial. Subsequently, in 1945, the accused is alleged to have committed murder. This was clearly a violation of existing local (Japanese) law, but it was not possible to bring the accused to trial. By the terms of the Instrument of Surrender, signed 2 September 1945, Japan was prohibited from resuming governmental functions in the mandated islands, of which Jaluit was one. As a result there is no Japanese tribunal that has jurisdiction to hear the case, although there has been a violation of the existing law.
3. The Hague Convention of 1907 was ratified by Japan and by the United States. Convention IV, Article 43, provides as follows:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." (Underlining supplied.)

Under the terms of this article occupying powers have in the past set up military tribunals for the trial of offenders against the laws of the occupied territory, even though the courts of the territory had not

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JAG:1:HN:11
Mil. Com. - FUNUKI, Midway (100019)
INOUR, Fudo (100116)/
A17-20 (11-12-47)

ceased to function. This procedure was followed by the United States in the Rhineland in 1919. The total lack of local courts is an added reason for, rather than against, the establishment of military courts in the instant case. As an incident to the restoration of order in the occupied territory, the occupant should bring to trial those offenders who have heretofore escaped punishment by reason of the breakdown of the judicial machinery. As stated in Article 48, supra, the proper law to be applied is the local law that was in force at the time of the commission of the offense. It follows, therefore, that it was proper to charge the accused with a violation of the Criminal Code of Japan.

4. The second contention is also without merit. Each of the five specifications alleges that the accused punished as spies, without previous trial, named Marshallese natives. The Hague Convention of 1907, Article 20, provides that a spy shall not be punished without previous trial. Each specification alleges a violation of this Article.

5. The third contention that there is no jurisdiction for this court to try the accused for a violation of the laws and customs of war when the offense was purely local is not sound. The Hague Convention of 1907, Convention IV, Article 20, defines spies as a class. There is nothing in this Article that states that a spy is necessarily a national of the enemy country. It appears that a spy may be a national of the country spied upon. The punishment of such a person as a spy without previous trial is still a violation of Article 20, supra.

6. The answers to these contentions were presented to the court by the judge advocate, and the court was correct in overruling the objections to the jurisdiction.

Reviewing Officers
Furukawa Case.

(s) H. N. Moore, Lieut. USN

H. N. Moore, Lieut. USN
Reviewing Officer.
Inour Case.

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
Headquarters of the Commander in Chief

Cincpacflt File
A17-25

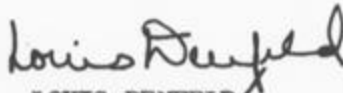
c/o Fleet Post Office,
San Francisco, California.

Serial 5136

29 AUG 1947

The proceedings, findings and sentence in the foregoing case of INOUE, Fumio, former Captain, Imperial Japanese Army, and the action of the convening authority thereon, are approved.

The record is, in conformity with section D-14, Naval Courts and Boards, 1937, and Chief of Naval Operations serial OLP22 of 28 November 1945, transmitted to the Judge Advocate General of the Navy.


LOUIS DENFELD
Admiral, U. S. Navy,
Commander in Chief Pacific
and United States Pacific Fleet.

To: Judge Advocate General.

Re: Record of proceedings of Military Commission - case of INOUE, Fumio,
former Captain, I.J.A.

Copies to:
ComMarianas
War Crimes Officer, Guam

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**THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
Headquarters of the Commander in Chief**

Cinspacflt File
A17-25

c/o Fleet Post Office,
San Francisco, California.

Serial 5186

29 AUG 1947

The proceedings, findings and sentence in the foregoing case of INOUE, Fumio, former Captain, Imperial Japanese Army, and the action of the convening authority thereon, are approved.

The record is, in conformity with section D-14, Naval Courts and Boards, 1937, and Chief of Naval Operations serial OLP22 of 28 November 1945, transmitted to the Judge Advocate General of the Navy.

**LOUIS DENFELD
Admiral, U. S. Navy,
Commander in Chief Pacific
and United States Pacific Fleet.**

To: Judge Advocate General.
Re: Record of proceedings of Military Commission - case of INOUE, Fumio,
former Captain, I.J.A.

Copies to:
ComMarianas
War Crimes Officer, Guam

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FF12/A17-10/
13-JDM-cn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 16952

18 AUG 1947

The military commission, composed of Army, Navy and Marine Corps officers, in the foregoing case, was ordered convened 1 March 1947, or as soon thereafter as practicable by the Commander Marianas Area pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, U. S. Pacific Fleet (CinCPac conf. serial 0558, of 8 March 1946) and Pacific Ocean Areas, and Military Governor of the Pacific Ocean Areas; and the Judge Advocate General of the Navy (JAG Secret despatch 311730 July 1946). The commission was authorized to take up this case as indicated in the precept. The order for trial (charges and specifications) was issued 13 March 1947 and served on the accused on 13 March 1947. The trial was held under authority of Naval Courts and Boards, except that the commission was authorized by the precept to relax the rules for naval courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals, and modifications thereof, dated 5 December 1945, as necessary to obtain justice.

Attention is invited to the fact that this case involves questions of jurisdiction similar to those involved in the case of FURUKI, Hidesaku, former major, IJA, previously tried by this commission and reviewed and approved by the Commander Marianas Area, 1 August 1947.

The proceedings, findings and sentence in the foregoing case of INOUE, Fumio, former captain, IJA, are approved.

INOUE, Fumio, former captain, IJA, will be transferred to the custody of the Commanding General of the 8th U. S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan.

C. A. Pownall

C. A. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Marianas Area.

To: Commander in Chief, Pacific and United States Pacific Fleet.
Re: Record of Proceedings of Military Commission - case of
INOUE, Fumio, former captain, IJA.

Copy to:
Island Commander, Guam.
President Military Commission, Guam.
Commanding Officer, U. S. Marine Barracks, Guam.

0670

13-JDM-cn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

18 AUG 1947

MILITARY COMMISSION ORDER NO. 38

(In re INOUE, Fumio, former Captain, IJA)

1. INOUE, Fumio, former captain, Imperial Japanese Army, was tried during period 23 April 1947 to 5 June 1947 by a United States Military Commission convened by order of the Commander Marianas Area, dated 21 February 1947 at the Headquarters, Commander Marianas, Guam, Marianas Islands, on the below listed charges and specifications:

CHARGE I - MURDER (Two specifications).

<u>Spec.</u>	<u>Nature</u>	<u>Place</u>	<u>Date of Offense</u>
1.	Kill seven unarmed native inhabitants of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-8-45.
2.	Kill one unarmed native inhabitant of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-12-45

CHARGE II - VIOLATION OF THE LAWS AND CUSTOMS OF WAR

<u>Spec.</u>	<u>Nature</u>	<u>Place</u>	<u>Date of Offense</u>
1.	Unlawfully punish as spies seven unarmed native inhabitants of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-8-45.
2.	Unlawfully punish as a spy one unarmed native of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-13-45

RECEIVED
26 AUG 1947
OFFICE OF JUDGE
ADVOCATE GENERAL
S.C.M. SECTION

FINDINGS: The Commission found:

"The first specification of the first charge proved."
"The second specification of the first charge proved."
"And that the accused, Inoue, Fumio, then a captain, Imperial Japanese Army, is of the first charge guilty."

"The first specification of the second charge proved."
"The second specification of the second charge proved."
"And that the accused, Inoue, Fumio, then a captain, Imperial Japanese Army, is of the second charge guilty."

SENTENCE: The commission on 5 June 1947, sentenced the accused as follows:

"The Commission, therefore, sentences him, Inoue, Fumio, captain, Imperial Japanese Army, to be confined for the term of his natural life."

2. On 18 August 1947, the Convening Authority (The Commander Marianas Area), subject to certain remarks took the following action:

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***** The proceedings, findings and sentence in the foregoing case of INOUE, Fumio, former captain, IJA, are approved.

INOUE, Fumio, former captain, IJA, will be transferred to the custody of the Commanding General of the 8th U. S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan."

C. A. POWNALL,
Rear Admiral, U. S. Navy
The Commander Marianas Area.

Copy to:

Commander in Chief, Pacific and U. S. Pacific Fleet (3).
Judge Advocate General, U. S. Navy (3).
Supreme Commander for the Allied Powers (3)
Commanding General, U. S. 8th Army, Japan (3).
National War Crimes Office, Washington, D. C. (3).
Commanding Officer, Marine Barracks, Guam (3).

AUTHENTICATED:

H. D. Vanston
H. D. VANSTON
Flag Secretary.

0672

13-JDM-cn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

18 AUG 1947

MILITARY COMMISSION ORDER NO. 38

(In re INOUE, Fumio, former Captain, IJA)

1. INOUE, Fumio, former captain, Imperial Japanese Army, was tried during period 23 April 1947 to 5 June 1947 by a United States Military Commission convened by order of the Commander Marianas Area, dated 21 February 1947 at the Headquarters, Commander Marianas, Guam, Marianas Islands, on the below listed charges and specifications:

CHARGE I - MURDER (Two specifications).

Spec.	Nature	Place	Date of Offense
1.	Kill seven unarmed native inhabitants of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-8-45.
2.	Kill one unarmed native inhabitant of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-13-45

CHARGE II - VIOLATION OF THE LAWS AND CUSTOMS OF WAR

Spec.	Nature	Place	Date of Offense
1.	Unlawfully punish as spies seven unarmed native inhabitants of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-8-45.
2.	Unlawfully punish as a spy one unarmed native of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-13-45

FINDINGS: The Commission found:

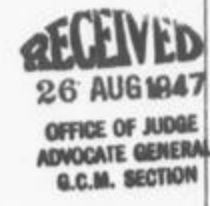
"The first specification of the first charged proved."
"The second specification of the first charge proved."
"And that the accused, Inoue, Fumio, then a captain, Imperial Japanese Army, is of the first charge guilty."

"The first specification of the second charge proved."
"The second specification of the second charge proved."
"And that the accused, Inoue, Fumio, then a captain, Imperial Japanese Army, is of the second charge guilty."

SENTENCE: The commission on 5 June 1947, sentenced the accused as follows:

"The Commission, therefore, sentences him, Inoue, Fumio, captain, Imperial Japanese Army, to be confined for the term of his natural life."

2. On 18 August 1947, the Convening Authority (The Commander Marianas Area), subject to certain remarks took the following action:



0673

***** The proceedings, findings and sentence in the foregoing case of INOUE, Fumio, former captain, IJA, are approved.

INOUE, Fumio, former captain, IJA, will be transferred to the custody of the Commanding General of the 8th U. S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan."

C. A. POWNALL,
Rear Admiral, U. S. Navy
The Commander Marianas Area.

Copy to:

Commander in Chief, Pacific and U. S. Pacific Fleet (3).
Judge Advocate General, U. S. Navy (3). ✓
Supreme Commander for the Allied Powers (3).
Commanding General, U. S. 8th Army, Japan (3).
National War Crimes Office, Washington, D. C. (3).
Commanding Officer, Marine Barracks, Guam (3).

AUTHENTICATED:

H. D. Vanston
H. D. VANSTON
Flag Secretary.

0674

13-JDM-cn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

18 AUG 1947

MILITARY COMMISSION ORDER NO. 38

(In re INOUE, Fumio, former Captain, IJA)

1. INOUE, Fumio, former captain, Imperial Japanese Army, was tried during period 23 April 1947 to 5 June 1947 by a United States Military Commission convened by order of the Commander Marianas Area, dated 21 February 1947 at the Headquarters, Commander Marianas, Guam, Marianas Islands, on the below listed charges and specifications:

CHARGE I - MURDER (Two specifications).

Spec.	Nature	Place	Date of Offense
1.	Kill seven unarmed native inhabitants of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-8-45.
2.	Kill one unarmed native inhabitant of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-13-45

RECEIVED
26 AUG 1947
OFFICE OF JUDGE
ADVOCATE GENERAL
S.C.M. SECTION

CHARGE II - VIOLATION OF THE LAWS AND CUSTOMS OF WAR

Spec.	Nature	Place	Date of Offense
1.	Unlawfully punish as spies seven unarmed native inhabitants of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-8-45.
2.	Unlawfully punish as a spy one unarmed native of the Marshall Islands.	Jaluit Atoll, Marshall Islands.	4-13-45

FINDINGS: The Commission found:

"The first specification of the first charged proved."
"The second specification of the first charge proved."
"And that the accused, Inoue, Fumio, then a captain, Imperial Japanese Army, is of the first charge guilty."

"The first specification of the second charge proved."
"The second specification of the second charge proved."
"And that the accused, Inoue, Fumio, then a captain, Imperial Japanese Army, is of the second charge guilty."

SENTENCE: The commission on 5 June 1947, sentenced the accused as follows:

"The Commission, therefore, sentences him, Inoue, Fumio, captain, Imperial Japanese Army, to be confined for the term of his natural life."

2. On 18 August 1947, the Convening Authority (The Commander Marianas Area), subject to certain remarks took the following action:

0675

***** The proceedings, findings and sentence in the foregoing case of INOUE, Fumio, former captain, IJA, are approved.

INOUE, Fumio, former captain, IJA, will be transferred to the custody of the Commanding General of the 8th U. S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan."

C. A. POWNALL,
Rear Admiral, U. S. Navy
The Commander Marianas Area.

Copy to:

Commander in Chief, Pacific and U. S. Pacific Fleet (3).
Judge Advocate General, U. S. Navy (3).
Supreme Commander for the Allied Powers (3).
Commanding General, U. S. 8th Army, Japan (3).
National War Crimes Office, Washington, D. C. (3).
Commanding Officer, Marine Barracks, Guam (3).

AUTHENTICATED:

H. D. Vanston
H. D. VANSTON
Flag Secretary.

0676

Captain Inoue, Fumio, Imperial Japanese Army,

Trial by Military Commission

at Guam

Marianas Islands.

April 23, 1947.

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TESTIMONY

Name of witness	Direct and Redirect	Cross and Recross	Commission
PROSECUTION			
Fukatsu, Tadashi, sgt. maj., IJA	14	18	
Wakamatsu, Minoru, w.o., IJN	22,27	23,28	
Edward L. Field, lt., USNR	29		
Jinno, Shigeru, capt., IJA	32	35	
Morikawa, Shigeru, 1st lt., IJA	38,48	42,51	52
James P. Kenny, judge advocate	196,206,207	201,206,209	
Shintome, Sanjiro, civilian	212,241	216	
DEFENSE			
Manako, Tatsuichi, w.o., IJN	62	67	70
Fueta, Kiyoshi, former lt., IJN.	71		
Furuki, Hidesaku, maj., IJA	77,114,255	100,116	
Inoue, Fumio, accused	119,186	144,192	
James P. Kenny, judge advocate	195	196	
Ieki, Tamenori, 1st lt., IJA	242,262	263	
Sakuda, Sawaaki, former lt., IJN	245,260		
Utsunimiya, Hirotsuke, sgt., IJA.	258		
Iwanami, Kenichi, lt., IJN	261		
Kadota, Itsuro, 1st lt., IJA	264		
Akimoto, Yuichiro, counsel for accused	266		
Suzuki, Saizo, counsel for accused	269		

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EXHIBITS

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AL6-2/FF12/
13-JDM-cn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3785

21 February 1947

From: The Commander Marianas Area.
To : Rear Admiral Arthur G. ROBINSON, U. S. Navy.

Subject: Precept for a Military Commission.

1. Pursuant to the authority vested in me by virtue of my office as Commander Marianas Area and Deputy Military Governor Marianas Area and further by the specific authority vested in me by the Commander-in-Chief U. S. Pacific Fleet (CinCPac conf. serial 0558, of March 8, 1946), and Pacific Ocean Areas, and Military Governor of the Pacific Ocean Areas, and by the Judge Advocate General of the Navy (JAG despatch 3117302, July 1946), a Military Commission is hereby ordered to convene at the Headquarters, Commander Marianas on Guam, Marianas Islands at 10 o'clock a.m. on Saturday, March 1, 1947, or as soon thereafter as practicable, at the call of the President, for the trial of such persons as may be legally brought before it.

2. The Military Commission is composed of the following members, any five of whom are empowered to act, viz:

Rear Admiral Arthur G. ROBINSON, U. S. Navy, President.
Colonel Vernon M. GUYMON, U. S. Marine Corps.
Lieutenant Colonel Henry K. ROSCOE, Coast Artillery Corps, United States Army.
Lieutenant Colonel Victor J. GARBARINO, Coast Artillery Corps, United States Army.
Commander Ramon J. WALLENBORN, Dental Corps, U. S. Navy.
Commander Charles E. INGALLS, junior, U. S. Navy.
Lieutenant Commander Bradner W. LEE, junior, U. S. Naval Reserve, and of Lieutenant David BOLTON, U. S. Navy and Lieutenant James P. KENNY, U. S. Navy, as judge advocates, either of whom is authorized to act as such.

AKIMOTO, Yuichiro, and SUZUKI, Saizo, of Tokyo, Japan, both furnished by the Japanese Government, and Commander Martin E. CARLSON, U. S. Naval Reserve, all of whom are lawyers, are available and authorized to act as defense counsel. This authorization does not preclude as defense counsel others who are available and are desired by accused.

A duly accredited native of the Marshall Islands is authorized to participate as an observer in any trial of an accused charged with offenses against Marshallese.

CERTIFIED TO BE A TRUE COPY

"A(1)"

Daniel Bolton, G. 48N

0679

A16-2/FF12/
13-JDM-cn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3785

21 February 1947

Subject: Precept for a Military Commission.

3. The Military Commission shall be competent to try all offenses within the jurisdiction of exceptional military courts. It shall have jurisdiction over offenses and Japanese military personnel now in the custody of Commander Marianas, referred to in the despatch of the Judge Advocate General of the Navy cited in paragraph one (1) above. It shall also have jurisdiction over all persons in the custody of the convening authority at the time of the trial charged with war crimes committed against United States nationals, and any white person whose nationality has not prior to ordering of the trial been established to the satisfaction of the convening authority. Nothing herein limits the jurisdiction of the military commission as to persons and offenses which may be otherwise properly established.

4. The Military Commission upon conviction of an accused is empowered to impose upon such accused any lawful punishment including the death sentence, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper.

5. The proceedings of the Military Commission will be governed by the provisions of Naval Courts and Boards, except that the commission is permitted to relax the rules for naval courts to meet the necessities for any particular trial, and may use such rules of evidence and procedure, issued and promulgated by the Supreme Commander for the Allied Powers, (Letter General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945 A.G. 000.5 (5 Dec. 45) LS, Subject: "Regulations Governing the Trials of Accused War Criminals," and modifications thereof) as are necessary to obtain justice. The commission may adopt such other rules and forms, not inconsistent herewith, as it considers appropriate.

6. Detachment of an officer from his ship or station does not of itself relieve him from duty as a member or judge-advocate of this commission. Specific orders for such relief are necessary.

7. Power of adjournment is granted the commission, and adjourned sessions may be held at such times and at such places as the commission may determine.

C. A. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Marianas Area.

Copies to: The Military Commission upon conviction of an accused is empowered to impose upon such accused any lawful punishment including the death sentence, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper.
Members of the Commission, Judge Advocates, Judge Advocate General, U. S. Navy. "A(2)"

Certified to be a true copy:
David BOLTON,
Lieutenant, U. S. Navy,

0680

FF12/A17-11/(WC-20)
13-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 11380

22 Apr 1947

From: The Commander Marianas Area.
To : Rear Admiral Arthur G. Robinson, U. S. Navy,
President, Military Commission, Guam.
Subject: Commander Ramon J. WALLENBORN, Dental Corps, U. S. Navy -
relief of.

1. Subject officer is hereby relieved as a member of the Military Commission of which you are President, convened by my precepts of 15 October 1946 and 21 February 1947, upon the completion of the trials already begun and except in the event of revision of cases already tried. JK

/s/ C. A. Pownall
C. A. POWNALL,
Rear Admiral, U. S. Navy.

cc:
Comdr. R. J. Wallenborn.
Judge Advocate, Military Commission.
Judge Advocate, General, U. S. Navy.

CERTIFIED TO BE A TRUE COPY:

James P. Kenney Lieut. VSN

"B"

0681

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

FF12/A17-11/(WG-20)
13-JDM-rhj

Serial: 11381

22 Apr 1947

From: The Commander Marianas Area.
To: Rear Admiral Arthur G. Robinson, U. S. Navy,
President, Military Commission, Guam.

Subject: Commander Charles E. INGALLS, junior, U. S. Navy -
relief of.

1. Subject officer is hereby relieved as a member of the
Military Commission of which you are President, convened by my precept
of 21 February 1947, upon the completion of the trials already begun
and except in the event of revision of cases already tried.

/s/ C. A. Pownall
C. A. POWNALL,
Rear Admiral, U. S. Navy.

cc:
Comdr. C. E. Ingalls, junior.
Judge Advocate, Military Commission.
Judge Advocate General, U. S. Navy.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny Lieut. USN

MC

0682

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

FF12/A17-11/(WC-20)
13-JDM-rhj

Serial: 11405

22 Apr 1947

From: The Commander Marianas Area.
To : Rear Admiral Arthur G. Robinson, U. S. Navy -
President, Military Commission, Guam.

Subject: Change in membership of Commission.

1. Lieutenant Colonel Arthur A. Poindexter, U. S. Marine Corps, is hereby appointed a member of the military commission of which you are president, convened by my precept of 21 February 1947, vice Colonel Vernon M. Guymon, U. S. Marine Corps, hereby relieved, upon the completion of trials already begun, and except in event of revision of cases already tried.

/s/ C. A. Pownall
C. A. POWNALL,
Rear Admiral, U. S. Navy.

cc:
Lieut. Col. A. A. Poindexter.
Col. V. M. Guymon.
Judge Advocate, Military Commission.
Judge Advocate General, U. S. Navy.

CERTIFIED TO BE A TRUE COPY:

James P. Henry Lieut. U.S.N.

0683

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

FF12/117-11/(WC-20)
13-JDM-rhj

Serial: 11445

23 Apr 1947

From: The Commander Marianas Area.
To : Rear Admiral Arthur G. Robinson, U. S. Navy,
President, Military Commission, Guam.

Subject: Change in membership of Commission.

1. Major James H. Tatsch, U. S. Marine Corps, is hereby appointed a member of the military commission of which you are president, convened by my precept of 21 February 1947, vice Lieutenant Colonel Arthur A. Poindexter, U. S. Marine Corps, hereby relieved.

/s/ C. A. Pownall
C. A. POWNALL,
Rear Admiral, U. S. Navy.

cc:
Lieut. Col. A. A. Poindexter.
Major J. H. Tatsch.
Judge Advocate, Military Commission.
Judge Advocate General, U. S. Navy.

CERTIFIED TO BE A TRUE COPY:

James P. Kenny Lieut. U.S.N.

"E"

0684

法、適用、関、異議

(被告人 井上文夫)

辯護人 秋元勇一郎

"B-1"

0685

昭和廿二年四月廿三日
法、適用 = 用 = る 異議 (被告人井上文夫)

辯護人 秋元芳一郎

本件起訴ハ法、適用、誤ツテ居ル

即本件起訴第一其、一其、= = 於テ日本刑法第199條
ヲ適用シテ居リ 起訴第= = 於テ戦争法又ハ慣習・違反
セリト爲シテ居ル 何レモ其、適用、誤ツテ居ル
辯護人ハ夫レ等、不法 = 糾シテ異議ヲ申スアルモノデ
アリマス

第一、ハ日本刑法第199條、適用、真デアリマス
檢事ハ曩 = 本法既 = 於テ審理サレタ古木秀策、
事件 = 就テ次、如ク主張シテ本件モ其、範圍、
法律關係 = 於テハ前者ト全然同一デアルカラ
檢事、其、主張ヲ引用シ之 = 反駁ヲ加ヘントス
即檢事ハ

(1) 昭和二十年八月十四日 マーシャル群島ハ米軍・占領セヨレ
同日以後 米國・統治管轄下 = 在ル

(2) 日本帝國政府ハ 昭和二十年九月 = 日 アメリカ合衆國
11) "F(2)"

政新=降伏し且前記西國間ハ何等平和條約ヲ締結
サレテ中ナシ

(3) 昭和十八年十一月一日ニ於ケルカイロ會議中次ノ事項ヲ
決議サレタ「日本ハ一九一四年第一次歐洲大戰當初
以後占領セル太平洋諸島ヲ剝奪セラルベシ」

(4) 昭和二十年七月二十六日ニ於ケルボツダム宣言特
第八條ニ「カイロ會議ノ條件ハ實施セラルベシ
且日本ノ領土ハ本州北海道九州四國其他適
ト認ムル小島ニ制限セラルベシ」ト宣言シタ

(5) 一九二六年公布セラレ一九三三年改正セラレタ勅令
第26号南洋諸島司法事項ニ依リハコノ犯罪ヲ
行ハレタル時ニ於ケルマーシャル諸島ノ現行刑法ハ
日本刑法ニアラズ而シテ全刑法ハ local Law
トシテ今ニ猶存續有效ナル」ニト述ベタ

而シテフレアレンスワイコフ大佐マリアナ司令軍政部
副司令ハ証人トシテ

(1) 米軍占領後全地方ノ司法行政各權ハ米占領軍
管轄ニ歸ス

(12) 日本國、主權ハ右占領地域ニ於テハ之ヲ喪失ス

(13) 日本刑法ハ local Law トシテ 全地域ニ存続シ
今猶有數ナリ 故ニ之ニ違反シタル者ニ對シテ全法ヲ
適用シ處罰スルハ正當ナラン 本件ニ日本刑法
199條ヲ適用セルハ合法ナラン 云々ト証言シテ

以上ニ依リ檢事、主張趣旨ハ明瞭ナリ之ヲ要スル

(11) 日本ハマニヤル諸島地域ニ對シテ主權ヲ喪失シテ

(12) 全地域ハ昭和十一年八月十四日末畢ニ占領セラレ
同日以後ハ末畢^國、統治管轄下ニアル

(13) 然レシ全地域ニハ昭和十一年日本國勅令第26号
ニ依リ日本刑法ガ施行セラレ 全法ハ local law
トシテ今猶存続シ有効ナラン 從テ同法ヲ
適用シテ起訴シタルハ合法ナラント謂フニ
在ル

而シテ檢事、主張ニ依レバ日本、主權喪失ハ昭和十八年
十一月一日、カイロ會議ニ依ルモノナラザラン
然レニ未レ一國、法律、效力、及ビ範圍ハ其主權、

(13)

"F(4)"

又ハ範圍・限ラルハ取テ茲・私が述ブル必要ナク何人
ニ承認スル所デアル若シ一國カ主權ヲ喪失スレバ
其ノ國ノ法律ハ當然其ノ效力ヲ失フベキハ論ヲ據
ヌデハナイカ

然ルニ檢事ハ日本ハマーシャル諸島北域ニ對シ
其ノ主權ヲ喪失セザルガ日本ノ法律ハ local law
トシテ現在ニ有効ナト云フ其ノ非論理ハ果
テラザルヲ得ナイ

殊ニ檢事所論、如ク日本、全北域ニ於ケル主權、
喪失ガ昭和十八年十一月一日、カイロ會議ニ依ルニト
スレバ本件發生當時タル昭和二十年三月十四日當時ノ
現行法トシテ日本刑法ハ已ニ効力ヲ喪ツテ居ルコト
ナル

如何ナル理由ニ依リテ本法ヲ適用スルヤ法、不遑及、
原則ヲ適用シテ是ニ日本刑法ヲ適用セントシテモ
全然其ノ意味ヲ爲サヌデハナイカコノ明白ナル事柄、
檢事ハ何ト説明セラル、ヤ御高見ヲ拝聴致シ度イ

仮リニ檢事ガ本件・於テハ前記日本ノ主權喪失ノ時期
ヲ昭和十八年十一月一日、カイロ會議ニ依ルニテアルト
主張ヲ撤回シテ昭和二十年八月十四日末軍ガ全北域
占領ノ時期ニテアルト変更セラル、ニト仮定シテ

(4)

"F(5)"

0689

不遑及、原則、適用レ行為多時有效ナリシ日本刑法
ヲ適用スルモト致シマシテモ 現在マーシャル諸島地域
ニ日本、刑法ガ有効ナリト、主張ハ許サレナイ
日本刑法ハ其主權喪失ト同時ニ其、效力ヲ失フハ
当然デ local law トモ依然有効ナリトイフガ如キ
見解ニ等シイ非論理ヲ肯定スルモハアルマイ

然レバ日本刑法ハ如何ニ之ヲ強辯スルトモ 現在
同地域ニ存続シテハ居ナイ 米國、裁判所ニ付シテハ
純然タル外國、法律デアル
而シテ本法院ニ 米國合衆國、法院デアルコトニ間違ハ
アルマイ 一國、刑事裁判ニ於テ外國、刑罰法規ヲ
適用シテ裁判スルコトハ 文明諸國、何レ、法制ニ
於テモ許サレテハ居ナイ 刑事裁判ニ於テ外國、
刑罰法規ヲ適用シ得ナイコトハ 刑事裁判ニ、原則
デアル 之レニ付シ東京帝國大學教授 法學博士
牧野英一氏著 日本刑法論 612頁ヲ引用スル

勿論私人間、行為ヲ規定スル民事法規ニ付シテハ
國際人間、取引ニ關シ契約其他、場合ニ於テ
外國、法規ヲ適用シナレバナラヌ場合ハ当然起リ
得ル 然レ民事裁判ニ於テハ外國法ヲ適用スル場合
アルハ其、性質上當然デアルガ 刑事裁判ニ一國、
(5) F(6)

權力、行使スル外國、法律ヲ適用シテ裁判ヲ為ス
ガ如キハ絕對ニ許サレナイ 違法デアリマス

捕法、不遑及、原則ニツイテ一言シナレバナリマセヌ
末國ガマーシャル地区ヲ占領シ其、主權ヲ行使スル
致シマシテモ 現在、末國法ヲ適用シ得ルハ末軍、占領
後ニ於テ發生セル犯罪行為ニ對シテハ爲シ得ル、デ
アリマシテ夫レ以前、行為ニ對シテ適用スルコトハ不遑及
ノ原則、許サレサル所デアリマシテ 檢察ガ行為當時、
日本刑法ヲ適用シタルハコト、不遑及、原則ヲ適用サル
爲メナルコトヲ是認スル、デアリマス 然レ此、兵衛
Commissioner、御留意ヲ候シ度キハコト、不遑及、原則ヲ
適用スルハ自國内ニ發生シタル犯罪ニ對シ自國、法律
ヲ適用裁判スル場合ニ於ケル時ニ同ニ原則デアリマシテ
本件、如キ他國内ニ於テ發生セル他國民ニ對スル行為
ニツイテ當テハマルベキ場合デハナイ、デアリマス
本件ハ日本、領土タル「ヤルト」環境ニ於テ日本人タル
爲民ニ對シ日本人、爲シタル行為デアリマス 即チ
行為地ハ他國デアリ行為者ハ他國人デアリ行為時ハ
他國、統治中デアリテ之レガ犯罪アリトスレバ完全ナル
他國、犯罪デアリマス 恰モ他國人ガ他國ニ於テ犯罪
行為ヲ爲シ現在末國領土内ニ逃セシ来リタル場合ト
全く同一デアリマス 此、場合其、裁判權、所屬スル

國家ハ其犯罪人、處スル他國デアツテ其、國家ハ
米國。對シ國際條約。基キ犯人引渡ヲ要求スルコトヲ
出来ル、デアリマシテ斷ジテ米國。裁判權ガ移ルニ、テハ
ナイ、デアリマス 若シ出来ルトシタラ完全ナル主權侵害ガ
アル 他國、司法權ヲ自由。侵害シ他國人ヲ自由
自在ニ所罰シ得ルコトニナル 左様ナ馬鹿氣ヲトガアル
筈ハナイ コノ點。固シテハ後ニ管轄權ノ異議。依リ
評論致シマスガ何レニモヨ 米國裁判所ナル當法廷
ニ於テ本件ヲ審理スルコトハ違法タル、ミナラス
外國法タル日本刑法ヲ適用スルコト、違法ナルコト
前段論述、通りデアツテ法、不遑及、原則、
適用等、問題ハ起リ得ナイ、デアリマス
依テ本件起訴。於テ外國法タル日本刑法ヲ適用シテハ
明カニ違法デアリマス

第二、國際法規タル戰爭法規ニ。慣習。違反セタリトナス
事ニ起訴デアリマス

今起訴。於ケル戰爭法規トハ 1907年10月18日締結セル
「ヘーグ」條約 特ニ其、追加規定 第ニ十九條又公法
三十條、應戰法規ヲ意味スルニナルコト前審理古本
事件ニ於ケル様事、所論。依リ明カデアリマスガ
Hague Convention ハ締結國タル Italy and
Bulgaria、批准ヲセテ國際法規タル
(7)

「F(8)」

効力ヲ有セザルモノデアル 従テ仮令本規定ニ違反シタル
場合アリタルトモ其ノ國、道義的責任ヲ同ト得ル
格別トシテ其口ニ属スル個人ノ刑事責任ヲ同トコトヲ
得ザルハ勿論デアル

仮リニ本規定ニ有効ナリト仮定シテ其條項ヲ解釈スル場合
ニハ先ヅ其ノ立法趣旨ヲ解スルニアツザレバ其ノ規定ノ
何タルヤヲ知ルコトハ出来ナイノデアル

由來 Case Law - 於テハ事實ガアツテ之ヲ實際ニ
処理シタル結果、一定ノ原則ヲ抽出シコレヲ法トシテ
アルカラ之ト同様ノ事件發生シタル場合ニ當テハ其ヲ
考慮スレバ大ナル誤リハナイノデアルガ成文法ハ一定ノ
事件ノ發生ヲ予想シ之ニ當テハメルベキ原則ヲ構想シ
作成スルノデアルカラ其ノ範圍ハ自然広汎デアツテ立法ノ
精神、文理、解釈、演繹、類推等凡テニ互ツテ
透徹シタル考慮ヲ拂ハナレバ其ノ解釈ヲ誤ルノ慥レ
ガアリ Case Law 適用、如キ單純デハナイ殊ニ
立法ノ精神ハ最も重要デアリマス

前記陸戰法規 第二十九條 第三十條、規定ハ先ヅ由何
ナル精神ニ依ツテ立法セシメタリヤヲ考察シテレバナラヌ
何レノ國家ト雖モ同譯ニ對シテ國內法ノ規定ハ
アルガ夫レハ主トシテ國內人ヲ対象トシテ立法セラル

タルモノデアル 夫レハ 國際法、自由ニ任スベキデアル
然ルニ 戦時ニ當リ 敵國又ハ 第三國人ニヨリ 間諜行為ヲ
アリタル場合ニハ 稍モスレバ 異狀ナル 興奮ト 敵愾心
ニ依リ 間諜ノ範圍ヲ 拡張シ 之ニ 嚴罰ヲ 科スル 傾向
ガアルカラ 之ヲ 制限シ 防禦セント、趣旨ニ 基テタルモノデ
アルコトハ 第ニ十九條ノ 規定 自作ニ 依ツテ 明カデアル
殊ニ 本法 第三十條ニ 於テ 「現行中、間諜ハ 之レヲ 裁判
ナクシテ 処罰スルコトヲ 得ズ」ト 規定シタルハ 果シテ 何ヲ
意味スルヤ 何レノ 文明諸國ニ 於テモ 犯罪ヲ 処罰スルニ
裁判ナクシテ 処罰シ得ルトナス 法制ガアリマセウヤ？
絶對ニ ナイノデアリマス 裁判ニ 依リ 処罰スルハ 当然、
コトデアル 其、当然ナルコトヲ 取テ 本法ニ 規定シタルハ
全ク 上述ノ 理由ニ 依テ 敵國人又ハ 第三國人ヲ 処罰
シタルガ 故 特ニ コノ 規定ヲ 設ケテ、デアル 自國人ニ 對
スル 所罰 規定ガ 何デアラウガ ソレハ 國際法、意味
スル 理由ハ ナイノデアル

前記條文ヲ 冷靜ニ 慎重ニ 讀メバ 明白ニ 了解セシム
ノデアル 然ルニ 後事ハ 右條文ノ 文言上 敵國人又ハ
第三國人ト、言葉ガ 使用シタナイカラ 自國人ト 外國人
トヲ 同ハズ 之レヲ 包含スルモノデアルト 謂ハレタカ 矣。
暴論ニ 基テシイ 夫レハ 全ク 成文法ノ 解釈法ヲ
解ヘザルカ 或ハ 強イテ 曲至シタル 暴論デ アツテ 斷ジテ
法律ノ 解釈上 許サルベキデハ ナイノデアリマス

得シ起ツバ 本件ハ日本ノ國民タル為氏ガ日本ノ國民法タル
日本刑法ニ違反シタル爲シタル單純ナル國內事犯ニシテ
新シテ上記陸戰法規ニ依リテ考慮スベキ事案デハナイ
ノデアリマス

以上ノ理由ニ依リ 本件第一起訴ニ於テ戰事法規ニ
悞習ニ違反シタルト爲スハ明カニ違法デアリマス
Commissioner、慎重ナル御考慮、仰ガ度イノデアリ
マス

以上ノ理由ニ依リ 本件第一起訴第一起訴ニ違法
テアリテ當然公訴ニ棄却セラルベキデアリマス

右異議ヲ申スル次第デアリマス

以上

(10)

"F(11)"

0695

ARGUMENT IN OBJECTION CONCERNING THE APPLICATION OF THE LAW DELIVERED BY
AKIMOTO, YUICHIRO, TOKYO, JAPAN.

Gentlemen of the Commission,

The charges of this case mistake the application of the law. That is, Specifications 1 and 2 of the Charge I, Article 199 of the Japanese Criminal Code is applied, and Specifications 1 and 2 of the Charge II allege the violation of the laws and customs of war. Both of these applications of laws are mistaken. Therefore, I object to these illegal applications.

The first point to which I object is the application of Article 199 of the Japanese Criminal Code to this case. The Judge Advocate, in the case of FURUKI, Hidesaku who was tried before in this court, asserted as follows, and, as the scope of legal aspect of this case is entirely as same as the foregoing one, I would like to cite his previous assertion and take a stand against it:

The Judge Advocate stated:

1. The Marshall Islands were occupied on 14 August 1945 by the American Forces, and have been under the jurisdiction of the American Forces since then.
2. The Japanese government surrendered to the United States government on 2 September 1945, and no peace conference has yet been settled between the two governments.
3. At the Cairo Conference on 1 December 1943 the following was decided:
"Japan shall be deprived of her islands in the Pacific which she has occupied since the beginning of the World War I in 1914."
4. The Potsdam Declaration announced on 26 July 1945, especially Article 8 of which states: "The terms of the Cairo Conference shall be put in effect, and the territory of Japan shall be limited within Honshu, Hokkaido, Kyushu, Shikoku and other small islands which are admitted to be proper."
5. According to the Imperial Ordinance No. 26 concerning the judicial affairs of the South Seas Islands which was issued in 1923 and amended in 1933, the effective criminal law on Marshall Islands at the time when the offenses of this case were committed was the Japanese Criminal Code which is still now effective as a local law.

Also the witness Clarence Winecoff, Captain, USN, the deputy commander of the Military Government of the Marianas Area, testified:

1. Since the occupation of the Marshalls by the US Forces, the administrative and judicial authority of the area has been under the jurisdiction of the US Occupation forces.

"G(1)"

2. Japan lost her sovereignty over the occupation area.

3. The Criminal Code of Japan still exists and is effective in the area. Therefore, it is lawful to punish those who violated the Code by applying the provisions of the Code. It is lawful to apply Article 199 of the Japanese Criminal Code in this case.

According to the above, what the Judge Advocate wants to assert is clearly understood. That is in short:

1. Japan lost her sovereignty over the area of Marshall Islands,

2. The area of Marshall Islands was occupied by the US Forces on 14 August 1945, and has been under the jurisdiction of the United States since then,

3. By the Imperial Ordinance No. 26 of 1923, the Criminal Code of Japan has been enforced in the area, and it still now exists and is effective as local law. Therefore, it is lawful to apply the Code in the Charges of this case.

According to the assertion of the judge advocate, it seems to me that the loss of Japanese sovereignty over the area is based upon the Cairo Conference of 1 December 1943.

However it is very clear and unnecessary to state that the scope of the efficacy of the law of a country is limited within the scope of her sovereignty. If a country loses her sovereignty, the laws of the country will naturally lose their efficacy in her lost territory. However, the judge advocate stated that the Japanese laws are effective in the area of Marshall Islands although Japan lost her sovereignty over the area. His assertion is really inconsistent and illogical.

If, as the judge advocate stated, the loss of Japanese sovereignty over the area is based upon the Cairo Conference of 1 December 1943, the Japanese Criminal Code already should have lost its efficacy as the effective law at the time when the incident of this case happened, namely in March and April of 1945. Then, what is the reason for applying this law to this case? Isn't it quite nonsensical to apply the Japanese Criminal Code by the ex post facto principle? How can the judge advocate explain this clear inconsistency? Even if we assume that the judge advocate withdraws his assertion that the time of the loss of Japanese sovereignty is based upon the Cairo Conference and states that it is based upon the occupation of the US forces and applies the Japanese Criminal Code which was effective at the time of the incident, it is still inadmissible to state that the Japanese Criminal Code is effective now in Marshall Islands. It is simply natural that the Japanese criminal code lost its efficacy at the time when Japan lost her sovereignty over the islands, so it is quite inconsistent to state that it is still effective as local law.

"G(2)"

Then no matter how much the judge advocate insists upon this point the Japanese Criminal Code is not actually now in effect in the area. The Japanese Criminal Code is purely a foreign law in the court of the United States.

This court is undoubtedly an American court. It is not admissible in any of the judicial systems of civilized states to apply foreign criminal law in their criminal trials. It is the principle in criminal cases that foreign criminal laws are inapplicable in the criminal trial.

Page 612 of "Theories on the Japanese Criminal Code" written by MAKINO, Eiichi, the professor of the Tokyo Imperial University, Doctor of Law, states it in the same way.

Of course, concerning the civil law which provides for personal affairs, foreign laws must sometimes be applied in such cases as transactions and contract among foreign persons. Therefore, it is proper from the nature of the civil law that foreign laws are sometimes applicable in civil cases. But as the criminal trial is the exercise of the authority of a country, it is absolutely inadmissible and unlawful to apply foreign laws in the criminal trials.

I must state further concerning the ex post facto principle. Now that the United States Forces has occupied the Marshalls, they can exercise jurisdiction over the area. But the American laws can be applied only to the offenses committed after the occupation, and it is a violation of the ex post facto principle to apply them to the offenses committed before their occupation. Therefore I can admit that the reason why the judge advocate applied the Japanese Criminal Code to this case was that he obeyed the ex post facto principle. But I would like to ask the commission to pay attention to the fact that the ex post facto principle is one which is used in the trial when a law of a country is applied to the offenses committed with that country. Therefore, the ex post facto law is not a principle to be applied to the offenses of a foreigner committed in a foreign land such as this case. This is the act of a Japanese done against the natives, Japanese subjects, on Jaluit Atoll, Japanese territory. That is, for the United States, the place where the act of this case was done is a foreign land; the person who did the act is a foreigner; and at the time when the act was done, the place was under the control of a foreign country. If this act is a crime, it is entirely the crime of other country. It is just as if a foreigner committed a crime in a foreign country and has escaped now to American territory. In this case, the jurisdiction over the crime lies upon the foreign country to which the criminal belongs, and the country can request the United States, according to the international contract to deliver the criminal. The United States has no jurisdiction whatsoever. If she has, it is entirely an infringement upon her sovereignty. It is inadmissible to infringe upon the jurisdiction of another country and punish other nationals at her own decision. Concerning this point, I shall state later in my objection of the jurisdiction of this commission. Anyhow, it is unlawful to try this case in this court, an American court, and also as I stated before it is inadmissible to apply the Japanese Criminal Code in this case. There is no room for the problem concerning the ex post facto principle to arise.

"G(3)"

0698

Therefore, it is clearly unlawful to apply the Japanese Criminal Code, a foreign law, in this case.

The second point that is objected to is, Charge II, which alleges that he violated the laws and customs of war, which is international law. By the laws of war it must refer especially to the amendment, Articles 29-30 on land warfare, of the Hague Convention, 18 October, 1907. It is clear through the assertion of the Judge Advocate in the previous trial, of the FURUKI case: That the Hague convention was not ratified by Italy and Bulgaria, who were members of that convention, therefore it has no efficacy as international law. Therefore, even though the regulation was violated, it would be a different matter if the nation was being held responsible for its moral responsibility, but it is natural that an individual of that nation could not be held for criminal responsibility. Presuming that this regulation has efficacy, in interpreting these rules, unless we can understand the principle behind the rules, we cannot know what those rules are. Up to the present in case law, there is a case. This case is tried and as a result a ruling is obtained this is considered the law, and if a same kind of case occurred again, this ruling is applied and there may not be any mistakes. But in code law, occurrences of certain cases are foreseen and the principles to be applied to this is drawn up; therefore, its scope becomes very large. Unless clear thinking and consideration is given on all points, the spirit of violating the law, grammatical interpretation, deduction, and analogical construction or a mistake in the interpretation of the law may occur. It is not as simple as the application of case law. Especially the spirit of the law is the prime factor. In the first place we must consider what was the spirit behind article 29 and 30 of land warfare. In all countries there are domestic laws concerning spies, but these laws were principally concerned with its own citizens and it should be left up to its domestic law. But in times of war, when there are cases of spying by an enemy citizen or of a neutral country, there was a tendency to enlarge the scope of spies, through feelings at the time of hostility and the spies were severely punished. It can clearly be seen by Article 29 itself, that these regulations were made to restrict and prevent this. Especially in Article 30 of the same law it is stated "A spy taken in the act shall not be punished without previous trial." What can this mean? Is there any law system of any civilized nation that states that a person could be punished for a crime without a trial? Absolutely there is not. It is natural that a person be tried before, he is punished. Therefore the fact that this natural function was stated separately can only mean that it was for the above reason and was in reference to citizens of enemy or neutral countries, and this special rule was made. No matter what the laws of punishment for its own citizens may be there can be no reason for the interference of international law.

If the above article is read calmly and carefully this can clearly be understood. However the Judge Advocate stated that from the wording of the above article the words citizens of an enemy country or neutral country. Was not used therefore it included both citizen of its own country and that of enemy countries. This is a dangerous argument. It can be said he may be mistaken in his understanding of how to interpret code law or a dangerous argument based on a forcible interpretation of the law and can never be sanctioned from the standpoint of

"G(4)"

0699

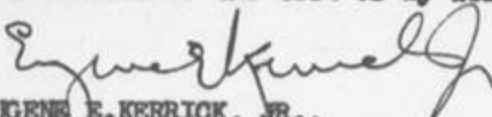
interpretation of the law.

Also this case, a case in which a native, who is a citizen of Japan, violated the Japanese Criminal Code and so a simple domestic national crime and is not a case to be thought of in terms of the above rules and regulations of land warfare.

By the above reason it is clear that it is unlawful to charge that the laws and customs of war were violated in Charge II of this case. I request the commissions consider this carefully.

By the above reasons the Charges I and II are unlawful. Therefore the charges should be rejected. I therefore make the above objection.

I certify the foregoing, consisting of five (5) pages, to be a true and complete translation to the best of my ability.


EUGENE E. KERRICK, JR.,
LIEUTENANT, U. S. NAVAL RESERVE,
INTERPRETER.

"G(5)"

0700

Objection to the charges and specifications in the case of Captain INOUE, Fumio, Imperial Japanese Army, delivered by Commander Martin E. Carlson, U.S.N.R. Defense Counsel on April 23, 1947, before the Military Commission convened by the Commander Marianas Area at Guam, Marianas Islands.

The accused, Captain INOUE, Fumio, Imperial Japanese Army objects to the charges and specifications on the following grounds:

All the specifications allege "INOUE, Fumio, then a Captain, Imperial Japanese Army," Under the first charge there are two specifications. Both specifications allege the offense charged is "in violation of effective law especially Article 199 of the Criminal Code of Japan." Captain INOUE, Fumio, Imperial Japanese Army is still an officer of the Army because he has been kept a prisoner by American authorities since the termination of hostilities - August 1945, accused as a war criminal. Article D-13, page 490, Naval Courts and Boards, 1945 states "in the cases of the more serious offenses triable by superior provost court and military commission, there should be a detailed specification as in court martial practice, and such specification should show on its face the circumstances conferring jurisdiction, as for example, that the offender was an inhabitant of a district under military government". Quite to the contrary the specifications show on the face a clear lack of jurisdiction. Especially is this true of the two specifications under Charge I because these specifications allege the offense as "in violation of effective law especially Article 199 of the Criminal Code of Japan."

We will enter a plea to the jurisdiction of this commission to try the accused, INOUE, Fumio at the proper time. But since Naval Courts and Boards, Section D-13 requires that all specifications show on the face "the circumstances conferring jurisdiction" the accused objects to them all and especially to the two specifications under Charge I.

Section D-14 Appendix D, Naval Courts and Boards requires that the record of this court be "transmitted to the Judge Advocate General of the Navy to be revised and recorded." It is therefore necessary that the requirements of Section D-13 of Naval Courts and Boards be complied with in this present case and the specifications be amended to show jurisdiction.

The accused further objects to specification 1 of Charge I because seven separate offenses are charged in one specification. We ask that this specification therefore be amended and seven specifications be drawn up one for each offense. Under Section 199 Criminal Code of Japan translated by William J. Sebald this ruling is set forth: "Even when murder is committed as a result of one single resolution, as many cases of murder are formed as there are victims" 35 S.C. 3587.

"H(1)"

We hold that there should be eight specifications inasmuch as eight offenses are alleged.

The accused objects on the same grounds to specifications one and two of Charge II. We hold that there should be eight specifications under Charge II.

The accused further objects to all the specifications of Charge II on the ground that the offenses alleged are said to be that the accused Captain INOUE, Fumio, did, "punish as spies,....killing.....native inhabitants of the Marshall Islands, this in violation of the laws and customs of war." We hold that these specifications are not in good form in that the specific laws and customs of war are not set forth verbatim, but now in this second charge no such law or custom is set forth. It is not enough to simply allege that the offense is in violation of the laws and customs of war. This is too vague and uncertain to fully acquaint the accused with the offense with which he is charged. Section 27, Naval Courts and Boards requires: "whenever the offense comes directly under any other enactment (foreign laws, municipal ordinance, or local ship or station order) the same shall be set forth verbatim in the specification and proved like any other fact."

Since the record of this commission must be transmitted to the Judge Advocate General of the Navy to be revised and recorded, it is necessary that it be correct in all details, Section D-14, Appendix D - Naval Courts and Boards, and we ask that all specifications of Charge II be amended and the specific laws and customs of war be set out verbatim.

At this time we reserve the right to further object to the charges and specifications for any errors in substance. This right to object is guaranteed by Section 398, Naval Courts and Boards and may be made at any stage of the trial that it manifests itself.

Martin E. Carlson
MARTIN E. CARLSON,
Commander, U.S.N.R.
Defense Counsel.

"H(2)"

0702

起訴並。罪狀項目=對スル異議申立

objection to the charges and specifications

被告人 井上文夫

辯護人 鈴木才藏

Suzuki Saizo

裁判長並委員各位

被告=對スル第一起訴、殺人、罪ヲ以テ、
第二起訴、新刑法規定並。横領罪取
得ヲ以テ、被告ヲ起訴シ居ラス。茲ニ

第一起訴、罪狀項目其ノ一、第二起訴、罪狀
項目其ノ一ヲ對照スルニ、其ノ文面ヲ一見シ、
兩罪狀項目が被告、全ク同一、所為ヲ取扱
ハテ居ルコトが判ルリテアリマス。ナリトナリ、兩
罪狀項目、認定シテ居ル、被殺害者、殺害、場
所、殺害、日、全ク同一テアルヲ以テ、第一起
訴、罪狀項目其ノ一、第二起訴、罪狀項目
其ノ一ニ付テモ、同様ノコトがハルテアリマス
結局、被告井上カ、既ニ中ノ島民ハチヲ殺害
シタル同一事件ヲ、第一起訴、日本刑法
第百十九條、規定スル殺人、罪ヲ以テ起訴
シ、第二起訴、裁判ナシテ、又ハ同一事件ニ對シテ
之殺害シタル理由ヲ新刑法規定並。横領罪取
(1)

00114

1. 起訴は中心である。

惟、一ツ、行為の同時、異個、法規違反する場合、起訴は、一ツ、得られず。然し、此、場合、於て、次、一ツ、異個の場合、アルコトは注意すべきなり。一ツ、場合、石ヲ投テ、他人ヲ傷害、同時、他人、器物ヲ損壞の場合、此、場合、一、他人ヲ傷害の罪、他人、器物ヲ損壞の罪ト云フ、一、犯罪が成立シタル。此、場合、一、犯人、同一、所為ニ就テ、一ツ、犯罪者ニシテ、chargesヲ以テ起訴スルコト、許サレザリ。然し、一ツ、行為の同時、異個、法規ヲ犯シタル、其、犯サレタる法律、性質上、一ツ、法律の他、法律ヲ、吸收シ、其、排斥する場合アル。例、日本刑法、規定スル犯罪ニ就テ之ヲ説明シ見ル。

日本刑法第九十條第一項、次如ク規定シテ居ラス。「帝國ニ滞在スル外國、君主又、大統領ニ對シ、暴行又、脅迫ヲ加スル者、一、一年以上、懲役ニ處ス」。而シテ、日本刑法、一般の、暴行行為ニ對シ、一、六月以下、懲役ニ處ス。次、如ク規定シタル。

21

11(2)

暴行ヲ加ヘ人ヲ傷害スルニ至ラザル時、一年以下
懲役若シ、五月以下、罰金又ハ拘留、若シ、
科料ニ付テスルモノトス。
又一般の脅迫行為ニ就テハ、全法ニ百一十
條ニ於テ、如左規定セラル。
「生命身體、自由、名譽又ハ財産ニ對シ、害ヲ
加フコトヲ以テ人ヲ脅迫スル者、一年以下
懲役又ハ五月以下、罰金ニ處ス」。
從テ、或者ハ、日本ニ滞在スル外國君主ニ對
シ暴行又ハ脅迫ヲ加フ場合、上述、日本刑
法ニ於テハ、~~外國君主ニ對シ~~、罪ヲ犯ス
ルハ同時ニ、觀念的ニ、外國君主ニ
對シ暴行、脅迫、行為、上述、一般の
暴行、脅迫、罪ヲ規定スル日本刑法第
二百八條又ハ、~~年ニ百一十條~~、罪ヲ犯スル
ハ「アリ」ス。此の場合、外國君主ニ對シ
暴行、脅迫行為ニ就テハ日本刑法ニ於テハ、
罪ヲ犯スル。然レ、又、其、暴行、脅迫、行為
ニ就テハ、日本刑法ニ百八條、暴行罪、
又ハ、年ニ百一十條、脅迫罪ニ於テハ、
罪ヲ犯ス。暴行罪又ハ脅迫罪、君主ニ對テハ、日本刑法
九條、犯罪ニ對シ「主スル」アリ。コトヲ以テ、
此、法理上、論理上、~~アリ~~、合衆國、刑法ニ對シ
(3)

三、同標=認^ヲラ^ルル等ト信^ニジマス。従^ツテ、^ニ此^ノ場合^ニハ、外國君主=對^スル暴行^ヲ又^ハ脅迫、罪^ノミ^ヲ以^テ犯人^ヲ起^シ新^スル^ヲナ^ラズ^ニ、^ハ一般^ノ暴行^ヲ又^ハ脅迫、罪^ヲ以^テ受^テ起^シ新^スル^ニト^ス。當^レヲ

ヒルカワニ、本件、并立、事件=就テ之ヲ参考
シ見ル。第=起訴、各罪状項目、被害者上
の、意思的、違法性、裁量+。第一起訴、
アナル島民ヲ、スロイトニ危険ナル利器ニ
テ襲撃、負傷、死亡セシメ、之ヲ殺シ、死体
トモ共ニ認定シ起訴シ居ルヲアリ。
従フ、此、第=起訴、第一起訴、殺人罪ヲ含
ム起訴シタルコト容易=理解出来ルヲ
アリ。提言スル、第一起訴、認定シタル
犯罪ヲ「アル殺人」、非=起訴、スロイトニ裁判
=附スルコトナキ件、アナル島民ノ處刑の場合、
殺人行為ナラサル

従つて、此、第一起訴、殺人ト第一起訴、起
定ニテ居ルモノノ處刑行為トシテ、殺人ト、同條ニ
シテ述ビタル日本刑法ニ百八條、一般暴行ニ當ル
日本刑法九十一條、規定ニテ此外國君主ニ對
スル暴行、罪ニナル暴行、脅迫行為ト、同條ニ
全ク同一ノアリマス。外國君主ニ對スル暴行罪ニ
(4)

起訴の以上、受、よ、加、一般、暴行罪、起訴
スル、許、此、然、違、法、重、起訴、ア、同、様、
在、件、起、第、起訴、起、ア、ア、中、何、何、殺
害、行為、裁、判、附、ス、ル、ア、何、何、違、法、
處、刑、の、事、を、認、定、起訴、ア、中、以上、受、其、
殺害、行為、就、一、般、殺人、罪、起訴、ス、ル、
許、此、然、起訴、重、様、ア、信、に、ア、ス。

若、此、何、何、重、様、起訴、の、許、此、然、ア、
ナ、リ、捕、獲、の、正、當、理、由、殺害、の、者、其、殺人
行為、何、何、新、争、法、規、並、捕、留、處、置、
刑、罰、起訴、也、受、通、常、殺人、罪、の、同、時、
又、時、何、何、起訴、ス、ル、の、許、此、然、ア、
ナ、リ、今、同、日、在、人、新、争、犯、罪、人、何、何、起訴、
起、何、何、重、様、起訴、其、例、ア、見、及、
等、ア、リ、ア、ス。然、此、何、何、何、何、重、様、起訴、
一、例、ア、知、ア、リ、ア、ス。又、此、二、様、重、様、
起訴、の、法、理、的、何、何、何、何、何、何、
裁、判、ア、カ、コ、ナ、リ、ア、リ、何、何、重、様、起訴、の、
法、理、的、正、當、ア、リ、ア、ス、の、確、認、也、
信、に、ア、リ、ア、ス。

若、此、何、何、何、何、何、何、何、何、何、何、
行為、の、同、時、何、何、新、争、法、規、並、捕、留、
何、何、何、何、何、何、何、何、何、何、何、何、
(5)

(5)

charge
犯罪に付いて別々、起訴理由で「起訴スルニ付違背
ナシトスル」P11002、441. 法理解、許サレズ
P4. 正當に起訴テ「P11023. 然レ、本件、場合」
同一殺人行為、才起訴テ。日本刑法才一九九條
ニ違反トシ、通常犯罪トシ起訴シ、第一起
訴テ。新章犯罪トシ起訴シ中「P11023.
241. 明白ニ、起訴、掛替テ「P4. 同條ニ時
又許サレズニ重シ、起訴テ「P11023
若シ、報告、本件、起訴並ニ罪狀項目ニ付
スル書面ヲ申立テ、委員會、御明認ヲ仰ス
次第テ「P11022. 以上、

Suzuki
J(1)

OBJECTIONS TO THE CHARGES AND SPECIFICATIONS

IN BEHALF OF THE ACCUSED, INOUE FUMIO

DELIVERED BY SUZUKI, SAIZO

If it please the commission:

In Charge I, the accused is charged with the crime of murder and in Charge II with war crime as violating the Laws and Customs of War. But when we compare Specification 1 of Charge I with Specification 1 of Charge II, we find at a glance on the face of both specifications that both deal with entirely the same acts of the accused. This is apparent because the persons killed, the time and place alleged in both specifications are entirely identical. The same thing can be said as regards Specification 2 of Charge II and Specification 2 of Charge II. In short, the same acts and incident in which the accused Inoue killed eight Marshallese, is indicated in Charge I as a crime of murder provided in Article 199 of the Japanese Criminal Code and in Charge II as an act violating the Laws and Customs of War on the ground that the accused had punished and unlawfully killed as spies, without previous trials.

It can be considered that there are some cases, where one act violates several provisions of law simultaneously. But, even then, we must bear in mind that there are two variations to it. The first is when a person throws a stone at another person and wounds him, and at the same time destroys another person's things. In this case, two crimes exist, that is the crime of wounding another person and the crime of destroying the other's things. Under such circumstances, it may be permissible to draw up two charges for each crime of the same act. But it must be noted that, although an act simultaneously violates a number of provisions of law, from the standpoint of its nature, one provision should exclude the other. For instance, I shall explain this with the crimes provided in the Japanese criminal code, Article 90, paragraph one of the Japanese Criminal Code reads: "Article 90. Every person who has used violence or threats against the Sovereign or President of a foreign power staying within the Empire shall be punished with penal servitude for not less than one year nor more than ten years."

While concerning general acts of assault Article 208 of the same, provides as follows: "Every person who has used violence against another person without wounding (injuring) such person shall be punished with penal servitude not exceeding one year, a fine not exceeding fifty yen, detention, or a minor fine."

"J(1)"

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3(11)

Moreover, as to general acts of threat, Article 22 of the same reads: "Every person who has threatened another person with injury to his (her) life, person, liberty, reputation, or property shall be punished with penal servitude not exceeding one year or fined not more than 100 yen.

"The same (punishment) applies to every person who has threatened another person with injury to the life, person, liberty, reputation, or property of a relative of such (latter) person."

Therefore, if a person used violence against a sovereign of a foreign power staying in Japan, he would be committing the crime stipulated in Art. 90 of the above Japanese Criminal Code and as an abstract idea, simultaneously this act of violence or threat against a sovereign of a foreign power, would be violating Articles 208 and 222 of the said code, which stipulates crimes of violence and threat. In this case, would such an act of violence and threat constitute a crime provided in Art. 90 of the same code and also at the same time constitute a crime of violence provided in Article 208 or crime of threat mentioned in Art. 222? A crime of simple violence or threat would not exist. Merely, a crime of violence or threat against the sovereign of a foreign power, which is provided in Art. 90 of the said code, would be constituted.

I firmly believe that this logic in jurisprudence is also acknowledged in American Criminal Law. Therefore, in such case, the act could be indicted as a crime of violence and threat against a sovereign of a foreign power and it would be erroneous to charge in addition to it a crime of general act of violence or threat.

Now, let us scrutinize the instant Inoue case. Charge II alleges that the accused, Inoue, did wilfully, unlawfully and without previous trial, punish and cause to be punished as spies, assault, wound and kill the Marshallese natives mentioned in Charge I. Therefore, it is easily understood that Charge II includes the act of murder alleged in Charge I. In other words, the crime murder alleged in Charge I is the same act of murder referred to as the execution of Marshallese as spies, without previous trials in Charge II.

Therefore, the relation between murder in Charge I and murder as an act of execution of spies alleged in Charge II, is the same as the relation between the crime of violence and threat against a sovereign of a foreign power provided in Article 90 of the Japanese Criminal Code and the general act of violence stipulated in Art. 208 or threat mentioned in Art. 222 of the said Code, which I have already stated. Since an act is already indicted as a crime of violence against a sovereign of a foreign state, then in addition to it, the act should not be allowed to be charged with the crime of general violence because it would be unlawful duplication of charges. Likewise, in the instant case, since the act of killing the Marshallese has been indicted and alleged in Charge II as an

"J(2)"

0710

J(111)

act of illegal execution without previous trial, as spies, then I believe, it would be an unpermissible duplication of indictment to charge the act of killing in addition to the crime of ordinary murder.

If such duplication of charges is permissible, then a person killing a POW without justifiable cause should be accused of war crimes in violation of the laws and Customs of War and simultaneously indicted with ordinary crime of murder for his act. And, we should find numerous cases of such duplication of charges in the prosecution of Japanese war criminals. But, on the contrary, we do not know of any such examples of duplication of charges. I believe that the reason for this is not that in spite of its not being permissible from the point of view of jurisprudence, it was not ventured to be tried, but that it has been already confirmed that such duplication of charges is not justified from the point of jurisprudence.

At this period, I would like to reiterate my point for the sake of avoiding misunderstanding. We do not contend that it is illegal to draw up separate charges for each crime when a single act simultaneously violates several laws or customs of war and constitutes different crimes. In this sense it would be permissible from the point of view of jurisprudence and also a legitimate indictment. But in the instant case, the same act of murder is charged in Charge I as an ordinary murder in violation of Article 199 of Japanese Criminal Law and in Charge II as war crime. This clearly is an alternative charge and an unpermissible duplication of charges.

Therefore, the accused objects to these Charges and Specifications and requests the careful consideration of the commission.

I certify the foregoing, consisting of three (3) pages, to be a true and complete translation, to the best of my ability.

Eugene E. Kerriak, junior
Eugene E. Kerriak, junior,
Lieutenant, U. S. Naval Reserve,
Interpreter.

J(3)

0711

Kenny
K(1)

REPLY TO OBJECTIONS BY THE ACCUSED TO THE CHARGES AND SPECIFICATIONS.
BY LIEUTENANT JAMES P. KENNY, USN

If it please the commission:

Mr. Akimoto, a defense counsel, objected to the application of the criminal law of Japan to this case as alleged in Specification 1 of Charge I. In answer to this the judge advocate states that, in regard to Charge I, this commission is not sitting as a tribunal foreign to the local law of Jaluit but rather as an exceptional local military court. It is therefore proper to charge a violation of the "lex loci" which in this instance is the Japanese Criminal Law. We believe that Mr. Akimoto's objections are, like many of the other objections made by defense counsel, not directed at the form and technical correctness of the charges and specifications but rather are arguments in objection to the jurisdiction of this commission and should be properly made as a plea in bar of trial. They do not relate to the requirement of section 398 of Naval Courts and Boards. Further objection was made by defense counsel on the ground that since the prosecution had argued in a previous trial that there was no Japanese sovereignty of the Marshall Islands at the time of the alleged crimes, it therefore should not be alleged that these crimes were violations of Japanese law. The judge advocate wishes to point out that it is not contradiction to argue that Japan had no sovereignty in the Marshalls at the time these crimes were committed but that the local effective law in the islands at the time was the Japanese law.

It is further argued by the defense that Charge II is improper in that it alleges a violation of laws and customs of war which are based upon the Hague Convention. Defense counsel is of the opinion that since all the powers did not sign this document, as provided by its terms in order to become operative, then its terms are not the law of nations. We point out that the articles contained in the Convention are merely a crystallization of what had already become the common law of nations. When Japan ratified this convention she merely acknowledged an obligation which already existed on all members of the international family of nations.

Mr. Suzuki objected to a duplication of charges, claiming that Charge I and Charge II relate to the same acts of the accused. In reply, the judge advocate quotes section 19 of Naval Courts and Boards, which states that "the law permits as many charges to be preferred as may be necessary to provide for every contingency."

Commander Carlson of defense counsel argued that the charges and specifications do not comply with the provisions of Section D-13 of Appendix D of Naval Courts and Boards in that they do not on their face show jurisdiction. We content that since this commission is sitting as a local court of the Marshalls area as well as a military court, it is apparent that the charges

"K(1)"

0712

Kenny

and specifications do, on their face, show jurisdiction. He further contended that it is improper pleading to charge the accused with seven murders in one specification. Since these mass murders occurred as one incident, we feel that this is proper pleading and that the accused is in no way prejudiced thereby.

The necessary technical requirements of charges and specifications and the form thereof merely require that the accused be acquainted in simple language with all the essential elements of the offense charged and this has clearly been complied with by the prosecution in Charge I and Charge II and the specifications thereunder. The objections of the accused relate to the jurisdiction of this commission to hear the pending case and will be argued by the prosecution when properly presented as a plea in bar of trial.

James P. Kenny
JAMES P. KENNY,
Lieutenant USN
Judge Advocate.

"K(2)"

0713

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

A16-2/FF12/
13-JDM-ro

Serial: 4445

From: The Commander Marianas Area.
To : Lieutenant David BOLTON, USN, and/or
Lieutenant James P. KENNY, USN, and/or
your successors in office as Judge Advocate
Military Commission, Commander Marianas.

Subject: Charges and Specifications - in the case
Captain INQUE, Fumio, Imperial Japanese A

1. The above named person will be tried before
Commission of which you are Judge Advocate upon the following
specifications. You will notify the President of the Commission
inform the accused of the date set for trial, and sum
for the prosecution and for the defense.

CHARGE I

MURDER

SPECIFICATION 1

In that INQUE, Fumio, then a captain, Imperial Japanese Navy,
to the Second Battalion, First South Seas Detachment, at
military installations of the Imperial Japanese armed forces at
Marshall Islands, and while so serving at the said Se
Jaluit Atoll, Marshall Islands, did, on or about 8 April 1945,
Atoll, Marshall Islands, at a time when a state of war existed
United States of America, its allies and dependencies, and the
Empire, wilfully, feloniously, with premeditation and
and without justifiable cause, assault, strike, kill,
killed, with an instrument, a deadly weapon, exact details of
relator unknown, seven unarmed native inhabitants of the
exact names to the relator unknown, but believed to be
of Raliejap, Neibet, Anchio, Ochira, Siro, and Laco,
and thereby, then and there, inflict mortal wounds on
and heads of said inhabitants of the Marshall Islands,
wounds the said inhabitants of the Marshall Islands,
Raliejap, the wife of Raliejap, Neibet, Anchio, Ochira,
died on or about 8 April 1945, on the said Jaluit Atoll,
of effective law, especially Article 199 of the Criminal Code
which reads in tenor as follows:

Every person who has killed another person shall
or punished with penal servitude for life or not less

0714

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

A16-2/FF12/
13-JDM-ro

Serial: 4445

13 MAR 1947

From: The Commander Marianas Area.
To : Lieutenant David BOLTON, USN, and/or
Lieutenant James P. KENNY, USN, and/or
your successors in office as Judge Advocates,
Military Commission, Commander Marianas.

Subject: Charges and Specifications - in the case of:
Captain INQUE, Fumio, Imperial Japanese Army.

1. The above named person will be tried before the Military Commission of which you are Judge Advocate upon the following charges and specifications. You will notify the President of the commission accordingly, inform the accused of the date set for trial, and summon all witnesses both for the prosecution and for the defense.

CHARGE I

MURDER

SPECIFICATION 1

In that INQUE, Fumio, then a captain, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment, attached to the military installations of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving at the said Second Battalion at Jaluit Atoll, Marshall Islands, did, on or about 8 April 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, with an instrument, a deadly weapon, exact description to the relator unknown, seven unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be Raliejap, the wife of Raliejap, Neibet, Anchio, Ochira, Siro, and Lacojirik, and did, therein and thereby, then and there, inflict mortal wounds in and upon the bodies and heads of said inhabitants of the Marshall Islands, of which said mortal wounds the said inhabitants of the Marshall Islands believed to be Raliejap, the wife of Raliejap, Neibet, Anchio, Ochira, Siro, and Lacojirik, died on or about 8 April 1945, on the said Jaluit Atoll, this in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows:

Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years.

"S(1)"

0714

Received true and correct copies, both in English and Japanese, of Charges I and II, and specifications thereunder, on the 13th day of March 1947.

井上文夫

INOUE, FUMIO.

Inoue, Fumio.

The above acknowledgement read to the accused in Japanese before he signed.

Eugene E. Kerrick, Jr.

Eugene E. Kerrick, Jr.
Lieutenant, U.S.N.R.

0715

CHARGE I (continued)

SPECIFICATION 2

In that INOUE, Fumio, then a captain, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment, attached to the military installations of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving at the said Second Battalion of the Imperial Japanese armed forces at Jaluit Atoll, Marshall Islands, did, on or about 13 April 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, with an instrument, a deadly weapon, exact description to the relator unknown, one unarmed native inhabitant of the Marshall Islands, exact name to the relator unknown, but believed to be Ralime, and did therein and thereby, then and there, inflict mortal wounds in and upon the body and head of the said inhabitant of the Marshall Islands, of which said mortal wounds the said inhabitant of the Marshall Islands believed to be Ralime, died on or about 13 April 1945, on the said Jaluit Atoll, this in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows:

Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years.

"S(2)"

0716

CHARGE II

VIOLATION OF THE LAWS AND CUSTOMS OF WAR

SPECIFICATION 1

In that INOUE, Fumio, then a captain, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment, attached to the military installations of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving at the said Second Battalion of the Imperial Japanese armed forces at Jaluit Atoll, Marshall Islands, did, on or about 8 April 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding, and killing with an instrument, a deadly weapon, exact description to the relator unknown, seven unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be Raliejap, the wife of Raliejap, Neibet, Anchio, Ochira, Siro, and Lacojirik, this in violation of the laws and customs of war.

"S(3)"

0717

CHARGE II (continued)

SPECIFICATION 2

In that INOUE, Fumio, then a captain, Imperial Japanese Army, attached to the Second Battalion, First South Seas Detachment, attached to the military installations of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands, and while so serving at the said Second Battalion of the Imperial Japanese armed forces at Jaluit Atoll, Marshall Islands, did, on or about 13 April 1945, on Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding, and killing with an instrument, a deadly weapon, exact description to the relator unknown, one unarmed native inhabitant of the Marshall Islands, exact name to the relator unknown, but believed to be Ralime, this in violation of the laws and customs of war.

C. A. Pownall

C. A. POWNALL

Rear Admiral, U. S. Navy,
The Commander Marianas Area.

"S(4)"

0718

米國太平洋艦隊
「マリアナ」方面司令部

昭和二十三年三月十三日

發「マリアナ」方面司令部

宛「マリアナ」方面司令部軍法委員附法務官

米國海軍大尉「アイダ・ホルトン」

米國海軍大尉「ジロ・ロ・ケニー」

或ハ法務官トシテ貴官等、彼在籍

記

大日本帝國陸軍大尉 井上 文夫

前記、有ハ貴官等法務官タル軍法委員ニ於テ
後記、起訴並ニ罪狀項目ニ付テ裁判セラルベシ
貴官ハ裁判長ニ之ヲ通告ノ被告ニ裁判、
日時ヲ通告ノ原告並ニ被告兩側、全證人
ヲ集合セラルベシ。

Enteef to bea due ^{ST(1)} translation
Eigues fene
HUSNR

0719

第一起訴
殺人
罪状項目 其(一)

「マーシャル諸島」マールト、環状珊瑚島、大日本帝國
軍隊南洋第五方面軍第三大隊付トノテ勤務中、
大日本帝國陸軍大尉(當時)井上文夫ハ「マール
合衆國トノ」屬領及ビ其同盟諸國ハ大日本帝國
ト戦フ状態ニアルシ昭和三十年四月八日頃「マーシャル
諸島」マールト、環状珊瑚ニテ意思的ニ違法的ニ企圖
ト惡意ヲ以テ正當ナ理由モナク武装セザル「マーシャル
諸島」島民七名「ラリースヤップ」、「ラリースヤップ」妻、
「ネーベット」、「アンチヨウ」、「オチラ」、「シロー」、「ラゴシリク」、
(要殺者ニ、確實ナ姓名不明)ナルモ前記ノ者ト
思ハルヲ器具即チ危險ヲ武器(詳細不明)ヲ以テ
襲ヒ殺害スル又殺害セシメ同時同所ニテ上記「マーシャル
諸島」住民「ラリースヤップ」、「ラリースヤップ」妻、
「ネーベット」、「アンチヨウ」、「オチラ」、「シロー」、「ラゴシリク」、
ノ身體及頭部ニ致命傷ヲ負ハセソシテソコテ
前記ノ致命傷ニヨリ前記「マーシャル」諸島、住民
「ラリースヤップ」、「ラリースヤップ」妻、「ネーベット」、
「アンチヨウ」、「オチラ」、「シロー」、「ラゴシリク」ト思ハ
ル者ハ昭和三十年四月八日頃死セリ右行爲ハ實施

Confirmed to be a true(2)
translation Eugene Spence & H. J. N. P.

第一起訴 罪狀項目 其、一 (續キ)

中、法令特ニ日本刑法第九九條ニ違反タルモノナリ
本法、臆本左記ノ如シ
「人ヲ殺シタル者ハ死刑又ハ無期若クハ三年以上
ノ懲役ニ處ス」

Certified to be a true translation
Signed & sealed
USAR

"T(3)"

第一起訴 (續)

罪狀項目 其ノ二

「マーシャル」諸島「アルト」環状珊瑚島、大日本帝國
軍隊南洋第一支隊第二大隊付トシテ勤務中、
大日本帝國陸軍大尉(當時)井上文夫ハ「アメリカ」
合衆國トソノ屬領及ニ其同盟諸國ハ大日本帝國
ト戦争状態ニアリシ昭和二十年四月十三日頃「マーシャル」
諸島「アルト」環状珊瑚ニテ意思的ニ違法的ニ
企圖ト悪意ヲ以テ正當ナ理由モナク武装セザル「マーシャル」
諸島ノ島民一名「フリメ」(告發者ハ確實ナ姓名
不明)ナルモ前記ノ者ト思ハレルヲ器具即チ危険ナ
武器(詳細不明)ヲ以テ襲ヒ殺害又殺害セシム
同時同所ニテ上記「マーシャル」諸島ノ住民「フリメ」
ノ身体及頭部ニ致命傷ヲ與ハセ「ソニ」ソコテ前記
ノ致命傷ニヨリ前記「マーシャル」諸島ノ住民「フリメ」ト
思ハレル者ハ昭和二十年四月十三日頃死亡セリ右行為
ハ實施、法令特ニ日本刑法第一九九條ニ違反シタルモ、
ナリ本誌、謄本左記、如シ

「人ヲ殺シタル者ハ死刑又ハ無期若クハ三年
以上、懲役ニ處ス」

Authenticated by a true Japanese
Police Officer #5017R

學年法規廿二慣習二四五八

零狀項目 其、

[illegible]

Ordered to be a true copy later
Suzanne & family of "5"
18 RR

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第三起訴(續)
罪狀項目 其二

「ア」諸島「エ」環狀珊瑚島、大日本帝國軍隊南洋第二支隊第三大隊付トシキ勒務中、大日本帝國陸軍大尉(當時)井上文夫「シ」各象國トシ、屬領同盟諸國が大日本帝國ト戦争状態ニ入り、昭和二十年四月十三日頃「ア」諸島「エ」環狀珊瑚島ニ、復見の遺体の裁判ナク、其セサル「ア」諸島、島民一名告發者ニ、確證ナシ姓名不明ナルモ「ラ」ト見ハル者ヲ「ス」トシテ谷貝即チ危険ナル武器(詳細不明)「シ」テ其ニ負傷死セシメ之ヲ別罰セシタル事、戦争法規並ニ慣習ニ違反シタルモノナリ。

「ア」地巴司令官
米國海軍少將「エ」パーバ

Certified to be a true
transcription
Eugene L. Funchess "T(6)"
J. J. J.

FIRST DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Wednesday, April 23, 1947.

The commission met at 2:18 p.m.

Present:

Rear Admiral Arthur G. Robinsen, U. S. Navy,
Lieutenant Colonel Henry K. Rescoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Belton, U. S. Navy and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.

Brian S. Moore, sergeant, U. S. Marine Corps, entered with the accused
and reported as provost marshal.

The judge advocate introduced Robert R. Miller, yeoman first class,
U. S. Navy, and Joseph Kase, junior, yeoman second class, U. S. Navy, as
reporters and they were duly sworn.

The judge advocate introduced Lieutenant Eugene E. Kerrick, junior,
U. S. Naval Reserve, Mr. Isamu Ueda, and Mr. Shigeo Yamanouchi as interpreters
and they were duly sworn.

The accused, Captain Fumio Inoue, Imperial Japanese Army, requested that
Commander Martin E. Carlson, U. S. Naval Reserve, Mr. Yuichiro Akimote and
Mr. Saizo Suzuki, both of Tokyo, act as his counsel. Commander Carlson,
Mr. Akimote and Mr. Suzuki took seats as counsel for the accused.

The judge advocate read the precept and modifications thereof, copies
prefixed marked "A", "B", "C", "D", and "E".

An interpreter read the precept and modifications thereof in Japanese.

The judge advocate informed the commission that an oral stipulation had
been entered into by the defense counsel and the judge advocate under the
terms of which, when classified dispatches are referred to during the course
of the proceedings of this commission, reference only to the content and
substance of these dispatches will be made in open court. No reference to
the date time group, or other means of identification of classified matter
will be made, but defense counsel represented by Commander Carlson, U. S.
Naval Reserve, will be given full opportunity to verify the accuracy and the
authenticity of any statement regarding the content of such dispatches. The
reason for this stipulation is primarily one of cryptographic and communication
security. Counsel for the defense have all, individually and jointly, agreed
to this procedure. 87

The commission announced that the above was approved.

The judge advocate did not object to any member.

The accused objected to Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, as follows:

The accused objects to Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, because he sat as a member of the Military Commission which tried Major Furuki, Hidesaku, Imperial Japanese Army, on charges growing out of similar incidents which occurred on Jaluit. The defense, in this present case, is based on the same and similar facts which were relied on as a defense in the Furuki case. Our plea to the jurisdiction of this commission to try the accused in this case is similar to that in the Furuki case. The accused in this case, Captain Inoue, Fumie, Imperial Japanese Army, was a witness in the Furuki case. Because Lieutenant Commander Bradner W. Lee, junior, sat as a member of the Military Commission which tried Major Furuki, Hidesaku, and heard the testimony of the accused as a witness in that case, we charge that he is prejudiced against the accused, Captain Inoue, Fumie, Imperial Japanese Army. Lieutenant Commander Bradner W. Lee, junior was and/or is also a member of the Staff of Director of War Crimes, Pacific Ocean Area, investigating war crimes. We charge that he is prejudiced against the accused, Captain Inoue, Fumie, Imperial Japanese Army. We charge that Lieutenant Commander Bradner W. Lee, junior, has personally investigated the charges in this case and that he has formed a positive and definite opinion as to the guilt or innocence of the accused, Captain Inoue, Fumie, Imperial Japanese Army.

The judge advocate replied as follows:

The judge advocate wishes to point out that in this case we do not have a situation that falls under the provisions of Section 388(e) of Naval Courts and Boards which states that a valid ground for challenge is when the challenged member "sat as a member of a court or board which tried or investigated another person upon charges based on the same transaction concerning which the accused is on trial." No member of this commission sat on a court which tried or investigated charges based on the same transaction for which the accused, Inoue, is now on trial. It is true that the facts and circumstances might be similar, but this is not a valid ground for challenge. Such a situation exists in civil criminal courts where the same judges sit on numerous cases in the course of a year wherein the facts and circumstances are similar.

Before the challenged member replies, the judge advocate, with the permission of the commission, wishes to make it known that he has two dispatches relating to the challenge of members of this commission. Since it has been stipulated that such classified material will not be read in open court, it will suffice to state that the first dispatch is from Commander Marianas to SecNav, JAG, requesting permission to relax, in these war crime trials, the rule stated in Section 388(e) of Naval Courts and Boards and the second is a reply in the affirmative.

The certified true copies of the two dispatches were presented to Commander Carlson, counsel for the accused, and to the commission.

The challenged member replied as follows:

I, Bradner W. Lee, junior, state that I have not previously investigated the charges nor expressed an opinion thereon and that I have not formed a positive and definite, or any, opinion as to the guilt or innocence of the accused. That I have never seen these charges and specifications, dated 13 March 1947, until the afternoon of 22 April 1947, relating to the accused. That I have never heretofore seen the accused, Inoue, Fumio, except when he appeared as a witness in the case of Major Furuki, and that I have never talked to Captain Inoue. Furthermore, I admit that I was a member of the commission which tried the previous case, just completed, of Major Furuki. However, I firmly believe that I can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases, and my own conscience. 92

An interpreter read this reply of the challenged member in Japanese.

The commission was cleared. The challenged member withdrawing.

The commission was opened and all parties to the trial entered. The commission announced that the objection of the accused was not sustained.

The accused objected to Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army, as follows:

The accused objects to Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army, because he sat as a member of the Military Commission which tried Major Furuki, Hidesaku, Imperial Japanese Army, on charges growing out of similar incidents which occurred on Jaluit. The defense in this present case is based on the same and similar facts which were relied on as a defense in the Furuki case. Our plea to the jurisdiction of this commission to try the accused in this case is similar to that in the Furuki case. The accused in this case, Captain Inoue, Fumio, Imperial Japanese Army, was a witness in the Furuki case. Because Lieutenant Colonel Victor J. Garbarino sat as a member of the Military Commission which tried Major Furuki, Hidesaku, and heard the testimony of the accused as a witness in that case we charge that he is prejudiced against the accused, Captain Inoue, Fumio, Imperial Japanese Army. We charge that Lieutenant Colonel Garbarino has formed a positive and definite opinion as to the guilt or innocence of the accused, Captain Inoue, Fumio, Imperial Japanese Army.

The accused waived the right to have the challenge read in Japanese.

The challenged member replied as follows:

I, Lieutenant Colonel Victor J. Garbarino, did serve on the commission to try the Furuki case and I recall Captain Inoue appearing as a witness. However, I believe I can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission, the rules of evidence prescribed for trial, the customs of war in like cases and my own conscience.

The accused waived the right to have the reply of the challenged member read in Japanese.

The commission announced that in view of the fact that the circumstances concerning this objection appear to be identical with the previous case, the commission would not be cleared and announced that the objection of the accused is not sustained.

The accused objected to Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army, as follows:

The accused objects to Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army, because he sat as a member of the Military Commission which tried Major Furuki, Hidesaku, Imperial Japanese Army, on charges growing out of similar incidents which occurred on Jaluit. The defense in this present case is based on the same and similar facts which were relied on as a defense in the Furuki case. Our plea to the jurisdiction of this commission to try the accused in this case is similar to that in the Furuki case. The accused in this case, Captain Inoue, Fumio, Imperial Japanese Army, was a witness in the Furuki case. Because Lieutenant Colonel Henry K. Roscoe, sat as a member of the Military Commission which tried Major Furuki, Hidesaku, and heard the testimony of the accused as a witness in that case we charge that he is prejudiced against the accused, Captain Inoue, Fumio, Imperial Japanese Army. We charge that Lieutenant Colonel Roscoe has formed a positive and definite opinion as to the guilt or innocence of the accused, Captain Inoue, Fumio, Imperial Japanese Army.

The accused waived the right to have the challenge read in Japanese.

The challenged member replied as follows:

I, Lieutenant Colonel Henry K. Roscoe, acknowledge having participated as a member of the commission in the trial of Furuki, however, it is my firm belief that I can truly try without prejudice or partiality the case now pending according to the evidence which shall come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases, and my own conscience.

The accused waived the right to have the reply of the challenged member read in Japanese.

The commission announced that in view of the fact that the circumstances concerning this objection appear to be identical with the previous case, the commission would not be cleared and announced that the objection of the accused was not sustained.

The accused objected to Rear Admiral Arthur G. Robinson, U. S. Navy, as follows:

The accused objects to Rear Admiral Arthur G. Robinson, U. S. Navy, because he sat as a member of the Military Commission which tried Major Furuki, Hidesaku, Imperial Japanese Army, on charges growing out of similar incidents which occurred on Jaluit. The defense in this present case is

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based on the same and similar facts which were relied on as a defense in the Furuki case. Our plea to the jurisdiction of this commission to try the accused in this case is similar to that in the Furuki case. The accused in this case, Captain Inoue, Fumio, Imperial Japanese Army, was a witness in the Furuki case. Because Rear Admiral Arthur G. Robinson, sat as a member of the Military Commission which tried Major Furuki, Hidesaku, and heard the testimony of the accused as a witness in that case we charge that he is prejudiced against the accused, Captain Inoue, Fumio, Imperial Japanese Army. We charge that Rear Admiral Arthur G. Robinson has formed a positive and definite opinion as to the guilt or innocence of the accused, Captain Inoue, Fumio, Imperial Japanese Army.

The accused waived the right to have the challenge read in Japanese.

The challenged member replied as follows:

I, Rear Admiral Arthur G. Robinson, acknowledge that I sat as a member of the military commission that tried Major Furuki, but I should like to state unequivocally that I have formed no opinion as to the guilt of Captain Inoue in this present case. I wish to solemnly assure you that I can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases, and my own conscience.

The accused waived the right to have the reply of the challenged member read in Japanese, with the understanding that the translation will be read to the accused at a later date, as will the translations of the replies of the previous challenged members.

The commission announced that in view of the fact the circumstances concerning this objection appear to be identical with the previous case, the commission would not be cleared and announced that the objection of the accused was not sustained.

The judge advocates and each member were duly sworn.

The accused stated that he had received a copy of the charges and specifications preferred against him, both in English and Japanese, on March 13, 1947.

The judge advocate asked the accused if he had any objection to make to the charges and specifications.

The accused replied in the affirmative and read a written statement in Japanese, prefixed marked "F."

An interpreter read the English translation, copy prefixed marked "G."

The accused further objected and read a written statement in English, prefixed marked "H."

The accused waived the right to have this objection read in Japanese at this time.

The accused further objected and read a written statement in Japanese, prefixed marked "I."

An interpreter read the English translation, copy prefixed marked "J."

The judge advocate requested a recess to prepare a reply to the objections of the accused.

The commission then, at 4:15 p.m., took a recess until 4:44 p.m., at which time it reconvened.

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

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

The judge advocate made a reply to the objection of the accused, prefixed marked "K."

The accused waived the right to have the reply of the judge advocate read in Japanese in open court at this time, provided the accused be furnished a copy at a later date.

The commission was cleared.

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

The commission announced that the objections of the accused to the charges and specifications were not sustained and that the commission found the charges and specifications in due form and technically correct.

The accused stated that he was not ready for trial, requested a postponement of the trial and read a written statement in English, appended marked "L."

The commission was cleared.

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

The commission announced that the request of the accused was granted.

The commission then, at 5:18 p.m., adjourned until 9 a.m., Monday, May 5, 1947.

SECOND DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Monday, May 5, 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 Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Bolton, 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, his counsel, and the interpreters.

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

The accused stated that he was ready for trial.

No witnesses not otherwise connected with the trial were present.

Mr. Akimoto, Yuichiro, counsel for the accused, read a written objection
in Japanese to the jurisdiction of the commission over the accused, original
appended marked "M."

The commission then, at 10:13 a. m., took a recess until 10:28 a. m.,
at which time it reconvened.

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

An interpreter read an English translation of Mr. Akimoto's objection
to the jurisdiction of the commission over the accused, copy appended marked
"N."

Mr. Suzuki, Saizo, counsel for the accused, read a written objection in
Japanese to the jurisdiction of the commission over the accused, original
appended marked "O."

The commission then, at 11:26 a. m., took a recess until 2:07 p. m., at
which time it reconvened.

Present: All the members, the judge advocates, the accused, his 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 interpreter read an English translation of Mr. Suzuki's objection to the jurisdiction of the commission over the accused, copy appended marked "P."

Commander Martin E. Carlson, U. S. Naval Reserve, counsel for the accused, read a written objection to the jurisdiction of the commission over the accused, copy appended marked "Q."

The accused waived the right to have the objection of Commander Carlson read in Japanese in open court at this time.

The commission then, at 3:08 p.m., took a recess until 3:24 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate read a written statement in answer to the objections made by the accused, appended marked "R."

The commission then, at 4:27 p.m., adjourned until 9 a.m., tomorrow, Tuesday, May 6, 1947.

THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Tuesday, May 6, 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 Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Bolton, 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, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate concluded reading a written reply to the objection by
the accused to the jurisdiction of the commission, copy appended marked "R."

The commission was cleared. The commission was opened, and all parties
to the trial entered. The commission announced that the objection was not
sustained.

The judge advocate read the letter containing the charges and specifica-
tions, original prefixed marked "S."

An interpreter read a Japanese translation of the letter containing the
charges and specifications, copy prefixed marked "T."

The judge advocate arraigned the accused as follows:

Q. Inoue, Fumio, captain, Imperial Japanese Army, you have heard the
charges and specifications preferred against you; how say you to the first
specification of the first charge; guilty or not guilty?

A. Not guilty.

Q. To the second specification of the first charge, guilty or not guilty?

A. Not guilty.

Q. To the first charge, guilty or not guilty?

A. Not guilty.

Q. To the first specification of the second charge, guilty or not guilty?

A. Not guilty.

Q. To the second specification of the second charge, guilty or not guilty?

A. Not guilty.

Q. To the second charge, guilty or not guilty?

A. Not guilty.

The prosecution began.

The judge advocate made an opening statement, copy appended marked "U."

An interpreter read the judge advocate's statement in Japanese.

The judge advocate requested the commission to take judicial notice of the following:

That from December 8, 1941, to August 14, 1945, a state of war existed between the Imperial Government of Japan and the Government of the United States of America.

That on or about August 14, 1945, the Marshall Islands were occupied by the armed forces of the United States of America, and that said Marshall Islands have continued under the government and jurisdiction of the United States since that date.

That Jaluit Atoll is part of the Marshall Islands and is part of the territory under the command of Commander Marianas.

That the Imperial Government of Japan surrendered to the Government of the United States of America on September 2, 1945, and that no peace treaty has been consummated between the Imperial Government of Japan and the Government of the United States of America.

The Cairo Conference of December 1, 1943, particularly that portion which reads: "Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the First World War in 1914."

The Potsdam Declaration of July 26, 1945, particularly paragraph 8, which reads: "The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine."

The instrument of Japanese surrender, dated September 2, 1945, signed at Tokyo Bay, Japan, particularly that portion which reads: "We, acting by command of and in behalf of the Emperor of Japan, the Japanese Government, and the Japanese Imperial General Headquarters, hereby accept the provisions set forth in the declaration issued by the heads of the governments of the United States, China, and Great Britain, on July 26, 1945, at Potsdam."

The Imperial Ordinance No. 26, for the Treatment of Judicial Affairs in the South Sea Islands, enacted in 1923, and revised in 1933, and that under the provisions of this ordinance the local criminal law effective in the Marshall Islands in the period of the commission of the alleged crimes was the Criminal Code of Japan.

The Criminal Code of Japan as applicable to the Marshall Islands, particularly Section 199 of the Criminal Code of Japan, which reads in tenor as follows: "Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years.", and Article 41 which reads in tenor as follows: "Acts of persons under fourteen years of age are not punishable."

The Fourth Hague Convention of October 18, 1907, and the Annex thereto, particularly Articles 29 and 30 of the Annex, which read:

"Article 29. A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party....."

"Article 30. A spy taken in the act shall not be punished without previous trial."

and that Japan ratified and signed this convention.

The Geneva Prisoner of War Convention of July 27, 1929, and of the fact that although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control, and also, so far as practicable, to interned civilians.

The Treaty of Versailles, particularly Article 119 thereof, in which Germany renounced in favor of the Principal Allied and Associated Powers all her rights and titles over her overseas possessions; and Article 22 of the Covenant of the League of Nations; Part I of the Treaty of Versailles, which established the mandatory system and set forth the Class "C" mandate.

The Charter established by the League of Nations with respect to the manner in which the islands mandated to Japan should be governed.

Proclamations Number 1 through Number 7 to the People of the Marshall Islands, issued by and under the authority of Chester W. Nimitz, Admiral, United States Navy, Commander-in-Chief, United States Pacific Fleet and Pacific Ocean Area, Commanding the United States Forces of Occupation in the Marshall Islands, and Military Governor of the areas occupied by such forces; and Ordinances 1 through 5, issued under the authority of the Military Governor of the Marshalls Area, particularly:

Proclamation Number 1, "Article 1. All powers of government and jurisdiction in the occupied territory and over the inhabitants therein, and final administrative responsibility, are vested in me as Admiral, United States Navy, Commanding the United States Forces of Occupation, and Military Governor, and will be exercised through subordinate commanders by my direction. Article 2. The exercise of the powers of the Emperor of Japan shall be suspended during the period of military occupation."

Proclamation Number 2. "By proclamation No. 1, I have assumed all powers of government of the areas of the Marshall Islands, occupied by the United States Forces under my command. In order to make provisions for the safety of the United States Forces under my command and for the maintenance of public order and safety in the area occupied by such forces, I, C. W. Nimitz, Admiral, United States Navy, Commander-in-Chief, United States Pacific

Fleet and Pacific Ocean Areas and Military Governor of the Occupied Territory, ^{of T} hereby proclaim as follows: Article 4. "Any person who commits an act which violates any provision of Japanese penal law in effect in these islands prior to occupation by the Forces under my command or the provisions of native law customary in the islands, may, at the discretion of the Military Governor or under his authority, be brought to trial before Military Court and on conviction, shall suffer such punishment as the Court may direct. The court shall be guided by punishments customarily imposed for such offenses in these islands and may, in the case of offenses against native customary law, call upon village headmen or chiefs to sit with the Court."

Proclamation No. 4,

"Article II. Jurisdiction.

"1. Over Territory. Jurisdiction of every Military Court shall extend to the whole of the occupied territory, and, as regards each part of the territory, from the time at which that part was first occupied.

"2. Over Persons. Jurisdiction of every Military Court shall extend to all persons in the territory except:

- a. Members of the Forces of occupation; and
- b. Persons who are treated as prisoners of war under the Geneva Convention of July 27, 1929, Provided: that the Military Governor may order the trial before a Military Court of such persons when accused of war crimes.

"3. Over offenses. Military courts shall have jurisdiction over:

- a. All offenses against the laws and usages of war.
- b. All offenses under any proclamation, order or regulation issued under the authority of the Military Government.
- c. Offenses against provisions of Japanese penal law in effect at the time of occupation, or the provisions of native law customary in the occupied territory, provided the trial of such offenses or class of offense by a Military Court has been ordered by the Military Government."

Ordinance No. 1,.....(4): "Sit as a court with jurisdiction over offenses and disputes not reserved for trial by military courts; mete out and carry into effect punishments appropriate to the crime, not to exceed thirty (30) days at labor."

Ordinance No. 2,.....Part II, Section 11 "There is hereby established in each atoll a Marshallese Court. The Marshallese Court shall be composed of not less than three (3) or more than five (5) members. The Magistrate shall be the presiding officer of the court and shall choose the remaining members from among the District Headmen and Elders. In an atoll which does not have a Magistrate, the District Headman shall be the presiding officer of the court." Section 12 (a) (b) "The Marshallese Court shall have jurisdiction over: (a) All offenses punishable under the provisions of this ordinance, except those offenses for which the penalty is death or imprisonment; (b) All violations of local atoll regulations enacted by the Atoll Council pursuant to section 8 hereof." Section 32: "The following acts are

criminal offenses which shall be punished as herein prescribed: (a) Murder - the wilful or intentional taking of the life of a human being without lawful justification or excuse. (This offense is tried by a military court.) Punishment: Death, or imprisonment for a period which shall not be less than ten (10) years, including imprisonment for life. Manslaughter - the unlawful taking of the life of a human being without wilful intent. (This offense is tried by a military court.) Punishment: Imprisonment at hard labor for a period of not less than one (1) year or more than three (3) years."

Directive of 10 January 1946, serial 362....."10(d). To suits and torts, both at law and in equity, arising under local customs and involving amounts of one hundred dollars (\$100.00) or less." "11(a) All other judicial matters are reserved to military courts, although the local native court may serve as court of first instance in any criminal case, and order the defendant held in confinement while awaiting a military court to take jurisdiction. Similarly, the native court shall be competent to impose imprisonment exceeding six (6) months or a fine to exceed one hundred dollars (\$100.00), or both such imprisonment and fine."

The commission then, at 10:32 a.m., took a recess until 11:10 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

The accused waived the right to have the judge advocate's request to the commission to take judicial notice read in Japanese in open court at this time.

Commander Martin E. Carlson, U. S. Naval Reserve, counsel for the accused, read a written objection to the commission taking judicial notice of the foregoing, copy appended marked "V."

The accused waived the right to have the objection of Commander Carlson to the commission taking judicial notice read in Japanese in open court.

The commission then, at 11:25 a.m., took a recess until 2:05 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Mr. Suzuki, Saizo, counsel for the accused, offered a further objection to the commission taking judicial notice, appended marked "W." The accused waived the right to have the objection of Mr. Suzuki to the commission taking judicial notice read in Japanese in open court.

An interpreter read an English translation of the objection of Mr. Suzuki to the commission taking judicial notice, copy appended marked "X."

The judge advocate replied to the objections of the accused, copy appended marked "Y."

The accused was furnished a copy of the judge advocate's reply which was translated to him in Japanese. The accused waived the right to have the reply of the judge advocate read in Japanese in open court.

The commission was cleared. The commission was opened. All parties to the trial entered. The commission announced that the objection was not sustained.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

- Fukatsu*
1. Q. State your name and rank. - ?
A. Sergeant Major, Imperial Japanese Army, Fukatsu, Tadashi.
 2. Q. Are you presently confined on Guam?
A. Yes.
 3. Q. If you recognize the accused state as whom.
A. Inoue, Fumio, captain, Imperial Japanese Army.
 4. Q. Were you ever stationed with the Japanese armed forces on Jaluit Atoll, Marshall Islands?
A. I was.
 5. Q. During what period were you stationed on Jaluit?
A. I arrived on Jaluit on the 15th of May 1943 and stayed there until the tenth of October 1945.
 6. Q. To what organization were you attached while stationed on Jaluit?
A. It was the Second Battalion of the First South Seas Detachment.
 7. Q. Was the accused also stationed on Jaluit during that period?
A. Yes.
 8. Q. To what organization was he attached?
A. Second Battalion, First South Seas Detachment.

The accused moved to strike out this answer on the ground that it was the mere opinion of the witness.

The judge advocate replied.

The commission announced that the motion to strike out the answer was not sustained.

9. Q. In April 1945 were you assigned duty in connection with some native prisoners?

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.

10. Q. What was the assignment that you received?

A. It was to guard natives.

11. Q. From whom did you receive that assignment?

A. Captain Inoue.

12. Q. Will you tell this commission what you did as a result of that assignment?

A. Around the tenth of April 1945 Captain Inoue told me to go and wait in front of the Second Ammunition Dump after supper. There, Captain Inoue said they are going to be moved, watch that they do not escape. From the ammunition dump four natives were brought out and placed on the truck, the truck started out toward Aineman, this was about 3:40 in the afternoon. When I stated four natives were brought out from the ammunition dump I made a mistake, it was three. After the truck had gone for about three thousand meters it came to the Aineman Transmitting Station from which four natives were brought out and placed on the truck, which already contained the three natives. With a total of seven natives on it the truck went on for about five minutes and stopped. There Captain Inoue gave us the following orders. At the truck were myself, Warrant Officer Wakamatsu and Captain Jinno. He told us to keep a sharp watch to see that the natives did not escape. There were four other soldiers and it looked as if Captain Inoue was talking to them. Eventually they went in different directions. Then Captain Inoue said to take the three male natives from the truck. Myself, Wakamatsu and Jinno cooperating took them from the truck. Captain Inoue taking the three natives went into the jungle on the outer side of the reef. After they had been gone about ten minutes four to five pistol shots were heard. Just at this time Captain Jinno was down from the truck, myself and Wakamatsu were on the truck. Captain Jinno called to me to take a look and I looked in the direction of the shots, but not being able to see Inoue or the natives, I stated that I could not see anything. A short time later Captain Inoue came out toward the truck and he said to take the two women from the truck, so myself, Wakamatsu and Jinno cooperated and took them down from the truck. Taking the two women with him he again entered the jungle. I do not have a very distinct recollection of the time, but about ten minutes after I heard two or three pistol shots. A short time later Captain Inoue again returned to the truck. Next, he told us to take down the two children who were twelve to thirteen and taking the two children with him he again entered the jungle. Also about ten minutes later two to three pistol shots were heard. A short time after the pistol shots were heard, Inoue called to us three from the jungle. The three of us ran toward the jungle where he had entered, there there was a big hole with the dead natives in it and Captain Inoue was standing by the hole. Then Inoue said to us, "They were executed after investigation as spies and because they had committed murder at Mille, they had been consulted on and examined." And he also stated that he had been ordered to do this execution by the commanding officer, and that he executed them. It sounded as if Captain Jinno was asking him did he also kill the children and Captain Inoue answered, "I could not help but kill them, I expressed my opinion many times to the commanding officer, but the commanding officer did not heed me. I can not help but shed tears. I made myself blind to the tears and executed them." Next he stated, "We are going to bury the natives, you shall help in this." He started to throw dirt in the hole. After we had

finished, the four of us gave prayers for the dead natives and went back toward the truck. After we came back to the truck Captain Inoue called the guards who had been placed out in front and in back and after we were all assembled it seemed as if Captain Inoue was talking to the four guards and he was also bowing his head toward the jungle where the natives had been buried. At this time the three of us were on the truck. By the time we were on the truck and going back toward headquarters it was getting dark. I do not remember the exact time. 8x

13. Q. Where was the Second Ammunition Dump located?
A. On the main island of Emidj.

14. Q. Which of the natives were removed from the Second Ammunition Dump?

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. From the Second Ammunition Dump was taken one woman of about twenty-seven to twenty-eight, one man of about thirty and a boy of about twelve to thirteen. 8x

15. Q. Who removed these prisoners from the Second Ammunition Dump?

A. We who went as guards cooperated and brought them out.

16. Q. At what location on Aineman Island were the other natives confined?

A. It was the Transmitting Station which was built as strongly as the ammunition dump and its position was about three thousand meters or so from the main village of Emidj.

17. Q. Which prisoners were removed from the Transmitting Station?

A. There was one man of about forty, a woman of about forty and another man of about thirty and a girl of about twelve to thirteen. Their ages are just a guess from what I saw and I may be mistaken.

18. Q. Was the jungle into which the accused took the natives located on Aineman Island?

A. Yes.

19. Q. You stated that "Inoue called from the jungle to the three of us." Who were the three referred to? 8x

A. The three were Captain Jinno, who was at that time a first lieutenant, Petty Officer Wakamatsu, and myself.

20. Q. Where were the four other guards located while this was going on?

A. They were some distance in front of the truck as we did not hear their instructions I did not remember how far out they were, but I do remember seeing them go north and south.

21. Q. When the accused entered the jungle with these natives was he armed?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. He had a pistol.

22. Q. When you saw the bodies of the dead natives did you notice any wounds on their bodies?

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

The judge advocate withdrew the question.

23. Q. You have testified that you saw the bodies of the dead natives in the hole. Will you describe their appearance?

A. On their faces and heads there was some blood and some were lying face down, some with their face up, but the direction of their heads were all the same.

24. Q. You have testified that Captain Inoue stated that he executed these natives on the order of the commanding officer, did he give any reason for the executions?

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

The judge advocate withdrew the question.

25. Q. Did the accused in addition to his statement that he had executed the natives on the order of the commanding officer state anything else at that time?

A. He stated that they had been investigated and they had come to spy and that they had committed murder on Mille and as a result consultation had been held on them and they had been ordered executed by the commanding officer.

The commission then, at 3:40 p.m., took a recess until 3:58 p.m. at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Fukatsu, Tadashi, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

26. Q. Did you receive any other assignment to guard some native prisoners later in the month of April in 1945?

A. About three or four days after the tenth of April to which I testified before, I received an assignment to guard natives.

27. Q. From whom did you receive this assignment?

A. From Captain Inoue.

28. Q. Tell the commission what you did as a result of this assignment.

A. After supper I was ordered to go to the Second Ammunition Dump, I went to the Second Ammunition Dump and there Captain Inoue came and brought out a native from the dump. He stated that we were going to take this native toward Enibor. Myself and Captain Inoue placed the native on the truck. The truck went through Aineman toward Enibor. After the truck had been going for about twenty-five to twenty-six minutes the truck stopped about one hundred meters before the crematorium and we took the native down from the truck. Captain Inoue said "You stay here and let no one go through here toward Enibor." Captain Inoue took the native with him and went down the road toward Enibor. As the road was not straight and was winding I could not see. Twelve to thirteen minutes later I heard two to three pistol shots. A short time later I was called to in a loud voice so I ran toward the voice. When I ran toward the voice Captain Inoue was standing by a hole which the native was in. When I went there Captain Inoue said that this person came here to spy and that he had committed murder at Mille, he was the worst one among them and by the orders of the commanding officer he was executed. He said we are going to bury him, so help me, so we buried the native. After he was buried prayers were offered. Captain Inoue said we are going back to headquarters, so we walked back toward the truck and we went back toward headquarters. By the time we were going back it was getting a little dark.

29. Q. What was the sex of this native prisoner?

A. It was a male native of about thirty-two to thirty-three years of age.

30. Q. The location where the truck stopped and Captain Inoue took the prisoners with him, was that located on Aineman Island?

A. Was it the place where the truck stopped?

31. Q. Yes.

A. It is at the end of Aineman Island.

32. Q. Describe the appearance of the body of this native as you observed it.

A. I remember he had a wound at his temple and he was lying sidewise in the hole.

33. Q. Did Captain Inoue say who had performed the execution?

A. He said, "I just executed him by the orders of the commanding officer."

Cross-examined by the accused:

34. Q. You stated that on April tenth seven natives were executed and two or three days later another native was executed. If you know the reason for this please tell us.

A. This native escaped during the investigation and this was why his execution was later.

35. Q. You stated that this native's execution was delayed because he escaped during the investigation. Due to his escape do you know what events occurred?

A. It was getting a little dark when this native escaped and the commanding officer ordered a general search by the military and gunzokus to capture him. Guards were placed on all places on the atoll.

36. Q. When was this?

A. As I recall it was the night before the seven natives were executed.

37. Q. You stated that the native who escaped was looked for everywhere. Was he also looked for in the sea as well as on the land?

A. I know he was looked for on land, I have heard that he was looked for by canoe on the outlying islands, but I do not know about the sea.

38. Q. Do you know who was in charge of the search?

A. Naturally I think it was the commanding officer, Masuda.

39. Q. Do you know who directly took charge of the search?

This line of questioning was objected to by the judge advocate on the ground that it was irrelevant and immaterial and had no bearing on the issues.

The accused replied.

The commission announced that the objection was sustained.

40. Q. You testified that you went to the Second Ammunition Dump and also the Transmitting Station where the natives were confined. Did these confinements have facilities for air raid shelter?

A. The Second Ammunition Dump was a place where soldiers took shelter during air raids, as for the Transmitting Station, as it was some distance from the main island it was very rarely bombed and was considered a safe place.

41. Q. Was there any other place near headquarters where there were good air raid shelter facilities?

A. There was the First Ammunition Dump and the Command Post, that was all.

42. Q. Were these capable of withstanding bombings?

A. Both were dangerous if there was a direct hit, but for bombs falling nearby it was comparatively safe.

43. Q. You stated that you went to the Second Ammunition Dump on the tenth and two or three days later. Did you ever act as a guard on the ammunition dump while the natives were confined there?

A. Yes.

44. Q. While you were acting as guard there did anyone come to the ammunition dump to investigate or otherwise?

A. Usually Morikawa, Inoue and an interpreter. The commanding officer, I do not remember exactly, came about twice when Morikawa was absent.

45. Q. When the commanding officer came was there anyone with him?

A. Captain Inoue and the interpreter came along.

46. Q. What is the name of the commanding officer?

A. Rear Admiral Masuda, Nisuke.

The witness was duly warned.

The commission then, at 4:27 p.m., adjourned until 9 a.m., tomorrow, Wednesday, May 7, 1947.

FOURTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Wednesday, May 7, 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 Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Bolton, 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, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Fukatsu, Tadashi, 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-examination continued.)

47. Q. When did you first see these natives that you testified about?
A. It was around the end of March.

48. Q. Did you see them for the first time when Captain Inoue ordered you
to go with him to the ammunition dump?
A. Yes.

49. Q. Do you know who these natives were?
A. Do you mean their description?

50. Q. Yes.
A. The men were wearing white shirts with long pants, about two of them
were wearing short pants. All the women were wearing mother hubbards. They
were all barefooted. They all looked neatly dressed.

51. Q. Were they natives of Jaluit?
A. I did not know.

52. Q. Had they come to spy on Jaluit?
A. I heard this after the execution, from Captain Inoue.

53. Q. Did they look to you as if they were spies?

This question was objected to by the judge advocate on the ground that it was irrelevant, immaterial, and called for the opinion of the witness.

The accused replied. JK

The commission announced that the objection was sustained.

54. Q. Were they different than the Jaluit natives?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness, was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

55. Q. Did Captain Inoue appear to be reluctant to carry out the orders, that is, regarding these natives, when he first took them on the truck with you?

A. When we first placed them on the truck, Captain Inoue said, "We are going to move the natives." I did not notice his expression.

56. Q. How did he appear to you when the first of the natives were taken off the truck and he went into the jungle with them?

A. He seemed a little different from his usual self. He looked sad.

57. Q. And how did he look when the next group were taken into the jungle?

A. When he came out to take the next group in, when Captain Jinno asked him, "What were those shots?", he appeared as if he could not hear us and looked as if was thinking deeply. JK

58. Q. How did he look when he took the two children in?

A. The same as when he took the others. He looked very sad.

59. Q. You testified that he said certain things when he came out after the last time. Did he appear to be very happy?

A. He did not look happy. JK

60. Q. You testified that he said, "I cannot help but shed tears; I made myself blind to tears." Did you see any tears in his eyes?

A. At that time I did not look at his face, but I saw that he was very sad.

61. Q. What was Captain Inoue's general reputation?

A. As I worked together with him, I know that he was a very serious person and not a person to do a thing by himself. As our work was the special police detail and also in punishing military personnel, he was very deliberate and very careful. JK

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 prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.

A. Warrant Officer, Imperial Japanese Navy, Wakamatsu, Minoru.

2. Q. Are you presently confined on Guam?

A. Yes.

3. Q. Were you stationed with the Japanese forces on Jaluit Atoll?

A. I was.

4. Q. During what period were you stationed there?

A. From the 31st of October, 1941, to the 10th of October, 1945.

5. Q. To what organization were you attached?

A. The Sixty-second Naval Guard Unit.

6. Q. During the month of April, 1945, were you assigned duties in connection with some native personnel?

A. I was assigned duties.

7. Q. From whom did you receive the assignment?

A. I was assigned these duties by the former executive officer of the guard unit, Lieutenant Commander Shintome.

8. Q. Tell the commission what you did as a result of that assignment.

A. I think it was on the 9th or the 10th that myself, Inoue, Moriura, Ii and Nishida were ordered by the former executive officer, Shintome, to go to the Second Ammunition Dump after supper, by 3:30, to act as guards in moving natives, and to come under the command of Captain Inoue. After supper we assembled at the Second Ammunition Dump. About the same time the commanding officer, Inoue, and a Japanese civilian who looked like a gunzoku came and they talked for about ten minutes and then returned. The eight persons having assembled included Inoue. Inoue ordered the natives placed on the truck. We placed the three natives on the truck. Captain Inoue then instructed us to be sure that the natives did not escape. The truck started out toward the south from Emidj. After it had gone for about two or three thousand meters, it stopped at the transmitting station where four more natives were placed on the truck. The truck again started to move and, after it had gone seven hundred to five hundred meters, it again stopped. I remember Captain Inoue sending four guards out toward the front and the rear and he told First Lieutenant Jinno, myself, and Fukatsu to watch the natives who were on the truck. He also told us to take down three of the natives. Then he went toward the outer sea and went toward the right into the jungle. After about ten minutes, we heard several shots. Again Captain Inoue came back, next taking two natives, went in the same direction. After about the same time, we again heard the shots; Inoue came back and took the two remaining natives. He then came back toward where we could see him and called to us. The three of us went after him. After we had gone a distance of about sixty or seventy

9. Q. Do you know the names of any of these seven natives who were executed?
A. I do not know their names.

A. Their hands were tied in back of them and they were blindfolded before they were placed on the truck. As for their clothes, each one was wearing a white shirt and short pants, the woman was wearing a colored one piece dress.

A. One was a man of about twenty-two or twenty-three years old; the other was a boy whose age, I guess, would be about twelve or thirteen.

A. There were two men, one of about thirty, the other near fifty, about forty-five or forty-six, the one woman was about in her thirties, about thirty-four or thirty-five years old. The other was a girl of about twelve or thirteen. I do not remember exactly, but one or two of them were wearing long pants. The woman and the girl were wearing one piece dresses which were not white. Their hands were also tied in back and blindfolded.

A. The three men.

A. The two women.

A. The two children.

16. Q. You stated that around the 10th of April you received orders from the executive officer, Shintome. What work was Shintome performing around that period?

A. Lieutenant Commander Shintome was the executive officer of the Sixty-second Naval Guard Unit. He was in a position to directly help the commanding officer and was one of the head men of the Jaluit Garrison. He had many duties such as head of the land patrol, sea detail, the head of the sea patrol, the head of the transportation section, communication section and also over mines. He performed heavy and minor duties all by himself, but together with the army battalion commander he was an important man on Jaluit.

17. Q. You stated that Shintome and the battalion commander, Furuki, helped the commanding officer. Do you know if Furuki was absent when this native incident occurred?

The commission suggested that counsel establish the identity of the battalion commander before asking this question. 82
82

The accused withdrew the question.

18. Q. You have just stated that Shintome, together with the army battalion commander, helped the commanding officer. What is the name of the army battalion commander?

A. Major, Imperial Japanese Army, Furuki, Hidesaku.

19. Q. Do you know if Furuki was absent from Jaluit when these natives from Mille arrived?

A. On the night before the execution of the seven natives, one native escaped and from what I remember, Major Furuki was at headquarters and together with the executive officer, Shintome, helped in the search for this native. On the day of the execution, I do not know.

20. Q. Do you know the date when the natives from Mille were sent to headquarters?

A. I do not remember the exact date, but I think it was the beginning of March.

21. Q. When you say the beginning, is it a mistake for the end of March?

This question was objected to by the judge advocate on the ground that the counsel was interpreting the answers of the witness.

The accused withdrew the question.

22. Q. You just stated that it was the beginning of March. Are you sure of this?

A. As I had no connection with the natives at that time, and two years have already elapsed, I cannot say for sure whether it was the beginning or the end. 82

23. Q. Do you know if Major Furuki was absent from the main island from the end of March to the beginning of April?

This question was objected to by the judge advocate on the ground that it was too vague. 82

The accused withdrew the question.

24. Q. Do you know if Major Furuki was absent from the island from the end of March to the second or third day of April?

A. As I very rarely visit headquarters, I do not remember exactly whether Major Furuki was there or not.

25. Q. Who was in charge of the natives?

A. As I did not look into the natives, I do not know anything about who was in custody.

26. Q. You stated that the executive officer, Shintome, and the battalion commander, Major Furuki, directed the search ~~by~~ the native who escaped. Do you know who directly took charge of the search and commanded the men? If you know anything about this, please tell us.

A. This materialized by the order of the commanding officer, and the army battalion commander, Furuki, and the navy executive officer, each commanded the various men and went about the search. Concerning the defense and guarding furnished, if a submarine came into the lagoon of Jaluit, all matters of guard outlooks and of patrolling was conducted by Major Furuki and the executive officer, Shintome.

27. Q. Who was guardin^g the places of confinement when the natives escaped? ~~9x~~

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.

28. Q. Do you know if any one was scolded because of a mistake he had made in guarding natives?

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 sustained.

29. Q. While you were guarding the natives, did Admiral Masuda ever come to investigate the natives?

A. I went to guard the natives at the Second Ammunition Dump once or twice, but during my times as guard, Admiral Masuda did not come.

The commission then, at 10:27 a.m., took a recess until 10:50 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Wakamatsu, Minoru, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

30. Q. The civilian that you testified was in this group of eight or nine people, was he a Japanese citizen?

A. Yes, I think so.

31. Q. Do you know what his name is?

A. I do not know the name.

32. Q. Were these natives from Mille?

A. I did not know until Captain Inoue told me. Captain Inoue told me after the execution that they had come from Mille. That is how I know. JK

33. Q. When did you first see these natives from Mille?

A. When we went as a working detail to the Second Ammunition Dump and when they came out.

34. Q. How long before the execution was this?

A. When I went as a work detail to the Second Ammunition Dump was about two hours before they were executed. JK

35. Q. Was this the first time you had ever seen these natives?

A. Yes.

36. Q. You testified on direct examination you were assigned duties in connection with these natives by Lieutenant Commander Shintome. When were you assigned these duties by Lieutenant Commander Shintome?

A. It was before supper on the 9th or 10th of April, 1945; therefore, it must have been around 2:40 in the afternoon.

37. Q. What duties did he assign you? JK

A. To go as a guard to watch the natives in moving them.

38. Q. Was anyone else assigned as a guard with you?

A. The guard you mean now is the men to guard the natives. Is that what you mean?

39. Q. Yes.

A. The five of us were ordered as guards, but I was the one who received the order and relayed that order to the other four.

40. Q. Were there any other guards over these prisoners?

A. There were guards.

41. Q. Do you know why these prisoners were being guarded?

A. All I remember is that there were guards in front of the ammunition dump and other to this, I do not know.

42. Q. What were your regular duties on Jaluit?

A. Do you mean by battle station or duties other to this?

43. Q. Duties other to your battle station. What was your regular duty?

A. I was a member of the special police detail and worked under Captain Inoue and I also was the senior petty officer and in my spare time I performed these duties.

44. Q. Was Captain Inoue in charge of the police on Jaluit?

A. He was directly the head of the special police detail.

45. Q. Then how was it that Lieutenant Commander Shintome gave you orders in regard to guarding these prisoners?

A. Because I worked part of the time for Captain Inoue and the other I had duty as senior petty officer and I lived, for about a month or two, across the road from Lieutenant Commander Shintome's offices. He called me as I was going by and ordered me to go as guards with the other four.

46. Q. Did Captain Inoue know that you were ordered to guard these prisoners?

This question was objected to by the judge advocate on the ground that it was immaterial, irrelevant, and called for the opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

47. Q. Did you work directly under Captain Inoue?

A. Yes.

48. Q. Now, these orders that you received from Lieutenant Commander Shintome, how well did you carry them out?

A. I received the orders to act as guard in the movement of these natives. I relayed this to the others and performed my duties.

49. Q. How well did you perform your duties?

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

The accused replied.

The commission announced that the objection was sustained.

50. Q. The prisoners that you were ordered to guard, were they all taken out to be executed by Captain Inoue?

A. Yes.

51. Q. What was Captain Inoue's reputation on Jaluit?

A. He was a gentle and moderate person and in everything he did, he was careful, diligent and strove to make no mistakes. In our work he even asked the opinion of such persons as myself and these opinions were expressed to his superiors.

52. Q. You stated on direct examination that Captain Inoue looked very grave when you were at the unloading of the prisoners and just prior to it and after the execution. Did he appear to be reluctant to carry out this duty?

A. Every time he took the prisoners in and after we had gone to where the natives were, he always seemed very low-spirited looking back upon that period.

Reexamined by the judge advocate:

53. Q. In answer to the question by defense counsel, you stated that about April 1, the natives were taken to headquarters. What did you mean by that answer?

A. I cannot understand the question. I would like to have it repeated.

54. Q. Where at headquarters were these natives taken?

A. Was this before the execution?

55. Q. Before the execution and about April 1, at the time they were taken prisoner.

A. At that time, as I was not there, I do not know where they were taken but later I went as an outside guard and I heard that the persons inside were natives, but that was all I know.

56. Q. Was this at the Second Ammunition Dump?

A. Yes, the Second Ammunition Dump.

57. Q. Was the Second Ammunition Dump located at headquarters?

A. It was an ammunition dump which was used by the air squadron and was one of two ammunition dumps. It was located about three hundred to four hundred meters from headquarters on the island of Emdj.

Recross-examined by the accused:

58. Q. Were all eight natives taken here?

A. I do not know how many were brought.

59. Q. Do you know why they were brought there?

A. I do not know the reason for this either.

60. Q. How soon after this were they executed?

A. As I do not know the exact date when they were taken, I do not know how many days passed.

61. Q. Was it several days?

A. I do not know the number of days.

62. Q. Were all the natives executed at the same time?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. Seven were executed and one was executed later. I heard about this other execution by documents of the Jaluit Defense Garrison.

63. Q. Do you know why one was executed later?

A. Because the one who had escaped the previous night had not been caught up to that time.

64. Q. Were you responsible for the one that escaped?

A. No, I had no responsibility.

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 prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, rank and present station.
A. Edward L. Field, lieutenant, U. S. Naval Reserve, presently attached to the Legal Staff, Commander Marianas, duties in connection with war crimes. OK
2. Q. If you recognize the accused, state as whom.
A. The accused in this case is Captain Fumio Inoue, Imperial Japanese Army.
3. Q. Are you the legal custodian of a document pertaining to matters concerning this trial?
A. Yes, I am.

4. Q. Will you explain to the commission how this document came into your possession?

This question was objected to by the accused on the ground that the accused has not been afforded the opportunity to know what this document is. OK

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The document which I have in my possession was written by the accused, Captain Inoue. It came into my possession as a result of an investigation that I undertook at the stockade early in December, 1946, with Lieutenant Frederick Tremayne acting as interpreter. I interviewed personnel at the stockade from Jaluit Atoll. These personnel were all Japanese nationals and among those interviewed was the accused, Captain Inoue. At this interview he informed us that he would gladly write out an acknowledgment of what he knows concerning the alleged war crimes at Jaluit Atoll. Writing facilities were made available to him in order that he might write this acknowledgment out and he so did. This document was not written in my presence, but was later delivered to the guards at the stockade by Captain Inoue after he had written it and it was in turn delivered to my custody.

5. Q. Was any reward or inducement offered to Captain Inoue if he prepared this statement?

This question was objected to by the accused on the ground that the witness has already testified that he was not present when the statement was prepared.

The judge advocate withdrew the question.

6. Q. Did you offer any reward or inducement to Captain Inoue to prepare this statement?

A. I did not.

7. Q. To your knowledge, did anyone at the stockade offer any reward or inducement to Captain Inoue to prepare this statement?

This question was objected to by the accused on the ground that this witness should not be allowed to testify as to whether or not any reward was offered by anyone at the stockade since he was not present when the document was signed.

The judge advocate replied.

The commission announced that the ^{obj}jection was not sustained. OK

A. Insofar as I know, there was no inducement or threats used to obtain this statement from Captain Inoue.

The witness was duly warned.

The commission then, at 11:30 a.m., took a recess until 2:06 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Edward L. Field, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

The original statement in Japanese of the accused, Captain Inoue, Fumio, Imperial Japanese Army, and an English translation thereof, were submitted to the accused and to the commission, and by the judge advocate offered in evidence.

The accused objected to the admission of this document in evidence as follows:

Commander Martin E. Carlson, United States Naval Reserve, a counsel for the accused, read a written objection, copy appended marked "X." OK

The accused waived the right to have the objection of Commander Carlson read in Japanese in open court.

The commission then, at 2:25 p.m., took a recess until 2:40 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Edward L. Field, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony. JK

(Examination continued.)

The accused waived the right to have the objection of Mr. Akimoto, Yuichiro, read in Japanese in open court. Appended marked "AA."

An interpreter read the English translation of Mr. Akimoto's objection, copy appended marked "BB."

With the permission of the commission, the judge advocate resumed his questioning of the witness.

8. Q. At the time that Captain Inoue offered to prepare this statement relative to his connection with the case of the Mille natives, did you have a conversation with him concerning his part in the case of the Mille natives?
A. This statement is merely the result of our request that he write down what he had just previously told us by way of conversation orally and he said that he would.

9. Q. Does this statement in substance contain the facts as related to you by Captain Inoue in the conversation at that time?
A. The written statement contains a synopsis of the general substance of the oral statement that Captain Inoue made to me.

The judge advocate replied to the objection of the accused to receiving the statement of Captain Inoue, Fumio, Imperial Japanese Army, into evidence. JK

The accused waived the right to have the reply of the judge advocate read in Japanese in open court.

The commission was cleared. The commission was opened. All parties to the trial entered. The commission announced that the objections of the accused were not sustained and that these documents would be received in evidence.

The original statement of Captain Inoue, Fumio, Imperial Japanese Army, in Japanese and the English translation thereof were so received in evidence and are appended marked "Exhibit 1" and "Exhibit 2" respectively.

10. Q. Will the witness read the English translation of this statement?

The witness read the English translation of the statement of Captain Inoue, Fumio, Imperial Japanese Army, copy appended marked "Exhibit 2."

An interpreter read the English translation of the statement of Captain Inoue, Fumio, Imperial Japanese Army, appended marked "Exhibit 1."

The accused did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The judge advocate did not desire further 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 prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.

A. Jinno, Shigeru, captain, Imperial Japanese Army.

2. Q. Are you presently confined on Guam?

A. Yes.

3. Q. If you recognize the accused state as whom.

A. Captain Inoue, Fumio, Imperial Japanese Army.

4. Q. Were you stationed with the Japanese forces on Jaluit Atoll?

A. I was.

5. Q. During what period were you stationed on Jaluit?

A. From the thirtieth of October, 1943, until the tenth of October, 1945.

6. Q. To what organization were you attached?

A. The First South Seas Detachment.

7. Q. To what organization was the accused attached?

A. Headquarters of the First South Seas Detachment.

8. Q. What battalion was he attached to?

A. He was officially attached to the headquarters, but as he was separated from the headquarters he performed his duties at the headquarters of the second battalion.

9. Q. In April, 1945, were you assigned duties in connection with some native prisoners?

A. I was.

10. Q. From whom did you receive that assignment?

A. Captain Inoue.

11. Q. Tell this commission what you did as a result of that assignment.

A. I went to the ammunition dump and as I remember I was one of the first ones there. Just as I arrived there the commanding officer, Captain Inoue, and a Japanese person who was not of the regular military came and went into the ammunition dump. A short while later they came out and Captain Inoue said, "I am going to headquarters and will be back." During this period the rest of the men arrived. Almost at the same time Captain Inoue returned and said, "We are going to move the natives now, watch that they do not escape." We placed three natives on a truck at the ammunition dump. One man, one woman and a boy of about thirteen years were placed on the truck.

The truck went forward toward Aineman. Four more natives were placed on the truck at the Aineman Transmitting Station and as I remember the truck went forward for about six hundred meters and then stopped. Captain Inoue got down from the truck and said for two guards each to go forward from the truck and two to go backward from the truck. Myself, Wakamatsu and Fukatsu were ordered to watch the natives at the truck. Captain Inoue at first said to take down the three men. The three of us took them from the truck. Captain Inoue took down the three natives as I remember, one in front and two in back, and went into the jungle on the outer part of the island facing toward the sea. About ten minutes after he entered the jungle five to six shots were heard. I had Fukatsu look toward the shots, but Fukatsu said that he could see nothing so I continued to guard the natives at the truck. Five or six minutes after the first shots Captain Inoue came back and said to take down two natives. Captain Inoue taking the two natives went again in the same direction. Again several shots were heard, Captain Inoue again came back to the truck. At this time I asked Captain Inoue what were those shots, I do not know if he heard or not, but there was no answer. Taking the two natives again he went in the same direction. Again the shots were heard. A short time later Captain Inoue called out, "The three guards come here." We ran toward Captain Inoue. When we reached there there was a big hole and I was surprised to see the natives lying in it. Then Captain Inoue said to the three of us, "The natives you brought today were found upon investigation that in escaping from Mille Island had killed a soldier and had sneaked into Jaluit to spy, consultation was held and I was ordered to do the executions by the commanding officer and just did it." Then at this point I asked Captain Inoue, "Did you also kill the children?" Concerning the children Inoue said, "I expressed my opinion many times that they should be confined on another island, but the commanding officer did not heed and had them executed." After this he stated that we were going to bury them, so we assisted him. The four of us buried the natives. Captain Inoue said, "Let us offer our prayers and return." We offered our prayers and we returned.

12. Q. You stated that upon your arrival at the Second Ammunition Dump certain people entered the dump. Will you please repeat the names of those people?

A. The commanding officer, Captain Inoue, and I do not know the name, but one Japanese person.

13. Q. Who do you mean when you say commanding officer?

A. Rear Admiral Masuda, Nisuke.

14. Q. You stated that these people stayed in the ammunition dump a short while. Will you estimate how many minutes you mean by that statement?

A. About ten minutes.

15. Q. After this did you immediately proceed to the transmitting station on Aineman Island?

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

The judge advocate withdrew the question.

16. Q. Upon the return of Captain Inoue did you proceed to the transmitting station on Aineman Island?

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

The judge advocate withdrew the question.

17. Q. Upon the return of Captain Inoue where did you go?

A. What do you mean by "Upon the return of Captain Inoue"?

18. Q. In your testimony did you not state that Captain Inoue left the ammunition dump with the commanding officer?

A. The commanding officer, Captain Inoue and the one Japanese came and went into the ammunition dump, stayed there for about ten minutes. The three of them came out. At that time Captain Inoue said, "I am going to headquarters and will be right back." The three of them went to headquarters and then Captain Inoue returned to the ammunition dump.

19. Q. For how long a period was Captain Inoue gone?

A. About fifteen minutes.

20. Q. How long after his return did you depart from the ammunition dump?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. About seven or eight minutes, as this is a recollection I can not say exactly.

21. Q. For how long a period did you stop at the transmitting station on Aineman?

A. Less than ten minutes.

22. Q. Did Admiral Masuda accompany the group to the transmitting station on Aineman Island?

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. No.

The commission then, at 3:43 p.m., took a recess until 3:58 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Jinno, Shigeru, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

Cross-examined by the accused:

23. Q. You stated that a Japanese person, the commanding officer and Captain Inoue, the three of them came to the ammunition dump and that all went back to headquarters and that Captain Inoue returned to the Second Ammunition Dump. By this time, you stated, all the people had assembled. By "all the people", who do you mean?

A. The three who assembled were Nishida, Ii, Moriura. The persons already there when the commanding officer came to the ammunition dump were myself, Wakamatsu and Inoue. There was also Fukatsu.

24. Q. You stated that you were ordered to act as guard by Captain Inoue. Do you know who ordered the others and what commands the others were under?

A. That day, as I was army and the rest were navy, I did not know, but from what I heard later the executive officer, Shintome, told them to do this.

25. Q. From whom did you hear this?

A. As I remember it was Wakamatsu.

26. Q. From what you stated previously you testified as to one execution. Were there any other executions?

A. When you mean once, do you mean on the same day or later?

27. Q. Later.

A. I do not know.

28. Q. Do you know if any native who was confined escaped or not?

A. I do.

29. Q. When was this?

A. I do not remember exactly, but as I recollect it it was around the eighth.

30. Q. Were any measures taken because of the escape of this native?

This line of questioning was objected to by the judge advocate on the ground that it was irrelevant, immaterial and that it was beyond the scope of the direct examination.

The accused replied.

The commission announced that the objection was sustained.

31. Q. Was the fact of these executions made public?

A. I think it was about one week after the natives were executed that this was made public under the name of Admiral Masuda.

32. Q. Do you know the contents of that publication?

A. I only remember the gist of it.

33. Q. Please tell the commission the gist of it.

A. The natives who sneaked into Jaluit and Chitogen in the latter part of March committed murder and spied, therefore all were executed.

34. Q. Do you know where these natives sneaked in from?

A. What do you mean by sneaked in?

35. Q. What I mean is, from what island they sneaked into Jaluit.

A. Also in the notice they made the execution of these natives public. It stated that the natives were from Mille and also in the notice that the one native escaped. It stated the native was from Mille Island.

36. Q. Do you know the general date when these natives, that sneaked into Jaluit, were captured?

This question was objected to by the judge advocate on the ground that it was double.

The accused withdrew the question.

37. Q. Do you know generally what date the natives who sneaked in were captured?

A. Around that period I was out at the outlying islands instructing in farming and I do not remember.

38. Q. During the time that Admiral Masuda, Captain Inoue and this Japanese civilian were gone, did anything happen during that period of time while they were gone to the prisoners?

A. What do you mean "while they were absent"?

39. Q. During that interval while they were absent did anything happen to the prisoners?

A. No.

40. Q. None of the prisoners escaped during that time?

A. At that time none of them escaped.

41. Q. Did any of them escape?

A. Yes. There was one who escaped from among those who were confined.

42. Q. Did he escape prior to the time you were ordered to guard them or afterward?

A. None escaped after I was assigned duty to guard them. One escaped one or two days before that.

43. Q. How was this notice of execution you testified to published?

A. I can not say for sure because it was not under my jurisdiction, but I think it was originated from the intelligence officer, was mimeographed and was issued to the various units.

44. Q. You testified that after Captain Inoue made the executions that he stated in effect that he did not want to execute the children. Did he appear reluctant to carry out the executions before he did execute them?

A. Captain Inoue's attitude when he was taking the natives to be executed was very sad, especially when he took the children, looking at him when he went it was different from his usual appearance.

45. Q. Are you qualified to state the age of these children?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness and was irrelevant and immaterial since a witness need have no special qualifications to testify on a question of age.

The accused replied.

The commission announced that the objection was sustained.

46. Q. Can you state with a certainty how old these children were?

A. No, I cannot because I did not ask and I did not investigate them and I am just guessing this from what I saw of them.

47. Q. Could they have been more than fourteen years old?

This question was objected to by the judge advocate on the ground that it was argumentative.

The accused made no reply.

The commission announced that the objection was sustained.

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:

I do not remember exactly, but around the end of April, I was at the office of the special police detail and I was shown a document by Captain Inoue and he stated that this document had to be turned over to the different sections and told me to read it. On this document was written "judgment paper." I can only remember a portion of the contents and do not remember exactly. It may have been the end of April or the beginning of May.

The witness was duly warned and withdrew.

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

FIFTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Thursday, May 8, 1947.

The commission met at 10 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 Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Bolton, 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, his counsel, and the interpreters.

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

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. First Lieutenant, Imperial Japanese Army, Morikawa, Shigeru.
2. Q. Are you presently confined on Guam?
A. Yes.
3. Q. If you recognize the accused, state as whom.
A. Inoue, Fumio.
4. Q. During what period were you stationed with the Japanese forces on
Jaluit Atoll?
A. From the thirtieth of November, 1943, to the eleventh of October, 1945.
5. Q. To what organization were you attached?
A. The First South Seas Detachment.
6. Q. What battalion?
A. I was officially attached to the headquarters of the First South Seas
Detachment, but on Jaluit I performed my duties in the headquarters of the
Second Battalion.

7. Q. Was the accused also stationed on Jaluit during this period?

A. Yes.

8. Q. To what organization was he attached?

A. The headquarters of the First South Seas Detachment; but on Jaluit as he was separated from the headquarters, he performed his duties at the headquarters of the Second Battalion.

9. Q. In what capacity did he serve with the Second Battalion?

A. His duties were concerned with fortifications and training.

10. Q. In the latter part of March, 1945, were you assigned to investigate some native personnel?

A. Yes.

11. Q. From whom did you receive this assignment?

A. From Rear Admiral Masuda.

12. Q. On what date did you receive this assignment?

A. As I recall, it was on the thirty-first of March, 1945. OK

13. Q. As a result of that assignment did you investigate the natives?

A. I did.

14. Q. Was anybody else to work with you on this investigation?

A. Captain Inoue was also ordered.

15. Q. During what period of time was your investigation conducted?

A. As I recall, from April 1 to April 8, 1945.

16. Q. Did you question these natives on April eighth?

A. I remember I interrogated them in the morning of the eighth.

17. Q. How many natives were involved?

A. There were eight.

18. Q. What were their names?

A. Their names were Raliejap, the wife of Raliejap, whose name I do not remember, Anchio, Ralime, Neibet, Ochira, Lacojirik, and Siro. I think that was all.

19. Q. Were these natives confined?

A. They were confined at the Second Ammunition Dump on Emidj and the Base Transmitting Station on Aineman Island. OK

20. Q. At the time, in beginning your investigation, which of these natives were confined at the Second Ammunition Dump?

A. Raliejap, his wife, Anchio and Neibet were the ones confined at the Second Ammunition Dump. OK

21. Q. Did they remain at the Second Ammunition Dump until the conclusion of this investigation?

A. On the night of the second of April, when Ralime, Ochira, Lacojirik, and Siro arrived at Emidj, the other natives were moved to the Aineman Transmitting Station.

22. Q. Were Ralime, Ochira, Lacojirik, and Siro then confined in the Second Ammunition Dump?

A. Yes.

23. Q. Who was Neibet?

A. Neibet was a child of Raliejap.

24. Q. During your investigation did you inquire as to the age of Neibet?

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.

25. Q. What was Neibet's age?

A. I forgot the age she told me when I was investigating, but from what I recall she was from ten totwelve or thirteen years old.

26. Q. Who was Siro?

A. Siro was a male child of Ralime.

27. Q. What was his age?

A. His age also from what I recall was ten, twelve or thirteen years old.

28. Q. During your investigation of these natives, did you inquire as to what islands they were natives of?

A. I did. They stated they were natives of Mille Island.

29. Q. Were you the intelligence officer at that time?

A. Yes.

30. Q. After the completion of this investigation, do you know what was done with these natives?

A. I do.

31. Q. How did you learn what had happened to them?

A. On the fifteenth of April, 1945, I was called by Admiral Masuda and told to make up a letter to the following, and dispatch it to the various commanders on the island. The gist of the letter was as follows: The natives who sneaked into Jaluit and Chitogen and various areas in the latter part of March are natives who had killed a Japanese soldier and escaped and had come to our island to spy. They were felonious criminals; therefore, they have been executed.

32. Q. Was the preparation of such documents as this one, one of your duties as intelligence officer?

A. At that time this was my duty. There was no adjutant at that time to do these miscellaneous jobs for Admiral Masuda, so I was given this temporary duty.

33. Q. During the course of your investigation, did any of these natives escape?

A. On the night that the investigation was completed, a native named Ralime escaped.

34. Q. Was he later apprehended?

A. Yes.

35. Q. Were these natives ever given a trial?

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

The judge advocate withdrew the question.

36. Q. Do you know whether or not a trial was held for these natives?

A. To the extent that I know of, I do not know of any trial.

37. Q. Did you ever hear that a trial was given to these natives?

This question was objected to by the accused on the ground that it called for hearsay. *JK*

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. I have not heard of any. *JK*

38. Q. As intelligence officer, were you kept informed of what was going on in Jaluit Atoll?

A. I knew generally what was occurring at Jaluit, but as my work was the defense measures against the kidnaping tactics of the Americans and these duties were given the intelligence officer, but I was not in a position to know everything that went on in Jaluit.

39. Q. In the course of your official duty as intelligence officer, did you ever see any documents that stated that these natives had had a trial?

A. Not while I was intelligence officer, but right after I became a member of the defense section, by order of Major Furuki, who was head of the defense section, I received documents which myself and Captain Inoue made reporting the investigation of these natives and also a document labeled "judgment paper." *JK*

40. Q. I again ask you, did you ever see any papers that stated that these natives were given a trial.

A. I have not seen any documents stating that the natives received a trial.

41. Q. Did you ever take part in any trial for these natives?

A. No.

42. Q. And you continued to investigate them up until the morning of April eighth. Is that true?

A. Yes.

43. Q. Was the final report then submitted on the investigation?
A. Yes.

44. Q. Was this a written report?
A. Yes.

45. Q. When was it submitted?
A. As I recall, it was in the afternoon of the eighth.

46. Q. Who signed this report?
A. Captain Inoue and myself.

The commission then, at 10:54 a. m., took a recess until 11 a. m., at which time it reconvened. OK

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

No witnesses not otherwise connected with the trial were present.

Merikawa, Shigeru, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

47. Q. During what period were you the adjutant?
A. I have never been officially an adjutant.

48. Q. During what period were you acting as adjutant?
A. I have never acted as an adjutant.

49. Q. During what period did you perform the duties of adjutant?
A. As the staff of headquarters was very small, of very few, work involving the calling of the district commanding officers to headquarters or transmitting documents and submitting documents to them, there was no regular staff to perform these duties, so myself, who was in charge of work concerned with the outlying islands, was given this sort of work if called upon. OK

50. Q. Were you doing this type of work during the month of April, 1945?
A. Yes.

51. Q. While performing these duties were you ever called upon to prepare any documents which would indicate that these natives were given a trial?
A. No.

52. Q. To your knowledge, were these natives ever given a trial?
A. To my knowledge, I have not seen or heard of a trial.

Cross-examined by the accused:

53. Q. You stated that near the end of March, 1945, Admiral Masuda ordered you to investigate the natives. When you were given this order, was Admiral Masuda alone or was there someone else with you?

A. As I recall, when I was given this order, Admiral Masuda, Lieutenant Commander Shintome and Captain Inoue were present.

54. Q. Did Lieutenant Commander Shintome relay the order of Admiral Masuda to you or was he just present when Admiral Masuda gave you the order?

A. The first time I was ordered to investigate this incident on the thirty-first of March, I was ordered directly by Admiral Masuda with Captain Inoue and Lieutenant Commander Shintome present. On the next day, on the first of April, when Captain Inoue was ordered the main person in charge of the investigation and myself, who was a second lieutenant at that time, ordered to cooperate with Captain Inoue in investigating these natives. Here we were relayed this order by Lieutenant Commander Shintome.

55. Q. At this time, was Major Furuki present?

A. At this time, Major Furuki was absent. He had gone to Chitogen Island and was absent.

56. Q. You stated that after the natives from Mille were captured they were investigated. While these natives were being investigated, who was responsible for them?

A. I do not remember exactly who at this time was in charge of the natives, but when I was ordered to escort the four natives who were caught sneaking into Jalait, the four natives, including Raliejap, I was ordered by Lieutenant Commander Shintome to take them to the base pier from where they would be escorted to the Second Ammunition Dump and to hand the four natives over to a navy petty officer whom Lieutenant Commander Shintome would dispatch there. I do not remember exactly who was in charge, but from the instructions I received, I believe it was Lieutenant Commander Shintome. JK

57. Q. You stated that Captain Inoue and yourself investigated these natives. Please tell us briefly how this incident came to light and what the contents of that incident were.

This question was objected to by the judge advocate on the ground that it was irrelevant, immaterial, and beyond the scope of the direct examination. JK

The accused replied.

The commission was cleared. The commission was opened, and all parties to the trial entered. The commission announced that the objection was not sustained. JK

The question was repeated.

A. On the afternoon of the thirty-first of March, 1945, a dispatch was sent from the commanding officer of the Jaluit District to Admiral Masuda stating the following: "Last night, the thirtieth of March, four natives, including Raliejap from Mille, drifted ashore on the northern side of Jaluit Island, and at present are confined at headquarters, cutting off any communications with the other natives. It is requested that the officer in charge be dispatched and investigate these natives." That is how the incident came to light. By this dispatch, Admiral Masuda, Inoue and Shintome decided to have them sent to headquarters and investigate them there. They ordered me as investigator and also to escort them from the island. The next day Inoue was ordered to be a main investigator and myself and Inoue were called to Admiral

Masuda's quarters with Shintome present and warned not to say anything about the contents of this investigation as it may bring to light things of great importance to the self-supporting measures and operations concerning Jaluit. The natives from Mille, who were Raliejap and his family and Ralime, the younger brother of Raliejap, and his family, while transporting chagaro (Interpreter's note: coconut toddy) in a canoe at Mille, killed the Japanese soldier who was on the canoe with them, stealing that canoe and also a sanpan belonging to Warrant Officer Takahashi, who was in charge of one of the islands at Mille Atoll. They tried to escape to Majuro and Arno Islands with their families. After they had put out from Mille Island by canoe and sanpan, they were picked up by an American ship and they were given candy and food, and a Marshallese interpreter came to them with an American officer and they said to Raliejap and Ralime: "Fill your ship; sneak into the northern island of Jaluit Atoll. Raliejap, you shall sneak into Jaluit to relay the following message to the natives on Jaluit: That one month later when an American plane flies over the island, the natives shall assemble on an island where there are no Japanese and if there is any native who knows well about the Japanese forces on Jaluit, you shall bring him or else get information from him and come back. If you are caught by the Japanese, say that you were wrecked and drifted to Jaluit. After you have completed this mission, you shall be taken to Majuro and Arno where you shall be given work." Ralime sneaked into the northern part of Jaluit, Raliejap into Jaluit where they were both caught. JK
OK

The witness was duly warned.

The commission then, at 11:43 a. m., took a recess until 2 p. m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Morikawa, Shigeru, the witness under cross-examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

58. Q. This morning you stated as to the contents of your investigation. What methods did you use to obtain this information?

A. Each native was questioned by both of us and this became known through their statements.

59. Q. Was there any evidence?

A. As for evidence, there were the boats and the personal effects were seized. In Ralime's group, among the personal effects, were found petty officer Tanaka's clothes, who was the one that was killed by them. A dispatch was sent to Mille asking if such an incident had occurred. Two requests were made to Admiral Masuda, one to send a dispatch to Mille asking if such an incident had occurred; another was that Raliejap stated that he had relayed his message to the natives of Jaluit and we requested that we be allowed to interrogate the natives of Jaluit to see if this was true or not. 2

60. Q. You stated that among the possessions were the clothes of the person who was murdered, Tanaka's clothes. How did you know that it was Tanaka's clothes?

A. Captain Inoue himself investigated this while I was out at one of the outlying islands and I have heard from Captain Inoue that on the clothing was written "Tanaka" in Japanese characters.

61. Q. When was it that you visited the outlying islands?

A. I left Emdj in the evening of the second of April and returned early on the sixth of April.

62. Q. Before you went on your trip is it correct that you completed the investigation of Raliejap's group before you left?

This question was objected to by the judge advocate on the ground that counsel was originating evidence.

The accused withdrew the question.

63. Q. When was the investigation of Raliejap's group completed?

A. In the afternoon of the second of April.

64. Q. You stated that Raliejap's group was moved from the Second Ammunition Dump to the transmitting station when the other group was brought in. Was their movement because the investigation had been completed?

A. When Raliejap's group was moved to the transmitting station it was after I had left and I do not know the exact reason for this, but as the investigation had been completed for the time being and as the transmitting station was far away there was no means of transportation and very difficult to go there to investigate, they were moved there and the other group whose investigation was yet to be taken up placed in the Second Ammunition Dump.

65. Q. You stated that the contents of this case came to light through the statements of the natives. Do you remember which native confessed first?

A. As I remember it was Neibet.

66. Q. You stated as to the age of the children, but it is still a little vague. Please tell us to what extent was the development of the consciousness of the children.

This question was objected to by the judge advocate on the ground that it was vague and that it was characterizing the testimony of the witness.

The accused withdrew the question.

67. Q. You testified as to the age of the children in your investigation. What was the extent of the maturity of Neibet?

A. The way she answered our questions and knew well the duties given Raliejap, she was more mature than the usual people of her age.

68. Q. Do you know also concerning Siro?

A. As for Siro, as I did not investigate him very much, I do not know.

69. Q. You stated that Raline's group was investigated while you were visiting the outlying islands. When you returned on the sixth day of April to what extent was the investigation of Raline's group in?

A. For the time being, the investigation had already been completed by Captain Inoue.

70. Q. Then, this morning, when you testified that you investigated until the morning of the eighth, was this a further investigation of these natives?

A. This investigation from the sixth to the morning of the eighth was to ascertain facts in making up the report to be submitted.

71. Q. What did you do with the results of your day by day investigation?

A. The results of the investigation every day was reported to Admiral Masuda with Major Furuki and Lieutenant Commander Shintome present.

72. Q. At this time, did Admiral Masuda, Major Furuki and Lieutenant Commander Shintome ask any questions regarding your investigation?

A. I remember that they asked questions.

73. Q. When you went to report to Admiral Masuda, were Major Furuki and Lieutenant Commander Shintome always present?

A. When Major Furuki was away he was not there, but I recall Lieutenant Commander Shintome and Admiral Masuda always being present.

74. Q. What was the period in which Major Furuki was absent?

A. As I remember, he left Midj on the twentieth of March and returned on the second or third of April.

75. Q. And in all the reports you made after the third, was Admiral Masuda, Major Furuki and Lieutenant Commander Shintome present?

A. I remember that they were there.

76. Q. You stated this morning when you were ordered to take care of some documents concerning the natives you stated you saw a document labeled "judgment paper." What was the content of this document?

A. As I recall, the name of the native, the decision, the crime and the opinion of Captain Inoue.

77. Q. By the names of natives, do you mean the natives that you investigated?

A. Yes.

78. Q. Was Admiral Masuda's signature on the paper?

A. Yes.

79. Q. You stated concerning the executions of the natives that this was made public on the fifteenth or sixteenth of April. On this notice, was there also Admiral Masuda's signature?

A. On the original that was filed at headquarters there was Admiral Masuda's signature, but on the copies that were distributed to the various divisions it stated, "By order of the commanding officer."

80. Q. Do you know what happened to this judgment paper and this notice of execution later?

A. By the orders of Admiral Masuda, these papers and all other official papers were burned after the end of the war.

81. Q. Do you know anything concerning the execution of these natives?

A. After the investigation had been completed, I went to the outlying islands and when I came back on the fourteenth I heard from Captain Inoue that he had been ordered to execute the natives by the order of Admiral Masuda.

82. Q. When Captain Inoue told you this did you see any signs of distress in Captain Inoue?

A. I just talked with Captain Inoue in front of his quarters and his expression at that time was clouded.

83. Q. Did you hear anything directly from Captain Inoue concerning this execution of the children?

A. I have never heard anything from Captain Inoue concerning this.

84. Q. Did you hear any rumors concerning this about Captain Inoue?

This question was objected to by the judge advocate on the ground that it called for hearsay.

The accused withdrew the question.

85. Q. What was the general reputation of Captain Inoue on Jaluit?

A. On Jaluit his general reputation was that he was very serious-minded and was very faithful to his work.

86. Q. How long had you been engaged in investigation work on Jaluit?

A. My experience in investigating was the period from April first to eighth when I investigated the Mille natives and about twenty days when I investigated other natives.

87. Q. Were you and are you well acquainted with the regulations regarding the authority to investigate as it pertained to conditions on Jaluit in 1945?

A. The head of the special police section had authority to investigate all crimes relating to the violation of food regulations, but at this time regulations concerning the investigation of crimes such as the Mille case, there were no regulations.

88. Q. You stated you were ordered to investigate the incident which concerned civilians. Did the military have authority to investigate civilians on Jaluit in 1945?

A. At that time on Jaluit, the military, gunzokus and civilians were organized into a Jaluit Defense Garrison and all persons who violated the food regulations and other crimes came under the jurisdiction of the head of the special police section.

89. Q. Were these natives from Mille that you investigated amenable to the military laws?

This question was objected to by the judge advocate on the ground that it called for the legal opinion of the witness and that it was immaterial and irrelevant.

The accused replied.

The commission announced that the objection was not sustained.

A. Yes.

90. Q. You stated that after the event happened, on or about April fifteenth, you were shown a judgment note by which these natives were punished by death. You testified that publication was made of their execution. Did the military on Jaluit have authority to punish these natives by capital punishment?

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

The accused withdrew the question.

91. Q. Did the military have authority to inflict capital punishment on civilians?

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

The accused replied.

The commission was cleared. The commission was opened and all parties to the trial entered. The commission announced that the objection was sustained.

Reexamined by the judge advocate:

92. Q. You have testified on cross-examination that the child, Neibet, was the first to confess. On what date did this occur?

A. As I remember, it was the afternoon of April first.

93. Q. Didn't you question Neibet until late at night on the first of April?

A. Yes.

94. Q. And was it not at the completion of the questioning of this child that you got a confession from her?

A. As a result of the questioning I obtained a confession.

95. Q. When did you commence^e questioning Neibet?

A. As I remember, it was after the noon meal on April first. JK

96. Q. What time of day was that?

A. As I remember, it was about one o'clock in the afternoon.

97. Q. At what time in the evening did you finish your questioning of this child?

A. The time in Jaluit is different from here^e, but it was ~~around~~ ^{about} four o'clock in the evening. When I said the interrogation started after lunch, I meant at eleven o'clock, because we took lunch at ten o'clock on Jaluit. JK

98. Q. Approximately how many hours was the child questioned?

A. As I recall, it was five or six hours.

99. Q. And you had also questioned her the day before. Is that not correct?

A. I did not start the investigation until the morning of the first when I started to ask the age, how they came to Jaluit, and the circumstances.

100. Q. Did you on the morning of April first question Neibet?

A. Yes.

101. Q. What story did she give you then?

A. She stated that Neibet together with the other members of the family while carrying copra from Nagarappu Island had been wrecked and had been drifting a week.

102. Q. Did Raliejap, Raliejap's wife and Anchio give you this same story?

A. Yes.

103. Q. What did you do in the afternoon to the girl to get her to change her story?

A. In the morning they stated that they had drifted for a week and that they had sank their sampan when American planes flew over them so that they could not be seen and upon looking into their possessions which myself, Captain Inoue and Admiral Masuda did, we found matches and Japanese money and a notebook which looked like a diary in which were written names such as Tokowa and Aniri which were the names of islands and a persons name Takahashi and they had also stated that they were natives from an island in Mille called Enajet and were carrying copra to Nagarappu. Upon looking at the map of Mille it was found that the names of the islands in the diary were islands in the northern part of Mille and not in the southern part and also the matches and money, the notebook showed no signs of having been wet. The investigators therefore stated that the story sounded false. Therefore in the afternoon breadfruit which was considered one of the greatest delicacies by the natives and copra cooked in "chagami", this was first given to Neibet in the afternoon. It was asked about the islands Aniri and Tokowa and the person Takahashi, it was found that Aniri was the island in which Neibet and her family lived and Tokowa was the island on which Ralime lived and that Takahashi was the commanding officer of Aniri Island and that Raliejap and Anchio worked under Takahashi as fishermen and it also came out that Raliejap had stolen a boat from Takahashi. In this was this story was brought out.

104. Q. Hadn't Neibet been fed up until this time?

A. As I remember up to this time they had only been fed the usual rations.

105. Q. How many breadfruit did you give her?

A. This breadfruit was not in the raw, it was prepared and made into a food and placed in a large plate and at a time when were only eating one copra a day this was a delicacy which the military were not able to get on Jaluit and was obtained by Captain Inoue by asking the supply officer to obtain this.

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, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Morikawa, Shigeru, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Reexamination continued.)

106. Q. Was Captain Inoue also present when you questioned Neibet?
A. Captain Inoue was also there.

107. Q. Did he participate in the questioning of Neibet?
A. Yes.

108. Q. Did Neibet confess right after she had this breadfruit?
A. She did not confess right away. What Aniri was, what Tokowa was, things of that sort kept coming to light and by the time of the evening meal a rough outline of what had occurred was found out. This breadfruit was not all eaten at one time, it was eaten while talking.

109. Q. It did not take her the five hours to eat the breadfruit did it?
A. Also the copra prepared with "chagami" was very sweet and was not something that could be eaten all at once and by the time the interrogation was over there was still some remaining.

110. Q. Did you use the same methods in questioning this girl as you did in the case of the Jaluit natives in the following month?

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

The judge advocate replied.

The commission announced that the objection was sustained.

111. Q. Did you ever see the clothing of Tanaka that you referred to on cross-examination?
A. I did not see it, I testified to it from what I heard from Captain Inoue.

112. Q. You testified that you made daily reports to Major Furuki, Lieutenant Commander Shintome and Admiral Masuda and that sometimes Major Furuki was not present. In the case of the Raliejap group how many times did you report in the presence of Major Furuki?

A. When I was investigating Raliejap Major Furuki was absent, on the later investigation Major Furuki was present.

113. Q. Haven't you testified on cross-examination that the investigation of Raliejap's group was concluded on April second?
A. Yes.

114. Q. Then you didn't make any verbal reports on this group after April second did you?

A. No report was made on the group of Raliejap, but as there were relations between Raliejap's and Ralime's group and reports on the complete group were made, reports on the group of Raliejap were included.

115. Q. So that it is true that up until April second when you, according to your testimony, left for the outlying islands, you never reported in his presence in the case of Raliejap?

A. I did not report to Major Furuki up to the time I left on the second of April.

116. Q. What did you do during this further investigation of the Raliejap group on April seventh and eighth?

A. Investigating the group of Raliejap we had the natives repeat once more their testimony and the contents of the investigation were ascertained.

117. Q. So that in fact this was a continuation of your investigation, was it not?

A. I can not get the meaning of the question.

118. Q. Did you consider the questioning of these natives of these two days part of your investigation?

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

The judge advocate withdrew the question.

119. Q. If you didn't consider your questioning of the natives on the seventh and eighth a part of your investigation, what do you call it?

A. The investigation done on the seventh or eighth was a continuation of the previous investigation.

120. Q. Then the final written report on the investigation was not prepared until April eighth. Is that correct?

A. Concerning the group of Raliejap, I made and submitted a written report to Admiral Masuda on the second of April because he stated that there was some problems vitally important to the defense of Jaluit in the testimony and later a complete report on all the group was submitted.

121. Q. Was the report submitted on April eighth the only written report submitted on Ralime's group?

A. I remember it was.

Recross-examined by the accused:

122. Q. These investigations and questionings that you testified to, were they carried out secretly?

A. They were conducted in secret because Admiral Masuda stated before the beginning of the investigation it was necessary that other to persons concerned this be kept secret due to preventing a leak of military secrets.

123. Q. Did he give any other reasons for ordering you to conduct the investigations in secret?

This question was objected to by the judge advocate on the ground that it called for hearsay.

The accused replied.

The commission announced that the objection was not sustained.

A. In saying to keep this secret he stated that the people of Jaluit, due to the food shortage and the attacks by the American forces were in a very desperate state of mind and the probabilities that these natives are acting for the Americans in kidnaping the natives of Jaluit, if this became known to the men the natives would also become acquainted with this and would bring about serious complications in self-support and operations on Jaluit.

Examined by the commission:

124. Q. You stated in your testimony that you drew up a notice for Admiral Masuda informing the various unit commanders of these executions. Do you know exactly what date these executions took place?

A. I do not remember.

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 prosecution rested.

The commission then, at 4:12 p.m., adjourned until 9 a.m., tomorrow, Thursday, May 9, 1947.

SIXTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, May 9, 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 Commander Brander W. Lee, junior, U. S. Naval Reserve, JK
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Bolton, 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, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The defense began.

The accused made the following opening statement:

The defense will prove the accused innocent of the charge of murder
and innocent of the charge of violation of the laws and customs of war. We
shall prove the fact that there was a proclamation issued by the commanding
officer, Admiral Masuda, to all personnel on Jaluit, military, gunzoku, and
civilians; the proclamation issued by the civilian government of Jaluit to
the effect that all functions of civil government were commanded over by the
military commander; all personnel, particularly the civilians, were under the
command and subject to the orders of the military commander, Admiral Masuda.
Command responsibility of Admiral Masuda will be shown. His authority to
order investigations; his authority to hold the trials which were held will
be proved. We shall prove that the eight prisoners were afforded a trial.
They were found guilty of crimes and sentenced accordingly. We shall show
that the trials held were conducted in the manner provided by Japanese
Naval Court Martial Law, exigencies of the service permitting. We shall
show that the accused, Captain Inoue, did not commit murder as he is charged,
nor did he kill the prisoners Raliejap, the wife of Raliejap, Neibet, Anchio,
Ochira, Siro, Lacojirik and Ralime in violation of the laws and customs of
war as he is charged. JK

The accused waived the reading of this statement in Japanese.

The accused requested the commission to take judicial notice of the following:

Japanese Naval Criminal Law (Act Number 48, April 10, 1908) (Revised in 1942, Law Number 36), particularly:

"Article 2. This Law shall also be applied to those who commit the crimes mentioned below, though they may not be naval officers or sailors:

1. The crimes of Art. 62 to 65 and these attempted crimes.
2. The crime of Art. 72.
3. The crimes of Art. 78 to 85.
4. The crimes of Art. 86 to 89.
5. The crimes of Art. 91 to 93 and the attempted crimes of Art. 91 & 92.
6. The crimes of Art. 95, 96, Clause ⁴/₂ of Art. 97, 98 and 100.

"Article 4. The naval officers and sailors who commit the crimes of the Naval Criminal Law or of the other laws or ordinances in the occupational territories of the Japanese Forces are treated the same as those who commit these crimes inside the territory of Japan.

"The above clause shall also be applied to the Japanese, foreigners who have followed the Navy, and captives, though they may not be naval officers or sailors.

"Article 17. The action which has been done in order to quell the people who used violence, or to keep the naval discipline in face of the enemy or when the ship is in danger, shall not be punished.

"When the action was beyond moderation, it is permissible to take the extenuating circumstances into consideration in punishing it, or the punishment may be reduced or remitted.

"Article 18. The previous article shall also be applied to actions prescribed as crimes in the criminal law or ordinances.

"Article 23. Those who have done the following action for the benefit of the enemy shall be condemned to death:

1. To destroy or make impossible the use of ships, arms, ammunition, and places, buildings and other things used by the Navy.
2. To destroy or shut up land and water paths, bridges, light-houses or buoys; or to interrupt in other ways the passage of ships or the march of troops.
3. That the commander, leading his ship and troops, refrains from assuming post of guard or of arrangement, or leaves such places.
4. To dissolve naval squadron or naval unit, put them to rout or into confusion, or interrupt the connection or the meeting of such.
5. To allow the lack of arms, ammunitions, provisions, clothings and the other munitions.
6. To inform or make false orders, informations or reports.
7. To spread false information or to make uproars in the face of the enemy.

"Article 24. Those who have given naval facilities to the enemy or injured the Japanese Navy with ways other than those stated in the foregoing two articles shall be condemned to death, or life term or above five years' imprisonment.

"Article 55. One who resists the superior officer's order or who is not subordinate to it shall be condemned to such penalties as follows:

1. In the face of the enemy, he shall be condemned to death or life term or above ten years' confinement.
2. In war-time or when in need of emergency measures of rescuing ships, from above one to ten years' confinement.
3. In other cases, under five years' confinement.

"Article 64. One who, resorting to arms or weapons, violates or threatens the guard shall be condemned as follows:

1. In the face of the enemy, life or above five years' imprisonment or confinement.
2. In other cases, above one year's terminable servitude or confinement.

"Article 65. Those who, forming a clique, commit the crime of the preceding article shall be condemned as follows:

1. In the face of the enemy, the ringleader to death or life imprisonment or confinement, and the others to life or above seven years' servitude or confinement.
2. In other cases, the ringleader to death or life or above seven years' imprisonment or confinement, and the others to life or above two years' servitude or confinement.

"Article 70. The attempted crimes of Art. 58 to 61, 61, 61-3, and 62 to 68 shall be punished.

"Article 76. Those who desert to the enemy shall be condemned to death, or life imprisonment or confinement.

"Article 78. Those who burn down the vessels, aircrafts, tanks, factories, buildings, trains, electric-cars, motor-cars or bridges for battle use, or warehouses in which the articles for Naval use are stored, shall be condemned to death, or life or above ten years' imprisonment.

"Article 79. Those who burn down arms, ammunitions, provisions, clothings, or other goods for Naval use piled up outdoors, shall be condemned to such penalties as follows:

1. Committed in war-time, to death or life imprisonment.
2. In other cases, to life or above two years' imprisonment.

"Article 82. Those who destroy the things named in Art. 78, or railways, telegraph wires, or passages on land and sea for Naval war use, or make them unusable, shall be condemned to life or above two years' imprisonment.

"Article 84. The attempted crimes of Art. 78 to 82 shall be punished."

Japanese Criminal Code, Law Number 45, 24 April 1907, amended by Law Number 61, 1941, particularly:

"Article 25.--If any of the following persons has been sentenced to penal servitude or imprisonment for not more than two years, execution of sentence may, according to circumstances, be suspended from one year to five years from the day when judgment has become irrevocable:

1. Persons who have not been previously sentenced to imprisonment or a graver punishment.
2. Persons who, though they have been sentenced to imprisonment or graver punishment, have not again been sentenced to imprisonment or graver punishment within seven years from the day when execution (of the former punishment) was completed or remitted.

"Article 35.--Acts done in accordance with laws and ordinances or in pursuance of a legitimate business (or occupation) are not punishable.

"Article 36.--Unavoidable acts done in order to protect the rights of oneself or another person against imminent and unjust violation are not punishable.

"According to the circumstances, punishments may be mitigated or remitted for acts exceeding the limits of defense.

"Article 37.--Unavoidable acts done in order to avert present danger to life, person, liberty, or property or oneself or another person are not punishable, provided the injury occasioned by such acts does not exceed in degree the injury endeavored to be averted. According to circumstances, however, punishment may be mitigated or remitted for acts exceeding such limit.

"The provisions of the preceding paragraph do not apply to persons under special obligation because of their calling or occupation.

"Article 38.--Except as otherwise provided by special provisions of law, acts done without criminal intent are not punishable.

"A person who without knowledge (of the fact) has committed a grave offense (crime) cannot be punished in proportion to its gravity.

"Ignorance of the law cannot be invoked to establish absence of criminal intent, but the punishment may be mitigated according to circumstances.

"Article 66.--Punishment for a crime may be mitigated when extenuating circumstances exist.

"Article 67.--Even though punishment is to be increased or mitigated by law, it may nevertheless be mitigated for extenuating circumstances.

"Article 81.--Every person who by conspiring with a foreign power has caused hostilities to commence against the Empire, or who has joined an enemy power in taking hostile action against the Empire, shall be condemned to death.

"Article 83.--Every person who for the purpose of benefiting an enemy power has damaged (destroyed) or rendered unfit for use a fortress, camp, vessel, arms, ammunition, train, electric car, railroad, telegraph (or telephone) lines, or other place or thing for military (or naval) use shall be condemned to death or punished with penal servitude for life.

"Article 85.--Every person who has acted as a spy for an enemy power, or has aided a spy of an enemy power shall be condemned to death or punished with penal servitude for life or not less than five years.

"The same (punishment) applies to every person who has disclosed a military (or naval) secret to an enemy power.

"Article 86.--Every person who by methods other than those of the preceding five Articles has given an enemy power any advantage or has injured the interests of the Empire shall be punished with penal servitude for not less than two years.

"Article 87.--Attempts of the crimes of the preceding six Articles shall be punished. . . .

"Article 240.--If a robber has wounded a person, he (she) shall be punished with penal servitude for life or not less than seven years; if he (she) has caused the death of a person, he (she) shall be condemned to death or punished with penal servitude for life."

The Japanese Code of Criminal Procedure, Law Number 75, May 5, 1922, amended by Law Number 72, 1926; Law Number 43, 1935; and Law Number 71, 1937, particularly:

"Article 1. The territorial jurisdiction of a court lies in the place where the offense was committed, or the residence, temporary domicile or otherwise the present place of the accused.

"With respect to an offense committed on board a vessel of the Japanese Empire outside of the Empire of Japan, beside the place provided in the preceding paragraph, the place of registration of the vessel, the place of the nationality of the vessel, or the first port the ship touched after the offense was committed, has jurisdiction. . . .

"Article 5. When several cases are related and fall under the jurisdiction of different courts, the court having jurisdiction over one case is competent to adjudicate on all other offenses concurrently." JK

Japanese Naval Court Martial Law, promulgated by Law Number ⁹¹92, 26 April 1921, amended by Law Number 9, 1941, particularly: JK

"Article 1. Court-Martial shall have power to try the following persons of their crimes:

1. The person mentioned in the Art. 8 No. 1 and 2; and the Art. 9 of the Naval Criminal Law.
2. The crew of naval transport.
3. Persons who are members of a naval unit or belong to it except those mentioned in the preceding two clauses.
4. Prisoners of war.

"When there are, among the persons mentioned above in No. 2 and 3, some who should be omitted specially, then it shall be determined by order of Court.

"Article 2. Court-Martial has power to try those persons mentioned above, of the crimes committed by them prior to their present standing also.

"Court Martial has power to try the persons even though he has lost his position if, during his former standing, report on his crime was received or he was already arrested or detained. . . .

"Article 4. Court-Martial has power to try persons, other than those mentioned in the Art. 1 stationed in the territory surrounded by enemy, of the crimes provided in the following items:

1. The same or separate crime committed in concert with the person mentioned in the clauses 1-2 of Art. 16.
2. The crimes of Naval Criminal Law, Military Criminal Law and Military Secret Safeguarding Law as well as of the Ordinances especially provided to meet military necessities.

"Crimes of sheltering criminals, destroying evidences, making false expert opinion or misinterpretation and pilferage are regarded as being committed in concert with the original crimes. . . .

"Article 6. Court-Martial, at the time of Military operation, if necessary, in order to maintain safeguard of the navy, may exercise power or jurisdiction over crimes of persons other than mentioned in the Art. 1. . . .

"Article 8. Courts Martial are organized as follows:

1. Higher Court-Martial.
2. Tekye Court-Martial.
3. Naval District Court-Martial.
4. Guard District Court-Martial.
5. Fleet Court-Martial.
6. Isolated Court-Martial.
7. Temporary Court-Martial.

"Article 9. Higher Court-Martial, Tekye Court-Martial, Naval District Court-Martial and Guard District Court-Martial are organized permanently. However, at Guard District, it might not have Court-Martial. Fleet Court-Martial, when it is necessary, is organized specially in a fleet commanded by Commander-in-Chief of a fleet or commander of an independent fleet or a detached fleet as well as in a man-of-war sent to foreign countries. OK

"Isolated Court-Martial is established specially in a district surrounded by enemy when a declaration of Martial Law is made. Temporary Court-Martial in a case of necessity during war and naval operation shall be specially established in a naval unit.

"Article 10. (a) Higher Court-Martial or Tekye Court-Martial makes the Minister of Navy its president. (b) Naval District Court-Martial makes the Commander-in-Chief of the District its president. (c) Naval Guard District Court-Martial makes the Commander of the District its president.

"Specially established Court-Martial makes the Commandant of unit or district where the said Court-Martial is established its president. . . .

"Article 16. Court-Martial in a territory surrounded by enemies has jurisdiction over the following cases:

1. Case of accused person who is subordinate of Commandant of the said territory or one who of the said territory or one who receives supervision of the Commandant.

2. Case of accused person whether he be a resident of the district or not has committed crime in the said district and is mentioned in the Art. 1-3.
3. Accused case which belongs to the jurisdiction defined in the Art. 1-3.

"Article 17. A Temporary Court-Martial has jurisdiction over the following cases:

1. Case of accused person who belongs to or receives the supervision of the Commandant of unit where a court martial is established. 9K
2. Case of accused person who, whether he be a resident of the District or not, has committed crime in the said district and mentioned in the Art. 1-3.
3. Case of accused person mentioned in the Art. 6, and resides in Guard District of a unit where Temporary Court-Martial is established.
4. Accused case which is transferred to, in accordance with the Articles 312 or 333.

"Article 50. In a special court-martial or guard district court-martial, the Commanding Chief may let a high government official staying in the isolated district take the duties of the judge in place of the law officer. . . .

"Article 86. In a Special Court-Martial, it is not necessary to abide in the regulations of this section. 8K

"Article 87. The accused is free to select, at any time, a counsel for his defense after the indictment against him is lodged, a Legal representative, or adviser; or husband of the accused can select a counsel independently.

"Article 88. A counsel shall be selected from the persons mentioned below:

1. Naval Officers or Ranking Officers.
2. Naval Higher Civil Officer or Probationer.
3. Lawyers designated by the Minister of Navy.

"Article 89. Selection of Counsel should be done at every trial. Selection of Counsel should be made by a letter jointly signed with a person for counsel.

"Article 90. A number of counsel should not be above two for each accused.

"Article 91. A Counsel is allowed to read or look over any document or evidential object or to copy in the Court-Martial any document relating to the accused case.

"Article 92. Counsel has right to make judicial procedure independently only when there is a special stipulation for it.

"Article 93. Regulations of the preceding six articles shall not be applied to a Special Court-Martial.

"Article 96. The consultation of judges shall not be held public. However, judiciary officers in probation might be allowed to listen to it.

"A meeting for the consultation of Judges is opened by the Chief Judge and he presides it. However, its proceedings and opinions expressed by each judge should be held secret.

"Article 267. In case a Prosecuting Officer is about to make inquiry of a witness he may let the latter make an oath.

"A Naval judicial police officer or judicial police officer might not ask witness to make an oath.

"Article 369. With regard to cases corresponding to death, life, penal servitude or imprisonment for a minimum of one year or more, the court shall not be held without a counsel, except when the decision is pronounced. 87x

"In the event the counsel does not appear in Court or the accused does not choose a counsel, the President by his authority appoints a counsel.....

"Article 372. The preceding three articles shall not be applied in a Special Court Martial.

"Article 420. An appeal may be made on the decision of Tokyo Court Martial, Naval District Court Martial.

"Article 500. Judgment shall be executed after decision is made.

"Article 501. The execution of the judgment shall be directed by the Judge Advocate of the Court Martial who held the trial or the Judge Advocate of the Court Martial to which the preliminary judge who held the trial belongs, except those which from their nature should be handled by the Court Martial, President, appointed judge or preliminary judge.

"The execution of the decision of the appeal case or the decision of the original court martial because of a dismissal of the case, shall be directed by the Judge Advocate of the Higher Court Martial.

"In the event of the preceding two paragraphs, when the legal documents are at the original court martial the Judge Advocate of that Court Martial shall direct the execution of the decision.

"Article 504. The execution of the death sentence is subject to the order of the Minister of the Navy.

"Article 510. When the death sentence is pronounced in the Special Court Martial, the Chief shall perform the duties of the Minister of the Navy with regard to its execution or the suspension of execution."

Japanese Naval Laws and Regulations in Relation to Order and Obedience, particularly:

Naval Battle Regulations, General Principles, Part II.
Military Training Regulations, General Principles, Part II, Chapter 1;
Chapter 2, Section 1, Article 20.
Service Regulations of Personnel on Ships, General Principles, Part II,
Part III, Part IV, Part VI, Article 105.

The judge advocate made the following objection:

The judge advocate does not object to the request that judicial notice be taken of the Japanese Criminal Code. The judge advocate has previously requested that judicial notice be taken of this Japanese Criminal Code and the commission has taken judicial notice thereof. The judge advocate does not object to the taking of judicial notice of Japanese Code of Criminal Procedure. It is understood that this Japanese Code of Criminal Procedures is one of the statutes which Ordinance Number 26 makes applicable to the South Sea Islands, and the commission has, on request by the judge advocate, taken judicial notice of Ordinance Number 26. The judge advocate does not object to the court's taking judicial notice of Japanese Naval Court Martial Law and of Japanese Naval Criminal Law, so long as the defense is required to establish during the course of the trial that these laws and the applied provisions thereof, which are on the face applied to the navy, applied to the Japanese navy, are in effect the local law of the Marshalls and were properly applicable to the natives. If the defense fails to establish the applicability of the Naval Court Martial Law or the Naval Criminal Law to the natives, the judge advocate reserves the right to object further at that time to judicial notice of these provisions and the attempted application thereof. The judge advocate objects strenuously to the request that judicial notice be taken of excerpts from the Japanese Navy Regulations. These Navy Regulations have not in any means been shown to be applicable to the natives on the Marshall Islands, nor in any manner have they been shown to be the local law of the Marshall Islands. They clearly do not fall within the general rules with regard to the taking of judicial notice. These general rules require that the subject matter of which the court should take judicial notices should be facts which the court knows to be true without any evidence to prove them; facts which are part of the common historical or geographical knowledge of all intelligent men and facts which are readily establishable from authentic sources. In this regard the judge advocate would further note that these regulations are not the local law of the Marshalls and there is no indication in any thing which the commission has heretofore heard that can be so applied. In Underhill's Criminal Evidence, it is stated in section seventy, that "generally the higher courts such as the Supreme Court and other courts of appellate jurisdiction, will not take judicial notice of enactment and existence of an ordinance of a municipality, city, town, or village, nor of its amendments, unless a statute so requires. Nor will they notice ordinances of county commissioners, boards of health, or state highway commissions." Further on it states: "The court does not take judicial notice of the statutes of another state, nor of a foreign country, nor the police regulations of towns." Before the requested excerpted regulations can be considered in the proceedings of this commission, they should be affirmatively and positively proved by the defense. They are not within the realm of these things which the commission should take judicial notice of.

gk
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The accused replied.

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

The commission made the following ruling:

Judicial notice has previously been taken of the Japanese Criminal Code. The commission further takes judicial notice of the following: the Japanese Naval Criminal Law, the Japanese Code of Criminal Procedure, and the Japanese Naval Court Martial Law. The commission does not take judicial notice of the Japanese Naval Regulations. In view of the voluminous nature of the documents of which the commission has taken judicial notice, the right of the judge advocate to make objections to particular portions thereof as may from time to time be referred to is granted.

The judge advocate introduced Mr. Frederick A. Savery as interpreter, and he was duly sworn.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name, rank, and present station.

A. Warrant Officer, Imperial Japanese Navy, Manako, Tatsuichi.

2. Q. Where are you presently confined?

A. In the stockade, Guam.

3. Q. If you recognize the accused, state as whom.

A. (Standing up and pointing at the accused) Captain, Army, Inoue, Fumie.

Examined by the accused:

4. Q. What is the name of the outfit to which you were attached?

A. The Sixty-sixth Guard Unit, personnel of the northern guard unit.

5. Q. Who is your commanding officer?

A. My overall commander was Navy Captain Shiga, Masanari; my immediate superior was Fueta, Kiyoshi.

6. Q. In the beginning of 1945, around March or April, where were you?

A. I was detached from the northern fort and was at Tekewa Island.

7. Q. Where was this place called Tekewa? Tell us the name of the atoll.

A. It is an island of the Mille Atoll. It was situated near the channel for ships, about five re (Interpreter's note: about ten miles) from Mille.

8. Q. What were your duties on Tekewa Island?

A. A certain number of men was stationed on this island due to the food shortage at that time. We were distributed in order to gather coconut to make coconut teddy for ourselves and also to send the same to the main island, Mille.

9. Q. During 1945, around March, that is, while you were still on Tekewa Island, did any unusual thing happen in regard to natives?

A. Yes.

10. Q. What is that?

A. In 1945, toward the end of March, two natives were in a canoe ferrying coconut teddy to Mille Island together with petty officer Tanaka.

11. Q. Do you remember the names of these natives?
A. Yes.

12. Q. What are the names?
A. Ralime, Lacejirik, Raliejap, Sire (is a boy).

13. Q. When the natives deserted, what method did they use in their escape?

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

The accused withdrew the question.

14. Q. You said that two natives together with petty officer Tanaka were ferrying coconut teddy to Mille Island. Do you know what happened?
A. Yes. Tanaka was on board and the crew and Lacejirik and Ralime were crew members. They left Tekowa in the canoe around six o'clock in the afternoon. The usual course for this transportation boat was to travel from island to island within the lagoon; however, on this particular day, the canoe was put out into the middle of the lagoon. When the boat had reached a point off Malagai, Tanaka asked why the canoe had taken this particular course. He was answered that it was on account of certain conditions.

The witness was duly warned.

The commission then, at 11:32 a. m., took a recess until 2 p. m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Manake, Tatsuichi, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

15. Q. The witness stated this morning that he knew of an incident regarding natives while he was stationed on Tekowa Island. How did you get to know about this incident?

A. Petty officer Tanaka was dropped overboard and did not return the following morning while the natives were ferrying across coconut teddy. We learned of the incident through the report of natives the following day. We investigated the houses of the natives and found that their families were gone also. They had escaped.

16. Q. You said that on account of the reports of the natives that were ferrying coconut teddy the fact of petty officer Tanaka's being dropped overboard and the fact that he did not return was learned the following morning. Tell us what happened then.

A. We contacted the natives on an island, Aniri, that was next to Tekowa to find out if they had escaped from there or not. Then we received a report that all the natives on Aniri Island had escaped. Checking the reason why the natives of Aniri Island had escaped we found that it was on account of Lacejirik and Ochira's relative. Before the natives escaped, that is the previous day to the escape of the natives, an unknown native woman of Aniri had come to Tekowa and had talked to Lacejirik, Ochira, and so forth, and, therefore, on account of this it was known that the escape was planned from Aniri. A sampan was used in the escape. Our party thought that maybe the natives had drifted ashore on some other islands and therefore a search party was instigated. However, there were no signs of the canoe or signs that natives had drifted ashore. We thought that they had gone over to the side of the Americans.

17. Q. Did you contact headquarters?

A. I did contact headquarters asking them whether the canoe had arrived or not.

18. Q. What was the answer from headquarters?

A. Headquarters' answer was that the canoe had not arrived the night before, and that Tanaka asse had not arrived. *gk*

19. Q. Then what did you do?

A. As we heard that Tanaka had not arrived, we thought that some ill might have befallen him, and we were very much worried about him.

20. Q. Did you search for Tanaka?

A. Yes. We sent out a search party of petty officer Tanaka from Tekowa. We searched the different islands as far as Nagarappu Island. However, no trace of him could be found. Between Tekowa and the main island of Mille there was an island called Nagarappu. *gk*

21. Q. After that, did you find out the whereabouts of Tanaka?

A. Yes, the following day about five in the afternoon we received a dispatch from headquarters. The dispatch was as follows: "Petty Officer Tanaka is now kept at Madagai. He is now being treated and he will be sent to headquarters for medical attention."

22. Q. And then what happened to Petty Officer Tanaka?

A. Then Tanaka went to the sick bay of headquarters and received treatment.

23. Q. Please tell us all you knew about this.

A. After about a month at headquarters Petty Officer Tanaka returned to the island of Tekowa. I heard the following from him personally: "We left Tekowa Island about six o'clock and immediately preceded from shore. A little while later....."

The continuation of this answer was objected to by the judge advocate on the ground that it was hearsay.

The accused replied.

The commission announced that the objection was not sustained.

A. (Continued.) ".....I asked the natives why they had taken such an off-shore course. They replied that it was on account of wind and tide conditions."

Although I cautioned them two or three times, they kept on their off-shore course. As the natives told me that this course was taken on account of tide and wind conditions, I thought that everything was all right and I did not think much about it. I sat down on one of the tin containers of coconut toddy and did not think about it. After we had reached a position a long way off shore, something touched my head; I thought the mast had fallen on me. When I looked back, I felt the second blow. The blow was delivered with the steering oar. When I tried to stand up I received the third blow and immediately, thinking that I did not have a chance, I jumped overboard. After I had jumped overboard, the natives lowered the sail and paddled around the place where I had jumped overboard, about four or five times, evidently checking whether I was alive or not. As they could not find me, they returned to Tokowa. I swam for about eight hours. I reached the island of Madagai and I managed to come to the army barracks on this island and then I passed out. I stayed on Madagai until the next day when I was taken to the main island of Mille on a stretcher for treatment. After this, about a month later, I returned to Tokowa Island." If Tanaka was an ordinary man, he would have died, but he was a man of unusual physique and was a good swimmer.

24. Q. You have said that Petty Officer Tanaka received treatment for about a month. Do you know the nature of his wounds?

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. He had on his head a scar of about ten to fifteen centimeters wide.

25. Q. Did you see this scar?

A. Yes, I did.

26. Q. You have mentioned names of natives. Tell us the names of the natives of Tokowa Island and the names of the natives of Aniri Island, the ones that you knew.

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

The accused replied.

The commission announced that the objection was not sustained.

A. The natives that escaped from Tokowa Island are as follows: Ralime; Lacejirik; Ochira, who was Ralime's wife; and Sire, a boy of about fifteen years of age; and the natives that escaped from Aniri. I do not know the names of the natives who escaped from Aniri.

27. Q. You testified that the natives that had escaped from Aniri were related to Ralime. How do you know this?

A. Because Ralime himself mentioned this fact; moreover, the other natives mentioned it.

28. Q. Do you know what kind of character Ralime and Lacejirik had?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial and that it called for the opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

29. Q. You have stated that the boy of the Ralime family was about fifteen years of age. If you know, please tell us what kind of work this boy performed on this island.

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

The accused replied.

The commission announced that the objection was sustained.

30. Q. Do you know in what direction the natives escaped?

A. The natives escaped to the open sea going between Aniri and Tokowa. I believe that they headed toward the Americans.

The judge advocate moved to strike the words "I believe that they headed toward the Americans" out of the answer on the ground that they were the mere opinion of the witness.

The accused made no reply.

The commission directed that the words be stricken out.

31. Q. You stated that the age of the boy was around fifteen. How do you know this?

A. Because the boy was able to climb the tallest coconut trees in order to cut down coconut teddy and also he worked just like any other man.

32. Q. What do you mean by "cut coconut teddy"?

A. To cut coconut teddy, I mean the following: when the shoots or sprouts come out from the tree it is firmly tied around with coconut rope, and then after the sprouts are tied, three times a day one would climb the tree, untie one knot and make a small incision of about one-tenth of an inch.

33. Q. Did the witness know Ralime and Lacejirik before this time?

A. Yes.

34. Q. Do you know what the personal history of these men were?

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

The accused made no reply.

The commission announced that the objection was sustained.

35. Q. What kind of work did Ralime and Lacejirik perform?
A. They used to make repairs on canoes.

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, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Makane, Tatsuichi, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

36. Q. When the case of Ralime and Lacejirik happened, do you know if there were any American ships near the island of Mille or not?
A. Yes. Every day there were small auxiliary vessels with loudspeakers near by.

Cross-examined by the judge advocate:

37. Q. Did you ever see the natives after they had left Mille Atoll in the canoe?
A. No.

38. Q. Then, is it true that all you knew about what happened after they left in the canoe is what you were told by Tanaka a month after the incident?
A. I knew something else.

39. Q. Do you know anything else of what happened while the natives and Tanaka were in the canoe?
A. I found out that Tanaka had received wounds from the natives and then had arrived on Madagai Island.

40. Q. How do you know that these wounds were received from the natives?
A. I heard this from Petty Officer Tanaka.

41. Q. You stated in your testimony that you sought to contact the natives on Aniri and you received a report that all the natives on Aniri Island had escaped. Is it true that all the natives on Aniri Island had escaped?
A. Yes. All the natives escaped on one ship; however, there were two or three left. There were only three or four natives on the island and they had escaped.

42. Q. Did you ever speak with these natives who had escaped at any time after they escaped?
A. No.

43. Q. You testified earlier concerning Lacejirik and Ochira's relatives. Were they on Aniri Island?
A. Yes.

44. Q. How did you find out why the natives escaped from Aniri?

A. Because the canoe did not come back. Moreover, when we went to the natives place the family was gone and then I contacted Aniri, but everyone had left.

45. Q. Then you did not speak to any of the natives on Aniri?

A. No.

46. Q. You testified this morning about an unknown woman from Aniri who had spoken to Lacejirik. How do you know this woman spoke to Lacejirik?

A. My squash farm was near the house of the natives. I was at the farm and I knew that someone had come to the house of the natives. I asked who was there and Ralime and Ochira had told me that their relative had come to visit them. This was in the evening previous to the day that the canoe left the island.

47. Q. Did you hear this unknown woman speak with them?

A. I saw them talking, but as I do not know the native tongue, I did not know what was said; however, Ochira, the wife of Ralime, could speak good Japanese, and she told me.

48. Q. Did she tell you that they had arranged to escape?

A. No, they never mentioned anything like that.

49. Q. Then, how do you know that in the conversation they had arranged to escape?

A. Because she only came once and this once was on the evening previous to the escape; besides, it was definitely shown that the escape was planned.

50. Q. But you did not hear this conversation; therefore, how do you know what this conversation was about?

A. Because if they had not planned anything, only the natives on Aniri would have escaped; moreover, the natives took all their personal belongings. They did not leave anything behind. Also, more than one hundred natives of Tokewa said that plans were made.

51. Q. But you did not hear this conversation, did you?

A. No.

52. Q. Do you know the name of the woman with whom they spoke?

A. I do not know.

53. Q. Did none of these more than one hundred natives tell you the name of this woman?

A. I do not mean natives. I mean more than one hundred military personnel. There were only twenty or thirty natives on Tokewa. These natives told us that the woman had come to make plans to escape.

54. Q. Did these twenty natives tell you the name of this woman?

A. No, I never heard.

55. Q. Are you sure that these twenty natives told you that this unknown woman had persuaded Lacejirik to escape or was it only the military personnel who told you that they had planned an escape?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The natives said this and all the others on the island.

56. Q. You testified concerning one message which was sent to Mille asking about Tanaka and an answer from Mille in which they said that he had not arrived. Do you know of any other messages that were sent or received concerning Tanaka or the natives?

A. Yes, I knew. This is other than the dispatch.

57. Q. Is this another dispatch that you are referring to?

A. Yes. This other instance is as follows: there was a soldier going further than Tekewa for liaison purposes; as he was passing Madagai Island he was stopped by an army man and informed that Tanaka had arrived on Madagai; that Tanaka was wounded and was receiving medical treatment. I heard this report from a sailor.

58. Q. Did you ever see or hear of any other messages or dispatches concerning Tanaka?

A. No.

59. Q. Did you ever hear or see any other dispatches concerning these natives?

A. Regarding the escape?

60. Q. Yes.

A. Only the dispatch that stated that Tanaka was on Madagai Island and that the canoe had not arrived on Mille Island.

61. Q. Did you receive any other or send any other dispatches concerning these natives?

A. I do not know of any other dispatches.

62. Q. Were you attached to the headquarters at Mille?

A. I was a person of the northern fort.

63. Q. Was there a radio station there?

A. Not at the northern fort. There was only telephone communication between the northern fort and the headquarters.

64. Q. In the performance of your duties did you see the dispatches that came into Mille headquarters?

A. Are you referring to dispatches that came to headquarters while I was on Tekewa?

65. Q. I mean any dispatches in the performance of your normal duties.

This question was objected to by the accused on the ground that it was too broad and that it was not clear to the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No, I did not.

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:

Ralime was working as a carpenter on the particular day that he came and asked to be released from that work and asked to be put on the canoe as a member of its crew. At that time on our island, it was well known that this man was of a bad nature, and we had never used him as a crew member. While Ralime was staying on Tekewa Island, he was treated very kindly. However, while ferrying coconuts across to Mille Island he attacked Petty Officer Tanaka with an ear, causing Tanaka to get into the water, also the fact that he circled five or six times around the spot that Tanaka had jumped into after checking and thinking that he was dead, he took the food and escaped. If they did not have any maliciousness, they would go together with Tanaka to Mille Island, unload the coconuts and then escape. From the first action was planned, and I wish that the senior member of the commission and the commission would understand this fact and give a lenient judgment in the case. That is all. gx

The commission directed that the words "From the first the action was planned, and I wish the senior member of the commission and the commission would understand this fact and give a lenient judgment in the case" be stricken from the record.

Examined by the commission:

66. Q. Do you know where Tanaka is at present?

A. I only know that he is in the prefecture of Kagoshima.

The witness was duly warned and withdrew.

The commission then, at 4:35 p. m., adjourned until 9 a. m., tomorrow, Friday, May 10, 1947.

SEVENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Saturday, May 10, 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 Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Bolton, 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, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.
A. Former Lieutenant, Imperial Japanese Navy, Fueta, Kiyoshi.
2. Q. Are you presently confined on Guam?
A. Yes.
3. Q. If you recognize the accused, state as whom.
A. I recognize the accused. His name is Captain Inoue.

Examined by the accused:

4. Q. Have you ever had duties on Mille Island in 1945?
A. I was on Mille from the third of September 1943, to the twenty-fifth of
September 1945.
5. Q. What unit were you attached to?
A. The Sixty-sixth Naval Guard Unit.
6. Q. Do you know the islands in the Mille Atoll, Tokowa and Aniri?
A. I do.
7. Q. Were these islands in the area under your jurisdiction?
A. Tokowa was under my jurisdiction, but Aniri was not.

8. Q. Do you know about the desertion of natives from Tokowa in March 1945?

A. I do.

9. Q. How did you come to know this?

A. In the middle of March, my men were scattered on the various islands and they were supposed to carry food from these islands to the main island. On this certain day, food was supposed to come from Tokowa, but the people on the main island waited until twelve o'clock that night but food did not arrive. On this day, the weather was good and the boat and the food ought to have been on time. As they did not come, I thought there may have been trouble and was worried. On the next morning, about eight o'clock, an army messenger who came from Aniri relayed a message to me which stated that last night, petty officer Tanaka, who was carrying food by boat, was struck by the natives and thrown into the sea. He had been swimming from five o'clock last night and had drifted ashore this morning, and that he was in critical condition. He asked that I take a stretcher to pick him up. I asked the army messenger what was Tanaka's condition and he answered that he had been struck on the right part of his head and that there was a big wound and he was tired out and unconscious. I sent six men with a stretcher to Aniri to pick Tanaka up. About forty to sixty minutes later they returned and stated that Tanaka was in a very critical condition and could not be moved; but the army was treating him, and he may live. He was left as he was. Before this I reported what I heard by report by telephone to headquarters. I do not know how he came by boat or by stretcher, but the evening of the next day he had been brought to headquarters.

10. Q. Are you sure that the island Tanaka drifted ashore on was Aniri?

A. Aniri was a mistake. It was Madagai.

11. Q. Did you see petty officer Tanaka personally?

A. I saw Tanaka personally a day after he returned to headquarters.

12. Q. At this time, what was the condition of his wound?

A. His head was bandaged with only his left eye showing and I could not tell about the wound, but that day I spoke to him.

13. Q. What did you talk about?

A. I asked Tanaka to explain the circumstances and he stated as follows: "As usual one or two hours after the sun had gone down, we left Tokowa, headed toward Mille with the food, and about one-half way, the canoe was taking another course different from the usual one which was going by the islands, and I asked why they were going this way. They answered in the native tongue and I did not understand, but I was reassured. On the boat were coconuts and coconut toddy. I settled down and was drowsing as we went toward Mille Island. About seven o'clock in the evening, I was suddenly struck on the head. I thought instinctively that the mast must have broken and had hit me on the head. As I tried to lift my head, a second blow with an oar hit me and I found out for the first time that they were trying to kill me with the oar. While I was defending myself, I may have been thrown or wilfully threw myself into the sea, I do not recall, but it hurt greatly; but I dived under the water after I had been thrown into the sea and stayed there. The canoe circled three times in that vicinity, and after the canoe left, I swam toward the land. After I reached the beach, I do not remember what happened."

The judge advocate moved to strike out this answer on the ground that it was hearsay.

The accused replied.

The accused made the following statement:

At this time the defense requests that the commission subpoena as a defense witness Warrant Officer Tanaka, who is still alive and in Japan.

The judge advocate replied.

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

The commission directed that the answer be stricken out.

The commission made the following statement:

The commission has no objection to the defense procuring petty officer Tanaka as a witness through the usual channels, but will not permit any delay in the progress of this trial for this purpose. Ample opportunity has previously been afforded to summon the desired witnesses.

14. Q. How long did it take Tanaka to recuperate from his wounds?

A. I think it took over forty-five days for him to be able to go back to his island and work.

15. Q. At this time, were there any other cases of natives deserting from Mille?

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

The accused made no reply.

The commission announced that the objection was sustained.

16. Q. In this period, did American ships come in and around the neighborhood of Mille?

A. They came about three or four times a week.

17. Q. Do you know what things these ships did?

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 sustained.

The accused did not desire further to examine this witness.

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

The witness made the following statement:

The fact that the natives escaped was of more importance to headquarters than the wound that Tanaka received. The effect on the forces that the natives had escaped was great. I received a reprimand from the commanding officer because of my responsibility, and thereafter all measures were taken to prevent the escape of the natives present. Due to the heavy bombings the natives frequently deserted. I believe the effect of the desertions of these natives was great on the natives and the military.

The witness was duly warned and withdrew.

The commission then, at 11:12 a.m., adjourned until 9 a.m., Monday, May 12, 1947.

EIGHTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Monday, May 12, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Rosece, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Bolton, 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, his counsel, and the interpreter.

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

No witnesses not otherwise connected with the trial were present.

The accused made the following statement:

As soon as the defense found that there was a possibility of Warrant
Officer Tanaka being alive they attempted to find him. According to our
information he is at Kagoshima-Ken, in the southern part of Japan. When
the commission ruled that the defense must secure him through the usual
channels we conferred with the Director of War Crimes, Pacific Fleet, here on
Guam. He advised us that there would be considerable delay to secure such
a witness. He advised us to prepare interrogatories and submit them to the
judge advocate and send them by courier on the plane that left this morning
for Japan. This has been done. The interrogatories were submitted to the
judge advocate and approved by him and I am sure that they went off by
courier on the plane today. As soon as these are returned to us with the
answers we will introduce the document containing the questions and answers
into the record of this commission.

The judge advocate made the following comment:

The only comment by the judge advocate is with regard to the statement
that as soon as the defense had found out the possibility that Tanaka was
alive that they had made efforts to obtain him as a witness. The judge
advocate would like the record to indicate that such efforts were not
made through the office of the judge advocate or through the office of the
War Crimes Director. The judge advocate believes that it was in part to

obtain this witness that the defense went to Tokyo. If such is the fact the judge advocate wishes to point out that defense did not seek to utilize the extensive facilities of SCAP or the War Crimes Director in order to locate this witness in Japan. Failure to do so may in part explain why the defense has been unable to locate and produce this witness prior to this time. With regard to the interrogatories, the judge advocate has approved the form of them, but believes the defense should be advised that they are not under obligation to introduce them if the contents thereof consists of matter which they object to, or do not wish to introduce in evidence.

The commission announced that the procedure outlined by the accused was approved, subject to the remarks of the judge advocate.

The accused requested that the commission take judicial notice of "Martial Law" as proclaimed in Dajokan Fukoku No. 38 of 5 August 1882.

The judge advocate objected to the commission taking judicial notice of "Martial Law" as proclaimed in Dajokan Fukoku No. 38 of 5 August 1882 as follows:

The judge advocate objects to the request of defense counsel ^{to} ~~take~~ judicial notice be taken of the martial law. Martial law is a peculiar type of law which is not part of the normal local law in that it is not the prevailing applied law. Martial law is law arising out of emergency situations which require certain conditions and certain actions in order to become operative as local law. There has been no evidence produced before this commission in this case indicating that martial law was ever proclaimed and that therefore the provisions of the Dajokan Fukoku No. 38 martial law (which is the Japanese basic martial law, as proclaimed on 5 August 1882.), came into effect. On the contrary there is every reason to believe that martial law was not in effect in the Marshall Islands during the period with which this commission is concerned. In a prior case in which the same defense counsel acted for the accused, one Major Furuki, it was affirmatively established by the defense that martial law had not yet been proclaimed in the Marshall Islands at a period slightly later than the instant occurrence.

There is a certain basic nature to martial law which is universally recognized, this basic martial law arising in times of emergency on a national or social basis authorizes the exercise of certain powers somewhat similar to those of self-defense of an individual. The Dajokan Fukoku No. 38 proclamation contains certain provisions which appear to go beyond the customary boundaries of martial law and the customary rights of the military commander in a situation of martial law. All of these powers and rights however are prefaced upon the actual proclamation and declaration of martial law. I cite in this regard particularly article 9 of the Dajokan Fukoku No. 38, martial law which reads as follows: "In a war area, the administrative and judicial affairs of the district, if they are concerned with military affairs, shall come under the command of the commanding officer of the district. Therefore, the officials, judges, and judge advocate of the district, upon proclamation or declaration of Martial Law shall immediately come under the command of the commanding officer" (italics supplied).

This can be interpreted as dissimilar to our own and to the common practice of martial law which normally considers that the military commander

of forces occupying territory under martial law is not in a position as military governor of such territory and that in general, exercises the power to suspend local law and jurisdiction only when necessary to control persons interfering with the exercise of military authority. Martial law does not give absolute power, it is limited by necessity of the situation - and does not per se mean the substitution of military for civil government. It is primarily because of these differences that the judge advocate objects to the taking of judicial notice of the Dajekan Fokoku No. 36, martial law.

The accused moved to strike out that portion of the judge advocate's objection which made reference to the trial of Major Furuki.

The judge advocate replied.

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

The commission announced that the objection was sustained. The commission further ruled that the motion to strike certain portions of the judge advocate's remarks from the record was not sustained.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.
A. Major, Imperial Japanese Army, Furuki, Hidesaku.
2. Q. Are you presently confined at Guam?
A. Yes.
3. Q. If you know the accused state as whom.
A. Inoue, Fumio.

Examined by the accused:

4. Q. Have you ever had duty on Jaluit Atoll?
A. Yes.
5. Q. Tell us when you arrived on Jaluit and when you left Jaluit.
A. The date I arrived on Jaluit was 18 January 1944, and the time I left Jaluit was 11 October 1945.
6. Q. What were your duties on Jaluit during this period?
A. I was the battalion commander of the Second Battalion, First South Seas Detachment, from the beginning of April 1945. I became head of the defense section of the Jaluit Defense Garrison and head of the War Preparations Committee until the end of the war.
7. Q. Who was your commanding officer?
A. Rear Admiral Nasuda, Hisuke.
8. Q. You stated that you were an army officer and that your commanding officer was a Rear Admiral in the navy, how do you explain the line of command and your disposition?

A. At that time by instructions from general headquarters all army and navy units in the Pacific Ocean Area came under the command of the supreme commander of that base and that the supreme commander would command all army and navy units. In my case I came under the command of Rear Admiral Akiyama who was the commanding officer of the Sixth Base Force at Kwajalein and by his order I came under the command of the commanding officer of the Sixty-second Naval Guard Unit, Rear Admiral Masuda. In all matters other to those pertaining to my promotion or salary or personal matters I came under the command of Admiral Masuda and received instructions from him, the same as his regular navy officers and men. JK

9. Q. Do you know what relation Captain Inoue had in the command of Jaluit?
A. I do.

10. Q. Is it the same as in your case?
A. Yes.

11. Q. What is the relation between yourself and Captain Inoue?
A. Captain Inoue was officially attached to the headquarters of the First South Seas Detachment and after I arrived to take command of the Second Battalion, First South Seas Detachment, by order of the Commanding Officer of the First South Seas Detachment, Captain Inoue was ordered attached to my unit and came under my command.

12. Q. Do you know the circumstances of the Japanese forces on Jaluit on and around 1945?
A. I do. JK

13. Q. I shall ask you some questions concerning those circumstances. Was there any means of transportation between Jaluit and the rear bases?
A. At that time the American forces had supremacy of sea and air in the Pacific area and all transportation between Jaluit and the rear bases and the neighboring bases was absolutely cut off.

14. Q. Where were the headquarters of the Jaluit Defense Garrison located?
A. It was located on an island called Rwidj in the middle part, on the east side of Jaluit Atoll.

15. Q. Where were the former headquarters of the Jaluit Defense Garrison located? On what island?
A. On Truk Island.

16. Q. What were the means of transportation between Truk and Jaluit?
A. After the fall of Kwajalein transportation between Truk and Jaluit by sea and air was absolutely impossible. We were barely able to maintain contact by radio communication.

17. Q. When did Kwajalein fall?
A. In the beginning of February 1944.

18. Q. What were the means of transportation or contact between the Fourth Fleet Headquarters and Jaluit?
A. It is as I have just stated concerning communications between Truk and Jaluit.

19. Q. What were the conditions of armament and supply of ammunition and the supply of food, its storage and its resupply, on Jaluit at this time?

A. Concerning the conditions of armament, almost all effective weapons against ships were destroyed. Concerning anti-aircraft, all high angle guns were destroyed, the only effective weapons against air raids were three 25 mm cannon, these had been damaged and repaired many times, therefore were not very effective. As ammunition for these three 25 mm cannons at the beginning of 1945 was only twelve thousand rounds, strict restrictions were placed on the use of this ammunition. On the ammunition for the 25 mm, no matter how many planes came they were restricted to two hundred rounds per day. After the fall of Kwajalein there was not even one resupply of ammunition for weapons and there was no hope of supply in the future. As for the food on Jaluit, in the middle of 1944 only one days rations for the military and gunsokus on the island remained. This was saved in case of an American invasion and we were not allowed to eat it. Concerning the resupply of food, it was the same as in the case of arms and ammunition. We had to rely on the native food which could be obtained on Jaluit. Many military and gunsokus had to be used and all natives who lived on Jaluit had to be mobilized to obtain these foods. One day's ration on Jaluit was one to one and one-half coconuts and 3.18 pints of coconut toddy a day, this was the main diet. All grasses which could be eaten were gathered throughout the atoll and they were all eaten. Rats and lizards were all eaten. As this was the only food which could be obtained the military and gunsokus on Jaluit all showed signs of malnutrition and after 1944 the persons dying of starvation increased.

20. Q. What were the battle conditions at that time on Jaluit?

A. Just before the fall of Kwajalein fierce bombings were directed at Jaluit. After the fall of Kwajalein the number of planes attacking Jaluit was to the end of the war eight thousand and the total amount of bombs dropped on Jaluit was five thousand tons. By the latter part of 1944 all weapons and armaments on Ruidj, the main island of the atoll, were destroyed. Jaluit had no effectiveness as a military base. From the beginning of 1945 the American forces used Jaluit as a practice ground for planes and continued to bomb it. Again the water around Jaluit was patrolled constantly by American destroyers, and bombardments by warships were frequent. This is an outline of armed warfare between the American forces and the Japanese on Jaluit. The attacks which caused us the most worry were the attacks to destroy the food on Jaluit. Farms, whether they were on the main island or on outlying islands, were systematically bombed. We could not grow food and also coconut groves which were the source of food on Jaluit were systematically bombed by the Americans. Boats used in carrying food which were considered the life line of Jaluit were destroyed one by one by bombing. Attacks were continued until even small canoes which could hardly seat one person were destroyed. Up to the end of the war the natives which were the main source of labor on Jaluit, one-half of them, about one thousand, were taken away by the Americans.

The commission then, at 10:50 a.m., took a recess until 11:03 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Furuki, Hidesaku, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

21. Q. You stated in your testimony regarding war conditions that air raids and bombardments were made. Will you state concretely what this means?
A. From the day that Kwajalein fell until the middle of 1944 a dozen heavy bombers raided Jaluit several times a day, after which the number decreased, but there were always planes over Jaluit. It could never be said that there were no attacking planes over Jaluit, and when small craft were not around Jaluit heavy bombers and medium bombers were continually patrolling and bombing Jaluit. I have not finished stating on the war conditions on Jaluit. Another kind of attack which was tried on Jaluit was through propaganda. From the middle of 1944 leaflets were dropped in an effort to break the morale and make the people desert. In the latter part of March 1945 two groups of spies, a total of eight persons, were sneaked into Jaluit. Also after which the dropping of leaflets and broadcasts from surface craft was intensely conducted. The three methods which the Americans used systematically and ingeniously to break the will to fight and break the morale of the men was through direct destroying of armament and installations, the attack against food production areas and through propaganda to break the morale of officers and men. Jaluit which came under these attacks from the middle of 1944 could be said to be in the same instance of a sick man on his death bed trying to live with his arms and legs taken away and also his food. Under these circumstances the policy set up by the commanding officer of the defense garrison, Admiral Masuda, is as follows: Under difficult circumstances we must continue the defense of Jaluit, to do so we must try to keep the people from dying and therefore all efforts have to be made to obtain food and see to it that the military, gunsokus and natives do not desert. This policy was not set up by Admiral Masuda only from what he observed on Jaluit, but as a result of what he knew and looked into about the other bases in the Marshalls in which the natives and military deserted in large numbers to the enemy and on which approximately two hundred people were dying a month of starvation.

The witness was duly warned.

The commission then, at 11:28 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Furuki, Hidesaku, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

22. Q. How many military, gunsokus and natives were there on Jaluit in this period?

A. There were fourteen hundred regular military, around six hundred gunsokus, and a little more than two thousand natives.

23. Q. What was the relation between the two thousand natives and the regular military at this time?

A. The natives came under the command of Admiral Masuda and were one of the elements composing the Jaluit Defense Garrison.

24. Q. What sort of work were they doing under the command of the military?

A. They were producing food and other necessities and its transportation needed for the existence of the people on Jaluit.

25. Q. You stated this morning in your testimony that two groups of natives sneaked into Jaluit. Do you know from what island they sneaked into Jaluit?

A. From Mille Island.

26. Q. How did you know of this fact that these natives sneaked into Jaluit from Mille?

A. Because Admiral Masuda held an examination and consultation for these natives and he was one of the members who was in on this. I was not in on this investigation.

27. Q. When did these natives sneak into Jaluit?

A. As I recall, it was the thirty-first of March, 1945.

28. Q. At this time, were you on Jaluit?

A. I was on Jaluit.

29. Q. Were you at the headquarters on Jaluit?

A. On this day, I was not at headquarters.

30. Q. Then, where were you?

A. I was at Chitogen Village, located in the northwestern part of Jaluit.

31. Q. By what did you know that the natives sneaked into Jaluit on the thirty-first of March?

A. When I was at Chalmoran Island, which was on the west side of the Chitogen area, the district commanding officer of this area, First Lieutenant Furuno reported to me that Ralime and three other natives had drifted ashore on the northern part of Ben Island and that they had been sent to headquarters. After my return to headquarters, I was told by Shintome and Admiral Masuda that Raliejan and three other natives had drifted ashore on the southern tip of Jaluit from Mille.

32. Q. What day was it when you returned to headquarters?

A. It was on the third of April.

33. Q. Were investigations held on these natives?

A. Yes.

34. Q. Who investigated these natives?

A. Captain Inoue and the intelligence officer, Lieutenant Morikawa, were ordered to investigate and they investigated. Admiral Masuda also investigated on this own.

35. Q. Who was the one who gave orders to Captain Inoue and Lieutenant Morikawa to investigate this incident?

A. Admiral Masuda.

36. Q. Were you present when Captain Inoue and Lieutenant Morikawa were ordered to investigate and act as investigators?

A. I was not present.

37. Q. Do you know who was present when Captain Inoue and Morikawa were ordered as investigators?

A. Lieutenant Commander Shintome.

38. Q. How do you know this?

A. I had heard from Lieutenant Commander Shintome and also from Admiral Masuda when I returned on the third of April to headquarters and later I heard from Captain Inoue and Lieutenant Morikawa.

The judge advocate moved to strike out the answer to question 37 on the ground that it was hearsay.

The accused replied.

The commission directed that the answer be stricken out.

39. Q. I would like you to answer directly from what you saw, what you heard, or what you know concerning this incident. Do you directly know what the contents of this incident were?

A. I do.

40. Q. Tell us what you know about this incident.

A. From about the middle of March, 1945, several hundred natives deserted to American ships. Also about the same time, several hundred Koreans revolted and deserted to American ships, and there were also some Japanese who deserted to the Americans. The principals of this incident, Raliejap and Raline and their families, determined to desert to the Americans and as a matter of desertion, they determined upon the following plan: Raline, living on Tokowa, Raliejap, living on Aniri, and there was a person - a man - living with Raliejap, I have forgotten his name at the moment, who worked for the Mille Defense Garrison in transporting things by boat. They planned to kill the soldier on the boat and steal it. On the other hand, Raline was to steal the boat of the commanding officer, Takahashi, then Raliejap's boat was to tow the boat that Raline stole and go through the Tokowa Channel and seek the American ships in the water around Mille. If they could not be located, they were head toward Arno and Majuro where they would present themselves. Around the latter part of March, Raline and the person whose name I have forgotten, on a certain day while sailing from Tokowa toward the main island of Mille, at the half-way point, about fifteen kilometers out, the natives struck petty officer Tanaka on the head several times with an oar and then threw him into the sea. They took the clothes off Tanaka into the things they were carrying in the boat, then circled the place where

Tanaka had been thrown into the sea to make sure, and then went to Aniri. Raliejap had already stolen Takahashi's boat and preparations had been completed. Towing this boat they had stolen they went to Tokowa Island where they took on board Ralime's family and going through the Tokowa Channel headed toward the open sea. Shortly after they had reached the open sea they were picked up by an American ship and they were given many things to eat. On board were some Marshallese and negroes. On this ship Ralime and Raliejap were called on by an American officer and there was a Marshallese interpreter. They were given the following instructions: You will sneak into Jaluit and do as follows: Ralime, you will go to the northern tip, and Raliejap, to the southern tip. You are to find out as much as possible about the forces on Jaluit and their self-supporting measures and when you return bring with you a native who knows well about Jaluit. And also you are to tell the natives and the military and gunsokus on the island about the revolt of the Koreans and their desertion, desertion of the natives, and desertion of the military on Mille Atoll; about a month later the Americans would bring many planes and ships to take you away; and the natives were to gather on an island where there are no Japanese and make preparations to escape. As a sign to us that you have made these preparations, a woman is to stand on the beach of the island facing the lagoon. Try to get as many military and gunsokus to escape as possible and if you are asked why you got to Jaluit, you are to tell them you drifted here while transporting food to Mille. After you have completed this mission, you will be sent to Majuro and Arno where you will be given much food and clothes and let live there.

The commission interrupted the answer and suggested that counsel ask the witness his source of this information.

41. Q. How did you come to know about these facts?

A. This I came to know through the examination and consultation of these natives. I was one of the persons who conducted this.

42. Q. You stated that you came to know this question because you were a person who was in on the examination and consultation of these natives. Tell us explicitly from what source you derived this information. The judge advocate stated that as you were not with the natives at Mille and you were not with them on the boat trip, that you did not know. Please tell us explicitly where you received this information.

A. After I returned from the outlying island, Admiral Masuda called myself, Shintome, and Inoue to him and told us as follows: The natives from Mille, it has been found, had committed murder and other felonies and had been given the duty to act as spies by the Americans, and this is a serious crime on Jaluit. As the regular courts are on Ponape and Truk, I shall have to handle this case by the authority vested in me on Jaluit, as a regular court cannot be held. Under the circumstances, the best procedure, which is a special examination and consultation, will be held. Captain Inoue shall act as judge advocate, Furuki and Shintome, he ordered to act in the capacity of judges and he also shall act as a judge. This crime pertains to military secrets, therefore, keep the proceedings secret. The persons receiving these assignments are judging on human lives; therefore, perform them soundly and in good faith.

The commission announced that the answer up to this point was not responsive.

A. (continued) I found out these facts through two investigation reports which were ordered returned by Captain Inoue concerning the investigation of these natives. Admiral Masuda ordered Captain Inoue to read the first investigation report concerning the Raline group.

The judge advocate moved to strike out the answer to question 40 on the ground that it was hearsay.

The accused replied.

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

The commission directed that the answer to question 40 be stricken out.

43. Q. You stated that you were ordered to act as a judge and that Captain Inoue was ordered to act as judge advocate. Concerning this, how was this procedure conducted?

A. From the third of April to the sixth of April, an examination and consultation was held on Raliejap's group. On the sixth, an examination and consultation was held from Raline's group and on the eighth and ninth a complete examination and consultation was held on both of these incidents.

44. Q. What steps were taken before this examination and consultation was held?

A. The members were appointed and the duties explained them. Captain Inoue as a judge advocate read the investigation report on Raliejap and the three natives.

45. Q. How was Raline's group's examination and consultation held?

A. It was the same as in the other case. Admiral Masuda stated that the Raline group should be examined and consulted upon, and Captain Inoue read the investigation report.

46. Q. You stated that the examination and consultation started with the reading of the investigation report. What examinations and consultations were held concerning these natives?

A. The boat in which the Raliejap group came to Jaluit was inspected. The things that were in the boat was as follows: Chagana, which was in bottles, and bruire, which is breadfruit prepared so that it could be kept for a long time. Admiral Masuda went with Captain Inoue to where the natives were confined and ascertained their statements. During the examination and consultation on points which were not sufficient, Admiral Masuda ordered it looked into further and ordered the investigation held in parallel with consultation. On the fifth of April, the acts of Raliejap's group were determined to actually be what was stated in the investigation report.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Tuesday, May 13, 1947.

NINTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Tuesday, May 13, 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 Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Bolton, 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, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Furuki, Hidesaki, the witness under examination when the adjournment
was taken on May 12, 1947, entered. He was warned that the oath previously
taken was still binding, and continued his testimony. JK

(Examination continued.)

47. Q. The last answer you gave yesterday was that the examination and
consultation of Raliejap's group was begun on the third and completed on the
sixth and you answered concerning this. What were the steps taken in the
examination and consultation of Raline's group?

A. The examination and consultation of the Raline group was begun on the
sixth and completed on the seventh. At first Captain Inoue read the investi-
gation report which had been made by him. The clothes of Tanaka were
submitted for inspection as evidence. Admiral Masuda took the record and
went to the natives to ascertain the facts and on points that were not
sufficient ordered Captain Inoue to investigate further.

48. Q. You were testifying to examination and consultation of Raliejap's
group. When and where was this examination and consultation held and who
was present?

A. The place was Admiral Masuda's air raid shelter. The persons assembled
there were Admiral Masuda, myself, Lieutenant Commander Shintone and Captain
Inoue.

49. Q. Where was the place and who were the people present in the consultat-
ion of Raline's group?

A. It is the same as in the case of Raliejap.

50. Q. You stated at these examinations and consultations the facts in the case of Raliejap and Raline were determined on. Tell us what facts were determined to have been true.

A. The following facts were determined upon in the examination and consultation. That at the end of March the natives Raline and Raliejap had plotted to desert and Raline's group had killed Petty Officer Tanaka and took the boat which Raliejap had stolen - the boat in Takahashi's custody - and placed their families on board and headed out toward the open sea where they were picked up by an American ship and they were given a mission to sneak into Jaluit and to find out about the military forces on Jaluit and if possible to bring a person who knew well about Jaluit back with them and to relay about the desertion of the natives, military and gunsokus on Mille and the desertion and revolt of the Koreans and to relay to the natives of Jaluit also the military and gunsokus that a month later many planes and ships would come to Jaluit and carry them away and that they were to go to an island where there were no soldiers and as a signal to place a woman on the inner side of the island. After this Raline sneaked into the northern part while Raliejap went to the southern part of the island.

The judge advocate moved to strike the complete answer on the ground that it was immaterial and irrelevant to the issues before this commission.

The accused replied.

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

The commission stated that it would announce its decision on the motion to strike when it reconvened after the noon recess.

The witness was duly warned.

The commission then, at 11:33 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Furuki, Hidesaku, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

The commission announced that the motion was sustained and directed that the answer be stricken out. ✓

51. Q. You stated that you examined and consulted upon these natives and established the facts of their actions. How were the facts established?

A. By the following three points: (1) Admiral Masuda ascertained by the

natives, the investigation of Inoue and Morikawa and the confessions obtained from them; (2) the reports of the commanding officer of the Jaluit district where the natives drifted ashore and also from the head of the detachment on Ren Island and the district commanding officer of Chitogen Village; (3) the boats and other material evidence.

52. Q. On the third item, you stated "boats and other materials." Will you state concretely what other material evidence there was?

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

The accused withdrew the question.

53. Q. You testified concerning boats and other materials. Were these boats and other materials brought before the people on the examination and consultation for them to see and inspect?

A. The boats were tied to the pier and they were not brought to the examination. The other things that Raliejap brought, such as food, clothes that were in a wooden box and also some toilet articles which were wrapped in a cloth, were submitted at the examination and the clothes of petty officer Tanaka which were brought by the Raline group were also submitted in the examination.

54. Q. Were the boats also inspected and examined?
A. Yes.

55. Q. How were they inspected and examined?

A. The commanding officer went to inspect and examine the boat. Myself and Shintome also went together to inspect and examine the boat.

56. Q. Was it no mistake that this boat was the boat that they had stolen from Mille Island?

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

The accused withdrew the question.

57. Q. Did you confirm that this was the boat in evidence?
A. Yes.

58. Q. Tell us the breakdown and the amount of things that were brought to be examined and inspected.

A. The effects of the Raliejap group was one wooden box, length of about one meter, width of about fifty centimeters, depth of about forty centimeters. It contained family clothes. I do not remember exactly what sort of things were in the box. Wrapped up in a cloth were towels, matches, and other toilet articles. I do not remember exactly what they were. As for food, there was a bottle which contained from six to nine pints and was filled with chagana, two baskets of buiro, which is prepared breadfruit that can be preserved, and copra, I do not remember the exact number. I also remember that all the copra was not brought in during the examination and consultation. As for the effects of the Raline group, the clothes of petty officer Tanaka, there was a regular Japanese navy shirt and short pants with the mark of the Sixty-sixth Naval Guard Unit and the name clearly shown.

The judge advocate moved to strike out this answer on the ground that it went into collateral matter.

The accused replied.

The commission directed that the answer be stricken out.

59. Q. You stated that you judged on the acts of these natives through these inspections and examinations. How did you judge them?

A. What do you mean when you say "How did you judge them?"

60. Q. You stated that you ordered the investigation reports by Inoue and Morikawa and that you obtained the confessions and that the reports of the various district commanders were read; also, you inspected and examined the boats and other material evidence. How did you judge the natives as a result of what you inspected and examined?

A. It was judged that the natives who had sneaked in had committed the crime.

61. Q. What kind of a crime do you mean when you say crime?

A. As violation of the Japanese Criminal Code, spying, murder and rebellion; in violation of Navy Criminal Code, desertion, attacking a guard in a group and destroying of military property and others.

62. Q. Tell us briefly what actions of the natives were applicable to what crime.

This question was objected to by the judge advocate on the ground that it was going into collateral material and was irrelevant.

The accused replied.

The commission announced that the objection was not sustained.

A. The mission that they were given by the American ships was that the natives were given a mission to spy on the boat and at the island where they drifted ashore, relay the message to some natives, this made them guilty of the act of spying. That they attacked the guard in a boat and plotted to kill him made them guilty of the crime of murder. Planning to desert to the Americans, desert from Hille and desert to an American ship made them guilty of desertion. That Ralime and Raliejap stole the boat made them guilty of the crime of destroying of military property and these acts on a whole made them guilty of the crime of plotting with another nation against Japan. That they attacked the guard in a boat made them guilty of the crime of attacking guards in a group.

63. Q. You stated that they killed a guard on a boat. Do you know the name of the person that they killed?

A. I do. It was Petty Officer Tanaka of the Sixty-sixth Naval Guard Unit.

64. Q. How did you determine the fact that it was Tanaka of the Sixty-sixth Naval Guard Unit that was killed?

A. Because the native, Ralime, confessed that he had killed petty officer Tanaka and the fact that he had the clothes of petty officer Tanaka in his box.

65. Q. Did you see the clothes of Petty Officer Tanaka with his name on it?

This question was objected to by the judge advocate on the ground that it was repetitious, irrelevant, and went into collateral matter.

The accused replied.

The commission announced that the objection was not sustained.

A. I did.

66. Q. What kind of clothing was this?

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

The accused replied.

The commission announced that the objection was sustained.

67. Q. After the crimes of the natives were determined, how was the examination and consultation continued?

A. On the eighth, a new investigation report with a supplementary investigation report attached was reviewed and then at this time Admiral Masuda said: "Tomorrow I shall hold an examination and consultation to determine the sentence on these natives. Inoue, in your capacity as judge advocate, shall give an opinion as to the punishment, tomorrow. Furuki and Shintome, prepare opinions as to sentence." On the next day, the ninth, an examination and consultation was held to pass sentence on the natives. Inoue stated his opinion as to sentence by a prepared opinion paper. After this, Shintome myself, and Admiral Masuda expressed our opinions. Further opinions were exchanged on how or whether to punish these natives. Then Admiral Masuda made his decision and a judgment paper was drawn up by him.

68. Q. Where was this last examination and consultation held?

A. In Admiral Masuda's air raid shelter.

69. Q. On the eighth and ninth were Admiral Masuda, Shintome, yourself, and Captain Inoue present?

A. Yes.

70. Q. You stated that Inoue expressed his opinion as a judge advocate. What opinion did he express?

A. The opinion stated by Captain Inoue by his opinion paper was that the two children should be sent to an island to the north of Baidj and confined. The grown-up people, the adults, they should be punished with death. And as for the crimes against the adults, it was as I stated previously. As for the children, as I remember, the charge of spying was laid against them. At this time Captain Inoue also stated that the natives had actually committed the crime and they had been given a mission to spy by the Americans. That there was no doubt that they had actually committed the crime and at a time when

Jaluit was under seige by the enemy and in dire circumstances by rebellion and spying against Japan and the revealing of the secrets of the Jaluit Defense Garrison overturns its very basis of security and therefore should be punished severely. The two children, it is clear, are spies, but as they are unfortunate and pitiful, they should be confined that they may not act as spies.

The judge advocate moved to strike out that portion of the answer which relates to the specific opinion of Inoue with regard to what acts had been committed by the natives on the ground that it was hearsay.

The accused replied.

The commission announced that the motion was not sustained and that the commission would accord this reply its proper weight.

The commission then, at 3:23 p.m., took a recess until 3:42 p.m., at which time it reconvened. JPK

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

No witnesses not otherwise connected with the trial were present.

Furuki, Hidesaku, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

71. Q. You just stated Captain Inoue's opinion as judge advocate. What were your opinion, Shintome's opinion and Admiral Masuda's opinion?

A. Shintome and myself were of the same opinion as Admiral Masuda concerning the adults, it was the same opinion as Inoue's. But, concerning the children, they shall be sentenced to death by reason for this. That the two children are undersize and their mind has developed to the extent of that of an adult, and in that they are spies, it is the same as in the case of adults; and if they are confined as stated by Inoue, it would mean the pardoning of their act of spying. There is no way out but death. Under the dire circumstances on Jaluit if these two escape and reveal military secrets, it would mean the basis of existence of the Jaluit units and result in the destruction of military property; therefore, it is pitiful, but they shall be sentenced to death. To this I expressed the following opinion: Steps should be taken to prevent the spying of the two children and confine them as stated by Captain Inoue. As means of doing this, these two children should be confined on another island and a good soldier selected to guard these children and reeducate them, especially concerning spying; therefore, destroying any of their attempts to spy. Lieutenant Commander Shintome also agreed to this. In reply to this Admiral Masuda stated: "I feel just as sorry for the two children as you and my opinion remains. I have many children of my own, but is there any means to do with the execution of these children since we have determined on the act of the natives? I have thought about this thing day

and night and there is no way of finding any means to do without this. Even at this point, is it not true that Ralime escaped? All of you know how difficult it is to prevent spying and infiltration of counter-intelligence. On Jaluit where there is nothing, and the conditions are the most hopeless. We have had a very difficult time keeping counter-intelligence out. I have thought concerning this very thoroughly, especially since last night after Ralime escaped and to provide against the revealing of military secrets and to keep up the morale of the Jaluit forces and to the continued existence of the Jaluit Defense Garrison. There is no other way but to sentence the children to death." For a short time, no one spoke, after which Admiral Masuda said: "We are finished with the examination and consultation and sentence shall be decided" and then stated that he had sentenced the eight natives to death, and on the top part of Inoue's opinion paper, he wrote in the sentence of death, signed it and then initialed it. JWC

72. Q. Please tell us briefly how this decision paper was written.

A. On the top part of Captain Inoue's opinion paper there was a column to write in the decision, to the right he wrote in judgment in the column reserved for this, and on top of the names of the eight natives, he wrote in the sentence of death and on the right he signed "Rear Admiral Masuda, Misuke," and initialed it.

73. Q. Was the sentence relayed to all the natives?

A. Yes.

74. Q. How was this done?

A. Admiral Masuda took Captain Inoue with him and went to where the natives were confined.

75. Q. From what we have heard from the witnesses up to the present, they have stated that Admiral Masuda directed the investigation and examination and consultation. Is that correct?

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

The accused replied.

The commission announced that the objection was sustained.

76. Q. You stated that Admiral Masuda assembled yourself, Shintome and Inoue and stated that by his authority and under the conditions on Jaluit you would hold this consultation at this time. Were there no established courts at Jaluit?

A. No.

77. Q. Under normal conditions, if you know, what courts would these natives have been referred to?

A. To the court at Pohnpei.

78. Q. Where were the military courts?

A. At Truk.

79. Q. Couldn't these cases have been sent to the Pohnpei or Truk courts?

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

The accused withdrew the question.

80. Q. Do you know, by your own knowledge, if it were possible to send these cases to the Ponape and Truk courts?

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

The accused replied.

The commission announced that the objection was not sustained.

A. It was absolutely impossible.

81. Q. For what reasons was it absolutely impossible?

A. At this time the central Pacific was dominated by the American forces and all inter-base connections were completely cut off after the fall of Kwajalein. There was no transportation by way of air between Truk or Jaluit or Jaluit and the other bases.

82. Q. Do you know if Admiral Masuda had the authority to examine and consult this case?

A. I do.

83. Q. Tell us what authority he had, if you know.

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

The accused replied.

The commission announced that the objection was sustained.

84. Q. Do you know whether there was an order from the Fourth Fleet Commanding Officer to Admiral Masuda around April, 1944?

A. I do.

85. Q. Please tell us what it was.

A. It stated that each supreme commander of each base should command all military, gunboats, government officials and civilians, and administer judicial and administrative affairs.

86. Q. Did this dispatch give Admiral Masuda authority to take action in this case?

This question was objected to by the judge advocate on the ground that it called for the legal opinion of this witness.

The accused replied.

The commission announced that the objection was sustained.

87. Q. You acted as one of the group of people examining and consulting on this case. Do you know of your own knowledge, if the act you testified to of Admiral Masuda, was right or wrong?

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

The accused replied.

The commission announced that the objection was sustained.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Wednesday, May 14, 1947.

TENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Wednesday, May 14, 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 Commander ~~Branker~~ W. Lee, junior, U. S. Naval Reserve, *JK*
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Bolton, 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, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Furuki, Hidesaku, 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.

(Examination continued.)

88. Q. You stated yesterday concerning the steps taken during the investi-
gation until the findings of this group of people on examination and consul-
tation. Do you know who directed and who decided the investigation and
examination and consultation?

A. I do.

89. Q. Please tell us.

A. Admiral Masuda.

90. Q. Did any one of the persons concerned, yourself, Shintome, or Inoue,
as the judge advocate, make any objections?

A. No.

91. Q. You, acting as a member of this group in examination and consultation, *JK*
what did you think of this?

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

The accused replied.

The commission announced that the objection was sustained.

92. Q. In yesterday's testimony you stated that Admiral Masuda said, "Even now, has not Ralime escaped?" If you know when Ralime escaped, please tell us.

A. It was on the night before the examination and consultation, to decide the sentence, was held.

93. Q. Was the decision concerning Ralime also made at this same time?

A. Yes.

94. Q. What occurred as a result of this decision?

A. Right after the decision was made, Admiral Masuda gave Captain Inoue orders concerning the execution. He wrote these orders on the bottom part of the judgment paper and read it to Captain Inoue. It stated as follows: "Captain Inoue, on April 9 (I do not know the exact date), 1945, you shall execute the sentence of death on the seven natives other than Ralime, by shooting." Captain Inoue, after hearing this order, was silent for a short time, after which he stated the following opinion to Admiral Masuda: "As for myself, the execution of the children I can not do because I feel very sorry for them, and I wish I could be excepted from the execution of these children or at least postpone the execution for two or three days so I may have time to think of means other than the execution. At this time, Admiral Masuda raised his voice and stated definitely that this was an order of execution and that "this order of execution was reached after an examination and consultation and you should know better than any of the men on Jaluit what an order is. I shall not tolerate any further opinions on this order. In the evening I shall go to tell the natives their sentences. Captain Inoue, you shall accompany me." After this, Captain Inoue told me as follows: "It is very difficult for me to execute these children, but as I have been ordered to do so, I can not get out of performing the execution. Never before have I felt as I do now how hard the life of a soldier is." That evening, Captain Inoue went with Admiral Masuda on a motorcycle with a side car attached to where the natives were confined to read the sentences to them. Two days later, when Ralime was captured, Admiral Masuda called all the judges and Captain Inoue to him and at the bottom of the judgment paper wrote the follows: "About the eleventh of April (I do not remember the exact date), 1945, Captain Inoue, after sentence of death passed on Ralime, Captain Inoue shall perform the execution by shooting." On the evening of that day, Admiral Masuda accompanied by Captain Inoue went to tell the sentence to Ralime at his place of confinement.

The judge advocate moved to strike the portions of the answer to the question relating the statements of Admiral Masuda and the statements of Captain Inoue made subsequent to the decision of the alleged trial procedure for two reasons: First, on the ground that they were hearsay statements made subsequent to the alleged trial; and second, on the ground of irrelevance because these statements were being used by defense in order to establish a certain motive in this accused and the existence of that motive was irrelevant and immaterial except in mitigation. The judge advocate further moved to strike those portions of the answer referring to when Captain Inoue and Admiral Masuda went on two occasions to read the sentences to the natives on the ground that there has been no testimony as to the source of this information given by the witness, and therefore it must be assumed that the testimony was hearsay.

The accused replied.

The commission was cleared. The commission was opened, and all parties to the trial entered. The commission announced that the motion to strike certain portions of the answer was not sustained. The reply in question

will be considered in its entirety and the various portions thereof accorded their proper weight and place in the proceedings.

95. Q. You stated that Admiral Masuda and Captain Inoue went to the place where the natives were confined in a side car. Did you see them go?
A. I did.

96. Q. How did you know that they were going to tell the sentence to the natives?

A. Admiral Masuda and Captain Inoue got on the side car in front of my quarters and told me that they were going to the ammunition dump and to the base transmitting station to pass sentence on the natives. *jm*

97. Q. Do you know if the natives were executed according to the order of execution?

A. I do.

98. Q. When was this order executed?

A. After the sentence was passed and on the same day.

99. Q. How do you know this?

A. Because Captain Inoue came to me and reported that the execution had been completed.

100. Q. To whom did he report this?

A. Captain Inoue and myself lived in the same house and in different rooms separated by a wall. When he went to any place other than to headquarters, he usually told me where he had gone and what he had done. In this case, as usual, he told me where he had gone and what he did.

The judge advocate moved to strike out this answer on the ground that it was not responsive. The judge advocate further moved to strike the answer to question 99 on the ground that it has become apparent that it was hearsay due to the fact that this information did not come about as a result of either Major Furuki's or Captain Inoue's official duties, but merely as a result of a personal conversation.

The accused made no reply.

The commission directed that the answers to questions 99 and 100 be stricken out. ✓

101. Q. Do you know if this information concerning the execution was made known to the forces on Jaluit?

A. I do.

102. Q. Tell us.

This question was objected to by the judge advocate on the ground that it called for an answer that would be irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

INOUE, Fumio

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A. Admiral Masuda made the executions public as follows: "The natives who sneaked into Jaluit from Mille committed felonies there and were given a mission to act as spies and did act; therefore, it was decided to execute them. They have been executed on the two days, the ninth and twelfth (I do not remember the exact date)," and it was made public in this form to all the men on Jaluit. This was also sent to the district commanders on the outlying islands.

The judge advocate moved to strike out this answer on the ground that it was hearsay, irrelevant and immaterial.

The accused replied.

The commission directed that the answer be stricken out.

103. Q. To whom and by what means was this execution made public?

A. It was made public to all military and gunzokus on the island. The means of making this public was that the commanding officer of the Jaluit Defense Garrison made up a document which he circulated to myself, Shintome, and Inoue, after which Shintome ordered the circulation to all the units on Jaluit, including the ones on the outlying islands. As for the Naval Guard Unit, Shintome personally made this public. I personally saw him do it. As for the army, the adjutant relayed this information to the persons assembled to receive orders from the various units. I saw the record in which it stated that this word was relayed. As for the outlying units, myself, as head of the Defense Section, had a document prepared and sent to the commanding officers of the outlying bases.

104. Q. What was Shintome's position on Jaluit at this time?

A. Lieutenant Commander Shintome was the executive officer of the Sixty-second Naval Guard Unit, actually he was almost an adjutant to Admiral Masuda, and he was one of his most important helpers. He had contact with all the units and helped Admiral Masuda strenuously in all matters.

105. Q. If you know to what extent Lieutenant Commander Shintome was involved in this incident, please tell us.

This question was objected to by the judge advocate on the ground that it was too vague, irrelevant and immaterial. *JK*

The accused replied.

The commission announced that the objection was ^sustained. *JK*

The witness was duly warned.

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, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Furuki, Hidesaku, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

106. Q. This morning you stated that Masuda had said to Captain Inoue: "You should know what an order is better than anyone else on Jaluit." Will you tell us what orders are in the military service and what are the rules on which they are based?

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 sustained.

107. Q. Do you know what punishments there are if a person does not obey the orders of his superior officer?

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 sustained.

108. Q. Do you know what duties Captain Inoue had on Jaluit at the time this Mille native incident occurred?

A. I do.

109. Q. Please tell us what duties he had.

A. He was head of the special police detail of the Jaluit Defense Garrison and was head of the farming department and the self-supporting measures committee. JK

110. Q. Do you know what work was handled by the special police section?

A. I do.

111. Q. Tell us briefly what their duties were.

A. (1) It was the investigation of facts, the food regulations and the rationing of it; (2) Disciplinary and moral supervision; (3) Investigation of crimes and their punishment.

112. Q. Do you know who ordered Captain Inoue as head of the special police section?

A. I do.

113. Q. Who was it?

A. Rear Admiral Masuda.

114. Q. You stated in your testimony that Captain Inoue was your subordinate. What command relation did Admiral Masuda have with Captain Inoue?

A. As the special police section came directly under the command of Admiral Masuda, he could order Captain Inoue in this respect; and also, on special occasions, he could order Captain Inoue directly.

115. Q. Do you know if there were any command relations as superior and subordinate between Admiral Masuda and Captain Inoue?

A. I know.

116. Q. Were there any?

A. There were.

117. Q. You stated that one of Captain Inoue's duties was the investigation of crimes and the execution of punishment. Do you know if Captain Inoue performed any of these duties concerning military, gunzoku, or natives previous to the Mille native case?

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

The accused made no reply.

The commission announced that the objection was sustained.

118. Q. You stated previously that you knew of natives deserting from the other bases on the Marshalls. How did you come to know this?

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

The accused made no reply.

The commission announced that the objection was sustained.

119. Q. Do you know if radio communications were possible between the Jaluit and the other bases around February to March, 1945?

A. I do.

120. Q. Tell us about it.

A. Radio communications between other bases in the Marshalls were not sufficient but were possible. It was the same in the radio communications between the Fourth Fleet Headquarters and Truk and Jaluit.

121. Q. Do you know if any inquiry was made to Mille concerning the Mille natives?

A. I do.

122. Q. Please tell us.

A. No inquiry was made concerning the Mille natives. The reason is as follows: In the middle of the examination and consultation of the Mille natives, I expressed an opinion to Admiral Masuda to inquire about the Mille crimes at the Sixty-sixth Naval Guard Unit. Admiral Masuda stated as follows: "We have evidence and it is backed by the confessions of all of the natives. Their guilt has been established. Also the codebooks now in use in the Marshalls have been in use for over a year and the enemy has captured Kwajalein and Tarawa and I have to presume that all dispatches sent from Jaluit are known to the enemy. If we let the enemy know that we have caught the natives and that they had confessed to the crime, the enemy would try newer and more effective methods to achieve their motive." Therefore, for this reason that the enemy may monitor and intercept our messages, Admiral Masuda rejected the opinion I expressed.

JK
JK

The judge advocate moved to strike out that portion of the answer which followed the words "No inquiry was made concerning the Mille natives" on the ground that it was clearly hearsay, irrelevant and immaterial.

The accused made no reply.

The commission directed that that portion of the answer be stricken out.

123. Q. Do you know the reason why no inquiry was made?

A. The reasons were: (1) Eight natives had confessed and it was evidence that their guilt was established and thought not necessary to probe further; (2) Was from the standpoint of operations, through fear of interception of their messages, which was undesirable to the defense garrison of Jaluit. JK

The judge advocate moved to strike out this answer on the ground that it was irrelevant, immaterial, and the mere opinion of the witness.

The accused replied.

The commission was cleared. The commission was opened. All parties to the trial entered, and the commission announced that the motion was denied.

124. Q. Do you know if there are regulations in the Japanese military service called "Rules and Regulations on Army Life"?

A. I do.

125. Q. What things does it regulate in this manual?

A. It has regulations concerning each person's duties and each daily routine in the service.

126. Q. Do you know if there are paragraphs in this book concerning the relation between superior and subordinate?

A. I do.

127. Q. Do you know what regulations or rules there are on this?

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 sustained.

Cross-examined by the judge advocate:

128. Q. Do you know if Admiral Masuda is alive?

A. He is dead.

129. Q. When did he die?

A. On the fifth of October, 1945.

130. Q. Do you know if martial law was proclaimed on Jaluit, Marshall Islands?

A. I do.

131. Q. Was martial law declared?

A. It was not formally proclaimed, but it was recognized the contents were that of martial law.

132. Q. You have testified concerning the authority which Admiral Masuda derived from certain dispatches. Was this authority broad enough to authorize him to violate international law?

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

The judge advocate withdrew the question.

133. Q. Did the authority given Admiral Masuda in the dispatches you referred to empower him to punish by death without a trial?

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 sustained.

134. Q. Was there a copy of naval court martial law on Jaluit during the period that you were there?

A. I think there was, but I did not ascertain this.

135. Q. Where do you think this copy of naval court martial law was?

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. In the office of the headquarters of the Sixty-second Naval Guard Unit.

136. Q. You testified concerning the decision that was reached by yourself, Shintome, and Admiral Masuda concerning the natives; and you testified that you and Shintome expressed the opinion as judges that the children should be spared, but that the others should be punished with death. Is that correct?

A. Yes.

137. Q. Then, it was the opinion of both Shintome and yourself that the children should be spared but that the others should be punished with death. Is that correct?

A. Yes.

138. Q. You testified that the examinations and consultations were held in three groups: (1) From the third to the sixth concerning Raliejap; (2) The second group concerning Ralime's group on the sixth, and then (3) a third series of examinations and consultations on the eighth and ninth. Did this last examination concern the identical material and evidence that was used in the former two examinations?

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.

The question was repeated.

A. The examination and consultation of the third group was concerned with the relations between the two groups and also supplementary evidence to the case.

139. Q. In the course of all of these examinations, did any native witnesses appear before Shintome, Masuda and yourself to testify concerning the events?

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. No native witnesses were called in front of Admiral Masuda, myself, and Shintome, but Admiral Masuda, himself, went directly to where the natives were and questioned them directly.

140. Q. Were you present with Admiral Masuda when he went to question the natives?

A. I did not go.

141. Q. Do you know if Shintome was present with Admiral Masuda when he questioned the natives?

A. I do not know.

142. Q. Did Admiral Masuda ever bring back from these alleged visits to the natives any transcripts of testimony by these natives?

A. No.

143. Q. Were any of the natives who were subsequently executed by Captain Inoue ever present during the course of the examination and consultation?

A. They never appeared while the three of us were conducting the examination and consultation.

144. Q. You testified concerning certain reports by Inoue and Morikawa of their investigations. Did these reports contain the alleged confessions you have spoken about during your testimony?

A. I cannot grasp the meaning of this question.

145. Q. You testified that the last examination was held on the ninth of April. Did this examination take all day?

A. It did not take all day. It took all morning. When I stated the ninth, I cannot say exactly that it was the ninth, but somewhere around there.

146. Q. During the course of your testimony, you have referred to certain investigations by the natives. How do you know about these investigations?
A. I know from what was reported to me by Captain Inoue and Lieutenant Morikawa, who were the investigators, and what I was told by Admiral Masuda when he returned from his questioning of the natives.

147. Q. Then, you never heard the natives confess, did you?
A. I did not hear them confess directly.

148. Q. Did you ever see any written confessions from any of these natives?
A. No.

149. Q. You testified that the natives were guilty of murder and of spying. Is that correct?
A. Yes.

150. Q. Who were the natives found guilty of murder?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The six adults were guilty of the two crimes.

151. Q. Who were they found guilty of murdering?
A. The natives who were found guilty of killing a Japanese soldier were Ralime and the native who lived with him. The person that the natives killed was petty officer Tanaka of the Sixty-sixth Naval Guard Unit. OK

152. Q. You testified that when you first heard of this native incident that you were away on a trip and that when you returned, Admiral Masuda called you, Shintome, and Inoue together in his office. Is that correct?
A. Yes.

153. Q. What did Admiral Masuda say to you when he called you together in his office at that time?
A. He told us that the natives who had sneaked in from Mille Island had committed murder and other felonies and that it was found that they were spies and this was a serious crime on Jaluit. As they could not be sent to the courts at Truk or Ponape, they would be given an examination and consultation by Admiral Masuda on his authority on Jaluit. Admiral Masuda also stated that Admiral Masuda, Furuki, and Shintome would act as judges and that Captain Inoue would perform the duties of judge advocate.

154. Q. What day was this on?
A. It was around the third.

155. Q. It was subsequent to this date, was it not, that the first examination and consultation was held with regard to the Raliejap group?
A. The examination and consultation began on this day. OK

156. Q. Did the examination and consultation begin after Admiral Masuda had called you together?

A. Yes.

157. Q. You have testified that Admiral Masuda said that the natives had committed murder and other crimes. Are you sure those are the words that Admiral Masuda used?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. He stated that according to the investigation made it had been found that they had committed murder and other felonies.

158. Q. Did he state that the investigation indicated they had committed murder or did he state that they had committed murder?

This question was objected to by the accused on the ground that it called for an answer that would be hearsay and that it was irrelevant to the issues being tried.

The judge advocate withdrew the question.

159. Q. Did Admiral Masuda state that the natives had committed murder?

A. He said that according to the investigation report it was stated that these natives had committed murder.

160. Q. Did Admiral Masuda tell you what the natives had done at this time?

A. He did not say anything in detail.

161. Q. Did Admiral Masuda say that the natives were also guilty of spying?

A. When did he say this?

162. Q. At this time when he called you and Shintome together and said you were to act as judges.

A. He did not say that they were guilty as spies.

163. Q. Did he say that the investigation reports showed that they were guilty as spies?

This question was objected to by the accused on the ground that the witness had not stated anything concerning guilty or not guilty, and that it was leading.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. He did not say that they were guilty as spies.

164. Q. Did he say that they were accused in the investigation report of being spies?

This question was objected to by the accused on the ground that it was misleading and too broad in its scope.

The judge advocate withdrew the question.

165. Q. At that time, did he say that they were accused in the investigation report of being spies?

A. He did not say that the natives were accused of spying.

The witness was duly warned.

The commission then, at 4:27 p. m., adjourned until 9 a. m., tomorrow, Thursday, May 15, 1947.

NINTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Thursday, May 15, 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 Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Bolton, 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, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Furuki, Hidesaku, the witness under examination when the adjournment was
taken on May 14, 1947, entered. He was warned that the oath previously
taken was still binding, and continued his testimony.

(Cross-examination continued.)

166. Q. You testified that the first examination of Rallie's group
occurred from the period of the third to the sixth. What time on the third
day did the examination begin?

A. I do not remember exactly what time it was, but it was in the morning.

167. Q. Do you know how long a time was spent during this first examination?

A. I think it was about three hours.

168. Q. On the fourth when did the examination begin?

A. I do not remember when we began on the fourth.

169. Q. Do you remember whether it was in the morning?

A. I do not remember.

170. Q. Do you remember if it was during the daytime?

A. It was during the daytime.

171. Q. Do you remember how long a meeting this consultation was?

A. I do not remember exactly how long it took.

172. Q. Do you remember approximately how long it took?

A. I do not remember the approximate time.

173. Q. Do you know whether any consultation was held on the fourth at all?

A. I do.

174. Q. Was there a consultation held on the fourth?

A. Yes.

175. Q. Do you know what was consulted about on the fourth?

A. I think the examination of the boat and the clothes and food the natives brought was done on this date, but I do not remember exactly.

176. Q. Where was the examination of the boat made?

A. The judges went to see the boat at the pier and the consultation concerning this was done in the air raid shelter of Admiral Masuda.

177. Q. How far is it from headquarters to the pier?

A. About five hundred meters.

178. Q. How long did it take the judges to go to the boat and to return to Admiral Masuda's air raid shelter?

A. I think it was about thirty minutes.

179. Q. Approximately how long did you consult about this after you returned to Admiral Masuda's air raid shelter?

A. Just short of an hour.

180. Q. And on that day you consulted at least an hour and one-half. Is that correct?

A. Yes.

181. Q. Do you now recall whether that was on the fourth or not that this took place?

A. It was around the fourth, but I can not say exactly whether it was the fourth or not.

182. Q. On the day of the fifth when was examination and consultation held?

A. I do not remember the time.

183. Q. Was it in the daytime?

A. Yes.

184. Q. Do you know approximately how many hours of consultation were held on this day?

A. I do not remember the time.

185. Q. Do you know how many hours were spent on the sixth day consulting about the Raliejap group?

A. As I remember the examination and consultation of the Raliejap group was over in the first three days of the examination and consultation.

186. Q. Did the examination of the Raline group begin on the sixth?

A. It was around the sixth.

187. Q. Do you know how many hours were spent on the sixth day consulting on the Raline group?

A. I do not remember.

188. Q. Was it in the daytime?

A. Yes.

189. Q. Was it in the morning?

A. I do not remember exactly.

190. Q. Was consultation held on the day of the seventh concerning the Raline group?

A. It was around the seventh.

191. Q. How many days did this first examination of the Raline group take?

A. Do you mean the first day?

192. Q. How many days from the sixth?

A. I think it was two days.

193. Q. Do you know approximately how many hours the consultation on the seventh was concerning the Raline group?

A. I do not remember.

194. Q. Do you know if it took place in the daytime?

A. As I remember it was during the daytime.

195. Q. At all these earliest examinations and consultations were Shintome, Inoue, Masuda and yourself always present?

A. Yes.

196. Q. On the morning of the third day when the consultation was begun with regard to the Raliejap group, did you use any written investigation report?

A. This was read.

197. Q. Was it read from a written paper?

A. Yes.

198. Q. Who read the report?

A. Captain Inoue.

199. Q. Whose investigation report was it?

A. It was the investigation by Captain Inoue and First Lieutenant Morikawa.

200. Q. Did this investigation report contain the confession of the child?

A. Do you mean that the child had confessed?

201. Q. Yes.

A. It was written in the investigation report that the child had confessed.

202. Q. Was this same written investigation report used throughout the fourth and fifth days of the consultation?

A. Yes.

203. Q. Was this the same final investigation report that was submitted on the eighth and ninth at the final consultation?

A. Do you mean was it the very same one that was submitted in the first examination?

204. Q. Yes, that is what I mean.

A. At the time of the third examination and consultation a rewritten report was used. 87

205. Q. Did the first investigation report contain charges that the natives had been spying?

A. Yes.

206. Q. As a result of that first investigation completed on the fifth did Admiral Masuda at that time determine that the natives of the Raliejap group were guilty of murder and spying?

This question was objected to by the accused on the ground that it called for hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. He did not determine that the natives were guilty, he determined the actions of the natives.

207. Q. During the period from the third to the fifth, the period of this first investigation, did Admiral Masuda or any members of this consultation direct Inoue to go back and ask further questions of the natives at the Second Ammunition Dump?

A. Yes.

208. Q. Who told Captain Inoue to go back and ask these questions?

A. Admiral Masuda.

209. Q. Did you or Shintome tell him to ask any additional questions?

A. I do not think we did.

210. Q. But you are sure that Captain Inoue went back to the Second Ammunition Dump and asked the Raliejap natives further questions.

A. Yes.

211. Q. On the eighth day do you remember how many hours were spent in consultation?

A. I do not remember.

212. Q. Do you know if that was in the daytime?

A. It was during the daytime.

213. Q. Do you know approximately how many hours were spent on that eighth day?

A. I do not remember.

214. Q. On the ninth day when was the consultation held?

A. I can not say exactly it was the ninth day, but do you mean the last day of the examination?

215. Q. That is right.

A. On the last day it was begun in the morning.

216. Q. Do you know approximately how long that meeting took?

A. I think it took all of the morning.

217. Q. About how many hours?

A. About three to three and one-half hours.

218. Q. You testified that the investigation report which was used on the first examination commencing on the third stated that the child had confessed.

A. Did it also state that the adults had confessed?

A. Yes.

219. Q. Did it state that all the adults had confessed?

A. Yes.

220. Q. Did this investigation report state who confessed first?

A. It was the child.

221. Q. Did this investigation report state what methods were used to make the child confess?

A. It was stated that the child had been given candy, obtaining her good feeling and good will and received the confession.

222. Q. Did this investigation report state that this child told that her parents committed murder merely because she was given a piece of candy?

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

The judge advocate replied.

The commission announced that the objection was sustained.

223. Q. Did this investigation report state that this child admitted the murder of a Japanese soldier and that this child was induced to make this confession by giving the child a piece of candy?

A. What was written in the investigation report was that the child was given candy and as a result confessed.

224. Q. When Admiral Masuda instructed Captain Inoue in your presence to act as judge advocate, did he swear him to truly determine and report the facts?

A. Not in my presence.

225. Q. Do you know if Captain Inoue was sworn?

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 sustained.

226. Q. In your official capacity as an alleged judge at this proceeding do you know if the judge advocate was sworn?

A. I do not know.

227. Q. Were you and Lieutenant Commander Shintome sworn as members of this alleged examination and consultation?

This question was objected to by the accused because it included Lieutenant Commander Shintome and therefore called for an opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Myself and Lieutenant Commander Shintome were not asked to be sworn and I think I misunderstood the question before this and I would like to have it repeated again.

228. Q. When Captain Inoue at the meeting on the third read the alleged investigation report so far as you know he was not sworn to tell the truth. Is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. When Captain Inoue read this investigation report he did not take an oath. He was not sworn.

229. Q. At these examination meetings from the third through the ninth were the accused natives represented by defense counsel or any legal representatives?

A. They were not represented.

230. Q. On the eighth day at the close of the meeting did Admiral Masuda tell you and Lieutenant Commander Shintome to consider the sentence and return the following morning?

A. Yes.

231. Q. Were you also to consider whether the natives were guilty of the crimes of murder and spying?

A. He did not say to think on whether they were guilty or not guilty.

232. Q. Did he ever ask you to think on whether the natives were guilty or not guilty?

A. No.

233. Q. On the ninth day when you assembled with Admiral Masuda and Lieutenant Commander Shintome did Admiral Masuda ask your opinion concerning the sentence? gk

A. Yes.

234. Q. Did he also ask Lieutenant Commander Shintome to give his opinion as to sentence?

A. Yes.

235. Q. Were your opinion and Shintome's opinion the same as to the sentence?

A. Yes.

236. Q. What was your opinion with regard to the sentence of the women?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Concerning the women, my opinion was death.

237. Q. Was it Lieutenant Commander Shintome's opinion that these women should be punished with death?

This question was objected to by the accused on the ground that it called for hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Lieutenant Commander Shintome's opinion was also death.

238. Q. With regard to the children, what was your opinion?

A. My opinion was to confine them so that they could not escape.

239. Q. Was Lieutenant Commander Shintome's opinion also the same?

This question was objected to by the accused on the ground that it called for hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

240. Q. Then with regard to the children, it was your opinion and Shintome's that they should not be punished with death, is that correct?

A. Yes.

241. Q. When you were originally called together with Lieutenant Commander Shintome and Captain Inoue on the third and informed that you were to act as a judge, did you ascertain the duties of a judge?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No.

242. Q. When did Ralime escape?

A. On the night before the meeting to determine the sentence was convened.

243. Q. Then is it true that Ralime's escape occurred after almost the complete examination and consultation had been finished?

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. Yes.

244. Q. Then is it true that Ralime's escape had nothing to do with the failure to have the natives present in Admiral Masuda's shelter during the examination and consultation?

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. It had nothing to do with it.

The commission then, at 10:18 a.m., took a recess until 10:35 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Furuki, Hidesaku, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

245. Q. When you testified yesterday in regard to the children and stated that they were "kogara", what did you mean by the word "kogara"?
A. I meant that their bodies were smaller than the build of an ordinary adult.

Reexamined by the accused:

246. Q. The question of the judge advocate in cross-examination with reference to the day before the last day of the examination, "Did Admiral Masuda tell you to think about whether they were guilty or not guilty?", and you answered that, "Admiral Masuda did not say to think about whether they were guilty or not guilty." Do you know what the reason why he said this?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness and that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

247. Q. Tell us exactly what Admiral Masuda said at this time.

This question was objected to by the judge advocate on the ground that it was too broad in its scope.

The accused made no reply.

The commission announced that the objection was sustained.

248. Q. To the question by the judge advocate in cross-examination, "Did Admiral Masuda ever ask you to think on whether the natives were guilty or not guilty?", you answered, "No." Is this correct?
A. This is correct.

249. Q. What did Admiral Masuda say on this subject at this time?

This question was objected to by the judge advocate on the ground that no time had been specified in this or prior questions.

The accused made no reply.

The commission announced that the objection was not sustained.

A. At this time Admiral Masuda said, "a decision will be decided tomorrow, think on this."

250. Q. When he said to decide the decision, when he stated decision did he mean determine whether he was guilty or not guilty and the sentence or did he only mean the sentence?

This question was objected to by the judge advocate on the ground that counsel was coaching the witness by a leading question and also on the ground that it called for the opinion of the witness.

The accused withdrew the question.

251. Q. When Admiral Masuda said, "decision will be decided", what did he mean when he stated decision?

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

The accused replied.

The commission announced that the objection was sustained, but informed the accused that if the question was directed at what the witness understood it would be permitted.

252. Q. When Admiral Masuda stated to think on the decision, what did you understand decision to mean?

A. I understood decision to mean to think on whether they were guilty or not guilty and if we thought they were guilty what sentence should be given them.

253. Q. By what facts was it decided that the natives in this case were spies?

A. Do you mean by me?

254. Q. In the examination and consultation.

A. Are you asking how I determined it?

255. Q. How did the people conducting the examination and consultation determine the natives were spies?

A. When Captain Inoue read the investigation report and Admiral Masuda questioned the natives directly on this and ascertained the facts that a confession was obtained and the confession stated that an American ship had given them a mission to spy and with an intent to spy they sneaked into Jaluit and that they had performed the duties as spies by relating what they were told to do to some natives on Jaluit and also the reports of the district commanding officers of Chitogen and Jaluit submitted to the defense garrison commanding officer stating that some of the natives had been told about the mission of the natives from Mille.

The judge advocate moved to strike out that portion of the answer following the words, "Admiral Masuda questioned.....", on the ground that it was hearsay, irrelevant and immaterial. JMK

The accused made no reply.

The commission announced that the motion to strike was not sustained and that the proper weight would be given to the reply.

256. Q. At that time what did you understand a spy to be?

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

The accused replied.

The commission announced that the objection was sustained.

257. Q. Have you ever read the Rules of Land Warfare in the Hague Convention?
A. No.

258. Q. Were you ever taught in the military service what a spy was according to international law?

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

The accused made no reply.

The commission announced that the objection was sustained.

259. Q. What did you understand Admiral Masuda's authority to be to call a court martial and punish criminals at the time of the examination and consultation?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial and that it called for the opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

Recross-examined by the judge advocate:

260. Q. You were asked by the judge advocate this morning before the recess with regard to Admiral Masuda, "Did he ever ask you to think of whether the natives were guilty or not guilty?" and in answer to this you said, "No." Is that correct?

The accused requested that the record show that the witness was interrupted in answer of this question when it was first asked.

The judge advocate replied.

The commission denied the request of the accused.

A. That is correct.

The witness was duly warned.

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

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

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

No witnesses not otherwise connected with the trial were present.

Furuki, Hidesaku, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Recess-examination continued.)

261. Q. After the recess this morning, you were asked by the defense counsel with reference to this question by the judge advocate whether or not you had answered "No" to the question, "Did Admiral Masuda ever ask you to think on whether the natives were guilty or not guilty?" and you answered, "This is correct." The next question by the defense counsel was, "What did Admiral Masuda say on this subject at this time?" and you answered this: "At this time Admiral Masuda said a decision will be decided tomorrow. Think on this." The next question by the defense was, "When Admiral Masuda stated to think on the decision what did you understand 'decision' to mean?" and you answered "I understand decision to mean to think on whether they were guilty or not guilty and if we thought they were guilty what sentence should be given them." In the answer to this last you indicated that you understood the word 'decision' to include the determination of guilty or not guilty. Is that what you understood the word decision to mean?

A. What I understood it to be was to find whether he was guilty or not guilty. If he was guilty to think on the sentence and as I understood it and we in Japan understood that it includes both.

262. Q. Then, why, this morning before the recess, when you were asked whether Admiral Masuda ever asked you to think on whether the natives were guilty or not guilty, did you answer "No"?

A. Admiral Masuda used the word "hanketsu" (interpreter's note: decision) and he did not say guilty or not guilty and when I was asked whether he had said think on whether they are guilty or not guilty, I answered "No."

263. Q. Since you understood the word "hanketsu" to include being guilty or not guilty, why did you answer that he had not asked you to determine whether they were guilty or not guilty?

A. Because he did not use those words.

264. Q. What words did he use?

A. He used the word "hanketsu."

The judge advocate asked the interpreter the Japanese words expressing "guilty or not guilty."

The interpreter replied "yusai musai."

265. Q. Did you understand the words "yusai musai" to be included in the finding "hanketsu"?

A. Yes.

266. Q. And the words "yusai musai" were the words that were used in the question to you before the recess this morning?

A. In this question do you mean in the question asked by the judge advocate?

267. Q. Yes.

A. Yes.

268. Q. If you considered that the words "yusai musai" were included in the

word "hanketsu," why did you answer "No" to the question whether Admiral Masuda had ever asked to find "yusai musai" in connection with these natives?

A. Because he did not use the words "yusai musai" but had used "hanketsu."

269. Q. The question you were asked this morning was "Did he ever ask you to think on whether the natives were guilty or not?" The question this morning wasn't whether Admiral Masuda had used the words "yusai" or "musai"; and, therefore, I asked you whether or not in thinking you were to determine whether they were guilty or not guilty; and, therefore, is it not true that you understood the words "yusai" and "musai" this morning as what you were to think about and not whether they were the words Masuda had actually used?

This question was objected to by the accused on the ground that it was beyond the scope of the redirect examination, too long and too complicated and difficult for the witness to understand, and was argumentative.

The judge advocate replied.

The commission announced that the objection was sustained.

270. Q. Were you asked by the judge advocate this morning before the recess whether Admiral Masuda had used the words "musai yusai"?

A. I was.

271. Q. The very first question you were asked in redirect examination this morning was with reference to whether or not Admiral Masuda ever asked you to think on whether the natives were guilty or not guilty. The next question was, "What did Admiral Masuda say on this subject at this time?" How did you know what time was being referred to?

A. I cannot get the meaning of the question.

272. Q. The first question that you were asked in redirect examination did not refer to any particular time but referred to "never." How did you know what time the defense counsel meant when, in his second question when he said "at this time"?

A. As I remember, I was asked by the judge advocate whether Admiral Masuda, on the last day before the decision, ever asked me to consider whether the natives were guilty or not guilty. Therefore, when I was asked by the defense counsel at this time, I understood it to mean the time I was asked "yusai musai."

273. Q. During the period of the recess this morning, did you think about the answer you had given the judge advocate with regard to that first question?

A. I did.

274. Q. Did you talk to anyone about this answer that you had given the judge advocate before the recess?

A. No.

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:

Concerning the last questions of the judge advocate, I was asked if Admiral Masuda had ever asked us to think on whether the natives were guilty or not guilty, and I answered that he did not, but I wanted to continue to say that he had said to think on the decision. As I was about to continue I was stopped by the judge advocate and in answer to the direct question of the defense stated that on the day that the determination of their acts was made, Admiral Masuda said then the next day a decision would be made on the natives and that Inoue should prepare his opinion as a judge advocate and Shintome and Furuki were to think on their opinions concerning the "hanketsu" (decision). As I remember, I testified as above and also concerning the sentence of death which was given the children. In testifying to the reasons why Admiral Masuda gave the decisions of death to the children, there was a part I forgot, so I would like to add it here. The children, if confined, a guard will always be necessary. Even now, Ralime has escaped and it can never be said to be sure and it would be very difficult. These children will have contact with the guards and relay the conditions of the military, the gunsoku, on Mille, the rebellion and desertion of the Koreans, and the desertion of the natives and try to gather as many natives, military and gunsokus from Jaluit to desert and give them a chance to achieve their motive. If this occurred it would break the discipline of the forces. This would drop the basis of military discipline, military secret, which is becoming known to the enemy and also the labor needed to get food, military and gunsoku, would be lost. It can be seen that this would bring about the eventual downfall of Jaluit and to save the existence of the Jaluit Defense Garrison, the two children were sentenced to death. Next, I would like to speak on the general reputation of Captain Inoue. It was generally stated on Jaluit that Captain Inoue had a fine military spirit, was the most obedient, the most diligent and a person who would give his own life to save another. He was also very fair under the dire circumstances on Jaluit. There was no one who could fulfill the job of head of the special police section other than Captain Inoue. Because Captain Inoue was the head of the special police section, they were able to maintain the morale and discipline on Jaluit. Whatever acts Captain Inoue did and whatever he said was sincerely believed by everyone. Whether it was army or whether it was navy, and whether it was regular military or gunsoku, there was no one who did not believe in him sincerely.

The witness was duly warned.

The commission then, at 3:07 p.m., took a recess until 3:37 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

The accused was, at his own request, duly sworn as a witness in his own behalf.

Examined by the judge advocate:

1. Q. State your name and rank.

A. Former Captain, Imperial Japanese Army, Inoue, Fumio.

2. Q. Are you the accused in the instant case?

A. Yes.

Examined by the accused:

3. Q. When did you enter the Japanese army?

A. In December, 1932.

4. Q. Did you graduate from the Japanese Military Academy?

A. No.

5. Q. When did you become an officer?

A. On March first of 1937.

6. Q. Have you ever had duties with the Japanese forces on Jaluit?

A. I have.

7. Q. What was the period that you were stationed there?

A. The thirtieth of November, 1943, to the eleventh of October, 1945.

8. Q. What unit were you attached to?

A. Headquarters of the First South Seas Detachment.

9. Q. What unit were you attached to on Jaluit?

A. I was attached to the headquarters of the Second Battalion, First South Seas Detachment.

10. Q. Who was the commanding officer of that unit?

A. Major, Imperial Japanese Army, Furuki, Hidesaku.

11. Q. While you were stationed on Jaluit, were there any other units there?

A. The only army unit was the Second Battalion.

12. Q. Were there any navy units?

A. There were.

13. Q. What units were there?

A. There was the Sixty-second Naval Guard Unit, commanded by Rear Admiral Masuda.

14. Q. What relation was there between the Sixty-second Naval Guard Unit and the Second Battalion of the First South Seas Detachment?

A. Upon arrival of the Second Battalion, it was placed under the command of the commanding officer of the Sixty-second Naval Guard Unit, Rear Admiral Masuda, and was commanded by him.

15. Q. On Jaluit what duties did you have?

A. In December, 1944, I was attached to the headquarters of the Second Battalion and was in charge of building fortifications. At the time of the incident, I was attached to the battalion headquarters of the army and worked as head of the farm department and the self-supporting committee, of which Lieutenant Commander Shintome of the navy was head. I also acted as head of the special police section which was under Admiral Masuda.

16. Q. What time do you mean when you say, "at the time of the incident"?

A. The end of March, 1945.

17. Q. What unit did this special police section belong to?

A. It was a section of the Jaluit Defense Garrison under which came the military, gunsoku and the natives and was commanded by Admiral Masuda.

18. Q. Since when had you been doing the work of the head of the special police section?

A. From the beginning of December, 1944.

19. Q. You mentioned the Jaluit Defense Garrison. Do you know for what reasons and when this organization was set up?

A. I do.

20. Q. Tell us briefly what you know.

A. In February, 1944, after the fall of Kwajalein, the Marshalls area and the other bases were cut off, and all transportation was cut off and by the decision of general headquarters, Admiral Masuda was given the full administrative and judicial authority and from April, 1944, thereafter, Admiral Masuda administered to all judicial and administrative affairs on Jaluit Atoll. From this time, the Jaluit Defense Garrison was organized.

21. Q. How do you know that Admiral Masuda was given this authority?

A. When Admiral Masuda was given the authority by the commanding officer of the Fourth Fleet, he called all the commanding officers together and relayed them this order and from this time the natives were included in the Jaluit Defense Garrison and all civilians were given the status of gunsokus, and the head of the civil government on Jaluit was ordered to work under Admiral Masuda, and from the fact that Jaluit Defense Garrison was organized, I know this.

22. Q. Was there any official order saying that the Jaluit Defense Garrison will be organized?

A. Admiral Masuda put out an order.

23. Q. To whom did he address this?

A. To each unit and the natives.

24. Q. What kind of work does the special police section perform?

A. The duties were (1) the investigation of food rationing; (2) the upkeep of military discipline and morale; (3) investigation of crimes and execution of punishment.

25. Q. Among the last duties you stated the execution of punishment. Did you also decide whether they should be punished or not?

A. No, I did not decide.

26. Q. Who decided this?

A. When I stated punishment, it was not punishment for felonious crimes. It was disciplinary punishment. I made the investigations and consultation examination was held by Shintome, Furuki, and the commanding officer of the

person to be punished and they determined the degree of this punishment and the final judgment was made by the commanding officer (Admiral Masuda).

27. Q. Among the duties you mentioned, did the third kind of duty apply also to natives?

A. It did not apply to the natives.

28. Q. Other to the duties as head of the police section, were there any relations between Admiral Masuda and yourself such as taking orders as a subordinate officer from a superior?

A. Concerning my duties as head of the police section, I took orders directly from Admiral Masuda, but in other matters, Major Furuki was my commanding officer and Admiral Masuda was the supreme commander.

29. Q. Did Admiral Masuda, as head of the special police section, have authority to order and command you and directly give you orders?

A. As he was the supreme commander, he had the authority; but in matters other than as head of the special police section, the orders were usually relayed to Major Furuki which was then relayed to myself.

30. Q. Do you know if an incident concerning natives from another island occurred on Jaluit around March, 1945?

A. I do.

31. Q. What kind of an incident was this?

A. It was a case where natives from Mille sneaked into the island.

32. Q. Do you remember the names of the natives?

A. I do.

33. Q. Tell us their names.

A. The natives were Raliejap, Anchio, Neibet, the wife of Raliejap, whose name is very long and I have forgotten it, Ralime, Iacojirik, Oehira and Sire.

34. Q. How do you know these things?

A. I know because I was ordered to investigate this incident and to act in the examination and consultation procedure.

35. Q. By whom and when were you ordered to perform this investigation?

A. In the morning of the first of April, 1945, I was relayed Admiral Masuda's order in Lieutenant Commander Shintome's room by Lieutenant Commander Shintome.

36. Q. What is the substance of that order?

A. It stated as follows: This morning natives from another island who had sneaked into Jaluit have been brought here. Admiral Masuda has already ordered Lieutenant Morikawa to investigate them but he thinks one is not sufficient; Admiral Masuda ordered that you shall also perform this investigation.

37. Q. Were you ever ordered directly by Admiral Masuda concerning this order?

A. I was.

38. Q. When was this?

A. It was right after I was ordered by Lieutenant Commander Shintome.

39. Q. Where were you given those orders?

A. In the air raid shelter which were the quarters of Admiral Masuda.

40. Q. Was any one present?

A. Admiral Masuda, Lieutenant Commander Shintome, Lieutenant Morikawa and myself, the four of us.

41. Q. Was the commanding officer, Furuki, present, too?

A. Major Furuki was not present.

42. Q. Do you remember if you received any instructions concerning the investigation from Admiral Masuda?

A. There were some instructions.

43. Q. Tell us briefly what those instructions were.

A. Admiral Masuda stated as follows: In the evening of March 30th, the four natives drifted ashore on the island of Jaluit. From what was investigated at Jaluit they have stated that they had drifted while transporting materials. The report is here and they say they are natives from Mille. There are many questions as to whether they were really natives who drifted. Investigate this carefully. Captain Inoue may not know the conditions of the other bases in the Marshalls, but it is a great difference from Jaluit. As a result of this investigation, even though you may come to know many things, I forbid you to say anything concerning them to anyone for if it is found that you have relayed this information to anyone you shall be punished severely. As a place to work in the investigation, we will clear a part of my air raid shelter and use it. Do not talk about this incident any place other than here. We will start on the investigation starting this morning.

44. Q. In your answer you stated Admiral Masuda said to you that you may not know the conditions of the other bases in the Marshalls. Would even a person of your rank not know the conditions of the other Marshall bases?

A. We were not told anything other to what was necessary. The reason for this was that on dispatches from the other bases and Truk, all persons other to the commanding officer, Shintome, the communication officer, Morikawa, and Major Furuki, were not allowed to see these dispatches.

The commission then, at 4:30 p.m., adjourned until tomorrow, Friday, May 16, 1947.

TWELFTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, May 16, 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 Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Belton, 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, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The accused, Inoue, Fumio, the witness under examination when the
adjournment was taken on May 15, 1947, 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.

(Examination continued.)

45. Q. In yesterday's testimony you stated that on the first of December
1932 you entered the army. Have you been in the army ever since?
A. From the time I entered the army I stayed on active duty for one year
thereafter.

46. Q. When was the next time you entered the army?
A. I was recalled into the service as a reserve officer in December of 1938
from that time I have been on duty ever since.

47. Q. Yesterday you testified that Admiral Masuda went with you to
investigate the four natives from Mille on the first of April 1945. Where
and what natives did you investigate?
A. I investigated Raliejap and three other natives who had drifted ashore
on the southwest part of Jaluit at the Second Ammunition Dump with Lieutenant
Morikawa.

48. Q. You stated Raliejap and three other natives. What are the names of
those other natives?
A. They were Raliejap, the wife of Raliejap, Anchio and Neibet.

49. Q. Were the four other natives from Mille Island at the Second Ammunition Dump at this time?

A. At this time the other four natives had not arrived at the main island of Rmidj. The fact that four other natives including Raline had landed in some part of Jaluit was learned after two days of questioning Raliejap.

50. Q. You stated that you investigated Raliejap's group for two days. What did you find as a result of this investigation?

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

The accused withdrew the question.

51. Q. You stated that you investigated Raliejap's group for two days. How did you go about this investigation?

A. At the Second Ammunition Dump Morikawa and myself investigated the natives. First the boat, possessions of the natives and other things which were sent from Jaluit were examined in detail. According to the investigation reports sent from Jaluit it indicated it had to be determined first whether the natives had really drifted.

52. Q. What did you find as a result of this investigation?

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

The accused replied.

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

The accused withdrew the question.

53. Q. What did you find as a result of the investigation in regard to whether the natives had actually drifted?

A. It was found that they were not natives who had drifted, but natives who had sneaked in with a certain motive.

54. Q. Did you investigate where on Mille Atoll they lived?

A. I did.

55. Q. What was found out as a result of this?

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

The accused made no reply.

The commission announced that the objection was sustained.

56. Q. Did you investigate what motives the natives had in sneaking into Jaluit?

A. I did.

57. Q. What motives did you find they had?

A. It was found that they were ordered by the Americans to try to get the military, guns, and natives to desert, also to relay a message and to look up the conditions on Jaluit.

58. Q. Did you investigate what the actions of the four natives were after they left Mille enroute to Jaluit?

A. I did.

59. Q. What did you find out?

A. The following was found. That on Mille, Raliejap and three other natives, Raline and three other natives, a total of eight natives, after plotting killed a soldier, stole a military boat and provisions and they all deserted to the enemy and in the open sea out of Mille they were taken in by an American ship and they were brought by this same boat to the waters adjacent to Jaluit. Raliejap and three other natives were to sneak into Jaluit. Raline and three other natives were to sneak into another place on Jaluit and that on this American ship they received a mission to which I have testified previously. After this mission was achieved they planned to escape from Jaluit.

The judge advocate moved to strike this answer on the ground that it was the opinion of the witness, that it was irrelevant and immaterial, and that it was clearly hearsay.

The accused replied.

The commission announced that the motion to strike was not sustained.

60. Q. You stated the natives were Raliejap and three others. What were the names of the three other natives?

A. They were Raliejap, the wife of Raliejap, Anchio and Heibet.

61. Q. Did you investigate as to their history?

A. I did.

62. Q. What did you find out as a result of this investigation?

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 sustained.

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, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, 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.

(Examination continued.)

63. Q. In your investigation, did you ask Raliejap his age?
A. I did.

64. Q. How old was he?
A. It has been a long time and I do not remember his age, but he was about forty.

65. Q. What was the age of the woman who said she was Raliejap's wife?
A. As I remember, it was about thirty.

66. Q. What was the age of Anchio?
A. As I remember, it was about twenty-five to twenty-six.

67. Q. How old was Neibet?
A. I do not remember how old she said she was.

68. Q. How old did you think she was?
A. Her mind was developed to that almost of an adult, but her size was very small; and from what I remember, her age may have been from about ten to twelve or thirteen years old. JK

69. Q. Was Neibet a woman?
A. Yes.

70. Q. Was Anchio a man or a woman?
A. He was a man.

71. Q. This morning you testified to the acts of these four natives from the time they left Mille until they reached Jaluit. Did all four of them testify to this?
A. Yes. This was what all four of them stated.

72. Q. Did the child, Neibet, know of the actions you have just stated?
A. She did. JK

The judge advocate moved to strike out this answer and the previous answer on the ground that they were hearsay.

The accused replied.

The commission announced that the motion was not sustained.

73. Q. In your last testimony in the morning session, you stated as to the killing of a soldier. Did these four natives know the name of that soldier?
A. They did.

74. Q. What did the natives know the name to be?
A. They stated that it was Petty Officer Tanaka.

75. Q. In the investigation, did you ask the natives when they left Mille?

A. I did.

76. Q. What time did they answer?

A. In the middle of the night on March twenty-fifth or twenty-sixth, 1945.

77. Q. Did they tell you that they killed the Japanese soldier?

This line of questioning was objected to by the judge advocate on the ground that it was hearsay, called for the opinion of the witness, was leading, irrelevant and immaterial; and the judge advocate moved that the answers to the previous questions be stricken from the record on the ground that they were hearsay, irrelevant, immaterial, and went into collateral matter.

The accused replied.

The commission announced that the objection to the question was sustained on the ground that it was leading; but that the motion to strike was not sustained.

78. Q. When and where did you investigate Ralime and the three other natives?

A. The investigation of Ralime and the three other natives was begun on the third of April at the Second Ammunition Dump.

79. Q. Do you know the names of Ralime and the three other natives?

A. I do.

80. Q. Tell us their names.

A. The names are: Ralime, Ochiro, Lacojirik, and Siro.

81. Q. Was Ralime a man or woman?

A. He was a man.

82. Q. How old was he?

A. He was about thirty or thirty-three.

83. Q. What was the sex and age of Ochira?

A. Ochiro was a woman and was about twenty-three to twenty-four.

84. Q. What was the sex and age of Siro?

A. He was a boy and his age was from about ten to thirteen.

85. Q. What was the sex and age of Lacojirik?

A. He was a man and his age was twenty-two to twenty-three.

86. Q. Up to what time in April did you continue that investigation?

A. In relation to the Ralime group, they were investigated from the third to sixth of April.

87. Q. Tell us briefly what you found in your investigations of Ralime's group.

A. Their acts were similar to those I testified to in the case of Raliejap. It was found that Ralime and Raliejap had killed a Japanese soldier, Tanaka, and that their boat, towed by Raliejap's boat and picked up. They were given the same mission and sneaked into the northwestern tip of Jaluit Atoll. The place where Raliejap landed and where Ralime landed, the distance was about sixty kilometers. JK

88. Q. Did you investigate what these two groups of natives did upon their arrival on Jaluit?

A. I did.

89. Q. Tell us briefly what they did.

A. The Raliejap group, upon their landing on Jaluit, relayed to the natives the conditions of Mille Island and also that a month later, American ships would come to take the natives from Jaluit away. As for Raline's group, they acted similarly to Raliejap's group. At Chitogen Village and Ren Island where they relayed the same information and were looking up or asking about the Japanese forces on the island.

90. Q. Other to your interrogation of these natives, did you look into any material evidence?

A. I did.

91. Q. What things did you investigate?

A. I investigated on the following: (1) boats used, (2) the possessions of the natives and the food they stole from Mille, (3) the clothes of petty officer Tanaka, (4) the investigation reports on their actions on the island of Jaluit and Chitogen Village, (5) the fact that the information they relayed had spread to Pingelap Island. JK 2

92. Q. What were the sizes of these two boats?

A. Raliejap's boat - the length was about two meters and was crammed with four people in it. There was the mark of the Sixty-sixth Naval Guard Unit on it and at the end of the boat was a rope.

93. Q. What was the size of the other boat?

A. The canoe was shattered when the natives sneaked into Chitogen Village and according to the testimony of eyewitnesses, it was stated that it was a medium sized canoe capable of seating four people. JK

94. Q. You stated that there were the clothes of petty officer Tanaka. How did you know that it was Tanaka's?

A. When the possessions of Raline's group were examined, this was found with the name of Petty Officer Tanaka of the Sixty-sixth Naval Guard Unit on it.

95. Q. Tell us if you reported the results of this investigation to anyone? JK

A. I did.

96. Q. To whom and where did you report this?

A. In the investigation I conducted from the first to the second of April, myself and Morikawa reported to Admiral Masuda with Lieutenant Commander Shintome present in Admiral Masuda's air raid shelter twice a day. On the investigation conducted from the third to the sixth of April, it was reported at the same place with Admiral Masuda, Major Furuki and Lieutenant Commander Shintome present. I reported to them the results one or two times a day.

97. Q. Do you know what happened to the natives on which you submitted your investigation report?

A. I do.

98. Q. Tell us what you know.

A. The eight natives as a result of the highest examination and consultation on Jaluit, were sentenced to death.

The judge advocate moved that this answer be stricken from the record on the ground that it was not responsive.

The accused replied.

The commission directed that the answer be stricken.

99. Q. Do you know if an examination and consultation was held for these natives, on whom you submitted an investigation report?

A. I do.

100. Q. Do you know what steps and procedure was taken in examining and consulting on these natives?

A. I do.

101. Q. How do you know this?

A. Because I was ordered to act as judge advocate by Admiral Masuda and acted in the examination and consultation.

102. Q. Tell us by what procedure this examination and consultation was conducted.

A. As Admiral Masuda was waiting for the return of Major Furuki, Major Furuki changed his schedule and came back to the main island of Enidj together with natives of the Raline group on the morning of the third of April. Admiral Masuda called Shintome, Furuki, and myself to his quarters and told us as follows: "There are natives who sneaked into Jaluit. I shall have what they said read by Captain Inoue. If possible, I would like to send these natives to Truk and Ponape, but as this cannot be done, I shall hold an examination and consultation with the ranking officers on Jaluit on my authority. Shintome and Furuki and myself shall act as judges. Inoue shall act as a judge advocate." The above is what he ordered and the highest examination and consultation on Jaluit was held during the period of the third to around the ninth of April. 8x

103. Q. You stated that there were two groups, the Raliejap group and the Raline group. Were the examinations and consultations for the eight natives all held at one time?

A. For the Raliejap group, from the third to sixth of April. For Raline's group, from the sixth to about the seventh and a combined consultation of both groups from the eighth to around the ninth.

104. Q. Where were these examinations and consultations held?

A. The place was Admiral Masuda's personal air raid shelter which he had turned over for this purpose.

105. Q. As a result of this examination and consultation, what happened to the natives who were alleged to have committed the crimes?

A. As a result of the examination and consultation, the eight natives were given a sentence of death.

106. Q. You stated that you were ordered to act as judge advocate in the examination and consultation. Did you express your opinion as to the facts in this case in your capacity as judge advocate?

A. I did.

107. Q. What opinion was that?

A. On the eighth of April, on the day that Ralime escaped, Admiral Masuda called Shintome, Furuki and myself to his room and stated: "Tomorrow the decisions on these natives shall be made. Inoue shall think on his opinion on sentence. Furuki and Shintome shall think well on their opinion on the decision." By this, around the ninth of April, in Admiral Masuda's air raid shelter in my capacity as judge advocate, I gave my following opinion: Ralime, Raliejap, Anohie, Lacojirik, Ochiro and Raliejap's wife: the above six were guilty of the crimes of murder, robbery and violation of the navy criminal code; desertion to the enemy; violation of the Japanese Criminal Code; rebellion, spying and the stealing of military provisions and boats; violation of the above Japanese laws and treason against the Japanese. And it was necessary to maintain military secrets, military discipline and also to maintain the lives and existence of the military, gunsokus and natives on Jaluit that they be executed. As for Naibet and Siro, these two children were guilty of spying, but that they be confined to Akisen Island (which was a continuation of Enidj) as there were no natives there. This was my opinion. JK
JK

The commission then, at 3:15 p.m., took a recess until 3:39 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, 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.

(Examination continued.)

108. Q. You stated that these natives violated the crime of spying in the Japanese Criminal Code in your opinion. What acts or duties did you find that violated the act of spying as set forth in the Japanese Criminal Code?

A. The acts which violated the act of spying set down in Japanese Criminal Code, was that the eight natives, supported by the Americans with will to tell the natives saying that they had drifted. They asked about the dispositions of soldiers which were a military secret in the neighborhood that they drifted ashore. And also, they relayed that "about a month later, American ships would come and get you, that the natives on the north assemble and the natives from the south assemble on an island where there are no soldiers to be taken away." And also relayed detailed instructions concerning this. And the fact also that they had relayed about the executing of natives on Mille, as were stated by the same method about a month later, six hundred natives of Jaluit escaped; the same method that these natives had stated about. 2
JK

The judge advocate moved to strike out this answer on the ground that it was hearsay, vague, and confused.

The accused replied.

The commission directed that the answer be stricken out.

109. Q. When you stated your opinion as judge advocate and stated that the natives violated the act of spying, what did you understand the act of spying as set forth in the Japanese Criminal Code to be?

A. I understood the act of spying as set forth in the Japanese Criminal Code to mean obtaining intelligence through false statement with the will to communicate this to the enemy.

110. Q. Have you ever read the Hague Convention concerning the laws and customs of war?

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 sustained.

111. Q. Did you express your opinion on these natives in their crime of murder as one that was an accomplished act?

A. Yes.

112. Q. Did you express your opinion that an inquiry should be made to Mille to ascertain these facts?

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

The accused withdrew the question.

113. Q. Concerning these natives, do you know if an inquiry was made concerning them to Mille?

A. I do.

114. Q. Was an inquiry made?

A. No.

115. Q. Did you ever ask for an inquiry to be made concerning this? JK

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. I did. I asked twice and it is as follows: On April second, Lieutenant Morikawa and myself asked Admiral Masuda to make an inquiry. The next time I expressed my opinion that an inquiry be made was after the examination and consultation had begun.

116. Q. Was ^{*}this opinion adopted?

A. It was not adopted.

117. Q. At the time the examination and consultation was being held, were the natives called there?

A. They were not called there.

118. Q. Do you know if Admiral Masuda, Major Furuki and Shintome, anyone of the judges, ever went to question the natives?

A. I do.

119. Q. Tell us what you know.

A. Admiral Masuda went with myself to question the natives. I have never seen Shintome or Major Furuki go to question the natives.

120. Q. When was it that Admiral Masuda and yourself went to question the natives?

A. It was two times. One on the morning of April third; the other after the evening meal on the sixth of April.

121. Q. When was the decision made?

A. It was around the ninth of April.

122. Q. Do you know if there was a judgment paper?

A. I do.

123. Q. Tell us the form it was in.

A. The judgment papers were in a form with divided into columns and on the top it stated "judgment paper" and on the top a column, a place to mark in the decision, next the name of the crime, also what law applied and written on the outside of these columns it was stated decision, which was made as stated on the right and was dated the ninth of April, 1945, signed Rear Admiral Masuda, Hisuke, with his initials.

124. Q. Do you know if these sentences he indicated were executed?

A. I do.

125. Q. Do you know who executed these sentences?

A. I do.

126. Q. Who was it?

A. I executed the sentences.

127. Q. When was it that you executed these sentences?

A. Around the ninth of April, I executed seven natives, excluding Raline; and around April thirteenth, I executed another native, Raline.

128. Q. Did you perform these executions voluntarily or were you ordered by someone?

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

The accused withdrew the question.

129. Q. Have you ever studied Japanese Criminal procedure or the Japanese court martial law?

A. I have never studied any of these laws.

The commission then, at 4:24 p.m., adjourned until 9 a.m., tomorrow, Saturday, May 17, 1947.

Case of
Inoue, Rumi,
captain,
Imperial Japanese Army.
April 23, 1947.

RECORD OF PROCEEDINGS
of a
MILITARY COMMISSION
Convened at
United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
by order of
Commander Marianas Area.

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ADVOCATE GENERAL
G.C.M. SECTION

VOLUME II

159116

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THIRTEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Saturday, May 17, 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 Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Bolton, 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, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, the witness under examination when the adjournment 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.

(Examination continued.)

130. Q. In yesterday's testimony, you testified that Admiral Masuda waited
for Major Furuki to come back from the outlying islands, and upon his return,
called Furuki, Shintome and yourself to his room and stated as follows:
"On my authority, the highest examination and consultation possible on
Jaluit will be conducted by the ranking officers. Furuki, Shintome and
myself shall act as judges," and that "Inoue shall act as a judge advocate."
Is that correct?
A. Yes.

131. Q. In testifying to this authority, what did you understand Admiral
Masuda's authority to be at this time?

This question was objected to by the judge advocate on the ground that
it called for the opinion of the witness and that it was too broad in its
scope.

The accused replied.

The commission announced that the objection was not sustained.

A. By the administrative and judicial authority given the supreme commander, I sincerely understood at this time that he had the authority to judge on criminals and punish them. Under usual circumstances, this would have been sent to Palau District Court, but after April, or thereabout, of 1944, in the Jaluit area, Admiral Masuda exercised judicial and administrative authority.

132. Q. You testified that Admiral Masuda ordered Furuki, Shintome to act as judges and Inoue to act as a judge advocate. How did you understand Admiral Masuda's authority to order you to act as such?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness, and that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

133. Q. In yesterday's testimony you testified that death sentences were given the eight Mille natives and that you executed this sentence. Tell us how you came to execute this sentence.

A. How I came to execute this sentence is as follows: At a time of the last examination and consultation on the ninth of April, as a result of this examination and consultation, Admiral Masuda gave the natives the decision of death. At this time, with Shintome and Furuki present, Admiral Masuda ordered me, as head of the special police section at this time, to execute the death sentence. After this order was written at the end of the judgment paper and reading the order to me, I was relayed this order. As a result of the examination and consultation, Admiral Masuda gave the death sentence and read the sentence to each native. I was convinced that it was legal; therefore, I was ordered to perform the execution, I expressed what opinion I was allowed concerning the execution of these two children to Admiral Masuda. In other words, I asked if there was some way to save the children, or at least postpone the execution for two or three days so I could think of other means to save them. To this, Admiral Masuda would not listen to my opinion. Reprimanding me, he said: "Execute the order tonight." Returning to my quarters, I went to Major Furuki who was my commanding officer. I told Furuki of my difficult position in having to execute the children and sought his advice. Major Furuki said himself and Shintome had expressed the opposite opinions, but the admiral would not listen. There is no other way but to do as ordered. The execution of the two children, I was convinced that this was a legal act and I had no doubt that this was a rightful act.

134. Q. Tell us briefly how did you carry out the death sentence?

A. I carried out the death sentence by shooting them with a pistol.

135. Q. Where did you execute this order?

A. I performed this in the area south of the Ainemman Transmitting Station on Ainemman.

136. Q. Do you know who decided the method in which to execute the order and where to execute it?

A. I do.

137. Q. Who was it?

A. It was Admiral Masuda.

138. Q. When you took the Mille natives to the place of execution, were there any guards?

A. Yes.

139. Q. Do you know who gave those guards their duties?

A. I do.

140. Q. Who was it?

A. This assignment of the guards was as follows: When Admiral Masuda ordered me to execute the death sentence, I asked for seven persons to act as guards and I also stated that if I had any men under my command, I would use them, but at that time, as there were only two, I asked that they be obtained from another unit. Admiral Masuda ordered Lieutenant Commander Shintome to submit five guards from the Naval Guard Unit, and two of my men were assigned as guards. Seven men, including Captain Jinno, were assigned as guards. I gave the guards their instructions. OK

The judge advocate moved that that portion of the answer which refers to Admiral Masuda ordering Lieutenant Commander Shintome to provide guards be stricken from the record on the ground that it was hearsay.

The accused replied.

The commission announced that the motion was not sustained.

141. Q. Did you report to Admiral Masuda after you executed the orders?

A. I did.

142. Q. Do you know if the executions of the eight Mille natives were made public?

A. I do.

143. Q. By what form and what were the contents of the publication of the death of these eight natives?

A. I would like to have the question repeated.

The question was repeated in Japanese. OK

A. (continued.) This was made public around the fourteenth of April. On that day, Admiral Masuda called Furuki, Shintome and myself to his office and stated as follows: "Because of the escape of Ralime and the disturbance caused at that time, it is a fact that almost everyone knows about the natives who sneaked in and it is necessary to let them know what happened." He then showed us a document of publication. The contents were as follows: "At the end of the month, the natives who sneaked in from Mille or other bases in the Marshalls, I am not sure on this point, 'The eight natives committed murder and spying; and therefore, all were executed.' By this document it was made public."

144. Q. Do you know who signed this document of publication?

A. I do.

145. Q. By whom was it signed?

A. It was put out by the supreme commander of the Jaluit Defense Garrison.

146. Q. When you were ordered to execute the two children, you testified that you requested Admiral Masuda to postpone the execution two or three days. Is that correct?

A. This is correct. Major Furuki and Lieutenant Commander Shintome are living witnesses who can testify to this.

The judge advocate moved to strike the words "Major Furuki and Lieutenant Commander Shintome are living witnesses who can testify to this" out of the answer on the ground that they were the mere opinion of the witness, hearsay, irrelevant and immaterial.

The accused made no reply.

The commission directed that the words be stricken out.

147. Q. You testified that Admiral Masuda did not listen to you when you made this request. Is this correct?

A. Yes.

148. Q. At this time, were you able to reject this order of Admiral Masuda?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness, and that it was irrelevant and immaterial.

The accused made no reply.

The commission announced that the objection was sustained.

149. Q. How did you understand your position in rejecting the order of Admiral Masuda?

A. As a soldier and as a person who is responsible for the maintenance of discipline on Jaluit, it was absolutely impossible to disobey the order, especially as this order was put out after the highest examination and consultation on Jaluit by the ranking officers was decided upon and this placed me in a position where I was unable to disobey Admiral Masuda's order.

150. Q. Do you know, if in the military service there is a manual on army life?

A. I do.

151. Q. What does this manual regulate?

A. It is a manual on army life. It is on army regulations and it contains regulations on the life of every person in the army and regulates the basis for their actions in matters other than battle.

152. Q. Do you know if it is required that every officer and soldier in the Japanese army know what is written in this manual?

This question was objected to by the judge advocate on the ground that it was irrelevant, immaterial, and called for the opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

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, the judge advocates, the accused, ^his counsel and the interpreters. JK

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, 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.

(Examination continued.)

153. Q. You stated you know about the Manual on Army life. Do you know the regulations in it regulating obedience in orders between subordinates and superiors?

This question was objected to by the judge advocate on the ground that it was immaterial and irrelevant since the defense of superior orders can only be used in mitigation.

The accused replied.

The commission announced that the objection was sustained.

154. Q. Before you were recalled in the army in 1938 what was your profession?
A. I was a clerk in a company office.

155. Q. How long have you been confined?
A. I have been confined from the eleventh of October 1945 to the present.

156. Q. Were you ever told the reason why you were being confined?

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

The accused made no reply.

The commission announced that the objection was sustained.

157. Q. Were you ever questioned while you were being confined?
A. I was questioned once, but this once was not on this case but on another case and I was asked the conditions on Jaluit.

158. Q. Have you ever tried to find out what you were being confined for?

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

The accused made no reply.

The commission announced that the objection was sustained.

159. Q. Have you ever submitted any documents to the Judge Advocate General of the Navy while you were being confined?

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 sustained.

160. Q. Are there any statements other to the statement you submitted to the judge advocate in November of 1946 that you submitted to the American authorities?

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

The accused made no reply.

The commission announced that the objection was sustained.

161. Q. The confession which was introduced in your case, was this the only document pertaining to this case which you prepared?

A. No.

162. Q. What other documents did you prepare in regard to this case?

This question was objected to by the judge advocate on the ground that it was too broad in its scope since there may be reference to documents which are irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained and stated that the commission would decide the relevance of any other documents according to the reply.

A. Other to the statement which was introduced by the prosecution the other day, there is a statement concerning this incident which I made of my own free will and submitted. The way it was submitted is as follows: In September 1946, while I was confined in the Guam stockade I drew up this statement in the stockade and it was submitted to the Judge Advocate General of the Navy through the judge advocate of Commander Marianas. It was also addressed to the Japanese Minister of the Navy. I was convinced that this native incident was lawful and asked that this be investigated and cleared up. In this statement I stated the outline of this native incident and what happened on Jaluit. OK

The judge advocate moved to strike this answer on the ground that it was irrelevant and immaterial and was concerned with an extra-judicial statement of this witness.

The accused replied.

The commission announced that the motion to strike was granted and directed that the answer be stricken.

163. Q. I show you a copy of a document. Is this a copy of the letter that you made in September of 1946?

A. Yes.

164. Q. Do you know where the original of this letter is?

A. I do.

165. Q. Where is it?

A. I handed this document to the judge advocate, Flynn, and he told me that the original was held at the legal office, Commander Marianas, and that copies had been sent to the places where it was addressed.

The judge advocate moved to strike this answer on the ground that there has been no evidence to show when and where this alleged conversation with the judge advocate Flynn occurred.

The accused replied.

The commission announced that the motion to strike was not sustained.

166. Q. When did the judge advocate Flynn tell you this?

A. It was about, as I remember, it was twenty days to one month after I submitted this document. There were ten copies of it typed up and Lieutenant Kerrick came with the judge advocate and I believe he may remember it.

167. Q. Do you wish to offer this letter in evidence in your behalf at this trial?

A. I request that this document be allowed to be submitted in evidence.

A letter was submitted to the judge advocate and to the commission, and by the accused was offered into evidence to be read into the record.

The judge advocate objected to the receiving of this document into evidence as follows:

The judge advocate objects to the admission of this document in evidence. This document is a document labeled "Inoue Case", dated 11 September 1946 written by Fumio Inoue, the accused in the instant case. The document is clearly a self-serving declaration made during the period of confinement and in anticipation of his forthcoming trial. The document was ~~not~~ made as a memorandum at the time of the commission of the alleged executions, it was not an official document made in the course of the duties as an alleged judge advocate at the alleged procedure, instead it is a document written one and one-half years after the commission of the offense with which this accused is charged. The judge advocate has already briefly indicated the basis on which self-serving statements are not admitted as evidence. It is unnecessary to further give legal citations on self-serving statements. There is no exception to the hearsay rule or other rules of evidence under which this statement can conceivably be admitted. OK

The accused made no reply.

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

The commission announced that the objection was sustained.

The commission then, at 11:40 a.m., adjourned until 9 a.m., Monday, May 19, 1947.

FOURTEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Monday, May 19, 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 Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Bolton, 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, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Inoue Fumio, the witness under examination when the adjournment was
taken, resumed his seat as witness in his own behalf. He was warned that
the oath previously taken was still binding, and continued his testimony. OK

(Examination continued.)

168. Q. The other day you testified to the sneaking in of eight natives
from Mille Island. As for the Jalnit Defense Garrison, do you know if they
took any measures to prevent this?
A. I do.

169. Q. Tell us briefly what those measures were.
A. The preventative measures taken were as follows: (1) to prevent the
natives from deserting and to patrol the island, the defense section, headed
by Major Furuki was set up; (2) to protect the outlying islands, officers
and men were dispatched; (3) all intercourse between islands was stopped;
(4) messages concerning the facts that the natives may try to desert a
month from now were sent to the district commanding officers and preparations
to prevent this made secret; (5) military, gunsoku and Koreans who it was
thought might desert were assembled at the main island and watched; (6) a
capable officer was dispatched to the outlying islands to train the patrolling
personnel.

170. Q. You testified that according to the natives' confessions it was their
mission to relay that a month later American planes and ships would come
to get the natives and also you stated that you took preventative measures
against this. Do you know if a month later that they stated occurred? OK

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 sustained.

171. Q. Yesterday you testified that you were not a graduate of the military academy and that you were recalled into the service as a reserve officer. What was your occupation before you were recalled into the service?
A. I was a clerk in a company office.

172. Q. How long have you served with the army?
A. I was on active duty from December, 1932 to November, 1933, and I was recalled into the service in December of 1938, and served until the end of the war.

Cross-examined by the judge advocate:

173. Q. Were the natives on Jaluit paid for the work they did?

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 know of their actually being paid in cash, but I know of a document which stated that when a supply ship came in they would be supplied with food and daily necessities.

174. Q. Were the natives subject to disciplinary punishment?
A. Yes.

175. Q. Are gunsokus paid for their work?

This question was objected to by the accused on the ground that it was irrelevant, immaterial, and beyond the scope of the direct examination.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. From what I remember, as there was no cash on Jaluit, they were not paid in cash, but it was promised that they would be paid for their work at the end of the war. *JK*

176. Q. Do you know if it was promised ^{that} ~~that~~ the natives would be paid for their work at the end of the war? *JK*
A. I do.

177. Q. Were they promised that they would be paid at the end of the war?

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 remember hearing from the civilian officer, Takisawa, that Admiral Masuda stated that the natives would be paid at the end of the war. JK

The accused moved to strike out this answer on the ground that it was hearsay.

The judge advocate made no reply.

The commission directed that the answer be stricken.

178. Q. Are specific gunsokus attached to one branch, either the army or the navy?

This question was objected to by the accused on the ground that it was irrelevant and immaterial and was beyond the scope of the direct examination.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. All the gunsokus on Jaluit were officially attached there as navy gunsokus, but in their actual work, some were attached to the army, some to the navy; and they worked together with the various units. JK

179. Q. Were the natives officially attached to the navy?

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. The natives, as part of the Jaluit Defense Garrison, were not members making up the army or the navy.

180. Q. Isn't it an essential condition of being a gunsoku that you have to be attached to either the army or the navy?

This question was objected to by the accused on the ground that it was immaterial and irrelevant and was beyond the scope of the direct examination. JK

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. I think it is essential that a gunsoku has to be attached to the army or the navy. On Jaluit, the navy gunsoku actually worked under sky commanders and some under navy commanders at the various units.

The commission then, at 9:41 a.m., took a recess until 9:50 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf, and continued his testimony.

(Cross-examination continued.)

181. Q. You testified that Masuda ordered Shintome to provide five additional guards for the execution. Were you present when Admiral Masuda gave this order to Shintome?

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. Yes.

182. Q. On Saturday, May 17, on direct examination, you were asked the following question: "157. Q. Were you ever questioned while you were being confined?" You answered: "I was questioned once, but this once was not on this case, but on another case, and I was asked the conditions on Jaluit." By this answer did you mean that since the end of the war you were never questioned in regard to these Mille natives?

A. I mean that concerning this incident with which I am charged, I was never questioned.

183. Q. Do you mean up till the beginning of this trial?

A. Yes.

184. Q. Were you questioned by Lieutenant Field regarding a confession concerning the Mille natives and the facts in this case?

A. I was never questioned by Lieutenant Field. I was told, if I wanted to, to write what I knew about the incidents that were concerned and I wrote the statement what I knew about. The one that was addressed to the Judge Advocate General, U. S. Navy, and also the statement in which I wrote what I knew about this incident.

185. Q. Then, you are sure that you were never, since the end of the war up until the beginning of this trial, questioned concerning the Mille natives in the incident involved in this case?

A. After the end of the war, before I was confined, I was questioned once.

186. Q. Then you were questioned concerning these natives and the native incident?

A. It is correct that I was questioned once, but in that previous question I was asked if I was confined, so I stated that I had not been questioned. JK

187. Q. But you have been questioned once?

A. Yes.

188. Q. Were you questioned on October 9, 1945, by a United States naval officer in a board of investigation concerning war crimes and atrocities?

This question was objected to by the accused on the ground that it was irrelevant and immaterial and that there had been no showing that the board of investigation had to do with this present trial and further objection was made to the judge advocate referring to a record in framing the question, said record not having been introduced into evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not know if the above mentioned person had these duties or what kind of a person he was, but around the ninth of October, 1945, I was questioned as to a part of this incident by McKinson and a person who looked like a judge advocate, and an interpreter Okubo, - these three persons.

189. Q. In this testimony that you gave on October 9, 1945, were you asked the following question: "3. Q. Tell all you know about the execution of the eight natives who were captured April 1945, their capture and all the things leading up to it." And did you give the following answer: "A. About six months have elapsed so I might have the dates and the names of the natives mixed up but I will give you the true story of it. At that time I was Naval Police Commander. My duties were to check on the civilians and Navy and Army personnel from not eating more than they were allowed to. About the end of March this year there were reports to headquarters that four natives had drifted down to Jaluit. On the following day, we had a report that four other natives had also landed on the island north of Medyai. At that time Warrant Officer Omura on Jaluit Island and First Lieutenant Furuno on Shittogen Island notified that the natives had drifted over there. Headquarters had me check on the eight natives because they thought the natives were sent here by the Americans to make some scheme to get the other natives off. Therefore the eight natives were sent to headquarters. At that time these natives were sent to the headquarters they didn't have any particular person in charge to look after the natives in native cases so the admiral ordered me to investigate these natives. On this atoll here the Army and Navy got along very harmoniously so whatever we did we had full cooperation among the units, the Naval Police were composed of Army and Navy personnel. I was the commander of the Navy and Army Police. The natives that were brought from Jaluit were kept on Aineman and the other four were kept at ammunition dump on Ruidj. I and First Lieutenant Morikawa, intelligence officer, and Shiroshita, civilian interpreter, the three of us interrogated these eight natives. I first asked this question, 'Why did you desert Mille?', the natives replied, JK

'Because many of the other natives were being rescued by the other American ships and we had heard an order by the commander of Mille that if any more natives tried to escape or escaped that all the natives left on Mille would be executed; so we made up our minds to take a chance in trying to get picked up by an American ship or drift to Majuro.'

"The four on Shittogen and the four on Jaluit had conferred with each other before they left Mille."?

This question was objected to by the accused on the ground that the judge advocate was reading from a document which had not been offered into evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember the detailed contents asked on that day. At this time I was not sworn in. I did not know that this was being taken down. I had no chance to reaffirm this, but I remember stating in general concerning this, but I do not remember the detailed content.

190. Q. Is any part of this answer you gave at the board of investigation not true according to your knowledge?

This question was objected to by the accused on the ground that the witness was being questioned as to what happened at a previous board of investigation and the witness was being made to testify against himself. JK

The judge advocate replied.

The question was repeated.

The commission announced that the objection was not sustained.

A. I think the following is false: On the following day we had a report that the four other natives had landed on the island north of Medyai. It was actually three days before it was found that they had landed on Chitogen, and as I recall I think I stated in detail more important things concerning the motive that the natives left Mille, and as the natives were confined until the evening of the third at the ammunition dump, I am sure I stated the ammunition dump. Other to this, I do not remember what I stated at that time.

The commission then, at 10:30 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, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, 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. JK

(Cross-examination continued.)

191. Q. Did you testify to the truth at this investigation?

This question was objected to by the accused on the ground that it was improper, immaterial, and irrelevant at this time as to what was said at the board of investigation.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I told the truth; but this investigation was made after Admiral Masuda had put out a statement that this was done "by my authority according to the laws of Japan," and when I was asked about this I stated only the general outlines of the incident. As I remember, I did not state other persons names.

192. Q. Did the natives speak Japanese?

A. There were about three who could speak Japanese.

193. Q. What language did the other natives speak?

A. All of them could speak a little Japanese, but most of it was native tongue.

194. Q. Which natives spoke Japanese?

A. As I remember, it was Lacojirik, Ochiro and Anchio.

195. Q. When did Admiral Masuda go with you to see the natives?

A. From what I remember, on the first of April, in the morning, he went to see the natives. The times he went to investigate the natives was on the third, in the morning of the third of April, and the evening of the sixth of April.

196. Q. Did Admiral Masuda speak with the natives on April first when he went to see them?

A. He did.

197. Q. For how long a period did he speak with them?

A. At this time, it was about fifteen minutes.

198. Q. Had the natives confessed at this time?

A. No, they had not confessed.

199. Q. On the morning of the third, when Admiral Masuda went to see the natives, how long did he stay with them?

A. He was there about an hour.

200. Q. Did he speak with them on this day?

A. He did.

201. Q. What time of the day was this?

A. As I remember, it was from about seven to eight.

202. Q. Where did you go to see these natives?

A. The Second Ammunition Dump.

203. Q. About how long did it take you to go to the Ammunition Dump and return?

A. It took about an hour and ten minutes to go there and return.

204. Q. Who went with you and Admiral Masuda?

A. The two of us went.

205. Q. Were there any guards at the ammunition dump when you arrived?

A. Yes.

206. Q. Do you know the names of the guards?

A. They were navy guards from the Naval Guard Unit and as they were seamen I do not know their names.

207. Q. How many were there?

A. As I remember, there were four.

208. Q. Did they stay outside while you and Admiral Masuda went into speak with the natives? JK

A. The guards were outside.

209. Q. Did you and Admiral Masuda go in alone?

A. Yes.

210. Q. And there was no one with you and Admiral Masuda except the natives? JK

A. No.

211. Q. Then, you did not have an interpreter with you?

A. No.

212. Q. On the sixth, what time did you and Admiral Masuda go to see the natives?

A. We left about three thirty in the afternoon and went to the Aineman Transmitting Station and the Second Ammunition Dump. It was getting dark when we returned and I think it was about five thirty in the afternoon.

213. Q. How much time did you spend in the Aineman Transmitting Station?

A. Is it the period of time we stayed at the transmitting station?

214. Q. That is correct.

A. As I remember, it was about twenty minutes.

215. Q. How many minutes did you stay at the Second Ammunition Dump?

A. About forty minutes.

216. Q. How long did it take to travel from the Aineman Transmitting Station to the Second Ammunition Dump?

A. From headquarters by motorcycle with a side car it was about fifteen minutes.

217. Q. Is that fifteen minutes from headquarters to the transmitting station?

A. Yes.

218. Q. And then, from the transmitting station, how many minutes did it take to go to the Second Ammunition Dump?

A. About twelve or thirteen minutes.

219. Q. Where did you go after the Second Ammunition Dump?

A. We returned to headquarters.

220. Q. How many minutes did that take?

A. About three minutes.

221. Q. What other times beside the first, third and sixth, if any, did Admiral Masuda go with you to see the natives?

A. He went on the evening of the ninth and the morning of the fourteenth.

222. Q. How many hours did you stay on the evening of the ninth with him?

A. The Second Ammunition Dump and also the transmitting station, was about ten minutes.

223. Q. Is that ten minutes in each place?

A. About ten minutes in each place.

224. Q. How long were you and Admiral Masuda with the natives on the fourteenth?

A. About five minutes. I would like this time, the fourteenth, corrected. It may have been the thirteenth of April for the date. The morning was that on which Ralime was executed.

225. Q. What time in the evening of the ninth did you go to see the natives with Admiral Masuda?

A. As it was after the evening meal, I think it was about three thirty in the afternoon.

226. Q. During this period from the third to the fourteenth, you were conducting your investigation of these natives. How many times did you go to see the natives and question them when Admiral Masuda wasn't with you?

A. As I remember, the morning and the afternoon of every day in the period from the third to the sixth. I went every day in the morning and the afternoons and also on the seventh, I think I went in the morning and the afternoon, and on the eighth the afternoon only. After the tenth, when Ralime was recaptured, I went about three times to ask him about the conditions on Mille Island. This was not in connection with the investigations.

227. Q. On the morning of the third, how much time did you spend investigating the natives?

A. The time I spent investigating by myself on the morning of the third was about two hours.

228. Q. From about what time to about what time?

A. As I remember, it was from about eight o'clock to about ten.

229. Q. How many hours did you investigate in the afternoon?

A. As I remember, it was about two and one-half hours in the afternoon.

230. Q. On the morning of the fourth, when and how many hours did you investigate the natives?

This line of questioning 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.

The question was repeated.

A. On the morning of the fourth, in the Second Ammunition Dump, it was about an hour and one-half.

231. Q. In the afternoon?

A. Maybe a little more than two hours.

232. Q. Do you remember the time in the morning during which you went to investigate?

A. In the morning, it was before the noon meal.

233. Q. When was the noon meal?

A. It was around ten o'clock.

234. Q. In the afternoon, when did you investigate?

A. As I remember, it was from about one thirty to about three thirty.

235. Q. On the morning of the fifth, when did you investigate and how many hours?

A. On the morning of the fifth it was at the Second Ammunition Dump; investigated for about two and one-half hours.

236. Q. From what time to what time?

A. From about eight to ten.

237. Q. In the afternoon, how many hours and during what period of time?

A. At the Second Ammunition Dump from one to three.

238. Q. On the morning of the sixth, how many hours and from what period?

A. On the morning of the sixth, I went to the transmitting station from about eight thirty to ten.

239. Q. In the afternoon?

A. In the afternoon at the Second Ammunition Dump from one to two, about one hour.

240. Q. On the morning of the seventh?

A. On the morning of the seventh, at the Second Ammunition Dump, about one hour.

241. Q. What time?

A. As I recall, about eight thirty to nine thirty.

242. Q. In the afternoon, what period?

A. In the afternoon, from about one to two thirty.

243. Q. On the third, did you report at an examination and consultation as judge advocate?

A. On the morning of the third, I was ordered the duties of judge advocate.

244. Q. Was there an examination and consultation held on the morning of the third?

A. On the morning of the third, as I recollect, Admiral Masuda ordered the proceedings of the examination and consultation. I read what the natives had stated up to the morning of the third, and examination and consultation was held for about twenty to thirty minutes.

245. Q. What time of the day was this examination and consultation held?

A. It was before the morning meal and as I remember, it was about five thirty. OK

246. Q. When does the morning meal begin?

A. As I remember, it was about five thirty.

247. Q. Do you remember what time you got up in the morning?

A. It was three thirty or four.

248. Q. Do you remember if you had your morning meal at the regular time that morning?

A. I do not remember if breakfast was at the regular time or not.

249. Q. Where was this meeting held on the morning of the third?

A. In the air raid shelter, the personal air raid shelter, of Admiral Masuda.

250. Q. Were Furuki and Shintome present at this examination and consultation?

A. Yes.

251. Q. On the second you reported concerning the natives, did you not?

A. I would like to have the question repeated.

The question was repeated in Japanese.

A. (continued.) The first and second, I reported to Shintome and Masuda. On the morning of the third, after Major Furuki returned, this was the first time I reported to Major Furuki.

252. Q. When did the Ralime group of natives arrive on Enidj on the morning of the third of April?

A. As I recall, it was about one or two in the morning.

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, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, 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.)

253. Q. On the fourth of April were any examinations and consultations held at which you acted as judge advocate?

A. Yes, there was.

254. Q. At what time of the day did they begin?

A. As I remember it was after the noon meal and up to the time I started my investigation.

255. Q. About what time was that?

A. As I remember it was about from eleven to twelve thirty.

256. Q. Did you have any other examinations and consultations that day or was that the only one?

A. As I remember it was only this time.

257. Q. Do you remember if on the third of April there was any other examination and consultation besides the one held about 5:30 in the morning?

A. Is it the third?

258. Q. The third, yes.

A. I remember that after the report, I made the afternoon report, the examination and consultation was held for about thirty minutes.

259. Q. So there were two examinations and consultations on the third of April. Is that correct?

A. As I remember there were two.

260. Q. On the fifth of April was an examination and consultation held?

A. Yes.

261. Q. What period of the day and for how many hours was this examination and consultation held?

A. On the fifth day also from about eleven to a little past twelve.

262. Q. Was any further consultation held that day?

A. As I remember on this day this was the only time.

263. Q. On the sixth of April was there an examination and consultation held during the day and what time was it held?

A. Yes, on this day also after the noon meal from about 10:30 to a little after twelve an examination and consultation was held.

264. Q. Was any further examination and consultation held that day?

A. As I remember on this day this was the only time.

265. Q. On the seventh of April was an examination and consultation held and if so at what period of time?

A. On April 7 I remember it being held in the evening from about three to three-thirty.

266. Q. Was any other examination and consultation held on that day?

A. As I remember the only meeting which was held as an examination and consultation was this once.

267. Q. During the period of that consultation from 3 to 3:30 was it dark outside? 9x

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. It was not dark.

268. Q. You said this was the evening. What time did it get dark?

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. As I recall it usually became dark after five o'clock in the afternoon.

269. Q. Was it after the evening meal that this examination and consultation was held?

A. It was just before the evening meal.

270. Q. On the eighth of April was any examination and consultation held?

A. Yes, there was.

271. Q. During what period of time?

A. As I recall it was from about 3:30 to 4:30 in the afternoon.

272. Q. Were any other examinations and consultations held that day?

A. As I remember that was the only examination and consultation held that day.

273. Q. On the ninth day of April was there an examination and consultation held?

A. Yes.

274. Q. When did that take place and for how long a period of time?

A. The place was Admiral Masuda's air raid shelter, it took place from six in the morning until nine in the morning.

275. Q. Was any further examination and consultation held with regard to these natives?

This question was objected to by the accused on the ground that it was vague and indefinite.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. During the period of investigation from the third to around the eighth of April short examinations and consultations of about ten minutes were held but I do not know on what days these were held.

276. Q. At all these examinations and consultations were Furuki and Shintome and Masuda and yourself present?

A. Yes.

277. Q. Was there any regular method of calling these examinations and consultations together?

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. The office of Admiral Masuda and the quarters of Major Furuki, Shintome and myself were within an area of about twenty meters and when Admiral Masuda called out we could hear him and all could assemble. Whenever Admiral Masuda called us together, he called us.

278. Q. Then these so-called examinations and consultations took place at any time when Admiral Masuda called out that he wanted you, Shintome and Furuki together? Is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes, but it was usually in the afternoon and at intervals after the noon meal before we started the noon work. The place to assemble was right near the command post.

279. Q. Then is it true that there were several of these so-called examinations and consultations that took only about ten minutes?

A. Yes.

280. Q. In addition to these periods of examination and consultation at other times did you make any reports concerning your investigations?

A. Yes, reports were made.

281. Q. Do you remember if you made any report on the third of April?

This question was objected to by the accused on the ground that it was too vague and was misleading. The accused further objected on the ground that it was repetitious.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do.

282. Q. To whom^m did you make the report and at what time of day?
A. All reports of the investigation after the third up to around the eighth were made to Admiral Masuda with Shintome and Furuki present. It was made morning and afternoon immediately after my return to headquarters after the investigation. In some days it was two times a day and sometimes once. Concerning the third of April I think it was in the afternoon.

283. Q. Were these reports part of the examination and consultation proceedings of these days?

A. It was separate from the examination and consultation.

284. Q. And is it true that you made these reports to Masuda, with Shintome and Furuki present?

A. There is no mistake.

285. Q. Were Shintome and Furuki present every one of these days when you made your report to Masuda?

A. Furuki was absent when I made my report on the first and second of April but at all times on the third and after Furuki was present.

286. Q. How long did it take you to make your reports?

A. It was about twenty to thirty minutes.

287. Q. What took place at these periods of examination and consultation?

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. What the natives had stated, all evidence that had been gathered, boats and a report from the district commanding officer concerning the actions of the natives after they had drifted ashore, this was presented to the judges so that they could determine their actions. Also what the natives had said was produced and documentary evidence was produced and was used to determine what the true actions of the natives were. On the eighth and ninth examination and consultation was held on whether the natives were guilty or not guilty and how they should be punished and on this the judges consulted. Masuda also stated what the natives had told him. On the ninth the last examination and consultation was held. I, who was the judge advocate, was asked to present the opinion as to punishment. The same day the eight natives were found guilty and were sentenced to death.

288. Q. You said during the course of this examination and consultation reports were used. Were your reports of your investigation used in the period from the third through the ninth at these examinations and consultations?

A. The reports I referred to were the reports from the district commanding officer concerning the actions of these natives.

289. Q. Did you read your reports at these examination and consultation meetings?

A. I did.

290. Q. On the third did you read your investigation report at the examination and consultation meeting?

A. I did.

291. Q. Did you read an investigation report on the fourth?

A. No.

292. Q. Did you read one on the fifth?

A. No.

293. Q. Did you read one on the sixth?

A. I did.

294. Q. Did you read your report on the seventh?

A. No.

295. Q. Did you read a report on the eighth?

A. I did.

296. Q. Did you read a report on the ninth?

A. On the ninth I read my opinion as to sentence.

297. Q. How many minutes did it take to read your report on the third?

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. As I remember it took a little more than twenty minutes.

298. Q. Was this the only report that you made on that day or did you make a prior oral report?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The contents of the investigation of the first and second day was made orally to Masuda and Shintome. On the third after I had read the investigation report, as Furuki had heard it for the first time, he asked me to lend him the report and he borrowed it for about thirty minutes.

299. Q. Did you read the report at the examination and consultation meeting on the third?

A. I did.

300. Q. On the third day of April before that alleged meeting, had you already made that same report?

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. Right at the start of the examination and consultation I read this report and on this basis the examination and consultation was begun.

301. Q. Was the reading of that report included in the period of time you told me it took for the examination and consultation?

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. Yes, it was included in the period of time for the examination and consultation.

302. Q. Then, when you said that the examination and consultation took twenty to thirty minutes at about 5:30 in the morning, you included in that twenty to thirty minutes the time that it took to read the report. Is that correct?

This question was objected to by the accused on the ground that it was misleading and vague. 9K

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

303. Q. Are you sure of this fact?

A. As for the time, two years have already elapsed and there may be a difference of about ten to fifteen minutes but it is correct that there was an examination and consultation that morning and that the investigation report was read and an examination and consultation held for a short period afterwards.

304. Q. This first investigation report, was that confined to a report on the Raliejap group?

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. Yes.

305. Q. Was Ralime, Raliejap's brother?

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 remember them saying that they were brothers.

The accused moved to strike out this answer on the ground that it was the opinion of the witness, and that it was hearsay.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

306. Q. You have testified that you and Admiral Masuda went to see the natives at certain times. Did you take anything with you when you went to see the natives?

A. We took the documents which contained what the natives had stated. JK

307. Q. Did you take your opinion paper with you when you and Admiral Masuda went to see the natives?

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. On the ninth and thirteenth, before the executions, Admiral Masuda took the judgment paper on which my opinion was also written in.

308. Q. Who was with you and Admiral Masuda at that time?

A. On the ninth there was the driver of the motorcycle. On the thirteenth one of my men, Sergeant Major Fukatsu, or another non-commissioned officer was with me, I remember this. JK

309. Q. Was anyone else with you and Admiral Masuda when you went to see the natives on the ninth?

A. There was only the driver of the motorcycle. JK

310. Q. Then there was no interpreter when you went to see the natives on the ninth?

A. No.

311. Q. Did anyone read the opinion part of your paper to the natives on that day? OK

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. My opinion was not read.

312. Q. At any other time when you were there with Admiral Masuda were the charges and specifications that were on your opinion paper read to the natives?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Admiral Masuda himself told them the specifications and stated that according to Japanese law you are sentenced to death.

The commission then, at 3:20 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, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, 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. OK

(Cross-examination continued.)

313. Q. At any time previous to the ninth of April did Admiral Masuda tell the natives what the specifications against them were?

This question was objected to by the accused on the ground that it called for hearsay.

The judge advocate withdrew the question.

314. Q. At any time previous to the ninth of April when you were present with Admiral Masuda, in your capacity as a judge advocate or as an investigator, did Admiral Masuda tell the natives what the specifications and charges against them were?

A. He did.

315. Q. When did he do this?

A. I remember his telling them on the eighth.

316. Q. You testified that on the eighth in your presence Admiral Masuda told the natives what the charges and specifications against them were. At any time prior to this date were you present when Admiral Masuda told the natives what the charges and specifications were?

A. As I recall, I did not say that Admiral Masuda told the natives the charges and specifications on the eighth of April. I believe the question of the judge advocate did not say "Did you relay this to the natives." I think it was stated previous to April 8. On the third of April and on the sixth of April he did not use the words charges and specifications. Admiral Masuda asked the natives if they had done such and such things and ascertained what they had done.

317. Q. Were you asked the question with regard to whether or not prior to April ninth Admiral Masuda told the natives the charges and specifications and did you answer that he did on April eighth?

A. How I understood the question was prior to April ninth did Admiral Masuda ever talk to you in your capacity as judge advocate and investigator concerning the charges and specifications against the natives.

318. Q. Were you ever present with Admiral Masuda and the natives when Admiral Masuda told the natives what the charges and specifications against them were?

A. No.

319. Q. Were you ever present with Admiral Masuda when he read any document containing the specifications against the natives?

A. Do you mean when he told this to the natives? JK

320. Q. Yes.

A. There never was a time when he used the words charges and specifications, but I was present when he asked the natives concerning their actions and specifications of their crimes.

321. Q. When did this occur?

A. As I recall I think it was April third and April sixth.

322. Q. Were there any interpreters present at these times?

A. There was none on April third, but as I recall I think there was one on the sixth of April.

323. Q. Where was this interpreter, at Aineman Island or the Second Ammunition Dump?

A. As I recall I think he was at both places.

324. Q. Was it the same interpreter?

A. Yes.

325. Q. How did you get from Aineman to the Second Ammunition Dump? JK

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

The judge advocate withdrew the question.

326. Q. Did this interpreter travel with you and Admiral Masuda in the motorcycle from Aineman to the Second Ammunition Dump?

A. He was at Aineman and, as I recall, I think he went with us to the Second Ammunition Dump.

327. Q. Did you take him with you?

A. Yes.

328. Q. Did you have a driver for the motorcycle?

A. There was.

329. Q. Was there a side car on the motorcycle?

A. Yes.

330. Q. How many seats were there in the side car?

A. Two could sit in the side car and one could ride on the back behind the driver.

331. Q. Do you remember the interpreter riding on the back behind the driver?

A. I remember him riding behind the driver.

332. Q. Then you know that he went from Aineman to the Second Ammunition Dump, do you not?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. I know.

333. Q. And you remember the entire incident very clearly now?

A. As it is two years previous I can not remember everything clearly, but thinking on it I think he was there.

334. Q. After your investigation of the natives on the first and second of April you reported to Admiral Masuda and to Shintome. Did they tell you what further questions to ask the natives?

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. Concerning the investigation on the first and second of April, I received instructions concerning the investigation. After the investigation of April second I received no instructions but was told by Admiral Masuda to ask all points which were not clear.

335. Q. During the following days on the third, fourth and fifth of April when you had reported to Admiral Masuda, to Furuki and to Shintome were you told any special questions to ask the natives?
A. Yes.

336. Q. And did you ask these questions that you were told to ask?
A. I did.

337. Q. Who told you to ask these questions?
A. Admiral Masuda.

338. Q. On the sixth and seventh of April, after you reported to Masuda, Furuki and Shintome, were you told what additional questions to ask the natives?

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. After the reports of the sixth, seventh and eighth of April, investigations on April sixth, seventh and eighth, I was given no instructions concerning the specifications of the crimes, but I was told to ask about the circumstances of Mille and what the natives knew about the discipline on Mille and what they knew about things which we did not wish known to the military, gunsokus and the natives. 8-K

339. Q. Is that what your questioning of the natives on the sixth, seventh and eighth consisted of? 8-K

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. No. Investigation was made on the crimes. But a part of the investigation was made on the things I mentioned above.

340. Q. And you did not receive any instructions during this period with relation to the crimes. Is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As I recall I received no such instructions.

341. Q. Do you know if during the period from April first through April ninth Shintome had other duties besides that of being a judge at these examinations and consultations?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do.

342. Q. Did he?

A. He did.

343. Q. Do you know if during this period Major Furuki had other duties?

A. I do.

344. Q. Did he?

A. He did.

345. Q. Do you know if during this period Admiral Masuda carried on other duties?

A. I do.

346. Q. In the period from March 31 to April 9 was Jaluit under continuous bombardment and shelling by American forces?

A. As I recall there was no bombardment, but the strafing and bombing by planes was continuously repeated every day.

The commission then, at 4:35 p.m., adjourned until 9 a.m., tomorrow, Tuesday, May 20, 1947.

FIFTEENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Tuesday, May 20, 1947.

The commission met at 9:35 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 Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major James H. Tatsch, U. S. Marine Corps, members, and
Lieutenant David Bolton, 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, his counsel and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, the witness under examination when the adjournment 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.

The commission then, at 9:48 a.m., took a recess until 9:52 a.m., at
which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, the witness under examination when the recess was taken,
resumed his seat as a witness in his own behalf, and continued his testimony. *JK*

(Cross-examination continued.)

347. Q. You testified that the natives confessed. Who confessed first in
Raliejap's group?

A. As I remember, the one who said first that they had not drifted, and this
is how they had come, was Neibet.

348. Q. Who first said that they had murdered Tanaka?

A. It was Neibet.

349. Q. Then, was it Neibet who confessed the entire incident first?
A. As I remember, it was Neibet who told the general outline of the story.

350. Q. Who confessed first in Ralime's group?
A. As I recall, the one who said that they had killed Petty Officer Tanaka and come, was I believe, Ochira.

351. Q. Didn't the child in Ralime's group confess first?
A. As I remember, the person who first confessed to killing Petty Officer Tanaka was Ochira. Concerning the acts after they had left Mille, the one who first spoke about this was, I believe, Siro.

352. Q. Did Siro confess about the acts after they left Mille before Ochira confessed about the murder?
A. As I recall, it was after Ochira had confessed.

353. Q. How did you get Ochira to confess?

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. She was told that Raliejap's group had already arrived and all their acts concerning Tanaka and also the clothes of Tanaka were shown them, and she quickly confessed to what they had done.

354. Q. How did you get Neibet to confess?
A. At first, as it was wondered if they were natives who had drifted or whether they were natives with another motive, and this was asked of them and Neibet stated that they had drifted. There was an examination of the boats and other evidence. At the investigation of the boats, there was myself as the investigator. Neibet, being a child, and the food given on Jaluit to the four natives was the same as to the men, was one copra and 3.8 pints of Chagaro. As the food given them was not good for the child, and as an investigator, every day when I went to investigate I asked the supply officer for emergency candy, which was made in Jaluit, and took this to the child, then gained her confidence. At first she would not talk, but she later stated, I think it was one afternoon, she stated that if her parents were told she would get scolded, but she stated that they had killed Tanaka and had stolen a boat and food and had deserted from Mille. This was how Neibet first came to tell.

355. Q. Did she tell this right away, or did it take several days of bringing her candies before she told?

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. As I recall, Neibet told us this after she had been given candy a couple of times. It was in the morning and in the afternoon of the first day. After the candy the child had was gone, I kept taking her more.

356. Q. Then, she confessed to you on the first day that you questioned her?
A. As I recall, it was the afternoon of the first day.

357. Q. And you went to see her that morning and again that afternoon. Is that correct?
A. Yes, that is correct.

358. Q. And you brought her a piece of candy in the morning and you brought her a piece of candy in the afternoon. Is that correct?
A. Yes. On the first day, I had the supply officer give me a lot of candy, and took this. I took some in the morning and some in the afternoon.

359. Q. And you wish this commission to believe that in one day with two pieces of candy you were able to gain the confidences of these children so that they confessed that their parents had killed Tanaka?

This question was objected to by the accused on the ground that it was argumentative, and that the witness had not testified that he used only two pieces of candy.

The judge advocate withdrew the question.

360. Q. And you wish this commission to believe that in one day with candy in the morning and candy in the afternoon, you were able to gain the confidence of this child so that she confessed that her parents had killed Tanaka.

A. I would like to have the question repeated.

The question was repeated in Japanese.

A. (continued.) Yes.

361. Q. You testified on direct examination that twice, once on April second, and again after this alleged trial - this alleged examination and consultation - began, you asked Masuda to make an inquiry of Mille concerning the natives. Is that correct? Did you twice ask Masuda to inquire from Mille about the natives?

A. This is correct. I asked twice: once was on the first of April and the other was during the examination and consultation. The reason for this was because Admiral Masuda, Shintome, and Furuki were present.

362. Q. Did you ask that an inquiry be made to Mille because the natives had not yet confessed?

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. No. It was actually to ascertain this, the facts.

363. Q. Was it because you doubted the truth of these alleged confessions you had received from Neibet?

This question was objected to by the accused on the ground that it was argumentative and improper.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No. The reasons I asked this on April second were: (1) It was to inquire whether it was a fact that Ralime and three others had deserted from Mille; (2) It was stated that they had Tanaka fifteen kilometers from land, and to ask if Tanaka had been washed ashore and if he was alive. It was not because I doubted what Neibet and the others had stated. OK

364. Q. Then, you wanted to find out whether Tanaka was still alive. Is that correct?

^AThis question was objected to by the accused on the ground that it was irrelevant and immaterial. OK

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It was to receive verification from the Mille Defense Garrison that Petty Officer Tanaka was murdered.

365. Q. And did you want to find out whether Tanaka was still alive?

^AThis question was objected to by the accused on the ground that it was repetitious, irrelevant, and immaterial. OK

The judge advocate replied.

The commission announced that the objection was sustained.

366. Q. Did you see Admiral Masuda write the judgment paper?

A. I did.

367. Q. Did you see him write in the sentence?

A. I did.

368. Q. Did you see him write in the sentence at the bottom of the judgment paper?

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. What do you mean by "at the bottom of the judgment paper"?

369. Q. You previously testified that Admiral Masuda wrote in the sentence

at the bottom of the judgment paper. The question is, what did you mean when you said, "the bottom of the judgment paper"?

A. I saw him write in the sentence at the respective column in the judgment paper.

370. Q. You testified that about the fourteenth of April, a document was made public concerning what happened to the natives. Did you tell exactly what was in this document?

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

The judge advocate replied.

The commission announced that the objection was sustained.

371. Q. You testified about a document published on the fourteenth of April concerning the native incident. You testified concerning the contents of that document. Did you give the full contents of that document?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As I remember, I stated everything that I remembered.

372. Q. You stated that the contents of this document were as follows: "At the end of the month the natives who sneaked in from Mille or other places in the Marshalls, I am not sure on this point, the eight natives committed murder and spying; therefore, all were executed." Is this all that you remember that this document contained?

This question was objected to by the accused on the ground that the judge advocate was reading from an unidentified document, thereby confusing the witness by not stating from what he was reading.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As I recall, what was read that I had testified is a mistake. What I stated was that from Mille or another island, I do not remember which, was used. The natives who had sneaked in from another island or Mille, I do not remember which, had committed murder and they had come and because they had spied, all of them had been executed. This is how I remember it. JK

373. Q. Do you remember anything else that this document contained?

A. Other to this, it was addressed to unit commanding officers the date of fourteenth of April, 1945, from the commanding officer of the Jaluit Defense Garrison.

374. Q. Do you remember anything else this document contained?

A. I do not remember.

375. Q. Are you sure?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. As I remember, the gist was as I stated.

376. Q. Then is it true that as far as you can remember, this document did not contain any reference to any trial being given these natives? JK

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. This was passed as information to the various commanding officers from the commanding officer of the Jaluit Defense Garrison, and I do not remember the words "trial" or "procedure" being used.

The commission then, at 10:54 a.m., took a recess until 11:08 a.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, 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. JK

(Cross-examination continued.)

377. Q. In your capacity as head of police, were you required to know criminal law?

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. In my work, as head of the special police section, I have studied the naval criminal code. This was sufficient.

378. Q. Did you study the naval criminal code?

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 knew the general outline of the naval criminal code.

379. Q. Did you also know the general outline of the naval court martial law?

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 know the naval court martial law.

380. Q. Do you know the army court martial law?

A. No.

381. Q. How long were you an officer on active duty in the army?

A. I was called into service as an army reserve officer on the fifth of December, 1938, and served until October, 1945.

382. Q. Then, during that period, and the one previous year that you served, you served for approximately eight years as an army officer. Is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No. The one year I spent in the service previous to 1938, was the time when I entered at the lowest rate of private and during that year, my period, I served from the lowest rate of private to sergeant, and when I started my duties as an officer it was when I was called to active service in 1938.

383. Q. In your police activities, did you exercise police authority over the natives, as well as over the army and navy personnel?

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. The authority included the military, gunzokus, and natives, but in actual practice, concerning the natives in the outlying islands, the district commander of those islands exercised the authority, by order of Admiral Masuda.

384. Q. Were you required to know the criminal code as it applied to the natives?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. It was necessary.

385. Q. Did you hear Shintome and Furuki state their opinions that the children should not be punished?

This question was objected to by the accused on the ground that it called for hearsay.

The judge advocate withdrew the question.

386. Q. At the examination and consultation meetings, did you hear Shintome and Furuki state their opinion that the children should not be punished with death?

This question was objected to by the accused on the ground that it called for hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did.

387. Q. Are you familiar with Article 98 of the Japanese Court Martial Law which reads: "A decision of the court is determined by the majority," et cetera?

This question was objected to by the accused on the ground that the witness had already stated that he was not familiar with the naval court martial law.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not know this article.

388. Q. Do you know, if in Japanese military law, the decision is based on the conclusions of the majority?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I would like to have the question repeated.

The question was repeated in Japanese.

A. (continued.) Concerning the various laws and trial procedure, I have no knowledge, and I do not know; but concerning the acts of the Japanese military forces, the decision is decided by the supreme commander.

389. Q. Have you ever participated in any trial of Japanese military personnel?

This question was objected to by the accused on the ground that it was irrelevant and immaterial, and beyond the scope of the direct examination.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I have.

390. Q. Was that trial held on Jaluit?

A. Yes.

391. Q. Was that trial held in accordance with the navy law or army law?

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. It was an examination and consultation of natives and the Japanese Criminal Code and the Naval Criminal Code were applied.

The commission then, at 11:35 a.m., took a recess until 2 p.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, 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.)

392. Q. At the conclusion of this morning's testimony you testified concerning a trial of natives in which you participated. Was this trial of natives a different one from the examination and consultation of the Mille natives?

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. It is a different examination and consultation.

393. Q. Was that an examination and consultation concerning Jaluit natives?

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

The judge advocate replied.

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

The commission announced that the objection was sustained.

394. Q. Was the proceeding of examination and consultation held in regard to the Mille natives trial?

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. Since the time of the incident I have thought that the examination and consultation concerning the natives that was taken by the authority of Admiral Masuda was a lawful procedure under the battle conditions in judging on these peoples lives.

The judge advocate moved to strike out this answer on the ground that it was not responsive to the question.

The accused replied.

The commission directed that the answer be stricken and directed the witness to answer the question.

A. (continued.) From that time I have thought in substance that it was a trial.

395. Q. You were asked this morning, "Have you ever participated in any trial of Japanese military personnel?" You answered, "I have." You stated that this was an examination and consultation concerning natives. Was that alleged trial of natives similar to the examination and consultation held in the Mille case? JK

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The Mille case was a case of natives from a different island. The procedure in comparison to the other case was very careful. The high ranking officers performed their duties to the best of their ability and there are some differences in the contents of this examination and consultation.

396. Q. You testified you were present when Shintome and Furuki were told to act as judges and you were told to act as a judge advocate. Were the words judges and judge advocates used by Admiral Masuda?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. He used those words.

397. Q. Did you understand the words judge and judge advocate to mean persons who officiate at a trial?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. Do you mean in court?

398. Q. The witness has stated that this was a trial. We are asking him if he believes that the judges and judge advocate participated in the trial as officials?

A. Yes.

399. Q. Then did you understand that this examination and consultation procedure was to be a trial when Admiral Masuda told you that you, Shintome and Furuki were to act as judges and judge advocate in this case?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. I understood it to be a trial in substance.

400. Q. When did you first understand this procedure to be a trial?

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. From that time I have understood it to be a trial in substance.

401. Q. Did you testify before a military commission in this court room on Guam in March and April of 1947?

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. Yes.

402. Q. Did you testify concerning a certain alleged examination and consultation held for natives whose executions were involved in that case?

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 have testified about an examination and consultation not in this case, but a prior case.

403. Q. In that testimony did that alleged procedure in that examination and consultation consist of the assembling of certain judges and judge advocates by Admiral Masuda to consider the investigation reports and to deliberate on the punishment of certain natives?

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

The judge advocate replied.

The commission announced that the objection was not sustained. JK

A. Yes.

404. Q. At that trial did you testify that you were ordered by Masuda to be a judge and Furuki was ordered to be the judge advocate? JK

This question was objected to by the accused on the ground that it was irrelevant and immaterial and contrary to the principle of law stated in CMO 1, 1923, pertaining to the impeachment of a witness by prior contradictory statements.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

405. Q. In that trial in question 171 were you asked, "When did you decide that this procedure constituted a trial?" and did you answer "From the time I was confined at Jaluit as a suspect."?

This question was objected to by the accused on the ground that it was prejudicial to the rights of the accused and that the judge advocate was being allowed to testify without being sworn as a witness, and contrary to the principle of law stated in CMO 1, 1923, pertaining to the impeachment of a witness by prior contradictory statements. JK

The judge advocate replied.

The commission announced that the objection was not sustained.

A. That is not what I answered at that time. I do not believe that was what I answered at that time of the previous trial. Due to the shortage of words I feel sorry that the exact true meaning was not grasped. What I really meant was that at the end of the war I came to understand clearly that the examination and consultation procedure that was taken at that time could be called a trial. At the time of this examination and consultation I had no doubts as to whether this could be called a trial or not. At the time of this examination and consultation I felt no doubt whether this was a trial or not. The reason for this was because I believed that this

examination and consultation procedure was a legal one and the only one possible under the battle conditions, and I was under the impression that that was how I had explained this. Due to the shortage in the words I used, I do not remember how it was written down.

406. Q. Were you asked the following series of questions and did you give the following answers: "167. Q. During the two years that you were on Jaluit, were there any trials held of Japanese personnel for violating Japanese Army law or Japanese Naval law? A. I was. 168. Q. Were there any trials held? A. Disciplinary crimes were punished by the same procedure as the natives were. 169. Q. You were asked whether or not any trials were held. Did you believe that this disciplinary procedure constituted a trial? A. Yes. 170. Q. Have you always, since November, 1943, believed that such procedure constituted a trial? A. No. 171. Q. When did you decide that this procedure constituted a trial? A. From the time I was confined at Jaluit as a suspect. 172. Q. Was this after the war? A. Yes. 173. Q. Was this after the special procedures that were taken on the native cases? A. Yes.

This question was objected to by the accused on the ground that it was prejudicial to the rights of the accused and that it allowed the judge advocate to testify without being sworn as a witness, and was contrary to the principle of law stated in CMO 1, 1923, pertaining to the impeachment of a witness by prior contradictory statements.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember it all as read to me, but I remember hearing and answering some questions, but I remember exactly in the middle or the end of this series of questions I stated after it was asked "Was this after the end of the war?" I remember stating distinctly that at that time I did not think about whether it was a trial or not.

The commission then, at 3:30 p.m., took a recess until 3:52 p.m., at which time it reconvened.

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

No witnesses not otherwise connected with the trial were present.

Inoue, Fumio, the witness under examination when the recess was taken, resumed his seat as a witness in his own behalf, and continued his testimony.

(Cross-examination continued.)

407. Q. You have testified earlier today concerning a board of investigation in which you were questioned by a U. S. Naval officer. Was this on October 9, 1945 on Jaluit Atoll that you were questioned?

This question was objected to by the accused on the ground that it was irrelevant and immaterial, and was contrary to the principle of law stated in CMO 1, 1923, pertaining to the impeachment of a witness by prior contradictory statements.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. As I remember it was around the ninth.

408. Q. Was this questioning concerning the execution of the Mille natives?

This question was objected to by the accused on the ground that if the judge advocate wishes to introduce this testimony into evidence the proper way to do it is to introduce the entire board of investigation into evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes.

409. Q. Were you asked the following question and did you give the following answer: "17. Q. What kind of trial did they have or was your investigation the only thing used? A. They did not have a trial here because even a Japanese soldier, they never have a trial and they just investigate and decide what to do from the report." JK

This question was objected to by the accused on the ground that the judge advocate is being allowed to testify without being sworn as a witness and that the proper way to do this would be to introduce the entire document into evidence, and that it was contrary to the principle of law stated in CMO 1, 1923, pertaining to the impeachment of a witness by prior contradictory statements.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not remember exactly.

410. Q. Do you remember giving this answer or the contents of this answer?

A. I remember distinctly that a regular trial was not given them, but I remember stating that an examination and consultation was held for them by the high ranking officers.

411. Q. Did you testify that a regular trial was not held for these natives?

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 remember saying that a regular trial procedure was not held.

412. Q. Do you deny making the answer "They did not have a trial here because even a Japanese soldier, they never had a trial and they just investigate and decide what to do from the report."

This question was objected to by the accused on the ground that it was prejudicial to the rights of the accused and that the judge advocate is being allowed to testify without being sworn as a witness and the proper way to do this would be to introduce the entire document into evidence.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do remember on Jaluit there was no Japanese soldier who was given a punishment for a felony, for the violation of the criminal code, and executed, and therefore I may have said this as it was right at the end of the war. After the end of the war there was much confusion and I do not remember what I stated.

413. Q. Were any Japanese army personnel tried for any crimes while you were on Jaluit?

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. There was none where a regular trial was held.

414. Q. You testified that the natives were not given a regular trial but were given an alleged examination and consultation. Then when you executed these natives did you know that they did not have a regular trial?

This question was objected to by the accused on the ground that it called for the opinion of the witness, that it was beyond the scope of the direct examination and that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I did not say regular trial, I said trial by regular procedure. As I remember I stated trial by regular procedure.

415. Q. And when you executed the natives you knew that they did not have a trial by regular procedure. Is that correct?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. When I did the executions I had no questions in my mind whether this was a regular trial procedure or not. I thought this was a lawful examination and consultation procedure and believed that it was right. No question arose in my mind as to whether this was a regular trial procedure or not.

The judge advocate moved to strike this answer on the ground that it was not responsive. OK

The accused replied.

The commission announced that the motion to strike was denied.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Wednesday, May 21, 1947.