

I N D E X

WITNESSES

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
H. A. Janson	3679	3685		
Joseph Oswald Bessmer	3687	3694	3697	3697
Mariano Icasiano	3698	3703		
Alejandro Acuna	3708	3712		
Arturo V. Tanco	3716	3720		
Rafael Dinglasan	3729	3739		
Michael J. Banuvar	3750	3754		
Hideu Nishiharu	3760			

EXHIBITS

<u>PROSECUTION EXHIBIT NO.</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
403	3730	
404	3748	3749

GENERAL

Rebuttal Testimony on Behalf of the Prosecution 3679

P R O C E E D I N G S

GENERAL REYNOLDS: The Commission is in session.

MAJOR KERR: Sir, all the members of the Commission, the Accused and Defense Counsel are present.

GENERAL REYNOLDS: For the purpose of the record I will inquire of General Handwerk if he has read the record of the trial of late yesterday afternoon's session during which time he was unavoidably absent.

GENERAL HANDWERK: I have read it.

GENERAL REYNOLDS: I will ask the Prosecution if there is anything in the testimony in the late afternoon session of yesterday to which you wish to invite the special attention of General Handwerk.

MAJOR KERR: No, sir. If the General has read the record I am sure that that will be sufficient.

GENERAL REYNOLDS: The same question is addressed to Defense counsel.

COLONEL CLARKE: No, sir.

GENERAL REYNOLDS: Very well. The Prosecution may proceed.

MAJOR KERR: Sir, the Defense has rested, has it not?

COLONEL CLARKE: No, not yet.

MAJOR KERR: We have no further cross examination of the Defense witness. We have nothing, sir, until Defense has rested.

COLONEL CLARKE: Are you ready to proceed?

MAJOR KERR: We are ready to proceed.

MAJOR PRATT: If the Commission please, I have the translation of the statement which General Yamashita wrote

out in court for me after the end of yesterday's session.

GENERAL REYNOLDS: Very well. You may read it.

MAJOR PRATT: "As regards the crime of a subordinate, his commanding officer will receive either criminal punishment or administrative punishment in accordance with the nature of the crime. That is to say:

"(1) If the commanding officer ordered his subordinate, permitted or condoned the crime which was committed, then that commanding officer will also receive criminal punishment.

"(2) If in spite of the fact that the commanding officer took all possible means to prevent the crime of his subordinate beforehand, in event of a crime committed by a subordinate at a time and place unknown to the commanding officer, then that commanding officer bears administrative responsibility to his superior officer only."

GENERAL REYNOLDS: The next order of business is rebuttal testimony, if any.

COLONEL CLARKE: If the Court please, we haven't rested as yet. We have a couple of matters to bring to the attention of the Commission.

GENERAL REYNOLDS: With further reference to the statement read by the Interpreter, for the purposes of the record this statement was in connection with a specific question asked yesterday, which statement the Commission permitted the Accused to write out at his leisure and have read this morning.

COLONEL CLARKE: If the Court please, the night before

last we received this exhibit, Prosecution's Exhibit 382, which is a photostatic copy of a diary. We haven't had time to go through it as yet. Before resting we would like to request permission that before the end of the trial we be given the opportunity to object to anything which may be in here rather than to object at this time.

GENERAL REYNOLDS: Is this a document presented by the Prosecution?

COLONEL CLARKE: Yes, sir.

GENERAL REYNOLDS: When was it received?

MAJOR KERR: Sir, I don't recall the page number of the record nor the day.

Do you have that, Colonel?

COLONEL CLARKE: I don't have that information. It is Prosecution's Exhibit No. 382. It must be near the end of the exhibits.

MAJOR KERR: Prosecution Exhibit No. 382. It was an original diary. It was submitted in connection with the prison ship case and at that time we were permitted to substitute for the original photostatic copies which have just been received from the photostat laboratory. A copy has been given to the Defense and copies will be made available to the Commission this morning.

GENERAL REYNOLDS: The Commission is willing to receive it but desires that it be accomplished prior to the completion of the rebuttal testimony, which is now in order or will be as soon as Defense completes its current program.

COLONEL CLARKE: There is another matter that we have to clear up, sir. We have talked to the Prosecution, and

if they are willing to stipulate on a certain matter we can do that, but we would like to have it done before the Prosecution completes its rebuttal. It concerns a certain radiogram.

MAJOR KERR: Colonel, that has not been located as yet in our files. They are still looking for it, and if they find it this morning we will send it right out and if and whenever we do find that we did receive such a radiogram we will be very glad to have it put in the record as a part of your affirmative defense.

COLONEL CLARKE: Is that agreeable to the Court, sir?

GENERAL REYNOLDS: That is agreeable.

COLONEL CLARKE: It is not in the original record, I know. If you do not find it, we would like to subpoena it.

MAJOR KERR: Frankly, I know nothing about it and have heard nothing about it except through you. They are looking for it in the files.

COLONEL CLARKE: Before resting the Defense desires to renew the motion made at the end of the Prosecution testimony. Without argument at this time we renew the motion for a finding of not guilty, sir.

GENERAL REYNOLDS: The Commission does not clearly understand what you mean.

COLONEL CLARKE: At the end of the Prosecution's case we moved the Court to return a finding of not guilty upon the ground that there has not been sufficient evidence to sustain the allegation. At this time we renew the motion for a finding of not guilty, sir.

GENERAL REYNOLDS: Without objection by any member

of the Commission the motion of counsel is not sustained.

COLONEL CLARKE: In the event that this telegram is not produced may we have the opportunity to produce it as part of our affirmative case later on?

GENERAL REYNOLDS: The Commission anticipates with confidence that the trial will be brought to an early conclusion other than the final arguments of counsel and the Prosecution. We have no objection to receiving it while evidence is being submitted. Of course there will come a day beyond which it will not be possible to receive it. The Commission is completely unaware of the particular item of evidence you have in mind.

COLONEL CLARKE: It had to do, sir, with a certain statement which was introduced in evidence wherein the affiant definitely identified the Accused as having been at a certain place: Cabanatuan. This radiogram is an answer to one sent to the United States wherein he makes a different statement than that made in the affidavit.

MAJOR KERR: I might state, sir, that before putting a certain affidavit in evidence I caused a radiogram to be sent to the United States requesting that an additional statement be obtained from that particular affiant. I have not heard anything in response to that cablegram or radiogram. We have not received any further statement so far as I know either in the form of an additional or supplementary affidavit or in the form of radiogram. I understand from counsel for the Defense that he has heard that such a radiogram was received by our office and I assured him that I would look into it and try to locate it.

So far we have not found such a radiogram. That is all I know about it. If we do find it, as I said before, I am entirely agreeable to its being put in the record, whatever it may amount to; presuming, of course, that we are not restricted in some way by reason of classification. I think we can take care of that all right.

COLONEL CLARKE: We have seen a copy of it in the files of the Adjutant General's office. The file itself is marked "secret".

MAJOR KERR: Do you recall, Colonel, when it was received here?

COLONEL CLARKE: I am not sure as to the date it was received.

GENERAL REYNOLDS: These matters are largely ones which have been discussed by counsel with Prosecution prior to the Commission opening its session. If you have knowledge of a radiogram which is in the files of the Adjutant General and you think it is material to the case, it is desired that you send someone for it at once. The Commission will hear and receive such evidence as long as testimony is being given. After that time it does not seem appropriate that anything be put in. Now let us proceed.

COLONEL CLARKE: The Defense rests.

- - -

REBUTTAL TESTIMONY ON BEHALF OF THE PROSECUTION

CAPTAIN CALYER: Mr. Janson, please.

H. A. JANSON

called as a witness in rebuttal on behalf of the Prosecution, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Captain Calyer) Will you state your name, please?

A H. A. Janson.

Q Where do you live, Mr. Janson?

A 31 Loring, Pasay.

Q What is your nationality?

A Swedish.

Q Were you living in the Philippines during the Japanese occupation?

A Yes.

Q Did you have some connection with the International YMCA?

A I was the Chairman of the Neutral Welfare Committee of the International YMCA.

Q When was that committee organized?

A November 25, 1943.

Q What was its function?

A To deliver welfare articles to war prisoners and civilian internees.

Q What type of article was included?

A Food, clothing, medicine, books, et cetera.

Q Will you explain to the Commission the manner in which those articles were distributed and what success you had in making such distribution?

A During December 1943 we were permitted to deliver to the prison camps with our own truck, although none of our committee was allowed to be on the truck. This permission was withdrawn on December 31, 1943.

Q Just a minute, please. How frequently were you able to make those deliveries?

A We made during December 1943 nine deliveries.

Q To what camps were those deliveries made?

A To prison camps around Manila and to the prison camp at Cabanatuan.

Q When you say "prison camps around Manila", what ones specifically?

A Park Avenue, Bilibid, Los Banos.

Q How about civilian internee camps?

A No deliveries were made to civilian internees during December 1943.

Q Do I understand that permission to make those deliveries was withdrawn on the 31st of December '43?

A Yes.

Q Did you thereafter make deliveries to any prisoner-of-war or civilian internee camps?

A On April 27, 1944 we were permitted to resume making deliveries.

Q And to what camps did you deliver at that time?

A To prison camps around Manila and to the civilian internees.

Q Did that include those interned at Santo Tomas?

A Yes.

Q How long were you able to deliver at that time?

A Our permission was withdrawn on the 7th of June, 1944.

Q During the period from April until June approximately how many deliveries were made to Santo Tomas?

A Three deliveries, I believe.

Q When the permission was withdrawn, by whose order was that?

A By order of Major General Kou.

Q Was any reason given?

A No reason was given.

Q Did you have food, clothing and other articles on hand at that time?

A Yes.

Q Did you make any attempt to get additional permission to deliver those articles?

A I made several attempts through the headquarters for prison camps and through the Japanese Embassy.

Q With what result?

A No result.

Q Were you ever able to get permission thereafter to deliver any of these articles to Santo Tomas?

A At the same time as I applied for permission here I also cabled the Swedish Minister in Tokyo, who was the chairman of the committee of which our committee formed a part, and through his intervention we got permission to deliver what we had on hand on December 21, 1944 to Santo Tomas.

Q Did you make such a delivery?

A Yes.

Q How was the delivery made?

A The delivery was made to the headquarters for military prison camps at Far Eastern University.

Q Whose headquarters was that?

A General Kou's.

Q Why was the delivery made there?

A That was the instructions we had from the headquarters.

Q Do you know whether those articles were subsequently delivered to the internees?

A I know that the articles were delivered to internees. Whether all of them were delivered I do not know.

Q Do I understand, then, that it took you from June of 1944 until December to get permission to make that delivery?

A Yes.

Q During all that time you were making every effort possible to get permission to deliver those articles; is that correct?

A Yes.

Q Do you know anything about the possibility of deliveries of food and other articles being made to internees in Santo Tomas by individuals?

A On November 3, 1944 blood relations were permitted to send in a small package to the internees.

CAPTAIN REEL: May it please the Commission, at this time we fail to see what is being rebutted by this testimony. We think it is entirely out of order and we ask that it all be stricken.

CAPTAIN CALYER: If the Commission please, the Defense presented evidence through one Ohashi that during the period of the Japanese occupation, particularly that period during

which the Accused was in command in the Philippines, articles of food were allowed to be brought to Santo Tomas by individuals and delivered through the Japanese to the internees. We are now attempting to show just what was that situation.

CAPTAIN REEL: Sir, may I call the Commission's attention to Prosecution's Exhibit No. 238 in which they put forward as their witness General Kou, a 57-page statement. During the course of this statement there appears practically the entire story that this witness has told on the stand thus far.

Now, if the Prosecution thinks that rebuttal is the proper place to break down their own witness, it is entirely a new theory to us. And in the interests of shortening up this case I think that the matter of rebuttal should be restricted to rebuttal only. We don't see that there is anything being rebutted here.

MAJOR KERR: I might point out, sir, that General Kou testified as a Commission witness.

CAPTAIN REEL: I refer, sir, to page 236 of Prosecution's Exhibit No. 238 wherein this entire testimony up to date appears. And, incidentally, it has to do for the most part with matters that occurred before the Accused ever came to the Philippine Islands.

MAJOR KERR: If the Commission please, the Defense went to some effort to show that food could come freely into Santo Tomas Camp throughout the period of the Accused's command here. Various witnesses testified on that subject attempting to create the impression that the civilian internees could freely obtain food from the outside. This

witness' testimony and the testimony of another witness on this subject will disprove that testimony. It is proper rebuttal.

CAPTAIN REEL: There was no testimony -- I was merely going to say, sir, that there was no testimony by the Defense that went any farther than the testimony that General Kou put in by the Prosecution as their witness in Exhibit No. 238.

MAJOR KERR: Why don't you read the portions of the statement to which you refer if you think that they are conclusive on the subject? I certainly am at a loss to understand Defense Counsel's position.

GENERAL REYNOLDS: It is the recollection of the Commission that testimony was offered by the Defense regarding the matter of the food supplies entering Santo Tomas, and on that basis the Prosecution may proceed and the objection is not sustained.

CAPTAIN CALYER: Will you read the last question and answer, please?

(Question and answer read)

Q (By Captain Calyer) Was there a particular reason why delivery was allowed at that time?

A November 3rd is a Japanese holiday. I believe it is called "Meiji Setsu".

Q Was there any other time between October 1944 and the liberation of the internees at Santo Tomas when blood relatives were allowed to deliver packages to internees?

A Not that I know of.

Q Were you related to an internee at Santo Tomas?

A My wife's brother was interned.

Q Were you or your wife able to deliver at any other time to him during that period?

A No.

Q Do you know whether mere friends who were not blood relatives were allowed to deliver packages to internees at any time between October '44 and the liberation?

A I don't know of any such occasion.

CAPTAIN CALYER: You may examine.

CROSS EXAMINATION

Q (By Captain Reel) Did you make any attempt to deliver packages to anyone other than this one person of whom you have just spoken?

A I made attempts to deliver to the camp as a whole.

Q I mean between October 1944 and February 1945.

A Yes. To the camp as a whole.

Q And when did you make that attempt?

A From June up to December when we got the permission to ...

Q Oh, you are referring now to your testimony relative to June 1944 when you had a conversation with General Kou; is that right?

A Yes.

Q But outside of that the only attempt you made to deliver packages was an attempt to deliver them to your relative there; is that correct?

A Yes. And also to the camp as a whole.

Q By "camp as a whole" you mean this attempt which was made in June 1944 to deliver to the camp as a whole through General Kou?

A It was not only made in June. It was made during the whole period.

Q Yes.

A Two or three times a month I attempted to do it.

Q And it was not successful until December 1944?

A No.

Q Now I am merely asking you this: Aside from that attempt which you made in June 1944 which was not successful until December 1944, did you personally attempt to deliver any packages other than those to the relative about whom you have told us?

A No.

Q How many internees were there in Santo Tomas?

A I believe about four thousand.

Q Do you know them all personally?

A No.

Q And you don't know whether any of the other internees received packages during that period, of your own personal knowledge?

A I did not hear of any such occasion.

CAPTAIN REEL: I see.

That's all.

CAPTAIN CALYER: Thank you, Mr. Janson.

(Witness excused)

JOSEPH OSWALD BESSMER

called as a witness in rebuttal on behalf of the Prosecution, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Captain Calyer) Will you state your name, please?

A Joseph Oswald Bessmer.

Q Where do you live, Mr. Bessmer?

A 176 Manga Avenue, Santa Mesa.

Q What is your nationality?

A Swiss.

Q Were you living in Manila during the Japanese occupation?

A Yes, I was living in Manila.

Q Were you associated with the International Red Cross?

A I was acting in inofficial capacity, as delegate for the Committee of the International Red Cross.

Q Were you requested by the International Red Cross to attempt to obtain permission to make deliveries of food and other articles to civilian internees?

A Yes.

Q When was that?

A At various times.

Q When was the first time?

A The first time was in April 1943.

Q '43?

A Yes.

Q What steps did you take at that time?

A I had orders from the delegate in Tokyo to see the

Japanese Military Administration in Manila, and to contact Mr. A. Kodaki, at that time chief of the Foreign Department of the Japanese Military Administration.

Q Did you do that?

A I did that after a certain delay, because Mr. Kodaki at the time was still in Tokyo and left about the middle of May, I believe.

Q Were you able to get permission to make such deliveries at that time?

A I was able to assist the internees financially. That is to say, I could advance or furnish funds, and the Executive Committee of the camp would attend to the buying of necessities.

Q Were you able at that time to make deliveries of food, clothing and similar articles?

A As I said, I furnished the money and the Committee of the camp sent out their own men to pick up food, medical supplies, hospital supplies, clothing and so on, which they brought to the camp.

Q Did you later make an effort to get permission to deliver food, clothing and similar articles directly by your organization?

A I did.

Q When was that?

A After 1943. That is to say, when the administration of the camp was taken over by the Intelligence Bureau for prisoners of war and internees, I had been asked to stop all activities --

Q Just a minute, please. By whom were you asked to

stop all activities?

A By the Intelligence Bureau.

Q That is, a part of the Japanese armed forces?

A Yes, I believe so.

Q Now, in 1944 did you make other efforts to obtain permission to deliver articles to the internees?

A Yes. At the end of April, I had received again a cable from our delegate in Tokyo, wherein he asked me to try to obtain a permit such as Mr. Janson apparently was able to secure, in order to be able to furnish prisoners of war and internees with food supplies, clothing, other relief material, and so on.

Q What did you do after receiving that cablegram?

A With this cable I went to the Japanese Embassy.

Q And what result did you achieve?

A I was asked by the Japanese Embassy to leave the cable with them, and that they would take it up with the Japanese High Command and that I should return in a week or so.

Q Was your request for permission one which included Santo Tomas Internment Camp?

A Yes, sir.

Q Did you ever get permission to make the deliveries?

A I never got the permission.

Q Well, will you explain the steps from the time that you went to the Japanese Embassy until you were given a final refusal?

A I was talking the matter over with Mr. Janson, and we together went at various times to the Japanese Embassy

to follow up the matter. On June 2, I was then informed by the Japanese Embassy that they could do nothing here about a permit, and that same would have to be negotiated in Tokyo.

Q Is that June 2, 1944?

A June 2, 1944.

Q What happened after that?

A After that I received another cable, on August 30, wherein the International Red Cross delegate in Tokyo told me that my appointment as delegate had not yet been approved by Tokyo, but that I should still try, unofficially, to obtain a permit to deliver needed supplies to the camps.

Q Did you again go to the Embassy?

A Beg pardon?

Q Did you again go to the Embassy, the Japanese Embassy?

A Yes, I again went to the Japanese Embassy.

Q With what result?

A I was informed after about four weeks, towards the end of September, that they had to refuse absolutely to give me any facilities.

Q Were you ever able to obtain permission to make deliveries as the representative of the International Red Cross, to internees in Santo Tomas?

A As I pointed out before, I never made any actual deliveries, but up to the end of 1943 I was in a position, with the consent of the Japanese Military Administration or the commandant of the camp, to furnish funds for the purpose of making it possible for the camp committee to obtain what they needed in the way of relief goods.

Q Did your attempts to get a permit to deliver specific articles continue after that time and until the time of the liberation?

A Yes, my attempt continued, but I was not successful.

Q At no time were you able to get a permit, is that correct?

A At no time was I able to get a permit.

CAPTAIN CALYER: You may examine.

CAPTAIN SANDBERG: If the Commission please, we must urge very strongly that the testimony of this witness be stricken as not proper rebuttal. The only testimony which this witness has given goes up to August 30, 1944, insofar as his official activities as a member of the International Red Cross are concerned. By his own testimony, after that time his appointment as a delegate was not approved, and anything he did thereafter has no official status. There is nothing that he has said that in any way rebuts anything the Defense has put in as part of our case.

CAPTAIN CALYER: If the Commission please, I would like to point out, first of all, that the witness has testified that in the latter part of September his appointment was still not approved by the Japanese, but that his efforts to obtain a permit continued until the time of the liberation. Whether he was recognized as the official delegate of the International Red Cross is beside the point. He was then attempting to get recognition in that capacity, which he was never able to obtain.

Furthermore, the testimony given by the Defense witnesses with reference to the deliveries of food was not

restricted to the period from October on; it was left indefinite, and apparently covers the entire time.

We submit that the testimony given by this witness is perfectly proper rebuttal.

CAPTAIN SANDBERG: If the Commission please, if the Prosecution is going to be permitted on rebuttal to bring in matters of this sort going back prior to October 1944, the Defense then, in all fairness, will have to be permitted on its surrebuttal to go all the way back to December 7, 1941, to show background, since that is the only relevancy this could possibly have.

CAPTAIN CALYER: If I may say just one more word, sir.

The reason for going beyond the 9th of October 1944 is simply to show the Commission the complete picture of the efforts made by this witness as the representative of the International Red Cross and the preceding witness as the representative of the National YMCA to get these articles in to the internees in Santo Tomas.

GENERAL REYNOLDS: The Commission recalls the testimony of the witness as to a radiogram received from Swedish authorities in Tokyo. Will the reporter please locate such testimony, if it exists, and read it to us?

(The portion of the record referred to was read by the reporter as follows:

"Q Well, will you explain the steps from the time that you went to the Japanese Embassy until you were given a final refusal?

"A I was talking the matter over with Mr. Janson, and we together went at various times to the Japanese Embassy

to follow up the matter. On June 2, I was then informed by the Japanese Embassy that they could do nothing about a permit, and that same would have to be negotiated in Tokyo.

"Q Is that June 2, 1944?

"A June 2, 1944.

"Q What happened after that?

"A After that I received another cable, on August 30, wherein the International Red Cross delegate in Tokyo told me that my appointment as delegate had not yet been approved by Tokyo, but that I should still try, unofficially, to obtain a permit to deliver needed supplies to the camps.")

GENERAL REYNOLDS: The Commission will withdraw for deliberation and recess, and will reassemble not earlier than 9:30.

(Short recess)

GENERAL REYNOLDS: The Commission is in session.

In the interests of proper organization of procedures, as well as expeditious action, the Commission does not desire to accept new evidence during rebuttal testimony.

Counsel has objected to the evidence now before the Commission on the grounds that it is a subject not properly available for consideration during the rebuttal. The Commission has consulted the record, starting on page 3342, Volume XXVI. This concerns the testimony of John Ohashi, a Defense witness who was a Japanese civilian in charge of certain morale and liaison duties at Santo Tomas. He testified concerning Red Cross packages and gifts of food supplies. Questioning of this witness was conducted by Captain Sandberg of Counsel.

In view of this testimony offered by the Defense, to which the Prosecution has been afforded no opportunity to reply or rebutt, the objection of Counsel is not sustained.

CROSS-EXAMINATION

Q (By Captain Sandberg) Why is it, Mr. Bessmer, that Mr. Janson was given permission in April to deliver packages, and you were not given such permission?

CAPTAIN CALYER: If the Commission please, I object to that question. This witness is not competent to answer. He could not know why someone else has refused.

GENERAL REYNOLDS: Objection is not sustained. Proceed.

CAPTAIN SANDBERG: Will the reporter read the question?

(Question read)

A I do not know.

Q (By Captain Sandberg) Do you know why your ratification as an International Red Cross representative was not approved?

A I do not know.

Q Do you know whether there were any complaints about your handling of Red Cross matters?

A As far as I know, there are no complaints.

Q Which agency was it that was charged with the approval of your appointment as an International Red Cross delegate?

A I cannot say that.

Q Wasn't it the International Red Cross organization?

A I suppose that the International Red Cross delegate in Tokyo had to negotiate with the Tokyo government to get the appointment approved or ratified.

Q If your appointment was not ratified, isn't it a fact that it was not ratified because the International Red Cross refused to approve it?

A The International Red Cross, as far as I know, appointed me a delegate and the appointment was put before the government in Tokyo and Tokyo did not ratify the appointment.

Q Now, on August 30, 1944, you received word that your appointment as a delegate had not been approved, is that correct?

A Yes, sir.

Q What steps, if any, did you take thereafter to get permission to bring in Red Cross supplies?

A I went to the Embassy with the telegram, and I left a copy of the telegram with the Embassy, and the Embassy again pointed out to me that the matter would have to be taken up with the High Command. I called at various times during the month of September for instructions, at the Embassy, and at the end of September I was informed by the Embassy that they had to decline giving me any facility to act in any way on behalf of the International Red Cross.

Q Now, you never took it up with the Japanese Army, did you?

A No.

Q When you were told in June that the Japanese Embassy had no authority to grant you the permit, but that authority

would have to be given in Tokyo, did you make any efforts
to get this approval from Tokyo?

A Yes, I cabled the facts to Tokyo.

Q To what agency in Tokyo?

A To the International Red Cross delegate.

Q So that if the permission was denied, it was denied
in Tokyo; is that correct?

A That is correct.

CAPTAIN SANDBERG: That is all.

REDIRECT EXAMINATION

Q (By Captain Calyer) Mr. Bessmer, after you cabled that information to Tokyo, isn't it true that you received a reply from the International Red Cross telling you to keep trying to get the necessary permission?

A Yes, sir, I received such a cable on August 30th.

Q Isn't it also true that after your visit to the Embassy in September you made additional efforts to obtain permission in Manila?

A Yes, sir.

Q Were those efforts successful?

A No.

CAPTAIN CALYER: That is all.

CAPTAIN SANDBERG: Will you read back the last two questions and answers, please?

(Record read.)

RE CROSS EXAMINATION

Q (By Captain Sandberg) Was an official Red Cross representative ever appointed subsequent to August 30, 1944?

A No.

Q So that all efforts made by you after August 30, 1944, were made by you as a private citizen and not as an official representative of the Red Cross?

A Yes, sir.

Q And to what persons did you address these unofficial requests?

A To Mr. Masuzawa of the Japanese Embassy.

Q Were those efforts that you made thereafter attempts

to get permission to make deliveries for the International Red Cross?

A Yes, they were always for the International Red Cross.

CAPTAIN SANDBERG: That is all.

CAPTAIN CALYER: That is all.

(Witness excused)

MARIANO ICASCIANO

called as a witness on behalf of the Prosecution in rebuttal, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Captain Calyer) Will you state your name, please?

A Mariano Icasiano.

Q Where do you live, Mr. Icasiano?

A Pasay, Manila.

Q What is your profession?

A City Health Officer of Manila.

Q Are you a doctor of medicine?

A Yes, sir.

Q Where did you study?

A The University of the Philippines and Johns Hopkins University.

Q What degrees do you hold?

A Doctor of Medicine and Master of Public Health.

Q How long have you been in practice?

A I have been in public health service for about 25 years.

Q Do you hold an official position in the City of

Manila at the present time?

A Yes, sir.

Q What position?

A City Health Officer.

Q How long have you held that position?

A I have been City Health Officer since 1940.

Q During the period from October, 1944, until the liberation of the City of Manila, did you have an opportunity to observe members of the Japanese armed forces stationed in Manila?

A Yes, sir.

Q Will you tell the Commission what you observed about those men with relation to their general appearance, as regards to physical condition?

A I have noticed that they are in fair physical condition, practically without difference from the previous years.

Q Would their appearance enable you to form a reasonable opinion as to their state of nutrition?

A I would say that they are well nourished.

CAPTAIN REEL: If the Commission please, we will ask that that last question and answer be stricken. We will ask that the answer to the question be stricken.

The question was whether he did have an opinion, and he went beyond that. If he had simply answered "Yes" there would have been no objection. The objection would then have been as to what the opinion was.

Obviously, unless the witness is qualified, if he was someone who made a physical examination of the persons

whom he is talking about, unless he did that he is not qualified to testify as to a medical opinion of their condition.

GENERAL REYNOLDS: The witness has testified as to his medical training, and it seems to the Commission that the objection is without foundation and is, therefore, overruled.

CAPTAIN REEL: May I state further, in explanation, one matter?

GENERAL REYNOLDS: Yes.

CAPTAIN REEL: We do not say that the witness is not a physician, but we do say that unless it appears that the witness made physical examinations, rather than merely watched people with clothes on walking down the street, that he is in no position to give a medical opinion.

I think the witness himself, as a physician, would have to admit that.

GENERAL REYNOLDS: Comments of counsel are noted. The Commission affirms its ruling and you may proceed.

Q (By Captain Calyer) During the same period did you have an opportunity to observe the civilian population of Manila?

A Yes, sir.

Q What did you observe with reference to those people?

A You mean their physical condition?

Q Yes, sir.

A Well, the civilian population of Manila has been, their health has been going down gradually.

Q Will you explain what you saw as you went about the

City?

A From October up until the liberation of Manila there has been several deaths from starvation and malnutrition. There were no days in which at least one cadaver was not found in the streets, especially around the public markets.

Q What was the condition, as you observed it, of the people who were walking about?

A There have been many persons emaciated, many swollen and with ulcers indicative of states of extreme malnutrition.

Q Did reports of deaths on the streets come to your office?

A Yes, sir. There is no death in the City of Manila, officially recognized, that is, that does not pass through my office, and I have full records of those.

Q Do those records show the causes of death?

A The causes of death due to malnutrition and starvation alone amounts to approximately 3,000, and from October up to the liberation of Manila, that was.

Q About how many per day during the month of December?

A During the month of December there were recorded more than 900 in one month; that would be around 30 persons a day in December.

Q Did the rate increase after that?

A Our highest record is in December, because the records we have for January were lost toward the latter part of January, but I presume if we had all the records now January would be worse than December.

Q Was the burial of the persons who died on the streets under your supervision?

A Yes, sir.

Q These figures which you have given on the causes of death are based on what information?

A What is that?

Q Upon what information are these figures and causes you have given based?

A They are the diagnoses of physicians; the majority by physicians of my department.

Q Now, did your department operate certain community kitchens?

A Yes, sir; we had around 33 community kitchens in the north side of Manila. On the south side, that is under the Red Cross and the Public Welfare.

Q Were those kitchens being operated from the period from October, 1944, until the liberation?

A Yes, sir. They were started in October.

Q How were deliveries made to those kitchens?

A We received rice from the National Rice Corporation, later Biba, and we distributed to the different kitchens. There are cooks, and they are cooked in this kitchen, and they are given to people who go there to eat.

Q Were your deliveries to those kitchens always successful?

A Not always, no. Sometimes there was no rice from the central depot, and sometimes they are lost on the way.

Q Will you explain what you mean when you say they were lost on the way?

A There were, I remember, three instances where the rice was taken by the Japanese soldiers from the man who

was in charge.

Q Those are reports that were made to you in your official capacity?

A Yes, sir.

Q Do you know of any instances where individual civilians had similar difficulties?

A We have some advice from nurses and from public citizens, from citizens, that in some places sentries get their food as they come out from the market; that is towards December.

CAPTAIN CALYER: You may cross examine.

CROSS EXAMINATION

Q (By Captain Reel) In your work, Mr. Icasiano, you had occasion to conduct physical examinations of Filipino civilians in Manila?

A Yes, sir.

Q Will you tell the Commission how you would conduct those examinations, tell us just what you would do?

A If I were to conduct an examination, I would examine them, depending upon the kind of information I would like to have.

Q Well, suppose you were trying to find whether or not a person were suffering from malnutrition, what would you do?

A I would examine him physically throughout, examine his heart, perhaps submit him to a laboratory examination.

Q Would you have him remove his clothing before the examination?

A Yes, sir.

Q Would you listen to his heart?

A Yes, sir.

Q Suppose you were trying to find out whether he was suffering from ulcers, what would you do?

A Well, I would examine his skin.

Q And what else?

A That is all.

Q That is all?

A Yes.

Q But you would have him take off his clothing, too?

A Yes, if they are not visible.

Q Did you have occasion during the period from October, 1944, to the liberation of Manila, to examine many Filipino civilians for those diseases?

A I have not personally examined one, because the minor details in my office are done by my subordinates, but as a physician I have observed thousands of people walking the streets with big ulcers exposed, especially in their legs.

Q And in your office you had your subordinates conduct numerous examinations of Filipino civilians?

A We have not done extensive examinations except in the hospital.

Q Now, did you examine in your office, or did your subordinates examine members of the Japanese armed forces?

A We have not.

Q So that all you know about them is what you see when you see them on the street?

A Yes, sir.

Q Now, as I understand it, there was a considerable

food shortage here in Manila after October, 1944, from then on until the liberation?

A Yes, sir.

Q And there was a shortage of rice?

A What is that?

Q There was a shortage of rice?

A Yes, sir, especially rice.

Q And as a result of that these kitchens were set up?

A Yes, sir.

Q Now, from whom did the kitchens get their rice?

A From the Biba.

Q What is the Biba?

A The Biba is the Government depot for rice.

Q That is the Philippine Government at that time, under President Laurel?

A Yes, sir.

Q They furnished the rice to kitchens?

A Yes, sir.

Q Now, from whom else did you get rice?

A From nobody else.

Q Did you say something about a rice corporation?

A The Biba is the rice corporation.

Q I see. Did you get any rice directly from the Japanese Army for these kitchens?

A Not my office.

Q Not your office?

A Not my office, no.

Q Who did get the rice directly from the Japanese Army for these kitchens?

A I would not know if the corporation got it from the Army or not.

Q I see. I think you testified that sometimes there would be no rice delivered to the kitchens. Is that correct?

A Yes, sir.

Q Because Japanese soldiers would actually take this rice away as it was on the way to the kitchen?

A That was only three instances out of the 33 kitchens.

Q You are sure that only happened three times?

A That is what I remember now.

Q Do you know what would be the average rice ration in grams per day of the average citizen of Manila during the month of December, 1944?

A For the whole City of Manila?

Q Yes.

A I will not know it.

Q I mean an average per individual. Would you know how many grams per day each average individual would get?

A I don't know.

Q Do you know how much rice the average working man in the City of Manila got per day during the month of December, 1944?

A I know only those getting rice from the community kitchen.

Q How much did they get from the community kitchen per day?

A 300 grams, if the rice came at all.

Q So that on the average it would be less than 300 grams

per day, because some days there was no rice at all?

A Yes, sir.

Q During this period did the city officials and the Army officials urge people to leave Manila and go to the provinces where food would be more plentiful?

A They did.

CAPTAIN REEL: That is all.

CAPTAIN CALYER: No further questions.

(Witness excused.)

CAPTAIN CALYER: Alejandro Acuna.

ALEJANDRO ACUNA

called as a witness in Rebuttal on behalf of the Prosecution, being first duly sworn through Interpreter Villa Real, was examined and testified as follows through Interpreter Villa Real, with Sergeant Riley acting as "check" Interpreter:

DIRECT EXAMINATION

Q (By Captain Calyer) Will you state your name, please?

A Alejandro Acuna.

Q Where do you live?

A Quiapo, in Chica Street, Quiapo.

Q What is your occupation?

A Actually I am one of the sellers in the market and President of Public Markets.

Q In your capacity as President of Public Markets what markets come under your control?

A In Manila and some of the markets in the provinces.

Q How long have you occupied that position?

A From 1937 up to the present time.

Q In that capacity did you receive reports from presidents of local markets in the provinces with reference to the supply of fruits and vegetables?

A Yes, sir.

Q Did you receive such reports during the period from October 1944 until the surrender of the Japanese?

A Yes, sir.

Q What fruits and vegetables did those reports cover?

A The fruits were bananas, pineapple, papaya, avacado, pepinos, chicos, and vegetables like camote, gabi, and the

camote "kahoi" that we used to call here in the Islands, eggplant. These are all.

Q Are those fruits and vegetables normally sold in the markets as food for civilian population?

INTERPRETER VILLA REAL: Will you read the question, please?

(Question read)

A (Through Interpreter Villa Real) Yes, sir.

Q (By Captain Calyer) According to the reports which you received from the provincial presidents was there a supply of fruits and vegetables available in the provinces in the latter part of 1944?

A None.

CAPTAIN CALYER: Will you repeat the question to him, please?

(Translated by Interpreter Villa Real.)

CAPTAIN CALYER: Strike that out and I will rephrase it.

Q (By Captain Calyer) According to the reports which you received was the crop of fruits and vegetables in the provinces in 1944 available?

A No, sir.

Q Did you receive reports from the provinces that fruits and vegetables were growing in 1944?

A Yes, sir.

Q Did those reports indicate whether that crop was normal?

A Yes, sir.

Q Was it? Was it normal?

A Yes, sir. It was normal.

Q Do you mean, then, that there was a growing crop available in the provinces in 1944?

A Yes, sir.

Q There is no mistake about that, is there?

A Those were the reports that I received.

Q Were those fruits and vegetables which were growing available for sale to civilians in the markets?

A They could not be brought to Manila.

CAPTAIN CALYER: I didn't ask that. Will you ask the question again, please?

INTERPRETER VILLA REAL: Will you read the question, please?

(Question read)

(Translated by Interpreter Villa Real.)

CAPTAIN CALYER: Just a minute, please. I think the Interpreter has again asked about "Manila".

GENERAL REYNOLDS: No. It is not the fault of the Interpreter. The question is most awkwardly phrased.

CAPTAIN CALYER: All right. I will strike it and ask it again.

Q (By Captain Calyer) Was the supply of fruits and vegetables available for distribution through the markets?

A Yes, it was possible.

Q Was the supply in the markets normal?

A No.

Q Why not?

A Because it was controlled; supply was controlled.

Q By whom?

A By military.

Q What military?

A Japanese military, sir.

Q What became of the supplies of fruits and vegetables which were grown and not received in the markets?

A My information is that they were under control.

Q Do you know what became of the fruit and vegetables?

A The only thing I know is that they were under control.

Q Who got the fruit and vegetables?

A The Japanese military for their use.

Q How do you know that?

A That is the information I received.

Q Did you have a farm in Laguna?

A I have some lands.

Q Was any of your crop taken by the Japanese?

A Yes, sir.

Q And was the same thing true of crops of your relatives and neighbors in that province?

A Yes, sir.

Q Did you receive similar reports from the market presidents in other provinces throughout Luzon?

A From some of those markets; not from all of the markets from the provinces.

Q Was the report the same from all the market presidents who made a report?

INTERPRETER VILLA REAL: What is that?

Q (By Captain Calyer) Were all the reports which you received to the same effect?

A Yes, sir.

CAPTAIN CALYER: You may examine.

CROSS-EXAMINATION

Q (By Captain Sandberg) Now, was it the practice in the market of Manila for the farmers to bring in their goods from the provinces to that market?

A It was not the practice of the farmers but practice of the travellers.

Q When you say "travellers" do you mean middlemen who bought the goods in the provinces and brought the goods to the Manila markets?

A They were middlemen.

Q And did these middlemen furnish the transportation of this produce into the Manila market on their own vehicles?

A Yes, sir.

Q And did this practice continue up until the middle of February 1945?

A No, sir.

Q When did it stop?

A The practice was stopped in the month of November.

Q And after the practice stopped in the month of November what was the practice thereafter?

A The practice has been resumed.

CAPTAIN SANDBERG: "The practice has been resumed"?

INTERPRETER VILLA REAL: Yes.

Q (By Captain Sandberg) When was it resumed?

A It was about between March and May.

Q How was produce brought into the Manila market between the middle of November 1944 and the middle of

February 1945?

A Produce was not brought here between that period and resumption of the bringing in of the product was started only in May.

Q Do I understand, then, that no produce came into the City of Manila between the 15th of November 1944 and the 15th of February 1945?

A Yes, sir.

Q And when you say "produce", are you referring to both vegetables and fruits?

A Yes, sir.

Q And between the 15th of November 1944 and the 15th of February 1945, there were no fruits or vegetables on sale in any market of the City of Manila?

A Yes, sir.

Q Now, as a man familiar with the food resources of the City of Manila, can you tell us whether the City of Manila depends in normal times for its food supply upon imports of foods from abroad?

CAPTAIN CALYER: May I ask what you mean by "abroad"?
You mean the provinces?

CAPTAIN SANDBERG: No; from outside the Philippine Islands.

A Not at all.

Q (By Captain Sandberg) Well, now, with specific reference to rice, is it not true that a considerable portion of the rice supply is imported from outside the Philippine Islands?

A In normal times, yes, sir.

Q Now, is it true also that in respect to fruits and vegetables the City of Manila depends on the bringing in of such produce from the provinces?

A Yes, sir.

Q You have stated that some of the vegetables from your farm were taken by the Japanese military?

A Yes, sir.

Q And did the Japanese military who took those vegetables pay for those vegetables?

A They paid for part of the rice taken, but not for the coconuts.

Q And for the coconuts, did they give you a receipt?

A No, sir.

Q Now, with respect to the coconuts, were those taken by individual Japanese soldiers?

A They were civilian agents of the Japanese militarists on the pretence that they were ordered by the Japanese militarists.

Q And in fact, they were not ordered by the Japanese military, is that correct?

A I do not know if they were really orders with the Japanese militarists, but they took them on the allegation that they were under orders from the Japanese militarists.

CAPTAIN SANDBERG: That is all.

GENERAL REYNOLDS: The Commission will recess for approximately ten minutes.

(Short recess)

GENERAL REYNOLDS: The Commission is in session.

(The following answers of the witness were given through Sergeant Riley, with Interpreter Villa Real acting as "check" Interpreter.)

Q (By Captain Calyer) You testified that you were paid by the Japanese for rice which they obtained. Is that correct?

A (Through Interpreter *Riley) Yes, sir.

Q How was that payment made?

A With Japanese money.

Q You also testified that from the latter part of 1944 through February 1945, there were no fruits or vegetables available for sale in Manila, is that correct?

A There was very little.

Q There was, in fact, some; is that correct?

A Yes, there was some.

Q Do you know why the supply available at that time was small?

A Because fruits were brought in by clandestine methods only.

Q Why did they have to be brought in that way?

A Because fruit was controlled by the Japanese.

CAPTAIN CALYER: That is all. Do you have any further questions?

CAPTAIN SANDBERG: No questions.

CAPTAIN CALYER: Thank you, Mr. Acuna.

(Witness excused)

ARTURO V. TANCO

called as a witness on behalf of the Prosecution in rebuttal, being first duly sworn, was examined and testified as follows:

GENERAL REYNOLDS: Before the questioning of this witness starts, the Commission desires to be informed as to the purpose of his testimony.

CAPTAIN CALYER: If the Commission please, I expect to show from this witness testimony with reference to the rice situation as it existed in the provinces and in Manila during the period from October, 1944, until the end of February.

GENERAL REYNOLDS: Unless the Prosecution has something entirely new the Commission feels it is fully informed about the rice situation.

CAPTAIN CALYER: With the Commission's permission I should like to ask one or two questions, if you feel that will suffice.

GENERAL REYNOLDS: Very well.

DIRECT EXAMINATION

Q (By Captain Calyer) What is your name?

A Arturo V. Tanco.

Q Where do you live?

A 1242 Gregorio Del Pilar, Manila.

Q In the latter part of 1944, were you connected with an organization known as Ricoa?

A Yes, sir. That was a Government institution organized for the purpose of effecting an equitable distribution of

rice and other cereals in the Philippines by controlling the procurements and distribution.

Q Was that known as the Rice and Corn Administration?

A Yes, sir.

Q How was that administration organized?

A That institution was under a mixed management. It was governed by a board of directors, and the board of directors were -- rather, head members, they were part Japanese and part Filipinos, and also the organization in the office itself is such that some are Filipinos and some are Japanese.

Q Now, was there rice available which that organization procured?

A I beg your pardon?

Q Was there rice available in the Philippines which that organization procured?

A There was rice in the Philippines, yes.

Q I am talking now specifically about the period from October, 1944, to February, 1945. Was there rice during that period?

A The Rice and Corn Administration was organized about the latter part of November. From October 9th to the time that the Rice and Corn Administration was organized it was the Bigasang Bayan, which in English was National Rice Millers.

Q Was that the organization known as Biba?

A That was the organization known as Bigasang Bayan, and the other organization that was operated by the Japanese Army was called the Beikokubu, which was operating

in a certain specified territory or territories.

Q This Ricoa was then a combination of those two, is that correct?

A The Ricoa was an amalgamation of the two institutions.

Q Now, was this rice made available for distribution to the civilian population after the organization of Ricoa?

A There was none. At the first month, during the first days of Ricoa, there was none.

Q Was there later?

A I think there was later.

Q How much?

A No reports were coming to the Manila office, but on an inspection that I made in the province I found out that there was palay being bought in the provinces.

Q Did that come to Manila?

A None came to Manila.

Q You mentioned a board of directors. Did that board of directors have any actual control over the operations of the organization?

A According to the charter of the organization the board of directors was the managing body, but there was an agreement in which the leadership system was going to be adopted.

Q What do you mean by that?

A Which meant that important matters were going to be decided between the chairman and the vice-chairman. In fact, the board of directors was only an advisory board.

Q Were important matters decided in that manner?

A Yes.

Q Who was the chairman?

A The chairman was the Minister of Economic Affairs, Mr. Sabido.

Q Was he a minister in the puppet government?

A Yes, he was the Minister of Economic Affairs in the puppet government.

Q Who was the vice-chairman?

A The vice-chairman was the assistant chief-of-staff of the Army; General Utsunomiya.

Q Will you indicate which one he is, if he is here?

A Mr. Utsunomiya is right there.

Q Indicating the general on the right of you?

A The gentleman that is last at the table.

Q Is that the man whom you refer to as the assistant chief-of-staff? Is he the assistant chief-of-staff to General Yamashita?

A I beg your pardon?

Q Is he the assistant chief-of-staff to General Yamashita?

A That I do not know; I know only according to the charter of the Rice and Corn Administration that the vice-chairman was -- not charter, but according to the agreement aside from the charter, the vice-chairman was going to be the assistant chief-of-staff.

Q Do you know who the commanding officer in this area was at that time?

A Yes, sir.

Q Who?

A I learned from newspaper reports that it was General

Yamashita.

CAPTAIN CALYER: You may cross examine.

CROSS EXAMINATION

Q (By Captain Reel) Mr. Tanco, I think you told us you were on the board of directors, or you were a member of the board of directors of Ricoa?

A Yes, sir.

Q Just what were your duties in that position?

A In that position, the board of directors, according to the charter, were supposed to be the managing body, but there was an agreement between the Army and the puppet republic to the effect that the board of directors was only going to be an advisory body.

Q Now, what were your actual duties? What did you do as a member of the board of directors of Ricoa?

A As a member of the board of directors of Ricoa, I attended one meeting.

Q When was that?

A It was on the day, I think it was in the latter part of November, when the Ricoa was first organized.

Q Now, when you say there was an agreement, between what groups or bodies was the agreement made? Who agreed, in other words, to make an agreement?

A I understand that it was agreed between the higher officials of the puppet republic and the Army. I did not know about this agreement when it was made. I only knew the text of the agreement later.

Q When the Ricoa was formed in the latter part of November, 1944, you were one of the charter members, is

that correct?

A I was one of the board of directors, a member of the board of directors.

Q Did you have anything to do with the formation of the Ricoa?

A I had something to do on the Filipino side of it.

Q Now, why was the Ricoa formed in the latter part of November, 1944?

A The Ricoa was formed for the purpose of controlling procurement in distribution of rice and corn in order to effect an equitable distribution of those cereals.

Q Why was this done in the latter part of November, 1944?

A It was done because the Biba, Bigasang Bayan, which was the then existing organization for the control, could not effectively control it for lack of enforcement.

Q Had there been enforcement before of the Biba, before November of 1944?

A There had been enforcement during the first months of 1944, but subsequently the policies adopted by the Biba were such that on a second stage there was a partial control necessitating enforcement, but only on a limited area in Manila, but as a third stage, during the latter part of the year, during the establishment of the Ricoa, the whole enforcement was entirely abandoned. There was free entry of rice into Manila.

Q Now, in the latter part of 1944, did you think it was necessary to enforce some sort of control of distribution of rice?

A I did not quite get that.

CAPTAIN REEL: Will you read the question?

(Question read.)

THE WITNESS: My personal opinion?

Q (By Captain Reel) Yes.

A The question of whether there should be control or not is rather a big question to put an opinion on because of the circumstances there. But if the control could be made effective and equitable distribution for the whole Filipino people or the residents in the whole Philippine Islands could be effected, it would be beneficial, but whether that could be done or not from the Filipino part of it we could not say, because our enforcement system, rather the puppet government's enforcement facilities, were very weak.

Q Well, is it fair to say, then, Mr. Tanco, that the food situation, particularly as applied to rice, by November of 1944, had become so serious that you thought some control was necessary, and that is why you took part in the formation of the Ricoa and became a member of its board of directors?

A My coming into the Ricoa was not prompted by any such opinion.

Q Well, is it true, Mr. Tanco, that the food situation, especially as applied to rice, had become very serious by November of 1944?

A Yes, it was serious.

Q And the purpose, so far as you were concerned, of the Ricoa, was to try and alleviate the suffering, resulting from the serious shortage?

A That was the reason.

Q Now, was the transportation of rice into the City of Manila interfered with by the activities of guerrilla forces?

A That I cannot say for sure.

Q Well, do you have some ideas about it, Mr. Tanco?

A The transportation of rice into Manila was being interfered with by the guerrilla movement, is that what you say?

Q Yes.

A I have had some reports that some people coming to Manila with rice were being, what we call, taxed on the way by some other people.

Q Is it also true that guerrilla activities interfered with the harvesting of some of the rice in the provinces?

A During November, during the latter part of December, when the harvest was being done, I had some reports that there were some interferences.

Q Is it also true, Mr. Tanco, that the American air raids made over the roads to Manila also made the transportation of rice somewhat hazardous?

A Probably.

Q And were some of the bridges and the roads destroyed, either by air raids or guerrilla activity?

A I don't believe so; at that time, when I was in the Ricoa, during the time I was in the Ricoa, I don't believe that happened.

Q When did you leave the Ricoa?

A I left on January 6th.

Q Is it also true, Mr. Tanco, that there was a shortage of gasoline and truckage facilities, which further hampered the delivery of rice from the provinces into Manila?

A Shortages of gasoline, as a matter of fact, there was no gasoline that I knew of.

Q It all had to be drawn by horse and carriage?

A By alcohol.

Q That was the only fuel available for the transportation of rice?

A At least that is what was available for civilians and government officials.

Q Was there a shortage of trucks and vehicles?

A There was some shortage of trucks and vehicles, because many of them were being used by the Army.

Q And was some of the rice that was distributed by Ricoa furnished by the Japanese Army?

A There was during the Ricoa time, there was only something like 800 cavanese that were distributed through the Ricoa.

Q You mean 800 cavanese came from the Japanese Army to be distributed through Ricoa?

A Yes, it was, because it was the rice control organization, and whatever donations were given by the Army to the puppet republic was passed through the Ricoa. We handled it, but not the distribution of it.

Q And in addition to that donation was other rice borrowed by the Ricoa, by the Japanese Army?

A Yes, sir.

Q How much?

A I think there were 2,000 cavanese that were borrowed, not by the Ricoa, but by the Biba.

Q Distributed by Ricoa?

A Yes, sir.

Q And is it true, Mr. Tanco, that during December and January -- December of 1944 and January of 1945, officials of the Army and of the local government here were urging the population of Manila to go to the provinces where food, especially rice, was more plentiful?

A Yes.

CAPTAIN REEL: That is all.

REDIRECT EXAMINATION

Q (By Captain Calyer) Mr. Tanco, at the time these 800 cavanese of rice were made available by the Army, do you know what the Army supply was?

A I can only say that when the Ricoa was established we understood, we got the information that the Beikokubu, which was the Army bureau for operations, for operating the Cagayan Valley, that they had stocks in Manila, and it was reported that there was something like sixty to seventy thousand cavanese in Manila.

Q Of that you got 800 for distribution to the civilians, is that correct?

A We got 800, and we understood it came through the Beikokubu.

Q Now, at the time we are talking about, the latter part of December -- December, '44, and the early part of '45 -- was the railroad still operating into Manila?

A Yes, sir, it was operating.

Q Do you know whether the Japanese obtained rice during that period?

A During December?

Q Yes.

A During the latter part of December -- you mean to say the Japanese in the Ricoa?

Q Well, through Ricoa or any other means, were the Japanese able to obtain rice at that time?

A During December, during the latter part of December, I had some verbal reports that the Ricoa, the Ricoa agencies in the provinces were procuring and were being able to procure palay in the provinces.

Q Do you know what became of that?

A I only knew later that they were sent to certain -- well, in Bulacan, where I was able to inspect, that they were being sent not to Manila, but towards the north.

Q Do you know whether that went to the Japanese?

A I beg your pardon?

Q Do you know whether that went to the Japanese?

A I was informed that it went to the Japanese.

Q At that time was there a prohibition against individual civilians bringing rice into Manila?

A What is that?

CAPTAIN CALYER: Will you read the question?

(Question read.)

THE WITNESS: Yes, sir, there was complete prohibition against anybody bringing rice to Manila.

GENERAL REYNOLDS: The Commission interrupts. We

feel the point is being tortured. If you have any further subject which you wish to inquire about we will hear that, but we want to know the new subject before we decide to retain the witness on the stand.

CAPTAIN CALYER: I have nothing further except a few things that were brought out on cross examination. If the Commission is satisfied I have no new matters.

GENERAL REYNOLDS: Does the Defense have further questions?

CAPTAIN REEL: The only thing I would seek to bring out by questioning would be to merely point out to the Commission that all of this testimony as to the rice in Manila and what happened to rice and palay in the provinces is based purely on rumor. There has been no identification of any source, and the witness never saw this, or hasn't even told us who told him.

There is no basis for the information at all.

GENERAL REYNOLDS: The Commission notes the comments of counsel.

CAPTAIN CALYER: May I ask one more question, sir?

GENERAL REYNOLDS: The Commission recalls that we granted you the right to ask one or two questions, and then the testimony went on for 15 minutes.

What is the question?

CAPTAIN CALYER: I would like to ask this witness whether or not in January of 1945 he made a personal inspection in Bulacan Province and saw rice being taken north by the Japanese.

THE WITNESS: I made an inspection of Bulacan and I

saw Japanese soldiers gathering all the palay in the different towns and were discharging them, or rather, unloading them, or unloading them themselves without any Filipino help.

CAPTAIN CALYER: That is all.

CAPTAIN REEL: That is all.

GENERAL REYNOLDS: The witness is excused.

(Witness excused.)

CAPTAIN PACE: Mr. Dinglasan.

RAFAEL DINGLASAN

called as a witness in rebuttal on behalf of the Prosecution, being first duly sworn, was examined and testified as follows:

CAPTAIN PACE: If it please the Commission, this testimony is offered for the purpose of showing that the battle for Manila was not a mere accident, that it was not an attempt to defend Manila from a landing from the sea, but that it was a carefully-planned battle and the actual preparations for which took place after the Accused states that he had given orders that there be no fighting in Manila.

GENERAL REYNOLDS: Very well.

DIRECT EXAMINATION

Q (By Captain Pace) Give your name, please.

A Rafael Dinglasan.

Q Speak loudly and to the Commission. Where do you live?

A 1504 Taft Avenue, corner Estrada, in front of LaSalle College.

Q What is your profession?

A Attorney. I am at present Judge-at-Large of the Court of First Instance.

Q You are a judge?

A And presently detailed in the Department of Justice with the Secretary of Justice.

Q From 1936 up until the present did you live in your residence there near de LaSalle College?

A Yes, sir. Because I could not move out to Bulacan as I planned before the Americans entered Manila.

Q Prior to December 1944 had the Japanese constructed any fortifications in the neighborhood in which you lived?

A Even before December there were constructed earthen pillboxes.

Q Just a moment. I am talking about before December 1944.

A I thought you said "December".

Q Had any fortifications been constructed in your neighborhood before December 1944?

A About November there were, I don't know whether you call them "pillboxes" or "trenches", made of earth, but these were later reinforced, some of them made concrete and then covered on top with earth, with grass.

Q When did they start the serious construction of these concrete fortifications?

A About the month of December, before the middle of December when the Americans were out in Mindoro.

~~CAPTAIN PACE: Mark this for identification, please.~~

(Diagram of fortifications in neighborhood of witness' home was marked Prosecution Exhibit No. 403 for identification.)

Q (By Captain Pace) How long did this construction take place in the neighborhood of your house?

A They were continuously reinforcing until the night when I was called over the phone by my sister that the Americans were already in the north, north of the Pasig River. That night I heard the Japanese manning and moving in all their equipment into these pillboxes. They brought

in some machine guns and bigger guns, which I suppose were anti-tank guns. 2

Q Will you look at Prosecution Exhibit No. 403 for identification and state whether or not that shows some of these fortifications in your neighborhood accurately?

A Substantially correct, but I would add some more here. For example, this pillbox (indicating) at the corner of Vito Cruz and Taft Avenue to the left going to Pasay is concrete and strong pillbox. It is not stated here that this is concrete pillbox.

Q Other than that, is what is shown there shown accurately?

A I would like to see part by part.

It does not appear here that -- Or, rather, the holes that the Japanese soldiers dug in the garden of my house next to the concrete fence facing Estrada Street, it is not here, two of which later served as dumping place for two Filipino civilians that the Japanese massacred in my garden.

Q Is what is shown there shown correctly?

A Yes, with these corrections, sir.

CAPTAIN PACE: I offer it in evidence, sir.

CAPTAIN SANDBERG: Defense objects to the introduction of this document into evidence for various reasons.

1. The document has at the top the name of Rafael Dinglasan. There has been no evidence as to who prepared this document. The name at the top would seem to indicate that the witness prepared it, yet the witness states that it is not accurate.

2. The document states no date. This plan might have been true as to any time. The document is inadmissible unless it states specifically when this was a correct plan.

3. The witness has not testified as to some of the items shown on here, as to, for example, the mines on Taft Avenue. Is that the witness' idea or is that somebody's else? There are several others of the same sort.

4. Finally, we have down here "(1) Japanese try to blow up house -- fail and so burn". There has been no testimony in this case of any such incident and it is irrelevant. "(3) Holes cut in walls for retreat". Similarly, sir, not identified. "(4) Mines placed -- then moved".

The whole document is inadmissible.

GENERAL REYNOLDS: With respect to the comments of Defense the Commission inquires concerning the testimony before us how it could relate to the stated purpose of this rebuttal testimony, which was that you were to show that the defense of Manila was an ordered, planned thing.

CAPTAIN PACE: We feel, sir, that the best possible evidence of the fact that the defense of Manila was a planned operation is that shortly before the Americans came the Japanese prepared to fight, set up their defensive system and then in fact did fight from those fortifications.

GENERAL REYNOLDS: The Commission seems to recall day after day testimony to that very effect. Is it necessary to introduce additional testimony at this time to sustain the point?

CAPTAIN PACE: There is no evidence in the record, to my knowledge, sir, that the preparation of these defenses commenced after December 1944. Several witnesses have been asked that but they were unable to answer the question.

GENERAL REYNOLDS: In its present form the Commission rejects the exhibit.

Q (By Captain Pace) Will you look at Exhibit 403 for identification. Is that your name and address which appear at the top of it?

A Yes, sir.

Q Does this show the state of fortification on the date when the Japanese defended this area against the American attack?

A As I have said, this is correct, accurate except for those things that I would like to add here. But I would like also to explain to the Commission how I was called on the witness stand.

Somebody from the War Crimes office interviewed me and asked if I knew about the fortifications of Manila in this part of my neighborhood, and they asked me to prepare a sort of a map or diagram. I was then at my office in Malacanan and I prepared it for him. And presumably this plan or diagram must have been copied from what I hurriedly prepared for him. But I can make that diagram and I think I can improve on this at any time.

Q Is what is shown there the state of affairs as it was in the early part of February?

A Yes, sir.

Q Are those notes on the bottom notes of what you put

on your plan?

A Note No. 1.

Q Will you tell what that is?

A "Japanese try to blow up house -- fail and so burn."

This house is a big house of Mr. Heras at the corner of Vito Cruz and Taft Avenue, and he had a strong concrete ground floor. Several days before the Americans were reported to be in the south the Japanese marines tried to blow up his house but their dynamite was not strong enough. So they burned it. And not only this house. They burned the houses next to this which were made of wood. And the purpose was evident: so that the pillbox on Vito Cruz, the corner of Vito Cruz and Taft Avenue, or pillboxes facing Pasay could be used effectively by the Japanese soldiers. And I saw them fight in these pillboxes from my house and when the Americans came I saw Japanese soldiers in the pillboxes dead and all over the streets and the neighborhood. And I saw and I witnessed how the Japanese soldiers brought mortar guns up to AFESA, the Mayflower Apartment, and the LaSalle College which surrounded my house. And that is why we were caught in cross fire. I stayed for several days under my house there to avoid being hit by the American shells.

Q Is Note 2 a correct statement?

A Note 2 is the home of Mr. Lorenzo. Yes. They drove Mr. Lorenzo away from his house long, oh, several weeks before the Americans were reported to be coming from Pasay and just to be able to build that big pillbox. And the Honorable Commission may, if it so desires, still go there

and see how strong those pillboxes are, how thick they are.

Q Is Note 3 correct?

A "Holes cut in walls for retreat". Yes, sir. And they were actually used. Soldiers used to pass through that during the street fighting.

Q Is Note 4 correct?

A "Mines placed -- then moved". Oh, those were the mines that almost drove me and my family almost out of my house, but they moved that to Singalong Street near the bridge and they blow up those bridges of Singalong Creek. And those mines were there. As a matter of fact, those mines exploded when the carretelas passed by after liberation.

CAPTAIN PACE: I re-offer Exhibit 403 for identification.

GENERAL REYNOLDS: The Commission would like to establish the date of the drawing with respect to the time these various situations existed.

CAPTAIN PACE: Yes, sir.

Q (By Captain Pace) When did they start the construction of these concrete pillboxes and the placing of the mines in the streets, the cutting of the walls, and so forth?

A They started back about after the middle of December; about the middle of December.

Q Did they continue work on those projects from the middle of December until the fighting started?

A Yes, sir. And dug trenches, even in some of those empty lots.

CAPTAIN PACE: I re-offer it, sir.

CAPTAIN SANDBERG: Sir, there is nothing that the witness has stated that affects the validity of the Commission's previous ruling on this document. The Defense is not denying that there was street fighting in the City of Manila by Japanese marines. And this is hardly, therefore, proper rebuttal. But our basic objection to this document is that it does not show the date as of which this is a correct chart. In other words, as a chart it is of no use whatsoever unless there is some statement of the date as of which this is correct.

GENERAL REYNOLDS: The Commission will recess until 1:30 this afternoon.

(Whereupon at 1125 hours a recess was taken until 1330 hours, 1 December 1945.)

- - -

AFTERNOON SESSION

(The trial was resumed, pursuant to recess, at 1330 hours.)

GENERAL REYNOLDS: The Commission is in session.

MAJOR KERR: Sir, all members of the Commission, the Accused and Defense Counsel are present.

GENERAL REYNOLDS: With respect to the exhibit proffered by the Prosecution just prior to the noon recess, the Commission rejects the exhibit and sustains the objection offered by Counsel.

RAFAEL DINGLASAN

the witness on the stand at the time of recess, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Resumed)

Q (By Captain Pace) During the period of December 1944 and January 1945, did you see the construction of other fortifications in Manila?

A You mean other than those around my house?

Q Yes.

A Yes, sir.

Q Where were they?

A Along Taft Avenue up to the Legislative Building. I even saw how they forced people to dig and fill up drums, oil drums that were lined up there behind the Legislative Building, and almost all the corners of streets that cross Taft Avenue from Vito Cruz up to the Legislative Building had pillboxes, either of earth, wood, stones or concrete.

Q Would it have been possible from those pillboxes to

fire upon troops who were attempting to land on Manila Bay from the sea?

A From the way they were constructed, it was impossible, especially taking into account the position of the holes in these pillboxes. They could only fire against the enemy, the Americans that would come from Pasay or -- that is, south of the city -- or that would come from the east through the -- crossing the Singalong Creek.

Q One more matter: During the Japanese occupation, was it customary for the civilians to bow to Japanese sentries?

A Customary? Not customary, but they were forced to bow! I myself -- I have been forced to bow to these Japanese, and many Filipinos had even to walk several blocks to avoid passing before a Japanese sentry and having to bow to what they called these "gorilla" sentries; and some Filipinos, including myself, whenever we were in a carretela or calesa we removed our hats long before we come to the sentries, just to avoid to have to remove our hats when we are in front of the sentries. I saw people slapped by sentries, that did not bow, and we were even instructed through the press as to the manner of how to bow to these sentries. We never did that before!

CAPTAIN REEL: Sir, we will ask that the answer be stricken. It is immaterial; it is not proper rebuttal. There is no specification, no one of the 123 particulars having to do with this matter. If the Prosecution's position is that this is rebuttal of some testimony of the Accused, we bring the point out that the Accused stated that in his

opinion this was a voluntary proposition.

It is certainly highly improper for the Prosecution to ask this witness, or for the witness to make a speech on this particular subject. It is not rebuttal.

GENERAL REYNOLDS: In view of the testimony of the Accused, the Commission is quite surprised at the objection.

Does Prosecution have any views to express upon this?

CAPTAIN PACE: Yes, sir. The testimony of the Accused, as was stated, was that he thought it was voluntary, and this witness is testifying as to what happened to some of them who failed to bow. It is very material.

CAPTAIN REEL: Sir, it is not rebuttal to in this manner dispute an opinion of one of the witnesses. The Accused stated that in his opinion the matter was voluntary. This doesn't go to that in any way, shape or manner.

MAJOR KERR: Sir, the Accused testified categorically that nothing happened to the civilians if they did not bow. Furthermore, this goes to the credibility of the Accused and, in addition to that, it shows how little he knew about affairs in Manila.

CAPTAIN REEL: Sir, it has no relationship to the credibility of the Accused. The Accused stated, if I may repeat, an opinion. We will let the record speak for itself on that subject.

GENERAL REYNOLDS: The witness is also stating an opinion. The objection is not sustained.

CAPTAIN PACE: You may cross-examine.

CROSS-EXAMINATION

Q (By Captain Sandberg) Have you seen any of these

so-called fortifications at other parts of the city than those you have mentioned on direct examination? Just answer yes or no.

A Yes.

Q Did you see the concrete structure just inside the gate to this building, when you came here this morning?

A I just saw that one for the first time when I was brought here for the first time.

Q And is that the type of fortification that you have been testifying about?

A No.

Q How does it differ?

A Well, that looked to me like an air raid shelter, and, as a matter of fact, I have read in the papers that they had air raid shelter here in the High Commissioner's Office.

Q Were there any air raid shelters in the immediate vicinity of your neighborhood?

A Air raid shelters for civilians?

Q Air raid shelters.

A Yes, those constructed by us, in our houses or in our yards.

Q Were any of these structures you have testified about this morning air raid shelters, whether for yourself or for Japanese soldiers?

A They were pillboxes, and anybody in this room can go there now and I will show them just how those openings were placed about one foot from the ground, where they could fire their guns against the Americans that were expected to come.

Q Now, this pillbox you have just described, with the opening near the floor; when was that constructed?

A That one I am referring particularly to is the pillbox at the corner of Vito Cruz, Taft Avenue, and the lot owned by ex-Representative Lorenzo.

Q When was the construction of that so-called pillbox completed?

A About January.

Q And did you see any others in that neighborhood?

A The one opposite that, the other corner, also made of concrete and with holes for guns.

Q And when was the construction of that pillbox completed?

A About the same time.

Q In January? What part of January?

A Or latter part of December.

Q Well, which was it? Was it January or was it December?

A You mean when it was completely finished?

Q When it was completed.

A With all the earth and grass on top of it?

Q When was it completed?

A Well, about the first week of January.

Q And were there any others that were completed before the first week in January?

A They were the earthen or the pillboxes made of earth and wood and stones -- they were completed before that.

Q When were they completed?

A About the latter part of December.

Q And were there any that were completed after the

first week in January?

A The pillboxes that were facing the bridges on Singalong Creek, which is not in this diagram (indicating) -- this is incomplete, in the sense that it does not cover the whole area.

Q Well, when were those completed?

A About the 10th, or within the second week of January.

Q Of January. And that was the last pillbox that was completed?

A That I know. I don't know when they completed the other pillboxes that they were constructing after we could not leave our houses.

Q But after the 10th day of January, you never saw any work being done on pillboxes or fortifications?

A They used to go inside the pillboxes and bring things; I don't know what they were doing, sir.

CAPTAIN SANDBERG: We ask that the last answer be stricken, and the question repeated to the witness.

GENERAL REYNOLDS: Very well. Repeat the last question and strike the answer.

(Question read)

A Around the pillboxes I also saw some more elaborate defenses. For example, in that pillbox in front of LaSalle College, between the Nippon Club lot and the LaSalle College entrance to the south, they cut down the big trees on the sidewalk, and then they covered that with barbed wire. Then they also built frames of wood which they encircled with barbed wire, and they allowed only passage through one way of Taft Avenue. Then they --

Q What was the date of that?

A I am not through yet. You asked for fortifications.

Q I asked you when --

A No; you asked whether they were doing work after this certain date --

Q I have asked you several times as to the date, and I should like an answer as to when, not the details.

GENERAL REYNOLDS: Read the question, please.

(The question was read by the reporter as follows:

"Q But after the 10th day of January, you never saw any work being done on pillboxes or fortifications?")

GENERAL REYNOLDS: In view of the way the question is framed, it is quite a proper answer. He is not only saying he did, but he is explaining it.

CAPTAIN SANDBERG: All right.

THE WITNESS: May I proceed?

CAPTAIN SANDBERG: Are you still answering?

THE WITNESS: Yes.

A (Continuing) Beyond Vito Cruz to the south, farther from the place of this burnt buildings, especially the building of the Heras residence which they tried to blow up and then burned, they bored holes in the ground, square holes, and I suppose that they were for mines, for anti-tank mines. And they also built frames there of wood covered with barbed wire, and then they dug trenches in that lot near the Heras residence, and they dug holes on the corner of Azcarraga and Taft Avenue for mines; and, as I said, that nearly sent us out of the house, but they put that farther toward Singalong Street where they put their mines,

and then they also placed barbed wire and they dug trenches in front of LaSalle College just behind the sidewalk, which had connections with underground installations they had there. And I suppose they were also fortifications, because after the Americans came in and liberated us two or three days after, I passed through these places and I found plenty of ammunition there, machine guns.

Q (By Captain Sandberg) All right. Now, let us go back and get this thing organized. You testified you saw no pillboxes constructed in your neighborhood after the 10th day of January. Do you still stand by that statement? Now, I am talking about the construction of pillboxes, the completion of pillboxes. Do you wish to stand by that statement?

A When you said -- when I answered your questions about the 10th of January, I was answering about an approximate date, because I did not note down the date when they finished. But I am sure that most of those fortifications were finished after the second week of January.

Q Well, do you want to change that date of January 10 now to some other date?

A Well, it is around that, the second week of January; I would not say 10.

Q You saw no pillboxes being constructed during the month of February, after the American forces reached the north bank of the Pasig River?

A The American forces, if the report given to me by my sister was correct, must have reached Azcarraga on the north side of the Pasig River about February 3. The Japs

were getting ready from that night on, they were taking munitions, guns and supplies to their pillboxes.

CAPTAIN SANDBERG: I ask that that answer be stricken, and that the question be reread to the witness and we have a response at this time.

GENERAL REYNOLDS: Will you read the question again, please?

(Question read)

GENERAL REYNOLDS: The answer will be stricken and the witness will give a new answer.

A I didn't go out of my house anymore after February 3. We just waited for the Americans to come. We had to wait for some days.

Q (By Captain Sandberg) Well, after February 3, then, you can't testify as to anything the Japanese soldiers did, since you were in your house?

THE WITNESS: What was that question?

(Question read)

A I can testify plenty yet on what they did, even during the fighting, just before the Americans came in and liberated us from the two rooms of the ground floor of the Mayflower Apartment.

Q (By Captain Sandberg) Well, in that event, will you please answer my question as to whether or not you saw any pillboxes constructed after the first day of February? Yes or no.

A After February 3, no.

Q Thank you. Now, these pillboxes which you saw constructed prior to the 10th day of January, am I correct

that it is your testimony that they faced only towards the south and the east?

A Yes, the ones I have been testifying to.

Q And they had no openings, then, towards the north; is that correct?

A For guns? No.

Q Do you know which way the American forces came when they did come?

A Of course. I watched them from the window of the Mayflower, one time --

Q They came from the north, didn't they?

A North? That is where the Japs took the last stand, on this side (indicating). They came, the first unit under Captain McDonald liberated us from that place where the 430 was, from the east, and after they had liberated us I learned that some units came from the north. As a matter of fact, when the first Americans came into the Mayflower Apartment, I asked for their commander, because I wanted to give him the exact position of the fortifications, and the soldiers, the GI's immediately called the commander and I told the Captain, I told him, "Please, do not allow your soldiers to pass through Dagonoy, Estrada and Vito Cruz, because there is a big concrete pillbox in front of LaSalle College, and another big earth and wood and stone pillbox near the Nippon Club, that guard these streets. Pass your men and your tanks through the Ohta Development Lot, where your tanks may be able to blast those pillboxes. And you can use my house," I said, "when you fight the Japs in LaSalle."

Q Now, it is true, then, that when the American forces came from the north, as you have just testified --

A Not from the north.

Q You just testified that they came later from the north.

A No, east; Singalong.

CAPTAIN SANDBERG: Will the reporter please read back the last answer?

GENERAL REYNOLDS: Well, there is no point in that. In fact, the Commission feels that this is a waste of time. The witness testified so very clearly that initially the attack came from the east, and later he learned that American troops came from the north.

THE WITNESS: From the south, also; I said from the south.

CAPTAIN SANDBERG: You said "north" --

THE WITNESS: Did I say "north"? Well, I pointed south, anyway.

CAPTAIN SANDBERG: The witness said "north".

GENERAL REYNOLDS: If there is any question about what he said --

THE WITNESS: Well, I will give you the chance to correct that.

GENERAL REYNOLDS: Is there anything further to be obtained by cross-examination?

CAPTAIN SANDBERG: I have nothing further.

CAPTAIN PACE: Thank you, sir.

(Witness excused)

CAPTAIN PACE: We will call Mr. Sia.

GENERAL REYNOLDS: Before we hear this witness, what is the purpose of his testimony?

CAPTAIN PACE: He will give the dates the fortifications were started north of the river.

MAJOR KERR: I believe this witness will testify as to the fortifications on the north side of the river. Counsel was questioning the other witness as to the openings in the pillboxes to the north, and this gentleman will prove that the Japanese were fortifying the north side of the river.

If the Commission is interested in that subject we are prepared to put evidence into the record on it, otherwise we will be content without it.

GENERAL REYNOLDS: The Commission will dispense with the witness.

CAPTAIN PACE: Will you mark this as our next exhibit?

(Book entitled "Japanese Defense of Cities as Exemplified by the Battle for Manila" was marked Prosecution's Exhibit No. 404 for identification.)

CAPTAIN PACE: If the Commission please, the Prosecution's Exhibit No. 404, marked for identification, is entitled "Japanese Defense of Cities as Exemplified by the Battle for Manila. A Report by XIV Corps. Published by A. C. of S., G-2, Headquarters Sixth Army, 1 July 1945."

It is an official report of the XIVth Corps and is offered into evidence, sir.

GENERAL REYNOLDS: Has the Defense had an opportunity to see this?

CAPTAIN PACE: No, sir; we have not had enough copies of it to pass it around.

GENERAL REYNOLDS: Has the Defense seen this report from any other source?

CAPTAIN REEL: No, sir.

GENERAL REYNOLDS: Are you offering the entire document?

CAPTAIN PACE: Yes, sir.

GENERAL REYNOLDS: Do you intend to invite the attention of the Commission to some specific parts in it?

CAPTAIN PACE: Yes.

GENERAL REYNOLDS: The document, being an official publication, is accepted for such probative value, if any, that it shall be deemed to possess.

The discussion of it shall be deferred until the Defense has had a time to study it.

(Prosecution Exhibit No. 404 for identification was received in evidence and so marked.)

CAPTAIN REEL: May we first inquire as to the matter that is being rebutted by this document?

CAPTAIN PACE: It is evidence of the same sort, sir, that Manila was actually fortified; that its defense was not just a haphazard venture. It shows the careful fortification of the City in great detail.

CAPTAIN REEL: If that is all that it is offered for we do not see its relevancy.

MAJOR KERR: This document will also show very clearly that it was not the intent or purpose, or actual conduct of the enemy forces here, to evacuate the City.

To the contrary , it specifies the three basic principles upon which Manila was defended. It shows, I believe, quite clearly, that it was not evacuated nor was any effort made to evacuate it by all of the Japanese forces.

GENERAL REYNOLDS: The Commission affirms its ruling. We will hear from the Prosecution as to the specific points of interest after the Defense has had an opportunity to look through it.

CAPTAIN PACE: That is all we have on that matter, sir.

MICHAEL J. BANUVAR

called as a witness on behalf of the Prosecution in rebuttal, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Captain Hill) Will you state your name to the Commission, please?

A Michael J. Banuvar, civilian, attached to the War Crimes Commission.

Q How old are you, Mr. Banuvar?

A Thirty-three years old, sir.

Q Where do you reside now?

A 50 Domingas Street, Manila.

Q By whom are you employed?

A I am employed by the War Crimes Commission as an investigator-interpreter.

Q Have you had occasion, as an investigator and interpreter, to interview Colonel Hashimoto, who testified before this Commission in this case?

A I have, sir.

Q On how many occasions have you interviewed Colonel Hashimoto?

A On the 11th of October and the 15th of November; there was one other occasion, but I don't recall the date.

Q Were the two dates which you have mentioned in 1945?

A That is right, sir.

Q Did you on either one of these interviews question or talk with Hashimoto about the placing of explosives in buildings here in Manila by the Japanese forces?

CAPTAIN REEL: Sir, we object to the question unless there is a proper foundation laid. If conversations with a Japanese prisoner of war are to be brought out on the stand by this or any other witness, we feel it should be shown, first, if it is a fact, that the witness was warned of his rights. There has been no such testimony here.

GENERAL REYNOLDS: What is the purpose of the testimony?

CAPTAIN HILL: The Court will recall that when the cross examination of Hashimoto was completed I believe your Honor asked me if we had any evidence to present relative to the questions that I had asked him on cross examination.

At that time I stated that in our rebuttal I would put on the stand the officer or interpreter that asked him those questions and received the answers which I cross examined him about.

GENERAL REYNOLDS: Is that the witness who was alleged to have been drunk in the Rainbow Club?

CAPTAIN HILL: That is correct, sir.

GENERAL REYNOLDS: Very well, you may proceed.

CAPTAIN REEL: May I address one further remark on this subject?

GENERAL REYNOLDS: Yes.

CAPTAIN REEL: We still feel, sir, that if this witness is going to testify as to conversations he had with a prisoner of war, before any such testimony is admissible it must appear that this witness, or whoever was with him, warned the prisoner of war of his rights.

MAJOR KERR: If the Commission please, in the first place there is no such requirement applicable to a proceeding of this sort.

In the second place, that particular person testified here himself, freely and voluntarily apparently, and, therefore, subjected himself to impeachment.

GENERAL REYNOLDS: Without any further discussion the objection is not sustained.

You may proceed.

CAPTAIN HILL: Will the reporter read the last question back?

(Question read.)

Q (By Captain Hill) Go ahead and answer the question.

A Hashimoto informed me at this time that in December, when he was assigned as a staff officer on the Manila defense, preparations had already been completed and that dynamite, explosives, and other inflammables, had already been placed in various large buildings.

Q Did you carry on your conversations with Hashimoto

in Japanese?

A I did, sir.

Q And did you, during that conversation, or the subsequent interview that you had with him, talk with him about where he was and in what condition he was at the time he first learned of the Americans' entry into the City of Manila?

A I did, sir.

Q Will you relate that conversation to the Commission?

A I asked Hashimoto where he first heard of the American landing in Manila. He informed me that he had been misinformed by his subordinates and that he had not expected the entry of the American forces into Manila until about three or four days, and that he thought that he was perfectly justified in taking his time, and he was at the Rainbow Night Club on the night of January 3rd. The exact literal translation of the term he used would actually be "drunk," but to give the man the benefit of the doubt you might interpret it as "I was feeling good and was high."

Q I call your attention to the date. Was it February, or January the 3rd?

A February, sir.

Q Did you, subsequent to that time, have a conversation with Hashimoto regarding staff meetings and meetings of subordinate officers of the Japanese forces during the last part of December, concerning the defense of the City of Manila?

A I did, sir.

Q Will you relate that conversation to the Commission,

please?

A This was on the occasion when I spoke to him on November 15th. At this time Hashimoto informed me that regular staff meetings were held, at which time the local commanders in the outlying outskirts would be called to the headquarters where discussions were held as to the defense of Manila.

Further he stated that at this time, as there was a fear of the American tanks, that they might enter the City of Manila, and as they had no means to combat this entry, they had dug large holes in most of the main highways, wherein they placed explosives, that they were to set off on the entry of the tanks into Manila.

He further stated that as they were short of ammunition at this time they broke up a lot of large shells and used up the powder in the shells.

Q Did you have any conversation with him about which Japanese staff officer had charge of these meetings or conducted the meetings?

A If I recall correctly, sir, I think he said that Colonel Suzuki was chief-of-staff at this time.

Q How long have you spoken the Japanese language?

A About 27 years, sir.

Q Did you live in Japan for some time?

A Yes, I did.

CAPTAIN HILL: That is all, sir.

CROSS EXAMINATION

Q (By Captain Reel) When you talked to Colonel Hashimoto on these three occasions, did you or anyone with

you warn him that as a prisoner of war he need not say anything other than his name, rank, and serial number?

A No, sir, I did not.

Q Did you or anyone with you warn him that he need not say anything that might incriminate himself?

A No, sir.

Q And were these conversations, all of them, prior to his taking the stand in this case?

A That is correct, sir.

CAPTAIN REEL: We will ask again, sir, that the testimony of the witness thus far adduced be stricken from the record.

MAJOR KERR: Sir, may I ask Defense counsel on what grounds or on what authority he contends that it is necessary to warn such a witness or prospective witness that he need not testify, or to make any statement which might incriminate him?

CAPTAIN REEL: Shall I answer, sir?

GENERAL REYNOLDS: Yes.

CAPTAIN REEL: On the grounds that the Geneva Convention states that a prisoner of war is to be accorded all the rights of a soldier of a country, or of the country who has him imprisoned.

MAJOR KERR: There is nothing in the Geneva Convention which requires anything more than that the captive soldier be required to give only his name, rank, and serial number.

However, if he desires to do so, even though it may incriminate him, he may do it.

GENERAL REYNOLDS: The discussion is terminated.

The evidence of the witness will remain in the record for such probative value, if any, that the Commission shall award to it, and the objection of counsel is not sustained.

Q (By Captain Reel) Now, Mr. Bonquvar, Colonel Hashimoto told you, I believe you stated, that in December, when he came here, certain preparations were already complete, is that correct?

A Right, sir.

Q And that he did nothing further on those preparations, is that correct?

A Very little, sir.

Q Did he tell you when those preparations had been completed?

A Shortly after his arrival. He was not appointed chief-of-staff of the Manila defense until March of 1945.

Q So it was before his arrival in December that the so-called preparations took place?

A During the month of December.

Q When did he get here, did he tell you that?

A If I recall correctly he was assigned as a staff officer on the 24th of December.

Q When did he get to Manila?

A He was in Manila before that, as I understand it.

Q Was his statement before he got to Manila these preparations were completed?

A I don't know whether it was before or not, but he informed me that on the assumption of his duties preparations had already been completed and he did not know anything about it.

Q I see. What was the Japanese expression used for feeling good or being high or being drunk?

A "Ii kibun de yoteita."

CAPTAIN REEL: Did the official interpreter get that?

MAJOR PRATT: Will you repeat it, please?

THE WITNESS: I might mention that it is kind of a slang. The phrase is "Ii kibun de yoteita."

"Ii kibun" are the words for feeling good, and "yoteita" is the past tense for being drunk, "you" meaning drunk.

MAJOR PRATT: Did the Defense counsel wish a translation from the Interpreter?

CAPTAIN REEL: Yes.

MAJOR PRATT: It is my opinion that the first phrasing that the witness gave to the Court is the closest to the English, of a person who has been drinking and is feeling good.

CAPTAIN REEL: All right.

Q (By Captain Reel) Now, when you talked to Colonel Hashimoto, you spoke of Manila, is that correct?

A Correct, sir.

Q Did Colonel Hashimoto distinguish to you between the City of Manila and the Manila sector?

A He informed me at this time that most of the defense preparations had been completed at the northern part of Manila.

Q Did he mention to you the defense positions at Fort McKinley?

A He did not.

Q Or at Karokan Field?

A No, sir.

Q Or at Nichols Field?

A No, sir.

Q Did you take a written statement from him?

A I did, sir.

Q How many of them?

A Two.

Q Did Colonel Hashimoto tell you the number of men he had in the City of Manila?

A He said about 1,500, sir, were in the Manila defense.

Q Did you ask him how he expected to defend the City of Manila with 1,500 men?

A No, sir, I didn't.

Q You were here during Colonel Hashimoto's testimony on the stand?

A I was.

Q Aside from those matters which you have just testified to now, was everything that Colonel Hashimoto said on the stand consistent with what he told you at these conferences?

A I believe it was, sir.

CAPTAIN REEL: That is all.

CAPTAIN HILL: That is all.

(Witness excused.)

GENERAL REYNOLDS: What is the purpose of this witness' testimony?

CAPTAIN WEBSTER: This witness was the Judge Advocate of General Yamashita's Headquarters.

The purpose of it is to rebut the testimony given by

the Accused and General Muto with reference to the court-
martial proceedings, that they had no knowledge of guerrillas
being executed contrary to court-martial law.

GENERAL REYNOLDS: Very well.

CAPTAIN WEBSTER: Hideo Nishiharu.

HIDEO NISHIHARU

called as a witness in rebuttal on behalf of the Prosecution, being first duly sworn, was examined and testified as follows through Interpreters Major Pratt, Sergeant Yajima, and Sergeant Oishi:

DIRECT EXAMINATION

Q (By Captain Webster) What is your name?

A (Through Major Pratt) Hideo Nishiharu.

Q Your age?

A 51.

Q Your nationality?

A Japanese.

Q You are now a prisoner of war held in the Philippines?

A Yes.

Q You understand that you do not have to say anything that will incriminate you?

A Yes.

Q You further understand that anything you say can be used against you?

(Translated by Interpreter Oishi)

A (Through Major Pratt) Yes, I understand.

Q (By Captain Webster) What was your rank in the Japanese Army?

A Colonel in the Judge Advocate's Department.

Q When did you come to the Philippine Islands?

A December 24, 1941.

Q What official position did you hold in the Japanese Army while you were in the Philippines?

A I was in the Judge Advocate's Department as a judicial police officer for court martials and military tribunals.

Q Were you the head of the Judge Advocate's Section in the headquarters of General Yamashita?

A I was head of the Judge Advocate Section and a police officer for court-martials.

Q In such capacity did you review and examine all court-martial cases?

(Translated by Major Pratt)

GENERAL REYNOLDS: The Commission will recess for approximately ten minutes.

(Short recess)

GENERAL REYNOLDS: The Commission is in session. You may proceed.

The answer to the last question will be repeated by the reporter so that we may have the answer.

(Pending question read)

A (Through Major Pratt) I handled court-martial and military tribunals cases, and if the cases were thoroughly investigated I reviewed them; if the investigation of the police was insufficient, I investigated them further before presenting them to the court-martial.

Q (By Captain Webster) Was it reported to your office that in December of 1944 a large number of persons who were suspected of being guerrillas had been arrested by the military police?

(The pending question and the following questions were translated into Japanese from English by Interpreter Yajima, the answer being translated by the interpreter indicated.)

A (Through Major Pratt) I recall having certain contacts with a 2nd Lieutenant in the military police headquarters.

Q (By Captain Webster) Do you know the name of the person who reported that?

A (Through Interpreter Yajima) The officer that came from the Kempei headquarters? (No response)

Q When was that report made to you?

A (Through Major Pratt) I believe it was in the middle of December.

Q Had your headquarters at that time planned to move from Manila?

A (Through Interpreter Yajima) Yes.

Q Was there sufficient time to try those cases by court-martial?

A (Through Major Pratt) There simply wasn't time.

Q What did you do?

A These guerrillas which were arrested were to be handled by a military tribunal, but there simply wasn't time to try them. And I talked to Major Katsuo, and since he told me that if they were left to the military police all the captured guerrillas would be executed, I decided to leave it up to the discretion of the military tribunal.

Q Did you discuss that matter with General Yamashita?

A Yes, I spoke to the General, and I told him that a large number of guerrillas were in custody, but to try them in court would be impossible due to lack of time, and therefore the officer of the military tribunal, after an investigation, would cooperate with the military police in

the handling of these prisoners.

Q What action did General Yamashita take on your suggestion?

A General Yamashita offered no suggestions. He just nodded.

Q That is, he nodded his head?

A (Through Interpreter Yajima) Yes.

Q Did you take that nod as the approval of proceeding?

A (Through Major Pratt) He didn't have any particular opinion to offer, so I accepted it.

Q Was that suggestion of yours carried into effect?

A After this, Major Katsuo and the officers under him investigated and handled the suspected persons, but since I got no report on the matter I do not know as to the details.

Q How many people were punished under that plan?

A As I just said, I am not too sure on the facts, but I would estimate around 600 persons.

Q How many of the 600 were executed?

A Those who were tried numbered about 900 to 1000, but those who were executed were approximately 600.

MAJOR PRATT: May I make a correction on that: "Those who were sentenced were 600".

Q (By Captain Webster) By "sentenced", do you mean executed?

A Yes, by sentence I mean a death sentence.

Q Is it true that those persons who were executed were without a proper trial or court-martial?

A In theory, I cannot say that they were -- in theory,

I cannot say that they were legally or officially tried. However, since they were investigated by two officers, I think that they were given trial.

Q Were they tried in accordance with Japanese court-martial law?

A According to the regulations, two officers and one law member should be present, but only the two officers were there.

Q Did General Yamashita approve of all of the death sentences?

A I did not understand that to be General Yamashita's idea or opinion.

CAPTAIN WEBSTER: Sir, I would like to have that answer stricken and have the question re-read to the witness. I don't believe it is responsive.

GENERAL REYNOLDS: Very well. Strike the answer and re-read the question.

CAPTAIN REEL: Sir, we object to having the answer stricken. We think it is responsive. If the Prosecution wishes to ask the question again, that is his privilege, but we don't think the answer should be stricken from this record, sir.

GENERAL REYNOLDS: It not being material whether the answer is stricken or not, it will be permitted to remain in the record, in view of Defense's objection. However, Prosecution may ask the identical question and see if we get the same answer.

Q (By Captain Webster) Did General Yamashita approve of all the sentences of execution?

(Translated to the witness by Interpreter Yajima)

GENERAL REYNOLDS: Your question itself is likely to be confusing to the witness. What you mean is, "Did General Yamashita act upon the recommendation for a death sentence, or the investigation?" The witness could very properly interpret the use of the term "approve" to refer to his preliminary discussion with General Yamashita.

CAPTAIN WEBSTER: I will withdraw that question and restate it.

Q (By Captain Webster) Did General Yamashita act upon all the sentences of death in December of 1944?

A Since I had no opportunity to receive a detailed report from Major Katsuo, I do not know myself in detail how the General handled the matter.

Q Did General Yamashita sign all the death sentences?

A No, there was not even time to have those papers signed.

Q Why wasn't there time?

GENERAL REYNOLDS: The Commission interrupts.

We would like, first, to have all of the questions and answers read back which pertain to the episode of the Filipinos who were charged with being guerrillas.

(Questions and answers read)

GENERAL REYNOLDS: This testimony doesn't make a cohesive whole. You have asked him if General Yamashita signed the papers; yet, he has testified there was no trial and hence no papers to sign. He has testified that there was an investigation, but he also stated that he doesn't know the outcome of that investigation, so there could have

been no papers that reached him.

He said 600 were sentenced, and he meant a death sentence, but how does he know that if no records reached him?

Prosecution must clear up a lot of points on this matter. We want to know who made the investigation. Was it the military police or officers from his office, or both? What kind of an investigation? It might have been merely going over and asking if all of these people were guilty, or it might have been a detailed, individual investigation. The investigation of a thousand or more people, if done on an individual basis, would take a lot of time.

The Commission desires that you think through your approach to this subject and try to clarify this matter.

It would also like to know the date when he went to General Yamashita's office. We would like to know the nature of the investigation performed by the military police, if he knows.

It would be appropriate to inquire of him if he knows whether any evidence was obtained by torture, since General Yamashita testified yesterday that torture was not tolerated in the Japanese Army, and he knew of no such instances.

This is a witness from whom we must obtain a clear picture of his story, which we are not now getting.

The Commission will recess for 15 minutes to permit the Prosecution time to think this thing through.

(Short recess)

GENERAL REYNOLDS: The Commission is in session. You may proceed.

(Interpreters Pratt, Yajima, and Tanoye, now present.)

Q (By Captain Webster) I believe that you stated that it was on or about December 12, 1945, that you received a report from the Military Police concerning the arrest of guerrillas.

A (Through Interpreter Yajima) Is that the time I received a report from the major?

Q The Kempei Tai?

A It was about that time, but I do not remember the exact date.

Q Was the report in writing?

A It was an oral report.

Q Are you familiar with the methods used by the Kempei Tai, the investigation?

A I do know.

Q What methods did the Kempei Tai use in the investigation of those suspected guerrillas in December of 1944?

A I do not know because I did not receive any report, but I believe they took the ordinary steps.

Q What were the ordinary steps?

A We investigated the evidence, the persons connected with this case, and the person himself.

Q Did the Military Police mistreat or torture any of the persons who were suspected guerrillas during December of 1944?

A I do not know.

Q Were you present during any of the investigations

conducted by the Military Police on those persons in December of 1944?

A I wasn't there.

Q What date was it that you went to General Yamashita and explained the situation to him?

A What conditions do you mean?

Q I am referring to the time that you went to General Yamashita and explained to him concerning the arrest of a great number of suspected guerrillas.

A About the 14th or the 15th of December, but that is not accurate.

CAPTAIN WEBSTER: Would the Commission like to have the witness explain everything that took place at that meeting at this time?

GENERAL REYNOLDS: What we are seeking is a clear-cut picture of what he has to say, and we do not seem to have it, or at least we do not feel that we have it.

I would like to know more about what happened after he had the discussion with General Yamashita. We would like to know more about the nature of the investigation that he said was held, and particularly we would like to know how long it took and how much time was spent on it, and who made it.

It would be interesting to know how much time elapsed after the conversation with General Yamashita and the execution of these people.

Proceed along that line.

Q (By Captain Webster) I believe you stated that members of your office investigated these guerrillas, is

that correct?

A Is that for December?

Q Yes.

A Yes, we investigated all.

Q How many officers worked on that?

A Two officers.

Q Will you explain to the Commission exactly what kind of an investigation and what action those two officers took?

A I did not receive any detailed report, but according to the documents that came in from the Kempei Tai the guerrilla suspects were determined individually.

Q What kind of documents came in from the Kempei Tai?

A Documents to the effect that the guerrillas were investigated.

Q That is investigated by the Kempei Tai?

A Yes.

Q What did your officers do at such investigations?

A Is it the method of investigation by my subordinates?

Q Yes.

A As I explained, I believe they made the investigation as to whether or not they were guerrillas, according to the documents which came in from the Kempei Tai.

Q Did your officers use any other evidence outside of the reports from the Kempei Tai?

A I do not know exactly, but I don't believe there was anything else.

Q Did they call any witnesses?

A I do not know.

Q Do you know whether they interrogated each of the accused?

A Not as an official report, but I heard this through ordinary conversation.

Q That is, you heard that they did interrogate the accused?

A I heard this but I didn't see.

Q Was that by your officers or by the Kempei Tai?

A My officers.

Q How long did the investigation of each person take?

A I believe it took from ten to twenty minutes.

Q How long did it take to consider all of the cases you have mentioned?

A Until the 25th of December, I believe. It was, I believe, until the day before I was transferred to Baguio, which was the 26th.

Q When did those investigations start?

A I think it is about the 15th or 16th of December.

Q Where were those persons investigated?

A At the Bilibid Prison.

Q Who performed the executions?

A The Kempei and Kemsho.

INTERPRETER YAJIMA: I don't know the exact meaning for "Kemsho."

CAPTAIN WEBSTER: Would this help you?

INTERPRETER YAJIMA: This one here is a civilian term. It is not a military term.

It is the Kempei Tai and the prison.

Q (By Captain Webster) Where were those persons

imprisoned before they were taken to Bilibid Prison?

A (Through Interpreter Yajima) Those who were with the Kempei were taken to the prison to be investigated.

Q Were they taken directly to Bilibid Prison or had they been imprisoned in another place before that?

A I think they were taken to Bilibid Prison for the purpose of the investigation.

Q From where did they take them?

A From the Kempei Tai.

Q Where was the Kempei Tai?

A In each Military Police group or squad.

Q Do you know when those suspected guerrillas were executed?

A I do not know.

Q Did anyone tell you when they were executed?

A I did not receive any official report.

Q Did you receive any reports whatsoever?

A I do not remember receiving any reports.

Q How did you find out that those persons were executed?

A I knew of this at the time when I came to Baguio and I gave orders to determine the names, age and addresses of those persons who were released and those who were executed. That was about the 14th or 15th of March, 1945.

Q Well, who gave you the information concerning the executions at that time?

A I just saw the papers but I did not receive any reports.

Q Were those papers brought to Baguio by the two

officers from your department?

A One officer, who is Major Katsuo, was transferred to another unit; so the other officer made up these documents.

Q Did that officer bring those documents to you?

A The papers were complete, but they were not brought to me.

Q What did that officer bring to you?

A He just came to make a report that the papers were complete.

Q Did you inform General Yamashita as to what happened to those suspected guerrillas?

A Since I did not know fully myself, I couldn't report this to General Yamashita.

Q Did General Yamashita ever ask you what was done with those suspected guerrillas?

A No.

CAPTAIN WEBSTER: Are there any other subjects upon which the Commission would like us to interrogate the witness?

GENERAL REYNOLDS: Yes, Yesterday General Yamashita discussed the action he took in approving death sentences and, as I recall, he stated that he approved 44, more or less, cases which had been presented to him. Inquire of the witness if he recalls the circumstances concerning the investigation by Kempei Tai and subsequent trial and investigation of Mr. Carrol C. Grinnell, Mr. Alfred F. Duggleby, Mr. Larson, and Mr. E. C. Johnson, all of whom were civilian internees at Santo Tomas; also if he is familiar with the circumstances of the trial and subsequent

execution of Mabel Jurika. If the Commission understood correctly, he said these were the "December assembly" of guerrillas. Inquire of him also if there were an "October and November" collection. If so, how many and what was done with them?

Q (By Captain Webster) Do you recall how many cases you had against suspected guerrillas during November of 1944?

A I do not recall.

Q Do you recall of any case which was against a person by the name of Mabel Jurika in November of 1944?

A I do not remember.

Q Do you recall how many cases you had against suspected guerrillas in October of 1944?

A I cannot remember.

Q Did you have any cases against suspected guerrillas in October and November of 1944?

A I think we had cases against guerrillas in October. I think the guerrillas were tried in December, but I really cannot remember.

Q Well, do you remember a case which the Kempei Tai referred to as "CIO-12" in November of 1944?

A Isn't that sometime in September?

Q We were informed that it was in October or November.

A Yes. I handled a case regarding the CIO.

Q Wasn't that particular case the one in which Mabel Jurika was executed?

A That is right.

Q Wasn't that execution in November of 1944?

A As I recall, it wasn't in October; it was in September.

Q Do you mean the trial of the persons?

A Yes, trial.

Q Do you know when they were executed?

A I do not remember.

Q Could the execution have been in October or November of 1944?

A I believe that was in September.

Q Do you recall of having a court-martial case against four American internees at Santo Tomas by the names of Larson, Duggelby, Johnson, and Grinnell?

A What month was this?

Q It was in the latter part of December or the first part of January.

A I did not handle any cases against internees in the latter part of December.

GENERAL REYNOLDS: Inquire of the witness whether he has ever acted upon the death sentence of an American prisoner of war or civilian internee and, if he has, then we want to know whether he has presented those matters to General Yamashita.

Q (By Captain Webster) Did you act upon any death sentences during the time General Yamashita was in the Philippines, which death sentences were against American

prisoners of war or civilian internees?

A Probably not.

GENERAL REYNOLDS: Well, we will press him further. In a matter such as this, there cannot possibly be any doubt in the mind of this witness.

Q (By Captain Webster) Are you sure that your office did not handle any cases against American prisoners of war or civilian internees during the time that General Yamashita was in the Philippines?

A I believe it is certain.

Q Did any reports come to your office --

CAPTAIN REEL: May we have the answer to that last question?

(Answer read)

Q (By Captain Webster) Did any reports come to your office of any kind --

GENERAL REYNOLDS: Hold it. He says "I believe it is certain." We do not know whether he means it is certain there were some, or certain there were none. We would like very much to have an answer to that question.

Q (By Captain Webster) Do you mean there were no cases against American prisoners of war or civilian internees?

A I am almost certain that I did not handle any cases against these Americans, but there may have been one case.

Q What case was that?

A There may have been one case, but I do not recall of any.

Q What case might there have been?

A It was a case that happened before October, I believe. But this particular case I refer to was a case where one of the internees was trying to escape and was -- one of the prisoners tried to escape. He was caught in the wire and was unconscious. Then this PW, when he regained consciousness, he tried to escape. Then when the guards tried to catch him, this PW got hold of a stick and wounded his guard.

Q Where did that happen?

A I think it is one of the PW camps in Manila.

Q Do you remember the man's name?

A I do not remember his name.

Q Do you recall when it happened?

A I do not remember.

Q Was his name Ray Parker?

A Maybe so, but I am not sure.

Q Did that happen at Bilibid Prison?

A Was that at the Bilibid Internment Camp?

Q Bilibid Prison here in Manila.

A Maybe so, but I am not sure.

CAPTAIN WEBSTER: Sir, I may be able to clear up that point. We did have a court-martial record against a man who tried to escape from Bilibid in August 1944, which was before General Yamashita's time. It may be the same case.

GENERAL REYNOLDS: Do you have any further questions to ask of this witness?

CAPTAIN WEBSTER: No, that is all. You may cross

examine.

GENERAL REYNOLDS: We will defer that cross examination. How much additional rebuttal testimony does Prosecution have, if any?

MAJOR KERR: Sir, we had in mind putting on this afternoon two additional witnesses, if the Commission desires to hear them, on the matter of the bowing --

GENERAL REYNOLDS: The matter of what?

MAJOR KERR: The matter of the bowing to the Japanese sentries in Manila.

In addition to that, we have documentary evidence to put in concerning the report from the Liaison Committee which I referred to yesterday while cross-examining the Accused, and a few other exhibits which we desire to substitute for the originals now in evidence. For instance, the photostatic copy of the diary of Lieutenant Colonel Bodine, the original of which is in evidence, subject, however, to being withdrawn and a photostatic copy substituted.

Aside from those matters, we will be ready to close.

GENERAL REYNOLDS: The Commission does not desire to hear the witnesses with respect to the bowing.

MAJOR KERR: Yes, sir.

GENERAL REYNOLDS: With that, then, you will have no further witnesses to introduce?

MAJOR KERR: No further oral witnesses.

GENERAL REYNOLDS: But you will have some exhibits to change, and additional exhibits to present?

MAJOR KERR: That is correct.

GENERAL REYNOLDS: And consideration of the report of the 14th Corps?

MAJOR KERR: Yes, sir.

GENERAL REYNOLDS: What additional witnesses, if any, will Defense wish to call?

COLONEL CLARKE: The present indications, sir, are that General Yamashita and General Muto will be called in rebuttal of this witness, and it may be that we will have one or two more concerning this witness's testimony.

GENERAL REYNOLDS: What is the status of the check of the record for errors in spelling and such matters?

MAJOR KERR: Sir, that is in progress. I think the bulk of it has been accomplished. That is to say, the check has been made by our office, and it requires, of course, consideration by the Defense and the Commission. I think the bulk of it has been completed as far as we are concerned.

GENERAL REYNOLDS: Have you suggested changes in the record?

COLONEL CLARKE: As of yesterday, we had received one volume, I think, of corrections to make, which we are checking. Insofar as the other check is concerned, we will be ready by the time Major Kerr is.

GENERAL REYNOLDS: Very well. The Commission will recess until 8:30 Monday morning.

(Whereupon, at 1630 hours, 1 December 1945, the trial was adjourned until 0830 hours, 3 December 1945.)

I N D E X

WITNESSES

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Hideo Nishiharu		3780	3820	
Examination by Commission	3794			
Akira Muto	3855	3861		
Examination by Commission	3862			
Tomoyuki Yamashita	3865	3872	3903	

EXHIBITS

<u>PROSECUTION EXHIBIT NO.</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
280		3851
281		3851
326-A		3844
363		3849
386		3843
390		3845
405	3831	3837
406	3840	3843
315		3905
<u>DEFENSE EXHIBIT NO.</u>		
FF	3853	3855

P R O C E E D I N G S

GENERAL REYNOLDS: The Commission is in session.

MAJOR KERR: Sir, all the members of the Commission, the Accused and Defense Counsel are present.

HIDEO NISHIHARU

called as a witness in rebuttal on behalf of the Prosecution, having been previously duly sworn, resumed the stand and testified further as follows through Interpreters Major Pratt and Sergeant Yajima:

CROSS EXAMINATION

Q (By Captain Reel) Colonel Nishiharu, you testified you were head of the Judge Advocate's Section and a police officer for court-martial. Was that two separate positions?

A (Through Interpreter Yajima) I am the chief of the Judge Advocate's Section and policeman or investigator for the court-martial.

Q How long had you held those two positions?

A From the 16th year of Showa, that is, 1941, the end of December, to the surrender.

Q And you were right here in the Philippine Islands all the time?

A Yes.

Q You served, then, under General Homma and General Kuroda?

A Yes.

Q And General Yamashita inherited you when he came here?

A Yes.

Q Now, as I understand it, your system of court-martial trials started with an investigation by the military police, is that correct?

A In general, yes.

Q And then after the investigation by the military police was over, the military police would send a report to the Judge Advocate's Department, is that correct?

A (Through Major Pratt) Do you mean the Judge Advocate's Department of the Army?

Q Yes.

A (Through Interpreter Yajima) After the investigations by the Kempei Tai, the documents were sent to the court-martial or the military tribunal.

Q And those documents were a judicial finding by the military police, is that correct?

A These documents were documents to the effect that the suspects were investigated, and also remarks by the Kempei Tai. In case of witnesses, their testimonies are included, and evidence presented.

Q And do they contain a conclusion of a finding of fact? Strike that.

In addition to the testimony and the evidence, does the military police who signs these documents put in them his conclusion as to what the facts show?

A (Through Major Pratt) Do you mean is this a matter included in these documents?

Q Right.

A (Through Interpreter Yajima) After the investigation, his estimate on the suspects are written on these

documents.

Q And then these documents, with the testimony, the evidence and the military police's "estimation" of the suspect, are considered by an officer who is either the court-martial or the military tribunal, as the case may be; is that correct?

INTERPRETER YAJIMA: May we have that again in English?

(Question read)

A (Through Major Pratt) Yes.

Q (By Captain Reel) And if the trial is of a Japanese soldier it is called a court-martial, but if it is of a civilian it is called a military tribunal; is that correct?

A (Through Interpreter Yajima) Yes.

Q And after the officer, who is either the court-martial or the military tribunal, gets this report from the military police, he studies it and makes his decision as to a verdict; is that correct?

A Before that, the policeman will first check it, and they will determine -- and he decides whether they shall be tried or not to be tried, and he then submits this paper, document, saying whether the persons should be tried or not, and the case will be determined according to the orders by the commanding officer. And then he will be prosecuted or not prosecuted, according to the orders by the commanding officer.

CAPTAIN REEL: Now may we have that whole answer read?

(Answer read)

MAJOR PRATT: The term used as "policeman" may also be translated as "court investigator".

GENERAL REYNOLDS: Very well.

Q (By Captain Reel) By "commanding officer" do you mean yourself or some other judge advocate?

A (Through Major Pratt) No, it is the army commander.

GENERAL REYNOLDS: Let's spend a little more time on that. The witness testified that it was the commanding officer but the very context of his statement would seem to indicate the commanding officer of the military police. Which commanding officer does he really mean?

Q (By Captain Reel) Which commanding officer do you mean?

A (Through Major Pratt) What do you mean by "what commanding officer"?

GENERAL REYNOLDS: Ask him the flat statement whether he means the commanding officer of the military police; whether he acts upon these matters.

Q (By Captain Reel) Does the commanding officer of the military police act on these matters as described by you?

A (Through Interpreter Yajima) No.

Q The commanding officer of what group, what commanding officer are you referring to?

A (Through Major Pratt) The army commander, the commanding officer of the 14th Army.

Q And you as Judge Advocate for the commanding officer of the 14th Area Army actually made those decisions; is that correct?

A No, I did not make any decisions.

Q Do you mean that every single case was brought to the attention of General Yamashita before there ever was a trial, is that what you are telling this Commission?

A I didn't present all the documents but I did present these documents which gave the statements of opinion.

MAJOR PRATT: If the Commission please, I believe that the witness refers there to these opinions made by the investigation or investigating officers.

GENERAL REYNOLDS: Let's find out what he really does mean.

CAPTAIN REEL: We will try, sir.

Q (By Captain Reel) Do we understand now, Colonel, that you would present to the commanding officer of the 14th Area Army all documents pertaining to cases coming from the military police where the military police gave any opinion? Strike that out.

Do we understand, Colonel, that you presented to the commanding general of the 14th Area Army all cases that had been investigated by the military police wherein opinions or recommendations had been made?

A (Through Major Pratt) Yes. Every case which had a statement of opinion with it was presented to the army commander and I requested orders.

Q Now, to what officer, to what person, would you present that case?

MAJOR PRATT: Will you read the question?

(Question read)

THE WITNESS (Through Major Pratt): When I received

the order or the authority to prosecute I presented not only the statement of opinion but the other documents connected with the case to the officer who was to act as judge in the case.

Q (By Captain Reel) Now, after you got the documents with the opinion or recommendation, your next step was to give them to the officer who was to act as judge in the case. Is that clearly correct?

A (Through Interpreter Yajima) Yes.

Q And after that that judge would decide that case, is that correct?

A (Through Major Pratt) No, the officer in charge would look over these documents and then he would make up a plan, and by plan I mean the time when the case would be tried.

There are three officers: the chairman of the board, the judge and officer from the legal office, the judge advocate office, and these three officers after investigating the case rendered the decision.

Q In rendering their decision they draw up a document in which they put down the verdict, the sentence and the reasons; is that correct?

A Yes, in this document there is the decision concerning the suspect, the reason for this decision and the evidence on the case.

Q That document is signed by every one of the three judges who were present at the time of the trial, is that correct?

A All three of them actually signed.

Q Is the execution of the sentence carried out by the military police? Is that correct, that execution of the sentence is carried out by the military police?

GENERAL REYNOLDS: Will you please read the question?

(Question read)

A (Through Major Pratt) The prison office carries out the sentence.

Q (By Captain Reel) In the case of a military tribunal, as distinct from the court martial, isn't the execution of the sentence left up to the military police?

A No. As a rule the officer in charge of the prison handles this.

Q You mean that the officer in charge of the prison would actually execute a death sentence in a capital case?

A Yes, he would carry it out upon the recommendation of the prosecutor.

Q Could he turn that duty over to the military police to carry out?

A Since the prison officer does not have a large number of troops, if in case he should not have sufficient men to carry out this sentence, he can request the commanding officer for additional men and when these men are sent down in accordance with this order they will carry out the execution.

Q Now, have you given us the process by which a case is tried and disposed of before a military tribunal?

A Since the military tribunal resembles a military court, this could be the process for a military tribunal.

Q Now, a few minutes ago you said something about presenting to the Commanding General of the army certain cases that had recommendations or opinions in them. In what stage of this process does this take place?

A When the document is received from the military police, it is looked over very carefully, and when we cannot determine whether to prosecute or not, we further investigate the matter, and after a full investigation we make our report.

Q So that the only time you would have a case reported to the Commanding General of the 14th Area Army was when you couldn't determine whether to prosecute or not, is that correct?

A No. After deciding whether or not to prosecute, it was reported to the Commanding Officer.

Q But only those cases were reported where you had had some difficulty in deciding whether to prosecute, is that correct?

A No.

Q Well, what cases were turned over to the Commanding General and when, in the course of this whole proceeding, were they turned over to the Commanding General?

A All cases.

Q When in this procedure that you gave us, this long process -- when were all cases turned over to the Commanding

General?

A After the decision was made as to whether to prosecute or not to prosecute, the substance or the contents of the case were submitted to the Commanding Officer, and in accordance with his order the case was either prosecuted or not prosecuted.

GENERAL REYNOLDS: The Commission will recess for approximately ten minutes.

(Short recess)

GENERAL REYNOLDS: The Commission is in session. The last question and the last answer will be read.

MAJOR KERR: Sir, may I swear in an additional interpreter, Japanese-English interpreter?

GENERAL REYNOLDS: Very well.

(Captain M. St. C. Frehn was sworn as an Interpreter, and acted in the following proceedings as "check" Interpreter.)

(Question and answer read.)

MAJOR PRATT: If the Commission please, the term that was previously translated as "court policeman" or "court investigator" may also be interpreted as a "judicial reviewer".

GENERAL REYNOLDS: Very well.

Q (By Captain Reel) Now, when these cases were turned over to the Commanding General after your decision as to whether or not to prosecute, would you give the Commanding General your recommendation as to what should be done?

INTERPRETER YAJIMA: May we have the question, please?

(Question read)

A (Through Major Pratt) The decision of the judicial reviewer as to whether to prosecute or not to prosecute was presented in writing in the report to the army commander, and then the matter of prosecuting or not prosecuting was carried out in accordance with the order of the Commanding Officer.

Q And was that decision of the reviewer presented to the Commanding General by you?

A Yes. Ordinarily I took it myself directly to the Commanding Officer.

Q And when you took it to the Commanding Officer, wouldn't you add your recommendation as to what should be done in that case?

A The decision of the judicial reviewer is written in the report and it has -- it bears his signature.

CAPTAIN REEL: Will you please repeat the question to the witness? Let us have an answer this time, please.

(Question read)

A (Through Major Pratt) No, because the judicial reviewer's signature is on the document.

Q (By Captain Reel) And you, Colonel Nishiharu, would never make any recommendations as to what should be done with those cases; is that what you want this Commission to believe?

A My opinion is not written in the document, but I present to the Commanding Officer the opinion that is written in that document.

Q And you don't present any opinion of your own, other

than the one that is written in that document, is that correct?

A No, I do not present my own opinion. To state the thing in more detail, however, my opinion or my recommendation is included in the document which states the decision of the judicial reviewer.

CAPTAIN REEL: Now, will you read back the whole answer?

(Answer read)

Q (By Captain Reel) But the only opinion in the document is that of the judicial reviewer, is that correct?

A Yes, that opinion is the opinion of the judicial reviewer.

Q In your capacity as Judge Advocate, was it one of your duties to give legal advice to the Commanding General?

A Do you mean legal opinion upon the matters that we are discussing now?

Q Among other things, yes.

A If there were questions on legal matters, it was my function to answer them.

Q And did the Commanding General ever ask your opinion about any of these cases?

A What do you mean by these matters, these facts, or these cases?

GENERAL REYNOLDS: The Commission interrupts.

Are all the people at the head of the bar members of the Prosecution's staff?

MAJOR KERR: Yes, sir.

GENERAL REYNOLDS: At the moment?

MAJOR KERR: Yes, sir.

GENERAL REYNOLDS: We charge the Prosecution to see that no person comes ahead of that bar who isn't officially appointed a member of the Prosecution's staff.

MAJOR KERR: Yes, sir.

GENERAL REYNOLDS: We will read the last question or the last answer, as the case may be.

(Question and answer read)

Q (By Captain Reel) The cases we have just been discussing.

A (Through Major Pratt) That is, these cases concerning military police, isn't it?

Q Yes.

GENERAL REYNOLDS: The Commission interrupts.

It is doubtful that a continuation of this line of questioning would be fruitful. The witness apparently will adhere to his contention that he was only the messenger between the officer who signed the paper and the Commanding General.

We also note that all of his testimony relates to events before trial of the accused persons, in which he contends that before a person is brought to trial the matter is presented to General Yamashita.

You may explore, if you wish to do so, what the procedures consist of after the trial when he again carried to the Commanding General the findings of the sentence of such tribunal as acted upon the case.

CAPTAIN REEL: I intend to do so, sir.

I would like, if I may, prior to coming to that

subject, to ask a few more questions on this matter. There is a question before the witness --

GENERAL REYNOLDS: The answers will probably be quite immaterial, anyway. No commander could possibly be in a position where the recommendations by a staff officer, if accepted, would place the responsibility upon the staff officer. In all armies, it is presumed to be a standard practice that staff officers make recommendations to commanders, which may or may not be accepted, but if they are accepted then it becomes the decision of the commander; the staff officer's responsibility is finished.

Let us hear the questions you would like to ask this witness before that particular line of questioning is terminated.

CAPTAIN REEL: Yes, sir. The questions that I was about to ask do not go to any question of responsibility for the acts of a staff officer. They go to the witness's credibility. I wish to discover if he would persist in what occurs to us to be the somewhat fantastic statement that he was merely an errand boy, and we want to find out through whom these various recommendations passed, whether they went directly to the Commanding General, whether they went to the Chief of Staff, and so forth. It is a matter of credibility of this witness that we are attacking.

GENERAL REYNOLDS: The line of questioning is certainly in order, but let us assume that he will adhere to the contention that he was merely the messenger or errand boy, because such seems to be clearly indicated.

CAPTAIN REEL: All right, sir. I will withdraw the

last question, then.

I would like to inquire of the witness, if I may, sir:

Q (By Captain Reel) When these cases were brought to the Commanding General by you, as messenger boy, did you bring them directly to General Yamashita, or did you go through the Chief of Staff?

MAJOR KERR: If the Commission please, I am advised, in fairness to this witness, that he has stated that he advised his Commanding General and that he was not merely a messenger boy. That may not have been brought out in the interpretation. In fairness to the witness, I suggest that be explored further.

GENERAL REYNOLDS: The comments of Prosecution are noted. You may obtain an answer to this question.

(Question read)

A (Through Major Pratt) I brought them just to the Chief of Staff. I didn't take them to any of the other staff officers.

Q (By Captain Reel) And you never actually took them to General Yamashita in person at all, did you?

A (Through Major Pratt) Yes, I brought them personally.

Q To whom?

A To the Commanding Officer.

Q Well, then, every time you saw the Commanding Officer the Chief of Staff was with you, is that correct?

A The Chief of Staff first, and then the Commanding Officer.

Q Now, after the trial, assuming there is a death sentence, I think you told us that those death sentences

would have to be approved in writing by the Commanding General, is that correct?

A No, that was not necessary for a death sentence.

GENERAL REYNOLDS: Will you repeat the last question and answer?

(Question and answer read)

EXAMINATION BY THE COURT

GENERAL REYNOLDS: The Commission interrupts. We have before us a Prosecution's exhibit, which is a record of trial which was made under your jurisdiction.

MAJOR PRATT: Will you repeat that, please?

GENERAL REYNOLDS: We have before us a record of trial which was made under your jurisdiction and consists of a captured document. It is signed by Shigemi Yoshkatsu, Judge, 1st Lieutenant, J.A.

CAPTAIN REEL: Sir, may I interrupt and I may probably shorten this up.

I have here the originals of those documents which I intended to show to the witness at a later part in the examination. It may help your procedure, sir, if these are presented to him now so that he might read them and he may not have to have them translated.

GENERAL REYNOLDS: It seems more appropriate now.

MAJOR PRATT: May I check this spelling?

GENERAL REYNOLDS: S-h-i-g-e-m-i, Y-o-s-h-k-a-t-s-u.

One of the concluding sentences reads as follows:

"Article 4 of the said military regulations will be applied and the death sentence will be imposed upon each of the defendants."

Now, the question, and think well of your answer:
Did the execution follow this signature without further
action of your office or of General Yamashita?

MAJOR PRATT: Will you read that statement?

(The last statement was read by the reporter)

THE WITNESS: (Through Major Pratt) The one that
was just read, was that the decision?

GENERAL REYNOLDS: It is a record of trial and bears
at the top of the first page the word "Verdict".

THE WITNESS; (Through Major Pratt) I would like to
be shown this document.

CAPTAIN REEL: Is that Prosecution's Exhibit No. 319,
sir?

GENERAL REYNOLDS: Prosecution's Exhibit 319, that
is correct.

MAJOR KERR: Is the document, which Defense Counsel
has, one of those original Japanese documents which the
Prosecution presented to the Commission?

CAPTAIN REEL: It is one that I got from the Prosecu-
tion this morning. I understood from the court reporter
that it had been taken from him by the Prosecution and a
receipt therefor given.

I obtained them from the Prosecution this morning
for use during this cross-examination.

MAJOR KERR: And this is one of the originals which
the Prosecution had introduced before the Commission and
was given in the custody or to the custody of the reporter?

CAPTAIN REEL: So far as I know it is.

GENERAL REYNOLDS: Very well.

THE WITNESS: (Through Major Pratt) I understand.

GENERAL REYNOLDS: Now, state again the question with the precautionary statement and obtain his answer.

THE WITNESS: (Through Major Pratt) This case was brought up by the Prosecution the day before yesterday, as I remember it, and it concerns the death sentence for some guerrillas in December of 1944, and I believe that the death sentence was executed without any action from either myself or General Yamashita.

GENERAL REYNOLDS: In view of your former statement, was not that the usual or regular procedure?

MAJOR PRATT: Will you read the question?

(Question read)

THE WITNESS: (Through Major Pratt) As I said before, this trial of the guerrillas in December of 1944, was not the usual procedure.

GENERAL REYNOLDS: What was the usual procedure after signature such as that on the document before you?

THE WITNESS: (Through Interpreter Pratt) After the trial the type of a decision is made up. This document that I have was made up after the death sentence was carried out.

GENERAL REYNOLDS: Will you verify that, please?

THE WITNESS: (Through Major Pratt) That is what I believe.

GENERAL REYNOLDS: Was that the regular procedure?

THE WITNESS: (Through Major Pratt) No, that is not the regular procedure.

GENERAL REYNOLDS: What is the regular procedure?

THE WITNESS: (Through Major Pratt) The usual procedure is that this type of a document is made up, this decision is made up and the execution is carried out in accordance with this or based upon this.

GENERAL REYNOLDS: Who, if anyone, take action upon this sentence of death before it is carried out?

THE WITNESS: I don't quite get the meaning of the question.

MAJOR PRATT: Sir, I would suggest that we ask him: Between the time that this decision is made up and the time they are executed is there any action taken by anyone.

GENERAL REYNOLDS: Between the time this paper is made up and signed and the execution of the prisoners involved, is there action taken by anyone?

THE WITNESS: (Through Major Pratt) After the court reviewer has made up the decision, the reviewing officer gives the order for the death sentence to be carried out to the Commanding Officer of the prison and in accordance with this the execution is carried out.

GENERAL REYNOLDS: With reference to the document in your hands, is Shigemi Yoshkatsu, 1st Lieutenant, Judge Advocate, the reviewing officer who orders the execution of the death sentence in this case?

THE WITNESS: (Through Major Pratt) I do not recall that point at this time.

GENERAL REYNOLDS: Give us the names, then, of some of these reviewing officers who ordered the execution of the death penalty after these records were made up.

THE WITNESS: (Through Major Pratt) I didn't get any reports so I don't know.

GENERAL REYNOLDS: Was the witness one of the individuals who ordered the execution of the death sentence following the preparation of such documents as he holds in his hands?

THE WITNESS: (Through Major Pratt) No, I have never given this type of order.

GENERAL REYNOLDS: Was General Yamashita one of the authorities who ordered the execution of the death sentence after the preparation of such documents as you hold in your hand?

MAJOR PRATT: Will you read the question?

(Question read)

THE WITNESS: (Through Major Pratt) I do not believe that he gave the order in this case.

GENERAL REYNOLDS: We are talking about such cases in general.

THE WITNESS: (Through Major Pratt) I do not believe that after this report is made up that it requires the signature or the approval of the Commanding Officer to execute the death penalty.

GENERAL REYNOLDS: The Commission will recess for approximately ten minutes.

GENERAL REYNOLDS: The Commission is in session.

MAJOR KERR: Sir, the chief interpreter has asked that I swear in an additional interpreter.

GENERAL REYNOLDS: Very well.

(Major James W. Schneider was sworn as interpreter.)

(The following questions to the witness and the answers thereto were translated by Major Schneider, with Interpreters Pratt and Yajima acting as "check" interpreters.)

GENERAL REYNOLDS: Are you an officer of the Japanese regular army?

THE WITNESS: Yes.

GENERAL REYNOLDS: How many years have you served in the Japanese regular army?

THE WITNESS: About 23 years.

GENERAL REYNOLDS: Have you been in the Judge Advocate's Department all these years?

THE WITNESS: Yes.

GENERAL REYNOLDS: Are you thoroughly familiar with the judicial processes of the Japanese army?

THE WITNESS: I generally know the procedure.

GENERAL REYNOLDS: The Commission has no further questions.

You may proceed, and the Commission doubts that further exploration of this point would serve any useful purpose. Do you propose to explore it further?

CAPTAIN REEL: I believe, sir, you have reference to the point of approval by the Commanding General of the death sentences?

GENERAL REYNOLDS: That is correct.

CAPTAIN REEL: I will not explore that further. We may bring the truth out on that through our own witnesses.

GENERAL REYNOLDS: Now, what else do you propose asking of this witness?

CAPTAIN REEL: Well, sir, I have considerable to ask him. I want to ask him about these other documents. I want to compare the procedure shown by these documents to ordinary procedures as he understands them. I want to delve carefully into this purported conversation he had with General Yamashita in about the middle of December, and so forth.

GENERAL REYNOLDS: Well, we have great doubt that lengthy cross examination will be worth consideration of the Court. It is entirely possible you may wish to explore into the details of the alleged execution of the one thousand or thereabouts Filipinos charged with being guerrillas, just before the headquarters was moved from Fort McKinley.

I will ask you to consider very carefully the necessity of very much more cross examination of this witness.

CAPTAIN REEL: Sir, we will keep the cross examination as brief, as short, as is possible.

GENERAL REYNOLDS: Well, we will listen for a while and see what develops along that line.

CAPTAIN REEL: Thank you.

Q (By Captain Reel) I show you now Prosecution's Exhibit No. 320, an original document, and ask you to look at it and read it.

(Translated to the witness by Major Schneider)

Q (continuing) And is that one of the documents referring to cases that were tried in December, similar to the one you have described before the recess?

CAPTAIN REEL: Is that too difficult? Strike that question out; I will rephrase it for the purposes of interpretation.

Q (By Captain Reel) Does that document refer to further cases of guerrillas who were tried in December?

A (Through Major Schneider) Yes.

Q And is that the usual type of document that would be found in such cases?

A In the ordinary documents of this type, in the ordinary trial documents of this type, there are signatures of three persons and the facts are stated in greater detail.

Q Well, are there not the signatures of three persons --
CAPTAIN REEL: Strike that out. I have the wrong copy.

Q (By Captain Reel) I will show you Prosecution Exhibit 321 and ask you to read that.

A (Through Major Schneider) I will look at it.

Q Does that document also refer to cases involving guerrillas in the period to which you have made reference?

A Yes.

Q And does that document contain three signatures?

A Yes, three persons have signed it.

Q And aside from the question of the signatures, one document having three and the others one, these documents are all the ordinary type of document used in this type of

case, is that correct?

A Yes, I think these are the normal type of documents.

Q Now, you testified on Saturday that you spoke to General Yamashita sometime around the middle of December.

Do you remember that?

MAJOR SCHNEIDER: May we have the question?

(Question read)

A Yes.

Q (By Captain Reel) How many conversations did you have with General Yamashita in December 1944?

A I think it was five or six times; I am not certain.

Q On this particular occasion, when you testified that you told him about a large number of guerrillas in custody and that an officer of the military tribunal, after investigation, would cooperate with the military police, that particular conversation -- where was that held?

MAJOR SCHNEIDER: Will you read the question, please?

(Question read)

A I think it was on the 14th or 15th of December.

Q (By Captain Reel) Where?

A It was in the room of the Commanding General.

Q In his office?

A Yes, in his office.

Q And was that on the second floor of the headquarters at Fort McKinley?

A It was on the second floor.

Q And of those five or six conversations that you said you had in December, how many of those were held in that office?

A They were all on the second floor.

Q Now, this conversation on the 14th or 15th of December, who was there?

A The Commanding General was there alone.

Q Was the Chief of Staff there?

A I think the Chief of Staff was in another room.

Q Are you sure that you have talked to General Yamashita about this, or do you only think that you did?

A I am sure.

Q Now, to get up to this office of General Yamashita, you went up some wooden stairs that led to the veranda, did you not?

A Yes.

Q And did you see General Muto before you saw General Yamashita?

A I think I also met General Muto.

Q As a matter of fact, you couldn't get to General Yamashita's office without passing General Muto's desk, could you?

A I do not think it was so.

CAPTAIN REEL: Will you read that answer, please?

(Answer read)

Q (By Captain Reel) Do you mean that you could not get to General Yamashita without going past General Muto's desk?

A (Through Major Schneider) No, it was not so. General Yamashita and General Muto had their offices separately, and they have had separate entrances.

Q I will show you this plan and ask you if that isn't

a fair representation of the second floor and verandas of the headquarters building at Fort McKinley.

A I think it was generally like this.

Q I ask you whether you didn't come up these wooden stairs, to which I am pointing.

MAJOR PRATT: It is almost impossible to get what he is saying when you can't see what he is talking about. May we go over there and do it?

CAPTAIN REEL: Certainly.

(Major Schneider proceeded to the witness stand.)

A (Through Major Schneider) I always came up these steps here (indicating). And when I went to see the Chief of Staff, I entered through this door (indicating) and went up this way (indicating). When I went to meet the Commanding General, I went this way (indicating).

CAPTAIN REEL: Will the record show that the witness pointed that when he went to see the Commanding General he turned left from the inside stairs and went into a reception room, and apparently drew his finger through a line that indicates a closed wall where there is no door.

MAJOR KERR: You mean where there is no door shown in the sketch?

CAPTAIN REEL: Correct. There is no door shown on the sketch which he identifies.

MAJOR KERR: You say the witness has identified that sketch?

CAPTAIN REEL: He did identify it as a fair representation.

GENERAL REYNOLDS: Let's see the sketch.

Now, where did the witness say he managed his course.

MAJOR SCHNEIDER: The witness said he went up this way to the right to see the chief of staff and he went, when he got to the top of the steps, he went to the left and then this way (indicating) to see the commanding general.

GENERAL REYNOLDS: Let's inquire of him then if he went in through this door (indicating) and that door (indicating), or whether he contends there is a door over here (indicating).

CAPTAIN REEL: All right.

GENERAL REYNOLDS: Although we must say we do not think it is material one way or the other.

Q (By Captain Reel) When you went to see the commanding general you turned left through this door into the reception room and out this way (indicating), where this pencil line is drawn here, out on the veranda, to his desk, or did you turn left into the toilet room, right into his inside room, through his inside room and out to the veranda to his desk?

A (Through Major Schneider) I always went through the reception room this way.

Q And you contend there is a door running from the reception room to the veranda?

A I think there is a door.

Q All right.

GENERAL REYNOLDS: Perhaps you can clear up the point you are after if you inquire of him whether General Muto permitted anybody to see General Yamashita without first getting the consent of the chief of staff.

CAPTAIN REEL: Yes, sir.

Q (By Captain Reel) Did General Muto permit anybody to see General Yamashita without first getting his consent?

A Yes, of course he permitted that.

Q But on this particular day you saw General Muto before you saw General Yamashita, is that correct?

CAPTAIN REEL: Pardon me just a moment. Was there some question about the previous interpretation?

MAJOR PRATT: No, there was not.

THE WITNESS: (Through Major Schneider) As it was usual to meet the chief of staff first, I probably met the chief of staff on this day, too.

Q (By Captain Reel) Don't you remember?

A (Through Major Schneider) I don't remember very clearly.

Q Well, do you remember whether you had any conversation about this matter with General Muto?

A Yes, I remember I talked about it.

Q To General Muto?

A I remember I met General Muto.

Q Well, what did you say to General Muto and what did General Muto say to you at this time?

A I believe it was at this time that General Muto said that it would make no sense to subject them to

criminal punishment.

Q Make no sense to subject who to criminal punishment?

A The guerrillas.

Q Well, what did you say to General Muto that brought forth that remark?

MAJOR SCHNEIDER: May it please the Court, the words "criminal punishment" should be amended to read "criminal imprisonment" or "heavy imprisonment."

GENERAL REYNOLDS: Is that an exact meaning of the term or is it merely a choice between two translations?

MAJOR SCHNEIDER: It is; it means "heavy imprisonment."

GENERAL REYNOLDS: In other words, the term used by the witness was "criminal imprisonment," is that correct?

MAJOR SCHNEIDER: Yes, that would be one of the meanings.

GENERAL REYNOLDS: What other meaning does the term have?

MAJOR SCHNEIDER: "Penal servitude" or "imprisonment without labor."

GENERAL REYNOLDS: Will the reporter please read the reply using the amended translation?

(Whereupon the question and answer was read by the reporter substituting the amended translation.)

THE WITNESS: (Through Major Schneider) I had only gone to report the case; I had not said anything in particular.

Q (By Captain Reel) Are you sure you were not talking about Japanese military prisoners and the problem of

transporting them to Baguio?

GENERAL REYNOLDS: The question will not be clear unless it is clarified to show whether you mean prisoners who were members of the Japanese Army or civilians who were prisoners under the Japanese Army control.

CAPTAIN REEL: Yes, sir. I will withdraw the question.

Q (By Captain Reel) Are you sure that you were not talking about the disposition of Japanese soldiers who were prisoners of the Japanese Army?

A (Through Major Schneider) I did talk about these Japanese prisoners, as this was the time we were getting ready to move to Baguio. I offered my opinion as to their transportation.

Q Did you also discuss the question of pardoning these Japanese soldiers who were being held in custody?

A I also obtained the opinion of the chief of staff as to what to do with these prisoners. It was not about the pardoning.

Q After you talked to General Muto about these two matters, the two of you went into General Yamashita about them, isn't that true?

A I think that after I talked to General Muto I went to General Yamashita and talked to him about it.

Q And General Muto was with you, was he not?

A I do not recall clearly.

Q This was the conversation that you had reference to on Saturday when you testified that you talked with General Yamashita, isn't that right?

A I believe I also talked to General Yamashita about these Japanese prisoners.

Q But the conversation to which you referred on Saturday when you testified here, as a witness, was the same conversation which involved the Japanese soldiers who were prisoners. Is that correct?

GENERAL REYNOLDS: Before he answers the question it would appear that the Commission should consult the record of trial because his testimony was so clearly different than the answers you are trying to extract from him.

CAPTAIN REEL: I know that.

GENERAL REYNOLDS: Will you read the record, including the questions before and after the discussion.

CAPTAIN REEL: Do you wish me to do that?

GENERAL REYNOLDS: Yes.

CAPTAIN REEL: I will withdraw the previous question. On Saturday you testified as follows --

MAJOR KERR: What page are you reading from?

CAPTAIN REEL: Page 3762.

"A Yes, I spoke to the General, and I told him that a large number of guerrillas were in custody, but to try them in court would be impossible due to lack of time, and therefore the officer of the military tribunal, after an investigation, would cooperate with the military police in the handling of these prisoners."

GENERAL REYNOLDS: Is that all on the subject?

CAPTAIN REEL: That is all the witness said as to his

conversation with General Yamashita.

GENERAL REYNOLDS: Of course, that is a very positive statement that he was talking about guerrillas.

Now, read the last question, please, asked by counsel.

(Question read.)

GENERAL REYNOLDS: That invites the witness to say that he has been misquoted or that he is wrong about the guerrillas.

CAPTAIN REEL: That is right, sir.

GENERAL REYNOLDS: Let us bring out, before we do that, whether there were two or more subjects discussed; one of which was guerrillas and one of which was Japanese prisoners of war.

Let us not get this thing more confused than necessary.

CAPTAIN REEL: Strike out the last question.

Q (By Captain Reel) When you talked to General Yamashita on the 14th or 15th of December, did you discuss more than one subject?

A (Through Major Schneider) I do not recall clearly.

Q When you talked to General Yamashita on the 14th or 15th of December, did you or did you not discuss the question of the disposition of Japanese soldiers, who were prisoners of the Japanese Army?

A I believe that I talked about the disposal of the Japanese prisoners before that.

Q When did you talk about the disposal of the Japanese prisoners?

A I wonder if it wasn't in the end of November or the beginning of December.

Q Didn't you talk to the General about the Japanese prisoners after the decision was made to move to Baguio?

A Yes, I talked to him about this after it had been decided to move to Baguio.

Q What did General Yamashita say when you talked to him about the prisoners who were Japanese soldiers?

A I believe he said nothing when I presented the opinion, which the chief of staff had given to me.

Q Did he just nod that time, too?

A Maybe he didn't nod; he just listened.

Q He didn't say anything?

A No, I heard nothing.

Q Was that always the case when you talked to General Yamashita, that he said nothing?

A Oh, sometimes he said something.

Q Now, this time that you talked to General Yamashita about the Japanese soldiers, who were prisoners, was General Muto present at that time?

A As I said before, I don't recall clearly.

Q But you do recall that when you talked about guerrillas General Muto was not there, you are sure of that?

A Yes, I am sure about that.

Q But you talked to General Muto and told him about this before you went in, is that correct?

A I am sure I talked to General Muto.

Q And you told him your errand, what your errand was,

is that correct?

A Yes.

Q And what did General Muto say when you told him what you were there for?

A I believe he said, as I said before, that it would be, it would make no sense to subject them to imprisonment with hard labor.

GENERAL REYNOLDS: The Commission interrupts. Inquire from the witness whether he is now referring to Japanese soldiers held prisoner or whether he is referring to Filipino civilians held as guerrillas.

THE WITNESS: (Through Major Schneider) I believe I heard him express this opinion when I talked to him about the guerrillas.

Q (By Captain Reel) Didn't he insist that he go in to General Yamashita with you when you talked to him?

A I do not remember that this was the case.

GENERAL REYNOLDS: That will conclude the questioning this morning.

It may be that the Commission will desire to hold a late afternoon session today and also an evening or night session tonight. It is desired that preparation be sufficient in order that we might bring the rebuttal testimony to a conclusion as reasonably and as practicably as is possible and so the Prosecution and the Defense will have all preparations made to continue tonight.

The Commission will recess until 1:30.

(Whereupon, at 1135 hours, a recess was taken until 1330 hours, 3 December 1945.)

AFTERNOON SESSION

(The trial was resumed, pursuant to recess, at 1330 hours.)

GENERAL REYNOLDS: The Commission is in session.

MAJOR KERR: Sir, all members of the Commission, the Accused and Defense Counsel are present.

HIDEO NISHIHARU

the witness on the stand at the time of recess, having been previously duly sworn, resumed the stand and testified further as follows through Interpreters Major Schneider, Sergeant Yajima, and T/4 H. Ito:

CROSS EXAMINATION (Resumed)

CAPTAIN REEL: Will the reporter please read over the last four or five questions?

(Questions and answers read)

GENERAL REYNOLDS: How much further do you propose exploring this particular episode?

CAPTAIN REEL: Very little, sir. Just two or three questions, maybe four or five.

GENERAL REYNOLDS: We will allow you very, very few more.

CAPTAIN REEL: Thank you, sir.

Q (By Captain Reel) When you talked to General Yamashita about the guerrilla matter, did General Yamashita want to know or ask you what the views of his Chief of Staff were?

A (Through Major Schneider) No, he did not ask any questions.

Q When you spoke to General Yamashita, did you ask him

whether he wanted to follow the usual procedure that had always been followed, insofar as these suspected guerrillas were concerned?

A No, he did not express any such -- he did not make any such statement.

CAPTAIN REEL: By "he" do you mean the witness, or did the witness say "he" referring to somebody else?

MAJOR SCHNEIDER: "General Yamashita did not make any such statement."

CAPTAIN REEL: Now, will you read the question again, please?

(The question referred to was read by the reporter as follows: "When you spoke to General Yamashita, did you ask him whether he wanted to follow the usual procedure that had always been followed, insofar as these suspected guerrillas were concerned?")

A (Through Major Schneider) No, there was no time to talk about that, so I did not ask such a question.

Q (By Captain Reel) Well, just what did you say to General Yamashita?

A I expressed my opinion to General Yamashita as follows: "It appears that the Kempei Tai are sending a great many guerrillas to the military tribunal, but there is absolutely no time to judge them in a formal court. They should be investigated by the officers of the military tribunal, and then in liaison with the Kempei Tai those who should be released should be released, and those that were to be punished should be punished, according to my opinion."

Q And is that all that you said?

A Yes, what I said about this case was only what I have said now.

Q Is that all that you said to General Yamashita during that visit?

A I do not recollect that I said anything else.

Q But you do recollect that you said those words that you have just given; your memory is clear on that, is that correct?

A Yes, I remember that clearly.

Q And General Yamashita said nothing at all, is that right?

A Yes, he did not express anything in particular.

CAPTAIN REEL: May we have that answer read?

(Answer read)

Q (By Captain Reel) Well, did he say anything?

A (Through Major Schneider) He said nothing. He only nodded.

Q Now, the only difference in the procedure you outlined and the ordinary procedure, as I understand it --

GENERAL REYNOLDS: The Commission will waive that and terminate this line of questioning on this subject.

What is your next subject?

CAPTAIN REEL: Well, sir, if there are to be no questions on that I will merely state, as an offer of proof --

GENERAL REYNOLDS: What is it?

CAPTAIN REEL: I say, if there are to be no further questions permitted on this subject, may we make an offer of proof as to what the witness would say if questioned --

what we expect the witness to say; we don't know.

GENERAL REYNOLDS: You can have the Accused put on the stand in this matter. We have heard this story now four times.

CAPTAIN REEL: All right, sir.

GENERAL REYNOLDS: What is the next subject?

CAPTAIN REEL: The next subject, sir, has to do with the transfer of court-martial jurisdiction, including power over death sentences, to the Shimbu Army in the latter part of December 1944.

GENERAL REYNOLDS: Do you mean delegation of authority?

CAPTAIN REEL: Yes, sir; full court-martial jurisdiction.

GENERAL REYNOLDS: The Commission recalls the Accused testified that he had never delegated the authority to anyone to pass upon sentences of death, is that not correct?

CAPTAIN REEL: My recollection of the witness's testimony in that respect, sir, is that it is completely confused. He testified two or three different ways.

GENERAL REYNOLDS: No, I am asking about the Accused.

CAPTAIN REEL: Oh, the Accused. I am sorry.

GENERAL REYNOLDS: Did not the Accused testify that he had never delegated to anyone the authority to approve death sentences?

CAPTAIN REEL: That, sir, I believe is correct, as far as the authority to approve death sentences is concerned.

The point of this inquiry, sir, would simply be this: To show that there was no necessity for any speed or rush or any other type of hasty action because of the fact that,

although the headquarters was moving out of Manila, the Shimbu Army remained in control and full court-martial jurisdiction; every bit of court-martial jurisdiction was left to the Shimbu Army. Now, the approval of death sentences was still by the Commanding General, but all other matters -- the trial and investigation, and all the rest of it -- was transferred to the Shimbu Army.

GENERAL REYNOLDS: That would be a logical action for a commander to take under those circumstances, and the Commission will accept the point.

What is your next subject?

CAPTAIN REEL: The next subject, sir, has to do with the question of how this witness learned of what occurred. The Commission itself asked some questions on this matter on Saturday.

I merely want to bring out that apparently this witness saw these documents that were shown to him today for the first time, and he doesn't know actually what did happen, and his testimony therefore was based entirely on conjecture.

GENERAL REYNOLDS: That is the recollection of the Commission as to his testimony, is that he was told certain of these things after he arrived at Baguio.

CAPTAIN REEL: In March 1945, I believe his testimony was.

GENERAL REYNOLDS: I believe that was the situation. Would anything be gained by establishing the point further?

CAPTAIN REEL: If the Commission so understands it,

there is nothing further to be gained by further questioning on that point.

GENERAL REYNOLDS: Very well. What is your next point?

CAPTAIN REEL: May I have your indulgence for a moment?

Sir, I have been corrected on one statement which I made as to my recollection of the testimony. That had to do with the Accused's statement as to delegation of authority to approve the death sentence. The statement that the Accused made, apparently, was this: That he never delegated the authority to approve the death sentence when such sentence came from the 14th Army Group, or Shobu Group. But there has been no testimony as to what would be the situation when the case was not tried by the 14th Army Group.

Now, that we can bring out through the Accused himself.

MAJOR KERR: The best evidence of the testimony, sir, is the record itself.

CAPTAIN REEL: That is right. I am afraid I misstated the record; I didn't recollect what the record said on the subject at the time.

GENERAL REYNOLDS: And you will bring the point out through the Accused himself. Very well.

What is your next point?

CAPTAIN REEL: There are no other matters, sir, on cross-examination.

GENERAL REYNOLDS: I will ask Senior Counsel if, in his judgment, there should be any further cross-examination

of this witness.

In your judgment, is there any need for further cross-examination of this witness?

COLONEL CLARKE: No, sir.

GENERAL REYNOLDS: Does the Prosecution have any further questions?

CAPTAIN WEBSTER: Sir, there are a very few questions we wish to ask. One of them will be --

GENERAL REYNOLDS: All right. What are they?

CAPTAIN WEBSTER: On this recommendation that this witness said he took to General Yamashita; I am wondering if the Commission would like to know where it was prepared, and whether this witness consulted with the man preparing it.

GENERAL REYNOLDS: We will waive the point. What else?

CAPTAIN WEBSTER: Secondly, there was an Exhibit 321, which was Prosecution's Exhibit 321, and I believe it bears the date 13 December --

GENERAL REYNOLDS: That is correct.

CAPTAIN WEBSTER: I was wondering if the Commission would like to have the witness testify as to whether that was before or after his conference with General Yamashita with reference to this large number of guerrillas that were in custody.

GENERAL REYNOLDS: You may inquire.

CAPTAIN WEBSTER: And the last point: As to whether this witness had employed, as an interpreter, Richard Sakakida, who has previously testified.

GENERAL REYNOLDS: You may include that one.

REDIRECT EXAMINATION

Q (By Captain Webster) I am handing you Prosecution's Exhibit 321 and I direct your attention to the date thereon. Was that case tried before or after the time you had your conference with General Yamashita concerning guerrillas?

A I believe it was right before.

Q Did you have a person employed in your office as an interpreter by the name of Richard Sakakida?

A Yes. I was employing such a person.

CAPTAIN WEBSTER: That is all.

GENERAL REYNOLDS: Further questions by Defense?

CAPTAIN REEL: No questions.

GENERAL REYNOLDS: The witness is dismissed.

(Witness excused)

CAPTAIN PACE: If it please the Commission, at the session Saturday we offered Exhibit 404 and it was received in evidence but a reading of the pertinent parts by the Prosecution and Defense was deferred until Defense had an opportunity to look at it.

GENERAL REYNOLDS: Very well. Take it up page by page. The Prosecution will read the points which they think material and at the same time the Defense --

CAPTAIN SANDBERG: Sir, the only copy is now held by Captain Pace. We shall have to wait until he finishes.

GENERAL REYNOLDS: Very well. We will do it that way.

CAPTAIN PACE: On page 1, paragraph 3:

"The main purpose of the enemy in defending Manila was three fold: first, to effect maximum attrition of American fighting power by utilizing the advantages of natural and man-made defenses within the city; secondly, to delay the occupation and utilization of the Port of Manila as long as possible; thirdly, to cripple the city as a base for future military operations and as a center for civilian production and governmental control. This third objective was covered in Manila Naval Defense Force (MNDF) Order No. 43, dated 3 Feb., 1945, which reads in part as follows: . . ."

That order is already in evidence.

On page 2, paragraphs 3 and 4:

"The evidence seems conclusive that the original defenses of Manila were prepared to meet attack from the seaward or from the south. There is no evidence of any

attempted re-organization of these defenses on the part of the enemy until the 23rd of January, 1945. An order issued on that date, later captured by our troops, indicated a concern for our approaching thrust from the north. The order provided for a screening force north of the Pasig. The southern portions of the city, especially the Paco, Ermita, Port and Malate Districts, were covered by a great number of prepared positions of all types. Road blocks and street barricades were constructed at all important street intersections; and disposed along Manila Bay were over three hundred and fifty anti-aircraft and dual purpose gun positions.

"As our forces approached the city the Japanese adopted a plan of defense which was based on the Walled City as the inner stronghold. This core was surrounded by a rough semi-circular formation of public buildings, garrisoned and prepared for defense. Slightly to the rear of these buildings were other strong points. These positions consisted of a series of well constructed pill boxes so placed as to utilize the protection afforded by existing obstacles, machine gun, anti-tank and rifle-fire. While the defenders utilized prepared positions, the defense itself was largely one of small units which were imperfectly coordinated. As the enemy areas became further compressed the lack of integration became more apparent. Groups of defenders became isolated in the large fortified public buildings. This, however, did not entirely preclude the shifting of some personnel from one building to another and some measure of mutual support."

On page 3, paragraph 2:

"The army units were two: The Manila Detachment of the Kobayashi Group(Heidan) and the South Flank Detachment of the same organization. Both units were composed of heterogeneous personnel: remnants of the units which had passed through Manila, men drawn from a Field Replacement Depot, and recently inducted civilians. As in the case of the naval force the army strength included various base and service units converted to infantry. The organization of these units is shown in Annex 4. Both detachments, although a part of the Kobayashi Group, came under the tactical control of Rear Admiral Iwabuchi, and may be considered elements of his command.

"The Manila Detachment, estimated strength 2,900, was originally deployed north of the Pasig, in the Northern Sector, but ultimately concentrated the bulk of its strength in the Intramuros and the Port District for the final phase of the Manila operation. The South Flank Detachment, estimated strength 1,500 was disposed in the area of Nichols Field, in the Isthmus Sector, where they were contacted and finally destroyed."

On page 5, paragraph 2:

"Streets: Streets were blocked by all types of obstacles. Intersections were barricaded and further defended by automatic and anti-tank weapons sited to cover streets approaching the intersection. Approximately fifty barriers were removed between 7 February and 3 March in the Paco, Ermita and Intramuros Districts of South Manila. Annex 26 shows an approximate reconstruction of

the installation at one typical street intersection. In this particular case there was a supply of railroad car axles nearby; these were set upright in the pavement to serve as barricades.

* * * * *

"Pillboxes: Pillboxes in the Manila area showed little departure from the conventional type. Annex 27 illustrates a type frequently encountered. Essentially, the materials used -- concrete, metal, wood and sandbags -- were standard. The thickness of the pillbox walls ranged from inches to several feet. Some had the inside walls sandbagged to a depth of several feet, thus reducing fragmentation within the confines of the positions."

That is all the Prosecution has in that exhibit, sir.

GENERAL REYNOLDS: Very well. Defense?

CAPTAIN SANDBERG: On page 3:

"IV. DEFENSIVE INSTALLATIONS

"1. Buildings and Streets

"a. General: Japanese defenses within the city were characterized by improvisation. Mines, barricades, and weapons of all types were used; these and the tactics employed were adapted to the situation at hand."

On page 6:

" . . . No regular pattern within minefields was noted, and the minefields themselves were liable to be encountered anywhere. In general, the fields were poorly camouflaged, many mines being only partially buried and easy to locate.

"There was apparently no organization in the choice of types of mines, for all available explosives were freely used and indiscriminately mixed. Naval beach mines were most common, and were followed in number by converted aerial bombs. These types were frequently found together, in the proportion of two beach mines to one aerial bomb. In addition artillery shells, mortar shells, depth charges were often used as mines."

Page 8:

"Practically every important bridge in the city was destroyed. The relatively few left intact represented very difficult demolition jobs, a fact which suggests that the enemy lacked sufficient qualified personnel to undertake them. As a whole, the bridge demolition work was better executed and destruction more nearly complete in the Manila area than in the Central Plains of Luzon. Most of the bridge demolition in Manila would be considered good by American standards.

"Japanese bridge demolition was marked by the following general characteristics:

"(1) On multiple span bridges, the span on the Japanese side was usually blown. Other spans in many cases were prepared for demolition but often remained intact.

"(2) In the demolition of concrete slab bridges, the enemy apparently concentrated on the destruction of the bridge decking.

"(3) Concrete arch type bridges were found blown in middle sections.

"(4) Steel truss bridges were sheared close to the supports with only abutments and piers left standing.

"(5) No bridges of any type were found that had been prepared for time demolition after our entry.

"The only other significant use of demolitions was encountered during the assault on fortified buildings. In many instances our entrance and subsequent occupation of a small section of a structure were met by controlled blasts affecting only that portion held by our forces. Usually charges were too light to cause the destruction intended by the enemy. By this means, however, obstacles were often created, and re-entry by another route made necessary."

On page 21:

" . . . In fighting from room to room explosives were freely used to make holes in walls through which grenades or flame throwers could be used against the enemy in adjacent rooms."

Page 22:

"3. Reduction of Fortified Buildings

* * * * *

"b. Development of Technique

The modern buildings in Manila were strongly built, earthquake proof, of heavily reinforced concrete. Many of them were surrounded by parks and wide streets which precluded anything except direct assault across open ground. Buildings were laboriously converted into individual fortresses of the most formidable type with sandbagged gun emplacements and barricades in the doors and windows

covering all approaches to the building, and emplacements within the building itself covering the corridors and rooms. The reduction of each building was actually a series of battles in itself. The problem of assaulting such a fortified building, constructed to be earthquake resistant, required a specialized solution. The first such buildings to be encountered was the Police Station. Indirect artillery fire was placed upon it and fire from 4.2" mortars and infantry supporting weapons. The building was assaulted by riflemen -- unsuccessfully. Tanks were then brought in, and although two of them were put out of action by mines and enemy fire, they succeeded in placing sufficient direct fire upon all sides of the building to permit the final assault. Even then the Japanese did not withdraw and the last of them were destroyed in sandbagged emplacements dug deep in the floor of the basement. The same methods were used against other well constructed buildings, until the large public buildings South of the Pasig River were encountered; namely, the City Hall, the Metropolitan Water District Building, the General Post Office, and the Agricultural, Finance and Legislative Buildings. Here it was necessary to bring in 155mm howitzers for direct fire, from ranges of less than 600 yards. As building after building was captured, the techniques improved until the final assault upon the Finance Building, which incorporated all the techniques developed by experience up to that time. In that action 155mm howitzers, tank destroyers, and tanks fired against two sides of the building. Because the rest of the city was in

friendly hands, the direct fire was confined to the ground and first floors in order to prevent the danger of shells going through open windows. As the lower portions of the outer walls disintegrated, the walls and roof settled; but the concrete was so strongly reinforced that the structure bent rather than collapsed. The guns were then moved and fired at the other two walls, and the procedure continued. Just prior to the assault, tanks and M-7's fired HE and WP into the upper stories, thereby driving the Japs into the basement; and immediately upon cessation of this fire, the infantry assault teams attacked, effected an entrance through breaches in the walls, and succeeded in eliminating the last of the enemy garrison in about four hours.

"4. Method of Assault

"It is necessary to employ all weapons possible in the preparatory fires in order that troops gain a foothold in a fortified building. High-angle artillery and mortar fire prove worthless against buildings of this type. Direct fire, high velocity, self-propelled guns, like tank destroyers, M-7's, and tanks prove effective only after hours of shelling have literally torn the building asunder. Direct fire with 105mm howitzers is useless. However, the 105mm howitzer on carriage M7 may be used to enlarge the cracks created by 76mm tank destroyer guns. During all shelling, the enemy either will move to elaborate previously prepared tunnels in the basement or at least away from the outside defenses so that our troops may move in. Preparatory fires should be as intense as possible to disorganize and shock the fanatical enemy. A building

of more than one floor is often untenable if the enemy holds the upper floors, even though our troops are inside. Therefore, the best method of using the direct fire weapons is to pound the roof and top floors first and work the fire down to the basement and ground floor, thus placing our troops on equal terms with the enemy insofar as elevation is concerned. However, if the intention is to demolish the building completely, the direct fire weapons should be employed on the ground floors first."

That is all.

GENERAL REYNOLDS: Does that complete the action on this exhibit?

MAJOR KERR: Yes, sir; it does.

GENERAL REYNOLDS: Very well.

MAJOR KERR: At this time, sir, the Prosecution offers in evidence the originals of documents received from the Liaison Committee (Tokyo) for the Japanese Navy and Army. This consists of a letter and the material referred to therein and inclosed therewith and attached thereto. I shall read the letter.

GENERAL REYNOLDS: Has counsel been provided with copies?

MAJOR KERR: Yes, sir. Defense Counsel was supplied with copies of these documents several days ago.

"LIAISON COMMITTEE (TOKYO)
FOR
THE JAPANESE NAVY AND ARMY

"S 275

27 October 1945

"To: Colonel Munson

"Subject: In Regard to the Command of General Yamashita

"In compliance with the request of 10 October 1945, AG005, we wish to submit the data as enclosed.

"We are submitting it in Japanese now, and the translation will be submitted later.

"For the Chairman

"/s/ Col. A. Yamamoto
/t/ A. Yamamoto
Colonel I.J.A.
Committee Member"

Attached to this letter is the document in Japanese, being the document referred to, inclosed with and attached to the letter I have just read. I desire, sir, to offer that in evidence in toto with the request that at this time we withdraw the original exhibit and file in lieu thereof, substitution therefor, a certified copy of the letter and a translation in English of the Japanese document. The letter to which I refer and the translation were delivered to Defense Counsel last week.

This may refresh your memory (handing copies of exhibit to Defense Counsel).

CAPTAIN SANDBERG: We are under the impression that we returned it.

MAJOR KERR: I don't think so.

CAPTAIN REEL: I gave it back to you.

MAJOR KERR: No. You returned the Japanese document, or the document in Japanese, and I left with you your copy of the English translation and the certified copy of the letter.

CAPTAIN SANDBERG: May we hold this now for the purpose of making objection to it?

MAJOR KERR: I have another one that I will give you, if you desire, at this time.

(Copy of letter from Liaison Committee (Tokyo) for the Japanese Navy and Army, 27 October 1945, together with enclosures and attachments, was marked Prosecution Exhibit No. 405 for identification.)

GENERAL REYNOLDS: Are there comments by the Defense?

CAPTAIN SANDBERG: Yes, sir.

MAJOR KERR: I should like to read in the portion of the English translation of the Japanese document. This is the portion which I referred to during my cross examination of the Accused several days ago.

It appears as paragraph 3 on page 7 of the typewritten English translations and reads as follows -- the heading which appears prior to the paragraph 3, I should quote first:

"These materials are not at this office at the present. We desire that the Southern Army be investigated. However, the findings from all the facts given by the persons concerned are immediately reported in the following:

"3. Conduct of operations after the American landings on Luzon:

"Following the suspension of the Leyte operation, the area army was concentrated generally in the Manila, Clark and Baguio sectors. It was being prepared for the American landings, but in January it was dispatched to meet the landings in the Lingayan sector. On this occasion the Southern Army dispatched to the area army a telegram giving encouragement and also instructions embodying the following points:

"Instruction.

"a. The 14 Area Army will hold the sea and air bases firmly. If it becomes necessary to relinquish them, see that the enemy cannot use them.

(The Southern Army and the area army gave no instructions of the kind which you specify regarding

the disposition of civilians.)

"Furthermore, in the event that the area army is forced to give up its sea, air and military bases, these facilities will be completely demolished to prevent enemy use. Manila will be defended to the utmost, and in event of its loss, its use to the enemy will be hampered by cutting off its water supply and by other such measures."

GENERAL REYNOLDS: Let me interrupt. This is an order issued by the Southern Japanese Command?

MAJOR KERR: Yes, the Southern Army, as they call it.

Then paragraph 1 under paragraph E on page 8 there is the following, and I quote:

"1. The defense of Manila served as a forward outpost for the main defensive positions in the area of Montalban, Ipo and Antipolo. The defense were conducted at Fort William McKinley, at the neck of land south of Nichols Airfield, at the defense position on the northern tip of Karokan Airfield. In addition, a suicide battalion resisted from the remains of Fort Santiago at the city's center and from the area of the post-office and the Pasig River bridges. It appears that they were ordered to restrict American use of the city of Manila as long as possible. Furthermore, it appears that the naval forces completely destroyed the naval base of Cavite and the wharfs of Manila."

GENERAL REYNOLDS: Any comments by the Defense?

CAPTAIN SANDBERG: We wish to object to the intro-

duction of this document into evidence.

GENERAL REYNOLDS: Before you go any further, do you realize that you are objecting to a document prepared by the liaison committee of the Imperial Japanese Army and Navy, in accordance with the surrender terms?

CAPTAIN SANDBERG: I understand that, and I think the basis of my objection will bring out my point.

On its face the document states that the document is not reliable. It states on page 1:

"Since the Central (TN Presumably referring to the War Ministry) burned reports at the cessation of hostilities, the following data was furnished through recollections of staff officers who participated in the operations. Consequently, the information cannot be construed as absolutely correct."

Now, this Commission has heard direct testimony before it from staff officers of the Japanese Army as to the strategic plans and as to the orders which were and were not received from higher authority.

If the other staff officers referred to here have any different view, any view which impeaches the evidence of staff officers who have directly testified before the Commission, then it would seem most proper that they should testify here in person as to exactly what those differences are. But to attempt to impeach the evidence of witnesses who have testified here simply through a document, which on its own face does not purport to be accurate, it seems to us to be improper.

MAJOR KERR: May I point this out, in reply: The

Commission will note that a large part of this document consists of a specification of subordinate units of the 14th Area Army and of various organizations, military organizations.

There must have been several hundred of them, at least well over a hundred individual units listed. Now, I submit that it is obvious that the reference to the possible error in the statements in the document obviously apply to those detailed matters. It would follow, as a matter of course, that a matter or a question as important as whether or not Manila was ordered to have been defended, would be readily recalled by members in the position of those members of the liaison committee.

GENERAL REYNOLDS: The Commission notes both the comments of the Prosecution and the comments of the Defense, and the document in question is an official document, submitted by the liaison committee of the Imperial Japanese Army and Navy to the United States High Command in Tokyo. It is, therefore, clearly admissible like any other document or evidence, and it must be weighed for its probative value and compared and contrasted with other evidence before the Commission.

Accordingly, it is accepted for such probative value, if any, as it shall be held to possess, and the objection of counsel is not sustained.

CAPTAIN SANDBERG: At this time we would like to point out certain portions of the document.

GENERAL REYNOLDS: Very well.

CAPTAIN SANDBERG: On page 6, subdivision D, refer-

ence is made to:

"Orders, instructions, reports, communications, and all records issued to General Yamashita from the higher headquarters pertinent to defense and demolition which involved any civilian massacres in Manila, in the provinces of Luzon, and in the islands of the Philippine Archipelago during the period from Jan - Sep 45."

On page 8 is the answer to that request which appears in subdivision a.:

"(The Southern Army and the area army gave no instructions of the kind which you specify regarding the disposition of civilians.)"

Also I would like to refer to subdivision 1 on page 7:

"In view of the precarious position of the Philippines and the resultant failure of the Leyte operation following the suspension of the Shogo plan of battle, a decisive battle in the Philippines became impossible. The situation further developed to the extent that the defense of the homeland and the Chinese mainland against American thrusts became desperate. Therefore, in the latter part of December, the Southern Army placed the 4 Air Army under the command of the 14 Area Army and issued on Jan 45 an order embodying the following:

"SOUTHERN ARMY ORDER

- "a. The 14 Area Army will hold firmly to the strategic areas of the Philippines, and will endeavor to crush the enemy and destroy their thrusts toward the Japanese homeland and Chinese continent.
- "2. Situation of the 14 Area Army and the activities of

the Southern Army from the beginning of 1945:

"Because of the stoppage of shipping and maritime communication following the failure of the Leyte Operation, the area army was forced to operate and fight on its own. The strength on Luzon has been put at over 200,000 but it was unbalanced, especially by the lack of mobility, air power, and supply which made any future operation very difficult. Therefore, the Southern Army devised a delaying campaign and planned to concentrate its forces in the rear. Accordingly, the concentrating of fuels and rations by use of sea trucks and the concentrating of signal equipments and other critical war materials and equipments by air became necessary. However, all the fond hopes, expectations, and effort put into the plan were shattered again and again due to the vigilance of the American forces. Consequently, only about three heavy bombers were able to conduct supply and liaison work daily."

GENERAL REYNOLDS: Comments of counsel are noted. The document, of course, has been received into evidence.

(Prosecution Exhibit No.
405 for identification
was received in evidence.)

MAJOR KERR: Sir, at the time that Exhibits 319, 320 and 321 were introduced it was agreed that the Prosecution would substitute therefor in due course translations from the Japanese into English of those original captured Japanese documents.

The record of this appears on Volume XVII of the record on page 2278. The Prosecution submitted to the chief interpreter proposed translations, and I have

received from the interpreter translations which have been approved by him. These are marked Prosecution's Exhibits 319, 320 and 321.

At this time, pursuant to the previous direction of the Commission, I would like to offer into evidence in substitution for the original Japanese documents these three exhibits.

GENERAL REYNOLDS: Any comment by counsel?

CAPTAIN REEL: Are they any different from the others? Is there any serious difference?

MAJOR KERR: Not that I know of.

GENERAL REYNOLDS: Authority is granted to substitute the translations as desired by the Prosecution. Authority is also granted to substitute a translation for Prosecution's Exhibit 405.

MAJOR KERR: If the Commission please, at the time the Prosecution put into evidence Exhibit No. 401, which is a certificate of the Secretary of State of the United States of America, concerning the agreement by the Imperial Government of Japan to abide by the provisions of the Geneva Convention relating to the treatment of prisoners of war, signed at Geneva, July 27, 1929, at that time we were granted permission by the Commission, in due course, to substitute for the original certificate a photostatic copy thereof.

We now offer such photostat copy, and request that it be substituted for the original exhibit No. 401; that it be accepted into evidence as exhibit No. 401, and the Prosecution be authorized to withdraw the original

certificate.

GENERAL REYNOLDS: Any comments by counsel?

CAPTAIN REEL: We have none, sir.

GENERAL REYNOLDS: The substitution may be made as recommended by the Prosecution.

MAJOR KERR: If the Commission please, Prosecution's Exhibit No. 382 is the personal diary of Lieutenant Colonel Roy L. Bodine, Jr. This was offered and accepted into evidence, as shown in the proceedings, page 2875. It was accepted subject to the privilege of the Prosecution to substitute, in due course, for the original exhibit a photostat copy thereof, and a photostat is now in the hands of the Defense. A photostatic copy was delivered to the Defense several days ago, and at this time we desire to substitute for the exhibit 382 a photostatic copy of that exhibit, and ask permission to withdraw the original exhibit and ask that the photostat be accepted into evidence in lieu thereof.

GENERAL REYNOLDS: The request of Prosecution is granted and substitution may be made.

MAJOR KERR: Does the Commission desire that the Prosecution read any portion of this diary at this time? This relates to the prison ship case, and we are agreeable to waiving the reading of the provisions which we think to be particularly important.

GENERAL REYNOLDS: The Commission has made a thorough study of the document, and the reading of the extracts will not be necessary.

However, if there are any specific things to which

counsel wishes to invite our attention, we will be pleased to hear it.

CAPTAIN REEL: We have none, sir.

MAJOR KERR: This, sir, is not a part of rebuttal evidence. However, since the Exhibit No. 401, the certificate of the Secretary of State concerning the Geneva Convention, the ratification or adoption, the agreement to be abided by by Japan was received by the Prosecution, we have received also another certificate by the Secretary of State of the United States relative to the agreement by Japan to abide to another one of the International Conventions.

I assume there will be no objection by Defense Counsel to our putting this into evidence at this time.

GENERAL REYNOLDS: Have they been provided with copies?

CAPTAIN REEL: Not as yet, sir.

GENERAL REYNOLDS: The Commission will recess for approximately ten minutes.

(Short recess.)

GENERAL REYNOLDS: The Commission is in session.

MAJOR KERR: Will the reporter mark this as our next exhibit?

(A certificate of the Secretary of State was marked Prosecution Exhibit No. 406 for identification.)

MAJOR KERR: At this time the Prosecution offers evidence a document which has been marked for identification as Exhibit No. 406. This is the original of a certificate signed by James F. Byrnes, Secretary of

State of the United States of America and executed under date of 26 October 1945, relative to an agreement by the Imperial Government of Japan to abide by the provisions of the Geneva Convention of July 27, 1929, known as the Red Cross Convention.

We desire to offer into evidence the original certificate, with permission to withdraw the same and substitute therefor a photostat copy thereof.

GENERAL REYNOLDS: You may read the essential parts of the document.

MAJOR KERR: "Department of State, Washington.
"TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

"I certify that the document hereunto annexed contains (1) a true copy of a certified copy of the official French text of the convention for the amelioration of the condition of the wounded and sick of armies in the field (Red Cross Convention) signed at Geneva July 27, 1929, which certified copy is on file in the archives of this Government, and (2) the English translation of that convention.

"I further certify that, according to the official records of the Department of State, the convention first entered into effect June 19, 1931, six months after the deposit of at least two instruments of ratification, in accordance with the provisions of article 33 of the convention and became effective in respect of the United States of America August 4, 1932, six months after the deposit of its instrument of ratification."

Follows a list of the countries which originally

ratified this agreement.

The next pertinent paragraph reads as follows:

"I further certify that the Department of State has received no official notification that this convention has been denounced by any party thereto and that the Department of State considers the convention as being in force at the present date."

The next paragraph relates to Italy, and the final paragraph is a pertinent one:

"I further certify that, in response to proposals made by the Government of the United States through the Swiss Minister in Tokyo, the Swiss Minister telegraphed on January 30, 1942, that the 'Japanese Government has informed me: "first. Japan is strictly observing Geneva Red Cross Convention as a signatory state"...'.

"IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the Department of State to be affixed at the City of Washington, in the District of Columbia, this twenty-sixth day of October, 1945.

JAMES F. BYRNES
Secretary of State
of the United States of America."

Sir, we offer this into evidence.

GENERAL REYNOLDS: Any comment by the Defense?

COLONEL CLARKE: What number is this exhibit?

MAJOR KERR: Prosecution's Exhibit No. 406.

GENERAL REYNOLDS: The document is accepted by the Commission for such probative value as it may be held to possess, and authority is granted to substitute a photostatic copy for the original.

Prosecution Exhibit No. 406
for identification was
received in evidence.)

MAJOR KERR: Prosecution's Exhibit 386, if the Commission please, which is covered by page 2885 of Volume XX of the record, was not admitted at the time it was offered by the Prosecution. The Commission stated that it desired that the Prosecution investigate to make sure that this same material was not included in the record in some other exhibit.

Such an investigation has been made, and we have determined that the exhibit in its present completeness was not covered by any other exhibit, and, therefore, we ask that this exhibit be officially admitted at this time.

I have discussed this with Defense Counsel. Part is in one of the reports, but the entire excerpt is not.

GENERAL REYNOLDS: As the Commission recalls it, part of the document starting with the 7th of February '45 has already been admitted, is that correct?

MAJOR KERR: Yes, sir.

GENERAL REYNOLDS: The only remaining parts were 4 August '44 to and including 25 September '44?

MAJOR KERR: Yes, sir, they are pertinent.

GENERAL REYNOLDS: Very well. The remainder of the document is accepted for such probative value as it may be held to possess.

(Prosecution Exhibit No.
386 for identification
was received in evidence.)

MAJOR KERR: Sir, the film which bears the title "Orders from Tokyo," which was shown by the Prosecution

to the Commission some time ago and which thereafter was ordered incorporated into the record of this proceeding by the Commission has not been assigned an exhibit number.

The certificate covering this film was admitted into evidence as Exhibit No. 326. That appears on record, pages 2424 and 2428 of Volume XVIII of the record. I suggest at this time that the film itself be assigned an exhibit number, and I suggest the number 326-A, in order to key in and immediately follow the exhibit number relating to the certificate covering the film.

GENERAL REYNOLDS: The recommendation of the Prosecution is adopted.

(The film "Orders from Tokyo" was received in evidence as Prosecution Exhibit No. 326-A)

MAJOR KERR: With respect to the other film, sir, which later was shown by the Prosecution to the Commission --

GENERAL REYNOLDS: You refer now to the Palawan film?

MAJOR KERR: No, sir, relating or being extracts from a combat film. That was shown immediately following the Palawan film or immediately preceding the Palawan film, and that film was assigned an exhibit number, Prosecution's Exhibit No. 391, and was admitted into evidence as part of the record. A certificate concerning the origin and the official film of those extracts was offered into evidence as Exhibit No. 390, but no action was taken by the Commission in admitting that exhibit.

We request at this time that that loose end be taken up by the admission of that certificate as Exhibit No. 390.

GENERAL REYNOLDS: The recommendation of the Prosecution is approved and the exhibit will be so numbered.

(Prosecution Exhibit No.
390 was received in evidence.)

MAJOR KERR: Finally, sir, from time to time the Prosecution has offered into evidence and there has been admitted as exhibits, the originals of signed affidavits or depositions or statements.

We desire to have a blanket authority from the Commission to withdraw all the originals of those affidavits or signed statements and to substitute for each one thereof a duly certified copy.

The originals will be required in connection with trials of other war criminals or other war criminal trials and they should be made available to the War Crimes personnel for that purpose.

GENERAL REYNOLDS: Are there any such documents known to the Defense that they feel should be retained in their original form?

COLONEL CLARKE: None, sir.

GENERAL REYNOLDS: The recommendation of the Prosecution is approved and substitutions of appropriate copies for originals may be made.

MAJOR KERR: Thank you, sir. There is one other exhibit which Captain Calyer will discuss.

CAPTAIN CALYER: If the Commission please, in connection with the Palawan case the Prosecution offered in evidence an Escape and Evasion Report of the United States Pacific Fleet and Pacific Ocean Areas. That was numbered 363.

On page 2742 of the record, the last three lines on that page indicate that the Commission at that time accepted the document in evidence, but gave to the Defense the right to comment upon it at a later time. The Defense then requested that any decision with reference to the acceptance of the document be deferred until a later time, so that they might comment upon it and, in the event that they saw fit, to offer objection to it. Consequently, the record at the present time does not clearly show whether that document is a part of the record or not.

The Commission stated, on page 2743 that it would consider the document after objections, if any, were stated by Defense Counsel.

GENERAL REYNOLDS: Let us see the document here.

CAPTAIN CALYER: Sir, the reporter, I believe, has that.

(Prosecution's Exhibit 363 was handed to the Commission.)

CAPTAIN CALYER: The pertinent portions of the document were read by the Prosecution at the time it was originally offered. We now renew our offer of the exhibit.

MAJOR KERR: Sir, the Prosecution will stipulate with Defense Counsel that only such portions of that proffered exhibit as relate to the period of time covered by the charge,

that is, from October 9, 1944 to 3 September 1945, will be admitted in evidence or considered as part of the admitted exhibit. Is that satisfactory, Colonel?

COLONEL CLARKE: As to that portion, yes, it is so stipulated.

GENERAL REYNOLDS: Have those portions been read into the record?

CAPTAIN CALYER: I would not say, sir, whether all portions relating to that period have been read into the record. The Prosecution, at the time of its original offer, did read the portions considered to be pertinent to the case.

GENERAL REYNOLDS: And they were restricted to the period 9 October until -- when?

CAPTAIN CALYER: 3 September 1945.

GENERAL REYNOLDS: Are there comments by Counsel?

COLONEL CLARKE: Insofar as the matters which are not covered by the dates General Yamashita was in the Islands, we are satisfied, sir. I want to look at this for one minute, sir.

GENERAL REYNOLDS: Those parts of the document which have been described by the Prosecution and limited to the dates stated, are accepted by the Commission for such probative value, if any, as they may be held to possess.

But we will be pleased to hear any comments of Counsel concerning it, if you wish to make them.

COLONEL CLARKE: There is a heading, sir, on page 14: "Opinion of Narrators As To Whether Or Not the Massacre Was Directed by the Japanese Headquarters at Manila", which

contains the opinion of certain men who have made statements.

We object to the admission of that portion of the document which is opinions of the men who made the statements as to whether or not this massacre was directed by the Japanese Headquarters at Manila.

CAPTAIN CALYER: If the Commission please, may I point out that at the time of the original offer we did read one paragraph, I believe, from that section, which was not, however, an opinion, but the statement of the Witness Bogue, with reference to certain remarks addressed to him by a Japanese guard prior to the time of the massacre. That was the only section under that heading which was read.

GENERAL REYNOLDS: Will the Defense point out the specific part of this document to which objection is made?

COLONEL CLARKE: It is on page 14, sir, beginning about two paragraphs before the end of the page, where it says "Opinion of Narrators --", then takes in McDole's opinion --

(Discussion off the record.)

GENERAL REYNOLDS: Counsel has placed an objection to the statement headed "McDole," which appears on page 14, and the statement headed "Barta", which appears on page 15. Are there any comments by the Prosecution? And the final paragraph, also, under the portion headed "Bogue", on page 15. Are there comments by the Prosecution?

CAPTAIN CALYER: As to those paragraphs, sir, there is no comment.

GENERAL REYNOLDS: Then the document is accepted, subject to the striking of the part headed "McDole" on page

14; the part headed "Barta" on page 15; and the final long paragraph, the part headed "Bogue" on page 15.

(Prosecution Exhibit No. 363
for identification was
received in evidence.)

MAJOR KERR: Sir, there is one final loose end. Exhibit No. 315 was offered in evidence by the Prosecution, in connection with the Batangas massacres. The Commission will recall that that was the large bound volume, the original of the City Records of Tanuan, Batangas, a large, bulky, heavy volume. At the time it was offered, the Commission directed the Prosecution to obtain and offer to the Commission at a later date photostatic copies of the pages desired to be offered in evidence. The photostatic copies were to have been delivered to us this morning. They were not, however, and telephoning to the office has just revealed that they are now on the way over here.

We should like to have the opportunity to offer those photostatic copies, pursuant to the Commission's previous direction, before the proceedings have terminated.

Other than that, we are ready to rest.

GENERAL REYNOLDS: The authority as requested by the Prosecution is granted.

The Commission will recess for approximately five minutes.

(Short recess)

GENERAL REYNOLDS: The Commission is in session.

MAJOR KERR: If the Commission please, before the Prosecution finally rests its case, I would like to request that in the event before the Commission has completed the

taking of testimony in this case, for the Prosecution or the Defense, the Prosecution receives certain evidence which has been requested from Tokyo and from Australia concerning atrocities committed in the Singapore area by persons under the command of the Accused, we then be permitted to put in that evidence before the termination of these proceedings. The Commission will recall that some of the Defense witnesses were asked questions which raised the issue of the conduct of the Accused's troops in Singapore. That evidence went in over the Prosecution's objection, and at that time I stated to the Commission that during our rebuttal case we would desire to go into that issue with evidence concerning the actual conduct of the Accused's troops in the Singapore area.

When the issue first arose in that matter, radiograms were dispatched to Tokyo and Australia for the evidence which we will desire to put in on that matter. That evidence, that material has not yet arrived. In the event it does arrive before the closing of testimony in this case, we should like at that time to have the opportunity of reopening our own case in rebuttal, for the purpose of putting in that testimony or that evidence.

GENERAL REYNOLDS: In the event the material arrives, the Prosecution may present it for consideration at that time, and decision will be reached as to its admissibility.

MAJOR KERR: Thank you, sir.

COLONEL CLARKE: Do you have any idea when that will be? I have witnesses here from Tokyo, that I am going to have to hold in the event they put it in.

GENERAL REYNOLDS: We are hoping to close the formal taking of testimony tonight.

COLONEL CLARKE: Tonight, sir?

GENERAL REYNOLDS: We are hoping to.

COLONEL CLARKE: We will object to the introduction of that testimony, inasmuch as, as I recall the record, the evidence went to the character of the Accused. I am not sure it went to the character of anything else. If I am mistaken -- (Pause)

GENERAL REYNOLDS: We will consider the matter of its admissibility if and when the material arrives.

COLONEL CLARKE: There are a few more exhibits, sir, that I have marked here that haven't been finally acted upon.

Prosecution's Exhibit 280 and 281, where objections were made to the exhibits at the time, were admitted but we were given an opportunity to object later on to any specific statements. There are no specific objections on that.

Prosecution's Exhibit 385 was held, subject to a checkup of Japanese translation. We have no objections to that.

GENERAL REYNOLDS: Very well. Exhibit 385 is considered closed and is a part of the record of this case, and similar action is taken with respect to Exhibits 280 and 281.

(Prosecution Exhibits No. 280 and 281 for identification were received in evidence.)

COLONEL CLARKE: Prosecution Exhibit 387, which is entitled "Excerpt from Allied Translator and Interpreter Section, Southwest Pacific Area, Item 1, 14 C.A. - 0056, 11 February 1945" was admitted subject to the original being shown to the Defense prior to action thereon.

May I ask the Prosecution if they have the original Japanese script on that?

MAJOR KERR: No, sir, we do not.

COLONEL CLARKE: If there is no original script, there is nothing we can do about it, sir.

GENERAL REYNOLDS: Very well.

COLONEL CLARKE: And Prosecution Exhibit 388, which was the translation of the Japanese violation of the Laws of War, was admitted subject to the same provision, that we be permitted to object to the translation of the document. There are no objections to that, sir.

GENERAL REYNOLDS: Very well.

COLONEL CLARKE: Defense Exhibit E, the newspaper which we had permission to withdraw and substitute photostatic copies for -- these are the copies for the court. The other copies have been given to Prosecution and the reporter.

GENERAL REYNOLDS: Very well. Authority is given to substitute photostatic copies for the original.

COLONEL CLARKE: The photostatic copies of those two charts will be delivered to us tomorrow, sir, at which time we will deliver them to the court and to the reporter and to the Prosecution.

CAPTAIN SANDBERG: On November 19, 1945, the Prosecution

introduced into evidence before this Commission, as Prosecution's Exhibit 373, a statement of Corporal Harold W. Memmler, formerly a prisoner of war in Cabanatuan Prison Camp. Part of that statement which was specifically noted by the Prosecution was this sentence: "Also General Yamashita, Philippine Japanese Commander, visited the camp twice, saw the conditions there, and did nothing to improve the situation."

At the time the Prosecution introduced into evidence this exhibit, the Defense asked the Prosecution whether it had not received information tending to cast doubt upon the accuracy of that statement, and the Prosecution stated that it had not.

Before the Defense rested, Colonel Clarke asked permission of the court to introduce into evidence subsequently, in view of the fact that the Prosecution had not done so, a certain radiogram from Washington, from the Office of the Judge Advocate General, which casts doubt upon that statement.

The Defense would like to introduce into evidence now a certified copy of that radiogram.

GENERAL REYNOLDS: Very well.

(A certified copy of radiogram referred to was marked Defense Exhibit FF for identification.)

GENERAL REYNOLDS: The document is accepted by the Commission for such probative value, if any, as it may be held to possess.

(Defense Exhibit FF for identification was received in evidence.)

GENERAL REYNOLDS: Do you wish to read it?

CAPTAIN SANDBERG: This is an incoming message from Washington to CINCPAC, "For Theater Judge Advocate", dated 24 October 1945: "Subject your C-18642 dated 2 October 1945. Steps undertaken to obtain additional statement from Memmler. No other information in this office that Yamashita visited Cabanatuan. Believe possibility of error in Memmler's statement. Will advise. SERVJAG."

GENERAL REYNOLDS: Very well. It will be received.

(Defense Exhibit FF for identification was received in evidence.)

CAPTAIN SANDBERG: I may add, sir, that the original shows the date of receipt of this radiogram in Manila as the 25th of October 1945.

General Muto.

MAJOR KERR: Will the interpreter explain to the witness that he has previously been sworn and is still under oath?

AKIRA MUTO

recalled as a witness on behalf of the Defense, having been previously duly sworn and admonished, was examined and further testified as follows through Interpreter Major Schneider, with Interpreters Major Pratt and Sergeant Oichi acting as "check" interpreters:

DIRECT EXAMINATION

Q (By Captain Sandberg) Will you state your name, please?

A (Without aid of interpreter) Muto.

MAJOR SCHNEIDER: Muto.

Q (By Captain Sandberg) And what was your capacity in the 14th Army Group at the time of surrender?

A I was chief of staff.

Q And you have previously testified in this proceeding; is that correct?

A Yes.

Q Did Colonel Nishiharu report to you in December or at any other time that there were approximately one thousand

guerrillas being held by the Kempei Tai?

A I have no recollection of such a thing.

Q Did he ever say to you that there was not enough time to try all suspected guerrillas?

A No.

Q Did he ever recommend to you a change in the manner of trying and sentencing suspected guerrillas?

MAJOR SCHNEIDER: Will you read the question, please?

(Question read)

A (Through Major Schneider) No.

Q (By Captain Sandberg) Did you ever participate in any conference in which any such plan was discussed?

A No, I did not participate in any such conference.

Q Now, do you recall ever saying to Colonel Nishiharu "It would make no sense to keep them imprisoned"?

A I have not said such a thing regarding guerrillas.

Q Do you recall ever making any such statement in any connection?

A I have said such a thing in connection with Japanese prisoners.

Q Well, will you explain exactly what you said and what were the circumstances under which you said it?

A I said that in December when we were considering means of finding troops in all quarters for the defense of Luzon --

Q And how did --

MAJOR SCHNEIDER: I beg your pardon.

A (continuing through Major Schneider) -- at the time when Japanese defense was weak. At that time we

were studying the question of whether the Commanding General of the Army had the authority to use Japanese prisoners who had repented; I mean, had changed their attitude. At that time we called the chief of the Judge Advocate's Department, Colonel Nishiharu, and inquired whether General Yamashita had the authority to pardon these Japanese prisoners who had repented. At that time I remember my statement was one to the effect that "At this time when the Japanese Army (was) being beset by the American Army from all sides after being bombed and shelled and encircled, it would make no sense to subject to imprisonment with hard labor Japanese prisoners" --

Q And what --

MAJOR PRATT: Just a minute.

A (continuing through Major Schneider) "-- and that such soldiers who might become good soldiers again, it would be better that they should die in battle."

Q (By Captain Sandberg) And at this conference who was present?

A At first this discussion was between myself and Colonel Nishiharu. Then we went to the Commanding General and inquired as to his opinion.

Q And what was the final decision reached at that conference?

A The Commanding General listened to the arguments from both sides and then expressed the opinion that we should inquire from the Judge Advocate General's Department of the Southern Army.

Q And was the question put to the Judge Advocate of

the Southern Army?

A It took considerable time for the answer from the Judge Advocate General's Department of the Southern Army to arrive, and I am not sure whether it arrived while I was at Baguio or at Ipo. It was to the effect that the Commanding General of the Army had no authority -- had no legal authority in this matter.

Q And as a result of that decision what action was taken with respect to these Japanese prisoners?

A At that time it was decided to move the Japanese prisoners who were in Manila to Baguio and to -- (inquiry made of the witness by Major Schneider). At that time it was decided to move those prisoners who were in Manila to Baguio and there to suspend sentence temporarily and to enroll them in the line of communication troops as laborers.

Q Now, what decision was made with respect to those prisoners other than Japanese soldiers? Strike that question.

What decision was made as to which agency should try suspected guerrillas?

A I did not hear that any decision was made in December with regard to the trials of guerrillas.

Q Did the Shimbu Army get general court-martial and general military tribunal jurisdiction at any time?

MAJOR SCHNEIDER: Will you read the question, please?

(Question read)

A (Through Major Schneider) The Judge Advocate's Department, that is, court-martial, military tribunal, were set up in the Shimbu Army in Manila and it was decided that all

cases in the Manila area would be handled here even when General Yamashita's headquarters had moved to Baguio.

Q (By Captain Sandberg) And on what date was the Shimbu Army given this jurisdiction?

A As far as I can remember this authority was given the Shimbu Army on the 27th or the 28th of December.

Q Who was appointed Judge Advocate of the Shimbu Army?

A It was Major Katsuo of the Judge Advocate's Department.

Q Had he previously served under Colonel Nishiharu?

A Yes. He was a senior member of Colonel Nishiharu's Department.

Q And am I correct then that after December 27th or thereabouts the Shimbu Army had full authority to try and sentence suspected guerrillas in the City of Manila?

A Yes, when Colonel Nishiharu left Manila he was supposed to have arranged for that matter fully.

GENERAL REYNOLDS: Before you leave the point, in view of the testimony of General Yamashita, the Commission desires to have you find out whether that delegation of authority was as to the death penalty.

Q (By Captain Sandberg) Did the Commanding General of the Shimbu Army have authority to confirm a death sentence?

A (Through Major Schneider) When the Shimbu Army was formed a Judge Advocate General's Department was organized in it and General Yamashita gave it that authority.

GENERAL REYNOLDS: Prior to the end of the next recess the Commission desires the Prosecution to search the

record pertaining to General Yamashita's testimony and determine, if you can do so, exactly what he had to say himself on this subject. The Commission recollects that he stated he never decentralized authority to approve death sentences.

MAJOR KERR: Yes, sir.

CAPTAIN SANDBERG: I think, sir, I might clear this up by further questioning of this witness.

GENERAL REYNOLDS: Very well.

Q (By Captain Sandberg) Was there any other Army commander who had the authority to confirm the death sentence?

A Yes, there were. The Commanding General of the 35th Army had this authority even without having been given it by General Yamashita.

Q Did he have that authority before General Yamashita came to the Philippine Islands?

A Yes, he had that authority before.

Q Now, in the terminology of the headquarters was a court-martial, which originated in the Shimbu Army or the 35th Army, regarded as a court-martial of the 14th Army Group?

MAJOR SCHNEIDER: Will you please read the question?

(Question read)

THE WITNESS (Through Major Schneider): No. A 14th Area Army court-martial was a court-martial under the Judge Advocate's Department of Colonel Nishiharu. A court-martial of the Shimbu 35th Army was a Shimbu Army court-martial or a 35th Army court-martial.

Q Now, did you ever have any conversation with Colonel Nishiharu in which the question of the trial of guerrillas was brought up?

A I do not recollect having discussed trials of guerrillas with Colonel Nishiharu.

CAPTAIN SANDBERG: Your witness.

CROSS EXAMINATION

Q (By Captain Webster) Was the 35th Army stationed at Cebu?

A Yes, it was at Cebu.

Q And was the 14th Area Army and the Shimbu Army the only two that had court-martial jurisdiction on Luzon?

A Yes, there was only these two.

Q And was the Shimbu Judge Advocate Department under Colonel Nishiharu?

A No.

Q Now, within Manila, as I understand it, the 14th Area Army had court-martial jurisdiction up until the time they moved to Baguio. Is that correct?

A When the 14th Area Army was in Manila it had the right to court-martial jurisdiction. Its Judge Advocate General Department had the right to court-martial jurisdiction in Manila. When they moved to Baguio it was to have it arranged for transfer of this court-martial jurisdiction to the Shimbu Army.

Q You have referred to court-martial jurisdiction. Did that include the jurisdiction of military tribunals?

A Yes. I should have said the right of court-martial and military tribunals.

EXAMINATION BY THE COMMISSION

GENERAL REYNOLDS: There is one question the Commission will ask to have read back by the reporter. It occurred about ten questions ago and it dealt with the passing of court-martial jurisdiction to the Commanding General of the Shimbu Group. Very likely it contained the statement that the Staff Judge Advocate was directed to make such an arrangement.

Will you find that and read that question.

(The question referred to was read by the reporter.)

GENERAL REYNOLDS: General Muto, during December of 1944, was Colonel Nishiharu a trusted or responsible member of your staff?

THE WITNESS (Through Major Schneider): At that time his head was a little clear and he had a better memory.

GENERAL REYNOLDS: Was he considered an efficient officer in December?

THE WITNESS: He was a man with very good character. He was not an outstanding officer but I thought he was not the man to make mistakes.

GENERAL REYNOLDS: What checks were made by you or your staff as to the procedures being followed by Colonel Nishiharu in order to determine whether he was inclined to General Yamashita's policies?

THE WITNESS: He reported what was to be reported. He had been chief of the Judge Advocate General's Department since the occupation of the Philippines and no special steps were taken to investigate him.

GENERAL REYNOLDS: You may cross examine.

CAPTAIN WEBSTER: No further cross examination.

CAPTAIN SANDBERG: Nothing further of the witness.

GENERAL REYNOLDS: The witness is excused.

(Witness excused)

GENERAL REYNOLDS: The Commission will recess for
approximately ten minutes.

(Short recess)

GENERAL REYNOLDS: The Commission is in session.

Is the Prosecution prepared to read excerpts from the record concerning General Yamashita's testimony on the authority to approve the death sentence?

MAJOR KERR: Yes, sir.

On page 3589 of Volume XXIX of the record, the following questions and answers appear, continuing over to page 3590:

"Q Were all courts-martial death sentences in the 14th Army approved by you?

"A It requires my decision.

"Q Were there any courts-martial trials of prisoners of war in the Philippines during your period here?

"A There were none that were tried by military court-martial. However, in the case of civilian internees it would be a military tribunal.

"Q What kind of a military tribunal?

"A It would be a military tribunal resembling a military court-martial.

"Q Would a death sentence by such a military tribunal require your approval?

"A Yes, the same as the military court."

And in the following volume, Volume XXX, on page 3634:

"Q Did a court-martial sentence of death on a charge of being a guerrilla require your approval?

"A Yes."

On page 3643 of the same volume:

"Q I believe you testified previously that a death

sentence for a guerrilla could not be effected without your approval, is that correct?

"A Yes."

Those are the pertinent statements that we have found, sir.

GENERAL REYNOLDS: Very well. Defense may proceed.

CAPTAIN SANDBERG: General Yamashita.

TOMOYUKI YAMASHITA

recalled as a witness in his own behalf, having been previously duly sworn, was examined and testified as follows through Interpreter Major Schneider, with the assistance of Major Pratt and Interpreter Tanoye:

DIRECT EXAMINATION

MAJOR KERR: Will you remind the witness that he has previously been sworn, and that he is still under oath?

(Translated to the witness by Major Schneider.)

Q (By Captain Sandberg) Will you state your name, please?

A Yamashita, Tomoyuki.

Q Did you select Colonel Nishiharu as your Judge Advocate?

A (Through Major Schneider) When I arrived at my post, Colonel Nishiharu was already Chief of the Judge Advocate General's Department.

Q Now, could a sentence of death of either a court-martial or a military tribunal of the 14th Army Group, be executed without your approval?

A It would depend on the approval of the chief of the court-martial. But death sentences of a court-martial

which is attached to me would require my approval.

Q When you say "court-martial which is attached to me", do you mean a court-martial appointed by Headquarters of the 14th Army Group?

A Yes.

GENERAL REYNOLDS: Will you read back, please, the last two questions and their answers?

(Questions and answers read)

GENERAL REYNOLDS: Now, go back to that statement in which General Yamashita stated that these sentences could be placed in effect by the president of the court. Read that particular part again, and I will ask the Interpreter to restate it to the witness and ask him if that is exactly what he meant.

(The question referred to was read by the reporter as follows: "Q Now, could a sentence of death of either a court-martial or a military tribunal of the 14th Army Group be executed without your approval?")

GENERAL REYNOLDS: And now read the first part of the answer to that question.

(The answer referred to was read by the reporter as follows: "A It would depend on the approval of the chief of the court-martial.")

GENERAL REYNOLDS: Ask General Yamashita if that is exactly what he meant.

(Translated to the witness by Major Schneider.)

MAJOR SCHNEIDER: If the Court please, the chief of the court, the General now points out, is the same as the Commanding General of the Army.

GENERAL REYNOLDS: Well, Defense should clear this matter up, because it is very conflicting.

Q (By Captain Sandberg) Do you mean that whether or not you had to approve a sentence of a court-martial depended upon who was the appointing authority of that court-martial?

A (Through Major Schneider) Yes. In case of a court-martial under Colonel Nishiharu, I was the approving authority .

Q And were there other courts-martial in the Philippines as to which you were not the appointing authority?

A The authority to appoint courts-martial was that of the Commanding General of the 35th Army, in case of the 35th Army. In the case of the Shimbu Army, when this army was created, by my orders authority was given them for courts-martial. Later, when it was given the status of the 41st Army by authority of the Imperial General Headquarters, it thereby had authority for its own courts-martial.

GENERAL REYNOLDS: The Commission will want to have Prosecution and the Defense search the testimony of the Commanding General, Shimbu Group, to see what, if anything, he had to say on the subject. As the Commission recalls, he stated he had no authority to pass upon death sentences.

MAJOR KERR: Yes, sir.

Q (By Captain Sandberg) Now, when you testified before the Commission several days ago that your approval was necessary for a death sentence, were you referring to courts-martial of the 14th Army Group appointed by you?

A Yes, that referred only to the courts-martial under

my jurisdiction. Courts-martial under the 35th Army jurisdiction and under Shimbu Army jurisdiction -- court-martials for the 35th Army and the Shimbu Army, the respective armies had their own jurisdiction.

Q How many death sentences did you approve as Commander in Chief of the 14th Army?

A I think it is about 40 cases. About 40 cases.

Q Will you tell the Commission what you did before you approved a sentence of death?

A Colonel Nishiharu, the Chief of the Judge Advocate General's Department, would bring the documents relating to the case to me, and would explain them to me. I would inquire about points which I wouldn't understand well. Then I would sign with brush dipped on an ink stone, and affix my seal. If I signed in this way, the case was confirmed.

Q Now, did this document which you signed in the manner you have described become an official part of the file in that case?

A Yes, this becomes the termination or the conclusion of the verdict.

Q Did you generally consult with your Chief of Staff before approving a sentence of death?

A Colonel Nishiharu would bring these documents first to the Chief of Staff, and then he would bring them to me. That was the common procedure.

Q Did you ever authorize your Adjutant to sign or approve a death sentence?

A In the case of courts-martial attached to me, I myself

did it.

GENERAL REYNOLDS: Before you ask another question, will you inquire as to whether this decentralization of authority to appoint a court-martial and to act upon death sentences applied also to civilian internees and prisoners of war, United States citizens?

Q (By Captain Sandberg) Did the 35th Army have jurisdiction to try American prisoners of war and civilian internees?

A Courts-martial of the 35th Army had this right, this authority.

Q And did courts-martial and military tribunals of the Shimbu Army have jurisdiction to try American prisoners of war and civilian internees?

A After the organization of the Shimbu Army, the courts-martial of the Shimbu Army had this authority.

GENERAL REYNOLDS: Now, let us stop right there.

Are we to understand from this testimony that the Commanding General, Shimbu Group, could approve the death sentence of an American civilian internee or an American prisoner of war, adjudged by a military tribunal, without reference to you?

Read it back slowly, so the Interpreters can get it with great care.

(The foregoing statement was read by the reporter as above recorded, and thereafter translated to the witness by Major Schneider.)

THE WITNESS: (Through Major Schneider) They can. The Shimbu Army Group could sentence to death without my

approval.

GENERAL REYNOLDS: Could they carry that death sentence into effect and actually complete an execution, without his approval?

THE WITNESS: (Through Major Schneider) Yes. This is the authority of court-martials and military tribunals.

GENERAL REYNOLDS: Then there will be three things that the Commission will desire the Prosecution and Defense to collaborate on for presentation to the Commission in the evening session tonight.

The first will be the testimony of the Commanding General, Shimbu Group, on this very subject, if there is any; the testimony of General Kou on the same subject, with respect especially to his administration of prisoner of war and civilian internee camps.

Then any specific requirements of the Geneva Convention to which the Japanese Imperial Government is signatory, with respect to the approval required of death sentences, if there is such a statement.

You are also asked to refer to the testimony of the civilian who was the interpreter of the Kempei Tai, and you will find that part of the record in connection with the letter of commendation which was read and about which there was so much discussion.

And also consult the testimony of the American Sergeant who worked in Colonel Nishiharu's office and reputed to be a Japanese civilian employee, on the same subject.

The Commission would like to have the first three things definitely, and the last two if they are considered

appropriate by either Prosecution or Defense. But note especially that we wish Prosecution and Defense to collaborate in finding these statements.

You may proceed.

Q (By Captain Sandberg) Did the court-martial jurisdiction of the 35th Army come direct from Imperial General Headquarters in Tokyo?

A As a matter of organization it had this authority from the time of activation.

Q Now, did Colonel Nishiharu report to you at any time that there were about a thousand suspected guerrillas being held by the Kempei Tai?

A I have never heard such a report.

Q Did he ever tell you that there was not enough time to give suspected guerrillas a proper trial?

A No.

Q Did he ever suggest to you a change in the matter of trying and sentencing suspected guerrillas?

A I have not heard anything from Colonel Nishiharu regarding a change in these methods.

Q Did you have the authority as a matter of law to change the method of trial of suspected guerrillas?

A I have no such authority.

Q Did you have a conference with Colonel Nishiharu about the 14th or 15th of December 1944?

A On the 13th or 14th Colonel Nishiharu and the Chief of Staff came to talk to me. This talk was regarding the pardoning of Japanese prisoners who were being held in the army prisons for the purpose of increasing Japanese army

strength. In this connection Colonel Nishiharu had inquired as to the opinion of the Chief of Staff. As it was not clear whether I had the authority or not to take this action I ordered them to send an inquiry to the Southern Army.

Q Was any other subject discussed at that conference?

A No. It was only this matter that was discussed.

Q Did you ever act on any important matters without obtaining the opinion of your Chief of Staff?

A In regard to important matters I always had the Chief of Staff give his opinion.

Q Did you ever act on any important matters without putting your decision in writing?

MAJOR SCHNEIDER: Will you read the question?

(Question read)

A (Through Major Schneider) Except for operational matters; I mean warfare operations. Except for operational matters I always put my decisions in writing or signed relative documents. In case of urgent matters during operations I gave verbal orders to do it thus and then I had somebody write the orders and sign them.

Q Did you ever make your decision known on an important matter simply by nodding your head?

A There has been no such case. In case of important matters I always gave a clear order.

CAPTAIN SANDBERG: Your witness.

CROSS EXAMINATION

Q (By Major Kerr) You don't consider the trial of guerrillas a particularly important matter, do you?

MAJOR SCHNEIDER: Will you read the question, please?

(Question read)

A (Through Major Schneider) Trials are all the same whether they are civilians or military personnel.

Q (By Major Kerr) You said you did not have authority to change the method of trying guerrillas.

A I did not have such authority. I had no authority to change the methods of court-martial.

Q But you did have the authority to require that the regulation method be followed; is that correct?

A Trials should be carried out in accordance with the regulations of respective laws.

Q And it was your duty to see to it that those regulations were complied with?

A I always demanded that they should be so complied with. I always demanded that trials should be held justly and fairly.

Q Did you demand that of every unit in your army?

A Yes.

Q Did you receive reports from the 35th Army concerning their courts-martial or military tribunal sentences?

MAJOR SCHNEIDER: Will you read the last two words?

REPORTER CONKLIN: "military tribunal sentences".

A (Through Major Schneider) I did not receive any detailed reports.

Q (By Major Kerr) Did you --

GENERAL REYNOLDS: The Commission will recess for approximately five minutes.

(Short recess)

GENERAL REYNOLDS: The Commission is in session.

You may proceed.

MAJOR KERR: Will you read the last question, please?

(Question and answer read)

Q (By Major Kerr) What reports did you receive?

A (Through Major Schneider) As regards the 35th Army, immediately after my arrival the Leyte campaign began and I did not receive any detailed reports.

Q Did you receive any general reports concerning courts-martial ?

A I could not receive any reports from the 35th Army.

Q Did you receive any reports from the Shimbu Group concerning courts-martial?

A As regards to the Shimbu Army, as the Americans landed at Linguayan Gulf, I did not receive any reports. Communications were cut and I did not receive any reports after the 10th of January.

Q What was that date?

A The 10th of January.

Q Did you receive any reports from the Shimbu Group concerning military tribunals?

A No, I did not receive any.

Q You testified Friday that no prisoners of war were tried by court-martial or military tribunals during your period in the Philippines.

MAJOR SCHNEIDER: Will you read the question, please?

(Question read)

THE WITNESS: (Through Major Schneider) There were no such court-martial in which I was -- there were no such

courts-martial under my jurisdiction.

Q You didn't say that Friday.

A That was because in the Japanese language I was asked only regarding the courts-martial under my jurisdiction.

Q You were not. You were asked for court-martial proceedings in the Philippines.

CAPTAIN REEL: We object to that, sir.

MAJOR KERR: I will read the record.

CAPTAIN REEL: The witness testified as to what he was asked in the Japanese language. I don't suppose the Prosecutor has the slightest notion about that.

MAJOR KERR: We don't suppose that Defense Counsel has, either.

GENERAL REYNOLDS: The discussion will cease. The record will stand on its own feet.

Q (By Major Kerr) I will read the record:

"Q Were there any courts-martial trials of prisoners of war in the Philippines during your period here?

"A I don't believe there were any.

"Q Are you sure there were none?

"A Yes."

That is page 3590.

CAPTAIN SANDBERG: I would like to make the suggestion that it may very well have been that the words "during your period here" when translated into Japanese may have conveyed an entirely different meaning.

GENERAL REYNOLDS: The Commission will trust the translation of the official Interpreters and the record will stand.

Q (By Major Kerr) Do you know whether Shimbu Group tried any prisoners of war?

A I did not receive any report.

Q Do you know whether or not the Shimbu Group tried any civilian internees?

A I did not receive any reports on this matter.

Q Did you ask for any report?

A I did not demand any.

Q Why not?

A If there were any trials they would report. After the 10th of January communications had been cut and there were no airplanes either and they couldn't be brought.

Q When were communications between Shobu and Shimbu cut?

A As far as I remember, shortly after the landing at Lingayan, about the 10th or 11th of January.

Q That was not the testimony of General Yokoyama.

MAJOR PRATT: Just a minute.

MAJOR SCHNEIDER: That should be: "As far as I know, shortly after the landing at Lingayan Gulf land communications were cut about the 10th or 11th of January."

Q (By Major Kerr) Why would Shimbu Group have reported trials to you?

A (Through Major Schneider) There was no need for the Shimbu Army to send reports to me.

Q Did you not just say --

MAJOR PRATT: Just a minute.

THE WITNESS: (Through Major Schneider) The Shimbu Group handled their own courts-martial.

Q (By Major Kerr) You were not interested in what Shimbu did then with the prisoners of war?

A These matters were disposed of by courts-martial of the Shimbu Army, according to the proper laws.

Q Who was responsible for the compliance with regulations and courts-martial procedure in the Philippines?

MAJOR SCHNEIDER: Will you please read the question?

(Question read)

THE WITNESS: (Through Major Schneider) The person responsible was the Commanding General of the respective army. In case of court-martial in the Shimbu Army, it was the Commanding General of the Shimbu Army; in the case of the 14th Army it was myself; in case of court-martials of the 35th Army, it was the Commanding General of the 35th Army.

Q Was the Commanding General of the Shimbu Group responsible to you for compliance with regulations?

A Since this was a technical matter it was the responsibility of the Chief of the Judge Advocate General's Department, who in my case was Colonel Nishiharu, to supervise compliance with the regulations.

Q Was Colonel Nishiharu responsible for compliance with regulations by the Shimbu Group?

A He had the responsibility of guiding them.

Q Did the Southern Army hold you responsible for compliance with regulations in the Philippines?

A It was the responsibility of the Chief of the Judge Advocate General's Department to provide guidance regarding Judge Advocate affairs.

Q Did the Southern Army hold Colonel Nishiharu --

A And it was my responsibility as Commanding General of the Army to supervise him.

Q In other words, you were responsible for enforcing the Japanese military regulations?

A Yes.

Q And that included the regulations governing courts-martial?

A Yes, that was also included.

Q And the regulations governing military tribunals?

A Yes, they were also included.

Q So that even though the Shimbu Group had its own courts-martial jurisdiction, you were responsible to the Southern Army that the required procedure was followed?

A Yes. However, due to the situation of the war and, as I explained a short while ago, communications had been cut and I did not know about the details.

Q Did you know that guerrilla suspects were being held in Manila shortly before you changed your headquarters?

A I did not know. However, I, of course, assumed that the police or the Kempei Tai might hold or normally would hold some such suspects. But this was only as a matter of general knowledge or imagination.

However, I had not received any reports about numbers or about other details.

Q When did you decide to change your headquarters from Manila?

A As the headquarters position changed on the 26th, it was on the day before, the 25th; it was four or five days

before that.

Q On what date, approximately, did you decide that you would move your headquarters?

A I remember that it was about the 21st or 22nd.

Q Of what month?

A Of December.

Q Is that the first time that you decided you would move your headquarters? Strike that question.

Is that the earliest date that you knew you were going to move your headquarters from Manila?

A No, it had been planned before that that under certain operational conditions headquarters would be moved but the decision to move was made about the 21st.

GENERAL REYNOLDS: The Commission will recess at this time until 8 o'clock this evening.

(Whereupon, at 1730 hours, 3 December 1945, the trial was adjourned until 2000 hours, 3 December 1945.)

EVENING SESSION

(The trial was resumed, pursuant to recess, at 2020 hours.)

GENERAL REYNOLDS: The Commission is in session and will remain in session, lights permitting, until the rebuttal testimony is completed.

MAJOR KERR: Sir, all members of the Commission are present, the Accused and Defense Counsel are present.

TOMOYUKI YAMASHITA

the witness on the stand at the time of recess, having been previously duly sworn, was examined and testified further as follows through Interpreters Major Pratt, Major Schneider, and Sergeant Yajima:

MAJOR KERR: Will the reporter read back the last question and answer?

(Question and answer read)

CROSS-EXAMINATION (Resumed)

Q (By Major Kerr) After you decided to move your headquarters from Manila, did you make any inquiry as to guerrilla suspects held in Manila?

A (Through Major Pratt) I did not ask about guerrilla suspects.

Q Why not?

MAJOR PRATT: On the last answer, the witness has corrected it to read "I did not receive any reports."

Q (By Major Kerr) Did you make any inquiry about guerrilla suspects held in Manila?

A (Through Major Pratt) I did not ask.

Q You made no effort to find out whether or not

guerrilla suspects were being left in Manila?

A I don't quite understand this "held in Manila". I heard nothing about whether there were or were not any guerrilla suspects being held in Manila.

Q Did you make any effort to find out how many people were under arrest in Manila as suspected guerrillas?

A I did not inquire particularly into this matter.

Q Did you inquire at all?

A No.

Q Was giving money to guerrillas punishable by death?

A That was a matter which I believe would depend upon the circumstances.

Q Under any circumstances would it be punishable by death to give money to guerrillas?

A I wouldn't say that of everybody.

Q Under any circumstance, would merely giving money to a guerrilla be punishable by death?

A Not everybody. Not all the people who give money to guerrillas are punishable by death.

Q When would one be punishable by death for giving money to a guerrilla?

A This is a matter which cannot be determined unless it has been investigated. I believe there could be an occasion. I believe or I think there could be an occasion when, if a man gave a large sum of money to the guerrillas and was supporting them, he could receive a death sentence for this.

Q Last week you testified that giving money to guerrillas would not be punishable by death. You are now changing

your testimony.

A I spoke of the general meaning; I spoke in general terms. But after thorough investigation, a person who was a founder of guerrillas by using money could be given a sentence of death.

Q Was giving shelter to guerrillas punishable by death?

A No.

Q If to your knowledge a Shimbu Group court-martial or military tribunal sentenced a person to death merely for giving shelter to a guerrilla, would you have done anything about it?

MAJOR PRATT: Will you read the question, please?

(Question read)

A (Through Major Pratt) Under the Japanese system, the Shimbu Group have their own courts-martial, and this matter would be something for the Shimbu courts-martial or military tribunals to handle. From the standpoint of the Japanese system, the 14th Army has its own courts-martial, and the Shimbu Group have their courts-martial, and it is something that should be handled by their courts-martial.

Q If the Shimbu Group courts-martial proceeded contrary to Japanese military law, would you do anything about it?

A As the army commander, if I were informed of a violation of military regulations by a Shimbu army court-martial I would warn the commanding officer of the Shimbu Group.

Q And it would be your duty to see to it that the regulations were obeyed?

A It is my duty as the Commanding General to see that the rules are obeyed.

(The following questions were translated from English into Japanese by Interpreter Yajima with the answer being translated from Japanese into English by the Interpreter indicated.)

Q (By Major Kerr) In the Japanese Army very important officers do not use many words with officers much below their rank, do they?

A (Through Major Pratt) Yes. I usually talk, but under some circumstances like when I was in Baguio it couldn't be done, and if the circumstances or the facts are not known I couldn't talk too much.

Q Is it not a custom among important Japanese people to show their importance among others by merely nodding when giving assent, when saying "yes"?

A There is no such custom.

Q Did you ever talk to General Yokoyama about the trial of suspected guerrillas in Manila?

A No, I never talked to him.

Q When you got to Baguio did you make any inquiry or effort to find out about trials of guerrillas in Manila?

A I received no reports from General Yokoyama, and since there were no reports I did not know the facts.

Q Did you make any effort to find out about the facts?
(Witness answering in native tongue.)

MAJOR KERR: I did not ask him, Mr. Interpreter, what General Yokoyama was doing.

Will you read the question, please?

CAPTAIN REEL: Could we have the answer?

GENERAL REYNOLDS: Will you read the question, please.

(Question read)

GENERAL REYNOLDS: Translate the answer.

A (Through Major Pratt) After going to Baguio I was so busy with the operational situation that I did not have time to request details.

Q (By Major Kerr) Colonel Nishiharu served in the Philippines as Judge Advocate under four different supreme commanders, did he not?

A I don't know who the first one was, but at the time I came to take up my post he was working for my predecessor.

MAJOR KERR: That is all, sir.

GENERAL REYNOLDS: Before you leave the matter, disregard for the moment General Yamashita's testimony of last week with respect to approval of all death sentences in the Philippines and direct your attention to his testimony of today in which he stated that authority to approve death sentences was decentralized as to commanders; among others, the Commanding General of the Shimbu Group. We wish you to inquire to see if they in turn decentralized it further. Specifically, Was the Colonel who testified before us, who commanded in the Batangas-Lipa area, authorized to administer the death penalty, and was the small unit commander in Batangas so authorized? Was the commanding officer of the Kempei Tai authorized to approve and direct death sentences?

In substance, we are asking you to find out now what further decentralization of authority to approve death sentences and order them into effect may have been granted in light of General Yamashita's testimony of today.

Q (By Major Kerr) What officers of the Shimbu Group could approve court-martial death sentences?

A The Shimbu Group military courts-martial and military tribunals can fully investigate the matters and the commanding officer of the group makes the approval.

Q Is the commanding officer of Shimbu Group the only man who could approve a death sentence in the Shimbu Group?

A (Through Interpreter Yajima) Yes.

Q Could General Kobayashi approve a death sentence in the Kobayashi Heidan?

A (Through Major Pratt) The commanding officer of the Kobayashi Heidan did not have this power. The Shimbu Group is over the Kobayashi Heidan, and in the Shimbu Group it is only the commanding officer of that group.

Q Could Colonel Fujishige in Batangas Province approve a death sentence?

A No, he cannot.

Q Could the commanding officer of the Kempei Tai approve a death sentence?

A No, he cannot.

Q Did the Kempei Tai conduct courts-martial?

A There were no courts-martial in the military police unit.

Q Did the commanding officer approve the beginning of a trial by courts-martial -- strike that out. Withdraw the question.

Who determined whether or not a person would be tried by courts-martial?

A In the 14th Army, in the military courts-martial

of that army it was myself; in the Shimbu Group, it was the Shimbu Group commanding officer, and in the 35th Army it was the 35th Army commander, who would decide whether to prosecute or not to prosecute.

Q Those were the only men in the Philippine Islands who could determine who would be prosecuted? Is that correct?

A Yes, just those units which had the courts-martial attached to them. Myself, the commanding officer of the 35th Army and the commanding officer of the Shimbu Group.

GENERAL REYNOLDS: Inquire as to the court-martial jurisdiction, if any, of the commanding general of the line of communication troops.

MAJOR KERR: What court-martial jurisdiction did the commanding general of the line of communication have?

A (Through Major Pratt) The commanding officer of the line of communications had no rights over courts-martial.

GENERAL REYNOLDS: Who then acted upon death sentences of American prisoners of war and civilian internees?

THE WITNESS: This is subject to the sanctions of international treaties and, therefore, it is a different matter.

GENERAL REYNOLDS: Let us have an explanation of the matter then.

MAJOR KERR: Will you repeat the question?

(Question read.)

THE WITNESS: (Through Major Pratt) In case of a crime committed by prisoners of war the camp commander

of those POW's or that POW would order a preliminary investigation into each fact by the judge advocate department or the military police.

As a result of this investigation, if he finds that the man should be punished, then he asks the prosecutor to, he asks him to investigate the matter further as to whether the man should be tried or not, and then present the matter to the court.

After the investigation by the judge advocate officer or the prosecutor, if he feels that he should be punished, if he feels he is subject to criminal punishment, it would be decided by the commanding officer of the army. For instance, in the 35th Army, the 35th Army commander, whether or not the man should be prosecuted, would determine that. If it is decided to prosecute him then that matter will be based on international law.

MAJOR KERR: In the case of a Santo Tomas internee, in Manila, prior to formation of the Shimbu Group, who would determine whether or not he would be prosecuted?

THE WITNESS: This was to be subject to the military tribunal of the 14th Army, and before it could be prosecuted it had to be turned over to the military police or the prosecutor for investigation or the military police or the judge advocate for full investigation as to whether or not it should be prosecuted.

GENERAL REYNOLDS: The Commission will recess for approximately ten minutes.

(Short recess.)

GENERAL REYNOLDS: The Commission is in session and desires the prosecutor to inquire into the approval of death sentences of American prisoners of war and civilian internees in light of the Accused's recent statement.

MAJOR PRATT: If the Commission please, I wish to state that the witness in mentioning prisoners of war who were to receive criminal punishment laid particular stress upon the fact that it was criminal punishment and not disciplinary punishment.

(The following questions were translated from English into Japanese by Interpreter Asano with the answer being translated from Japanese into English by the Interpreter indicated.)

Q (By Major Kerr) After the Shimbu Group was organized who approved death sentences for prisoners of war or civilian internees in Manila?

A (Through Major Pratt) Any matter pertaining to the courts-martial or military tribunals in the Shimbu Group were the responsibility of the Shimbu Group commander. I previously stated the normal sequence, but now to summarize, prisoners of war are handled in the same manner as Japanese prisoners. The prisoners of war and internees are handled the same way under military courts-martial, but the difference is that in the case of prisoners of war and internees it is based upon international law.

GENERAL REYNOLDS: Then this question: Are you now saying that the Commanding General, Shimbu Group, had authority to approve death sentences and direct their execution of American prisoners of war and civilian internees?

You may have it read back as much as you like, to get it correct.

MAJOR PRATT: The Interpreter would like to be excused. He is not feeling well.

GENERAL REYNOLDS: Very well.

(At this point Lieutenant Asano left the room. The following questions of the witness were translated by Sergeant Yajima.)

MAJOR PRATT: Now will you read that back?

(Question read)

THE WITNESS: (Through Major Pratt) He has the authority, but it must be in accordance with international law and the Geneva Convention.

GENERAL REYNOLDS: In practice, could the Commanding General, Shimbu Group, direct the execution of American prisoners of war or civilian internees, without obtaining the approval of General Yamashita?

THE WITNESS: He has that authority or prerogative, but that is not the actual practice. In practice, or in fact, this matter did not arise. He had this authority, but in actual fact the situation never arose, and I did not receive any reports concerning this.

GENERAL REYNOLDS: Can he recall now the circumstances concerning the execution of Mr. Carroll C. Grinnell, Mr. Duggleby, Mr. Larson and Mr. E. C. Johnson, who were

American civilian internees?

MAJOR PRATT: Will you read that, please?

(Question read)

THE WITNESS: (Through Major Pratt) I received no report that they had been subjected to a court-martial. I knew that only through the Bill of Particulars.

Q (By Major Kerr) Did you give the Shimbu Group court-martial jurisdiction over the prisoner of war and internee camps?

A (Through Major Schneider) When the 14th Area Army left here this authority, as a matter of course, was transferred to the Shimbu Group, insofar as these camps were within their jurisdiction, within their area of jurisdiction.

Q And that was by your order, is that correct?

A Yes, it was in accordance with an operational order.

Q Was that your operational order?

A Yes.

Q You said that only three men in the Philippines could determine whether or not a person would be tried by court-martial?

MAJOR SCHNEIDER: Will you repeat that, please?

(Question read)

A (Through Major Schneider) Yes, I said that.

Q (By Major Kerr) Were those three men the only men who could approve a death sentence?

A Yes, only those three men.

Q Was the death sentence approved at the same time the decision was made that the man would be tried?

A. After it was fully investigated by the Kempei Tai or the Judge Advocate's Department, it was decided whether or not to prosecute -- after it was fully investigated by the Kempei Tai or the Judge Advocate's Department, whether or not the case called for criminal punishment, it was decided whether or not to prosecute. As a result of these preliminary investigations, the Prosecutor would make a preliminary decision as to whether or not to prosecute, and submit this to the Commanding General of the Army to which the court-martial belonged, and, as a matter of fact, in the case of the 14th Area Army, to myself; in the case of the 35th Army, to the Commanding General of the 35th Army. And then if it should be decided that the case should be prosecuted, it would then be transferred to court-martial for trial.

As far as this goes, it is the same as in the case of the procedure for Japanese prisoners or people attached to the Japanese army, except that various considerations of international law based on the Geneva Convention had to be taken into consideration.

Q After the case had been tried and sentence passed, did it again come to you?

A As a matter of fact, while I was in charge such a matter did not occur. What I have now said is in explanation of the procedure.

GENERAL REYNOLDS: That will terminate that line.

The Commission would now like to hear the reading of testimony which was directed this afternoon, and would also like to have an immediate check made of the former

testimony of the Accused to see what he then said about approval of death sentences of American prisoners of war and civilian internees.

MAJOR KERR: Sir, the first point the General requested was as to whether or not the Commanding General of the Shimbu Army, General Yokoyama, testified concerning the approval of the court-martial death sentence. We find no mention of that subject in his previous testimony.

GENERAL REYNOLDS: Well, there is mention, is there not, that he had court-martial jurisdiction?

MAJOR KERR: Yes, sir, and there is no mention of that in General Yokoyama's testimony.

General Kou testified as follows on that general subject --

CAPTAIN REEL: What volume is that, and what page?

MAJOR KERR: On page 3313 and page 3314, General Kou's testimony:

"GENERAL REYNOLDS: Inquire of the witness whether camp commanders, such as the camp commander at Santo Tomas had authority to put executions into effect.

"Q Did the various camp commanders at Santo Tomas and the commanders at the various internment camps have authority to arrest and take into custody the prisoners of war and the internees under him?"

That question was withdrawn and this question substituted:

"Q Did the internee camp or prisoner of war camp commanders have authority to order the execution of internees and prisoners of war within their command?"

"A No.

"Q Did you have the authority to order the execution of prisoners of war and internees within your command?

"A No.

"Q Who did have within the Japanese army the authority to order the execution of prisoners of war and internees?

"A The ones that were executed had to commit a serious crime before that took place and he had to appear before a military court and be tried by a military court, and there he received his sentence, the death penalty or whatever the penalty was.

"Q Then was it the military court that ordered the execution of a prisoner of war or internee in such instances?

"A Yes. The military court gave the decision and the execution was also carried out by the military court.

"Q When a prisoner of war or internee was sentenced to death was it necessary that that sentence be passed upon by someone higher in command before it was carried out?

"A I received notice regarding the decisions from the military court and I believe that the notification was sent to the higher ups, but I am not very well versed with this matter.

"Q Do you know whether it was necessary for General Yamashita to pass upon these sentences of death before they were carried out?

"A I do not know.

"Q Do you know whether it was necessary for the

Imperial Government in Tokyo to pass upon these sentences of death of prisoners of war or internees?

"A I don't know what takes place in Tokyo, but probably they did review the situation."

I believe that completes the testimony of General Kou on that general subject.

We find that there is no reference in the testimony of Fermin Miyasaki, who was the civilian interpreter at the Kempei Tai headquarters, Cortebitarte Street in Manila, on the subject of court-martial jurisdiction.

In the testimony of Richard Sakakida, who worked as a civilian interpreter with Colonel Nishiharu in the Staff Judge Advocate's Office, 14th Army, we find several references to court-martial proceedings:

"Q You do not know if they might have been tried after the 28th of December?

"A I do not think there was any trial, because the court-martial moved out from Manila.

"Q You mean the 14th Army courts-martial?

"A Yes, sir.

"Q There were other groups in Manila, were there?

"A But they were under the jurisdiction of the 14th Army Headquarters, sir.

"Q Well, wasn't there a Shimbu Army?

"A Yes, sir, I later found out they were organized here in Manila.

"Q Do you know if they had their own court-martial system?

"A I found that out in the latter part of January.

"Q They were in charge of what army then remained in this area, were they not?

"A I don't know about that, sir.

"Q They were organized at approximately the time you left Manila, were they not?

"A Not to my knowledge, sir.

"Q Do you know when they were organized, the Shimbu Army?

"A I think it was after the headquarters of General Yamashita moved out from Manila, sir.

"Q You did say the Shimbu Army did have its own court-martial jurisdiction, is that correct?

"A Yes.

"Q You do not know whether these men might not have been, therefore, tried by the Shimbu Army?

"A I was definitely told by the guard that they were executed, sir."

I believe that completes his reference to the court-martial jurisdiction of the Shimbu Army.

The other question addressed to Counsel related to the provisions of the Geneva Convention with respect to the imposing of death sentences upon civilian internees and prisoners of war.

The Geneva Convention relative to treatment of prisoners of war has quite a number of provisions relative to punishment of and judicial action against prisoners of war, and the term "prisoner of war" is defined as including civilian internees.

For instance, Article 60 provides as follows:

"At the opening of a judicial proceeding directed against a prisoner of war, the detaining Power shall advise the representative of the protecting Power thereof as soon as possible, and always before the date set for the opening of the trial.

"This advice shall contain the following information:

"a) Civil state and rank of prisoner;

"b) Place of sojourn or imprisonment;

"c) Specification of the count or counts of the indictment, giving the legal provisions applicable.

"If it is not possible to mention in that advice the court which will pass upon the matter, the date of opening the trial and the place where it will take place, this information must be furnished to the representative of the protecting Power later, as soon as possible, and at all events, at least three weeks before the opening of the trial."

Article 61: "No prisoner of war may be sentenced without having had an opportunity to defend himself.

"No prisoner may be obliged to admit himself guilty of the act of which he is accused."

Article 62: "The prisoner of war shall be entitled to assistance by a qualified counsel of his choice, and, if necessary, to have recourse to the services of a competent interpreter. He shall be advised of his right by the detaining Power, in due time before the trial.

"In default of a choice by the prisoner, the protecting Power may obtain a counsel for him. The detaining Power shall deliver to the protecting Power, on its request, a list of persons qualified to present the defense.

"Representatives of the protecting Power shall be entitled to attend the trial of the case.

"The only exception to this rule is the case where the trial of the case must be secret in the interest of the safety of the State. The detaining Power should so advise the protecting Power."

Article 63: "Sentence may be pronounced against a prisoner of war only by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining Power."

Article 64: "Every prisoner of war shall have the right of appeal against any sentence rendered with regard to him, in the same way as individuals belonging to the armed forces of the detaining Power."

Article 65: "Sentences pronounced against prisoners of war shall be communicated to the protecting Power immediately."

Article 66: "If the death penalty is pronounced against a prisoner of war, a communication setting forth in detail the nature and circumstances of the offense shall be sent as soon as possible to the representative of the protecting Power, for transmission to the Power in whose armies the prisoner served.

"The sentence shall not be executed before the expiration of a period of at least three months after this communication."

Article 67: "No prisoner of war may be deprived of the benefit of the provisions of Article 42 of the present Convention as a result of a sentence or otherwise."

That relates to a previous conviction.

GENERAL REYNOLDS: Have you found the testimony of the Accused that he gave last week on this subject of approving death sentences?

MAJOR KERR: On page 3589, being part of the testimony of the Accused on 29 November 1945:

"Q Were all courts-martial death sentences in the 14th Army approved by you?

"A It requires my decision.

"Q Were any prisoners -- "

CAPTAIN REEL: Pardon me. I think it might be a little more helpful to the Commission if you would start a few questions before that to show the context of these questions and answers. Just the five or six questions that preceded that.

GENERAL REYNOLDS: Very well.

MAJOR KERR: Previously, the questions had related to the combined command of army and navy forces in Manila and all over the Philippines.

"Q Did you have an officer on your staff performing the functions of a staff judge advocate? Did you have a staff judge advocate?

"A There was no judge advocate in the staff. However, there was a judge advocate officer within the judge advocate department.

"Q Of what organization was that department a part? That judge advocate department belonged to what unit?

"A It was part of the 14th Area Army Headquarters.

"Q Was Colonel Nishiharu head of that department?

"A Yes.

"Q Were all courts-martial death sentences in the 14th Army approved by you?

"A It requires my decision.

"Q Were any prisoners of war in the Philippines sentenced to death by courts-martial?

"A During the time I was here there was none.

"Q Were there any civilian internees sentenced to death by courts-martial during your period here?

"A I don't believe there were any.

"Q Were there any courts-martial trials of prisoners of war in the Philippines during your period here?

"A I don't believe there were any.

"Q Are you sure there were none?

"A Yes.

"Q Were there any courts-martial proceedings against civilian internees in the Philippines during your period here?

"A There were none ever tried by military court-martial. However, in the case of civilian internees it would be a military tribunal.

"Q What kind of a military tribunal?

"A It would be a military tribunal resembling a military court-martial.

"Q Would a death sentence by such a military tribunal require your approval?

"A Yes, the same as the military court.

"Q During your period in the Philippines were any civilian internees tried by any such military tribunal?

"A None as far as I can remember.

"Q Are you sure there were none?

"A Yes, none.

"Q When you moved your headquarters from Fort McKinley in December 1944 were a large number of guerrillas or persons charged as guerrillas left in Fort Santiago?

"A That has never been fully reported to me."

Then on 30 November 1945, page 3634 of the record -- and I will go back a few questions on that:

"Q Did you go to Tokyo after you came to the Philippines?

"A No.

"Q Did you send anyone to Tokyo while you were in the Philippines?

"A Only those people who were transferred there.

"Q Did any member of your staff go to Tokyo?

"A I did not send any member of my staff to Tokyo.

"Q Was any member of your staff called to Tokyo by higher authority?

"A What do you mean by 'a higher commander'? Do you mean Count Terauchi?"

CAPTAIN REEL: What page are you on, Major Kerr?

MAJOR KERR: I am just now at the top of page 3634.

"Who do you mean by 'a higher commander'? Do you mean Count Terauchi?

"Q On the orders of anyone other than yourself.

"A No, just those people who were transferred.

"Q Did a court-martial sentence of death on a charge of being a guerrilla require your approval?

"A Yes.

"Q How were such people executed? By shooting, hanging, beheading or bayoneting?

"A As I recollect, it is execution by shooting.

"Q Do you know whether or not executions actually were carried out in other manners?

"A I do not know that."

Then on page 3643, the same day, going back a few questions:

"Q After you moved from Ipo on into Mountain Province did you authorize military police commanders to dispose of guerrillas as they saw fit?

"A Even after I moved my headquarters to Baguio I did not leave that prerogative to the military police.

"Q While your headquarters were at Baguio did you receive any reports from the military police commanders?

"A After I moved to Baguio I did not receive any reports from the military police.

"Q After you left Manila the latter part of December did you receive any courts-martial records for your review or approval?

"A No, there isn't.

"Q Do you recall how many death sentences by courts-martial assessed against persons charged as guerrillas were approved by you in the Philippines?

"A I recall reviewing about 40 of the sentences concerning guerrillas from military tribunals.

"Q I believe you testified previously that a death sentence for a guerrilla could not be effected without your

approval; is that correct?

"A Yes.

"Q You also testified that guerrilla activity was very great in the Philippines; is that correct?

"A Yes.

"Q And yet the number of guerrillas captured, tried and sentenced to death numbered at most only a few hundred; is that correct?

"A I did not give any definite count such as you stated.

"Q Very well. What is your estimate of the number of persons the death sentences for whom you approved?

"A Each incident comprised one case and there were 40 such cases and some of them had one or two or three people; so I do not know the total count."

I believe that is all of the references, sir.

GENERAL REYNOLDS: The Commission will recess for approximately ten minutes.

(Short recess)

GENERAL REYNOLDS: The Commission is in session.

Does the Prosecution have anything else that is material to ask the Accused?

MAJOR KERR: Nothing of this witness, sir. We do have the photostats of Exhibit No. 315. Perhaps it would be more suitable if we put that in after the Defense is through with this witness.

GENERAL REYNOLDS: Very well. Does the Defense have anything material in nature to ask the Accused?

CAPTAIN REEL: Approximately three or four questions, sir.

GENERAL REYNOLDS: Very well.

REDIRECT EXAMINATION

Q (By Captain Reel) General Yamashita, when you testified on Friday that all sentences of execution of guerrillas would be approved by you, to what did you have reference?

A (Through Major Pratt) I was referring to the military tribunals which were under me or attached to me.

Q And when you testified that all sentences of execution of prisoners of war and civilian internees would have to be approved by you, to what did you have reference?

A I was referring to the courts-martial which were attached to me.

CAPTAIN REEL: I have no questions of this witness, sir. It just occurs to me that I should explain that, although Captain Sandberg had the direct examination, he is at home ill; so I took over these last two questions.

GENERAL REYNOLDS: Very well. Anything further from Prosecution?

MAJOR KERR: No, sir.

GENERAL REYNOLDS: The witness is dismissed.

(Witness excused)

CAPTAIN PACE: This is Exhibit 315, sir.

At this time Exhibit 315 is re-offered as a photostatic copy. On page 2200 of the record the original book of the death lists of Tanauan, Batangas was offered and the Prosecution asked permission to be allowed to offer a photostatic copy at a later date and the Defense reserved their right to object until such time as a copy was offered.

GENERAL REYNOLDS: Very well. Comments by the Defense?

CAPTAIN REEL: I don't recollect, sir, whether or not this is one of the documents from which certain words were stricken. If they were not stricken, we would ask that at the top of the page the words "killed by the Japanese soldiers" and in the middle of the page, the heading, "by the Japanese" after the word "burned" be stricken from the first page. Similarly on the second page.

GENERAL REYNOLDS: You can cover it by one blanket statement.

CAPTAIN REEL: Yes, sir. By one blanket statement I would say this, sir: that we ask to have stricken from this document the reference to the cause of the particular act mentioned, whether it is a death or destruction of property or whatever it is.

GENERAL REYNOLDS: The document is accepted by the Commission for such probative value, if any, as it shall be held to possess, striking in each case wherever the

statements appear throughout the document the words "by the Japanese soldiers" or "by the Japanese", as the case may be. For example, on the first page the top line reads "Roll of Persons killed by the Japanese soldiers". The heading would then read according to the ruling of the Commission "Roll of Persons killed". And on the second heading following line 14 on page 1 where it reads "List of Barrios the houses of which were burned by the Japanese", it would read "List of Barrios the houses of which were burned". And all other like statements are similarly treated.

CAPTAIN REEL: Does that, sir, include the phrase "massacred"? As I recollect, there was no evidence other than the persons killed. There is a note at the top of the page where the word "massacred" appears.

GENERAL REYNOLDS: The term "massacred" would remain in. The document would read at the top of the second page "List of Persons Massacred during the month of February, 1945, by barrios". The words "by the Japanese soldiers" will be stricken. And all others are similarly treated.

(Prosecution Exhibit No. 315
for identification was received in evidence.)

GENERAL REYNOLDS: Does the Defense have anything further?

CAPTAIN REEL: Nothing further, sir.

MAJOR KERR: The Prosecution has nothing further, sir.

GENERAL REYNOLDS: The Commission is then to understand that the Prosecution has completed all its rebuttal

testimony.

MAJOR KERR: Yes, sir.

GENERAL REYNOLDS: And is the same true of the Defense?

COLONEL CLARKE: Yes, sir.

GENERAL REYNOLDS: We have this announcement:

The next order of business will be the final arguments for the Prosecution and Defense; Defense first. These will be heard starting at 8:30 A. M. Wednesday morning, 5 December 1945. This period is provided so that the time will be available for preparation. The Commission desires to have presented by both Prosecution and Defense a factual, accurate, objective, dispassionate analysis of the matters before us which will be of help in arriving at a decision as to the guilt or innocence of the Accused.

After we recess the Commission desires to see both the Senior Prosecutor and the Senior Defense Counsel in chambers.

The Commission will now recess throughout all of tomorrow and until 8:30 A. M. Wednesday morning, at which time there will be heard the final arguments. The Commission anticipates with confidence that the findings will be announced on Friday, very likely in the afternoon.

The Commission is now in recess in accordance with this statement.

(Whereupon, at 2235 hours, 3 December 1945, the trial was adjourned until 0830 hours, 5 December 1945.)

Yamashita, Tomoyuki, 1885-1946, defendant.

BEFORE THE
MILITARY COMMISSION
convened by the
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA)

-vs-)

TOMOYUKI YAMASHITA)

-----)

PUBLIC TRIAL

High Commissioner's Residence,
Manila, P. I.
5 December 1945

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

MAJOR GENERAL RUSSEL B. REYNOLDS, Presiding Officer
and Law Member

MAJOR GENERAL LEO DONOVAN

MAJOR GENERAL JAMES A. LESTER

BRIGADIER GENERAL MORRIS C. HANDWERK

BRIGADIER GENERAL EGBERT F. BULLENE

APPEARANCES:

(Same as heretofore noted.)

REPORTED BY:

E. D. CONKLIN

L. H. WINTER

M. M. RACKLIN

P R O C E E D I N G S

GENERAL REYNOLDS: The Commission is in session.

MAJOR KERR: Sir, all members of the Commission are present, the Accused and Defense Counsel are present.

GENERAL REYNOLDS: The Commission will now hear the final arguments of Defense.

COLONEL FELDHAUS: If it please the Commission, the summation and argument by the Defense will be divided into four parts: The introductory part by myself will cover the Accused's background and the conditions with which he was confronted upon his arrival in the Philippines;

Captain Sandberg will cover that phase of the evidence before the court that deals with the commission of atrocities in the City of Manila;

Captain Reel will sum up the evidence regarding guerrilla activities, the situation in Batangas, and the charges of mistreatment and abuses of internees and prisoners of war;

Colonel Clarke will make the concluding argument for the Defense, treating specifically the various items of evidence that attempt to connect the Accused with the crime as charged.

The Defense has submitted evidence to the Commission that the Accused during his long army career has demanded strict discipline of his subordinates; that prior to the war with the United States he was associated with a group of Japanese officers identified as "moderates", who believe that the Japanese army should reduce to a size only large enough for the defense of the Japanese Empire, and that

such army should not be used as a tool of aggression. This group is opposed to the policies of the Extremists Group, of which Tojo was a member.

In 1929 the Accused assisted in the preparation of plans for the reduction of the army, and, as a Moderate, he was never associated with any group that opposed friendly relations with the United States and Great Britain.

The fact that the Accused was not in the good graces of Tojo is further pointed out by the fact that he was relieved of his command at Singapore in June 1942 and given a command in Manchuria, a relatively unimportant assignment, in view of the war that was being carried on with the United States; and the further fact that he was not accorded the privilege of visiting Tokyo enroute to his new command. According to the witness who testified in this regard, the privilege was not granted to the Accused as it was rumored in Tokyo that he could not see eye to eye with Tojo.

On 23 September 1944, General Yamashita was notified that he had been assigned to the Philippine Islands to take command of the 14th Army Group, as a successor to General Kuroda. The Accused assumed command of the 14th Army Group on 9 October 1944. Upon his arrival he found the following conditions existed:

The 14th Army Group was subordinate to the Supreme Southern Command, commanded by Count Terauchi, whose headquarters was in Manila. Liaison to the Philippine Government was entrusted to Count Terauchi and Ambassador Murata. The navy was under a separate and distinct command, subordinate

only to the naval command in Tokyo. Subordinate to Count Terauchi's command, but on a parallel with the 14th Army Group, were the 4th Air Army, the 3rd Transport Command, and the Southern Army Communications Unit.

Therefore, out of approximately 300,000 troops in Luzon, only 120,000 were under General Yamashita's command.

An acute shortage of food existed, and the Japanese army was exceedingly short in both motor transport and gasoline.

The Accused found that the general state of affairs in the 14th Army Group was very unsatisfactory. The Chief of Staff was ill, there were only three members of Kuroda's staff left in the headquarters, and the new members were not familiar with the conditions that existed in Luzon. The 14th Army Group was of insufficient strength to carry out the Accused's mission, inasmuch as it was, in his opinion, about five divisions short of what would be required. His troops were of poor caliber and not physically up to standard requirements. The morale of his men was poor.

In addition, a strong anti-Japanese feeling existed among the Filipino population. There was no unity of command. Supplies were inadequate, his staff was not competent, his troops inferior and, in addition, he was surrounded everywhere by a hostile population.

Preparations for defense were practically nonexistent. Nine days after Accused arrived in Manila, the American Army invaded Leyte. On December 7, the American Army landed on Ormoc Bay, and it became apparent to General Yamashita that the battle of Leyte was lost.

However, about that time the Chief of Staff for operations, from the Imperial General Headquarters in Tokyo, arrived at General Yamashita's headquarters and urged further action against our forces on Leyte; and the Accused, because of this, actually made plans to make a counter-landing on Carigara Bay. This counter-offensive was decided against by the Tokyo representative, when the Americans landed on Mindoro.

The Accused's next problem was the defense of Luzon. His first action in this regard was to increase the strength of his army and to unify the command. Reinforcements were requested from the Supreme Southern Command. Only one-third to one-half of the three divisions sent by the Supreme Southern Command survived the American attacks by air and submarines.

The headquarters of the Supreme Southern Command had moved to Saigon on 11 November, taking with it the headquarters of the 3rd Maritime Transport. At about the same time, the prisoner of war camps came under the full command of the 14th Army Group.

To unify the 14th Command, General Yamashita requested that 30,000 troops under the Southern Command be transferred to him. This was accomplished in the early part of December. The 4th Air Army came under his command on 1 January 1945, the 3rd Maritime Transport Command came under his command during the period 15 January to 15 February of this year. The navy never came under his command, but the naval troops in the City of Manila came under the command of the 14th Army Group on 6 January for tactical purposes

during landing operations only.

This limited command was based on a long-standing agreement between the Japanese army and navy in Tokyo. This tactical command involved the right to order naval troops to advance or to retreat, but did not include the command of such things as personnel, discipline, billeting or supply.

General Yamashita's plan for the defense of Luzon, for sound strategic reasons, called for the evacuation of Manila. In line with this plan, on 26 December the Accused moved his headquarters to Ipo and on 2 January to Baguio, where he remained until the middle of April.

After the American victory on Leyte, the Japanese situation on Luzon became extremely precarious. The American blockade became more and more effective; the shortage of food became critical. The American air force continually strafed and bombed the Japanese transportation facilities and military positions. General Yamashita, charged specifically with the duty of defending the Philippines, a task that called for the best in men and equipment, of which he had neither, continued to resist our army from 9 October to 2 September of this year, at which time he surrendered on orders from Tokyo.

The history of General Yamashita's command in the Philippines is one of preoccupation and harassment from the beginning to the end.

Thank you, gentlemen. I shall now turn the argument over to Captain Sandberg.

CAPTAIN SANDBERG: No one will ever know the complete story of what happened in Manila in those bloody days of February, 1945. The Japanese who participated cannot tell because undoubtedly they are all dead. But if there is one fact which emerges clear and unmistakable from the welter of conflicting reports, rumor and gossip, it is that General Yamashita did not want fighting in the City of Manila, and that what happened occurred not only against his judgment and his wishes but against his express orders.

At the outset one point should be clearly emphasized. There is no rule of international law that says a commander must abandon a city. If General Yamashita had wanted to defend Manila to the last he would have been perfectly within his rights under the accepted international law and under the accepted standards of military warfare.

History is full of commanders who fought last-ditch fights in besieged cities -- Stalingrad is only one of a long list of beleaguered cities which fought to the end.

But General Yamashita decided to abandon Manila, and he is very frank about the reasons. He puts his motivation solely on strategic and not humanitarian grounds. Manila, he says, is indefensible and any attempt to retain would have been strategically unsound. There were at least three good reasons for this conclusion.

First, it was impossible to keep open food sources for the population of one million persons;

Second, the buildings are highly inflammable and so a constant battle hazard for a defender;

Third, the land is flat and peculiarly unsuited to

Japanese strength, armor and battle methods. In addition, Manila was of no particular strategic importance to the army, although it may be noted that it was one of the chief harbors of the Orient and it was of vital importance to the navy.

The soundness of General Yamashita's strategic views is borne out by what happened. The Japanese forces caught here were crushed between the bay and the river, and with no natural defenses and no escape route, were demolished to the last man.

The next question is this: If Yamashita did not want to fight in Manila why did he not declare it an open city? And his answer to this is likewise the answer of a military man with no attempt to put a humanitarian gilding on the harshness of war. General Yamashita did not declare Manila an open city because if he had done so it would have been a fraud. The declaration of a city as an open city has the effect in international law of making the city immune from enemy bombardment. No city is properly an open city unless it has been cleared of all military fortifications and supplies.

So long as Manila was full of war supplies, which he did not have the time, fuel or transportation to remove, and as long as the navy was basing its main operations, activities which he never had authority to curtail, he had no right to label Manila "open", and so invoke immunity from bombardment by the American forces. If he had declared Manila an open city then, truly, he would have violated the laws of war, just as the Germans did in 1944 when they

declared Rome an open city, knowing that as a center of war supplies Rome had no right to immunity from bombardment. Instead General Yamashita took the conservative course of moving to put Manila outside the area of battle without demanding any special status from the American forces for so doing.

The steps he took to achieve the evacuation of the city were clear and certain. In the middle of November he ordered General Kobayashi of the Manila Defense Corps and Lieutenant General Shimono of the Commissariat to evacuate. Subsequently similar orders were given to the Shimbu Group on its activation and to the Fourth Air Army when it came under his command on January 1st.

As a result of all these orders the Herculean task of moving the army installations from the city was accomplished so expeditiously that by February the 3rd there were left in the city only 1500 to 1800 troops of the Noguchi Detachment concerned with the guarding of supplies left in the city.

For these basic facts the Commission does not have to rely on the testimony of General Yamashita and his subordinates. Our own official intelligence and operational reports, in evidence, refer both to large scale troop withdrawals from Manila and to the presence of only small residual army elements in the city at the time of the Battle of Manila.

It may also be noted that at the same time the Japanese Army was withdrawing its troops it was encouraging the civilian population to leave the city to go to

the provinces where food was more plentiful. This point, clearly established, we think by the issues of the Manila Tribune in evidence and the testimony of several of the Prosecution rebuttal witnesses, disposes once and for all of the rumor or gossip that the Japanese Army in some manner imprisoned the civilian population within the city and would not let it leave.

Given all these moves, why did General Yamashita's plan fail? Why did the navy stay behind? We know that they were ordered to leave. Even before the navy came under his tactical control General Yamashita had instructed the Shimbu Army to inform the naval commander of his wishes. And when the navy came under Shimbu on January 6th, it came under the direct compulsion of the direct order to evacuate. During January, there was some withdrawal of naval troops, but on February 13th, General Yamashita learned for the first time that there had not been substantial compliance with his order -- that the bulk of the navy troops were still in the city. Very much concerned, General Yamashita sent an urgent order to Shimbu that the navy must withdraw immediately in accordance with previous orders. But the navy did not withdraw and the Battle of Manila ensued.

As to exactly why the navy stayed behind in Manila, we can only speculate. But Vice-Admiral Okoochi, the Supreme Naval Commander, advanced two reasons before this Commission. First, that transportation facilities made withdrawal impossible; second, that Admiral Iwabuchi deliberately delayed his withdrawal because he had not yet

completed the destruction of the harbors, docks and store of supplies in the city.

Since the transportation problem was no more difficult for the navy than for the army and the army was able to evacuate, we think that we may assume that the second reason is the really important one.

As Admiral Okoochi testified, he had issued an order in December for the destruction of harbor and dock facilities and naval supplies; on January 6th this order had not yet been completed. The order was one for a naval rather than a land operation, and, consequently, did not pass to General Yamashita's control; and it could not be revoked or superseded by General Yamashita.

We have a picture, therefore, of Admiral Iwabuchi on January 6th, 1945, faced with two conflicting orders -- an order from General Yamashita to withdraw and a previous order from Admiral Okoochi to remain until the work of destruction was completed. In the opinion of Admiral Okoochi, Iwabuchi stayed on to complete his naval mission, and the Battle of Manila ensued.

Now, there is little question but that the Manila atrocities were committed by these naval troops. If the evidence in the record of caps with anchors were not enough, the mere proportion of 1500 to 1800 army troops to 20,000 navy troops, and the disposition of the naval troops in the atrocity area along Manila Bay south of the river would certainly clinch the point. We submit that it is very doubtful indeed whether under any definition

of the term these navy troops were under General Yamashita's command.

It is true that they passed to his command on paper, but it is also true that the only important order he ever gave them -- the order to evacuate -- they failed to carry out. This is because the Tokyo agreement which steered a middle ground between the traditional and age-old rivalry of the two services, provided for a dual control in case of land operations. Admiral Iwabuchi's troops were serving two masters at the same time: General Yamashita for land operations, Admiral Okoochi for operations of naval importance; but when the conflict arose, they followed the navy.

In addition, even so far as land operations were concerned, General Yamashita's authority was limited to the tactical, the order to advance or retreat. Over supply, personnel, billeting and, most important -- discipline -- he had no control.

But most important of all is the practical problem. How can the man possibly be held accountable for the action of troops which had passed into his command only a month before, at a time when he was 150 miles away -- troops which he had never seen, trained or inspected, whose commanding officers he could not change or designate, and over whose actions he has only the most nominal control?

The Prosecution contends that there was a plan in the Manila atrocities. We do not see any. We see only wild, unaccountable looting, murder and rape. If there be an explanation of the Manila story, we believe it

lies in this: Trapped in the doomed city, knowing that they had only a few days at best to live, the Japanese went berserk, unloosed their pent-up fears and passions in one last orgy of abandon. There are some phases of the Manila situation that point to anti-guerrilla activity, it is true, but there are many others which do not. Can the rapes committed in the Bayview Hotel be explained on this basis?

Does the Prosecution contend that General Yamashita ordered these rapes?

And if General Yamashita is not charged with ordering the Manila atrocities, what is the charge? Is he charged with having failed to punish the 20,000 Japanese left in the city after the battle?

Another question remains. How does the report of the liaison committee of the Japanese Army fit in with the testimony before this Commission?

In our opinion, the statement is an ambiguous one. In our opinion, this statement is subject to two possible interpretations, and according to one of these interpretations it is perfectly consistent with the testimony. According to another interpretation it is not.

The ambiguity in the liaison committee report lies in its use of the word "Manila." General Yamashita has testified that the word "Manila" when used in operational orders did not refer to the City of Manila at all, but referred to the whole Manila sector, the whole area south of Nichols Field, north of Lake Laguna, Antipolo and the mountains to the north, Wawa, Ipo and other areas

up to the Pampanga River.

Read in the light of this meaning, the report of the liaison committee makes sense. It is true that the Manila sector, as so defined, was one of the three points of main troop concentration. It is true also that Manila, as so defined, was defended to the utmost. That the liaison committee was using the term "Manila" in this broad sense is confirmed by the statement in subdivision E, which refers to the main defensive positions at Montalban, Ipo and Antipolo, the forward outposts at For McKinley, Nichols Airfield and Karokan Airfield -- all outside the city limits -- and mentions as being inside the city limits only one battalion, described by it as a "Suicide Battalion," but identified in this trial as the 1800 men of the Noguchi Detachment, left behind in the city to guard the withdrawal of war supplies.

If, however, the liaison report is using the term "Manila" in the narrow sense of the City of Manila, it does not make sense. For the fact is that Manila was not defended to the utmost. Our own intelligence reports confirm the fact of constant withdrawal of troops from the city before the American advance. General Yamashita testified on the stand that he had received no orders to defend Manila to the utmost. And one fact is clear and certain: If he did receive such an order, he very definitely ignored and disobeyed it.

In our opinion the liaison report does not have much probative value. It does not contain actual documents, merely the recollections of staff officers, and it states

on its face that it is not absolutely correct.

One point remains -- was there any Japanese plan to destroy the city? Was there an order such as has been referred to by the Prosecution for the destruction of the city? The best answer to this question, we feel, was given by Captain Sparnon, of ATIS, who stated that nowhere among all the hundreds of thousands of documents captured by the United States was such an order to be found.

The only order in the record is one of the Imperial Naval Defense Force to destroy the factories, warehouses and material. Apart from being a perfectly legitimate military order, it was undoubtedly issued pursuant to Admiral Okoochi's plan of December, 1944, for destruction of naval supply depot. It is an unmistakable conclusion that it was under this order that the buildings along the northern bank of the Pasig River in downtown Manila, where Colonel Hashimoto testified the naval supply depots were located, were demolished.

It can hardly be pure coincidence that the only large-scale destruction in Manila was at the points of heaviest fighting, namely, the north bank of the Pasig and South Manila along the bay, but this destruction is battle destruction.

Our own XIV Corps report describes in great detail how we brought the point-blank fire of 155 millimeter howitzers, took destroyers and tanks to bear on the large public buildings of Manila until the buildings collapsed and were demolished.

The battle of the southside of Manila was a house-

to-house, room-to-room battle, and it was a battle of Japanese small arms against American artillery mortar fire and flame throwers.

Our own XIV Corps also reports that the only Japanese demolitions outside of destruction during combat was of bridges, and this corroborates completely the testimony of General Yamashita that the only order he gave was for the destruction of bridges.

If the Japanese had wanted to destroy the city, why did they not do so in January, after the American landing of Lingayan?

Why did they not put to the torch the vast populous sections of Manila, Quiapo, Santa Cruz, Sampaloc, San Jaun, Santa Mesa -- all highly inflammable, yet left virtually untouched and unharmed.

Our conclusion must be that, if indeed General Yamashita did receive this mysterious order from Tokyo, that order which the mysterious voice on the sound track says that an American soldier found on the body of a Japanese soldier, but which no one else has seen since, he certainly failed miserably to carry it out.

General Yamashita arrived in Manila on October 9th and left on December 26th. In those two key dates lie the salient explanation of much that happened in the Philippines. General Yamashita had his headquarters in Manila only two months and seventeen days. We can understand just how short a time that was because it parallels almost exactly the time this trial has been proceeding. From the time of the arraignment on October

8th until today, General Yamashita's case has been pending before this Commission only about three weeks less than the entire time of his stay in the City of Manila in 1944. That is the date of Count Terauchi's removal from Manila.

Until November 17th, General Yamashita was not even the highest commander in the City of Manila. His immediate superior, Count Terauchi, was here. He was on the spot and he was in charge. And, most important of all, it was Count Terauchi and not General Yamashita who was handling affairs concerning the civilian population -- the relations with the civil government and the discouragement and suppression of anti-Japanese activities. The basic period, therefore, is from November 17th to December 26th, a matter of a mere five weeks, during which General Yamashita was in Manila and in charge of civilian affairs.

Can it be seriously contended that a commander, beset and harassed by the enemy, staggering under a successful enemy invasion to the south and expecting at any moment another invasion in the north, that such a commander could in the period of a handful of weeks gather in all the strings of administration?

Could he in this period of time get a true picture of what the military police, with its three years of background in Manila and its long tradition of close contact with Tokyo, was up to, what it was doing right and what wrong, what legally and what illegally? Wasn't he forced by the very nature of the time and place and circumstances to rely on the course of conduct of the established,

functioning, subordinate commands?

And yet the record shows that General Yamashita did do something, that he acted swiftly, decisively, drastically. Shortly after the departure of Count Terauchi in November he met with President Laurel for the first time. This was as it should be, because prior to the departure of Terauchi he was not concerned with civil matters.

At that time he spoke to President Laurel about his desire to promote friendly relations between the Filipino people and the Japanese troops. "Because of the difference between the Filipinos and the Japanese in religion, customs and speech," he said, "undoubtedly there would arise incidents."

He hoped to be able to keep such incidents to a minimum but, he said, would President Laurel please report to him without reticence anything that should come to his attention.

Some time later President Laurel took advantage of this invitation and told General Yamashita that there was one thing which tended to create discord with the civilian population, the methods of the military police.

This was just a very general conversation, but General Yamashita went back to his office and said to his chief of staff, "President Laurel has got something to say about the military police." Go and find out what is the matter."

General Muto went, and he was told that in President Laurel's opinion the military police were over-

zealous and were making arrests on the basis of false reports of informers.

Shortly after General Yamashita's first conversation with President Laurel he had called Colonel Nagahama in to caution him to proceed with greater care, and General Muto had spoken to him also about the complaints. In addition, General Muto instituted an investigation of the military police.

However, the Japanese Army does not have an inspector general's department comparable to that maintained in the United States. The only investigative agency in the Japanese Army is the military police itself -- and the very agency it was desired to investigate, as General Muto pointed out, would have been a very difficult and very long process indeed to get the real truth about what was going on inside the Kenpei Tai. When President Laurel complained again, this time about the arrests of a friend and relative, General Yamashita took firm and immediate action. He recommended the immediate removal of Colonel Nagahama.

To understand the motivations in this matter we have to go back to the original assumptions on which General Yamashita based his plan for defense of Luzon. He knew that he was fighting an uphill battle against American superiority in all arms. He knew that friendly relations with the civilian population and with the civil government were essential. He made this point emphatically to his subordinates generally on arrival, and to Colonel Nagahama in particular on several occasions thereafter.

He knew that an unfriendly civilian population would be an additional and very powerful military arm of the invading Americans. History proved him to be correct. Our own military analysts of the XIV Corps credit the anti-Japanese sentiment of the Filipinos as one of the four major reasons for our military success here. This elementary fact of military strategy General Yamashita knew. But what he did not know then was that he was going to fail -- that his few months of effort were not going to wipe out the years of ill-feeling which grew under his predecessors, General Homma and General Kuroda, and that the Filipino people were just waiting for the signal light of the American counter-invasion to turn in full fury against the Japanese.

He recommended the removal of Colonel Nagahama. He did not remove him because he had no power to do so. The papers had to follow the long, tortuous route to the Supreme Southern Command at Saigon, from Saigon to Tokyo, from Tokyo back to Saigon, and from Saigon back to the Philippines. He recommended the removal on December 1st, 1944, and the official approval did not come back until February 1st, 1945. It took eight weeks to remove Colonel Nagahama, although ordinarily such a removal could be completed in two weeks. Why it took so long for Saigon and Tokyo to consider an act in the case of the commander of the military police we can only speculate. But we do know one thing: It was during this eight weeks -- during the months of December and January -- during the time that Colonel Nagahama was on the way out, yet not out,

that the affairs of the military police took the turn that is the subject of consideration of this Commission.

It is one of the peculiarities of the Japanese Army system that a commander cannot remove on the spot a subordinate whose performance is unsatisfactory. He can only recommend it to higher authority. As officers of the United States Army we fail to understand this. But not only is this the case in the Japanese Army, but it is also true that removal of an officer from the command which he holds by direct order of the Emperor is a far more serious and drastic step than it is in our own army.

General Yanashita, by endorsing the removal of Colonel Nagahama to the Southern Supreme Command, had taken this step and had every reason to believe that within two weeks Colonel Nagahama would be out as chief of the military police.

The Defense has maintained from the very beginning that the key -- the explanation -- of much of the matter covered by the Bill of Particulars is contained in the history of the guerrilla movement in the Philippines. We have noted with appreciation that as the trial has progressed the importance of this phase of Philippine operations has loomed larger in the evidence.

As Americans we know only too well what we owe the Filipino guerrillas. They spied for us on Japanese military installations and troop movements. They harassed Japanese supply lines, damaged bridges, ambushed Japanese detachments and assassinated Japanese soldiers and officers.

What greater tribute can there be to the effectiveness of their operations than the statement on the stand of General Muto that he was not even safe driving in the neighborhood of his own headquarters at Fort McKinley. What illumination is cast on the whole subject by General Muto's testimony regarding the plot to blow up Fort McKinley?

About the middle of November, 1944, the military police uncovered a plot to blow up General Yamashita's headquarters at Fort McKinley. Dynamite had been placed in the basement of the officers' recreation room. Machine gun emplacements, hand grenades and short wave transmission sets were found at a place between Nielson Field and Fort McKinley and 100 stands of small arms were found in a bamboo grove near Pasig. This was in November, two months before the American landing at Lingayan. The story of this incident explains the letter of commendation to the military police of which there has been so much comment. But it also brings out forcibly and vividly the extent to which the guerrillas in and around Manila had gone in their warfare with the Japanese Army.

Knowing as we do the scope and extent of guerrilla activity in the Philippines and of its increasing tempo as the American landing at Lingayan approached, is it surprising that there were in December a thousand suspected guerrillas held by the Kempei Tai for trial?

Our own G-2 reports mention the figure of 300,000 as a possible membership figure for east central Luzon alone, suggesting that many of these carried on their

routine duties during the day, joining the patrols, ambush parties or other guerrilla units only at night.

One thing we must concede: That however much we admire these staunch and fearless fighters, they were, in Japanese eyes, criminals, and the Japanese had every right under international law to try and execute them as such. Any civilian who took up arms against the Japanese thereafter was, in the eyes of international law, guilty of war treason -- just as any Japanese in Tokyo who would now take up arms against the United States would be a war traitor and subject to the death sentence. That guerrillas could, as a matter of international law be tried and sentenced has been recognized by this Commission.

The Commission has heard detailed evidence on the Japanese method of trial of guerrillas from Richard Sakakida, formerly a technical sergeant in the U. S. Army and later an interpreter of the Judge Advocate of the 14th Army Group, and from Colonel Nishiharu, Judge Advocate General of that army.

This testimony is so confusing and conflicting that it is impossible to state with any degree of certainty just what the procedure was. The points on which these two witnesses agree are as follows:

First, there is an investigation by a military police investigating officer; then there is a consultation or conference by the judge advocate's department; then finally there is a form of trial, which has much less importance and formality than the hearing in the judge advocate's department. Colonel Nishiharu's testimony is

so full of inconsistencies, confusion and untruths that we find it impossible to analyze it intelligently.

His statement, for example, that a death sentence did not require the approval of the appointing authority is so obviously at variance with the fact that it defies intelligent discussion.

There is one point, however, that emerges clearly from the mass of testimony, and that is embodied in Prosecution's Exhibits 319, 320 and 321.

These three documents which are labeled "Verdict" are apparently the records of conviction of persons charged with membership in guerrilla organizations. The dates of these verdicts are in two cases 22 December, and in one case 13 December 1944. The documents are mimeographed and in each case refer to the basis of the decision as a statement given by the defendant and a statement of the army judicial policeman. In each case the accused is found to have been engaged in guerrilla warfare against the Japanese Army. In the case of the verdicts of 22 December, the sentence is signed by one officer as "Judge." In the case of the verdict of 13 December, the sentence is signed by three judges.

The evidence indicates that Japanese methods of trial and procedure are foreign to and repugnant to American standards of justice. Sergeant Sakakida testified, however, that the methods described by him were used not only in the case of civilians accused of guerrilla activities, but also in the case of Japanese soldiers accused of purely military offenses.

In neither case was there a right to counsel; in neither case were witnesses called. In both cases the decision of the court was based on the facts developed in the military police investigation held before trial. The only difference developed by the witness between the courts-martial trials of Japanese soldiers and the military tribunal trials of suspected guerrillas was this: That in the case of Japanese soldiers, the soldiers' company commander or personnel officer would be called in and consulted as to the severity of sentence.

Colonel Nishiharu did not testify on the question whether there was any difference in any procedure of trying accused guerrillas and Japanese soldiers. Testimony from Colonel Nishihara on this point was waived.

On analysis of the shifting and inclusive evidence it seems that the only difference which clearly appears between the method of trying suspected guerrillas after December 14th or 15th and prior to that date is that the number of judges signing the verdict was reduced from three to one. This appears from Prosecution's Exhibit 319, 320 and 321, in which three judges are shown as signing the verdict on 13 December and only one judge shown on 22 December.

That the procedure was quick, informal and summary both before and after the 14th or 15th of December can hardly be doubted. That Japanese conceptions of a fair trial differ materially from Anglo-Saxon conceptions likewise cannot be doubted. But that the methods of trial described by Sergeant Sakakida as being in use for

both Japanese soldiers and suspected guerrillas are substantially the methods of trial called for by Japanese military law and regulations is likewise not subject to doubt.

Colonel Nishiharu has testified that he had a conference with General Yamashita and a conference with General Muto on the 14th or the 15th of December relative to the method of trial of suspected guerrillas. Both General Yamashita and General Muto deny categorically that there was any such conference.

This Commission will have to decide whom it considers more worthy of belief on this score. We think that Colonel Nishiharu with his vagueness and uncertainty and his inability to remember the most elementary facts is not worthy of being believed. According to Colonel Nishiharu, General Yamashita said nothing at all to him at this meeting -- only nodded.

At a previous conference on the question of pardoning Japanese prisoners so that they might rejoin the army, General Yamashita, according to Colonel Nishiharu, did not even favor him with a nod, just listened. We cannot believe that the Commission, after listening to General Yamashita on the stand for 19 hours will accept this story. In contrast to Colonel Nishiharu's vagueness and evasions are the definite and forthright statements of both General Yamashita and General Muto on this point.

Let us, however, examine the one-sided conversation which Colonel Nishiharu says he had with General Yamashita, on 1 December, and he described it as follows:

"I told him that a large number of guerrillas were in custody, but to try them in court would be impossible due to lack of time, and therefore the officer of the military tribunal, after an investigation would cooperate with the military police in the handling of the prisoners."

On cross examination on December 3rd his description was approximately the same:

"It appears that the Kempei Tai are sending a great many guerrillas to the military tribunal, but there is no time to judge them in a formal court. They should be investigated by the officers of the military tribunal, and then in liaison with the Kempei Tai, those who should be released should be released, and those that were to be punished should be punished."

Assuming for the moment that Colonel Nishiharu did make this statement, in what respect was he proposing a change from the ordinary, orthodox and usual procedure of military tribunals?

Both Sergeant Sakakida and Colonel Nishiharu testified that both before and after the middle of December, the role of the military tribunal was simply to approve or disapprove the findings of the Kempei Tai and not to take evidence or hear witnesses. Colonel Nishiharu may have thought he was proposing something new, but if all he said is what he claims he said, he was simply describing to General Yamashita the ordinary, orthodox usual procedure for military tribunals as prescribed by Japanese law and regulations.

One point might be added: Colonel Nishiharu made

much of the need for haste in view of the impending removal of General Yamashita's headquarters from Manila. Actually there was no such need at all. When the time came, General Yamashita transferred general court-martial jurisdiction to the Shimbu Army, thus giving to General Yokoyama full authority to dispose of pending cases of suspected guerrillas.

We have only one observation to add: Did Colonel Nishiharu honestly believe after 23 years of service in the army, and after three years of service as Judge Advocate in the Philippine Islands, that a death sentence of a military tribunal did not need the approval of the appointing authority?

We can hardly believe that he did.

In concluding the discussion of the military police situation in Manila, we think the salient points are these:

First, that guerrillas are, in the eyes of international law, subject to trial and execution if caught;

Second, that international law does not prescribe the manner or form of trial which must be given;

Third, that the suspected guerrillas held in Manila in December, 1944, were tried in accordance with the provisions of Japanese military law and regulations;

Fourth, that General Yamashita never ordered or authorized any deviation from the provisions of Japanese military law and regulations;

Fifth, that the fact that the method of trial prescribed by Japanese military law and regulations is a summary one and not in accord with Anglo-Saxon conceptions

of justice is immaterial, since international law does not prescribe any special method of trial, and in no event are Japanese methods of trial provided by Japanese law the fault or responsibility of the Accused in this case.

GENERAL REYNOLDS: There will be a recess for approximately ten minutes.

(Short recess.)

GENERAL REYNOLDS: The Commission is in session.
The Defense may proceed.

CAPTAIN REEL: May it please the Commission, to recapitulate for a moment the plan of this summation: the background, the character of the Accused and the situation he faced here in the Philippine Islands were brought to your attention by Colonel Feldhaus. We then began to consider the affirmative case put forth by the Prosecution. It is our opinion, sir, that that case, those 123 some-odd specifications break down into four major groups:

1. The Manila situation.
2. The military police situation.
3. The matters of atrocities in the provinces aside from Manila, which we believe have a close connection with the guerrilla situation, and
4. The charges relative to prisoner-of-war camps.

We have divided that up, as I believe is obvious now, so that Captain Sandberg discussed the military police situation and the Manila situation, and I am going to use the time allotted to me by the Commission to talk about the atrocities, the items of the Bills of Particulars that had to do with the atrocities in the provinces and the guerrilla situation and also the prisoner-of-war camps.

I want to start with this question of the prisoner-of-war camps. The charges in so far as prisoner-of-war camps are concerned fall into two main categories:

1. In the first place, there is a group of items having to do with the killing of prisoners of war.
2. On the other hand, there is another group of

evidence having to do with the mistreatment of prisoners of war with especial reference to lack of food and lack of medicines.

First of all I wish to talk about those items that had to do with the killings. That in turn breaks down into five categories: (1) the Palawan incident in which there is an allegation that 150 persons were killed; (2) the Santo Tomas incident involving four persons; (3) the Los Banos incident involving two persons; (4) a matter that does not have anything to do with prisoner-of-war camps as such but has to do with alleged executions of prisoners who were captured in the field, they being at Leyte, Cebu, and on Batan Island; and (5), and finally, the Olongapo situation having to do with the voyage of the ORYOKU MARU in which there was an allegation that prisoners were killed.

The other allegations I shall take up afterwards. Those have to do with mistreatment especially so far as food is concerned. First of all I wish to dispose of the Palawan incident.

In so far as the testimony before this Commission is concerned there is no evidence that General Yamashita had any connection with the Palawan incident. As a matter of fact, there were no connection, no chain of command, no tie-up at all between General Yamashita and the personnel at the airfield who allegedly committed these atrocities. This occurred at a time when the air force was not under General Yamashita's command.

The essence of this charge is that troops under his command committed certain acts. And we submit that

if it is not proved that troops were under his command, the charge must fall in so far as that item is concerned.

The testimony of the defense witnesses -- General Yamashita, General Muto and the others -- is clear on this point, but we do not need to look at the testimony of defense witnesses. The only witness that the Prosecution produced to show the chain of command in so far as Palawan is concerned was General Kou, whose statement they put in and, therefore, in so far as the statement is concerned the Prosecution made him their witness: Exhibit No. 238. The other witnesses and the moving picture all had to do with the occurrences at Palawan. But the only word in this testimony from the Prosecution side as to the chain of command, as to the control of troops in Palawan is found in their own Exhibit 238. And General Kou was clear and concise on that matter! I read:

"Q Were you in control of the prisoners who were kept at the airport at Puerto Princesa, Palawan?

"A I had no control over the airport at Puerto Princesa, Palawan. It came under the immediate command of the air force headquarters.

* * * * *

"Q Were you not in charge of prisoners of war in the Philippines?

"A Yes, I was. The regulations concerning that particular instance or similar instances were as follows: In general, I had control over all prisoners of war but those prisoners of war attached or sent to other units for work came automatically under the control and responsibility

of the particular unit commander."

And then specifically:

"Q What did you do if you wanted to get some prisoners back?

"A I remember that in the case of prisoners of war dispatched to work in airfields I had no control. In the case of airfields the chain of command was not under General Yamashita but under the 4th Air Army."

That is the only testimony of the Prosecution bearing on this entire subject of Palawan. And we submit that the allegation must of necessity fall.

Now let us take up the allegation that four men were executed at Santo Tomas: Grinnell, Duggleby, Johnson and Larson.

There is in the testimony, sir, no clear evidence as to exactly what did happen to these men. It appears that they were taken away from the prison compound, the internment camp, by the military police -- not by any orders of General Kou, General Yamashita or anybody else except the military police, and apparently they had that authority.

What happened to those men we do not know except that later on -- considerably later, after the liberation, a matter of a month and a half to two months later -- their bodies were found near the military police barracks in Manila. We can surmise from that that they were executed, but there is no evidence whatsoever as to whether or not in that period of time these men received any kind of trial. There was some evidence from various witnesses

to the effect that they were apparently charged with various types of guerrilla activity or connection with the American forces, but there is no evidence by anyone that they were not tried on this charge. They may have been tried. And the fact that General Yamashita did not have presented to him for signature death warrants of these men would not prove that they were not tried, because they left Santo Tomas at the end of December and if they were tried it must have been while the Shimbu Army had the court-martial jurisdiction.

So there is no evidence here to substantiate the allegation (and I quote) that these men were "executed without cause or trial".

The third allegation in so far as killing prisoners of war is concerned has to do with Los Banos prison camp. The allegation is and the testimony was that on the 20th and 28th of January 1945 at Los Banos two men, one named Held and one named Louis, were executed. There seemed to be some question as to whether or not they had attempted to escape and, as to one of them, whether he had been shot while attempting to escape, although it appeared that the final death blow was given later.

There is in this case no evidence whatsoever before this Commission that General Yamashita knew about this, condoned it, excused it, ordered it or had any connection with it whatsoever. His testimony was clear. He did not know of it until this case was started and he saw the Bills of Particulars.

Now there, I think we can assume that there probably

was no trial from the testimony of the witnesses, but it is not clear that while these two witnesses were out of sight there was not what might have been in the loose Japanese method, as pointed out by Captain Sandberg, not conforming to Anglo-Saxon ideas, a trial. And there again the mere fact that General Yamashita did not get a death warrant would not prove there was no trial, because that Los Banos prison camp was in the area covered by the Shimbu Army.

There was some testimony there by a witness named Hennesen, found on pages 1948 and 1949 of the record, who said that he saw a notice on the bulletin board to the effect that the camp commanding officer (and he quoted it and said that this was the precise language) "had orders from the Imperial Headquarters from Manila, 28 January 1945, to execute any prisoner who attempted to escape".

This notice was not signed by anyone from Manila. It was signed by the camp commanding officer. So it is pretty flimsy; hearsay at best. But it is interesting to note that the other witness, and a very impressive witness, if the Commission will recollect -- the lawyer de Witt -- stated that he saw the bulletin board; that he saw on that bulletin board the other two notices, that is, the protest and the answer to the protest, but that he never saw anything else.

Furthermore, we know that in January, January 28th, anytime in January, 1945, there was no headquarters of any sort in the City of Manila. And we know further now that the only "Imperial Headquarters" that ever was in Manila

was that of Count Terauchi and it had no connection with the Accused except that it was superior.

The fourth set of allegations having to do with the killing of prisoners is the one that I styled "captured prisoners", those who were not in prison camps: Leyte, Cebu, Batan Island.

First of all, let us consider Leyte.

The allegation on the Leyte situation was not proved by any oral evidence before this Commission. It was brought to the Commission's attention merely by one written statement.

I shall take that back. I am sorry. There was more than one written statement. There were a number of written statements. But there was one prisoner who was supposed to have been killed and there was no oral testimony before this Commission.

In those statements (and I think there were two or three) there is no evidence as to who committed the crime. They found this body, you will recollect, of the soldier in a mutilated and, of course, deceased condition. There was evidence that in the vicinity there were some Japanese troops, but there is no evidence as to who committed that crime; as to whether it was any Japanese troops; as to whether those Japanese troops were under General Yamashita, or anything else in that connection. And, certainly, this occurrence in Leyte at a time considerably after the invasion was in a situation where it is obvious that there was no further communication possible between that Island and the Commanding General of the 14th Army Group. And no

General of the 14th Army Group. And no connection is shown as to any knowledge, condonation, permission or anything else of that nature from General Yamashita.

Secondly, we have the Cebu incident. In Cebu the Commission will recollect that there were two American prisoners apparently captured and killed. One of them, I believe, was in civilian clothes at the time. It is not clear there that there was no trial. There may have been. One or two witnesses stated that in their opinion there was not, but it is clear that they were not present at all times. If there were a trial, the mere fact that General Yamashita did not have a death warrant presented to him would not be a point, because Cebu was under the 35th Army and even before General Yamashita ever got to the Philippine Islands the 35th Army had court-martial jurisdiction and right to approve a death sentence. But assuming that there was no trial (and it may well be that there was not), this appears on its face to be one of those incidents where soldiers took the law into their own hands and naturally there was no report made to the Commanding General.

Incidentally, I might point out that this incident occurred at the end of March -- March 26, 1945 -- on the Island of Cebu while the Commanding General was in Baguio preparing to leave for the mountains to the north. And it is clear that there was no communication between those areas at that time.

Finally on these allegations of captured prisoners being executed we come to the matter of Batan Island.

Batan Island, the Commission will recollect, was

a place where three men arrived in a rubber boat and were later executed. Apparently from the evidence the executions there were without trial, but there is no evidence that there was any information brought to General Yamashita's attention about this and, indeed, his testimony was a categorical denial that he knew anything about it.

This was the place where the Commission will recollect that a certain witness, I believe a restaurant keeper on Batan Island, testified that he was told by a second party that a third party had received a telegram purportedly sent by a fourth party, the fourth party being General Yamashita, the third party being General Tajima, and the second party being the one who told this story, and that that telegram said "Kill all American prisoners of war in the Philippine Islands"!

When the Japanese that was used by this supposed second party, this Captain or Lieutenant who told the witness, was translated here (the witness said he heard it in Japanese and that he understood Japanese and that he remembered precisely what was said) the official court interpreter stated that the words used were not idiomatic; that they mean "who talks American soldier", which might through some peculiar, unknown idiom to him mean "kill American soldiers". And he added "I have never heard a Japanese put the word 'General' or any other title before the name rather than after the name".

In other words, to put it mildly, considerable doubt was cast upon the credibility of that witness by the official interpretation of what he supposedly heard.

But add to that this situation, sir: there was no prisoner-of-war camp on Batan Island; there were three isolated men who arrived in a rubber boat; there would be no sense in sending a telegram like that to a place where there were no prisoners of war. And add to it further the obvious fact that all prisoners of war in the Philippine Islands were not killed. Thousands of them, as we shall show in a few moments, were turned over in advance of the time of the landing of the American forces.

We submit that it is an utterly fantastic and ridiculous story on the part of that witness and that General Yamashita's categorical denial of any such incident is the complete and whole truth!

Finally we come to the Olongapo incident, the ORYOKU MARU. That, the Commission will remember, is a ship which, upon orders from Tokyo relayed through the Supreme Southern Command, took prisoners of war to a place that was considered by them to be safer than the battleground here in the Philippine Islands: namely, Japan. And I bring it up in this connection because there was testimony that upon the arrival at Subic Bay some of the prisoners were shot and killed.

First of all, though, in so far as this voyage was concerned it is clear that General Yamashita and his chain of command had no connection with the Third Maritime Transport Command that operated this vessel and was responsible for its operation at this time. Here again we can turn to the testimony of defense witnesses which is clear on this point, but we do not have to because we can turn to

the testimony of the only prosecution witness who brought in any evidence on the connection between the voyage of the ship and General Yamashita: namely, General Kou. I refer to Prosecution Exhibit No. 238. And on this matter in his statement General Kou was clear.

On page 217 of the statement and on page 218 of the statement and on page 219 of the statement the Commission can find the precise and definite statement that there was no authority on the part of General Yamashita over the ORYOKU MARU during its voyage.

He testified here as a Commission witness and during the course of that testimony he was asked questions about this matter. And again as a Commission witness General Kou made the matter clear and certain. He said at page 3340:

"Q Now, who was responsible for furnishing food to the prisoners of war on the ship?

"A The captain of the ship.

"Q And who was responsible for the time when the prisoners would be fed?

"A That is determined by the Captain of the ship.

"Q And who was responsible for furnishing water to the prisoners of war on the ship?

"A That is also the captain of the ship.

"Q And if any marking is necessary on such a ship, whose responsibility would it be to see that it is there?

..."

Incidentally, sir, so far as we are aware, under International law it would be a violation of the laws of

war to mark such a ship as long as it carried munitions and other weapons. There are no necessity and no law which say that you must mark a prison ship.

The answer to the question "And if any marking is necessary on such a ship, whose responsibility would it be to see that it is there?" is:

"A That too is the responsibility of the captain of the ship.

"Q Now, when you testified as to responsibility for deliverance of the prisoners, did that have to do with anything more than guarding them?

"A I am not stating that I am responsible for the transportation of the prisoners of war. As far as the guard commander's duty is concerned, . . ."

And, incidentally, the guard commander was under General Kou.

" . . . he is responsible for giving any aid to the prisoners of war and to prevent their escape, and at the destination the guard commander is responsible for handing over the prisoners of war."

There was some question as to responsibility for loading that vessel. It appeared clearly in the evidence, sir, that the order came from above to ship that many prisoners of war and the order came to the Third Maritime Transport Command to furnish a vessel. The vessel was crowded but, as testified to by General Kou, it is clear that, although it was crowded, those prisoners were given the same accommodation as the Japanese soldiers got. Not good, to be sure; not proper; not comfortable; but in so

far as any violation of law is concerned, not in violation of International law.

General Kou said that he attempted to get more space but it was outside of his authority, and inasmuch as these prisoners were given the same space requirements as Japanese soldiers it is readily easy to see why the Third Maritime Transport Command would not furnish any more vessels, if indeed they had any. The testimony here was that there was a shortage of vessels.

What occurred at sea is completely beyond the scope of this Commission. And, incidentally, the charge here refers to "the Philippine Islands" and not to "the sea". And so that even if there were a chain of command running to the Third Transport Command, it would not be within the scope of this Commission's authority to decide that point.

When they got to Subic Bay the ship was bombed, there was some strafing and some men were shot. We do not justify in any way what occurred there, but I wish to point out, not by way of justification but by way of explanation, one thing that was not brought to the Commission's attention at the time. I bring it out now because I believe it has a bearing on this whole picture of this case, especially the atrocities in the provinces which I am going to take up next.

The Prosecution put in a number of statements on this matter. In fact, the entire case on this particular item was put in by statements; there were no witnesses before this Commission. And one of those statements

(incidentally, a statement that, if we had had it, we would not have put in) reads as follows. It is the statement of Lieutenant Colonel Jacobs. The part I am reading from is found on page 2860 of the transcript of record. He described the bomb hits on the ship by American planes and then he said:

"Pursuit ships strafed the decks of the vessel and killed hundreds of Japanese women and children."

I mention that for this reason:

It is not difficult to picture the reaction caused by abnormal war psychology on the part of soldiers to that sort of incident. We are going to run into that again and again in the guerrilla situation. It is no justification to those soldiers that after that incident they shot prisoners. None at all! It is not even a legal justification, because you cannot have reprisals against prisoners of war. That is clear. But inasmuch as the essence of the charges against General Yamashita go to "control", I think it is very important for this Commission to realize that under such conditions men are not in any real sense of the word under "control".

I know there was testimony by General Yamashita on this subject of "control", and before I finish I am going to discuss that in more detail. But I bring this up now because it runs through the entire picture -- not only at Subic Bay, not only at Olongapo, but all through the Philippine Islands where you have guerrillas committing acts of violence against the Japanese troops.

Finally on this subject I merely want to repeat that

in so far as the OROYOKU MARU or the happenings at Subic Bay are concerned, there is no evidence on this matter that anything in connection with it was brought to General Yamashita's attention, that he knew about it, approved it, condoned it, permitted it, justified it or excused it in any way.

Now, so much for the killings.

The rest of the allegations as to prisoner of war camps had to do with treatment and, for the most part, the question of insufficient food. I think the Commission has heard a very great deal about the food situation, particularly in so far as the staple, rice, is concerned, and I don't think there is a useful purpose to be served in going into the matter at great length now.

General Yamashita, General Muto, General Kira, Lieutenant Colonel Ishikawa, all testified as to the seriousness of the food situation; it was one of the most serious problems that they faced. The newspapers, the Manila Tribune, put in as Exhibits by Defense, and the last rebuttal witnesses of the Prosecution, all bore out this truth: that the food situation was very serious. Indeed, one of the Prosecution witnesses from Santo Tomas, a woman who was a dietician, testified that even in normal times in the Philippine Islands nutrition is a very serious problem. There is no question about it: that after the American submarines got into action, and the American Air Force and the guerrillas, the shipments of rice into this area were seriously curtailed, and even the local rice which was obtainable could not be brought to the cities or to where it would be useful, because of air attacks, guerrilla attacks, lack of transportation facilities and, very important, lack of fuel. The tie-up between fuel and food I think was clearly shown by Colonel Ishikawa, whom the Commission will remember testified that after his inspection trip he went immediately

to General Muto and recommended that they get gasoline from the Air Force to bring rice into the City of Manila. They were unable to get that gasoline. They made numerous trips, and they finally got some after the Air Force came under General Yamashita's command, but it was a small quantity by that time and most of it never actually came into their physical possession.

Now, the testimony as to whether prisoners of war got equal rations with the Japanese soldiers took up a great deal of time in this case. We think the testimony on that is pretty clearly to the effect that they did. Not only the Defense witnesses were unanimous on this point, but the truth of the matter came out also through some of the Prosecution's witnesses.

But there is one thing I want to point out to the Commission: There were here, during this period, approximately 250,000 Japanese troops that had to be fed. At the peak there were only 10,000 internees and prisoners of war -- most of the time there were less, but at the peak there were only 10,000. The prisoners of war and the internees therefore constituted 1/26 of the whole number of persons that had to be fed by the Japanese Army. Now, even if they decided to starve the internees and prisoners of war and not give them one grain of rice, from the time the shortage became acute, it wouldn't have made any significant difference to the Japanese Army -- because that is a drop in the bucket. It doesn't amount to anything; it is 1/26 of a whole.

And actually, there was no difference in the rations

issued. There was some testimony that in certain places Japanese soldiers were able to go out and buy in the stores, the markets, but the issue was the same. And in other places the Japanese soldiers were not so fortunate.

Here again we turn not to our own witnesses, but to the Prosecution's witnesses. I won't take the time of the Commission to read General Kou's statement put in by the Prosecution on this subject, but simply remark that the matter on it can be found at page 229 and page 230 of the record. Incidentally, General Kou pointed out that although the ration was the same the Japanese soldiers, even those in the prison camps, had their own cooks, their own system of preparation; whereas, the prisoners of war had their system of preparation. But the rations, the issue, was the same.

The Witness Ohashi, the Commission will recall, was a civilian employee of the Japanese Army and ate with the Japanese guards at Santo Tomas, and he testified that the food that was issued to them was the same.

Then we had the Prosecution witnesses that came in here on rebuttal. There was Doctor Icasiano, a doctor who reported on the physical condition of the residents of Manila, showing that in the City of Manila at that time the food situation was so serious that people were dying on the streets. He said he thought the Japanese soldiers looked well fed, but he also admitted that he never had made any physical examinations of them, never had seen them with their clothes off, and so forth. The important fact that he brought out was the substance of our position,

7

sir: that during December and January in the City of Manila there was a food shortage, and that nobody could get food; that the ration given to the internees at Santo Tomas was not less than the soldiers were getting, or the civilian population, or anyone else.

Now, what about this fact that soldiers could walk out into Manila and buy fruits and vegetables? No, they couldn't. Alejandro Acuna, another witness for the Prosecution, testified on examination that there were no fruits or vegetables of any sort available in Manila. Later he was brought in on redirect and said that, "Well, there was a little available." But the fact of the matter is pretty clear: If there was a little, it was a very little.

Finally we had the testimony of another Prosecution witness, to whom reference has already been made in this case: one Sakakida, technical sergeant in the United States Army, later civilian interpreter for the Japanese Army, and now master sergeant in the United States Army. He testified on unrelated matters to this issue, but at the close of his examination he was queried by a member of the Commission.

I am now reading from page 2300 of the record:

"Q While you served with the Japanese Army as an interpreter from October until the time of your liberation, did you receive ample food?

"A Not as much as I am fed by the American Army, sir.

"Q Did you lose weight during that time?

"A Yes, sir.

"Q Do you happen to know the value in calories of the food ration that you received while in the Manila area?

"A No, sir.

"Q What was the nature of your ration as to its balance? Did you have vegetables and fruits?

"A It consisted of rice, soup, meat, fish, and a little green vegetables, sir.

"Q Any fruits?

"A Very seldom, sir.

"Q Was the ration better or worse as you went to Baguio from Manila?

"A It became worse.

"Q It became worse?

"A Yes, sir."

Now, that was a soldier who was in the headquarters of General Yamashita during this period. He wasn't in any minor echelon; he was at a place where, if anywhere, we would expect the food situation to be at its best in the Japanese Army.

We submit that, on the basis of the Prosecution's witnesses, the food ration of the Japanese Army and the food ration of the civilian internees and prisoners of war was equally poor, equally low.

Defense witnesses made no claim that civilian internees and prisoners of war were well fed. They all frankly admitted they were not properly fed, but they all stated -- and I believe it is clearly proven -- that they were given the same ration as the Japanese Army, and that the best that could be done for them was

done.

One final word on this prisoner of war question. Let us come to General Yamashita and his affirmative action that he took for prisoners of war and for civilian internees. First of all, as I have just stated, he did everything he could to alleviate the food situation in the civilian internee and prisoner of war camps.

Secondly, I want to mention something that may appear in the evidence as minor, unimportant, small, but perhaps is indicative of something here. That is this: General Yamashita testified that during the entire time of his command in the Philippines he knew of only one prisoner of war who was captured, that is, one who was brought to his attention. The prisoner of war was captured near his headquarters. That is not unnatural, in view of a number of things: First, the poor communications, the lack of land communications between various parts of his command; and, secondly, the fact that he was on the run, he was retreating from the moment he started -- and when you retreat you aren't able to take prisoners. This particular prisoner of war, the only one brought to his attention, was given medical treatment and sent back to the American lines. Although a flyer, he was sent to the nearest outfit, which was the 32nd Division, and General Yamashita testified that he received a letter of thanks from the commanding general of the 32nd Division. That was Captain Shaw.

I say that is not important, it is a small matter, but I think it is indicative that the only prisoner of

war brought to General Yamashita's attention, who was captured, received that treatment.

Finally, and most important -- and this is very important -- we come to the question of the orders of General Yamashita for the freeing of prisoner of war and civilian internees. Far from ordering all American prisoners of war executed, or ordering any prisoners of war executed, General Yamashita's orders were to turn them over to the American forces at the earliest available time. Now, General Yamashita had an order from Tokyo -- this appears in the record on page 3543 -- he had instructions from Tokyo to the effect that the prisoners of war were to be released if the Americans approached. What were General Yamashita's further orders in carrying out that basic order? His instructions were that if the United States troops landed, long before any approach -- if they landed at all on Luzon, a roster of all the prisoners was to be made up and turned over to the protecting power, and that one month's supply of rations was to be prepared and was to be left with the prisoners. His order was that the list, the roster of prisoners, was to be forwarded to the United States Army through the protecting power. As General Muto testified, on page 3032 and page 3034 of the record, there was this slip-up: General Kou assumed that by "protecting power" was meant the protecting power of the United States -- Switzerland. He tried to find the representative, and there was none here. What was intended was the protecting power of Japan, who did have a representative here. But despite that slip-up,

the order was carried out, and when the Americans landed preparations were made to turn over the prisoners of war and the civilian internees.

In every one of the civilian internee and prisoner of war camps the prisoners were turned over without a hitch, with one slight exception -- and I say "slight," because in comparison with the whole number it was slight. At Santo Tomas there were 4,000 civilian internees. Thirty-seven hundred of them were immediately turned over to the American forces, set free before the American forces ever got there; that was the method. The commander at Santo Tomas disobeyed the order in one particular: He refused to let 300, who were living in the Education Building, go until he got a safe conduct for himself and his troops. This was a violation of General Yamashita's order, which made no such provision. It was not, so far as we are aware, a violation of any international law, because these prisoners were not taken from a place of safety and put into a place of danger at all, but it was a violation of General Yamashita's orders. General Yamashita's orders, had they been carried out to the letter, in Santo Tomas would have had 4,000, not 3,700, prisoners immediately released. As a matter of fact, the other prisoners were released after the safe conduct was granted.

There is one further element here. General Yamashita jumped the gun on the Tokyo order. He ordered the preparation for release of the prisoners upon the American landing, and not upon the American approach. As a result, as he testified, he was reprimanded by the Southern Army for

going too far in favor of the prisoners of war and the civilian internees.

We submit that on all of these prisoner of war matters that came to General Yamashita's knowledge or attention, he did everything that he could do for them. He did more than he was required to do, either by international law, by orders from his superiors, or from any other source of authority.

Now, sir, if I may, I wish to take my remaining time to discuss that part of the Prosecution's case which has to do with atrocities that occurred outside of the Manila area, which atrocities have already been taken up by Captain Sandberg. There are numerous items in the Bill of Particulars, and there has been much testimony about atrocities committed throughout the Islands, with particular emphasis on Batangas Province. It is impossible to consider these atrocities without considering at the same time the background of guerrilla activity that pervaded the Philippine Islands at the time that these atrocities took place. May I say that throughout this trial the Defense has made a point of bringing up the matter of guerrilla activity, not in justification of torture or in justification of execution of persons who were not guerrillas, but in explanation of the circumstances surrounding this entire bloody picture.

Now, the guerrilla situation, for purposes of our discussion, I believe divides itself into two parts: First of all, the factual situation and, secondly, the law applicable.

First of all as to the facts. We believe that it is now abundantly clear that the guerrillas were tremendously

active throughout the Islands, and particularly in the localities where the alleged atrocities occurred. We believe that it is clear that the activities of the guerrillas had been confined largely to espionage and intelligence missions prior to the Leyte landing, but that the Leyte landing was the signal for a flare-up and for the coordination of actual combat activities on the part of these guerrillas. These activities have been described by some of the witnesses, and they are fully covered in Defense Exhibit V, which is an extract from a G-2 document called "Guerrilla Resistance Movements in the Philippine Islands."

Now, it is interesting to know in this connection that the guerrillas not only harassed the Japanese, but that they also raided and terrorized civilians whom they suspected of Japanese sympathies or who did not cooperate with them in the manner in which they desired. We bring that to the Commission's attention at this time because we feel that in many of these cases where there is testimony simply that somebody came back to the scene and saw bodies and saw mutilation, that it cannot in all of those cases be assumed that the acts were those of Japanese troops.

Without taking the time to quote extensively from the testimony and documents, I just want to read one excerpt, a sample excerpt from Defense Exhibit V, the G-2 document. I quote -- this was about the guerrilla leader Merritt, one of the most active guerrillas:

"Merritt's relations with the civilian population under his control was reported to leave much to be desired. Reports indicated that the people were exploited by high

ranking Army officers and politicians, who made personal profits at the expense of the people. The people were held under control by terror tactics and anyone opposing the Army was eliminated."

Now, realization of the extent of the guerrilla activities in the areas covered by these atrocities makes it sometimes a little bit difficult to believe witnesses who, one after another, took the stand and testified that they knew of no such thing happening in their district; but it is true that a realization of the methods, perhaps the necessary methods of the guerrillas, does make those statements quite understandable. Occasionally the Commission was faced by the refreshing honesty of witnesses who testified as to guerrilla activities, and, in some cases, of their own connections therewith. I don't think it is necessary to belabor the point of the existence of guerrillas much further.

Now, secondly, we come to the other question: the question of law on the subject of guerrillas, which has already been touched upon to some extent by Captain Sandberg. This may be a difficult concept for us, as American soldiers, to appreciate. To us it is true that guerrillas were heroes who risked their lives and the lives of their loved ones to help us liberate the Philippine Islands. I, for one, certainly hope that the American people will some day realize the tremendous debt that they owe to the Philippine people, and in particular to the active guerrillas for the heroic work they did in helping us to win this war. Not only throughout this trial, sir, but throughout the entire preparation, throughout interviews with the Accused and the members of

his staff and staff officers, the Defense counsel have had an unparalleled opportunity to see the tremendous effect that the guerrilla resistance movement had on the morale, on the communications, on the fighting ability of the Japanese soldiers.

But in considering this case, this trial of General Yamashita, who is charged with being a war criminal -- considering this case we must put ourselves in the position of the Japanese forces. To us the guerrillas were patriots and heroes, and rightly so; but to the Japanese forces they were war criminals, and rightly so. They were the most dangerous form of war criminal: treacherous, ruthless, and effective.

Perhaps we can understand this better if we remember that after V-E Day, when our armed forces began the occupation of Germany, there were rumors that a Nazi organization called the "Werewolves" was in existence with the avowed purpose of striking at night and from hidden places, to ambush isolated groups of American occupation soldiers. Now, were we ready to regard those "Werewolves" as German patriots, as heroes willing to risk all for what they considered their homeland? Or were we ready to regard them as vermin that would have to be stamped out? Would we consider them honorable combatants entitled to the privileges of prisoners of war, or would we turn to our rules of land warfare, the Hague regulations, and take the correct position that they would be subject to execution and that we would have the right to use stern methods to exterminate them? I don't think there can be much question about this.

Defense Exhibit I, which was an extract from M-1

Operations Report of the XIVth Corps, United States Army, contained General Wainright's surrender terms as promulgated by Brigadier General Christie. This was a complete surrender of the Philippine Islands to the Japanese. The language as used by General Christie, quoting General Wainright's telegram, was:

"THE FORMAL SURRENDER OF ALL AMERICAN AND PHILIPPINE ARMY TROOPS IN THE PHILIPPINES. YOU WILL THEREFORE BE GUIDED ACCORDINGLY, AND WILL, REPEAT, WILL SURRENDER ALL TROOPS UNDER YOUR COMMAND TO THE PROPER JAPANESE OFFICER."

There follows in this document a complete description of every step that was to be taken to turn over all men, all arms, to cease all resistance, ending up with the very last one:

"IT IS ABSOLUTELY PROHIBITED THAT ARMS, AMMUNITIONS AND OTHER EQUIPMENT, MILITARY ESTABLISHMENT OR FOOD CACHES BE DESTROYED OR DISPERSED."

Even that was to be turned over. It was a complete surrender, as complete as possible; and legally, after that complete surrender, every man, woman and child who took up arms against the Japanese or distributed money or other aid to those who did take up arms, or gave shelter or gave aid and comfort for those who took up arms against the Japanese -- every such person, after a complete surrender of that type, is a war criminal. If captured, they are not entitled to any of the rights of a prisoner of war.

To be sure, there would have to be proof that the person captured was a guerrilla, was aiding the guerrillas, and our understanding is that you cannot say that such a

fact is proved unless there has been something that we call or choose to call in our parlance a "trial." But what kind of a trial must it be? The guerrilla suspect is not entitled, as a prisoner of war would be entitled, to the same kind of a trial that a Japanese soldier would get.

Now, the Prosecution has alleged that in all of these cases there was execution without trial. Maybe so, but what do they mean by "trial"? In practically all of these cases there was at least a semblance of what they call an investigation. Very often, this seemed to go no further than the action of a Filipino informer, sometimes with a mask on, pointing out guerrillas from a line of suspects, but in some cases it may have gone considerably further, and the evidence is not in all of the cases clear on that point. In some cases the evidence doesn't even show that there was any kind of an investigation.

But we are pointing this out to the Commission: that this is not only our position, as to the lack of necessity for a full trial, but it is the Prosecution's position that suspected war criminals are not entitled to the kind of a trial that a capturing Army gives its own troops. They have made that abundantly clear throughout this case. In the very beginning we raised the question, and claimed that because General Yamashita was a prisoner of war, that this trial would have to follow at least the rules laid down by the Manual for Courts-Martial, but the Prosecution took the position that General Yamashita, as an accused war criminal, was not entitled to the rights of a prisoner of war and that all of those known rules need not apply.

In the case of guerrillas, there is a much stronger situation, because the guerrilla never was a war prisoner and is not given the rights of a war prisoner, and it is the Prosecution's position that certainly he is not entitled to the kind of a trial that a prisoner of war would get. In so far as General Yamashita is concerned, as I said, it is our position that he is a prisoner of war; we are not, as I wish to point out, arguing the subject, because before this Commission it has been settled. But we want to point out that if the Prosecution is right, then it cannot be claimed that guerrillas are entitled to the specific type of trial a prisoner of war would get, and we submit that in any cases in which there is not clear proof that there was no trial or impartial investigation there is insufficient evidence on which to base a finding.

Now, this is not in justification of punitive expeditions that included the execution of small children or other persons who were not guerrillas, but there has been no testimony that General Yamashita ever ordered or permitted or condoned or justified or excused in any way these atrocities. All of the testimony, as a matter of fact, has been to the contrary. It is merely that we feel, as lawyers, that we have a duty to point out to the Commission the legal principles involved in the entire question of treatment of guerrillas.

Now let us see just what General Yamashita's attitude was on this whole matter. Let us put ourselves in his position. Coming to these Islands on the 9th of October, just before an imminent American landing, he finds

confusion, deterioration, and the danger of active guerrilla preparations for actual combat. He is faced with a dilemma. As a military commander he must take all steps to put down armed forces who threaten him, whether from the front or from the rear. If he doesn't do this, he is guilty of a dereliction of duty. On the other hand, he must do his best to gain the friendship and the aid of other civilians, other than guerrillas, because they are equally important in the defense of these Islands.

We submit that General Yamashita did precisely what he should have done under those circumstances. He issued an order in which he directed action against armed guerrillas, was careful to say "armed," and at the same time he informed his chiefs-of-staff -- I am now referring to page 3551 of the record -- "to think the matter over," that is, having to do with relationships with the Filipinos, and "to handle the Filipinos carefully, to cooperate with them and to get as much cooperation as possible from the Filipino people." He was forced to trust his subordinate officers to carry out those two orders to suppress armed guerrillas and to cooperate with and win the friendship of civilians who were not guerrillas. There is no question but that he did not receive any information to the effect that one of these two orders was not in effect carried out.

Now, the Prosecution will undoubtedly point out and claim that there were so many of these atrocities, that they covered so large a territory, that General Yamashita must have known about them. In the first place, a man is not convicted on the basis of what somebody thinks he must have known.

It must be proven beyond a reasonable doubt that he did know; the test known to criminal law is not negligence but intent. But in the second place, we submit that General Yamashita did not know and that he could not have known, and that it is entirely unreasonable to expect that he did know about any of these atrocities.

First of all, practically all of the atrocities took place at times and in areas that made communication of such matters practically impossible. Land communication was cut off early in the game, and Japanese wireless communication at its best was apparently somewhat worse than ours at its worst. It was reserved only for matters of operational importance. General Yamashita testified that he tried and failed to augment his inefficient communication system by the use of airplanes, that he tried to send sufficient staff officers and others to outlying units, but that the situation was such that they were cut off; that after the American landings on Leyte, Mindoro and Luzon, land communications were completely disrupted.

In the second place, not only was he physically unable to know of these things, but it is ridiculous to suppose that he would be told about them. His orders were clear: to attack armed guerrillas and to befriend and win the cooperation of other civilians. If there were any other orders, or if there were any orders to mistreat civilians, we may be sure that the able Prosecution, with their efficient staff of investigators and research men, would have produced those orders before this Commission. Captain Sparnon of ATIS testified that if any such orders were captured they would

have had such intelligence value that he would have seen them, and that he knows he has never seen any such order. The Prosecution's report put into evidence on the last day, from the liaison committee in Tokyo, contains a clear, negative answer to their request for the production of any such orders. There were none. When these atrocities occurred, they were committed in violation of General Yamashita's orders, and it is quite natural that those who violate a superior's orders are not going to inform him about that, either before or after the fact that they intend to do so or have done so.

It is not unknown, sir, that in many armies there may be some subordinate officers who break the law. Let us take, for example, in perhaps some army a subordinate officer who actually organizes groups of enlisted men and others to high-jack supplies and sell them in the black market in war-torn areas. Do these officers inform their superiors in advance of what they are going to do? Do they tell them afterwards that they have done it? There have been some diaries put into evidence in this case which support the Prosecution's testimony to the effect that certain subordinate officers ordered punitive expeditions, which resulted in the slaughter of innocent civilians. Now, is it reasonable to suppose that those subordinate officers informed their battalion commanders that their battalion commanders informed their regimental commanders, that their regimental commanders informed their divisional commander, that the divisional commander -- suppose he was in Batangas -- informed General Yokoyama, that General Yokoyama informed General Yamashita, and that perhaps

General Yamashita informed Count Terauchi, and that Count Terauchi informed the Imperial General Headquarters, and that the Imperial General Headquarters informed the Emperor -- either before or after the commission of any such crime?

We believe that the Prosecution, in its summation, will undoubtedly review for us these bloody, horrible atrocities. No human being could hear those stories without a feeling of revulsion and a perfectly normal desire for revenge. But we know that this is a court of justice, and not a court of vengeance. We don't say that those atrocities did not occur; we do take the position that some of them have not been proved by evidence of any probative value. We do say that some of the witnesses have been less than completely frank about guerrilla activities and about the numbers of victims involved in these matters. These are perfectly normal mistakes for witnesses to make, witnesses who have been subjected to the psychological and physical strain at the time of the occurrences about which they testify.

But I think it is interesting to note, in connection with the testimony as to numbers of persons involved, which seems to be a basic part of the Prosecution's case because they say that because of the number there must have been knowledge -- in that connection it is in point, we think, to quote from a paragraph from the extracts of the M-1 Operations Report, XIVth Corps, U. S. Army, which has been put into evidence before the Commission. I will read just one paragraph from this report:

"Guerrilla sources of information proved to be invaluable as to the location of enemy, but, in general, numbers

were grossly exaggerated. Guerrilla bands, among which there were several women, would report a group of 300 to 400 enemy in a barrio. Upon investigation, it was found that two or three Japs were in the village. In the Batangas campaign civilians reported a group of 1,000 to 1,500 Japanese soldiers moving to the East along the North Shore of Lake Taal. Later, when the group was considered annihilated by the 1st Cavalry Division, the counted enemy dead were 106. In many cases the enemy was reported in certain barrios by one or more civilians who desired only to have the prestige of being escorted home by a military guard. In the final states of the Central Plains and Batangas campaigns, civilians reported enemy concentrations in district barrios and villages for the sole purpose of enticing troops to their villages where they could sell them local produce. Despite all this chicanery, the information, when properly evaluated, was of value."

No, we don't say that these atrocities did not occur. We tried throughout this trial to show that General Yamashita had no connection with them. To place them in their proper value, may we remind the Commission that the witnesses that the Prosecution has presented are not only to be regarded as the victims of individual cruelty, but that what this Commission has been shown has been the victims of war in all of its ugly horror. There is not a nation in the world that has taken part in this war on either side that cannot produce a tale of death and torture of innocent, noncombatant civilians, including helpless women and babies, who suffered because of what someone on the other side decided was military necessity.

Our answer to the torture of noncombatants, whether they were victims of Sheridan's destruction of Atlanta, the shelling of French cities and villages in this war, or even the bombing of Hiroshima and Nagasaki, is that there was destruction by reason of military necessity.

Now, what answer can be given to the noncombatant victims in the Province of Batangas? Perhaps some subordinate commander thought there was military necessity for such action. If so, not only do we feel that he was wrong, but General Yamashita feels that the subordinate commander was wrong.

But does this charge mean merely that someone was guilty of a mistake in judgment on the question of military necessity? If so, who made the mistake? Certainly not General Yamashita, on military matters! Not in all these weeks of testimony has there been one word indicating that he made such a decision, and I submit that to attribute so ridiculous a move to a man of his military sagacity is fantastic. General Yamashita's orders were clear; they were based on sound military strategy, namely, to suppress armed guerrillas and to attempt to win the friendship and cooperation of other civilians. If the perpetrators of these acts were not guided by any thought of military necessity, then they must have been guided by simply an insane impulse, the insane acts of insane people, and General Yamashita is no more responsible for them than he would be for the acts of any other persons who violated his orders and played directly into the hands of his enemies.

We return finally to this basic question that I mentioned

before, of control, control of troops, which is the essence of the charge against General Yamashita and which is basic to the discussion not only of these atrocities, the prisoner of war camp question and the accusations relative to the City of Manila, and so forth. In this matter we can do no better than to call your attention to one or two short portions of General Yamashita's own statements on cross examination. If you will remember, he gave a rather long answer to the opportunity that was offered him by the Prosecution to explain how he could fail to know about these matters. He pointed out that he was constantly under attack by large American forces, under pressure day and night. He said, "Under these circumstances I had to plan, study and carry out plans of how to combat superior American forces, and it took all of my time and effort.

"At the time of my arrival I was unfamiliar with the Philippine situation, and nine days after my arrival I was confronted with a superior American force. Another thing was that I was not able to make a personal inspection and to coordinate the units under my command. It was impossible to unify my command, and my duties were extremely complicated.

"Another matter was that the troops were scattered about a great deal and the communications would of necessity have to be good, but the Japanese communications were very poor.

"Reorganization of the military force takes quite awhile, and these various troops, which were not under my command, such as the Air Force and the Third Maritime Command,

were gradually entering the command one at a time, and it created a very complicated situation. The source of command and coordination within a command is or lies in trusting your subordinate commanders. Under the circumstances I was forced to confront the superior U. S. forces with subordinates whom I did not know and with whose character and ability I was unfamiliar.

"Besides this I put all my efforts to get the maximum efficiency and the best methods in the training of troops and the maintaining of discipline, and even during combat I demanded training and maintenance of discipline. However, they were inferior troops, and there simply wasn't enough time to bring them up to my expectations."

He then spoke about his difficulties with communications, his attempt to better his land communications, and he pointed out that they were completely disrupted after the landings. "And under conditions like this," said he, "with both the communication equipment and personnel of low efficiency and old type, we managed to maintain some liaison, but it was gradually cut off, and I found myself completely out of touch with the situation. I believe that under the foregoing conditions I did the best possible job I could have done. However, due to the above circumstances, my plans and my strength were not sufficient to the situation, and if these things happened they were absolutely unavoidable."

Now, I point that out because shortly thereafter General Yamashita was asked this question, on page 3660:

"Q You admit, do you, that you failed to control your troops in the Philippines?"

"A I have put forth my maximum effort in order to control the troops, and if this was not sufficient, then somehow I should have done more. Other people might have been able to do more, but I feel that I have done my very best.

"Q Did you fail to control your troops? Please answer 'yes' or 'no'.

"A I believe that I did control my troops."

That answer is, of course, a legal and factual conclusion which only this Commission can decide, but also it must be taken in the context of his previous answers, particularly the long answer which preceded it.

Now, actually there is no question about this. General Yamashita did not have full control over all of his troops at all times. While these atrocities were being committed, he did not actually control the actual perpetrators in a strictly factual sense. Yet on paper, as a commander, he can give no other answer. I suppose that there have been rapes, and that there has been mistreatment of prisoners of war by all armies -- isolated cases, at least. And I don't suppose that any commander would say that he controlled a man while he was in the act of committing rape or mishandling a prisoner of war, but if you asked any of those commanders whether they controlled their troops they would certainly say they did.

Another matter: Suppose that it were a state of fact, sir, that approximately 20 percent of all of the supplies shipped into a certain area by service troops were pilfered or stolen, in many cases by the troops themselves. Certainly the commanding officer of that particular services of supply would not say that he did not have control of his troops, and

7
yet actually he would not have real control of the perpetrators at the time they committed the theft. And furthermore, he would not be held criminally responsible as a thief, and he would not even be held responsible financially for the loss.

General Yamashita's problem was not easy. Harassed by American troops, by our Air Force, by the guerrillas, even by conflicting and unreasonable demands of his superiors, he was on the run from the moment he got here. Of course he didn't have time to inspect prisoners; of course all he could do about the guerrilla situation was to give orders to suppress armed combatant guerrillas and befriend and cooperate with other civilians, and trust his subordinates to carry out his orders.

When we judge him, sir, we must put ourselves in his place, and I say that unless we are ready to plead guilty before the world to a charge of hypocrisy, to a charge that supinely succumb to a mob's desire for revenge, then we must find General Yamashita not guilty of these charges!

GENERAL REYNOLDS: There will be a recess for approximately ten minutes.

(Short recess.)

GENERAL REYNOLDS: The Commission is in session.
The Defense may proceed.

COLONEL CLARKE: The Prosecution, in the presentation of its case, has called over 250 witnesses to the stand and has introduced into evidence many ex parte affidavits in support of the allegation of the charge. The testimony thus adduced was directed almost exclusively to the proof of the atrocities alleged in the Bills of Particulars. A minute fraction thereof attempted to impute to General Yamashita the knowledge of the commission of the atrocities and, in a few instances, the ordering of the commission of the atrocities.

One witness, whose testimony would tend to charge General Yamashita with having ordered the massacre of civilians and the destruction of the City of Manila, is Lapus, a collaborator during the Japanese occupation. This witness testified that he had contacted General Ricarte in March 1942, and that he had devoted part of his time in aiding General Ricarte in performing his mission of preparing the groundwork for Philippine independence. He continued working with General Ricarte until the month of June 1942, at which time he was arrested by the military police and charged with having committed the crimes of espionage and sabotage. He was tried and sentenced to death but was informed that he could save his life if he would agree to corroborate to the end with General Ricarte. Despite the fact that Lapus had been assisting General Ricarte for three months prior to his arrest, he would ask this Commission to believe that he inquired as to the kind of cooperation

which would be required because, in his own words, "If it was against my conscience I preferred to be executed."

Thus, to save his life, Lapus became the confidential secretary to General Ricarte and was the one and only person in the Philippines who enjoyed the confidence of General Ricarte.

It was to this man, and this man only, that General Ricarte confided that General Yamashita had issued a general order to all commanders of the military posts in the Philippine Islands to wipe out the whole Philippines, if possible, and that General Yamashita had stated that he had orders to destroy Manila.

General Ricarte kept Lapus informed of the various meetings he had with General Yamashita at which times, he, Ricarte, had pleaded with General Yamashita to rescind his order to massacre the Filipinos, but to no avail.

The Commission will recall the inconsistencies in the testimony of Lapus and his attempts to explain those inconsistencies. The Commission will remember Lapus' eulogy of General Ricarte, in his direct examination and in the cross examination and his statements that he had never experienced any lies from that man for the long years that he had relations with him, and that he had heard General Nagasaki say to General Ricarte, "You are not a human being; you are a god," and that General Ricarte was a man of ideals and a puritan and did not care about materialistics.

Later on cross examination, Lapus testified that although he was the confidant of General Ricarte, the

General held mental reservations as to the witness's loyalty. When asked to explain why General Ricarte entertained such mental reservations, Lapus attempted to extricate himself from that untenable position by reversing the import of his prior statements as to General Ricarte's character by testifying that, "The Japanese are tricky; they never tell the truth; they always have something in your back. That is the way General Ricarte thought."

A reversal of his testimony came easy to the man who would rather be executed than betray his conscience.

Lapus was emphatic on direct examination and on cross examination in denying that he had been promised any reward if he would testify in this case, or that he had contacted the CIC and offered to testify for a consideration, or that he had asked anyone for any consideration for himself or his family in return for his testimony in this case. He testified that he volunteered as a witness in this case to serve justice and to help my country and to be redressed of all these crimes committed by this man.

The Defense introduced into evidence the CIC file relating to Narcisco Lapus. This file contained letters written by Lapus to the Chief of the CIC offering to tell his story in return for the release from confinement of his son, his houseboy and himself, the return to the son of all his property now under the control of the CIC or the monetary equivalent thereof and other benefits to himself and the members of his family.

In view of the unexplained inconsistencies in his testimony and his deliberate statement under oath that he

had made no request for any reward for his testimony, contradicted by letters written and signed by him, now a part of the official records of the CIC, no credence can be given to any of the testimony presented by Lopus before this Commission.

Lopus was followed by Galang, another collaborator who testified that he was a constant visitor to the home of General Ricarte and that on one occasion when he was at the Ricarte home, General Yamashita, by himself, unaccompanied by an aide or other officer, called at the Ricarte home. General Ricarte and General Yamashita, with Ricarte's thirteen-year-old grandson as the interpreter, engaged in a conversation which he, Galang, heard and the grandson interpreted the conversation. Galang testified that in this conversation General Ricarte said to General Yamashita, "I would like to take this occasion to ask you again to revoke the order to kill all of the Filipinos and to destroy all of the city," and that General Yamashita answered, "An order is an order; it is my order. It should not be broken or disobeyed."

Thus did collaborator Galang corroborate the testimony of collaborator Lopus. Galang further testified that although he had been arrested in February 1945, and had talked to a member of the CIC, he had not mentioned this conversation between General Ricarte and General Yamashita; in fact, he had not mentioned this conversation to anyone until he related the story from the witness stand.

The Commission will recall the testimony of the thirteen-year-old grandson of General Ricarte, who, clearly

and without equivocation, testified that he had not interpreted the conversation alleged to have taken place between his grandfather and General Yamashita in the presence of Galang. The grandson also testified, that in his opinion, if his grandfather had known that an order to massacre Filipino civilians had been issued by General Yamashita, General Ricarte would have ceased immediately his labors in the interest of the Japanese Government. To anyone who knows the history of the life of General Ricarte, the opinion of the grandson is well-founded.

The testimony of Galang and the inference to be drawn therefrom, namely, that General Ricarte, a man who believed in the independence of the Philippines and who had the courage of his convictions to the extent that he lived in exile for thirty years, would continue to work in the interests of a power which had ordered the destruction of all that he had believed in, is absurd and in view of the frank testimony of the grandson of General Ricarte in denial thereof, it is not worthy of belief.

The Prosecution introduced into evidence an ex parte statement wherein the affiant, among other things, said that he had seen a number of Red Cross packages, some of which had been opened and the contents appropriated, stored in a room in General Yamashita's headquarters in a building in the City of Manila.

Even though the affiant may have seen Red Cross packages stored in a room as he described, he was mistaken in his assumption that they were stored in a room in General Yamashita's headquarters.

Defense witnesses and prosecution witnesses have testified that the headquarters of General Yamashita, from the day he arrived in the Philippines, from the 9th of October 1944, from the day that he assumed command of the 14th Army Group until the 26th of December, 1944, the day he moved his headquarters to Ipo, that at no time during that period of time did General Yamashita have his headquarters in any office in the City of Manila.

A witness who testified concerning the execution of three American prisoners of war on Batan Island, attempted to establish the fact that General Yamashita had ordered all prisoners of war on Batan Island to be executed. This testimony was predicated upon a statement made to him by a Japanese officer, a frequent visitor at the home of the sister of the witness, who, according to the witness, made the statement not only in the Japanese language, but also in the Tagalog language, without identifying the source of information. Testimony of this character can have no value in imputing to General Yamashita, not only knowledge of the illegal execution of prisoners of war, but, in fact, the ordering of the execution.

An ex parte affidavit of Corporal Harold W. Memmler, formerly a prisoner of war, interned in the prisoner of war camp at Cabanatuan, was introduced into evidence by the Prosecution; the attention of the Commission being called to a sentence in the affidavit reading:

"Also General Yamashita, Philippine Japanese Commander, visited the camp twice, saw the conditions there and did nothing to improve the situation."

The Defense introduced into evidence, as an exhibit, a message from Washington signed SERVJAG to CINCAFPAC, which contained the following information:

"Steps undertaken to obtain an additional statement from Memmler. No other information in this office that Yamashita visited Cabanatuan. Believe possibility of error in Memmler's statement."

This message coming from an official source, indicates that Corporal Memmler was mistaken in his identification of the officer whom he identified as General Yamashita, a visitor to Cabanatuan.

In view of the circumstances and the testimony discrediting the testimony of the collaborators Lapus and Galang, the apparent mistake in the testimony of the affiant, who thought that the Red Cross packages he saw in a room in a building in the City of Manila were stored in the headquarters of General Yamashita, the character of the testimony imputing that General Yamashita gave an order, via radio, to execute prisoners of war on Batan Island, and the message from SERVJAG, Washington, stating that there was no other evidence in that office that Yamashita visited Cabanatuan and the belief, therefore, of the possibility of error in Corporal Memmler's statement, there is no credible testimony in the entire record of trial which in any manner supports any contention that General Yamashita had ordered or had actual knowledge of the commission of any of the atrocities set forth in the Bills of Particulars. Without knowledge of the commission or the contemplated commission of the offenses, General Yamashita

could not have permitted the commission of the atrocities. Before there could be permission, there would have to be knowledge of the acts or act to be permitted.

We do not deny the commission of atrocities by Japanese troops, but the fact that atrocities were committed does not charge General Yamashita with knowledge of the commission thereof, nor can knowledge be inferred therefrom under the conditions which existed during the period in which the atrocities were committed.

What were those conditions? Briefly, this is the picture.

General Yamashita, unfamiliar with the Philippine situation, assumed command of the 14th Area Army on the 9th of October, 1944. He did not know the members of his staff and he was not familiar with the character and the ability of his staff officers. Before he had an opportunity to make any estimate of the situation, within nine days after he assumed command of the 14th Area Army, the American forces landed on Leyte. From the 18th of October, 1944, until the surrender of General Yamashita in September 1945, this command was engaged in combat.

The original plan for the defense of the Philippines contemplated that troops of General Yamashita in Leyte would cooperate with the air force and the navy in the event of an attack on Leyte. However, the manner in which the American troops landed on Leyte, demanded an immediate abandonment of the original Leyte defense plan, and the substitution of a new plan.

As a result of the change in plan, General Yamashita,

on the 21st or 22nd of October, 1944, was ordered to send immediate reinforcements to the Leyte area. The execution of this order, with the attendant confusion and added duties and responsibilities placed upon General Yamashita and his staff, demanded a concentrated effort of all concerned to the exclusion of all other duties. The first troops to be transported to Leyte were equipped, embarked and sailed from Manila on the 28th of October; 50,000 troops were shipped between October 28 and December 3.

American troops landed on Ormoc on 7 December, and to add to the confusion at General Yamashita's headquarters, a staff officer from the Imperial General Staff arrived and demanded that additional troops be equipped and shipped to the battle area.

5,000 troops were assembled and preparations were made for a counter-landing, but before the troops could be transported from Manila, the American troops landed on Mindoro, nullifying the plan and the preparations for the execution thereof which had been accomplished by General Yamashita's headquarters.

General Yamashita was faced with the defense of Luzon proper. He decided upon a delaying action plan of defense, necessitating concentration of his troops in the mountainous areas. His attempt to put this plan into execution was complicated by the destruction of his supply lines, his lines of communication, his motor equipment and his supply dumps by American aviation and by guerrilla bands.

Under adverse combat conditions, with the myriad of problems which had to be solved in fighting a losing battle,

neither General Yamashita or the members of his staff could or would have time for any duties other than that of an operational nature and could not, and did not know of the commission of the acts set forth in the Bills of Particulars by troops whose imminent and inevitable death turned them into battle-crazed savages. Nor is General Yamashita or the members of his staff chargeable with any dereliction of duty in not learning of these occurrences.

The evidence adduced by the Prosecution, therefore, does not establish that General Yamashita or his headquarters, issued orders directing the commission of the atrocities set forth in the Bills of Particulars, nor does it establish that General Yamashita or his headquarters had any knowledge thereof, nor that General Yamashita or his headquarters permitted the commission thereof, nor that under the circumstances then existing General Yamashita unlawfully disregarded and failed to discharge his duty as the Commanding General of the 14th Area Army in controlling the operations of the members of his command, thereby permitting them to commit the atrocities as alleged.

The only possible basis for imputing to General Yamashita any criminal responsibility for the commission of these atrocities is that of his status as the Commanding General of some of the troops involved in the commission thereof.

The United States does not recognize a criminal responsibility predicated upon the status of the individual as a Commanding General of troops, but does recognize the criminal liability attached to a Commanding General for the

improper exercise of that command. The United States has defined the criminal liability of offending individuals against the Laws of War in War Department Publication, "The Rules of Land Warfare," FM 27-10, Section 345.1, wherein criminal liability is defined and limited to individuals and organizations who violate the accepted laws and customs of war.

Under this section, the liability for war crimes is imposed on the persons who committed them and on the officers who ordered the commission thereof. A war crime of a subordinate committed without the order, authority or knowledge of the superior officer, is not the war crime of the superior officer.

In addition to the failure of proof of the criminal responsibility of General Yamashita for the alleged offense, the witnesses for the Defense have testified that no orders directing or authorizing the commission of the alleged acts were issued by General Yamashita nor by his headquarters; that no reports of any of the acts were received by General Yamashita or his headquarters; that under the circumstances General Yamashita and the members of his staff were absorbed in the duties incident to combat to the exclusion of other duties normally performed by an army headquarters, and that the proper functioning of General Yamashita and his staff officers was complicated by enemy action, disabling and destruction of supply lines, lines of communication and motor equipment, the lack of gas and oil for the operation of the vehicles, which were not damaged, and the consequent impossibility to keep

advised of the status of the administrative functioning of his command.

General Yamashita elected to take the stand, be sworn as a witness, and subject himself to direct examination and cross examination in the interest of truth and justice. Throughout hours of questioning, General Yamashita told this Commission the true facts as they existed during the period of time covering his command of the 14th Area Army in the Philippine Islands.

The intensive cross examination of General Yamashita failed to develop any inconsistencies in his testimony. However, an apparent inconsistency was developed in his testimony relating to the delegation of courts-martial jurisdiction to the Shimbu Army and the authority of the Commanding General of the Shimbu Army, as well as the authority of the Commanding General of the 35th Army to confirm sentences of death imposed by a courts-martial or a military tribunal.

In view of prior testimony to the effect that there were no courts-martial trials of prisoners of war in the Philippines during his period here, that a death sentence adjudged by a military tribunal would have to be approved by the Accused, that a sentence of death adjudged on a charge of being a guerrilla would have to be approved by the Accused, when the question of the approval of death sentences by the Accused was first introduced into the testimony of the Accused, the following questions were asked on page 3589 of the record:

"Q Did you have a Staff Judge Advocate?

"A There was no Judge Advocate in the staff. However, there was a Judge Advocate officer within the Judge Advocate Department.

"Q The Judge Advocate Department belonged to what unit?

"A It was part of the 14th Area Army Headquarters.

"Q Was Colonel Nishiharu the head of that department?

"A Yes.

"Q Were all death sentences in the 14th Area Army approved by you?

"A It requires my decision.

"Q Were any prisoners of war in the Philippines sentenced to death by courts-martial?

"A During the time I was here, there was none."

And continuing the questions from that time on, the answers of General Yamashita were made in the approval of death sentences in the Philippines.

The Commission will note that the first four questions related to the 14th Area Army and that the next question related to the Philippines. The Accused, having been questioned concerning the 14th Army Judge Advocate, and approval of death sentences in the 14th Army, assumed and had the right to assume that the questions following the first four questions which related to the 14th Area Army, related to his command of the 14th Army Group, and the answers given by the Accused to the questions were consistent with that assumption.

Consequently, that which appears to be a discrepancy in the answers of the Accused is not, in fact, a discrepancy,

but the result of the mistaken assumption on the part of the Accused that the questions referred to his courts-martial jurisdiction of the 14th Area Army.

The testimony of Colonel Nishiharu to the effect that he had informed General Yamashita that it would be necessary to change the method of trying suspected guerrillas and that General Yamashita gave his approval of the suggestion by a nod of the head, was denied by the Accused and this denial was corroborated by General Muto, to whom Colonel Nishiharu believes he talked about the same opinion.

It will be noted that throughout the entire testimony of Colonel Nishiharu he was vague in his remembrances of those facts attempted to be elicited by questions, as well as the military justice procedure in the Japanese army. I believe that the lack of memory as to most every event which happened, except his remembrance of the one opinion he gave to General Yamashita relating to a change in the courts-martial system, is best accounted for in the answer given by General Muto to the question: If during December 1944, Colonel Nishiharu was a trusted or responsible member of your staff, to which his answer being, "At that time his head was a little clearer and he had a better memory ."

General Yamashita, testifying as a witness in his own behalf, has denied that he issued any orders directing the commission of any act of atrocity, that he had received any report of the commission of such acts, that he had any knowledge whatsoever of the commission of such acts, that he permitted such acts to be perpetrated, or that he condoned the commission of such acts.

We respectfully request that this Commission, after an analysis of the evidence adduced by the Prosecution and the Defense and after weighing this evidence in the scales of American justice, will exemplify the concepts and the standards of American justice, the keystone of American democracy, by returning a finding of not guilty of the charge.

GENERAL REYNOLDS: The Commission will recess until 1:30 this afternoon.

(Whereupon, at 1130 hours, a recess was taken until 1330 hours, 5 December 1945.)

AFTERNOON SESSION

(The trial was resumed, pursuant to recess, at 1330 hours.)

GENERAL REYNOLDS: The Commission is in session. You may proceed.

MAJOR KERR: Sir, all members of the Commission are present; the Accused and Defense Counsel are present. We will proceed.

ARGUMENT ON BEHALF OF THE PROSECUTION

MAJOR KERR: If the Commission please, we shall open our closing argument or discussion with reference to the charge upon the basis of which this proceeding has been held.

The charge is that the Accused, a "General (of the Imperial Japanese Army, between 9 October 1944 and 2 September 1945, at Manila and at other places in the Philippine Islands, while commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly the Philippines; and he, (the Accused), . . . thereby violated the laws of war".

I intend, sir, to point out the extent of our proof of the basic requirements of this charge and to show that the Prosecution has established the truth of the charge

as stated.

In the first place, the evidence of course is that the Accused was a General of the Imperial Japanese Army. The dates, 9 October 1944 to 2 September 1945, are established in the record as being the period of time during which the Accused was the commander of the 14th Area Army, its subordinate units and its attached units in all of the Philippine Islands. There is no question as to that. Furthermore, there is no question as to the proof that the Accused during that period of time did command armed forces of Japan then at war with the United States of America and its allies.

We contend, sir, that the evidence also shows clearly, conclusively that during that period of time the Accused did unlawfully disregard and fail to discharge his duty as such commander to control the operations of the members of his command and that he permitted members of his command to commit brutal atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly the Philippines.

We contend further that his dereliction of duty in that regard clearly is a violation of the laws of war.

The principal contentions as between the Defense and the Prosecution have been as to whether or not the Accused did fail to perform a duty which he owed as commander of armed forces in the Philippines, and, secondly, whether or not if he did fail to perform that duty, if he were derelict in the performance of that duty, such constitutes a violation of the laws of war.

Analyzing the closing argument of Defense Counsel I would say that those are the two issues at this time before the Commission. There is no question as to the atrocities having been committed. Defense Counsel has acknowledged that. The Commission has seen and has heard hundreds of witnesses, themselves victims of the wrongful acts of members of the Japanese armed forces in the Philippines. We repeat: There is no question, there can be no question as to the commission of the atrocities. There is no question as to where the atrocities were committed. From Davao City in the south on Mindinao Island to north in Batan Island beyond the northern limits of Luzon, from practically one end of the Philippines to the other, these atrocities were committed in the Philippine Islands. The people who were the victims of those atrocities were well identified and most of them, of course, were citizens of a dependency: the Commonwealth of the Philippines. There is no question as to those points in the charge having been adequately covered by the proof.

On the point of whether or not the Accused unlawfully disregarded and failed to discharge a duty to control his troops:

First, does the proof, does the evidence establish that it was the duty of the Accused to control his troops in the Philippine Islands?

The Accused himself on the witness stand acknowledged freely that he was familiar with international law applicable in this field. He stated that he had studied it and given it great care and was familiar with it. He

freely acknowledged, or, I should rather say, he "did" acknowledge, that an officer in his position owed a duty to control his troops. I refer now to page 3647 of the record which is a part of the testimony of the Accused:

"Q Are the standards of ethical conduct by professional soldiers substantially the same throughout civilized nations?

"A It is the same.

"Q Is it a recognized duty, among soldiers, of a commanding officer to control his troops so that they do not commit wrongful acts?

"A It is a recognized duty."

The Accused then has acknowledged that he was under a duty to control his troops so that they would not commit wrongful acts.

The question then arose as to the responsibility so far as punishment goes of the commander of such troops under Japanese law. We have the, I presume, very carefully-considered (in any event, written) statement of the Accused on that subject which was presented to the Commission and read by the interpreter. And that appears on page 3674 of the record. Therein the Accused states that, If the commanding officer ordered, permitted or condoned the crime which was committed by his troops or his subordinate, then that commanding officer would be subject to criminal punishment under the military law of Japan; if in spite of all that the commanding officer did or could have done he took all possible means to prevent the crime committed by his troops or his subordinate, and yet that crime was committed

thereby, then the commanding officer, despite all of the efforts which he made, bears administrative responsibility to his superiors.

I repeat, sir: There is no question as to the crimes having been committed; there is no question as to the Accused having been in command of the troops who committed the atrocities.

The question then arises, Was the Accused responsible for the acts of those troops which he commanded, the acts which resulted in these atrocious crimes?

The crimes having been committed, the atrocities having been established, of course the next question is, Who is responsible?

We contend that clearly under the laws of war, under international law, the commanding officer who was in command of those troops, who was in the theater, who owed the admitted duty to control those troops so that they would not commit those acts, is responsible.

In passing let me point this out: So far as the laws of war are concerned there is no distinction between criminal responsibility and administrative responsibility. If an act constitutes a violation of the laws of war the death penalty may be assessed irrespective of whether or not under the military laws of the nation involved or in civil law there would or would not be a criminal responsibility. I believe that is clear. It is so stated in our own basic Field Manual on the laws of war. I quote now from page 357 of Field Manual 27-10, Rules of Land Warfare. It reads as follows:

"All war crimes are subject to the death penalty although a lesser penalty may be imposed."

Therefore we contend that if the Commission finds that a violation of the laws of war was committed by the Accused, irrespective of whether or not under the laws of Japan or the military regulations of Japan the punishment would be criminal or merely administrative, the Commission, if it sees fit to do so, may assess the death penalty or such lesser penalty within the provisions of the regulations prescribed by the convening authority as it may deem to be proper under the circumstances.

With respect to the duty of the Accused the Commission will recall that the testimony showed that Marshal Terauchi left the Philippines on 17 November 1944 and, according to the testimony, at that time the Accused took over the responsibility and the duty of handling the civil affairs in the Philippines. That is the statement of the witness General Muto on pages 3073 and 3074 of the record.

In other words, as we interpret that statement, the Accused became to all intents and purposes after the 17th of November 1944 the military governor of the Philippine Islands. He was the highest military commander in this area. It was his duty, in addition to the duty as a military commander, to protect the civilian population. There became added to his duty as a military commander the further duties of a military governor.

With respect to the atrocities or the wrongful acts which the evidence has established as having been committed in the Philippines during the period of the Accused's

command, I see no need at this time reviewing the unpleasant details of those terrible tragedies which were visited upon the civilian population of the Philippines. The Commission will recall, probably all too vividly for its own peace of mind, the nature of those atrocities. I do desire to point out, however, that in many, many instances those acts were under the leadership of officers -- commissioned officers! Defense Counsel has referred to these atrocities as having been committed by "battle-crazed men under the stress and strain of battle". That is not the evidence! That is not the evidence! The atrocities which were established before this Commission are atrocities, wrongful acts committed by military units or men then acting as a part of military units under the command of noncommissioned officers or of officers. We have not presented to this Commission instances merely where soldiers, members of military forces on their own time, on leave, on furlough, three-hour passes or the equivalent thereof, committed excesses or violations of law. The atrocities before this Commission were committed by armed soldiers of the Imperial Japanese forces embarked upon military missions. Obviously, clearly so! They were led; they were commanded; they were acting as military units in a military operation.

That is quite a far cry from sudden breaking of bounds of restraint by individuals on their own initiative, on their own time. We submit, sir, that the evidence shows that these atrocities were carefully planned, carefully supervised; they were commanded.

Take the German Club massacre, for instance (the Commission will recall that clearly), where hundreds of civilians, men, women and children, took refuge under the substantial structure then in use by the German Club in the City of Manila. They were surrounded by armed Japanese who piled furniture and other materials around the foundations of the building, then set it afire.

The Commission will recall that a spokesman for those civilian refugees, the manager of the German Club, went forward; went outside to find the officer who was in charge of the Japanese and talked to him and pled with him to let these people, who were noncombatants, go free. The Commission will recall the testimony, uncontroverted, not denied in any particular, entirely credible, that the Japanese then in charge of those men denied the request and forced that spokesman to go back under the Club. Whereupon those who remained there were burned to death; those who sought safety outside were bayoneted, pursued, killed or wounded.

Time and time again in these atrocities there were that same command, that same supervision, that same obvious plan. These were not wild, drunken orgies by individual soldiers on their own! Not at all!

I submit that we have no instance where the evidence indicates that such was the case. Counsel has referred to the number of civilians who lost their lives in these atrocities in the Philippines and in that connection made reference to guerrilla reports which he stated were unreliable

as to totals given. What possible connection that discussion of guerrilla reports has with the number of persons our evidence shows were massacred, killed in the Philippine Islands during the period of the Accused's command, I do not see at all.

The testimony is explicit as to the atrocities. The Prosecution has gone to great pains to establish the names, the identities of the victims. The testimony as to the number of people who lost their lives or who were wounded has been the testimony of eyewitnesses. We did not place before the Commission exhibits such as this, which is Exhibit No. 315, for nothing. This is a photostat copy of the official records of the Municipality of Tanauan, Batangas, bearing the names (hundreds of them!) of persons who were established to have been killed in that area. That particular exhibit is supported by the oral testimony of witnesses to the effect that those people were killed in that area and that they were killed by acts of Japanese.

I submit there is no basis for any question as to the number of persons who were affected by the atrocities, evidence on which we have presented to the Commission.

For instance, the exhibit and the testimony with respect to Batangas go down even to one last figure: 25,709 civilians in Batangas Province, according to the record on page 2519. We submit that that is extraordinarily explicit for a case of this nature.

The atrocities having been established, the command of the Accused over the forces involved having been estab-

lished, let us examine into the defense or the excuse offered by the Accused.

The Accused asserts that he had no knowledge of these acts. He states that if he had had knowledge or any reason to foresee these acts he would have taken affirmative steps to prevent them.

In explanation of his claim that he had no knowledge he asserts that his communications were faulty. Let us examine the record on that issue.

General Muto on page 3059 of the record stated that General Yokoyama, who commanded the Shimbu Shudan, responsible for the Manila area during the battle for Manila, reported to him when the American forces reached the Pasig River on the 3rd of February. General Muto further testified that the report came through from General Yokoyama on the 4th of February that the Americans had arrived in the vicinity of Nichols Field and that it appeared as if the Navy forces would be surrounded.

General Muto also testified on page 3063 that the last report he received concerning the fighting in Manila was at the end of February -- the end of February!

It is interesting to note the comments or testimony of General Yokoyama, who, after all, is in the best position to know what were the communications, since he was in the middle. The chain of communications or avenue of communications from the Accused on into Manila passed through General Yokoyama except in so far as they had communications directly with the Naval radio in Manila. I am now quoting from the testimony of General Yokoyama

on page 2674. This relates to the communications between General Yokoyama and his subordinate, Admiral Iwabuchi, whose forces were a part of the Shimbu Shudan under the overall command of General Yokoyama.

"Q Between February 23rd -- after that time did you keep in contact with Iwabuchi at all times?

"A There were times when I had liaison and there were times when I did not have liaison with him.

"Q Were you able to get all of your important orders to him during that period?

"A Until about the 10th of February I was able to get them through comparatively successfully. From then until the 20th I was able to receive messages on several occasions. On the other hand, the important messages which I sent out did arrive regularly.

"Q Did you have communication with Yamashita from December, 1944, until the end of hostilities? Did you have communication with Yamashita from December 1, 1944, until the surrender?

"A To be specific, until the early or middle part of April I can say that there was no interruption in communications between us. From then on communications deteriorated until about the middle of June and they were completely severed. Since then I have had no communication.

"Q Between February 3rd and February 20th, 1945, did you send reports to Yamashita?

"A I sent them every day, as much as I could.

"Q Did you receive reports from Iwabuchi during

that period?

"(Answer) I received them up until the 10th of February, and from then to the 20th occasionally.

"Q How did Iwabuchi receive his orders?

"A Are these orders from myself that you refer to?

"Q From yourself or from Yamashita.

"A All orders from General Yamashita for Iwabuchi came to me and I transmitted them direct to Iwabuchi."

We submit, sir, that that establishes there was adequate communication during the period of the battle for Manila between Yamashita, on the one hand, and Yokoyama and, on the other hand, between Yokoyama and Iwabuchi. We believe that that conclusively spikes any contention on the part of the Accused that he did not have communications which he could have used for the purpose of obtaining the requisite information of what was going on in or in the vicinity of Manila.

With respect to communications I should like to point out that there is nothing in the record to the effect that the Accused did not have communications throughout with Batangas Province. The Accused testified, General Muto testified with respect to the intelligence operatives or representatives, the intelligence personnel, who were established throughout the Philippines and in response to direct questioning acknowledged that such personnel were placed in Batangas Province. The Accused acknowledged that reports from Batangas concerning guerrilla activity were received from time to time. And I repeat: The

record does not show that the Accused did not have communication with Batangas Province or that Yokoyama, the subordinate commander under Yamashita, did not have such communications. Therefore there is nothing in the record to show that the Accused could not have been fully informed as to what was going on in Batangas. True, he acknowledged that he made no request for information; he did not request reports. He says "I received no reports". Is that satisfaction of the duty to control his troops? Does that constitute an adequate effort or any effort at all to control, to supervise his troops, to protect the civilian population?

We contend it clearly was not an adequate or even any effort at all. He has not shown as a matter of defense that he could not have obtained the information as to what was going on in Batangas if he had desired to do so. Irrespective of any question of his actual knowledge, if we accept his position that he did not know, there still remains this stubborn fact: that he did not make an adequate effort to find out; else he would have known. And he has not shown that he could not find out so far as Batangas is concerned, nor so far as Manila is concerned.

He contended that he did not have communications. We believe that an examination of the record will show that the testimony of competent witnesses such as General Yokoyama, General Muto, is conclusive on that issue. They did have communications. Perhaps the Accused did not endeavor to use those communications for the purpose of acquainting himself with the developments and the activities of the battlefield in Manila. Perhaps not! It was his

duty to do so. It was his duty to know what was being done by his troops under his orders, under his commands.

Now the matter of press of duties:

Whenever the Accused was asked upon the witness stand, "Did you endeavor to find out what was going on? Did you endeavor to find out what your troops were doing?" the answer invariably was "No. I received no reports. I asked for no reports".

"Why not?"

"I was too busy. I had many things to do. I was being pressed by the enemy."

That, sir, is no answer. The performance of the responsibility of the commanding officer toward the civilian populations is as much, as heavy a responsibility as the combating of the enemy. And if he chooses to ignore one and devote all of his attention to the other he does so at his own risk, because he is deliberately choosing then to disregard a substantial part of his duty as a commanding officer.

Furthermore, let us examine into this matter of being "too busy" to perform the duties of the commanding officer.

The Accused acknowledged that he made seven or eight trips into Manila, some of which confessedly were for social purposes or at least involved considerable time in social activity or political activity. Apparently in those connections he had weighed between the responsibility to protect the civilian populations of the Philippines, to control his troops, and his mission in the political field. He saw fit to slight the one and devote his attention to

the other. Again he assumed the risk in doing so.

Why, sir! the Accused acknowledged that he did not even take the trouble to step the few steps from his headquarters buildings in Fort McKinley over to the prisoner-of-war camp where some 450 American prisoners of war were incarcerated to supervise the activities of his subordinate officers. He didn't even take that trouble! He had time to come down into Malacanan for a social visit; he had time to drink with Ricarte and others in his own headquarters building, but he did not have the time because of press of duties to step those few steps or to ride in his car over there to the barracks where our prisoners of war were being starved or improperly treated, according to the evidence; or even time or interest enough to note that those barracks in which our men were kept were not marked as protection against bombs by our own forces -- certainly a humanitarian measure which anyone who had any interest in the welfare of the enemy captives would have taken.

Again as to notice or knowledge, many of these atrocities were committed very, very close to the headquarters at that time of the Accused. The tortures by the military police in the Cortebitarte garrison here in Manila over a period of time were not committed in faraway Cebu. According to the evidence, they were the normal, the customary, the general practice right here in the City of Manila. He has testified that the garrison was not far from Fort McKinley. The Accused testified he did not inquire as to the methods being pursued by the military police. He made no effort to find out what they were

doing. He did not visit even Fort Santiago, which of course he knew was the headquarters of the military police here and the place of incarceration of the guerrillas. He was "too busy" for that!

Our answer to that, sir, is not that he was "too busy" but that he was too disinterested. He did not care. At least he did not care enough to take the time and trouble of looking into those matters.

With respect to the testimony concerning whether or not the Accused visited Cabanatuan, very well! we shall agree that the Accused did not visit Cabanatuan, if the Defense so desires. Where are we now? The Accused never visited any of the prisoner-of-war or civilian internee camps according to his own testimony, including, as I said before, Fort McKinley where his own headquarters building was. Very well! We are willing to let the record stand on that. He did not take the trouble to visit any of those camps.

That alone is a bit startling, but when we couple it with the confession of the Accused that he did not require reports concerning those camps other than the normal reports which were made from time to time, despite the fact that he had been informed that the food situation was bad, he made no inquiry and took no special pains to find out whether that condition improved or became worse, even though he himself (he says by virtue of necessity) had required the reduction of the ration.

We contend, sir, that when Yamashita found it necessary to reduce the ration of the civilian internee camps

and the prisoner-of-war camps, then he certainly was on notice that the condition in those camps thereafter would be extremely bad and it was his duty to look into that and see if there were not something that could be done to alleviate those conditions.

The Defense offers as the supreme example of solicitude for the welfare of the prisoners of war and the civilian internees the order which the Accused issued for the release of these unfortunate captives upon the approach of our own troops. Certainly! The Accused was beaten and he knew it. He was a beaten man. He has acknowledged in the testimony that he foresaw defeat before that time. And that, we believe, was simply an effort to make up for past derelictions on his part and the part of his command. Merely an effort to improve the record! "Too late!" And of course it was a natural act for a man to foresee his doom. We venture to say that no such humanitarian act would have been committed by this officer unless he had known that that was the last phase of the campaign in the Philippines.

While we are on the subject of prisoners of war let us discuss the Palawan incident.

The Accused acknowledged that he knew that prisoners of war were working on Palawan Island. The evidence is clear, of course, that the prisoners of war generally were under the Accused. He as commanding general in this theater was responsible for the care, custody and well-being of those prisoners of war. He knew that those prisoners of war were on Palawan Island. He also acknowledged

that he knew that they were being worked on airfields or an airfield installation.

In response to questions he stated that, in his opinion, airfield work was entirely legal, that is to say, in accordance with international law, so long as the airfield was not under attack -- an interpretation of the Geneva Convention which we believe to be wholly unwarranted. It was a military installation and, according to the Geneva Convention, the prisoners of war shall not be required to work on a military installation. It was an installation to be used against their own nation, against their own forces. It was illegal, a violation of the Geneva Convention for those men to be worked on that airfield at all. The Accused has acknowledged that they were being so worked and that he knew it.

If, with the Accused's knowledge and apparently consent and approval, those men were being worked in that illegal manner and as a result of that illegal act they lost their lives through murder, we contend that the Accused is responsible. He was responsible for the custody, the well-being of those men. It is immaterial that under the Japanese procedure or regulations those men may have been turned over to another organization outside his immediate command for that type of work. It was his duty to see to it that the men under his control, the men for whom he was responsible, were not turned over for illegal work. And when he found out that that had been done after his arrival here he owed those men and he owed humanity a duty to do everything he could to get them back and get them

out of that illegal work. There is no evidence that he ever even made that effort.

Therefore we contend that he is responsible in the Palawan case irrespective of whether or not he immediately commanded the forces which were working those men on the airfield at the time.

Furthermore, the evidence shows that there were army forces on that island. There is a reference in one of the affidavits to the "army troops" guarding the prisoners of war at that time. We acknowledge that the evidence on that point is obscure and is not clear as to whether or not the troops who were guarding those unfortunate prisoners of war at Puerto Princesa, Palawan were under the direct command of Yamashita. But we say that, irrespective of that point, this man had the duty of seeing to it that the requirements of international law, of the Geneva Convention with which Japan had agreed to comply, were complied with in his jurisdiction with respect to men for whom he was responsible. Having failed to meet that responsibility, to perform that duty, we say he is responsible for the consequences.

The Accused testified several times in several ways to the effect that he was anxious that the prisoners of war be properly treated. I call the Commission's attention to this statement by General Muto as a witness for the Defense which appears on page 3024 of the record, and I quote:

"After my arrival General Yamashita had never issued any special orders on these subjects" (the treatment of pri-

and conduct of prisoner-of-war camps)".

The food situation:

The Commission will recall the testimony of the men who were in the camps, who were civilian internees at Los Banos, at Santo Tomas; will recall the affidavits on that subject with respect to Cabanatuan. The evidence in the record is that according to the observation and the personal knowledge of internees the Japanese garrison at each of those camps actually was getting better food and more food than the internees were getting. The Commission will recall the testimony of the man who worked in the kitchen.

With respect to Old Bilibid Prison the Commission will recall the testimony of the men to the effect that they were forced to eat garbage scraps while in the kitchen where the Japanese guard was being fed ample food was served the guards and personnel of the Japanese forces.

Furthermore, the testimony is replete with references to efforts made both by the internees themselves through their own organization, their own funds, to bring food in which was available from the outside and which they had been able to buy until orders later forbade it or restricted it; food which they knew to be available. The testimony is replete with references to efforts made by people on the outside to bring food in. And for some inexplicable reason the Japanese authorities either from time to time absolutely forbade such food to be brought in or so restricted it that it became impractical to get it in.

All this time, of course, the Japanese forces, whatever may have been their issue of rations from the commissary in the garrison, were free to get food from the outside.

The Commission will recall that on cross examination it was brought out from one witness, a guard or employee in Santo Tomas, that the Japanese personnel there had pigs and other food in addition to the issue of the Japanese forces which was not available to the civilian internees. And he finally frankly acknowledged that the internees were worse off so far as food was concerned than the Japanese guards.

So that whatever the situation may have been outside with respect to food -- starvation among the people -- irrespective of whatever the problem may have been of distribution of food to the Japanese Army, the fact remains that food was available to these civilian internees if the Japanese had permitted it to come in. They didn't see fit to do that. They are responsible for the results.

We submit, sir, that the evidence concerning the murder of George Louis and Patrick Held, Los Banos, was clear and that it has not been controverted by evidence produced by the Defense. We believe the record shows very clearly that those men were murdered; that is to say, that there was no justification in law or in humanity for the killing of those two men.

In the case of George Louis it will be recalled that he was on the way back to the camp enclosure when he was shot and the evidence is that there was no trial between the time that he was originally wounded and apprehended and the time of coup de grace or when he was executed. Eye-witness accounts show that he was simply summarily disposed of -- no court-martial, no trial. And the same way with Patrick Held. And we see no basis upon which the Commission could reach any conclusion other than that those two men were summarily disposed of by the Japanese forces, clearly in contravention of the prisoner-of-war agreement. They had no trial.

There is no evidence, of course, that the Accused ordered those executions. However, the executions were carried out by men under his command. And we contend that the very method by which those executions were accomplished; the callous disregard, complete disregard of the prescribed procedure, shows that those men were acting under approval. Otherwise they would have never dared to be so arbitrary.

The Defense has painted Yamashita as a man of iron discipline; a man who controlled his troops, exacted the

last measure of military discipline of the men under him. They say that that was his reputation in Japan before he came to the Philippines, that that was his general reputation among military men.

Very well! If we accept that, it makes it all the more unlikely that his subordinates would have violated, as obviously they did in these many, many ways -- flagrantly violated -- not only the regulations of the Japanese army but the regulations and the principles of mankind, unless they had felt and had known that their conduct was approved and permitted by the Accused. If he had a reputation as such a disciplinarian and if those acts had been contrary to his desires, to his orders, certainly those men (many of them high generals) never would have dared to proceed on that basis.

With respect to guerrillas, that is an interesting position the Defense takes. Apparently their contention is that the Japanese were goaded into committing atrocities or wrongful acts by guerrilla activity. Surely they did not mean to assert that these executions, these massacres in Batangas, for instance, or in Manila, wherein many thousands of women and children were butchered, constituted or were intended as the execution of guerrillas.

If that be their position, it is palpably a false one because a baby in arms is not a "guerrilla." And the testimony uncontradicted showed that these people were unarmed. They had no trial. Their hands were tied behind them or they were otherwise fettered and they were butchered --

again by military men acting as military units, squads, platoons, led by officers, noncommissioned and commissioned. These massacres were not in the heat of battle. The Americans were not anywhere around at the time.

Therefore I believe the Defense will have to acknowledge that those executions were not executions of guerrillas or, if they were, that there certainly was no trial.

Reference was made to a possible investigation by the "evil eye" or the "magic eye", the hooded man who pointed out certain people to be executed. That is not "investigation"! That certainly is no trial! And I was astonished that Counsel would even refer to it as a possible "trial". It bears no semblance of a trial. A trial in every nation of the world offers the person accused the opportunity to know what is the charge and the opportunity to defend himself, to answer it. And these poor people certainly had neither!

All right. They were not guerrillas, or at least they were not treated as guerrillas. They were not given a trial. They were certainly not armed. The only remaining possibility is that they were massacred, and we say they were.

The defense to that or the explanation of that simply is that the Japanese troops in that area got out of hand; they were goaded by guerrilla activity and they were desperate and they resorted to unauthorized, unlicensed activities. More than 25,000 people over a period of more than a month or practically six weeks were massacred in that methodical, obviously-planned way and, as

the evidence indicates very strongly, under the orders of the highest military commander in that area: General Fujisige. The Accused's position is that he did not know, he did not realize, he did not approve, he did not order! Let us look at the record on that.

Prosecution's Exhibit No. 4, which is an ATIS translation of a captured document, which includes an order issued by the Shobu Group (and this order later was identified by the Accused himself as having been issued by him on 11 October 1944), is a Philippines operation plan summary or summary of Philippines operations guide. It goes into some detail as to the plan for the defense of Luzon and the Philippines. It includes this paragraph:

"In view of the special characteristics of the Philippine operations, subversive activities of the residents and attacks in our rear by airborne raiding forces must be considered. In order to avoid mistakes in combating the operations, take precautions against armed guerrillas, subjugate them quickly, and put a stop to their activities."

The Accused testified that this order was discussed at a staff conference at which there were present all the chiefs of staff of subordinate units and the commanding officers of a number of units, the headquarters of which were located close to his own headquarters, at which time obviously there was an oral discussion of this general plan. We do not know what was that oral discussion. We do not know the extent to which this paragraph concerning the suppression of guerillas was expanded upon, added to or explained. We do know that it was discussed at this staff

conference.

We also know from the testimony of General Muto, as appears on page 3086 of the record, that about the middle of November (this is almost a month or more than a month after this order of 11 October was issued) Yamashita gave orders for the control of guerrillas as a result of the Leyte campaign. Of course the Leyte campaign had not started when this other order was issued on 11 October. Therefore if additional orders were given, of course they had to be sometime about the date given by Muto. In other words, he says, about the middle of November as a result of the Leyte campaign, Yamashita gave orders for the control of guerrillas. He said that it was necessary to break up the bands of armed guerrillas and he gave orders to that effect.

Yamashita himself had this comment to make: "As the Americans approached the people in those areas gradually became more hostile I knew of this from the time I first arrived here because of the activities of the armed bandits or guerrillas." And on page 3578 Yamashita stated that he knew of guerrilla activity in Batangas. He said that he left the method of suppressing those guerrillas to the local commanders. And, finally, despite all of his previous build-up as to the terrific problem of the guerrillas, he said that the guerrillas were only a "minor matter"!

That was the order, the action taken by General Yamashita with respect to guerrillas. "Suppress them"! "Mop them up"! And action was taken apparently under that

order.

The Commission will recall the testimony of Colonel Fujisige, the Commanding Officer under Yokoyama in the Batangas area. He identified, acknowledged the written record that we had of a conference which he had held with subordinate commanders in which record there appeared this instruction: "Kill American troops cruelly. Do not kill them with one stroke. Shoot guerrillas. Kill all who oppose the Emperor, even women and children".

We had this interesting situation in that connection:

General Fujisige acknowledged that six of the seven paragraphs of that note taken by someone at the conference were exactly correct, but this particular paragraph relating to "Kill American troops cruelly" he disavowed. Everything in that paper was put down by the recorder absolutely exactly except that one paragraph, which happened to be the one that was embarrassing to the witness. However, he testified that in the middle of November he received orders from Yokoyama to "mop up" the guerrillas in his area. He testified further that a little later, either in November or early December a staff officer from Yokoyama's headquarters came around and told him that the "mopping up" of the guerrillas in his area was behind schedule and that he would have to see to it that it proceeded with greater rapidity. And, finally, on the 1st of January 1945 he received word from the Shimbu Group, Yokoyama's command, that even women and children were carrying weapons and they must be on guard against that.

These orders from Yamashita to "mop up", "suppress"

the guerrillas obviously resulted in the Batangas area in the mass killings which followed sometime later. Of course these orders do not say "massacre all civilians!" But Yamashita knew the hostility of the residents of the Philippines, according to his own testimony. He knew the guerrilla activity. He knew that his troops were being harassed. He gave them an order which naturally under the circumstances would result in excesses, in massacres, in devastation, unless the order were properly supervised. He unleashed the fury of his men upon the helpless population and, apparently, according to the record, made no subsequent effort to see what was happening or to take steps to see to it that the obvious results would not occur -- not a direct order, but contributing necessarily, naturally and directly to the ultimate result.

We maintain, sir, that if the Accused saw fit to issue a general order to suppress guerrillas under circumstances as they then existed, according to his own testimony, he owed a definite, absolute duty furthermore to see to it that that did not open wide the gates of hatred of his men leading them to wreak vengeance upon the civilian population. Obviously he did not do that. That is a part of his responsibility.

Again with respect to guerrillas, the contention is that they were always given a trial according to military law and according to the dictates of international law.

The Commission will recall the testimony of Sakakida which appears on pages 2253 and 2302 of the record. He stated that 2,000 Philippine civilians were tried in one

week in December in Manila -- one week in Manila! -- and that he saw five American women, including Mabel Jurika and Mary B. Stagg, beheaded in North Cemetery. The Accused asserted that the only method authorized for the execution of guerrillas was shooting. Beheading and bayoneting were not approved, were not authorized and would be contrary to regulations. Therefore the testimony is that the regulations of the Japanese army were being violated in Manila.

Sakakida testified as to the procedure followed in those so-called "courts-martial". He testified that the Judge Advocate's office was only two houses removed from the office of the Accused at Fort McKinley and that conferences frequently were held at the Judge Advocate's office at Fort McKinley concerning the disposition to be made of accused guerrillas.

Exhibits 319, 320 and 321 were introduced and identified by Sakakida. Those are records of courts-martial trials. Each trial was held in December of 1944.

The real significance of those exhibits has not as yet perhaps been perceived. Exhibit 321 is a record of a court-martial proceeding held on 13 December 1944. It is signed by three officers. It has three signatures and is under the name of Shobu Unit Court-Martial -- in other words, 14th Area Army. The date is 13 December 1944.

Exhibit 320 relates to a court-martial proceeding on 22 December 1944 -- 22 December! And it was again a Shobu Unit court-martial, with only one signature.

Exhibit 319 likewise is on the same date, 22 December 1944, Shobu Unit court-martial, with one signature.

The testimony of Colonel Nishiharu concerning his conference with Yamashita whereby there was decided upon a summary method of court-martial trial for guerrillas then in custody in Manila took place between the 13th of December and the 22nd of December, according to his testimony. His testimony is substantiated by these records. On the 13th of December they were having regular court-martial proceedings with three officers; the record was signed by three officers. On the 22nd only one officer was signing. And the testimony of Sakakida and the testimony of Nishiharu both are to the effect that under the normal court-martial procedure of the Japanese army three officers functioned at the so-called "trial", and Nishiharu testified that under this summary procedure only one officer was to perform the functions normally performed by three.

Those exhibits, sir, do substantiate the testimony of Colonel Nishiharu as to the conference with Yamashita, which the Accused saw fit to disavow, to deny.

Incidentally, an interesting sidelight on those exhibits is this:

It will be noted that the first name on Exhibit 319 is the Accused Henry Guy Lindobloom. He is charged with having given guerrillas 150 gallons of coconut alcohol. The death sentence was adjudged to that accused. Yamashita testified the other day that giving food to guerrillas was not a capital offense punishable by death. He later changed that testimony somewhat, saying that under some circumstances it might be so punishable. Here is one case where they did punish a man apparently because he gave 150

gallons of coconut alcohol to guerrilla forces.

Whatever the procedures of the courts-martial under Yamashita may have been, whatever the procedures of the courts-martial conducted by the subordinate units, Shobu Group and the 35th Army, both of which he said had court-martial jurisdiction that he issued himself, he acknowledged that he made no effort to determine what those courts-martial were doing. So far as he knows, they may have proceeded entirely in violation of all regulations, international or otherwise. He doesn't know.

He stated that no American prisoner of war was tried by court-martial. But he cannot possibly know one way or the other because he said he received no reports from them; he said he requested no reports; he made no effort to determine what they were. So therefore his testimony concerning the trial or lack of trial of American PW's is simply discredited because he wouldn't know. Nobody told him and he didn't take the trouble to ask anyone as to what were the facts.

The same way with respect to trials by military tribunals of civilian internees. He does not know who was tried; he did not inquire; he did not get reports.

With respect to Colonel Nishiharu's testimony the Defense Counsel saw fit to refer to it as "confusing". It was not "confusing" in particular to Prosecution, and if the Commission will re-read the record of that testimony I believe it will find that it does make sense.

Colonel Nishiharu was told by a Major that a large number of guerrillas were on hand in Manila; too large a

number to be tried by the normal court-martial procedure prior to the removal of the 14th Army headquarters to Baguio. He was further told by that Major that if nothing were done about it by the Judge Advocate all of those men would be executed by the military police. He felt that they deserved a better fate, that they should be given some semblance of a trial, which he knew the military police would not give them. Therefore he devised a summary procedure whereby instead of three officers sitting in a normal court-martial "passing upon the case", if you call it that, two officers would handle all of the thousand-or-some guerrillas involved and one officer would serve as the investigating or judicial officer representing the Judge Advocate.

He took that to Yamashita and, to his disappointment, Yamashita showed very little interest in the matter. He merely nodded! He merely nodded!

We can explain that lack of interest on the part of the Accused and we say it is in character according to all of the evidence in this case. Yamashita didn't care one way or the other! That is all there is to it. "Sure! Handle them any way you see fit! Go ahead!"

Colonel Nishiharu did the best he could. He had to go on to Baguio. He even went to the trouble later of trying to get reports as to who was executed, and he said that the reports showed that 600 of those guerrillas or accused guerrillas actually were executed.

GENERAL REYNOLDS: The Commission will recess for approximately ten minutes and then the Prosecution will continue.

(Short recess)

GENERAL REYNOLDS: The Commission is in session.

MAJOR KERR: Sir, before the recess I was discussing the so-called courts-martial of guerrillas. In leaving that subject, I would like to point out that on page 3878 of the record we have the testimony of the Accused himself to the effect that he was responsible or, as he stated, "It was my responsibility" for enforcing the regulations governing courts-martial in all of his subordinate units.

Therefore, all of the testimony of the Defense with respect to the establishment of courts-martial jurisdiction in the Shimbu group, under General Yokoyama, and the fact that the 35th Army Command had courts-martial jurisdiction, is beside the point. If courts-martial were not being conducted according to the requirements of Japanese military law and, more specifically, in compliance with the requirements of international law, it was Yamashita's responsibility -- and he admitted as much.

True, a suspected guerrilla is not afforded any particular type of trial by international law. However, it must be a trial; and the bare minimum of a trial, so regarded in any civilized nation, would be knowledge of the charges, an opportunity to defend, and a judicial determination of guilt or innocence on the basis of the evidence.

We submit that the procedure followed in these summary cases, as testified to by Colonel Nishiharu, and more particularly by the witness Fermin Miyasaki, certainly did not follow any such procedure. It was the testimony of the Accused that death sentences could not be executed or carried out except through court-martial and with his approval, or

the approval of at least one of two other officers: the commanding general of the 35th Army, the commanding general of the Shimbun group. And yet we have the testimony of Miyasaki, who was connected with the Military Police, a civilian interpreter at the Cortabitarte garrison in Manila, as set forth on page 2154 of the record, to the effect that the Military Police executed large numbers of people without trial, without any court-martial.

I refer precisely to his testimony on page 2154:

"Q Well now, in your capacity as interpreter, did you have occasion to know that the Military Police was charged with the duty of executing the sentences of the court-martial?

"A Only those people who were to be given prison sentence were sent to the court-martial. Those who were released, being found innocent, or those who are going to be executed, were never sent to the court-martial.

"Q Well now, after a court-martial reached a verdict for an execution, who executed that sentence?

"A I think the court-martial did.

"Q The Military Police did not execute that sentence?

"A Those prisoners who are going to be executed were never sent to the court-martial."

In other words, if the Military Police saw fit to decide a person was going to be killed, a death sentence assessed, that person didn't go to a court-martial; he was executed by the Military Police.

General Yamashita denied that he had ever given the Military Police authority to carry out death sentences, or

authority to try and assess death sentences; and yet, according to this competent testimony of the interpreter at the Cortabitarte garrison headquarters here in Manila, that was the practice of the Military Police. If Yamashita didn't know it, it was his fault! He didn't choose to know it! He didn't inquire, he didn't require any reports, he didn't ask what they were doing, he did not investigate! There is no testimony even that he had any staff member look into that matter. He didn't care! He was too busy, and yet, presumably, thousands of innocent people were summarily executed without trial, simply because of the lassitude and the lack of interest on the part of the commanding general.

There is no question that the Military Police were directly under the command of Yamashita; he acknowledged that. The testimony is all to that effect. He certainly owed a duty to find out, to know what the Military Police were doing. If they proceeded improperly, contrary to his wishes, it was simply because he didn't check on them, he didn't supervise.

Now, continuing with some of the chain of evidence leading from this general order, or these several orders by Yamashita to suppress or mop up guerrillas, down to the actual massacres that we know took place all over the Philippines, I remind the Commission of Exhibit No. 6 which, again, is a translation of a captured Japanese document. These are instructions by General Yamashita as commanding general of the 14th Area Army, otherwise known as the Shobu Army group. These are extracts, and

I quote:

"The enemy's casualties have reached 60,000 as a result of the daring action of the Army Group (Shudan)."

And this, incidentally, is dated 15 February.

"The operation is progressing as planned. The opportunity to crush the American onslaught is closer at hand."

He states, as of 15 February, that "The operation is progressing as planned." Obviously, that is the Luzon operation, as of 15 February.

"Orders:

"Raise the morale higher. Develop fighting spirit as such to have one man kill 100 enemy soldiers.

"The Army expects to induce and annihilate the enemy on the plains of Central Luzon and in Manila. The operation is proceeding satisfactorily.

"Whether the enemy's strength and plans will be destroyed in our great counter-offensive depends on the future daring actions of all officers and men. The front line troops and personnel, who are responsible for supply transportation in the rear, will develop a fighting spirit and a determination to kill 100 of the enemy for one of our men."

And the Commission will recall that in the Fujishige Conference he stressed exactly the same point: "Each one of your men will kill 100 Americans to his own life"; the same identical idea. We contend that there is reasonable ground for determining the same idea that Fujishige expressed -- "Kill Americans cruelly; kill even women and children who oppose the Emperor", as they appeared in his

instructions on that date -- that that came also from above, came from the same source, came from Yamashita.

In another exhibit in evidence, Exhibit 386, is an extract of a notebook diary covering a period in February, and this extract is a portion of diary entries made by a man who had just arrived in Manila. The entry for 7 February 1945:

"150 guerrillas were disposed of tonight. I personally stabbed and killed 10."

They weren't shot, as Yamashita said the regulations required; they were stabbed! You can imagine how!

"8 February 1945. Guarded over 1,164 guerrillas which were newly brought in today.

"9 February 1945. Burned 1,000 guerrillas to death tonight."

They certainly weren't executed by shooting!

"10 February 1945. Guarded approximately 1,000 guerrillas.

"13 February 1945. Enemy tanks are lurking in the vicinity of Banzai Bridge. Our attack preparation has been completed. Am now on guard duty at guerrilla internment camp. While I was on duty, approximately 10 guerrillas tried to escape. They were stabbed to death. At 1600 all guerrillas were burned to death."

In the same exhibit, this translation of a captured Japanese order is set forth. This is a Kobayashi group order, Kobayashi Heidan, dated 13 February. The Commission will recall that the Kobayashi group was part of the Manila defense force directly under Yamashita. Then,

according to the diagram which is in evidence as a Defense exhibit, showing the situation as of 1 January 1945, the Kobayashi Heidan is a part of the Shimbu Shudan, or General Yokoyama's force. It is not a naval force, but an army force. According to the evidence, it was based and was operating in Manila.

This is an order of that Kobayashi group:

"1. The Americans who have penetrated into Manila have about 1,000 artillery troops, and there are several thousand Filipino guerrillas. Even women and children have become guerrillas.

> "2. All people on the battlefield with the exception of Japanese military personnel, Japanese civilians, and Special Construction Units (GANAPS in the Filipino language) will be put to death. Houses" -- and the order breaks off at that point.

That, sir, is not an order for naval troops by Admiral Okoochi, or Iwabuchi; that is an order by the commander of the Kobayashi group, Lieutenant General Kobayashi, or Major General Kobayashi, who commanded Army units in Manila under Yokoyama who, in turn, was under Yamashita.

Now, the evidence shows frequently that Army personnel, Army officers or Army enlisted men, as distinguished from Navy personnel, were participating in the atrocities in Manila. Apparently they were doing their best to carry out the order of this military unit, this Army unit:
"Kill all Filipino civilians."

I refer now to extracts from Exhibit 388, again part

of this significant chain of orders which followed that one general order by General Yamashita to kill all guerrillas, to mop them up or to suppress them. Extract from diary notebook dated July, 1944, to 22 May 1945, captured in Luzon on 23 May 1945:

"February 1945. Every day is spent in hunting guerrillas and natives. I have already killed well over 100. The naivete I possessed at the time of leaving the homeland has long since disappeared. Now I am a hardened killer and my sword is always stained with blood. Although it is for my country's sake, it is sheer brutality. May God forgive me! May my mother forgive me!"

In the same exhibit, an extract of a diary belonging to a member of the 116th Fishing Battalion, dated December, 1943, to 17 April 1945 -- the Commission will recall that the evidence is that some of the so-called "Fishing" battalions were under the control and command of the 14th Area Army:

"10 February 1945. By order of the Army, we began punitive operations against the Filipino terrorists and killed 500 of them."

And let us remember that the Accused said he knew of only 44 cases where the death penalty had been approved by him for guerrillas. There are none for prisoners of war, none for civilian internees; only 44 cases. And he further said, in response to repeated questioning, that the most, the greatest number in any one of those cases, was three. Therefore, we may liberally say a total of 150 maximum, and here we have evidence by the perpetrator

that they killed at least 500.

"12 February 1945. We left for Calamba by automobile with the mission of carrying on punitive operations against the inhabitants of the town. We killed 800 men and returned at midnight.

"13 February 1945: For security reasons, all inhabitants of the town (presumably Anilao) were killed and all their possessions were confiscated."

All inhabitants of the town were killed; all the possessions were confiscated! Is that an activity against guerrillas? Is that after trial? Is that the unauthorized, disapproved activity of drunken battle-crazed men? Not at all! It was a military expedition by order of the Army, and we maintain in all earnestness that this sheds light on the intent, the purpose, and gives an explanation of these otherwise inexplicable massacres down in Batangas and elsewhere in the Philippines. They were expeditions, organized, deliberate, planned, and most mercilessly and cruelly carried out.

"Until yesterday we lived in the hills or in fishing barrios and we had only salt to go with our rice. But today we are in Paradise. There is nothing that we cannot obtain. Although there were a tremendous number of watches, rings, suits, shoes and dresses, we couldn't take them back with us, and so we had to burn them with great regret. Everyone has 3,000 or more pesos in cash. We had all we wanted of good things to eat.

"17 February 1945. Because ninety percent of the Filipino people do not feel pro-Japanese but on the

contrary are anti-Japanese, Army headquarters issued orders on the 10th to punish them. In various sectors we have killed several thousands (including young and old, men and women, and Chinese, in addition to Filipinos). Their houses have been burned and valuables have been confiscated."

Then on 17 March 1945:

"Caught and killed four natives (three children and their mother)."

In the same exhibit, an extract from a notebook belonging to a member of the 64th Infantry Regiment, dated 19 December, presumably 1944, to 27 March:

"Taking advantage of darkness, we went out to kill the natives. It was hard for me to kill them, because they seem to be good people. Frightful cries of the children were horrible. I myself stabbed and killed several persons."

In the same exhibit, an extract from a notebook kept by Machine Gun Company of West of the Lake Sector Unit, containing operations orders and intelligence reports dated 13 February to 23 March 1945:

"Instructions. 1600, 17 March.

"1. Leaving tonight at 1930.

"2. We shall march to Mahina.

"3. There will be many natives along our route from now on. All natives, both men and women, will be killed."

The Defense saw fit to refer to the victims of the Japanese and the Filipinos as the victims of war. Victims of war!

Is this warfare?

We have another explanation for it. We say they are the victims of Yamashita! They are the victims of the type of warfare that was conducted by Yamashita; by the troops under him.

Certainly they are not the victims of the type of warfare that the Laws of War, international laws, recognize. That is plain.

This also is of interest: Sakakida testified that he was in the headquarters of Yamashita at Baguio after the headquarters had been moved from Manila. He said that in February of 1945, that it was common talk in Yamashita's headquarters, among the officers and the men there, that the military police were denying or refusing permits to the people in Baguio who had come there from their homes in the lowlands, with the idea that Baguio would not be bombed, but who after the headquarters had been established there, to their knowledge, and who desired to get out because they foresaw the bombing of the headquarters by the American planes, permits to those people to leave the city were denied by the military police until finally such permits were made available and were being issued, and according to this common talk, they were being issued to the people to go down the one route which would take them by or in the vicinity of Rosario, where they were to be murdered by

army troops.

They were to be massacred -- shall we say suppressed -- in that locality. That was his testimony. That is on page 2271 of the record.

On pages 2655 to 2661 of the record appears the proof, testimony concerning the killings at Rosario. In that atrocity men, women and children were murdered as they were proceeding down that route. Thus, that substantiates that general rumor in Yamashita's own headquarters. That is coming very, very close, sir, to the Accused himself.

However, I suppose that if he is not interested or was not interested in the welfare of the Filipino people in the performance of his duty to protect them, to the extent of inquiring from time to time as to what his troops were doing in various areas where he knew guerrilla activities were great, where he had ordered guerrillas suppressed, if he was not interested sufficiently as to the civilian population, the American prisoners of war and internees, and the conduct of those who were directly in custody of them; if he was not sufficiently interested in the military police, to inquire from time to time to determine what they were doing and the methods of torture and what not that they were using, we might assume he was no more interested to what might happen to those civilians or even in knowing what might be generally known among his own headquarters.

Incidentally, Sakakida testified to the execution of the two American prisoners of war in Manila. His testimony was that they were held in Manila. He saw them; he

talked to them. He left Manila and went to Baguio before they were executed, but he was told by one of the guards later in Baguio that they had been executed. That is in contradiction to the Accused's statement that no American prisoners of war had been executed.

There again he would not know what happened to those prisoners of war unless he took steps to see to it that he was kept informed; perhaps he didn't know.

With respect to Manila, we do not contend, we never have contended that it was any crime or any unlawful act for the Japanese forces to defend Manila, if they saw fit to do so. They were free to do that if that was their plan.

However, we do deny their right in connection with defending Manila or in connection with fighting in Manila to massacre civilians, deface state property without military justification, or to commit other substantial wrongs in violation of the Laws of War. We deny the privilege of doing that. The whole question of Manila involves really two points.

First, were the troops in Manila, which were navy troops, under the command of Yamashita. He acknowledges they were under his tactical command. He contends that he had no control over them, was not required to control them because they were merely under his tactical command.

However, General Muto acknowledged that the officer in command of troops of the other branch under him did have the authority and did have the duty of restraining those men under his command against the commission of

wrongful acts. He said he could have them arrested. He had that authority. He could not punish them. He could not order their court-martial, but he could restrain them and that is all we ask of Yamashita in this case, that he restrain his troops, including the navy troops in Manila.

Much has been said about the naval mission of these troops. They were under the command of Yamashita, or his subordinates, only for land operations in land combat. That is all they were doing so far as the commission of these atrocities was concerned. They were not then defending the port; they were not then firing at vessels at sea. They were not then engaged in any naval operations on land or at sea; they were engaged, as one of the witnesses very clearly brought out, in repelling or attempting to repel the advance of the Americans, the advance of the American forces; from the east, north and south.

It was a land operation in every particular and there was no element of naval operation in it. Therefore, they were clearly under the tactical command of Yamashita at that time and he, as their tactical commander, was responsible for what they did.

And what did they do?

The record is replete with that, and there again those were not the acts of irresponsible individuals, acting at a whim or will in a drunken orgy; not at all. There again they were acting under officers -- sometimes in concert with army men -- army officers. Obviously, it was a deliberate planned enterprise. It may be they were then assisting the military police in the zonification of areas of the city and

in the suppression of guerrillas by burning the houses and killing everyone around there. Of course, by killing everyone in the vicinity they would also kill any guerrillas that might be there and that might have been their method of suppression.

Whatever it was, those troops were acting under military command and acting in a military enterprise, and in most cases they certainly weren't acting in the heat of battle.

The other point is with respect to the defense of Manila. We are interested in that question of the defense of Manila only in so far as it relates to the credibility of the Accused, as his own witness, and in so far as it shows that they were deliberately engaged in military operations in Manila.

I believe the Commission recognizes the utterly fantastic nature of the assertion by the Defense that there was no intent or plan to defend Manila. We believe that the correct, obviously sound analysis of that situation, and of that operation is that which is contained in Prosecution's Exhibit No. 404, which is, "A Report by XIV Corps," on the subject of the defense of Manila.

I shall read from page 1.

"The main purpose of the enemy in defending Manila was threefold:

"First, to effect maximum attrition of American fighting power by utilizing the advantages of natural

and man-made defenses within the city;

"Secondly, to delay the occupation and utilization of the Port of Manila as long as possible;

"Thirdly, to cripple the city as a base for future military operations and as a center for civilian production and governmental control."

Then it goes on and states further:

"This third objective was covered in Manila naval defense force order number 43, dated 3 February 1945, which reads in part as follows:

"The south, central and north forces must destroy the factories, warehouses and other installations and material being used by naval and army forces, in so far as the combat and preparations of naval forces in Manila and of army forces in their vicinity will not be hindered thereby."

And interpolating, I would like to point out this is not a naval order of the Imperial Japanese Navy. It was referred to in one of the exhibits of the Defense as such. This is an order of Iwabuchi, as commander of the Manila naval defense forces, and Iwabuchi was commander of the combined army and navy forces in Manila. This was not an order of the Imperial Japanese Navy.

"2. The demolition of such installations within the city limits will be carried out secretly for the time being so that such action will not disturb the tranquility of the civil population nor be used by the enemy for counter-propaganda. Neither large scale demolition nor burning by incendiaries will be committed.

"3. A special order will be issued concerning the demolition of the water system and the electrical installations."

All of which, incidentally, ties in with the orders from the Southern Army, the Southern Command, to the effect that Manila will be defended to the utmost, that if they have to give the city up they will destroy it as a base for enemy operations, and that the port and dock facilities will be destroyed.

The Commission will recall that as Exhibit No. 405, and this is part of the order:

"The 14th Area Army will hold the sea and air bases firmly. If it becomes necessary to relinquish them, see that the enemy cannot use them.

"Furthermore, in the event that the Area Army is forced to give up its sea, air and military bases, these facilities will be completely demolished to prevent enemy use. Manila will be defended to the utmost, and in event of its loss, its use to the enemy will be hampered by cutting off its water supply and by other such measures."

This order, by the Manila Defense Command, is directly in accordance with that directive.

Furthermore, there is ample evidence, in fact, there is visual evidence wherever you go in the City of Manila, that extensive preparations were made to defend the city, which belies the assertion by the Accused that early in December or in December, it had been decided that Manila would not be defended; it would be

evacuated.

However, I wanted to call particular attention of the Commission to the testimony of General Yokoyama on this subject. The Commission will recall that the Accused testified that he gave orders to Yokoyama, when he first appointed him as commanding general of the Shinbu Group, that Manila would not be defended; that it would be evacuated. Let's see what General Yokoyama had to say about that.

On page 2680 of the record there appears the following:

"Q What were General Yanashita's orders with respect to the defense of Manila?

"A Do you refer to the general locality of Manila?

"Q No; to the City of Manila as distinct from the whole sector; the city itself.

"A I received no orders with particular respect to the City of Manila.

"Q What orders did you receive with respect to the outlying sections?

"A The orders which I received were to establish a line on east of the city and contact as many American troops as possible for as long as possible and inflict as many casualties as possible.

"Q Were there any orders you received relative to the evacuation of the City of Manila?

"A There were orders to evacuate the city. I believe that was the 12th or 13th of February.

"Q Were there any orders before that to evacuate the city?

"A There were none before that."

That is indirect opposition to the testimony of the Accused. General Yokoyama ought to know what he was talking about. He was the general in command of Manila. Orders to evacuate were given, he said, to him on the 12th or 13th of February and the battle then was at its height. The Americans had reached the city on the 3rd of February.

Apparently, then, according to that testimony, the battle had failed so far as the Japanese were concerned and they wanted out. Of course, they would evacuate then. It doesn't tie in at all with the Defense's position that they intended to evacuate Manila, all in all, from the very time the Shinbu Group was first organized.

In any event, whether they decided to evacuate or not, the fact remains that there was an army operation in the City of Manila. The troops, naval and army, engaged in that army operation, and they were under the command of General Yamashita. Those troops, without question, committed the most heinous offenses, the most terrible atrocities -- almost unbelievable -- and yet they were acts of men under orders of officers and non-commissioned officers -- they were carried out methodically according to the testimony. They were carried out, obviously, with a general plan and a fixed purpose. They were not in any sense of the word the result of a sudden complete lack of control by officers, of battle hysteria or drunkenness -- not at all.

They were performed by and committed by sober men with full uniform -- in full uniform -- in mili-

tary units under the command of their officers.

We contend that, obviously, they were acting under orders, pursuant to carefully and previously prepared plans.

Yamashita says that he didn't know that these things were happening in Manila. Our case is simply that it was his duty to know. It was possible for him to know. We believe very earnestly that the Defense has failed to show that it was physically impossible for Yamashita to know.

Yokoyama's headquarters were then only ten miles away. Yokoyama's testimony is that he was in communication with Iwabuchi, in communication with the Manila Defense Force in February.

The testimony further shows that Yamashita's headquarters were in communication with Yokoyama. He could have known if he had been interested. He should have known. It was his duty to know. If he had known certainly he could have taken steps to see to it that these orders -- obvious orders -- at whatever level they may have been were rescinded, withdrawn, and this calculated plan of extermination in the City of Manila would have been stopped.

There is no question that the laws of war were violated by those acts; there is no question as to the illegality under any standard of humanity that any civilized nation might recognize or apply, that they were illegal; no question whatever about that.

The Defense certainly does not question that.

One point remaining is whether or not the failure of the Accused to prevent these atrocities, these illegal acts on the part of his troops, constitutes a violation of the laws of war. We are prepared to show and believe conclusively that it does.

Truly, the application of the laws of war to a commanding officer on this theory has not frequently been done or attempted. Nevertheless, we submit that it is well recognized in international law, even under the international conventions, that a commanding officer does have a duty to control his troops in such a way that they will not commit these widespread, flagrant, notorious violations of the laws of war.

We are not dealing here with isolated instances of peccadillos committed by individual soldiers on their own time, far from the restraining influence or commands of the higher officers. Under the circumstances which existed here, the whole length of the Philippines was blanketed with one horrible atrocity after another over a period of seven months; tens of thousands of innocent men, women and children were massacred under the most horrible, heartrending conditions, or subjected to the most inhumane tortures and indignities. It is amazing that the human mind and the human body could stand up as long as many of them did under such treatment. Where you have this widespread pattern of atrocities over such a period of time, necessarily notorious,

committed by organized officer-led military units, there must have been a failure on the part of the ultimate commander of those troops to perform his duty to control those troops so they would not commit such acts.

I refer now to the Hague Convention, known as the Fourth Convention, being the regulations respecting the laws and customs of war on land. Section I, Chapter I, Article 1, reads as follows:

"The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

"1. To be commanded by a person responsible for his subordinates;

"2. To have a fixed distinctive emblem recognizable at a distance;

"3. To carry arms openly; and

"4. To conduct their operations in accordance with the laws and customs of war.

"In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination 'army.'"

This article, sir, is intended as, and has the effect of defining lawful belligerents. And under that article Yamashita has this choice: To say, "Yes, I did command an army; these men under me were lawful belligerents, and, therefore, the person commanding them, myself, was responsible for his subordinates."

Responsible for what?

Responsible under international law for the proper conduct of its military operations; responsible to see to it that its members did conduct their operations in accordance with the laws and customs of war. That is one choice.

The other choice is to say, "No, I did not command an army; I commanded armed bandits," as he would call them, "outlawed brigands."

He has not chosen this second course; he has said, "Yes, I commanded an army," therefore, he has told this Commission that he was a person in command of an army and responsible for the acts of his subordinates. That does not mean merely subordinate officers, that means everyone in the army, to see to it that they conducted their operations in accordance with the laws and customs of war.

That alone is enough, as we see it, to establish the dereliction of duty on the part of Yamashita as a violation of the laws of war.

Confessedly, this provision of the Hague Convention has not generally been so applied. In fact, I know of no case of any importance where it has been applied or where any effort has been made to apply it that way. However, there are many provisions in these international conventions, in the customs and laws of warfare, which have not as yet come before or had occasion to be passed upon by military tribunals or by any tribunals, and this may be one.

We say this is the time for this tribunal to apply it. However, it is not necessary for us to rely merely upon that express provision of the Hague Convention.

As I have had occasion to say before, the Hague Convention, as well as other international conventions relative to the laws of war, very largely is merely a confirmation of the common laws of war which previously had been built up as general and common understanding of the nations of the world -- at least, the civilized nations -- following which they were codified in writing, into what we called "Conventions." We contend that under the standards of conduct of all armies, which the Accused himself acknowledged applied to professional soldiers of all civilized nations -- under those standards of conduct, in all armies, the commanding officer does bear responsibility for the conduct of those under him. That is a requisite element of command. If it were not the case, it would be impossible to conduct effective or, at least, civilized warfare.

Furthermore, the criminal laws, the customs, the laws generally of civilized nations, are construed to apply in the international field as a part of the laws of war as well, wherever they bear any relation at all. For instance, murder is a violation of the laws of war; not because there is an international convention on the subject, but because all civilized nations forbid murder. The same with rape.

Furthermore, under laws generally, any man who, having the control of the operation of a dangerous instrumentality, fails to exercise that degree of care which under the circumstances should be exercised to protect third persons, is responsible for the consequences of his

dereliction of duty. We say, apply that in this case! Apply that in the field of military law. It is applied by international tribunals or claims commissions with respect to claims for pecuniary damages by individuals or governments against individuals of another government, or against other governments, arising out of illegal acts. There are many cases where, under international law, a government of one nation -- or let us say a nation has been held financially responsible because of the wrongful acts of its agents or representatives, military or otherwise, with consequent injuries to the nationals of other countries. There is nothing to prevent the application of that same principle in the law of war on a criminal basis; absolutely nothing.

When we speak of criminal and civil liability, we are speaking of statutory law or of common law on a municipal basis, and not necessarily in the field of the laws of war. As I said awhile ago, if in military law an officer may have criminal responsibility in some cases and administrative responsibility in another, in either case, he having been guilty of a wrongful act in the field of international law, the laws of war, the difference in punishment is not recognized except as to the degree of sentence. If the judging authority sees fit to assess death as the penalty for that wrongful act, it may do so; or, if it believes that under the circumstances a lesser sentence is justified, it may fine or imprison rather than assess death. But the type of punishment is immaterial to the type of penalty, so far as the laws of war are concerned.

There are many cases in the courts where pecuniary damages have been awarded against a government because of wrongful acts of its soldiers or commanding officers, with consequent injury to the nationals of other countries. That is in the field of civil liability.

Now let us look to the field of criminal responsibility. The Defense would say that it is all very well to talk about civil liability or to cite cases involving civil claims, but that criminal liability and criminal punishment are quite another matter. We will meet them on that ground. I am sure the Defense would not deny the principle of criminal negligence. We believe that this is a clear case, in the international field, of criminal negligence.

The general rule with respect to criminal negligence is stated as follows:

Furthermore, where an injury results from a dangerous instrumentality, the law may impose upon the wrongdoer a criminal liability. This was so at common law and has generally been enacted into statutes.

Quoting Thompson on Negligence, 2d Edition, Volume I, Section 10:

"The general conception of the courts, and the only one that is reconcilable with reason, is that the failure to do an act required or the doing of the act required is negligence as a mere matter of law; otherwise called 'negligence per se'."

Wharton's Criminal Evidence, Volume I, Section 88, states the rule on Criminal Negligence as follows:

"That a person knows what he does is also sometimes called a presumption of law. If the term 'presumption of law' is taken to mean something that the law declares to be universally true until rebutted, then it is not a presumption of law that all persons know what they are about, for there are many persons of whom the law declares just the contrary. But that a person who is cognoscenti should set up ignorance of fact as ground of exculpation or of defense would be against the policy of the law, and hence, where there is no fraud or imposition, the law treats him as if he were cognizant of what he did. He is not supposed to have known the facts of which it appears he was ignorant; but if his ignorance is negligent or culpable then his ignorance is no defense."

"If his ignorance is negligent or culpable, then his ignorance is no defense" -- that is a principle applied in criminal law. There are many variations of that, and a similar principle has been applied in the field of international law.

For instance, Borchard, Diplomatic Protection, page 217, states that:

". . . . The failure of a government to use due diligence to prevent a private injury is a well recognized ground of international responsibility."

Now, if it is proper and permissible under international law and the laws of war to apply to an entire government, an entire nation, civil responsibility in the form of damages for wrongful actions, violations of laws of war by the agents or the representatives of that nation,

is there any reason under the sun why a responsibility, criminal or civil, under the laws of war, might not properly be applied under the proper circumstances in the proper case to an individual? The Defense cries that Yamashita was too far away from the scene of battle, too far removed from the actual perpetrators, justly to be charged and punished for the crimes of those under him. Yet, his very government, his entire nation may legally be held responsible -- even farther removed from the perpetrators and from the scene of the crime. We say that it is in accordance with all of the established principles of responsibility in the field of international relations that the commanding officer as an individual be held responsible.

Now, Defense has made out that the Accused took every possible step that he could have taken to prevent these violations of the laws of war by those under him. That is the customary defense in a manslaughter charge. In a manslaughter charge, which, of course, is a criminal charge in courts of law, the basis of the charge may be some failure to act or some negligent act, a negligent, not wilful act; not a deliberate, intentional act -- that could be some degree of murder. Where there has been a failure to do something which should have been done and which would have prevented the death, that may be manslaughter. It is immaterial that there was no intent to kill, that the person charged later deplored the consequences of his negligence. It is immaterial that if the situation were to arise again he would take

affirmative action to prevent the accident or prevent the injury. That is all immaterial. The fact remains that he failed to observe a duty to take proper care. That failure of duty resulted in injury or death. If it is death, he may be charged and convicted of manslaughter.

I have in mind the case of the burning of the circus tent, I believe in Connecticut, a few years ago. Officers and employees of the circus company were charged and, I am informed, convicted of criminal charges, and sentenced to prison terms. Not because they ordered that the circus tent be burned, not because they ordered that the innocent, helpless women and children there be killed, but because they failed to take action which, if taken, would have prevented that catastrophe. True, they had taken steps; they had men posted as fire guards. But they had failed to take the steps which, if taken, would have prevented the tragedy; it was foreseeable, and they were charged with having had knowledge that, if they failed to take those ultimate precautions, such a tragedy might happen.

We say the same thing of Yamashita. He knew there was guerrilla activity in the Philippine Islands. He says it was most intense, the hostility of the people was extraordinary, and that he learned those things as soon as he came to the Philippines. He knew that his men were being pressed by the guerrillas, he knew the people were unfriendly, and that such would naturally, necessarily react upon the reciprocal feelings of the Japanese troops

under him. He was issuing orders for the suppression of guerrillas -- civilians, of course. Under those circumstances he owed the affirmative duty of taking definite steps to see to it that his troops did not commit these atrocities. If he himself did not condone, if he did not order, if he did not approve, if he did not direct these atrocities, he could have foreseen them; and, foreseeing them, he could have prevented them. And he failed to prevent them!

We won't say that he failed to foresee them. We think he did foresee them and didn't care. We claim there is ample testimony in the record to support that conclusion. But irrespective of that, and irrespective of the affirmative proof in this record to the effect that he himself ordered these executions, these massacres -- irrespective of that, the ultimate fact remains that he came into the Philippines under circumstances such that he should have and could have foreseen what later did happen, and he did not take the steps necessary to prevent it. That alone is sufficient to mark him as guilty of a dereliction of duty under international law, the laws of war; dereliction of duty which constitutes a violation of the laws of war.

I would like to quote from Moore's International Law Digest, Volume VI, page 919, which is a recognized authority in the field of international law:

"We do not, at the present day, often hear when a town is carried by assault that the garrison is put to sword in cold blood, on the plea that they have no right to quarter. Such things are no longer approved or countenanced by civilized nations. But we sometimes hear of

a captured town being sacked, and the houses of the inhabitants being plundered, on the plea that it was impossible for the General to restrain his soldiery in the confusion and excitement of storming the place; and under that softer name of plunder it has sometimes been attempted to veil all crimes which man in his worst excesses can commit; horrors so atrocious that their very atrocity preserves them from our full execration, because it makes it impossible to describe them. It is true that soldiers sometimes commit excesses which their officers cannot prevent; but in general, a commanding officer is responsible for the acts of those under his orders. Unless he can control his soldiers, he is unfit to command them."

If he is unfit to command them, sir, he is responsible to mankind for the results of his unfitness! If Yamashita could not control his troops, it was his duty to mankind, to say nothing of his duty to his country, to inform his superiors of that fact so that they might have taken steps to relieve him, replace him with a man who would have saved humanity from these crimes. There is no evidence that he did that. He testified that he did not even communicate with the Southern Army, to say nothing of Tokyo, concerning the situation here with respect to guerrillas and the hostile attitude of the people.

He failed in his mission in the Philippines; not merely to hold the Philippines for the Japanese, but he failed in his mission here to protect the Philippine people who were in his custody. It was an affirmative failure, because he failed to take the action which

would have protected him, which would have preserved him against the fate which befell him.

Now, in conclusion, sir, the Prosecution believes without question that it has established the atrocities, the crimes, the murder, the rape, the destruction without military excuse or necessity of private and public property, the devastation of large parts of the Philippines; we have established that.

We have established that these acts were committed wrongfully by men under the command of the Accused.

We have established that he failed to take steps which could have been taken to prevent those acts. We believe that the testimony shows an affirmative failure to act, that is to say, a failure on the part of the Accused to do those things which he, as an Army commander under the circumstances, with the experience he confessedly had, knew would have to be taken to prevent these foreseeable acts. He failed to take that action.

We say he is responsible under the laws of war. If he is responsible, if it is his fault, his failure to perform his duty that resulted in all of these murders, horrors, that we have spent some four weeks presenting to the Commission, then we say that no penalty less than death could be justified.

We say that if Yamashita is responsible in any measure for the violations of the laws of war committed by the men under his command in the Philippines, anything less than the death sentence would be a mockery!

We therefore respectfully recommend that if the

Accused is found guilty as charged, the sentence be death; and, in view of the aggravated nature of the crimes, in view of the measure of the crimes, we recommend that the sentence in the case of death be carried out by hanging.

CAPTAIN REEL: Sir, may I make one remark that will aid the Commission in the study of the record, on the basis of the reference to the testimony of General Yokoyama? Quite inadvertently, I am sure, the Prosecution neglected to point out that the part that they read was later, on cross examination, corrected by General Yokoyama, who admitted that he had made a mistake in that particular testimony.

GENERAL REYNOLDS: This will conclude the taking of testimony and arguments in this case.

The Commission will announce its findings at two o'clock in the afternoon, Friday next.

The Commission is now in recess.

(Whereupon, at 1620 hours, 5 December 1945, the trial was adjourned until 1400 hours, 7 December 1945.)

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA)

-vs-)

TOMOYUKI YAMASHITA)
-----)

PUBLIC TRIAL (FINDINGS)

High Commissioner's Residence,
Manila, P. I.
7 December 1945

Met, pursuant to adjournment, at 1400 hours.

MEMBERS OF MILITARY COMMISSION:

MAJOR GENERAL RUSSEL B. REYNOLDS, Presiding Officer
and Law Member
MAJOR GENERAL LEO DONOVAN
MAJOR GENERAL JAMES A. LESTER
BRIGADIER GENERAL MORRIS C. HANDWERK
BRIGADIER GENERAL EGBERT F. BULLENE

APPEARANCES:

(Same as heretofore noted)

REPORTED BY:

E. D. CONKLIN
L. H. WINTER
M. M. RACKLIN

P R O C E E D I N G S

GENERAL REYNOLDS: The Commission is in session. The Prosecution may make its opening statement.

MAJOR KERR: Sir, the members of the Commission, the Accused and Defense Counsel are present.

GENERAL REYNOLDS: The charge against the Accused is as follows:

"Tomoyuki YAMASHITA, General Imperial Japanese Army, between 9 October 1944 and 2 September 1945, at Manila and at other places in the Philippine Islands, while commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly the Philippines; and he, General Tomoyuki YAMASHITA, thereby violated the laws of war."

It is backed by Bills of Particulars specifying one hundred twenty-three separate items or offenses, most of which were presented for our consideration.

The crimes alleged to have been permitted by the Accused in violation of the laws of war may be grouped into three categories: (1) Starvation, execution or massacre without trial and mal-administration generally of civilian internees and prisoners of war; (2) Torture, rape, murder and mass execution of very large numbers of residents of the Philippines, including women and children and members of religious orders, by starvation, beheading, bayoneting, clubbing, hanging, burning alive, and destruction by explosives; (3) Burning and demolition without adequate military necessity of large numbers of homes, places of business, places of religious worship, hospitals, public buildings, and educational institutions. In point of time, the offenses extended through-

out the period the Accused was in command of Japanese troops in the Philippines. In point of area, the crimes extended throughout the Philippine Archipelago, although by far the most of the incredible acts occurred on Luzon. It is noteworthy that the Accused made no attempt to deny that the crimes were committed, although some deaths were attributed by Defense Counsel to legal execution of armed guerrillas, hazards of battle and action of guerrilla troops favorable to Japan.

The Commission has heard 286 persons during the course of this trial, most of whom have given eye-witness accounts of what they endured or what they saw. They included doctors and nurses; lawyers, teachers, businessmen; men and women of religious orders; prisoners of war and civilian internees; officers of the United States Army; officers of the Japanese Army and Navy; Japanese civilians; a large number of men, women and children of the Philippines; and the Accused. Testimony has been given in eleven languages or dialects. Many of the witnesses displayed incredible scars of wounds which they testified were inflicted by Japanese from whom they made miraculous escapes followed by remarkable physical recovery. For the most part, we have been impressed by the candor, honesty and sincerity of the witnesses whose testimony is contained in 4055 pages in the record of trial.

We have received for analysis and evaluation 423 exhibits consisting of official documents of the United States Army, The United States State Department, and the Commonwealth of the Philippines; affidavits; captured enemy

documents or translations thereof; diaries taken from Japanese personnel, photographs, motion picture films, and Manila newspapers.

The Prosecution presented evidence to show that the crimes were so extensive and widespread, both as to time and area, that they must either have been wilfully permitted by the Accused, or secretly ordered by the Accused. Captured orders issued by subordinate officers of the Accused were presented as proof that they, at least, ordered certain acts leading directly to exterminations of civilians under the guise of eliminating the activities of guerrillas hostile to Japan. With respect to civilian internees and prisoners of war, the proof offered to the Commission alleged criminal neglect, especially with respect to food and medical supplies, as well as complete failure by the higher echelons of command to detect and prevent cruel and inhuman treatment accorded by local commanders and guards. The Commission considered evidence that the provisions of the Geneva Convention received scant compliance or attention, and that the International Red Cross was unable to render any sustained help. The cruelties and arrogance of the Japanese Military Police, prison camp guards and officials, with like action by local subordinate commanders were presented at length by the prosecution.

The Defense established the difficulties faced by the Accused with respect not only to the swift and overpowering advance of American forces, but also to the errors of his predecessors, weaknesses in organization, equipment, supply with especial reference to food and gasoline, training,

communication, discipline and morale of his troops. It was alleged that the sudden assignment of Naval and Air Forces to his tactical command presented almost insurmountable difficulties. This situation was followed, the Defense contended, by failure to obey his orders to withdraw troops from Manila, and the subsequent massacre of unarmed civilians, particularly by Naval forces. Prior to the Luzon Campaign, Naval forces had reported to a separate ministry in the Japanese Government and Naval Commanders may not have been receptive or experienced in this instance with respect to a joint land operation under a single commander who was designated from the Army Service. As to the crimes themselves, complete ignorance that they had occurred was stoutly maintained by the Accused, his principal staff officers and subordinate commanders; further, that all such acts, if committed, were directly contrary to the announced policies, wishes and orders of the Accused. The Japanese Commanders testified that they did not make personal inspections or independent checks during the Philippine campaign to determine for themselves the established procedures by which their subordinates accomplish their missions. Taken at full face value, the testimony indicates that Japanese senior commanders operate in a vacuum, almost in another world with respect to their troops, compared with standards American Generals take for granted.

We have considered carefully the final statements of the Prosecution and Defense Counsel.

This Accused is an officer of long years of experience, broad in its scope, who has had extensive command

and staff duty in the Imperial Japanese Army in peace as well as war in Asia, Malaya, Europe, and the Japanese Home Islands. Clearly, assignment to command military troops is accompanied by broad authority and heavy responsibility. This has been true in all armies throughout recorded history. It is absurd, however, to consider a commander a murderer or rapist because one of his soldiers commits a murder or a rape. Nonetheless, where murder and rape and vicious, revengeful actions are widespread offenses, and there is no effective attempt by a commander to discover and control the criminal acts, such a commander may be held responsible, even criminally liable, for the lawless acts of his troops, depending upon their nature and the circumstances surrounding them. Should a commander issue orders which lead directly to lawless acts, the criminal responsibility is definite and has always been so understood. The Rules of Land Warfare, Field Manual 27-10, United States Army, are clear on these points. It is for the purpose of maintaining discipline and control, among other reasons, that military commanders are given broad powers of administering military justice. The tactical situation, the character, training and capacity of staff officers and subordinate commanders as well as the traits of character, and training of his troops are other important factors in such cases. These matters have been the principle considerations of the Commission during its deliberations.

The Accused, his Senior Counsel and personal interpreter will take position before the Commission.

(Whereupon, Colonel Clarke, Mr. Hamamoto, and the Accused stood before the Commission.)

(Whereupon the Accused addressed the Commission in native tongue.)

GENERAL REYNOLDS: Mr. Hamamoto may read the statement.

MR. HAMAMOTO: "In my capacity as Commander-in-Chief of the Japanese 14th Area Army I met and fought, here in the Philippines, numerically and qualitatively superior armed forces of the United States. Throughout this engagement I have endeavored to fulfil to the best of my ability the requirements of my position and have done my best to conduct myself at all times in accordance with the principles of fairness and justice.

"I have been arraigned and tried before this Honorable Commission as a war criminal. I wish to state that I stand here today with the same clear conscience as on the first day of my arraignment and I swear before my Creator and everything sacred to me that I am innocent of the charges made against me.

"With reference to the trial itself I wish to take this opportunity to express my gratitude to the United States of America for having accorded to an enemy General the unstinted services of a staff of brilliant, conscientious and upright American officers and gentlemen as Defense Counsel."

Thank you.

GENERAL REYNOLDS: General Yamashita: The Commission concludes: (1) That a series of atrocities and other high crimes have been committed by members of the Japanese armed forces under your command against people of the United States, their allies and dependencies throughout the Philippine

Islands; that they were not sporadic in nature but in many cases were methodically supervised by Japanese officers and noncommissioned officers; (2) That during the period in question you failed to provide effective control of your troops as was required by the circumstances.

Accordingly upon secret written ballot, two-thirds or more of the members concurring, the Commission finds you guilty as charged and sentences you to death by hanging.

The Accused and Japanese members of the Defense staff will be escorted from the Courtroom.

(Whereupon the Accused and Japanese members of the Defense staff were escorted from the courtroom.)

GENERAL REYNOLDS: Its task completed, the Commission adjourns, sine die.

(Whereupon, at 1415 hours, 7 December 1945, the trial was concluded.)

AUTHENTICATION OF RECORD

The foregoing 4,063 pages, contained in Volumes I to XXXIV inclusive (together with the Pleadings, Prosecution Exhibits 1 to 406 inclusive, Commission Exhibits "A" and "B", and Defense Exhibits "A" to "FF" inclusive, all under separate covers), are hereby certified as the Record of the Proceedings of the Military Commission appointed by paragraph 24, Special Orders 112, Headquarters United States Army Forces, Western Pacific, dated 1 October 1945, in the trial of the case of United States of America against Tomoyuki Yamashita.

Dated 11 December 1945.

/S/ Russel B. Reynolds
RUSSEL B. REYNOLDS
Major General, U.S.A.
President of Commission

THIS ACKNOWLEDGES that the above-described Record was submitted to Defense Counsel prior to being certified by the President of the Commission.

/S/ Harry E. Clarke
HARRY E. CLARKE
Colonel, JAGD
Chief, Defense Counsel

UNITED STATES OF AMERICA)

vs)

TOMOYUKI YAMASHITA)

Recommendation for Clemency

TO: Lieutenant General Wilhelm D. Styer, Appointing Authority in the above entitled case

and

General Douglas MacArthur, Confirming Authority in the above entitled case.

1. We, of the undersigned Defense Counsel in the above entitled case, hereby request that the findings of guilty be disapproved, for the reasons stated by the Defense throughout the trial which appear in the record thereof.

2. In the event that the findings of guilty are approved, the Defense Counsel hereby submits a recommendation for clemency.

3. The charge against the accused is:

"Tomoyuki YAMASHITA, General Imperial Japanese Army, between 9 October 1944 and 2 September 1945, at Manila and at other places in the Philippine Islands, while Commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly the Philippines; and he, General Tomoyuki YAMASHITA, thereby violated the laws of war."

The Commission based its finding and sentence solely on the following two conclusions:

(1) That a series of atrocities and other high crimes have been committed by members of the Japanese armed forces under your command against people of the United States, their allies and dependencies throughout the Philippine Islands; that they were not sporadic in nature but in many cases were methodically supervised by Japanese officers and noncommissioned officers; (2) That during the period in question you failed to provide effective control of your troops as was required by the circumstances.

It is respectfully submitted that even were it a fact that the atrocities were not sporadic in nature but were supervised by Japanese officers and noncommissioned officers, these supervised cases were scattered over the entire area of the Philippine Islands and there was no evidence that the officers or noncommissioned officers who were responsible therefore reported these acts to General Yamashita. The second and basic conclusion of the Commission indicates that its members agree that the fact that in some instances there was a supervision by Japanese officers and noncommissioned officers does not warrant a conclusion that General Yamashita had ordered or directed the commission of such acts or that he had any knowledge that such acts had been or were being committed.

The second conclusion makes it apparent that the death sentence was adjudged for an offense that did not include any criminal intent, any specific intent, or any mens rea. At its worst, the offense stated by the Commission is simply unintentional ordinary negligence. The sentence of hanging is grossly disproportionate for such an offense.

4. The Commission said, inter alia:

"Taken at full face value, the testimony indicates that Japanese senior commanders operate in a vacuum, almost in another world with respect to their troops, compared with standards American Generals take for granted."

It is respectfully submitted that even though this be accepted as a fact, no General Officer commanding any army is to be held criminally liable and hanged for the customs and procedure inherent in that army simply because that standard of customs and procedure does not compare favorably with the standards of customs and procedure in the American Army.

5. The essence of the Commission's conclusion on which the finding of guilty was based: namely, the accused had failed to provide control of his troops as was required by the circumstances, makes it important to consider just what those circumstances were.

6. The evidence adduced by the Defense shows that within nine days after General Tomoyuki Yamashita assumed command of the 14th Area Army in

the Philippines, the American forces landed on Leyte and from that time until the surrender of General Yamashita on 3 September 1945, his troops were engaged continuously in combat; his entire command was subjected to attack by the American air forces and guerrillas and his supply dumps, supply lines, lines of communication and mobile equipment were damaged and in many cases destroyed. These conditions existed during practically the entire period of his command of the 14th Area Army and placed an unprecedented burden upon him and his headquarters. He had a mission to perform: the defense of the Philippine Islands. Due to the rapid advance of American forces, his mission then became the defense of Luzon, plans for which had to be perfected and carried out under the above conditions.

The first duty of an officer in any army is to accomplish the mission assigned to him. This General Yamashita attempted to do, concentrating most of his time and the time of the members of his staff on the countless operational matters involved in the accomplishment of his mission, and thereby, of necessity, relegating administrative functions within his command to a secondary role.

It is further respectfully submitted that under the circumstances and conditions which existed during General Yamashita's command of the 14th Area Army in the Philippine Islands, he, being a General with a mission to perform, did not fail to exercise control of his troops to the extent that he was criminally negligent in the performance of his duty and therefore subject to a criminal punishment adjudged by a Military Commission.

7. The Military Commission before announcing its findings and sentence entered into a discussion concerning the evidence adduced by the prosecution, including 423 exhibits, many of which were ex parte affidavits, and would not be considered as evidence of any value whatsoever in any Civil Court, Courts-Martial, or Military Commission functioning as an agent of the government of the United States.

8. The preliminary conclusion of the Commission to the effect that atrocities in many cases were methodically supervised by Japanese officers

and noncommissioned officers does not in any way indicate that these acts were within the knowledge of the accused. On the contrary the Commission in its basic conclusion found merely a failure to provide effective control of troops.

9. The prosecution introduced evidence of the commission of atrocities by troops under the accused's command. Some of the evidence was direct evidence but much of it was hearsay evidence, opinion evidence, and ex parte affidavits. The defense had no opportunity whatsoever to cross-examine the deponents executing the ex parte affidavits. This "evidence", admitted by the Commission, in its cumulative effect was extremely damaging to the accused and was prejudicial to the substantial rights of the accused. The prosecution did not introduce any direct evidence whatsoever to show that the accused had issued orders for the commission of the alleged atrocities; nor that he had received any reports from any subordinate officers, or from any other sources, that such alleged atrocities had been or were being committed; nor that he had any knowledge that such alleged atrocities had been or were being committed. Having no knowledge of the commission of the alleged atrocities, the accused could not have permitted the commission thereof as alleged in the charge, and the Commission in its conclusion indicated that it found no such permission.

10. This is the first time in the history of the modern world that a commanding officer has been held criminally liable for acts committed by his troops. It is the first time in modern history that any man has been held criminally liable for acts which according to the conclusion of the Commission do not involve criminal intent or even gross negligence. The Commission therefore by its findings created a new crime. The accused could not have known, nor could a sage have predicted, that at some time in the future a Military Commission would decree acts which involved no criminal intent or gross negligence to be a crime, and it is unjust, therefore, that the punishment for that crime should be the supreme penalty.

11. Uncontroverted testimony disclosed that the accused has an excellent reputation as a soldier, citizen and a man. He has consistently been allied with the so-called moderate group in Japan as distinguished from the radical or war monger group headed by Tojo. In 1929, as a member of the War Ministry headed by General Kazunari Ugaki, he drafted the plan for partial disarmament and reduction of the Japanese Army to a size that would meet minimum defense requirements.

12. In view of the above cited circumstances, in the interest of justice, particularly American justice, it is recommended that if the findings of guilty be allowed to stand, that the sentence of death by hanging be commuted to imprisonment for a term of years appropriate to the offense found by the Commission.

/S/ Harry E. Clarke
/T/ HARRY E. CLARKE
Colonel, JAGD,
Chief Defense Counsel

/S/ Walter C. Hendrix Jr.
/T/ WALTER C. HENDRIX JR.
Lt. Col., JAGD,
Assistant Defense Counsel

/S/ George F. Guy
/T/ GEORGE F. GUY
Major, Cavalry
Assistant Defense Counsel

/S/ Adolf F. Roel
/T/ ADOLF F. ROEL
Captain, JAGD,
Assistant Defense Counsel

/S/ Milton Sandberg
/T/ MILTON SANDBERG
Captain, JAGD,
Assistant Defense Counsel