

**VOL. 21**

**YEAR**

**1945**

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**VOL. 34**

**YEAR**

**1945**

Yamashita, Tomoyuki, 1885-1946, defendant.

2

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.  
20 November 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

I N D E X

WITNESSES

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Mariano Espera	2931	2935	2936	
Naty Pamilar	2937			

G E N E R A L

Prosecution Rests	2945
Motion for Dismissal	2945
Response to Motion for Dismissal	2949

EXHIBITS

<u>PROSECUTION EXHIBIT NO.</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
401	2941	2945

P R O C E E D I N G S

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

MAJOR KERR: Sir, all the members of the Commission are present; the Accused and Defense counsel are present. We will proceed.

Sir, at this time I should like to swear Lieutenant Asano as a Japanese-English interpreter.

GENERAL REYNOLDS: Very well.

(Whereupon Lieutenant Asano was sworn as Interpreter.)

CAPTAIN HILL: Sir, the next item in the Bill of Particulars that the Prosecution desires to present is No. 118.

MARIANO ESPERA

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

DIRECT EXAMINATION

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

A Yes. Mariano Espera.

Q Where do you reside?

A Davao City.

Q Is that on Mindanao?

A Mindanao.

Q How old are you?

A I am now 55 years old.

Q What is your nationality?

A Filipino.

Q Were you residing in or near Davao City in April and May of this year?

A Yes, sir. I have been driven out by Japanese forces from my residence up to Matina Pangi barrio about eight kilometers from Davao.

Q That is about 15 kilometers from Davao City?

A Eight.

Q Eight kilometers. And during the time that you were there in that barrio after you had been driven from your home by the Japanese did you see any Japanese soldiers or sailors there in the barrio where you were living?

A Yes, sir. There was a meeting in my house, because my house in Matina Pangi barrio is the only house that the Japanese can get into, because my house is well prepared. I have many chairs, and everything.

Q And did the Japanese come to your home there frequently?

A Yes, sir; officers, including privates and Navies.

Q Well now, on May 13th did any Japanese come there to your house?

A It was happened that morning that Captain Sakurai was in my house and drinking, too, because my house is stored with everything, and it happened that in my house he was a little bit drunk, and he said to me, "Americans come. All civilian Filipinos will be killed. You, yourself, have to hide, because" --

Q Just a minute. Do you know the name of the Japanese that made that statement to you?

A Yes, sir.

Q What was his name?

A His name is Captain Sakurai. He is belonged to the

Harada Butai, a neighborhood association.

Q All right. Go ahead and tell the Commission just what happened after the Japanese captain made this statement to you.

A It was happened that day, the 14th, they are not any more in that place. They were over in their camp. And the next day, on the 15th -- . No; I meant to say the 14th. On 15th, the night, they went there in our group at Matina Pangl, near the river, and on check up us how many of us were in that group.

Q How many were in each of the houses, you mean?

A Yes.

Q How many civilians?

A Many civilians. Around 150-plus, more or less, because I cannot tell exactly, because we are too many.

Q In how many houses were these 150 gathered?

A There were about three houses and air raid shelter about ten in that place nearby.

Q Go ahead and tell the Commission what else happened there.

A On that night, on the 14th, there were Japanese checking us up, we are how many in that place, and after that, on 5:30 in the morning, there are many soldiers including Navies and Armies, Japanese forces. That is why on that morning it happened that all of our companions were killed by bayonet and shooting in that place. I cannot tell exactly, because when I heard the fire I got my two boys, but the whole families, and including evacuees in that place, were already killed.

Q Do you know about how many people were killed there in your barrio that day by the Japanese?

A According to the record of the 14th of May when they were checking up us in that place we were around 167.

Q That were killed by the Japanese?

A We have remain around seven or six, I think, more or less, because it happened that the next 16th of May we were -- . Well, while we are hiding we meet in the jungle.

Q How many civilians did you see the Japanese kill there in the barrio that day?

A In our place I cannot tell exactly, because we are little bit further from my place after that house in another air raid shelter, but in my place, which was very near, I think more or less 20 killed when I was there.

Q And were there men, women, and children?

A Yes; including children and little babies and girls.

Q Tell the Commission how the Japanese killed these people that you saw.

A The Japanese soldiers killing old men and old women and including little kiddies -- . They are killing with bayonet.

Q All that you saw --

A After killing they would throw us in the river.

Q And all that you saw killed were bayoneted by the Japanese, is that right?

A Yes, sir.

Q And were all of the persons that you saw killed civilians?

A Sir?

Q Were all of the people that you saw killed there civilians?

A Yes, sir.

CAPTAIN HILL: You may cross examine.

CROSS EXAMINATION

Q (By Captain Reel) Was there any guerrilla activity in the neighborhood of Davao City?

A Yes, sir.

Q And were some of the people in the city helping the guerrillas?

A Yes. According to Captain Sakurai he told me that he think that all the people in Davao are all guerrillas. "That is why sometime when American forces come we would kill all of you."

Q Well, was it true that many of the people were helping the guerrillas?

A Yes. But we are helping the guerrillas secretly, because if they know that we are helping we are subject to cut our neck at that time.

Q Yes. Now, one other question: Davao City was a big Japanese naval base, was it not?

A Yes.

Q And were these people sailors or soldiers, or both?

A I beg your pardon, sir?

Q Were these Japanese that you told about sailors, members of the Navy or the Army?

A They are combined forces, because in 1944 there were only Armies. In 1950 --- . 1945 there was only the Navies from another port, and they reach into that place because

of bombing. They go out of that place and they went into our place, Matina Pangi, and combined with the Army forces.

Q And the Navy came in there before May, 1945, is that right?

A Yes.

CAPTAIN REEL: That's all.

REDIRECT EXAMINATION

Q (By Captain Hill) Just one more question: Of these 20 persons that you saw killed there in your barrio, did the Japanese give them any kind of a trial before they killed them? Did they take them before a court and have a trial of any kind?

A No. They approach us civilians, tied, and after that they were killed right that way (illustrating bayoneting).

CAPTAIN HILL: That's all.

(Witness excused.)

NATY PAMILAR

called as a witness on behalf of the Prosecution, being first duly sworn, was examined and testified as follows with the aid of Interpreter Zosa:

DIRECT EXAMINATION

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

(Without aid of Interpreter) Naty Pamilar.

Q And where do you live?

A (Without aid of Interpreter) Davao City.

Q You live right in Davao City, or one of the barrios in the town?

A (Without aid of Interpreter) Matini Pangí.

Q That is a barrio?

A (Without aid of Interpreter) That is barrio in Davao.

Q How old are you?

A (Without aid of Interpreter) Nineteen.

Q What is your nationality? Are you a Filipino?

A (Without aid of Interpreter) I am Filipino.

Q And were you living there in that same barrio on the 15th of May of this year?

(Translated to the witness by Interpreter Zosa.)

A (Through the Interpreter) Yes.

Q Do you recall on that day of seeing any Japanese come to your barrio?

(Translated to the witness by Interpreter Zosa.)

A (Without aid of Interpreter) Yes.

Q How many Japanese did you see come to your barrio that day?

A (Without aid of Interpreter) There were so many.

Q There were how many?

A (Without aid of Interpreter) There were so many, sir.

Q Well, could you give the Commission some idea? Were there five or ten or twenty-five, approximately?

A (Without aid of Interpreter) I have seen ten Japs.

Q And do you know whether they were in the army or in the navy?

A (Without aid of Interpreter) They were navy.

Q And what time of the day did you see those Japs come to your barrio?

(Translated to the witness by Interpreter Zosa.)

A (Without aid of Interpreter) 6 o'clock.

Q In the morning?

A (Without aid of Interpreter) Yes.

Q And what did they do after they came to your barrio?

A (Without aid of Interpreter) They went to our air raid shelter and they told us to get out of the air raid shelter, and they told us -- (Speaking in native tongue)

INTERPRETER ZOSA: "Our hands were tied."

Q (By Captain Hill) And did they take all of the people out of the air raid shelter where you were?

A (Through Interpreter Zosa) Yes.

Q And how many people were in the air raid shelter with you?

A (Without aid of Interpreter) We were about fifteen.

Q About fifteen?

A (Without aid of Interpreter) Inside.

INTERPRETER ZOSA: Fifteen?

THE WITNESS: Fifteen.

Q (By Captain Hill) Were they men, women or children?

A (Without aid of Interpreter) Women and small children.

Q Were there some men in the group, also?

(Translated to the witness by Interpreter Zosa.)

A (Without aid of Interpreter) Yes.

Go ahead and tell the Commission what the Japanese did with your group after they tied your hands.

(Translated to the witness by Interpreter Zosa.)

A (Without aid of Interpreter) When we were tied, the Japanese brought us beside the river and make us lie down. Then we were shoot by the Japanese. After shooting with us, they used bayonets.

Q Did they shoot you?

A (Without aid of Interpreter) Yes, sir. (Indicating)

Q Show the Commission where you were shot.

A (Without aid of Interpreter) Here, sir (Indicating).

Q Were you injured in any other way by the Japanese?

(Translated to the witness by Interpreter Zosa.)

A (Through the Interpreter) We were thrown into the river.

Q Did you see the Japanese shoot the other people or bayonet them, that were in your group?

A (Without aid of Interpreter) Yes, I saw them.

Q And do you know whether any of those people survived besides yourself?

A (Without aid of Interpreter) Yes.

Q How many?

A (Without aid of Interpreter) About twelve of them.

Q You mean twelve of them were killed or twelve of them are living now?

A (Without aid of Interpreter) Twelve of them were killed.

Q And three survived out of your group, is that correct?  
(Translated to the witness by Interpreter Zosa.)

A (Through the Interpreter) Yes.

Q And after they shot and bayoneted the civilians in your group, what did they do with them, if anything?

(Translated to the witness by Interpreter Zosa.)

A (Through the Interpreter) They threw me into the river. I had not seen any one of them.

Q Did they throw you into the river?

A (Without aid of Interpreter) Yes, sir.

Q And how were you able to make your escape from the Japanese? Can you tell the Commission about that?

(Translated to the witness by Interpreter Zosa.)

A (Through the Interpreter) They threw me into the river and I tried to swim just very near the side of the river and I was able to reach a house in which I took shelter.

Q Did the other two that survived -- did they escape the same way that you did?

(Translated to the witness by Interpreter Zosa.)

A (Through the Interpreter) No, they ran away. They did not swim or did not save themselves, because they ran away when the Japanese were about to kill them.

CAPTAIN HILL: You may cross-examine.

CAPTAIN REEL: No questions. (Witness excused)

MAJOR KERR: That completes the evidence on number 118 of the Bill of Particulars.

We would like to have this document marked as the next exhibit.

(A document was marked Prosecution Exhibit No. 401 for identification.)

MAJOR KERR: At this time the Prosecution desires to offer into evidence what has been marked for identification as Prosecution's Exhibit No. 401.

This is a certificate signed by James F. Byrnes, Secretary of State of the United States of America, under date of 26 October 1945.

I will read the more pertinent parts of this certificate.

"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 relating to the treatment of prisoners of war 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 92 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.

"I further certify that, according to the official records of the Department of State, the following countries deposited instruments of ratification of the convention at Berne on the dates indicated below, and that the convention became effective for each high contracting party six months after the deposit of its instrument of ratification in accordance with the provisions of article 92 of the convention:"

Thereafter follows a list of nations referred to by the foregoing certificate.

"and that, according to the official records of the Department of State, the Swiss Federal Council received notifications of adherence to the convention on the dates indicated below, and that, with the exceptions noted below, each adherence became effective six months after the date of its receipt by the Swiss Federal Council in accordance with the provisions of article 94 of the convention."

And there follows the names of certain countries and remarks applicable thereto.

Continuing with the certificate:

"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.

"I further certify that by an exchange of notes

dated March 4 and 30, 1942, effected through the Minister of Switzerland at Washington in charge of German interests, the United States and Germany agreed to enforce the Model Agreement, attached to the convention relating to the treatment of prisoners of war signed at Geneva July 27, 1929, concerning direct repatriation and hospitalization in a neutral country of prisoners of war for reasons of health (Executive Agreement Series 255).

"I further certify that, in response to a proposal made by the Government of the United States, Italy agreed, in a note verbale of January 2, 1942, a copy and translation of which were transmitted to the Department of State with despatch no. 2058 of January 30, 1942 from the American Legation at Bern, 'to apply during the actual state of war between Italy and the United States of America the Geneva Convention of July 27, 1929, for the treatment of prisoners of war ... extending the benefits of the ... convention, as far as it is applicable, reciprocally to the interned civilians of the two countries;' and sets out certain proposals for the application of the convention; the Government of the United States accepted a proposal by the Italian Government for the adoption of a model agreement of the type annexed to the convention with a suggested change regarding repatriation rather than hospitalization in neutral countries and a proposal for the extension of the benefit of repatriation to those military persons interned in third countries who meet the conditions provided in letters (a) and (b) of the Model Agreement.

"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: "... Although not bound by the Convention relative treatment prisoners of war Japan will apply mutatis mutandis provisions of that Convention to American prisoners of war in its power."

"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."

The document bears the seal of the Department of State, United States of America.

We request, sir, that we be permitted to withdraw the original of this document and substitute therefor a photostatic copy, together with a true copy of the annexed pamphlet attached to the certificate.

This has been shown to the Defense prior to this time.

GENERAL REYNOLDS: Any comments by the Defense?

CAPTAIN SANDBERG: No comments, sir.

GENERAL REYNOLDS: The document is accepted by the Commission. The Prosecution is authorized to substitute a copy therefor.

(Prosecution Exhibit No. 401  
for identification was re-  
ceived in evidence.)

MAJOR KERR: At this time the Prosecution rests.

(PROSECUTION RESTS)

GENERAL REYNOLDS: The Defense may proceed.

COLONEL CLARKE: If the Commission please, the original charges in this case allege that between October 9th, 1944, and September of 1945, the Accused did 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 disregard and fail 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, thereby violating the Laws of War. The Supplemental Bill of Particulars alleges that he permitted members of the forces under his command to commit alleged atrocities between October, 1944, and September, 1945, in the same area.

For the past 18 days the Prosecution has been introducing evidence of atrocities alleged to have been committed by the armed forces of Japan, some of which were under the command of the Accused, and others of which were under the command of officers on the same level and not in any manner subject to the Accused.

This evidence has consisted of some direct evidence, but the bulk of the evidence has been numerous hearsay

statements, numerous opinions of witnesses, 100 or more ex parte affidavits, reports and opinions of various agencies and photographs of scenes of the alleged atrocities and of the victims.

In no instance has the Prosecution presented any direct evidence to establish the allegation contained in the charge that the Accused unlawfully disregarded and failed to discharge his duties as Commanding General of the forces alleged to have committed the crimes.

In no instance has the Prosecution presented any direct evidence that the Accused permitted the perpetration of the atrocities as alleged in the charge and specifications.

In fact, the only evidence presented by the Prosecution remotely connecting the name of the Accused with any knowledge of the commission of any of the alleged atrocities is the testimony of two self-confessed collaborators, who schemed to save their lives during the period of Japanese occupation of the Philippines and who are now trying to earn some protection for themselves by testifying against the Accused, presenting as their testimony hearsay statements of persons who are dead and cannot contradict the statements made by these witnesses.

The Commission will recall that the collaborator Lapus testified to certain facts on direct examination. On cross examination the witness contradicted himself. One instance of a contradiction was the testimony on direct examination that General Ricarte was an honorable and upright gentleman. On cross examination the witness,

having placed himself in a position where he could not re-affirm this statement and save himself, stated that General Ricarte was tricky and was a double-crosser.

A close analysis of Lapus' testimony will reveal numerous contradictions of the same character. This places the witness in the unenviable position of asking this Commission to believe him, a collaborator, who presents as the truth the statement of a dead man, who he himself has characterized as tricky and a double-crosser.

The whole testimony of Lapus is not only hearsay, but is unworthy of belief. The collaborator Galang testified to the fact, which he believed to be safe from any attack, because he thought all who were present except himself were dead.

The Commission will recall the pathetic picture of a young Filipino coming into this court where General Yamashita is charged, not to defend General Yamashita, but to clear the name of the man he loved, his grandfather. By his testimony he gave the lie to the testimony of Galang that this boy sat in a conference and interpreted for the General to Galang.

The only other testimony on the subject was the hearsay testimony of a girl who said some identified enlisted man used the Accused's name in connection with atrocities and the hearsay three times removed, that a man from Batanes Island had said that a Jap had told him, a third party, General Tajima, had received a telegram from the Accused relative to killing all prisoners of war.

The Commission will remember that the official interpreter stated that the witness' Japanese did not mention prisoners of war, but dead soldiers. That no Japanese would use the language that the witness swore was used.

Furthermore, it was established that aside from the accidental arrival on the Island there were no prisoners of war on that Island. Because of the fact that there is absolutely no evidence before this Commission of any of the essentials of that charge, no evidence of any disregard of duty, no evidence of any failure to discharge a duty, and no evidence of any permission by the Accused to anyone to commit any of the things listed in the charge and in the Bill of Particulars, we hereby move this Commission to render a finding of not guilty as to the charge and specifications.

The Commission will remember that the official interpreter stated that the witness' Japanese did not mention prisoners of war, but dead soldiers. That no Japanese would use the language that the witness swore was used.

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MAJOR KERR: If the Commission please, the Prosecution feels sure that the Commission, recalling the witnesses who have appeared before it; recalling their direct, sworn testimony to the Commission; recalling the horrible scars, mutilations which they themselves exhibited to the Commission and which they testified in all candor, frankness and honesty they suffered at the hands of Japanese soldiers, some of them Army, some of them Navy here in the Philippines, we feel sure in evaluating that testimony could not reach the conclusion that the charge at present is not supported. The Prosecution is perfectly content to leave this issue with the Commission on the basis of the testimony which has been presented to the Commission -- the oral testimony alone, for that matter. But, of course, in addition to that we have the wealth of documentary evidence, sworn testimony, photographs, the captured Japanese documents bearing eloquent testimony of the plan and definite purpose of the Japanese Army Forces in this area to commit these atrocities. Altogether, sir, we contend that it is an overwhelming, a clear, a convincing proof that the man who was in command of the armed forces of Japan in the Philippines did permit these unquestioned atrocities!

Counsel refers to numerous hearsay witnesses and, as I understood him, meant to indicate that our testimony was not direct on the question of atrocities. I am very much surprised by such a statement. What more direct testimony, what more convincing proof could there be of the actual commission of these atrocities than the very victims who have sat in this chair and who have told the

Commission what happened to them and who did it! I submit, sir, that there is no question of the commission of these atrocities -- absolutely no question whatever!

Furthermore, I submit that there is no question whatever that these atrocities were committed by Japanese members of the armed forces of Japan in this area. That is uncontroverted. True, Defense has attempted to drag red herrings across the path of the Commission here and there with their discussions of guerrillas, shelling by American armed forces, and so on. But in each case I believe the Commission noted very clearly the witnesses themselves show that that was impossible. They themselves saw the Japanese bayonet; they saw them rape; they saw them burn. There is no testimony that any of that is properly attributable to the activity of anyone other than the Japanese themselves.

Defense Counsel said that there is no direct evidence connecting the Accused Yamashita with these crimes. I respectfully beg to differ with that statement. We have in the record actually uncontroverted testimony that Yamashita himself ordered these atrocities, the executions of prisoners of war without trial, without any military justification. We have in the record evidence that Yamashita ordered the massacre -- cold, brutal, unjustified, inexcusable -- of civilian Filipinos. Counsel attempts to erase the effectiveness of that evidence by impugning the motives and the characters of the witnesses who testified on that subject and refers to the testimony of the child, that little pro-Japanese unfortunate, who, having

been reared in Japan, was so thoroughly indoctrinated with hatred of Americans and admiration for the Japanese military that even his testimony is suspect, we submit. But even his testimony corroborated Lapus' testimony in many particulars. He acknowledged that Lapus was an intimate of Ricarte, a personal friend, a confidant, close to Ricarte. There is absolutely no refutation in the record of Lapus' testimony concerning Ricarte's conversations with Yamashita, and the boy's testimony went only to the testimony of the subsequent witness as to what he had overheard in a conversation between Yamashita and Ricarte. Lapus' testimony stands. It has not been contradicted.

So that the record itself strongly supports the contention or conclusion that Yamashita not only permitted but ordered the commission of these atrocities. However, our case does not depend upon any direct orders from the Accused. It is sufficient that we show that the Accused "permitted" these atrocities. I repeat, sir: There can be no reasonable question whatever as to the commission of these atrocities. They are established.

As to the Accused's connection with those who committed these atrocities, again the record is clear that he did command the Army troops in the Philippines and in more than fifty per cent, well over the majority, of the instances established by the Prosecution the atrocities were committed by Army personnel, according to the testimony. He was in command of those troops.

As to the Navy troops, again the record is eloquent on that subject.

I submit, sir, that it is conclusive at this stage of the proceedings that Yamashita commanded the Naval ground forces in Manila at the time that the atrocities in Manila which we have established were committed. True, the witness Yokoyama made a statement concerning the objective or mission of some of the Naval groups along the waterfront, stating that their mission under Naval command was to repel an American attack from the sea with torpedo boats and the like.

Again the fact remains that there never was a Naval operation in Manila Bay. That Naval attack or attack from the Bay by the American forces never materialized. There were no Naval operations in Manila. Instead those Naval troops found themselves defending against an American attack from the land. Therefore they engaged themselves in land operations and in doing so they were under the command of Yamashita. That is the record!

With respect to the Accused having permitted atrocities, there is no question that the atrocities were committed in the Philippines on a widespread scale; notorious, tremendous atrocities; thousands of people massacred; men, women and children; babes in arms; defenseless, unquestionably noncombatants.

Who permitted them? Obviously the man whose duty it was to prevent such an orgy of planned and obviously deliberate murder, rape and arson -- the commander of those troops!

Now, sir, we must distinguish in this case between an incident where a member of the armed forces on his own,

perhaps while on leave, or certainly not while carrying out any military operation or duty, commits certain excesses or violations of law or the laws of war. That is one thing. But when that same man or others with him embarked upon military operations under the command and control of commissioned officers, engaged with the enemy, commits those same acts as a military unit, commits those same violations of law, the laws of humanity, the laws of war, then that definitely is the responsibility of the overall commander because he is using those troops for a military operation in accordance with his duty and he is responsible for what those people do in carrying out his mission.

Without further elaboration, sir, and without further argument the Prosecution most earnestly submits that there is no question -- absolutely no question whatever -- there can be no question at this stage of the proceedings as to the charge being supported amply and eloquently by the evidence before the Commission.

GENERAL REYNOLDS: The Commission will withdraw for deliberation.

(Whereupon the members of the Commission retired for executive session.)

GENERAL REYNOLDS: The Commission is in session.

The motion of Defense Counsel for a verdict of Not Guilty is denied.

The Defense may proceed.

COLONEL CLARKE: If the Commission please, on the 29th of October Defense requested a continuance at that time, in order to prepare on the additional Bill of Particulars and an affirmative defense. At that time the Court said that at the end of the presentation of the Prosecution's evidence concerning the Bill of Particulars dated 1 October 1945, presented during the arraignment, the Commission will consider such a motion.

In the afternoon session, at the time that the Prosecution proposed to establish one of the particulars in the new Bill of Particulars, there was a question as to whether or not it would be taken up; and the Court asked the Defense whether they had any comment to make.

At that time, Captain Reel told the Court that he understood that morning, after Prosecution's case was in in the 64 particulars, then consideration would be given to time to prepare on the other Bill and on the affirmative defense, and the Court answered, "That is correct". At that time we requested a two-weeks' continuance.

At the present time, Defense moves the Court for a reasonable continuance, in which time we may prepare and properly prepare an affirmative defense. During the time this Court has been in session, the Defense has been working day and night to keep up with that new Bill of Particulars. We have had no time whatsoever to prepare any affirmative

defense. In order that we may save time in the presentation of the Defense case, it is necessary that we prepare our defense so that it may be presented to the Court expeditiously.

We therefore request the Court to grant the Defense a reasonable continuance.

GENERAL REYNOLDS: The Commission will withdraw for deliberation.

(Whereupon the members of the Commission retired for Executive Session.)

GENERAL REYNOLDS: The Commission is in session.

The Commission has given careful consideration to the request of the Defense for a continuance. The Accused was arraigned on 8 October 1945, at which time the first Bill of Particulars was furnished to the Defense. Following the arraignment, there was an adjournment for three weeks to provide time for preparation by both Prosecution and Defense.

The supplemental Bill of Particulars was furnished Defense on or about 26 October 1945. The Prosecution started the presentation of its case on 29 October 1945.

This provides a total of 42 days since the arraignment.

Both in open session and in chambers, the Commission has cautioned both Prosecution and Defense to so plan their preparation as to avoid the necessity of asking for a continuance. On 12 November 1945 the Commission made the following announcement in open court, which is found on page 1835 of the record:

"The Commission will grant a continuance only for

the most urgent and unavoidable reasons. The trial has now consumed two weeks of time. The Prosecution indicates that this week will be required to finish its presentation. Early in the trial the Commission invited Senior Defense Counsel to apply for additional assistants in such numbers as to avoid the necessity for a continuance. The offer has been extended from time to time throughout the trial. The Commission is still willing to ask that additional counsel be provided for we do not wish to entertain a request for a continuance. The Commission questions either the necessity or desirability for all members of Counsel being present during all of the presentation of the case for the Prosecution. We feel that one or two members of the Defense staff in the courtroom is adequate and that the remaining member or members should be out of the courtroom performing specific missions for Senior Counsel. It directs both Prosecution and Defense to so organize and direct the preparation and presentation of their cases, including the use of assistants, to the end that need to request a continuance may not arise."

On several other occasions prior to the announcement just read, the Commission has invited Counsel, if they chose to do so, to apply to the appointing authority for additional assistants in whatever number they desire.

In view of this simple narration of time and events, the Commission feels that ample time has been provided Counsel to prepare its defense.

The request of Defense Counsel for a continuance to enable it further to prepare its case, is denied.

The Defense may proceed.

COLONEL CLARKE: If the Commission please, the continuance having been denied we request the court to grant us a short recess of a day.

GENERAL REYNOLDS: The Commission would be more willing to grant a recess until 1:30 this afternoon. Would that suffice?

COLONEL CLARKE: It will not suffice, sir.

GENERAL REYNOLDS: The Commission feels that the Defense should be prepared at least on its opening statement.

COLONEL CLARKE: We haven't had time to do that, sir.

GENERAL REYNOLDS: In view of the statement of Counsel that they are completely unready to make their opening statement and to proceed, the Commission will recess until 8:30 tomorrow morning.

(Whereupon, at 1000 hours, 20 November 1945, the trial was adjourned until 0830 hours, 21 November 1945.)