

I N D E X

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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.)

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