

INTERPRETER: Is Sawada a Lieutenant General or full general?

PROSECUTOR: Lieutenant General.

A My memory of the time is not very clear. However, the fact that General Sawada was there is clear in my memory. At the time of the execution.

DEFENSE: I withdraw that question and answer.

PROSECUTOR: May it please the Commission, this answer is not withdrawn. That is on the record and counsel has no authority to withdraw the answer from the record.

DEFENSE: Will you read back the question and answer for me?

REPORTER: "Question, then how do you know that General Sawada was in command of the 13th Army at this time?" And the answer "My memory of the time is not very clear. However, the fact that General Sawada was there is clear in my memory. At the time of the execution.

Q Was General Shimomura in command of the 13th Army at the time of the execution?

A I do not know.

Q Was Caesar Luiz dos Remedios the interpreter for the questions asked you by Major Dwyer?

A Yes.

Q Was he once an inmate in the Kiangwan Prison?

A He was in the Shanghai Branch of the -- he was in the Branch office -- the Shanghai Branch office of the legal division of the penitentiary.

Q Could General Shimomura have been in command of the 13th Army at the time of the trial of the Doolittle fliers?

PROSECUTOR: Objected to as being immaterial. What General Shimomura could have been or could have done is immaterial. If he is asked was he, or was he not, we have no objection.

COLONEL MC REYNOLDS: Objection sustained.

Q Was General Shimomura in command of the 13th Army at the time of the trial?

A I do not know about it at that time.

Q Do you know if General Sawada was in command of the 13th Army at the time of the trial?

A I do not remember.

Q Then do you know who was in command of the 13th Army at the time of the trial?

A Because of the fact that my dates are not clear chronologically, I do not know who the commanding general was.

Q Was General Shimomura ever in command of the 13th Army?

A Yes.

9/10 m 22 Mar 46

DEFENSE: No further questions.

PROSECUTOR: Does the Commission have any questions?

QUESTIONS BY THE COURT

COLONEL MURPHY:

Q I have, to clear up the status of Remedios when he was in the Branch office of the penitentiary, otherwise known as the Kiangwan Prison. Was he a prisoner there?

A Yes.

Q Do you know the name, rank and branch of the prosecutor who signed the writs of execution and imprisonment?

INTERPRETER: Imprisonment?

COLONEL MURPHY: Yes, execution and imprisonment.

A I do not know.

COLONEL WISE:

Q Was General Sawada present at the execution?

A I do not remember.

COLONEL BERRY: I would like to ask defense counsel, when you phrased the question to the present witness, something to the effect, Was General Sawada in command of the 13th Army at this time? and the witness answered, "He was in command at this time", my question to you is, what time are you referring to?

DEFENSE: (Lt Col Bodine) From the previous question I was referring to the time of the execution. If it please the Commission, I would like to point out at that time what I had in mind and what the witness had in mind are two different things.

COLONEL BERRY: It seems to me that it should appear on the record whether the witness knows the question and the time you referred to in making his answer.

DEFENSE: It may be that the matter will be cleared up if the reporter goes back and reads the testimony before this particular question.

PROSECUTOR: I might suggest that to clear it up the defense counsel ask the witness a question to tie him down to a particular date.

DEFENSE: He later answered that, I believe. I asked him later and he said no, but to that particular question he specifically stated that General Sawada was Commanding General of the 13th Army at this time. I think it will be unnecessary to pursue the matter any further.

COLONEL GAMBER:

Q While you were on duty as a guard at Kiangwan Branch Prison, did you ever act as a personal guard to any of the fliers?

A No.

Q Was the Bridge House jail under the 13th Army?

A I do not know of the others.

COLONEL GAMBER: What does he mean by that?

9/11 m 22 Mar 46

INTERPRETER: I do not know. I interpret only what is asked. I do not add words.

PROSECUTOR: Yes, of course.

DEFENSE: I do not think the question is made clear.

COLONEL GAMBER: I understood yesterday when he was questioned he said he had been there three times.

DEFENSE: The Japanese counsel said the interpreter had interpreted it to him that way.

COLONEL GAMBER: You mean the interpreter used those words?

INTERPRETER: When we translate we cannot add anything to explain the words. We give only a literal translation and we do not change it unless it is a grammatical error and we make it clear but we do not add words.

PROSECUTOR: Was the Honkew Gendarmerie Prison under the jurisdiction of the 13th Army?

A I do not know.

PROSECUTOR: May the witness be excused if there are no further questions?

COLONEL MC REYNOLDS: There being no further questions, the witness is excused.

(Whereupon the witness withdrew from the court room.)

PROSECUTOR: I might suggest at this time that we would like to translate the statement read into the record yesterday as the next order of business, if the Commission would like to recess first. It is nearly ten thirty.

COLONEL MC REYNOLDS: The Commission will recess for fifteen minutes.

(Whereupon the Commission at 1028 hours recessed until 1043 hours, at which time all members of the Commission, the accused, counsel for prosecution and defense, the interpreting staff and official reporter resumed their seats in the court room.)

COLONEL MC REYNOLDS: The Commission is in session.

PROSECUTOR: At this time we would like to have the interpreters translate the statement of Hite and DeShazer to the accused. This was read into the record yesterday, Prosecution's Exhibit No. 22.

(Whereupon the interpreter, Mr. Krantz, translated Prosecution's Exhibit No. 22 for the accused.)

PROSECUTOR: The prosecution will call as its next witness Sgt. Iasmu Yoneda.

9/12 m 22 Mar 46

YONEDA ISAMU

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

DIRECT EXAMINATION

(Sgt Morozumi, interpreting.)

Q (By Maj Dwyer) The prosecution will ask a couple of qualifying questions as to the witness' affirmation. Do you have a religion?

A I do.

Q What is it?

A Buddhism.

Q Do you know the difference between truth and untruth?

A I do.

Q In speaking before this Commission will you be bound by your conscience and your religion to tell the truth and nothing but the truth?

A I do.

(Whereupon the witness was given the oath of affirmation.)

Q State your name, rank and organization in the Japanese Army.

A Army Legal Section, Sergeant Major, Isamu Yoneda, 13th Army Prison.

Q Is that your present station?

A It is.

Q Was that your station in about September 1942?

A At that time it was the Shanghai Prison, Shanghai Branch of the China Expeditionary Forces Prison

Q When did you first come to Shanghai in 1942?

A Latter part of July.

Q Did there come a time at Kiangnan Military Prison when you met the Doolittle fliers?

A There was.

Q What date?

A It was when I came to Shanghai from Nanking, around the latter part of July 1942. I do not remember the date.

Q Were you present at a court-martial when these fliers were tried by the court?

A No.

Q Were you present at a time when certain of these fliers were executed?

A I was at the execution ground.

Q What date?

A I do not remember the exact date but I think it was in the middle part of October, 1942.

Q How many fliers were executed?

A Three.

9/13 m 22 Mar 46

Q Do you remember their names?

A No.

Q Describe to the Commission what happened at the execution grounds.
A The three prisoners were placed in front of crosses and their arms bound. A hood was placed over them and the firing squad took position about thirty meters away from them and fired.

Q Do you know Captain Tatsuta?

A I do.

Q Do you see him in the court room?

A Yes sir.

Q Point him out.

A (Pointing.)

PROSECUTOR: Let the record show the witness points to Captain Tatsuta.

Q Was he at the execution?

A Yes.

Q Was he in command of the execution?

A He was the commanding officer of the execution.

Q Was Captain Tatsuta the governor at the prison?

A He was the Shanghai Branch chief of the China Expeditionary Forces Prison.

Q At Kiangwan?

A Yes.

Q Did Captain Tatsuta give the command to fire at the execution?

A I do not clearly remember but I don't think he did.

Q Was Captain Wako there?

A He was.

Q Captain Okada?

A I do not remember.

Q Did anybody ask the fliers any questions before they were executed?

A Captain Tatsuta was asking and speaking to them.

Q What were the questions?

A I was too far distant away to understand.

Q You saw him talking to the fliers?

A I did.

Q Do you remember seeing me before?

A I think that when I was first investigated that you interrogated me.

Q That was at the Japanese Military Hospital in Kiangwan, wasn't it?

A Yes.

Q I show you a statement -- signed statement, and ask you whose signature that is?

A The signature is mine.

9/14 m 22 Mar 46

Q You signed that in front of me, didn't you?

A Yes.

Q There was an interpreter, wasn't there?

A He was.

Q Were you asked this question and did you give this answer through the interpreter: Question "Was he in command of the execution?" Answer "I think it was Captain Tatsuta."

A I stated that I was not sure.

Q I ask you again, were you asked that question and did you give that answer?

A I did.

Q Were you asked this question and did you give this answer: Question "He was governor of the prison?" Answer "Yes."

A I said that he was the branch chief.

Q Were you asked this next question and did you give this answer: Question "Did he give the command to fire?" Answer "I cannot be sure but I think it was him."

A I stated that at that time I was not sure who it was.

Q I ask you again, were you asked the question and did you give that answer when you talked to me?

A I did.

Q And just before you signed the statement did you make this statement: "The above statement has been read to me in Japanese by interpreter Caesar Luiz dos Remedios and I understand it fully and it is a true and correct statement. I affirm the statement" and then your signature?

A I was.

PROSECUTOR: You may cross-examine.

CROSS EXAMINATION

Q (By Mr. Kumashiro) What was your rank at the time of the execution?

A I was Army Prison Guard.

PROSECUTOR: Excuse me, was that "What was your rank?" Mr. Kumashiro could you speak up just a little bit more please.

Q What was the rank of Tatsuta at the time of the execution?

A He was Army Prison Chief.

Q Is it the civilian rank or the military rank?

A Civilian rank.

Q At the time of the execution how many orders were given to the firing squad?

A I think that there was only one order to the firing squad.

Q Do you remember what was that one order?

A I am not sure but I think I heard the order "Fire".

Q I ask you that is the independent order or one of the orders in one series of order?

9/15 m 22 Mar 46

INTERPRETER: I do not understand your question clearly.

(Captain Hahn then interpreted the question.)

A It was the single order of a series of orders.

Q Was it the final order of the series, of the order to "shot"?

A Yes.

Q I would like to repeat the -- I would like to ask again whether the order to shoot is the last order of the series of these orders?

A Yes, it was.

Q How far were you at the execution ground from the man who issued the order?

A I was standing about fifteen meters to the left of the person who issued the orders.

Q Could you hear the whole orders in that series of orders?

A I was able to hear all orders in that series of orders.

Q Can you say to this Commission that the -- Can you say to the Commission that each order in this series of orders?

A First it was "Attention", "Face to the target", "Prepare", and "Fire". "From squatting position, fire".

Q Anything more?

A I heard nothing other than that.

Q I would like to ask you the order of "shoot" is the last order?

A The order to fire was the last.

Q I would like to ask you again, after the firing squad shot the fire, were they not given any other orders?

A After the firing squad fired, they were given an order to cease fire.

Q Anything more?

A I don't think that there were any more than that.

Q Do you think all those orders were from the same person?

A The same person issued those orders.

Q Could you hear all those orders distinctly?

A I was -- I heard everything that I have stated to now.

Q How many chief of the guard were there at the time of the execution in the Kiangwan Prison?

A At that time there was one.

Q Was Tatsuta the chief of the guard at the time in the Kiangwan Prison?

A He was.

Q Was he the only chief of the guard at the time of the execution in the Kiangwan Prison?

A There was one other chief of the guards.

Q Who was the Chief of the Prison in Nanking at the time of the execution?

A Ooka Takigiro was the prison chief in Nanking.

9/16 m 22 Mar 46

Q Do you remember whether the medical doctor treated the wounds prior to place the corpse of the three fliers in the coffin?

A I do.

Q Don't you remember the flower wreaths was brought to the execution ground?

INTERPRETER: What do you mean, flower leaves?

DEFENSE: Flower wreaths.

A I do.

Q Was it the usual custom at the time of the execution of the Japanese?

A Yes.

Q Do you remember whether the special treatment was given at the time of the execution of the Doolittle fliers?

A I do.

Q What was it?

A We received orders from superior officers to afford these fliers more than to the Japanese prisoners; to permit them to exercise as long as they wished without limiting their period and we granted them more vegetables in their daily diet than we did to the Japanese. These vegetables were raised by the prison itself.

Q Anything more?

A And they were allowed to bathe twice or three times a week. They were also given two or three more blankets than the other prisoners.

Q How many to the Japanese prisoners in winter--in summer?

A In the summer it was three.

Q How many blankets did you give to the Doolittle fliers in summer?

A I remember that it was four or five blankets at that time.

DEFENSE: No more questions.

PROSECUTOR: Does the Commission wish to ask this witness any questions?

QUESTIONS BY THE COURT

COLONEL GAMBER:

Q Were you ever on duty as a guard directly over any of the fliers while they were in prison?

A I served as a general guard rather than guarding the fliers in particular.

COLONEL MC REYNOLDS: No further questions by the Commission.

PROSECUTOR: May the witness be excused.

COLONEL MC REYNOLDS: The witness is excused.

(Whereupon the witness withdrew from the court room.)

9/17 m 22 Mar 46

PROSECUTOR: The prosecution will call as its next witness Sgt. Tomoichi Yoneya.

YONEYA TOMOICHI

(Sgt Morozumi interpreting)
called as a witness on behalf of the prosecution, being first duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

- Q (By Major Dwyer) The prosecution will ask the witness a few preliminary questions to qualify his affirmation. Do you have a religion?
A I do.
- Q What is it?
A Shinto - Buddhist sect.
- Q Do you know the difference between truth and untruth?
A I do.
- Q In speaking to the Commission will you be bound by your conscience and your religion to tell the truth and nothing but the truth?
A I do.
- (Whereupon the witness was given the oath of affirmation.)
- Q State your name, rank and present organization and station.
A Army Judicial Sergeant Major, Tomoichi Yoneya.
- Q You are presently stationed in Kiangwan with the 13th Army?
A Yes.
- Q And Mayama and Yoneda are there with you, aren't they?
A They are.
- Q In 1942 were you stationed at Kiangwan Military Prison, Shanghai?
A There is no Kiangwan Prison in Shanghai.
- Q Where were you stationed in August, 1942?
A I was with the 13th Army.
- Q Were you at the prison where the Doolittle fliers were brought?
A I was.
- Q When did you first see the Doolittle fliers?
A It was some time in 1942. I do not remember the date or the month.
- Q Did you remember attending a court-martial of the Doolittle fliers?
A I do not remember.
- Q Were you present at First Shanghai Cemetery in October 1942 when three of these fliers were executed?
A I was.
- Q What were your duties at the execution?
A I went there on preparatory detail and erected crosses with new lumber.

9/18 m 22 Mar 46

Q Did Captain Tatsuta order you to do that?
A Yes.

Q When the three fliers arrived at the cemetery were you already there?

A Because I have come there on preparatory detail, I was there.

Q Was Captain Tatsuta in charge of the execution party?

INTERPRETER: Repeat the question please.

(Whereupon the reporter read the question back to the interpreter.)

A He was there and he transmitted the orders he received from Ooka.

Q Did you help tie any fliers to the cross?
A I did.

Q Was Ooka present?
A He was not.

Q Who did you tie to the cross.
A I have forgotten his name.

Q Describe to the Commission the execution of the fliers. What happened?

A I was on preparatory detail and I went and erected crosses made of new timber, after which I brought the prisoners by vehicle. After the prisoners were brought to the cemetery I bowed to the coffin after which the prisoners were tied to the crosses with new cloth. There were two riflemen assigned to each man. One primary rifleman and the other secondary. As to the person giving the order, I do not clearly remember.

Q Which officer gave the signal to fire the shot?

A The person who gave the order to fire I think was either the officer or the non-com who was in charge of the firing squad.

Q Did you ever see me before?
A I have.

Q You gave me a statement at Japanese military hospital, through an interpreter?

A I have.

Q I show you that statement with a signature at the bottom of it and ask you whose signature that is.

A The top signature is mine.

Q That is the signature above the two English signatures?
A Yes.

Q You signed that in front of me?
A Yes.

Q Now in that statement were you asked this question and did you give this answer: Question "Which officer gave the signal to fire the shot?" Answer "I think it was Captain Tatsuta because he was the Governor of the Shanghai Military Prison, a branch of Nanking."

9/19 m 22 Mar 46

A I was mistaken. At that time Captain Tatsuta was a civilian and a civilian can never issue an order to military personnel.

PROSECUTOR: I ask the answer be stricken from the record. I merely asked the question did I ask that question and did he give that answer. I move that his answer be stricken from the record.

DEFENSE: If it please the court, this witness is merely giving a pretty responsive answer to the question. He can make an answer "yes" or "no" or he can make an explanation. He gave the explanation which implies the answer given at that time was a mistake.

COLONEL MC REYNOLDS: The answer will be stricken from the record.

Q I ask you again, were you asked that question and did you give that answer?

A I did not.

Q Do you know Lieutenant Hayama, defense counsel in this case?

A I do.

Q He is also in the Legal Department, Japanese 13th Army, isn't he?

A Yes.

Q Do you know Captain Shimada of the same department?

A I do.

Q They were present when you gave me this statement weren't they?

A Yes.

Q And they heard the translation of Mr. Remedios read to you, didn't they?

A Yes.

Q Have you talked to Lt. Hayama about this statement since you gave it to me?

A I have not spoken to him concerning the statement.

Q You are in the same office with him, aren't you?

A No.

Q Did you lie to me then, when you gave me the statement?

A I did not say a lie. It could very probably be that I misunderstood or was misunderstood.

Q You didn't object to the translation at the time it was read to you, did you?

A Yes.

Q You objected to the translation when it was read to you?

A No.

DEFENSE: If it please the Commission, there is some misunderstanding on the interpretation there.

PROSECUTOR: I think if there is some question of interpretation, the interpreters can get together and settle it.

(Whereupon the interpreters consulted with each other but before a decision was reached, the prosecution again spoke up.)

9/20 m 22 Mar 46

PROSECUTOR: I withdraw the question.

Q Did you object to the translation when it was read to you?

A I did not object at that time.

Q Did Lieutenant Hayama object?

A I do not know.

Q You were there weren't you?

A I was.

PROSECUTOR: May it please the Commission, we shall need this witness after lunch. It is five after twelve. Do you wish to take a recess?

COLONEL MC REYNOLDS: The Commission will adjourn until two o'clock this afternoon.

(Whereupon, the Commission at 1205 hours, adjourned until 1400 hours, 22 March 1946.)

AFTERNOON SESSION

... Pursuant to adjournment, the Commission reconvened at 1400 hours on 22 March 1946 ...

COLONEL MC REYNOLDS: The Commission is in session.

MAJOR DWYER: Let the record show the members of the Commission, prosecution and defense counsel, accused, interpreters and reporter are present in the court after recess and the witness is reminded he is still under oath.

TOMOICHI YONEYA

testifying at the close of the previous session, resumed the stand, was reminded he is still under oath, was examined and testified (through T/Sgt John Morozumi) as follows:

CROSS EXAMINATION

Q (By Mr. Komoshira) At the time of the execution of the Doolittle fliers were you a guard of the Kiangwan Prison?

A Yes.

Q Did the Kiangwan Prison belong to the 13th Army at the time of the execution of the Doolittle fliers?

A It is not the Shanghai Prison. It is the Shanghai Branch, China Expeditionary Force Prison.

Q Where was the Shanghai Expeditionary Army's prison?

A Kiangwan. It is the Shanghai Branch of the China Expeditionary Force Prison.

Q Where was the main prison?

A Nanking.

Q Do you know who led the firing squad at the time of the execution?

A Either an officer or a non-com. I am not sure of it.

Q How many members were there in this firing squad?

A There were two persons per man making a total of six.

Q Did you hear the orders to fire at the time of the execution?

A I did not hear the order "fire".

Q Where were you at the time of the execution?

A Between the crosses and the firing squad to the side.

Q How far was it between you and the firing squad?

A About 15 meters.

Q Do you think that the order to fire is spoken independently according to the military regulations?

A I didn't hear the order "fire", however, they were given an order to load, to about face, to forward march and halt.

Q I'd like to ask you that the present answer was from what you have seen actually the firing squad had done?

A I saw the actions of the firing squad and stated it.

Q After they fired the shot what kind of action did the firing squad taken?

A I think that the order was about face, forward march, halt and extract cartridge.

Q Don't you remember who had ordered these series of orders at the time of firing?

A I do not remember. Since the orders are important to such a point I don't think anyone other than an army officer or a non-com could have given such orders.

MAJOR DWYER: May it please the Commission, prosecution moves to strike that answer. The witness may be permitted to say what he saw and what he observed but when he says "I don't think it could have happened this way" because of some circumstance, that is not a responsive answer and has no probative value. We suggest the witness describe what he saw. If he didn't see anything let him so state.

CAPTAIN FELLOWS: If the Commission please, there is no doubt but what it does have probative value.

COLONEL MC REYNOLDS: The answer given was not an answer to the question. It will be stricken from the record.

Q Can a civilian order to military officers, military personnel?

A They can not.

Q Please explain to this Commission the treatment of the prisoners in the Kiangwan Prison concerning to the food.

A The food rations are set down by the prison. However, we raised part of our own vegetables. The main dish can not be altered, however, the side dishes could be and was supplemented with greens raised in our own yard.

Q Were the fliers and the Japanese prisoners treated equally in the Kiangwan Prison?

A There is no Kiangwan Prison. It is the Shanghai Branch.

Q I mean the prison where the fliers were.

A I understand.

Q How was it?

A Of course the same.

Q Were they not given any special treatment?

A They were treated similar to the treatment the Japanese prisoners were getting. We did not see them get any better treatment.

Q I'd like to ask you who cleaned the toilets of the Japanese prisoners?

A Japanese inmates.

Q Who would clean the toilets of the fliers?

A That also by Japanese.

Q I would like to know the reason why there was the difference between the cleaning of the Japanese prisoners toilet and the toilet of the fliers?

A There were no difference.

Q I understand that you have just said that all the toilets were cleaned by the Japanese prisoners.

A Yes, Japanese did clean out all of the toilets.

Q Did you not receive any special order from the chief of the guard to give special consideration to the fliers while they were in the confinement there?

A I have.

Q What kind of order did you receive?
A Because our language is different and because they are of a different nationality, to treat them a little easier.

Q What kind of special treatment were actually given to the fliers?
A They were given consideration in that they were given vegetables as side dishes because of the fact that bread alone will not sustain them.

Q Was that order given from Tatsuta?
A Yes, because we are guards.

MR. KIMASHIRO: No further questions.

LT COL HENTREN: Any questions by the Commission?

COLONEL MC REYNOLDS: There appear to be none. The witness is excused.

(Witness excused)

MAJOR DYER: Prosecution calls as its next witness, Sergeant Minezaki.

YUTAKA MINEZAKI

was called as a witness on behalf of the Prosecution.

MAJOR DYER: The prosecution will ask two or three preliminary questions to qualify the affirmation of this witness.

Q Do you have a religion?
A Yes.

Q What is it?
A It is Buddhism.

Q Do you know truth from untruth?
A Yes.

Q In speaking before this Commission will you be bound by your conscience and religion to tell the truth and nothing but the truth?
A Yes.

(Whereupon the witness was affirmed, was examined and testified (through S/Sgt Katsuki Arita) as follows:

DIRECT EXAMINATION

Q (By Major Dwyer) State your name, rank and present organization and station.

A Sergeant Major Minezaki, Yutaka of the Japanese Judicial Branch, location of the unit at Kiangwan Headquarters of the 13th Army.

Q Japanese army?
A Yes.

Q Where were you stationed in August 1942?
A Shanghai.

Q Were you stationed at the Shanghai Branch Military Prison at that time?

INTERPRETER: To the previous question, "I was attached to the Supreme Headquarters."

#10-4 z 3/22 FM

Q Were you stationed at Shanghai Branch Military Prison in August 1942?

A That was in September.

Q Was it September that you first came there?

A Yes.

Q What was your rank at the time?

A Guard.

Q Was there a time in September 1942 when you met the Doolittle fliers at that prison?

A Yes.

Q How many did you meet?

A I remember as having been five of them.

Q Do you remember their names?

A I do not remember.

Q Do you remember a time in October 1942 when you attended the execution of three of these Doolittle fliers?

A Yes.

Q What were your duties at the execution?

A Security.

Q Did you help tie the men to the crosses?

A I did not.

Q Who was in charge of the execution party?

A I do not remember.

Q Was it Captain Tatsuta?

A Yes.

Q Was he commander of the prison at that time?

A Yes. He was the chief of the Shanghai Branch of the army prison.

Q Was he present at the execution?

A Yes.

Q Do you see Captain Tatsuta in the courtroom?

A Yes.

Q Point him out to the Commission.

MAJOR DYER: Let the record show the witness points to Captain Tatsuta.

Q Describe to the Commission what you saw at the cemetery when the execution took place.

A First I got there, Tatsuta was speaking to three persons. Just those that were assigned duties took them over to the cross and began preparations. After the execution, the bodies were all interned in a coffin and were arranged in a row of three.

Q How were the three fliers executed?

A It was by firing squad.

Q By firing squad?

A That is right.

Q Was it the three fliers that Captain Tatsuta was talking to?

A Yes.

Q Do you know what he said or what they said?

A I do not remember.

Q Where were you standing when all this took place?

A Facing the cross on the right hand side at approximately 20 meters.

Q After the men were executed by the firing squad what happened to their bodies?

A I do not remember.

Q They were taken out of the cemetery?

A They went toward the crematorium.

Q You are in the legal office of the Japanese 13th Army now?

A Yes.

MAJOR DYER: You may cross examine.

CROSS EXAMINATION

Q (By Mr. Kumashiro) You have just said that Tatsuta was in command of the execution. What do you mean by "in command"?

A Captain Tatsuta was the chief guard and we being guards we received orders from him and the guards maintained security. We act under the orders of the chief of guards.

Q Does it mean that Tatsuta was in command of those subordinates?

A Just the guards.

Q Don't you know who was the responsible officer in the execution?

A I do not know.

Q How many firing squads were there at the execution grounds?

A One squad.

Q How many members were there?

A Which is that, of the squad?

Q Yes.

A Approximately 15 men.

Q Were these members under the command of Tatsuta?

A No.

Q Do you remember who issued the order to fire?

A I do not remember.

Q Where were you at the time of the execution actually taken place?

A I was facing the crosses to the right 20 meters.

Q Could you hear the voice of the order to shoot?

A Yes.

Q Was it the only voice of the order which you heard?

A Yes.

Q Did you see what the firing squad conducted?

A Yes.

Q What was it?

A In this squad the actual shooters or firers were three, the rest were security members or guards.

Q Did the fire squad shoot the fire standing?

A From a squatting position, kneeling.

Q Did you not hear the order to shoot?

A Yes.

Q Did you hear any other orders besides to shoot?

A I do not remember.

Q Do you know from whom the order to shoot came?

A I do not remember.

Q What was the rank of Tatsuta at the time of the execution?

A Chief of guards.

Q Was he a professional military man?

A He was a civilian attached to the army.

Q Could a civilian issue an order to a professional military man?

A He can not.

Q Were the fire squad military men?

A Yes.

MR. KUMASHIRO: No further questions.

EXAMINATION BY THE COMMISSION

Q (By Colonel Gamber): To what army did the firing squad belong?

A I do not remember.

Q You stated that Tatsuta was in charge of the execution. Did you so state?

A He was the commander of the guards only.

Q Did you see Captain Tatsuta give any instructions to the commander of the firing squad?

A I do not remember.

COLONEL MC REYNOLDS: There appear to be no more questions; the witness is excused.

(witness excused.)

LT COL HENDREN: At this time we will put Major Dwyer on the stand pertaining to the previous witness.

MAJOR ROBERT T. DWYER

called as a witness on behalf of the prosecution, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Lt Col Hendren) Major Dwyer, did you assist in the investigation and examination of the witnesses in this case?

A I did sir.

Q Major Dwyer, please state your name, grade and organization.

A Major Robert T. Dwyer, Headquarters Army Air Forces, Assistant Air Judge Advocate, Air Forces, China Theater.

Q Major Dwyer, in your investigation of the case, did you take a statement from Sergeant Minezaki?

A I did, sir.

Q On what date was that statement taken?

A That statement was taken on 20 November 1945.

Q Will you state to the Commission the circumstances under which the statement was taken?

A In the company of Mr. Remedios, an interpreter employed by the U.S. Army, I was taken to the Japanese military internment camp on the outskirts of Shanghai. Lt. Hayama, defense counsel in this case, and a legal officer in the Japanese 13th Army, together with a Captain Shimada of the same office, took me to the camp. I had a shorthand reporter with me. Lt. Hayama went into the camp barracks and brought out Minezaki. I took Minezaki's statement in the presence of both Captain Shimada and Lt. Hayama.

Q Was that statement taken down in shorthand by the reporter?

A Yes, sir. I would ask the question and the interpreter would interpret that into Japanese. He would obtain the answer and give it back in English.

Q Then was that statement typed and presented to Sergeant Minezaki for his signature?

A Yes, sir.

Q Was the statement read back to Minezaki in Japanese when he signed it?

A Yes, sir, and in the presence of Lt. Hayama and Captain Shimada.

Q Do you have with you a signed copy of the statement given by Sergeant Minezaki?

A Yes, sir, I have several executed all in the original and I have one with me.

Q Major Ivyer, I ask you to examine the copy you have and I will ask you if the following questions were asked and the following answers given. Was this question asked, "Do you remember a time in October 1942 when three of those fliers were executed?" and this answer given, "Yes."

A That question was asked and that answer was given.

Q I will ask you if this question was asked and this answer given: "Were you present at the execution?" A. Yes."

A That question was asked and that answer was given.

Q I will ask you if this question was asked and this answer given: "Who was in charge of the execution party?" A. Captain Tatsuta."

A That question was asked and that answer was given.

Q I will ask you if this question was asked and this answer given: "Q. Was he commander of the prison?" A. Yes."

A That question was asked and that answer was given.

Q Now Major Dwyer, I will ask you if you took a similar statement from Sergeant Yoneya.

A I did.

Q Was that statement taken under similar circumstances as that you have related relative to Sergeant Minezaki?

A Yes, sir, this was taken at a Japanese military hospital on the outskirts of Shanghai in the presence of Lt. Hayama and Captain Shimada who took me into the hospital. The same interpreter was present also.

LT COL BODINE: If it please the Commission, I object to the method of questioning the witness. I'd like to know the reason. Are they trying to impeach their own witness? If they have any further questions to ask, the witness are here.

LT COL HENDREN: We are showing to the Commission the inconsistent answers given by the witness on the stand and that given at the time he was interrogated at the first instance. It is a form of impeachment of these Japanese witnesses who appeared today who belong to the same army as these gentlemen here on trial. I think this is proper for the record and it is evidence that has probative value before this Commission.

LT COL BODINE: May it please the Commission, there was no answers given today that were different from the answers the prosecution has been asking the witness.

LT COL HENDREN: I believe there was, if the Commission remembers the testimony. I think the answers were somewhat different.

COLONEL MC REYNOLDS: Objection overruled. Proceed.

Q Major Dwyer, did Sergeant Yoneya sign his statement after it had been interpreted to him in Japanese?

A He did.

Q I will ask you if this question was asked and this answer given: "Q. Was Captain Tatsuta in charge of the party? A. Yes."

A That question was asked and that answer was given.

Q I will ask you if this question was asked and this answer given: "Q. Which officer gave the signal to fire the shot? A. I think it was Captain Tatsuta because he was the governor of the Shanghai Military Prison, a branch of Nanking."

A Yes, sir, that question was asked and that answer was given.

Q I will ask you, Major Dwyer, if you took a similar statement from Sergeant Yoneda.

A I did, sir.

Q Was this statement taken under similar circumstances as that taken relative to the statement taken from Sergeant Minezaki?

A Yes, sir, this was also taken on the 20th of November, 1945 at the Japanese military hospital in the presence of the same persons I have already testified to.

Q Did Sergeant Yoneda sign his statement after it was read to him in Japanese?

A He did.

Q Do you have a signed copy of his statement before you?

A Yes, sir.

Q I will ask you, Major Dwyer, if this question was asked and this answer given: "Q. Do you know Captain Tatsuta? A. Yes."

A Yes, sir, that question was asked and that answer was given.

Q I will ask you if this question was asked and this answer given: "Q. Was he in command of the execution? A. I think it was Captain Tatsuta."

A That question was asked and that answer was given.

Q I will ask you if this question was asked and this answer was given: "Q. He was governor of the prison? A. Yes."

A Yes, sir, that question was asked and that answer was given.

Q I will ask you if this question was asked and this answer was given: "Q. Did he give the command to fire? A. I can not be sure, but I think it was him."

A Yes, sir, that question was asked and that answer was given.

LT COL HENDREN: You may cross examine.

CROSS EXAMINATION

- Q (By Captain Fellows) Major Dwyer, who was the interpreter on all these statements?
- A Mr. Remedios.
- Q On all of these statements?
- A Yes, sir.
- Q In whose office was Mr. Remedios employed?
- A I employed him in my office.
- Q Your interrogation was handled through Mr. Remedios?
- A That is correct.
- Q Who read the statements to these witnesses?
- A Mr. Remedios.
- Q Did you ever have another interpreter present to check Mr. Remedios' statements before these witnesses?
- A No, I had no other official interpreter. Lt. Hayama, who understands English, was there, however.
- Q Is Lt. Hayama efficient on the speaking of the English language?
- A Oh, he does a fair job speaking. I wouldn't say he was an expert.
- Q Is he sufficiently proficient to be an interpreter?
- A No, I wouldn't say he is good enough to be an interpreter.
- Q Then is it not true that all three statements that you have testified to are actually what Mr. Remedios states these witnesses said?
- A Yes. I regard them as satisfactory because Lt. Hayama and Captain Shimada used him himself when they had him as a prisoner.

CAPTAIN FELLOWS: If the court please, I move the answer be stricken as not responsive to the question.

LT COL HENDREN: I doubt if the last part of the answer was responsive, if the court please. The first part of the answer was responsive.

COLONEL MC REYNOLDS: Strike that portion out, please.

- Q Major Dwyer, how did you locate these witnesses?
- A The names of these witnesses were originally given me from an investigation made by the first American War Crimes team that came in here, so I went to the 13th Army Headquarters out here at Kiangwan and met Lt. Hayama and Captain Shimada and they produced the men themselves.
- Q Major, would you state that Lt. Hayama as being a help to you in investigating this case?
- A Yes, I would say he was. If I remember, he gave instructions to each man whom I questioned, told them to tell the truth.

CAPTAIN FELLOWS: No further questions.

LT COL HENDREN: Does the Commission have any questions?

COLONEL MC REYNOLDS: There appear to be no questions by the Commission. The witness may be excused.

(Witness excused.)

LT COL HENDREN: If it please the Commission, the next offer we have is a transcript exhibit, being the statement of a Japanese named Major Hata and it is rather lengthy. Is it the desire of the Commission to recess now and start on this statement after the recess, or does the Commission desire for me to start on the statement?

COLONEL MC REYNOLDS: The Commission will recess for approximately 15 minutes.

(Whereupon the Commission recessed at 1515 hours.)

COLONEL MC REYNOLDS: The Commission is in session.

LT COL HENDREN: Let the record show the members of the Commission, counsel for prosecution and defense, the accused, the interpreters and reporter are present in court at the termination of recess.

LT COL. JOHN H. HENDREN JR.

recalled as a witness on behalf of the prosecution, having been reminded he was still under oath, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Major Dwyer) Colonel Hendren, in connection with the investigation of this case, did you have occasion to learn of a Major Hata Itsuro?

A Yes, I did.

Q What was his connection with the Doolittle case?

A He was the prosecutor at the court martial held 28 August 1942.

Q Has your investigation disclosed whether this man is living or dead at this time.

A I have been advised that Major Hata is dead.

Q State briefly to the Commission the facts upon which you base that statement.

A A request had been made sometime last fall, I believe it was in November, to the American Army in Japan to apprehend Major Hata. I was in Japan the latter part of 1945, last part of December, and I was advised by the legal branch of the Supreme Allied Headquarters there that Major Hata was sick in a hospital. I went to the hospital where he was supposed to be and found that he had left a few days before that for his home. I then requested to the American army that he be apprehended at his home and held for transportation to Shanghai in connection with this case. Sometime later in January 1946 I was advised by the American Army in Tokyo that Major Hata had died. I then requested the particulars relative to his death and received a communication dated 6 February 1946 from the General Headquarters, Supreme Commander for the Allied Powers in Tokyo a certificate of Major Hata's death and a copy of the report of the medical officer who examined the body on 23 January 1946 and three photographs of the body. The body was examined by an American medical officer on 21 January 1946 and was identified to him as the body of Major Hata.

Q Prior to Major Hata's death, can you state to the Commission whether a statement was taken from the major?

A Quite sometime prior to his death, Major Hata sent a statement written in Japanese to the legal section of the Supreme Allied Headquarters in Tokyo and that statement was translated by the Allied Interpreters Service in Tokyo and the English translation was forwarded to me through military channels here in Shanghai in December of 1945.

#10-11 z 3/22 PM

Q Did an official army translation of that statement accompany the statement itself?

A Yes, it was officially translated, forwarded to the legal section on 28 November 1945.

Q Do you have that translation in your possession?

A Yes, and I also have in my possession the original statement from which it was translated which is written in Japanese, and that statement I picked up in Tokyo in the early part of January 1946.

MAJOR DWYER: Please mark this document as Prosecution's Transcript Exhibit No. 25 for Identification.

(Document so marked.)

MAJOR DWYER: Copies of this translation have been given the defense counsel sometime ago. I now offer Prosecution's Transcript Exhibit No. 25 for Identification in evidence as Prosecution's Transcript Exhibit No. 25.

CAPTAIN FELLOWS: May I ask a few questions of the witness concerning the exhibit?

CROSS EXAMINATION

Q (By Captain Fellows) Colonel Hendren, have you examined the exhibit which has been offered in evidence?

A Yes, I have.

Q Was it sworn to?

A I don't believe it was. It is a voluntary statement made by Major Hata.

Q Was it signed in the presence of any person that you know of?

A I don't know that of my personal knowledge.

CAPTAIN FELLOWS: No further questions.

If the Commission please, we have some statements taken somewhat similarly, for which reason, in order to make a record which to guide ourselves, we'd like to interpose an objection to the admissibility of this statement so it will set this standard.

COLONEL MC REYNOLDS: What is your objection to the admissibility?

CAPTAIN FELLOWS: The objection is to put in the record at this time whether or not a statement taken not under oath and not signed in the presence of any known person is admissible. It is being made for our guidance as we proceed.

MAJOR DWYER: May it please the Commission, we have taken great pains to show the facts and circumstances surrounding the taking of each statement which we have offered in evidence. We have put on the witness stand both Colonel Hendren and myself to show these circumstances. Each exhibit that is offered must stand on its own merits. This particular exhibit is a statement voluntarily written by Major Hata of his own volition and Major Hata is dead. We can not set any standard for all exhibits. These peculiar circumstances are peculiar to this exhibit alone, at least so far as we know, so that whatever the ruling of the court may be on the admissibility of this exhibit, it can not be said to set a standard. Each must stand or fall on its own merits.

LT COL BERRY: May I inquire as to whether there is anything in the statement which indicates why the major wrote or prepared the statement. I am afraid I am not clear as to what he did with the statement after he wrote it. Did he send it voluntarily to the headquarters in Tokyo of the Allied

#10-12 z 3/22 PM

Powers or just what did he do with the statement.

MAJOR DWYER: Let the witness answer.

THE WITNESS: This statement was mailed from a Japanese hospital in Tokyo by Major Hata to Colonel Carpenter, Chief of the Legal Section of the Supreme Allied Headquarters in Tokyo after Major Hata had been informed that he was to be apprehended in this case. I picked up the original Japanese copy from Colonel Carpenter's office in Tokyo.

COLONEL MURPHY: I may have missed this in the testimony, but did Colonel Carpenter authenticate the signature, did he make any affidavit that he knew this was the signature of Major Hata, or is there any authentication of the signature at all?

A The original statement is written entirely in Japanese. I don't believe Colonel Carpenter can read Japanese, but I believe the exhibit will show its authenticity at the time it is read to the Commission that it did come from the Major because it contains information which he would likely have in his possession.

COLONEL MC REYNOLDS: The objection is overruled. The statement will be read into evidence and the Commission will give the proper weight to the voluntary statement.

(Prosecution's Transcript Exhibit No. 25 for Identification was received in evidence.)

(Witness excused.)

(Whereupon Colonel Hendren read Prosecution's Transcript Exhibit No. 25, which is attached hereto.)

Dec 1870

EMS/BHK

ALLIED TRANSLATOR AND INTERPRETER SECTION
UNITED STATES ARMY FORCES, PACIFIC

NOTE: Translation requested by Legal Section.

PARTICULARS RELATING TO THE PUNISHMENT OF THE AMERICAN
ALDERMAN WHO RAIDED THE JAPANESE HOMELAND ON 18 APRIL 1942

by HATA, Itsuro ()

On 28 August 1942, I was ordered to be the prosecutor in the trial in of Second Lieutenant HORUAKU (TN Presumably HALLMARK) and seven others at the 13 Army Military Tribunal in the compound of the 13 Army Headquarters stationed in SHANGHAI, CHINA. The following is a detailed account of the nature of my duties at the time of the trial, and my version of my part in this affair. I solemnly swear that this account is absolutely true, sl help me God!

In order to understand fully the circumstances of the punishment, it is necessary to present a general outline of the organization and functions of the military tribunal, and its trial procedure.

A. Organization and function of the Military tribunal.

The military tribunal is the army's legal organ for punishing any individual, other than Japanese nationals, within a military zone of operation of the Japanese Army, who commits any act construed to be a wartime offense, or who commits any act inimical to the safety of the Japanese Army, or who commits any act which hinders military operations.

After the outbreak of the CHINA incident, the Japanese Army established military laws affecting all non-Japanese peoples in the various zones of operations, and established a military tribunal in each army headquarters to punish any individual violating these laws. The military law differs from the criminal and army penal laws in that it is not established with the authorization of the Imperial Diet. It is purely an army order imposed by authority of the respective army headquarters for the purpose of insuring the safety of the army, and for securing the activities of military operations.

Since the military law is based essentially on the requirements of military operations, the military tribunal which tries all violators of this law falls into the same category. On this point, the real nature of the military tribunal differs from that of the court martial, which is based on the army court-martial law. However, aside from a few exceptions, the organization and procedure of the military tribunal are, as a rule, patterned after army court-martial law. I will herein explain it by using, as an example, the military regulations and the military trial regulations under the military law of the Japanese Expeditionary Army in China, which was established by authority of the Supreme Headquarters of the Japanese Expeditionary Army in China. Those established in territories other than China differ only slightly.

According to these, the military law of the Expeditionary Army in China applies to people other than Japanese nationals within the zone of military operation of the said Expeditionary Army (Art. 1). Any person who engages in conspiracies, or espionage activities against the Japanese Army, or who willfully and knowingly endangers the safety of the Japanese Army, or who commits any act which interferes with military activities is liable to military punishment (Art. 2). Such punishment is divided into five classes: death, imprisonment, banishment, fine and confiscation (Art. 5).

The organization and functions of the military tribunal are prescribed in the military trial regulation of the Expeditionary Army in China. They prescribe that the military tribunal is under the jurisdiction of the Expeditionary Army in China, or a subordinate army thereof (Art.2), and stipulate that the presiding officer shall be the supreme commander of the Expeditionary Army or the commanding general of the subordinate army thereof (Art.5).

The general military tribunal consists of the presiding officer, the judges, the law member, the clerk of court, and the sergeant-at-arms. Further, the legal section is established to assist the commanding general who is the presiding officer, and the chief of the legal section directly assists the commanding general. In addition, the chief of staff and his subordinate staff officers assist the commanding general, insofar as requirements of military operations are involved.

A summary military tribunal, on the other hand, is merely an agency appointed to pass judgment on specific cases, and is limited in its jurisdiction. The tribunal in this case is composed of three judges, two of whom are combatant officers, and the third a law member.

When these requirements are fulfilled, the presiding officer takes charge (Art.6). The trial convenes with the judges, the prosecutor and the clerk of court in attendance (Art.7). However, in trying foreigners other than Chinese, the military tribunal must obtain sanction of the supreme commander of the Expeditionary Army in China (Art.8). The ranking officer among the judges is the presiding officer.

As a general rule, the military tribunal tolerates no interference in conducting its trial. However, as has been mentioned previously, inasmuch as the military tribunal is set up by authority of the commanding general of the Army in accordance with the requirements of military operations and placed under his jurisdiction rather than being granted absolute judicial power, it is operated by the virtue of the prerogative of the supreme command. Hence, it is probable that, within the bounds of the requirements of military operations, a certain degree of latitude is permitted in the trial proceedings.

On the other hand, the prosecutor can exercise no initiative in discharging his duties, and is merely a tool discharging the duties of his office in complete compliance with the orders of his superiors.

The foregoing is a general outline of the organization and function of a military tribunal. Perhaps additional data may be presented verbally. For reference purposes, there are attached hereto supplementary inclosures presenting the rules and regulations of military law of the Expeditionary Army in China and the rules and regulations for trial procedure of the said Army. (See inclosures 1 and 2).

D. MILITARY TRIBUNAL PROCEDURE.

As a rule the military police investigate all violations of the military law. When sufficient evidence confirming the violation is assembled, a report of the investigation, together with all documentary and material evidence is transmitted to the presiding officer of the military tribunal. When this report is received, the prosecutor of the military tribunal, upon receipt of orders from the presiding officer, carefully examines all the documents, etc., and if necessary, submits his opinion to the presiding officer as to the advisability of prosecuting the case. This the presiding officer takes under consideration by consulting the chief of the legal section, the chief of staff and his subordinate staff officers; and after arriving at a decision, issues his instructions to the prosecutor.

On the basis of this order, the prosecutor makes appropriate disposition of the case. In a case where the prosecutor draws indictment, a summary tribunal passes judgment. In such a case, the prosecutor is present at the trial, and carries out his duties in compliance with the orders of his superiors.

In this connection, the prosecutor conducts the trial on the basis of the defendant's testimony. If the trial establishes the guilt of the defendant, the term of imprisonment is based on the recommendation of the prosecutor. However, in imposing a death sentence, the order of the presiding officer is required.

9. PARTICULARS RELATIVE TO THE PUNISHMENT METED OUT IN THIS INCIDENT.

1. On or about 18 April 1942, I was on duty with the legal section of the Central Army at OSAKA. Shortly thereafter I was transferred to the legal section of the 13 Army as a staffmember, and reported to duty at SHANGHAI, 13 May 1942. Until 1 March 1943, when orders for my transfer to HIROSHIMA () came through, I was on duty for approximately 10 months at Shanghai.

2. At the Tokyo Military Police headquarters, Lieutenant HORUMAKU and the seven others were examined by First Lieutenant WADA, Kiyoku () Military Police, and others. Toward the end of July 1942, Major OGATA Izumi (), of the Shanghai Military Police headquarters, came to the 13 Army Hq with the documents of the investigation in his possession. He explained in detail the full particulars of the case to Colonel ITO, Okinobu (), who is the chief of the 13 Army Legal Section and the prosecutor of the military tribunal, and others, and demanded that the airman be tried by the military tribunal.

It was at this point that I first became aware that this case was being investigated by the Military Police, and that Lieutenant HORUMAKU* and his men were in the custody of the Shanghai Military Police headquarters. Colonel Ito called attention to the fact that the findings of the investigation were limited to the testimonies of the defendants, and did not reveal such information as damages and losses sustained in the bombing and strafing. He gave instructions for the preparation of a document covering all aspects of the case, and for its dispatch to the military tribunal. Accordingly Major OGATA and his colleagues made inquiries at the Tokyo Military Police headquarters as to the extent of the damages and losses, the findings of which were appended to the investigation report.

The case was referred to the 13 Army Military Tribunal early in August 1942. Its prosecutor for the 13 Army Military Tribunal, Colonel Ito carefully examined the papers relating to the case, following which he submitted his recommendations to Lieutenant General SAWADA (), Commanding General of the 13 Army, Major General KARAKAWA (), chief of staff, and others. Upon orders from the commanding general of the 13 Army, approved by the supreme commander of the Expeditionary Army in China, Lieutenant HORUMAKU* and the seven were indicted, and committed to trial by the 13 Army Military Tribunal. To facilitate disposition of the case, in compliance with orders from the Grand Imperial headquarters and the Ministry of War, the "Military Law concerning Punishment of Enemy Airmen" was established by the supreme commander of the Expeditionary Army in China. Lieutenant General SAWADA, Colonel Ito, et al, committed Lieutenant HORUMAKU* and his men to trial by the military tribunal for violation of this regulation. For reference purposes, this law is appended hereto. (See Supp.3)

3. Lieutenant Colonel NAKAJO, Toyoma (), chief judge, First Lieutenant WAKITSU, Yusui (), and Second Lieutenant OKADA, Ryuhel (), judges, were designated judges of the trial. On 28 August 1942, before the court convened, Colonel Ito designated me prosecutor of the case, and specifically instructed me to demand the death penalty. For reasons elaborated in the

following paragraphs, it can be seen why I did not care to become involved in this affair; but inasmuch as it was the order of my superior office, Colonel Ito, I could not refuse. So it was, more or less, under duress that I prosecuted the case.

4. The trial was over in about an hour. Lieutenant HORUMAKU and his men were specifically charged with violation of Article 2, Sections 1 and 2, of the Military Law Concerning Punishment of Enemy Airmen, but in one way or another they were all found guilty and sentenced to death under the provisions of article 3 of the law.

5. Before the trial, the commanding general of the 13 Army had received specific instructions from the Grand Imperial Headquarters, through the Expeditionary Army in China Headquarters, "to relay news of the verdict to the Chief of Staff immediately, in order that the Grand Imperial Headquarters might make official announcement of the punishment meted out to the American airmen". Accordingly, the moment the trial was ended, the commanding general of the 13 Army relayed the verdict to the Grand Imperial Headquarters through the Expeditionary Army in China Headquarters.

As a consequence, on 10 October 1942, 13 Army Headquarters received orders from the Chief of Staff of the Grand Imperial Headquarters, via Headquarters of the Expeditionary Army in China, to the effect that the death sentence of Lieutenant HORUMAKU*, Second Lieutenant FUARO* (T.N. Presumably FARROW), Sergeant Sufatsu* (T.N. Presumably SPANZ) were upheld, and the date of execution set at 15 October 1942; while the sentence of the remaining five were commuted to life imprisonment with the stipulation that since these five had been declared was criminals, they were to be accorded treatment separate from that given the usual prisoners of war.

6. On the basis of the foregoing order, on 15 October, Colonel Ito, upon receipt of an order from Lieutenant General SHINOMURA () who succeeded Lieutenant General SANADA, issued instructions for the execution of Lieutenant HORUMAKU* and the other two. TATSUDA, Gaijiro (), warden of the Expeditionary Army Penitentiary at Shanghai, assumed the role of executioner. At Public Cemetery No. 1, located north of Yen-Chia-Chai (), Chunghsie () district, Shanghai, the condemned men were executed by a firing squad, headed by First Lieutenant Tashima (), commanding officer of the 13 Army Headquarters Guards, with one non-commissioned officer and six enlisted men under him. The five who were sentenced to life imprisonment were removed to the Expeditionary Army Penitentiary at Nanking (), under the direction of Colonel Ito.

D. My duties and my version of my participation in this affair.

Insofar as my part in this affair is concerned, I merely attended the trial as the prosecutor under orders from Colonel Ito. I can only venture to guess at the reason which prompted Colonel Ito, who had, as the prosecutor, personally interviewed and cross-examined the defendants, drawn the indictment, and after the trial, supervised the enforcement of the sentence, to order me to attend the trial in the capacity of prosecutor. In all probability, it must have been because I had evaded becoming one of the trial judges. The fact that Lieut WANITSU (), as law member, would be in charge of the trial, in consideration of his (Colonel Ito) rank, did not appeal to Colonel Ito.

At any rate, I did not relish the prospect of being the prosecutor for the following reasons:

1. From the standpoint of International Law on Warfare, I had grave misgivings as to the propriety of the "Military Law Concerning Punishment of Enemy Airmen". At the International Conference for the Revision of the International Law on Warfare

held at HAGUE from December 1922 through March 1923, rules and regulations concerning aerial warfare were prescribed. Under Article 22 and 24, restrictions on bombing are established, but this law is yet to be enforced by the various nations.

2. No other nation has established such a military regulation in the annals of history.

3. Inasmuch as there is a reasonable margin of error in bombing from high altitudes, when objects of no military value, located at varying distances from military targets, are hit, it is extremely difficult to determine whether such "bombing, strafing or other forms of attack were carried out with the object of menacing and killing innocent civilians", or whether the "bombing, strafing, or other forms of attack were carried out with the purpose of destroying and damaging private property having no military value", or whether the "bombing, strafing, or other forms of attack of non-military objects, except in unavoidable circumstances, were purely deliberate", as expressed in the military regulation.

I presume this law was enacted by the Grand Imperial Headquarters and the Ministry of War upon the assurance of the Japanese authorities on International Law that such a law would be within the bounds of International Law. Be that as it may, as far as I was concerned, for the reasons advanced hereinbefore, I never did approve of the law. Furthermore, I repeat, I had no desire to be a party in this affair, definitely not as a judge, nor even as the prosecutor. However, once a military law is established by a state, one obviously cannot refuse the orders of his superiors in its prosecution, since as a civil official, a refusal would be tantamount to acting contrary to orders.

Heretofore, I have never passed judgment on a death sentence. During the time I was on active service on the front in China, there were numerous cases of war crimes punishable by death under the provisions of the military law of the Expeditionary Army in China. However, even under the inexorable machinations of the stern military law and regardless of its necessity from the standpoint of military operations my conscience would never permit me to exact the death penalty; so I constantly endeavoured to avoid such cases.

4. My present stand.

As has been clearly revealed in the foregoing statements, despite the fact that I had no desire to be party to the affair, I had no alternative other than to comply with the orders of my superiors and attend the trial in the role of prosecutor. Furthermore, the situation was such that I attended the trial with practically no opportunity to go through the documents relating to the case. In other words, insofar as my part in the case is concerned, I merely attended the trial as the proxy of Colonel Ito. It was a situation where one's respect for duty permitted no refusal.

I contend that those to be held truly accountable for this affair are those connected with the Grand Imperial Headquarters, the Ministry of War, and the Military Police Headquarters. It was they who instigated the enactment of this law, making it retroactive in order to fit it to past offences; and through the medium of a military tribunal mete out punishment. It is my sincere opinion that in this connection, the military tribunal was merely an organ exercising the provisions of the law. It is my understanding that the United States is a nation highly advanced in its conception of jurisprudence.

In the name of justice and from the standpoint of common sense I fail to see how I am to be held accountable for this affair, when my sole connection with this matter was my attendance at the trial as a proxy. I hopefully submit this matter for your sound and just judgment.

Post Script

As of March 1945, I have been afflicted with stomach ulcers, and am still under treatment. I am the sole support of my family consisting of my wife, my aged father, who is 71 years of age, and my infirm mother, age 69, who has been an invalid for more than three years because of rheumatism. If there is any probability of my being taken into custody, I would like to be exonerated of any charges immediately so that I may be able to attend to my personal affairs with peace of mind.

In March 1932 I was graduated from the Law School of the Tokyo Imperial University. I had planned originally to become a judicial officer, but in that same year I was called to active service with the Army. Then and there I decided to become a general court official. At that time, a general court official was a civil official, but in March 1942, by a revision of the system, this position was placed on military status.

The period of my student days at middle and higher schools, and my undergraduate years at the Tokyo Imperial University was the heyday for the teaching of democratic doctrines. I became thoroughly inculcated with democratic concepts. Should it be my good fortune to be released and exonerated of all charges arising from this affair, it is my express intention to become a farmer, and at the same time devote my energy to the furthering of the ideals of democracy.

For your reference and information, I have appended hereto, a summary of the various materials related to this case. (See inclosures 4 to 9)

H.T., Itsuro ()

October 1945.

Inclosure No. 1

Military Law of the Japanese Expeditionary Army in China

Art. 1. This military law shall apply to all persons other than those of Japanese citizenship within the zone of military operation of the Imperial Army.

Art. 2. Any person who commits any or all of the following acts shall be liable to military punishment:

Sec. 1. Any act of conspiracy against the Imperial Army.

Sec. 2. Any espionage activity.

Sec. 3. Any act not covered by Sec. 1 and 2, which shall be construed as jeopardising the safety, or hampering the military activity of the Imperial Army.

Art. 3. Any instigating, abetting, promoting, plotting, or miscarriage of any or all of the acts hereinbefore mentioned in Art. 2, shall be subject to punishment, provided, however, that punishment shall be mitigated or restrained in accordance with the merits of the case.

Art. 4. Any individual who commits any or all of the acts mentioned under Art. 2, and who confesses of his own volition before any discovery of such act or acts is made, shall have his punishment mitigated or shall be spared.

Art. 5. Military punishment shall be in the following classes.

Sec. 1. Death

Sec. 2. Imprisonment

Sec. 3. Banishment

Sec. 4. Fine

Sec. 5. Confiscation

The degree of punishment shall be noted in the order of the preceding paragraphs.

Art. 6. etc. (omitted).

Inclosure No. 2.

Military Trial Regulations under the Military Law of the Japanese Expeditionary Army in China.

Art. 1. Any individual violating the provisions of the military law of the Japanese Expeditionary Army in China shall be tried by the military tribunal.

Art. 2. The military tribunal shall be established by the Expeditionary Army in China or by a subordinate army thereof.

Art. 3. The military tribunal of the Expeditionary Army in China shall be vested with authority of jurisdiction over any affair designated by the supreme commander.

Art. 4. The military tribunal of the various subordinate armies thereof shall be vested with authority of jurisdiction over any affair involving violations of the military law within the spheres of operation of their respective armies, provided, however, that they do not conflict with the provisions of Article 3.

The supreme commander shall be invested with the authority to designate the military tribunal, which shall have jurisdiction over a special case, regardless of the provisions of the preceding paragraphs.

Art. 5. The presiding officer of the military tribunal shall be the supreme commander of the Expeditionary Army, of the commanding general of the subordinate army thereof.

Art. 6. The military tribunal shall be composed of three judges.

The judges shall consist of two officers and one law member, all of whom shall be under the orders of the presiding officer.

Art. 7. The military tribunal shall convene with the judges the prosecutor, and the clerk of court in attendance.

Art. 8. The military tribunal shall first obtain the authorization of the supreme commander before proceeding with the trial of a foreigner other than a Chinese.

Art. 9. The laws and regulations governing the special court martial under the army court martial law shall apply to all other items not covered by this law, as the situation permits.

By-laws

This law shall be effective as of 1 October 1939.

Inclosure No. 3

Expeditionary Army in China Military Order No. 4

Military Law concerning the Punishment of Enemy Airmen.

Art. 1. This law shall apply to all enemy airmen who take part in raids against Japanese territories, Manchukuo, the zones of military operations, or who come within the sphere of influence of the Expeditionary Army in China.

Art. 2. Any individual committing any or all of the following acts shall be liable to military punishment:

Sec. 1. Any bombing, strafing or other forms of attack carried out with the object of menacing or killing innocent civilians.

Sec. 2. Any bombing, strafing or other forms of attack carried out with the purpose of destroying and damaging private property having no military value whatsoever.

Sec. 3. Any bombing, strafing or other forms of attack of non-military objectives except in unavoidable circumstances.

Sec. 4. Any violation of the International Law on Warfare not included in the above three sections.

This law shall also apply to any individual who participates in raids on Japanese territories, Manchukuo, and the zones of military operations, with the intent of committing any or all of the acts mentioned in the preceding sections, and who come into the sphere of jurisdiction of the Expeditionary Army in China before accomplishing his objective.

Art. 3. The penalty shall be death. However, this sentence may be commuted to life imprisonment, or to a term of imprisonment not less than 10 years, depending on the merits of the case.

Art. 4. The execution shall be by firing squad. In the case of imprisonment, the sentence shall be served in confinement for the term of imprisonment.

Art. 5. Sentence shall not be imposed when there is valid reason for withholding punishment.

Art. 6. Imprisonment shall be in accordance with the provisions of criminal law, with the exception of those stipulations prescribed under this law.

By-Laws

This law shall be effective as of 13 August 1942.

This law shall apply to any and all such acts covered in the provisions, committed prior to the date of its enactment.

Inclosure No. 4

Staff Memo. No. 1140

SUBJECT: Memo pertaining to the Disposition of Enemy Airmen.
(per inclosure)

FROM: USHIROMIYA, Jun (), Chief of Staff, Expeditionary Army in China.

TO: KARAKIWA, Yueso (), Chief of Staff, 13 Army.

DATE: 13 August 1942.

(Enclosure)

Military Document No. 2190 (Confidential)

SUBJECT: Memo Pertaining to the Disposition of Enemy Airmen.

FROM: Vice-Minister of War Kimura, Hyotaro ()

TO : USHIROMIYA, Jun (), Chief of Staff, Expeditionary Army in China.

request formation of rules and regulations for the disposition of enemy airmen who come within our sphere of jurisdiction in connection with raids on Japanese territories, MANCHUKUO, or our zones of military operations.

1. Any individual who abides by the terms of the International Law on Warfare shall be treated as a prisoner of war; any individual who violates the provisions of the International Law on Warfare shall be dealt with as a war criminal.

2. The supreme commander in charge of national defense and the commanding generals of the various armies (including the various armies in Japan proper, and her territories, and the occupational forces in Hong Kong (etc.) shall treat enemy airmen who trespass their respective spheres of jurisdiction as war criminals. Any individual who falls under suspicion shall be referred to the military tribunal.

The laws and regulations governing the special court martial under the provisions of the army court martial law shall apply to the military tribunal.

Inclosure No. 5

Staff Doc. No. 383-1 (Confidential)
(Military Section, Grand Imperial Headquarters)

SUBJECT: Name pertaining to the Disposition of Enemy Airmen.

FROM: TANABE, Seibu (), Assistant Chief of Staff, Grand Imperial Headquarters.

TO: USHIROMIYA, Jun, Chief of Staff, Expeditionary Army in China.

DATE: 28 July 1942.

In regard to Military Doc. No. 2190 (Confidential) concerning the disposition of the captured enemy airmen, request that action be deferred (Probably until the middle of August) pending proclamation of the military law and its official announcement, and the scheduling of the date of execution of the American airmen.

The Grand Imperial Headquarters will make official announcement of the punishment imposed upon the American airmen, and request that news of the decision be transmitted to the Chief of Staff as soon as the verdict is reached.

(rest omitted)

Inclosure No. 6

DISPATCHED: 22 October, 1250 hours

RECEIVED: 22 October, 1354 hours

FROM: Chief of Staff, Grand Imperial Headquarters

TO: Chief of Staff, Expeditionary Army in China

Radiogram No. 453

In the future, announcement of verdict of trial of enemy airmen charged with outrages and atrocities committed to military tribunal, will be made by Grand Imperial Headquarters. Maintain absolute secrecy as to place of trial.

Inclosure No. 7

SUBJECT: Disposition of Convicted American Airmen
FROM: SUGIYAMA, Gen (), Chief of Staff
TO: HATA, Shunroku (), Supreme Commander,
Expeditionary Army in China.
DATE: 10 October 1942.

1. To be punished by death:
MILLER* Dane Edward, pilot.
FARROW* William D, pilot
SPATZ* Harold A., gunner
2. Death sentence commuted:
MEEDA* (TN:) (presumably MELER)
MEDER Robert J, assistant pilot.
NEERUSOE* (TN: Presumably NEILSEN)
NEILSEN C. J., navigator.
H. ITO* (TN:) presumably WHITE)
WHITE, Robert L, assistant pilot
BARR* (TN:) presumably BARR).
BARR George, navigator.
DESHAJEUR* (TN) presumably DESHAJEUR.)
DESHAJEUR Jacob, bombardier.
3. Date of execution: 15 October. For further details,
have staff of Expeditionary Army contact me.
4. The five whose death sentences are commuted are hereby
sentenced to life imprisonment. They are adjudged war criminals
and as such should receive no consideration as prisoners of war.
In no case will they be repatriated as prisoners of war in the
event of an exchange of prisoners.

Inclosure No. 8

Record of Execution

Nationality: American.

HORUMAKU * Dane Edward, 2d Lt, age 27, 95 Squadron, 17
Bomber Command, USAAF.
FARROW* William D, 2d Lt, age 23, 34 Squadron, 17 Bomber
Command, USAAF.
SUPATSU* Harold A, Sgt, age 20, 34 Squadron, 17 Bomber
Command, USAAF.

On 28 August 1942, at the trial held by the NOBORU ()
7330 Unit (TN: 13 Army) Military Tribunal, the above mentioned
men were adjudged guilty and sentenced to death for violating the
provisions of the "Military Law Concerning Punishment of Enemy
Airmen".

The following is a written account of the execution carried
out under the execution orders issued by the commanding general of
the NOBORU 7330 Unit, 15 October 1942.

1. Date of execution: 15 October 1942.
2. Place of execution: Public Cemetery No. 1, YEN-CHIAI-CHAI
() CHUNG-HSIN () district, SHANGHAI ()
3. Executioner: TATSUDA, Gayiro (), warden,
Expeditionary Army Penitentiary at Shanghai, representing TOKI,
Tokijiro () Head Warden, Expeditionary Army Military
Penitentiaries.

4. witnesses: Colonel ITO, Akinobu (), Prosecutor.
FUJITA, Chosei (), Clerk.
Medical Officer of the NOBORU 7330 Unit, 1st
Lt MASUTANI, Maruo (), Medical Detach-
ment
Interpreter, MIURA, Yasutoshi (),
Interpreter, Shanghai Military Police Head-
quarters.

5. Spectators present by permission of the prosecutor:
Lieutenant Colonel NOGUCHI, Masao () SHANGHAI
Military Police Headquarters.
Major OGATA, Izumi (), Shanghai Military Police
Headquarters
1st Lt SETO, Hitaro () Shanghai Military Police
Headquarters.
Lt Col NAKANO, Saburo () Medical Detachment,
NOBORU 7330 Unit.
1st Lt MINOSHITA, Chikao () Medical Detachment,
NOBORU 7330 Unit
2 medical corps men from the medical detachment of the
NOBORU 7330 Unit.

6. Firing squad and security guards: Under the command of
First Lieutenant TASHIMA, Goro, commanding officer of the NOBORU
7330 Unit Guards, one non-commissioned officer, and nine enlisted
men were assigned to the firing squad. Six of the men were
directly assigned roles as members of the firing squad, while
three were posted as security guards around the cemetery.

7. Health and physical well-being of the condemned men:

The condemned man arrived at the execution grounds at
1630, escorted by three turnkeys, and the above mentioned guards.
At the request of the executioner, these men were given a physi-
cal examination by the witnessing medical officer, who pronounced
them as being physically sound. Thereupon, the executioner,
through the medium of an interpreter, informed the men of the
fact that the death sentence pronounced by the NOBORU 7330 Unit
Military Tribunal on 28 August 1942, would now be carried out,
and asked if there were any last statements to be made. The
condemned had none to make.

8. Preparation for execution. (Omitted)

9. Method of execution. Firing Squad (rest omitted).

10. The execution commenced at 1630, and was completed by
1720

Military Tribunal of the NOBORU 7330
Unit

(S) FUJITA, Chosei, Clerk of Court.
(S) ITO, Akinobu, Prosecutor
(S) Col. Legal Department.
(S) T. TSUDA, Saijiro, Warden, Expedition-
ary Army Penitentiary at Shanghai.

Dated: 15 October 1942,

Record of the Trial

(Preceding Statement omitted)

Defendants: HORUMAKU*, Dane Edward
 LEED*, Robert J.
 NEERUSON*, C. J.
 FUARO*, William D.
 H.IITO*, Robert L.
 B...*, George
 SUP.TSO*, Harold A.
 LESHILJ...*, Jacob

have been found guilty as charged, and are hereby sentenced to death.

Reasons for the Sentence

It has been proven to the satisfaction of the Court that in March 1942, the defendants, motivated by their sporting instincts and sense of glory, in response to a call for participants in an air raid, made application to their currently attached unit; that for a period of over a month, they, together with the other trainees, received special combat training; that they embarked from the port of SAN FRANCISCO, on 2 April aboard the aircraft carrier HORNET, and on that day were apprised, for the first time by Colonel BOOLITTLE, that they were to raid JAPAN in five formations of 10 bombers, and were briefed as to the details of the raid and the respective mission of each craft; and that on the morning of 18 April, at about 0800 hours, at a point approximately 35° north latitude, and 153° east longitude, the first plane took off from the flight deck, followed in close order by the other planes, headed for the raid on JAPAN.

1. The defendants, HORUMAKU*, pilot, LEED*, co-pilot, and NEERUSON*, navigator, occupants of plane No. 6, a North American B-25 medium bomber, arrived over TOKYO at about 1300 hours, suddenly exhibited cowardice when confronted with opposition in the air from the ground, and with the intent of cowing, killing and wounding innocent civilians, and wrecking havoc on residences and other living quarters of no military significance whatsoever, together with the other twelve planes did carry on indiscriminate bombing and strafing, thereby causing the death and injury of about 10 civilians, and the destruction of numerous residences; following which they attempted to escape to the China mainland. At noon of the same day, they were forced to land on the water in the vicinity of NINGPO (), CHIENKIANG () province, where they were captured by the Japanese Army on the 20th.

2. The defendants, FUARO*, pilot, H.IITO*, assistant pilot, B...*, navigator, SUP.TSO*, gunner, and LESHILJ...*, bombardier, occupants of plane No. 16, a North American B-25 medium bomber, arrived over NINGPO () at about 1015 hours, afternoon of 18 April, suddenly exhibited cowardice when confronted with opposition in the air and from the ground, and with the intent of cowing, killing, and wounding innocent civilians, and wrecking havoc on residences and other living quarters of no military significance whatsoever, together with another plane, did carry on indiscriminate bombing of said city, and further did willfully and knowingly strafe a school building thereby endangering the lives of numerous school children at recess in the yard, and thereby causing the death and injury of 10 or more civilians, and the destruction of numerous residences, following which they attempted to flee to the CHINA mainland. At 2140 that evening while over NINGPO (), KIANGSI () province, they were forced to parachute because of fuel exhaustion, and were immediately captured by Japanese Army units in that vicinity.

The foregoing facts are based on the (1) depositions made by the eight defendants at their trial, and the (2) copy of the acknowledgment made by the SHANGHAI Military Police unit in response to the request of the Military Police Headquarters for full information as to the extent of damages and injuries sustained in said affair. The tribunal finds the eight defendants guilty of violating the provisions of Sec. 1 and 2 of Art 2 of the Military Law concerning the Punishment of Enemy Airmen, and hereby pass judgment and impose sentences under the provisions of Article 3 of said law.

Dated: 28 August 1942.

NOBORU 7330 Unit Military Tribunal.
(S) Lt Col NAKAJO, Toyoma, Chief Judge
(S) 1st Lt WAMITSU, Yusei, Law Member
(S) 2d Lt OKADA, Kohei, Judge.

Certified a True Copy.

*Robert T. Ayer
Major J. A. G. D.
Assistant Prosecutor*

#10-13 z 3/22 PM

LT COL HENDREN: Does the Commission desire to finish the translation tomorrow morning?

COLONEL MC REYNOLDS: Yes, tomorrow morning.

The Commission will adjourn until nine o'clock tomorrow morning.

(Whereupon the Commission adjourned at 1655 hours on 22 March 1946 to reconvene at 0900 hours on 23 March 1946.)

///

11/1 m 23 Mar 46

MORNING SESSION

... Pursuant to adjournment, the Commission reconvened at 0900 hours, 23 March 1946, at which time all of the members of the Commission, the accused, counsel for prosecution and defense, the interpreting staff and the official reporter resumed their seats in the court room...

COLONEL MC REYNOLDS: The Commission is in session.

PROSECUTOR: At the last session, the Commission requested copies of some of the Transcript Exhibits which had been presented to the Commission. At this time I would like to give the Commission copies of those exhibits. (Prosecution's Exhibits 21, 22, 23 and 24.)

At this time we request that the translators continue with the translation of Major Hata's statement.

(Whereupon the translators took turns in translating the statement of Major Hata until they had completed the translation.)

PROSECUTOR: (Maj Dwyer) Colonel Hendren will take the stand.

JOHN H. HENDREN, JR

a witness called on behalf of the prosecution, was recalled to the stand, duly reminded that he was under oath, was examined and testified as follows:

DIRECT EXAMINATION

(Mr. Krantz interpreting)

Q (By Major Dwyer) Colonel Hendren, in Prosecution's Transcript Exhibit No. 25, the Hata statement, there appears on the last page thereof, the name of 1st Lieutenant Wamitso Yusei. Who is that man?

PROSECUTOR: I withdraw that part of the question that states "Who is that man?"

Q In the course of your investigation, have you had occasion to ascertain who this person is?

A When we started investigating the case, we ran across that name on Hata's statement and I made investigation and a request to Japan that this man be identified and apprehended. The Japanese Government was unable to identify this man from the name of "Wamitsu" from the information we had at the time as to his station. The interpreter in the Allied Headquarters in Japan re-examined the writing in Japanese and determined that the name would be Wako rather than Wamitsu.

DEFENSE: If the court, please, we move that the answer be stricken. Colonel Hendren has testified as to what someone else has done without any basis of his own personal knowledge of the facts.

PROSECUTOR: May I be permitted to ask another question and I think it will clarify that. You may be permitted to reserve the objection.

COLONEL MC REYNOLDS: Proceed.

11/2 m 23 Mar 46

Q Colonel Hendren, subsequent to ascertaining this information, did you go to Sugamo Prison?

A Yes. The man whose name appeared as Wako had been apprehended and placed in the prison there and I had interrogated Wako there and he admitted that he was a member of the court.

DEFENSE: I renew my objection to what a man named Wako testified to in Sugamo Prison and what appears in this statement here, as to any errors in it. The statement as to what the Interpreter section in Japan did, not in his presence and without any knowledge as to how it was done, I move should be stricken from the record.

A If the Court, please, I might add to my statement that at the time I was in Japan in the latter part of December 1945 and early part of January 1946, I had the interpreter section re-translate this in my presence and they informed me that the name was subject to interpretation as Wamitsu and as Wako. They verified that by the Japanese dictionaries there.

Q Did Lieutenant Wako Yusei, now Captain --

COLONEL MC REYNOLDS: Just a moment. We will rule on the objection.

DEFENSE (Capt Follows) Major Dwyer has asked permission to ask a couple more questions and we are agreeable but we reserve the right to renew our objection.

Q Did Lieutenant Wako, now Captain, state to you that he had been a member of the court that tried the Doolittle fliers?

A Yes, he did.

DEFENSE: If the Court, please, I object to this line of questioning. My objection is made -- this is not on the point my objection is made to. If we want to go into that, fine, but after my objection is covered.

PROSECUTOR: As I understand, counsel's objection is that the statement made by the interpreters as to the interpretation of the word "Wamitsu" --

DEFENSE: My objection was originally based on Colonel Hendren's statement that the Interpretation Section in Tokyo had changed the interpretation on it. At that time there was no statement as to how he knew that, and my motion was to strike that answer.

PROSECUTOR: We submit to a ruling of the Commission.

COLONEL MC REYNOLDS: Objection over-ruled.

Q Colonel Hendren, I call your attention to Prosecution's Transcript Exhibit No. 25, inclosure 8, which is the record of execution. Paragraph 3 thereof and the last page thereof, refer to a Tatsuta Gaijiro. Please state to the Commission what, if any, circumstances surrounded the appending of this exhibit by you, bearing on that name?

A At the same time that I was interrogating the Interpreter's Section as to the translation of the name "Wamitsu", I asked them if this name, I believe it was Gaijiro, something like that, could be Sotojiro, the name of Captain Tatsuta, and the interpreter told me that it also was subject to two interpretations and

11/3 m 23 Mar 46

perhaps Sotojiro was correct rather than the name written on the translation.

Q Colonel Hendren, in Prosecution's Transcript Exhibit No. 25, there appears the name, Lt. Col. Nakajo Toyama. Can you state to the court anything about this name?

A This name appeared in the papers as the President of the Military Commission which tried the Doolittle fliers and we made several requests to the Japanese Government that he be apprehended. They were unable to identify the person of that name so when I was in Japan, in Tokyo, the latter part of December and early part of January, I went to the interpreter's section and asked if there could be some mistake in the interpretation of that name. The interpreter, on examination of the Japanese exhibit--the exhibit written in Japanese--said that the name of Nakajo Toyama should be interpreted as the name of Nakajo Chujo, and that was a similar interpretation.

Q In the preparation of this case did you attempt to apprehend Lt. Colonel Nakajo -- Nakajo Toyama or Chujo?

A Yes, I made investigation in the Japanese War Department in Japan as to where this man was located and found that at that time he was reported to be in Java. I sent a radio request from the China Theater Headquarters to the Allied Forces in Singapore for his apprehension.

Q Was this radio communicated through the China Theater Headquarters?

A Yes, it was.

Q Do you have the radio with you?

A I have a certified copy of the radio which was received from Singapore in reply to the radio sent by the Commanding General, China Theater.

Q What did the radio say?

A One dated 1 February stated that Lieutenant Colonel Nakajo Chujo had been reported dead by the British authorities on Rempang Island and that that office had asked ALFSEA for written proof of death. That came from the British Forces in Singapore.

Q Is there anything further you have to say on this subject, Colonel?

A A later radio received on 7 February relative to the same subject, referred to the apprehension order for Lieutenant Colonel Nakajo Chujo.

Q What does that radio say?

A It reads, "See apprehension order for Lieutenant Colonel Nakajo Chujo issued by this Headquarters in early January at the request of your Liaison but could not be effected owing to death of Nakajo Chujo after arrival Rempang Island. Much regret failure to catch him alive."

PROSECUTOR: No further questions. You may cross-examine.

Q (By Maj Dwyer) One more question, Colonel Hendren, did Lieutenant Wako state to you that he was a law member of this court?

A Yes, he did.

PROSECUTOR: You may cross-examine.

DEFENSE: No questions by defense.

PROSECUTOR: Any questions by the Commission?

COLONEL MC REYNOLDS: There appear to be none. The witness is excused.

PROSECUTOR: (Col. Hendren) We will now call Major Dwyer to the stand.

ROBERT T. DWYER

recalled on behalf of the Prosecution, was reminded that he was still under oath, was examined and testified as follows:

DIRECT EXAMINATION

- Q (By Lt Col Hendren) Major Dwyer, in the course of your investigation of this case, have you met a Caesar Luiz dos Remedios?
A Yes sir, I have.
- Q Will you tell the Commission where Mr. Remedios is at this time?
A On Sunday night, March 17th, the night before the opening of this trial, I accompanied him to the Shanghai General Hospital and he is there at this time.
- Q Will you tell the Commission, if you know, what is -- why he is there?
A Yes sir. I talked to his personal physician who attended an operation performed on him at approximately midnight on that night, under a diagnosis of Tuberculosis of the intestines.
- Q Is Mr. Remedios able to appear and testify before this Commission?
A No sir. His doctor says he cannot be removed and is in very serious condition.
- Q Major Dwyer, in your -- in the course of your investigation of this case, I will ask you if you have ever seen this document?
A Yes sir, I have.
- Q I will now have the document marked by the reporter as Prosecution's Transcript Exhibit No. 26.
(Document so marked)
Major Dwyer, will you tell the Commission what the document is?
A This is an original statement given by Mr. Remedios on the 19th day of September 1945 to Captain James S. Bailey, Assistant Theater Judge Advocate, China Theater.
- Q Major Dwyer, does that document refer to issues involved in this case?
A Yes sir.
- Q Major Dwyer, have you had an opportunity to see the signature of Mr. Remedios?
A Yes sir, many times.
- Q I will have you examine the exhibit and ask you whether or not that document is signed by Mr. Remedios?
A (after examining signature) Yes, it is.

11/5 m 23 Mar 46

- Q I will ask you whether or not the document was sworn to before Captain Bailey? and whether or not it is a sworn statement?
A I think the document speaks better for itself than the witness who was not present.

PROSECUTOR: At one of the exhibits yesterday, the counsel raised an objection as to whether one of the document was a sworn statement and anticipating such an objection, I was attempting to cover the matter.

DEFENSE: (Capt Fellows) The question could be asked whether this was a sworn statement rather than if the witness were present.

PROSECUTOR: (Maj Dwyer) I may be able to clear this up if I may make a voluntary statement.

PROSECUTOR: (Lt Col Hendren) Does the defense object to the statement of the witness?

DEFENSE: Yes, until this is ruled on. All we want is for the document to speak for itself. It is obvious what it is.

PROSECUTOR: I will withdraw the previous question.

DEFENSE: Withdraw the objection.

Q Major Dwyer is the document a sworn statement of the person who made it?

A Yes sir, it is.

PROSECUTOR: We will now offer in evidence Prosecution's Transcript Exhibit No. 26 marked for identification, now offered as Prosecution's Transcript Exhibit No. 26.

DEFENSE: No objection as to the admissibility.

COLONEL MC REYNOLDS: Prosecution's Transcript Exhibit No. 26 will be received in evidence.

(Prosecution's Transcript Exhibit No. 26 for identification was received in evidence.)

PROSECUTOR: Does defense wish to ask any questions of this witness?

DEFENSE: No.

PROSECUTOR: Are there any questions by the Court?

COLONEL MC REYNOLDS: No.

PROSECUTOR: May the witness be excused?

COLONEL MC REYNOLDS: There appearing to be no further questions, the witness is excused.

(Whereupon the witness withdrew from the witness stand and resumed his seat in the court room.)

PROSECUTOR: We request that Major Dwyer read Exhibit No. 26.

(Whereupon Prosecution's Transcript Exhibit No.26 was read.)

Prosecution's Manuscript Exhibit 26

Caesar Luiz Dos Remedios, being duly sworn, deposes and says:

My name is Caesar Luiz Dos Remedios. I am a Portuguese citizen holding Portuguese passport 2315. My father is Portuguese, while my mother is Japanese. I am able to speak Chinese, English, Japanese, and Portuguese. I was born and have lived all my life in Shanghai, China.

On 26 June 1941, I was called to the Japanese Military Police Headquarters at the Bridgehouse, Shanghai. Ever since that time I was detained by the Japanese Military Police. On 10 July 1941, I was transferred to Kiangwan, and on 27 September 1941 was tried by the Japanese 7330th Mobori Unit (this is the Shanghai Court Martial Unit). I was sentenced to seven years for investigating and hindering Japanese activities and also for being accused as a spy. On 16 October 1941, I was taken to the Japanese Nanking Military Prison.

On 8 December 1941, I heard that the war had broken out. On 26 March 1942, I was taken back to Shanghai to the Shanghai Military Prison at Kiangwan, to act as an interpreter for the Japanese. This place is also called the "Civic Center". During all the time of my imprisonment, I was used as an interpreter because of my knowledge of languages. On 28 August 1942, seven United States airmen from two B-25s which had participated in the bombing of Tokyo on 18 April 1942 from the U. S. Aircraft Carrier Hornet were brought to the Kiangwan Military Prison. One plane crashed in the China Sea; two men were drowned and three saved. This was told to me by Lt. Meder.

I met the following men, on 28 August 1942, at Kiangwan Military Prison, who were members of a B-25 crew of the 34th Bombardment Squadron: 2nd Lt. William Glover Farrow, 2nd Lt. George Barr, 2nd Lt. Robert L. Hite, Sgt. Harold A. Spatz, and Cpl. Jacob DeShazer. At the same time, I met the following two men of the 95th Bombardment Squadron, 17th Group: 2nd Lt. Charles J. Nielsen and 2nd Lt. Robert J. Meder. On 14 October 1942, I met 2nd Lt. Dean A. Hallmark, who came from a B-25 of the 95th Squadron. All of the above named eight fliers were taken from the Bridgehouse in Shanghai on 28 August 1942 to the Kiangwan Military Prison, also known as the Civic Center. Lt. Hallmark was sick at this time and was immediately returned to the Bridgehouse, and I didn't see him until 14 October 1942.

Report of C. L. Dos Remedios, continued:

On 28 August 1942, all of the above men, with the exception of Lt. Hallmark, were held at Kiangwan Military Prison. During the period of their confinement at Kiangwan, I acted as their interpreter. From that time on, I was with them constantly. I went with them to exercise, wash, etc. I asked them where they came from and how they had come. Months after that, a Japanese prosecutor (whose name I don't know) of the Military Court at Kiangwan took their pictures. At that time I was also their interpreter. After that I took their description of their home address, schools attended, and information about their Army career. This information had been requested by the Japanese. During the time I acted as their interpreter, we became very close friends. I told them about Shanghai, and they told me all their stories of their life, etc.

On 14 October 1942, Lt. Hallmark was brought in from the Bridgehouse. I also asked him for his address, about his education, and what he did before and after joining the Army.

On 14 October 1942, I was instructed by Sergeant Tatsuta (later Captain) to have Lt. Farrow, Lt. Hallmark, and Sgt. Spaatz sign their names on two blank sheets of white paper. One page was signed by each of them in the middle of the sheet, and the other page was signed by each of them at the bottom. They asked me why they were made to sign these papers. Tatsuta told me that they were signing these as a receipt for their belongings, and that he would fill the rest in Japanese later on.

Later Tatsuta gave each two sheets of paper, one on which to write a letter to their family, which he said he would send thru the Red Cross; and the other sheet was to be used to describe the treatment they received by the Japanese while they were confined. At that time I didn't know what the Japanese were going to do to these three airmen. The fliers asked me what they should write. My opinion was to give a little "top hat" for the Japanese, so that they would be given good treatment later on. I didn't read the letters, but gave them to Sgt. Tatsuta early the next morning.

On 15 October 1942, the three above mentioned airmen left Kiangwan, leaving their prison belongings behind. The next day, Lt. Hite, Lt. Meder, Lt. Nielsen, Cpl. DeShazer, and Lt. Barr, were taken to the storeroom to

Report of G. L. Dos Remedios, continued:

pick out their own belongings. At that time the guard in charge of the storeroom, Lance First Class Private Suzuki, called me to act as an interpreter. By mistake, he brought out the flying jacket of Sgt. Harold A. Spatz which he had in his cell. They asked the other five airmen to pick out their own belongings. The five airmen picked up their clothing that was in the storeroom and took it to their cells. I have a very strong belief that these three airmen were shot on 15 October 1942.

My reason for believing that they were shot was because when prisoners of war are transferred to a different prison, they take their belongings with them, while in this case the flying jackets which were with the three fliers were left behind. Lance First Class Private Suzuki scolded the other guard at that time for being so careless in bringing in the wrong clothing. Right away, I had the idea that the three airmen must have been shot, but I didn't tell the rest of the five airmen about it. Lt. Meder asked me what became of the three other fliers. Not to dishearten the other five remaining pilots, I told him that maybe they were taken over to see their plane which had crashed, because Sgt. Spatz was with the two pilots (Lt. Hallmark and Lt. Farrow).

A week after that, Sgt. Tatsuta called me up at six o'clock in the evening to act as an interpreter for the five remaining airmen. They were supposed to be sentenced to death by the court martial at Kiangwan. They were informed that they were sentenced to death, but they had a special pardon, and that their sentences had been commuted to life imprisonment by this court martial, which had convicted them for machine-gunning civilians and school children at Tokyo. Lt. Meder said that the machine guns were never fired and that they only dropped their bombs on military targets. Lt. Hite and Lt. Meder also told me to promise them that when I got out of the military prison at Kiangwan to inform the War Department in Washington that they were sentenced to life imprisonment.

During their confinement, the remaining five airmen carved their names and dates of flights and confinement on the wooden floor of their cells using fish bones and sea shells as their instruments.

Report of C. L. Dos Remedios, continued.

When they first arrived at Kiangwan, they occupied cells two to eight, inclusive; each being placed in solitary confinement. On 14 October 1942, Lt. Farrow was brought to cell number five of the second section of the building. Spatz stayed in cell number six opposite Farrow, and Hallmark was brought in from the Military Police Headquarters, Bridgehouse, Shanghai and was located in cell number eight. Farrow gave me the following articles on the evening of October 14th: One American Red Cross card in the name of B. Farrow; eleven Bank of America traveler checks, in denomination of \$10.00 each and signed by Farrow; and one social security card in the name of William G. Farrow and a photo of a girl. All these articles were held by me from 14 October 1942 until turned over by me to Capt. J. S. Bailey, War Crimes Section, on 18 September 1945. Lt. Farrow handed these to me stating that some day I might make use of them.

Around the first of the year 1945, I talked with First Sergeant Mayana, who is the assistant jailer at the Kiangwan Military Prison and who was a Lance Corporal Guard at that prison in 1942. While having a few drinks, by the slip of his tongue, he said he didn't like to pick up the ashes of persons who had been cremated following their execution by the Japanese. He said he had gone out three times to pick up ashes, twice for Japanese and once for the three airmen, Americans. This statement he stopped right away realizing what he had said.

Sgt. Tatsuta asked me to have Lt. Hallmark's summer flying jacket washed, which was a leather jacket. He told me to have Hallmark's name removed from the jacket. He also asked if I knew a tailor in Shanghai that could cut down this jacket to fit him, as he wanted to wear it. I believe that this jacket is still in Tatsuta's possession, unless he has given it to someone else. At the present time, Tatsuta, now Captain, is at the Hankow Military Prison.

It was the practice of the Japanese at Kiangwan to take prisoners condemned to death to a Chinese crematory in Kiangwan, opposite the race course, and execute them by shooting them. All Chinese were buried in graves, while Japanese and Americans were cremated at the Japanese Association Crematorium. I feel quite positive that the three missing American airmen were taken out

Report of C. L. Dos Remedios, continued:

on the morning of 15 October 1942 and executed by rifle fire. This is based upon my knowledge of Japanese customs in this respect, because I overheard Mayama's conversation, and because of the disposition of their flight jackets. Also because Lt. Hallmark, Lt. Farrow, and Sgt. Spatz were never seen or heard of after that date. In addition, because of the fact that Tatsuta had said that all eight fliers were sentenced to death, but that five of them had had their sentences commuted to life imprisonment.

I didn't attend the court martial of the fliers, which was held on 14 October 1942 in an "L" shaped building, which is used by the Japanese for court martials, and which is located just outside the prison walls. I do not know the members of the court martial, but it is a Japanese custom to select a high ranking officer as the judge. The court itself is composed of a judge, prosecutor, two officials who help set the sentence, and an enlisted man to act as court clerk. It is my belief that the sentence of death on the fliers had been set and approved by military headquarters in Tokyo because the fliers had originally been taken to Tokyo for questioning in April and returned to Shanghai in June. However, the Commanding Officer of the 13th Army Headquarters in Shanghai had to put his seal upon all death sentences. I do not off hand know the name of the Commanding Officer. At the time of the execution, Tatsuta was in charge of the military prison. The firing squad was usually composed of guards from the Hoberi Unit. These men were regularly used as guards for the gates of the 13th Army Headquarters compound. The firing squad usually consisted of a Lance Corporal and five or six enlisted men.

The remaining five fliers remained at Kiangwan Military Prison until 17 April 1943, at which time they were taken to Nanking. I was still at Kiangwan Prison as an interpreter and inmate at the time they left.

During their confinement, I did not see any of them being hit by any guard or otherwise tortured. They asked for foreign books to read and Tatsuta always promised he would get a few books for them, which he never did. Finally Meder asked me if I had any books. I had some at home, and received permission to give the books to the airmen; however, the guards would look thru them before I could give them to the fliers.

Report of C. L. Dos Remedios, continued.

They usually had about an hours exercise a day, unless the guards, who were normally lazy, didn't want to stay out that long, and on those days, they only exercised about 15 minutes. Normally they were allowed to take a bath once a week.

The food was the same as the Japanese prisoners received. This was always insufficient for them. It consisted of 3/4 of a pint of rice three times a day; tea three times a day; and when the weather was hot they got an extra cup of tea at night.

They could wash themselves in the morning. They usually washed their clothes during exercising periods as part of the exercise. This was done in the open air. Medical attention was extremely slow in coming and even for the Japanese prisoners it was slow.

The following Japanese were stationed at Kiangwan Military Prison on 15 October 1942, at the time of the execution of the airmen: Sgt. Tatsuta, at present at Hankow. Lance Corporals, Mayama, Nakatsuka, Takeguchi, Minezaki and Yoneya, still at Kiangwan. Lance Corporal Suzuki, at present in Hankow, Lance Corporals Jino and Otsuki, returned to Japan. Lance Corporal Komatsu, sick in the hospital.

This statement consists of seven pages. Further deponent sayeth not.

/s/ C. L. DOS REMEDIOS

206 Embankment Bldg.

410 North Soochow Rd.

Sworn and subscribed to before me this 19th day of September 1945.

/s/ JASON S. BAILEY

Capt, AUS,

Asst. Theater Judge Advocate

Certified a true copy:

Robert T. Dwyer.

Major, JAGC

Assistant Prosecutor

PROSECUTOR: (reading "It was the practice of the Japanese at Kiangwan to take prisoners condemned to death to a Chinese crematory in Kiangwan, opposite the race course, and"--

DEFENSE: Is that word "crematory" or "cemetery"?

PROSECUTOR: (after conferring and comparing copies of document) Apparently the copy furnished defense says "cemetery". The original, however, says "crematory".

DEFENSE: Defendant moves to strike the last statement for the reason it is based on mere belief and not upon any evidence or any knowledge of what the witness had particular knowledge of, as to what might have happened in Tokyo. We submit that it should not be admitted, and that such remarks should not be submitted to the commission.

COLONEL MC REYNOLDS: Will you read back the statement objected to?

PROSECUTOR: "It is my belief that the sentence of death on the fliers had been set and approved by military headquarters in Tokyo because the fliers had originally been taken to Tokyo for questioning in April and returned to Shanghai in June." Defense did not object to the admissibility of the document when it was offered.

DEFENSE: We merely stated we had no objection to the admissibility of the statement. However, we do object to this last statement which the prosecution has just re-read.

COLONEL MC REYNOLDS: Objection over-ruled. Proceed.

PROSECUTION: (after completing the reading of Prosecution's Transcript Exhibit No. 26.) May it please the Commission, due to the fact that this witness was suddenly taken sick and we had counted on having him as a personal witness, we have had to put it in the record and we therefore have not had a translation of his statement made. If it is satisfactory with the Commission and defense counsel, we would like to turn this statement over to the interpreters to prepare a translated statement over the week-end, which they can use in court.

(Whereupon both defense counsel and the Commission nodded their heads in assent.)

PROSECUTOR: The prosecution presents as its next witness, Sergeant Suzuki. Prior to affirming the witness, the prosecution would like to ask two or three preliminary questions.

(Sgt Morozumi, interpreting.)

SUZUKI KIUCHI

called as a witness on behalf of the prosecution, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Maj Dwyer) Sergeant, do you have a religion?

A I do.

Q What is it?

A Buddhism, Shinto sect.

11/7 m 23 Mar 46

Q Do you know what is truth and what is untruth?
A I do.

Q In speaking before this Commission will you be bound by your conscience and your religion to tell the truth and nothing but the truth?

A I do.

(Whereupon the witness received the oath of affirmation.)

Q State your name, grade and present organization and station.

A Kiuichi Suzuki. Sergeant Major, Legal Section, attached to the 6th Area Army Jail, Hankow, China.

Q Where were you stationed in August 1942?

A 13th Army, Shanghai Prison.

Q What were your duties?

A Guard.

Q Do you know Captain Wako?

A I do.

Q Did you know him in August 1942?

A I did.

Q What were his duties?

A He was legal officer.

Q Was he in the 13th Army Headquarters at that time?

A Yes.

Q Sergeant, did you ever receive from Captain Tatsuta some blank sheets of paper signed by the Doolittle fliers?

INTERPRETER: Blank sheets signed or to be signed?

PROSECUTOR: I withdraw the question. That is poorly phrased.

Q Sergeant, did Captain Tatsuta ever hand you some blank sheets of paper on which were the names of the Doolittle fliers?

INTERPRETER: I don't know how to explain blank sheets if there was a name written on. (Captain Hahn and other interpreters then assisted in the translation and the interpreter on duty put the question to the witness.)

A He did.

Q When did that happen?

A I am not sure of the exact date but I think it was about two or three days prior to the execution.

Q Was that in the prison grounds that he handed them to you?

A Yes.

Q What did Captain Tatsuta say to you at the time?

A He told me to bring it to the judicial officer,--legal officer.

11/8 m 23 Mar 46

- Q How many of the Doelittle fliers had signed those papers, do you know?
A I don't know how many signed the paper. However, there were two or three sheets of paper signed in pencil.
- Q Was the signing in English?
A Yes.
- Q Was there anything else on the paper besides the signatures?
A Because it was in English I couldn't read it. I do not know.
- Q Were the rest of the sheets blank?
A Yes.
- Q Where did you take these sheets of paper?
A I went to the -- I took them to the Legal Section office.
- Q Who was in the office?
A Legal Officer Wako and Hata and another officer.
- Q Were they all present when you turned over the papers?
A Yes.
- Q Which one did you hand them to?
A As I have said before, I am not certain to whom I handed these sheets of paper. It is either Wako or Hata.

PROSECUTOR: You may cross-examine.

CROSS EXAMINATION

- Q (By Mr. Kumashiro) At the time of the execution of the fliers were you a guard in the Kiangwan prison?
A I was a guard there.
- Q I ask you whether you were a civil officer or a military personnel?
A Civilian.
- Q Do you remember what was the rank of Captain -- of Tatsuta at the time of the execution?
A He was Army Chief of Guards.
- Q Is that rank of Tatsuta, Army personnel rank or rank of civil personnel?
A Civilian status.
- Q Was the prison where you were at the time of the execution under the control of the 13th Army?
A Yes.
- Q Are you sure of that?
A I am.
- Q Where was the Headquarters of the Prison of the Expeditionary Army in China?

INTERPRETER: The witness is making a qualifying statement to his previous answer. He is adding to the previous answer.

- A Actually this prison is a Shanghai Branch of the China Expeditionary

11/9 m 23 Mar 46

Forces Prison in Nanking and it was under the Command of the 13th Army.

DEFENSE: I withdraw my question -- last question.

Q What do you mean by the Command of the 13th Army?

A Actually it was attached to the China Expeditionary Forces Prison in Nanking. However, from the standpoint of duty and work it received instructions from the Legal Section, 13th Army.

COLONEL MURPHY: Did the Commander of the 13th Army supervise the transfer of the personnel?

A Not supervise.

Q (By Mr. Kumashiro) Was the personnel transfer of the prison where you were, taking place by the instruction of the Commander of the 13th Army?

A Yes.

Q Under whose supervision were you at the time of the execution?

A We were under the supervision of Tatsuta, Chief of the Branch, and carried on our duties accordingly.

Q Do you know that Tatsuta was under the control of the head office in Nanking?

A I do.

Q On the paper what you received from the fliers were there any other words written except the signatures?

PROSECUTOR: We object to that question upon the grounds that the witness has already testified that there weren't any other words. To suggest that there were any, I think is improper.

DEFENSE: (Lt Col Bodine) The witness did not testify that there weren't any other words. He testified he couldn't read English and therefore could not understand.

PROSECUTOR: May it please the Commission, as I recall this question is, he said, did he receive them from the fliers. Is that correct? The record shows he received them from Tatsuta.

COLONEL MC REYNOLDS: Let the witness answer the question and reserve your objection.

INTERPRETER: The witness is not clear and I am not able to understand if he is saying there were or there weren't.

COLONEL MC REYNOLDS: Have the witness repeat his answer.

A (after considerable discussion between witness and interpreter) There were.

COLONEL MC REYNOLDS: The objection by the prosecution is sustained.

PROSECUTOR: We move to strike the answer from the record.

COLONEL MC REYNOLDS: The question and answer will be stricken from the record.

11/10 m 23 Mar 46

Q What was written on the bunch of pieces of papers that you received from Tatsuta?

A It was in English so I could not read it.

Q At the time of the execution where were you?

A I was in the office.

Q At the time of the execution did you see any -- did you see the writ of execution in the office?

A I have.

Q Do you remember the contents of it?

A It read "Order of Execution" there was a date and the name of the legal officer. The name of the prosecuting attorney I think was Ito and it was addressed to Ooka Takijiro of the China Expeditionary Forces Prison.

Q Do you remember at that time when you were in the office that one officer came in the office to speak with Tatsuta?

A First Lieutenant Tajima came into the office on the day of the execution.

Q Could you hear the conversation between Tajima and Tatsuta?

A I did not hear it.

Q Do you know what was the duty at that time of Tajima?

A He was the Chief of the Guards of the 13th Army.

Q Do you know that fire squad was instructed to assist the execution of the fliers?

PROSECUTOR: That question may be objectionable. Will the reporter read it, please.

REPORTER: (reading) "Do you know that fire squad was instructed to assist the execution of the fliers?"

PROSECUTOR: No objection.

A I do know I have seen documents on it.

Q From whom was that document issued?

A The document was issued by the 13th Army and was dated the morning of the day of execution. The general outline and general contents of that document that one officer and one non-commissioned officer and fifteen enlisted men be dispatched to the prison; that for detailed instructions to consult Tatsuta.

Q Do you remember to whom was that order addressed?

A It was a 13th Army Order and it did not indicate any specific addressee.

Q Do you know to whom was that order handed over?

A I was in the office when it was brought from the Supervision Department. I then handed it to Chief of Guard Myada.

DEFENSE: May we ask for a short recess at this time.

COLONEL MC REYNOLDS: The Commission recesses for fifteen minutes, until 10:45.

(Whereupon, at 10:30 the commission recessed for fifteen minutes, until 1045 hours, at which time the Members of the Commission, the accused, counsel for prosecution and defense, the interpreting staff and official reporter resumed their seats in the court room, and the witness resumed his place on the witness stand.)

PROSECUTOR: Remind the witness that he is still under oath.

Suzuki Kiuichi resumed the stand after adjournment and was reminded he was still under oath. Cross-examination was continued with Mr. Kumashiro interrogating and Sergeant Morozumi interpreting.

Q When you received the pieces of paper from Tatsuta did he explain what the papers were?

A He told me that it was the last testament.

Q Do you know the names of the fire squad and its Commanding Officer?

INTERPRETER: Do you mean to say the names of the members of the firing squad?

DEFENSE: Yes.

A I do.

Q What were they?

A First Lieutenant Tajima, Commanding Officer, 13th Army sentries.

REDIRECT EXAMINATION

Q (By Maj Dwyer) Did you take the blank sheets of paper with the Doolittle fliers' signatures to Captain Wako and Major Hata?

A Yes.

Q And then do you mean to tell the Commission you took another set of papers at another time to Lieutenant Tajima?

A No.

Q Did you take a second group of papers to Major Hata and Captain Wako?

A No.

Q Were there six papers?

A I am not sure. There was more than three sheets. Around four or five.

Q Isn't it a fact that you took six papers and each of the three fliers had signed two of them?

A Because I did not count the number of sheets, I do not remember how many sheets there were. I think that there were four or five.

RE-CROSS EXAMINATION

Q (By Mr. Kumashiro) Did you take those papers which you had received from Tatsuta to Wako or to Hata, directly, personally?

A Yes.

Q Did you personally hand that papers to Wako?

A I do not remember to whom I gave those papers.

11/12 m 23 Mar 46

Q Were you instructed from Tatsuta to hand these papers to Wako?
A I was told to bring it to the Legal Officer.

Q At that time where was Wako? Where was Wako?
A In his office.

Q In his office where you were?
A In the legal office.

Q Are you sure that you handed over to Wako that pieces of paper?
A I do not clearly remember. As I have stated before, I cannot remember whether I handed them over to Wako or to Hata.

PROSECUTOR: Does the Commission wish to interrogate this witness?

COLONEL MC REYNOLDS: There appear to be no questions.

PROSECUTOR: May the witness be excused?

COLONEL MC REYNOLDS: The witness is excused.

(Whereupon the witness withdrew from the witness stand and left the court room.)

PROSECUTOR: The prosecution calls as its next witness, Lieutenant Webber.

(Captain Hahn, interpreting.)

BERT WALLACE WEBBER

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

DIRECT EXAMINATION

Q (By Maj Dwyer) Lieutenant, please state your full name, grade, organization and station.

A Bert Wallace Webber, Second Lieutenant, Infantry, and I am attached to the American Graves Registration Service, China Theater.

Q Lieutenant Webber, as part of your duties do you work in the general matter of graves registrations and graves control?

A I do.

Q Lieutenant, because we are dealing with interpretation, I will ask the question and please withhold your answer until he has interpreted the question in Japanese, and after you give your answer I will hold the next question until he has interpreted your answer. You have come to this court at the request of the prosecution?

A Yes.

Q Lieutenant, have you consulted the records of your office with respect to Lieutenant Dean E. Hallmark?

A Yes sir, I have.

Q Do you have that record with you?

A Yes sir.

11/13 m 23 Mar 46

Q Will you consult it, please, and state to the Commission briefly what it shows with respect to the body of Lieutenant Dean E. Hallmark.

A It shows he was cremated, sir, and the ashes were taken to the International Funeral Service.

Q Does this record show the date of death?

A Yes sir, it does.

Q What date?

A 15th of October 1942.

Q Does this record show the present location of the ashes of Dean E. Hallmark?

A Yes sir, it does.

Q Where are they located?

A They are located at the International Funeral Directory . I cannot pronounce the address but it is written in the record.

Q In Shanghai?

A Yes, it is.

Q Does your record show another name for Dean E. Hallmark, also?

A Yes sir, it does.

Q What is that name?

A J. Smith, initial only.

Q Do you have a similar record for Lieutenant William Glover Farrow, F-A-R-R-O-W?

A I have.

Q State briefly to the commission the similar data with respect to Lieutenant Farrow.

A The date of death of Lieutenant Farrow is also 15 October 1942. It also shows he was cremated and the ashes are at the International Funeral Service, Shanghai.

Q Does that record also show another name for Lieutenant Farrow?

A Yes, it does.

Q What is the name?

A. H. E. Gande.

Q G-A-N-D-E?

A Yes sir.

Q Do you have a similar record for Sergeant Harold A. Spatz?

A Yes sir.

Q Please state to the Commission the similar data with respect to Sergeant Spatz.

A The record also shows that the date of death was the 15th of October, 1942. It also shows that he was cremated and the ashes are at the International Funeral Directors. There is also an alias for him.

Q What is that?

A E. L. Brister. B-R-I-S-T-E-R.

Q Do you have a record from your office with respect to Lieutenant Robert J. Meder?

A Yes sir, I do.

Q Please state to the Commission the data from that record.

A The date of death for this officer was December 1, 1943, and the body was cremated and the ashes are at the International Funeral Directors, Shanghai.

Q Does that record of Lieutenant Meder's show the place of death?

A Yes sir, it does.

Q Where?

A Nanking Prison.

Q Lieutenant, these records from which you have testified are records kept by the Graves Registration Bureau, United States Forces, China Theater?

A Yes sir, they are.

Q They are official records?

A Yes sir.

PROSECUTOR: You may cross-examine.

CROSS EXAMINATION

Q (By Capt Fellows) Lieutenant Webber, are you the official custodian of these records?

A No sir, I am not.

Q Who is the official custodian of these records?

A I am afraid, sir, I cannot answer who would be the official custodian unless it would be the head of the office.

Q Do you know how the information relating to the time and facts of death of Lieutenant Hallmark was gathered?

A No sir, I don't.

Q Do you know how the information relating to the cremating of the body of Lieutenant Hallmark was gathered?

A No sir, I don't.

Q Do you know how the information relating to the place where the ashes might be found was gathered?

PROSECUTOR: If the Commission, please, the prosecution would like to object to this line of questioning. The witness has only testified that these are official documents and what the documents say. He is not questioned as to the correctness or authenticity of the documents and this line of questioning is only taking up the time of the Commission and can serve no useful purpose.

DEFENSE: If the facts on the documents are not worthy of evidence, it should not be put in. If it is worthy of evidence, the defense should be entitled to inquire into the background of the truth of these documents.

COLONEL MC REYNOLDS: Objection sustained.

DEFENSE: No further questions.

11/15 m 23 Mar 46

PROSECUTOR: Does the Commission wish to interrogate the witness?

COLONEL MC REYNOLDS: There appearing to be no questions by the Commission, the witness is excused.

(Whereupon the witness withdrew from the witness stand and resumed a seat in the court room.)

PROSECUTOR: We will call Mr. Scott as our next witness.

(Capt Hahm interpreting)

R. O. SCOTT

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

DIRECT EXAMINATION

Q (By Maj Dwyer) Please state your name and present address.

A R. O. Scott, 207 Tai Chou Road.

Q How long have you lived in Shanghai, Mr. Scott?

A About twenty years.

Q What is your business?

A President, International Funeral Directors.

Q And how long have you been in that business, sir?

A As President since 1933.

Q Mr. Scott, you have come here as a witness at the request of the prosecution?

A I have.

Q State to the Commission whether the records in your funeral parlors indicate anything with respect to Dean E. Hallmark, William G. Farrow, Harold A. Spatz.

A Yes, they do. That is, those names were recorded in my office after the liberation.

Q Are they the names of persons whose ashes are in your funeral parlors?

A Yes, they are said to be.

Q Do those ashes have on their urns, names other than Hallmark, Farrow and Spatz?

A Yes, they have.

Q State the other names for each of those three.

A One is J. Smith; one is E. L. Brister and one is H.E.Gande.

Q State to the Commission which of those other names applies to each of those men.

A I am sorry, I cannot tell you without referring to other records.

Q When did the International Funeral Parlors first have anything to do with these ashes?

A The ashes were received by the International Funeral Directors on the 14th of November, 1942.

Q For each of the three?

A They arrived at the same time.

Q And those ashes came under the names of Smith, Brister and Gande?

A Yes sir.

Q Where did they come from?

A According to my record they came from the Japanese Internment Camp.

Q The bodies already had been cremated, is that correct?

A Yes sir.

Q State to the Commission whether or not at a later time, after hostilities, something happened with respect to the names on those urns.

A Shortly after the cessation of hostilities, some Japanese came to my office and looked over the urns of prisoners of war that we had there.

Q Then what happened?

A A few days later they came back again and left instructions regarding these three cases of Smith, Gande and Brister, to change the names of those three cases.

Q Were they Japanese military?

A They were in uniform.

Q Do you know their names?

A No.

Q Pursuant to their instructions to what names did you change the urns?

A I can't tell you without referring to the urns.

Q Will you open up the basket, please and remove the urns? You may remain standing right by the urns. Now, I ask you, can you tell the Commission now, by looking at these urns, to what names the urns were changed?

A (after removing urns from basket and lining them up on bench in front of Commission) Yes.

Q Please do so.

A Dean E. Hallmark from Smith; to --

Q From Smith to Hallmark?

A Yes.

Q All right, and the next one?

A Gande to Farrow.

Q And the next one?

A Brister to Spatz.

Q Have these ashes remained in your control at all times since they were first received by you?

A They were in control of the International Funeral Directors but I was not directly in charge, for two and a half years while I was in camp, in internment.

Q But they were at all times in control of the International Funeral Parlors?

A Yes sir.

11/17 m 23 Mar 46

Q Did there come a time when the ashes of Lieutenant Meder were also brought to the International Funeral Parlor?

A Yes sir.

Q Do you have your records with you with respect to Meder?

A I have no records with me with respect to Meder.

Q State to the Commission what you know about that.

A They were brought to the Funeral Parlors some time after the liberation.

Q Who brought them there?

A I do not remember.

Q Are these ashes held by you subject to the control of the Graves Registration Bureau of the United States Forces, China Theater?

A Yes sir.

Q Do you have the urn of ashes which, according to these records and yours, are the ashes of Lieutenant Robert J. Meder?

A Yes sir.

Q You have them here in the court room?

A Yes sir (removing them from the basket and placing them beside the other three before the Commission.)

Q And these are also presently under your control subject to the regulations of the Graves Registration Bureau?

A Yes sir.

PROSECUTOR: May it please the Commission, prior to offering the ashes in evidence, I would like to make a statement on behalf of the exhibit that the repatriation law which controls the return of bodies and ashes of those who have died in foreign theaters has not yet been enacted and passed by the Congress of the United States and until it is, no bodies will be exhumed nor will ashes be returned to the United States until the law is enacted in final form and the United States Army will keep control of these ashes and bodies until the law is enacted and in no event will a disposition be made until the next-of-kin are told as to the disposition. Therefore, these ashes must remain under the control of the Graves Registration Bureau and in the International Funeral Parlor. With that statement we would offer these in evidence, subject to being withdrawn subsequent to their being received and returned to the International Funeral Parlor and a reference of their withdrawal and receipt substituted in the record for the ashes themselves. With that statement underlying the offer, the prosecution now offers in evidence as Exhibit "C", the ashes of Lieutenant Dean E. Hallmark, Lieutenant William Glover Farrow, Sergeant Harold A. Spatz and Lieutenant Robert J. Meder.

DEFENSE: The defense requests the Commission to close the session without ruling on the Prosecution's offer. We have no questions of the witness.

PROSECUTOR: Does the Commission have any questions?

COLONEL MC REYNOLDS: There appearing to be none, the witness is excused.

(Whereupon the witness withdrew from the witness stand and resumed a seat in the court room.)

11/18 m 23 Mar 46

COLONEL MC REYNOLDS: The Court will be closed.

(Whereupon, at 1145 hours, the public withdrew from the court room and the court was in closed session, at which time defense objected to the receipt of Prosecution's Exhibit "C" and argued his reasons therefor.)

COLONEL MC REYNOLDS: The Commission will receive Prosecution's Exhibit "C" in evidence and over-rules the defense objection. Let the record show the offer in evidence and its receipt into evidence.

(Prosecution's Exhibit "C" received in evidence.)

PROSECUTOR: If the Commission, please, with the approval of the Commission, let the record also show that the original exhibits shall be withdrawn and a reference in the record to their receipt in evidence be substituted for the ashes themselves. Is that satisfactory to the Commission?

COLONEL MC REYNOLDS: That is satisfactory with the Commission.

PROSECUTOR: May it please the Commission, perhaps we should open the court to the public. It is after twelve, and then if it is agreeable to the Commission, the court will adjourn.

COLONEL MC REYNOLDS: The Court is open (1200 hours).

(Whereupon the doors to the court room were opened and the public given an opportunity to return to their seats.)

PROSECUTOR: It is stipulated and agreed by prosecution and defense counsel that Prosecution's Exhibit "C" is described as four wooden boxes each approximately nine inches long, nine inches wide and twelve inches deep and each draped with an American flag. Each urn or box was marked with the name of the person whose ashes were contained therein, as described in the evidence.

COLONEL MC REYNOLDS: The Commission will adjourn until Monday morning, 25 March, at 9:00 o'clock.

(Whereupon, at 1203 hours, 23 March 1946, the Commission adjourned to reconvene at 0900 hours, 25 March 1946.)