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BEFORE THE  
MILITARY COMMISSION  
CONVENED BY THE  
COMMANDING GENERAL  
UNITED STATES ARMY FORCES  
CHINA

RESTRICTED

*Not Available to Defence*

*Doc # 175*

UNITED STATES OF AMERICA

-vs-

SHIGERU SAWADA  
YUSEI WAKO  
RYUHEI OKADA  
SOTOJIRO TATSUTA

PUBLIC TRIAL

VOLUME IV

PAGES 308 TO 423

SHANGHAI, CHINA.

DATE 1 MAY 1946

AUTHENTICATION

THIS CERTIFIES that this volume is a part of the Record of the Proceedings of the Military Commission appointed by Paragraph 2, Special Orders 42, Headquarters United States Forces, China Theater, dated 16 February 1946, in the trial of the case of United States of America against Shigeru Sawada, et al.

Dated 1 May 1946.

*Edwin R. McReynolds*  
EDWIN R. McREYNOLDS  
Colonel, IGD,  
President of Commission

VOLUME IV

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MORNING SESSION

... Pursuant to adjournment the Commission reconvened at 0900 hours on 3 April 1946 ...

COLONEL MC REYNOLDS: The Commission is in session.

LT COL HENDREN: Let the record show the Commission, the accused, counsel for prosecution and defense, reporter and interpreters are present in the courtroom.

Two days ago Colonel Berry called my attention to the fact that Prosecution's Exhibit No. 22 was not an exact copy of the original letter which was read in evidence, so I have at this time the corrected copies to give the Commission. Also the Commission has not been furnished with copies of Prosecution's Exhibit D, being the excerpts from the State Department Bulletin, and copies of Prosecution's Exhibit G, being the letter written by Sergeant Spatz to his home, Prosecution's Exhibit F, being the letter written by Lt. Farrow, and Prosecution's Exhibit E, the letter written by Lt. Hallmark. I'd like to give the Commission copies of those exhibits at this time.

(Whereupon Colonel Hendren distributed copies of the above-mentioned exhibits to the members of the Commission.)

LT COL HENDREN: At the last session there was not read into Japanese the last two transcript exhibits by the defense, Exhibits Nos. 12 and 13. Does the Commission desire those read at this time?

COLONEL MC REYNOLDS: Yes, proceed.

(Whereupon Defense Transcript Exhibits Nos. 12 and 13 were translated to the accused.)

CAPTAIN FELLOWS: Defense would like to call Major General Ito to the stand.

SHOSHI ITO

called as a witness on behalf of the defense.

MAJOR DWYER: Prior to the affirmation of this witness the prosecution would like to ask him a few qualifying questions.

Q Do you have a religion?

A I have.

Q What is it?

A Buddhism.

Q Do you know the difference between truth and untruth?

A I know.

Q Do you state that the testimony that you shall give before this Commission shall be binding upon your conscience and your religious belief so that you will tell the truth and nothing but the truth?

A Yes, I will.

MAJOR DWYER: Is the Commission satisfied with the qualification of this witness to be affirmed?

COLONEL MC REYNOLDS: The Commission is satisfied.

(Whereupon the witness was affirmed and testified through Interpreter Arita as follows:)

Q (By Major Dwyer) State your name, rank, organization and army?  
A Name is Ito, Shoshi, rank is Army Judicial Major General.

Q Japanese army?  
A Japanese army.

MAJOR DWYER: The prosecution has a preliminary statement to make with reference to this witness. This witness is not entitled to the protection of the 24th Article of War nor the 5th Amendment of the Constitution guaranteeing the privilege against testifying against himself. His name and the scope of his duties has been referred to several times in the evidence in this case. It is at least in the realm of possibility that his own testimony may be of such a nature that the U.S. Army International Prosecution Section in Tokyo may deem it proper to try him on the international level. In order that this Commission and the prosecution may not at some subsequent time, place or trial be charged with some measure of duress or laxity in fairness to everyone who comes before them it is suggested that the prosecutor, with the consent of this Commission, be permitted at this time to advise this witness that in the event he is ever tried before a military commission of the United States Army, any statement he may here make may be used against him.

CAPTAIN FELLOWS: If the court please, I think the prosecution is trying to intimidate the witness at this time; we strenuously object to this.

COLONEL MC REYNOLDS: Objection overruled.

The Commission desires to know the status of the witness at the present time regarding the possibility of being a prisoner, retired status, or what is his status?

MAJOR DWYER: That we can't answer and that is the reason why we state it is in the realm of possibility. We don't know.

CAPTAIN FELLOWS: If the Commission please, I know the witness is not a prisoner.

MAJOR DWYER: I know that.

CAPTAIN FELLOWS: That is what the Commission asked.

MAJOR DWYER: I would suggest defense counsel state his present status of which I know nothing about. As to his future status, I don't think anybody can advise the Commission on that.

COLONEL MC REYNOLDS: His status will be part of the record.

CAPTAIN FELLOWS: This witness is here as a free witness. He was brought back from Tokyo by the defense counsel and appears in court at the request of defense counsel. He is not a prisoner. He is not under any charges. That is all of my information.

COLONEL MC REYNOLDS: Under the circumstances the Commission feels that the witness should be advised of his rights, although not subject to the Article of War mentioned, therefore the objection by the defense is overruled.

CAPTAIN FELLOWS: The witness has been advised of his rights by the reading of that statement I think.

Q (By Major Dwyer) General Ito, do you understand what has been said up to now in this courtroom about you?

A I do.

Q You are advised that any statement you may here make may be used against you.

MAJOR DWYER: You may examine the witness.

CAPTAIN FELLOWS: For the purpose of the record, the defense counsel for the accused and each of the accused asks the Commission to declare this a mistrial for the reason that an attempt has been made to intimidate this witness prior to his testimony by stating to the witness that he may be charged with the statements he herein makes.

MAJOR DWYER: May it please the Commission, defense counsel is putting words into the mouth of prosecution. We have said nothing. We don't wish to have anyone infer, including this witness, that he is charged or will be charged. We make it specifically clear we don't know about that. But in the event this man ever is charged by a military tribunal we feel that we would be derelict in our duty if we did not advise him what the rules of this Commission specifically provide. The rules of this Commission, under which we are operating, state that anything that may be stated in this proceeding may be used at a future time and we are merely advising this witness of what the rules of this Commission specifically provide. There is no attempt to intimidate this man at all. If anything, we are leaning over backwards to see that fairness is done to everyone who comes before this Commission, the accused and everyone else, and I will quote from the Rules of the Commission. Paragraph 16, sub-paragraph e: "The findings and judgment of a commission in any trial of a unit, group or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial by that or any other commission of an individual person charged with criminal responsibility through membership in that unit, group or organization...." The balance is immaterial. The record in this case may be used in any future trial before any military commission. Now we don't know that it ever will be as a matter of fact, but if it is we do not want to have a future commission or prosecutor charge this Commission or those prosecutors with the same question that was asked me personally about the conditions under which I took statements from these accused and others in which I was asked by the defense, Did you advise these men that these statements would be used against them? I can anticipate other defense counsel maybe just as devoted to their duty and doing just as good a job as is done by the defense, and I say that in all honesty and fairness. We want to eliminate any such charges against any one in the future. There is no attempt to intimidate this person in any way. We don't want it to be taken as such. I ask the motion be denied.

CAPTAIN FELLOWS: If the Commission please, the reference Major Dwyer makes to the rules appointing this Commission have no application to the International Commission which he intimates may be brought into this case. therefore the argument he makes on the rules and regulations appointing this commission have no bearing whatsoever.

COLONEL MC REYNOLDS: The motion requested by the defense for mistrial is denied. Proceed.

DIRECT EXAMINATION

Q (By Captain Fellows) General Ito, I think you stated you are a member of the Japanese army.

A Yes.

- Q How long have you been a member of the Japanese army?  
A Twenty-five years.
- Q For how long a period have you been a member of the Judicial Department?  
A Twenty-five years in the Judicial Department.
- Q During the summer and fall of 1942 where were you assigned?  
A Judicial Department, 13th army of the China Expeditionary Force.
- Q Where was the Judicial Department located during that period of time?  
A It was in Shanghai, China.
- Q What is the function of a legal department to an army?  
A It handled the matters concerning legal matters of the 13th Army.
- Q Was it the duty of a legal department to advise the commander concerning military laws and regulations?  
A Yes.
- Q Did the legal department of the 13th army have any contact with any courts or tribunals?  
A Yes.
- Q Did the legal department take care of the court and tribunal work for the commander?  
A Is that of the judicial department?
- Q Yes.  
A Yes.
- Q During the summer of 1942 what was your rank?  
A Colonel of the judicial department.
- Q Were you head of the judicial department?  
A Yes.
- Q At that time whom did you have working under you?  
A Major Hata of the judicial department. Lt Wako of the judicial department, and Captain Ikawa.
- Q When did Lt. Wako become a member of your department?  
A It was either August or September of 1941. I might be mistaken about the year.
- Q Was he the junior member of the department?  
A Yes.
- Q General, when did you first learn that any of the Doclittle fliers were in Shanghai?  
A It was either the end of July or the first part of August, 1942.
- Q How did that fact come to your attention?  
A I learned about the Doclittle fliers for the first time when the gendarmerie of Shanghai came to me to make the necessary connections with us.
- Q Did the Shanghai gendarmerie come to you and request that you try the Doclittle fliers?  
A Yes.
- Q That was, I believe you said, the last of July or first of August, 1942?  
A Yes.



- Q Was the Shanghai gendarmerie in any way under the 13th army?  
A It was not under the chain of command.
- Q Did the Shanghai gendarmerie have a military tribunal of their own?  
A They did not have.
- Q Under what command was the Shanghai gendarmerie?  
A It was under the headquarters gendarmerie in Nanking.
- Q Had any stipulation been made to your knowledge whereby the 13th army undertook to try cases for the Shanghai gendarmerie?  
Was any stipulation entered into between the supreme headquarters in Nanking and the Nanking gendarmerie headquarters concerning the trial of cases for the gendarmerie?  
A There was an order from the supreme commander at Nanking saying "Have the 13th Army conduct the trial."
- Q Is that the trial or trials?  
A It concerned only the Doelittle fliers.
- Q Had the 13th army tried other cases for the Shanghai gendarmerie?  
A Yes, they have.
- Q Then it was not unusual for the Shanghai gendarmerie to come to your office, request that you try a case?  
A Yes, it is unusual.
- Q Was the 13th army tribunal the only tribunal in this area?  
A Yes, it was the only one in Shanghai.
- Q General, will you tell the Commission under what regulations or law the 13th army military tribunal was set up under?  
A Court trial regulations regulated by the supreme commander of the Expeditionary Forces in China.
- Q Was that by the law effective 1 October 1939?  
A It was the first since October 1, 1939.

CAPTAIN FELLOWS: I call the Commission's attention to the fact that that law was attached to Major Hata's statement as inclosure 2. I will, from time to time, question this witness concerning laws and regulations that are attached to that statement. I suggest the Commission take out Hata's statement in order to follow the witness. Before going into these laws, it is almost 10:30, does the Commission want to recess now?

COLONEL MC REYNOLDS: The Commission has 10:25. Proceed.

- Q Do you have a copy of this military law in your possession, General?  
A I have a copy.
- Q I will ask you to refer to the copy that you have.  
A I don't have the copy.

CAPTAIN FELLOWS: I will furnish the witness with a copy in Japanese.

(Captain Fellows hands the witness a document.)

- Q Under that law is a right given to army commanders to set up a military tribunal?  
A Yes.
- Q Under that law does the supreme commander in Nanking have a right under Article 4 to designate an army tribunal to try a special case?  
A On special cases the supreme commander has the right to designate the persons.

Q Does he have the right to designate the tribunal which will try accused?

A He has the right to designate the court - the military tribunal.

Q General, was this law in effect on August 28, 1942?

A Yes.

Q Now going back to the first of August 1942, what representative of the Shanghai gendarmerie came to you and made this request you spoke of?

MAJOR DWYER: Is this all in answer to a question what was the name of the officer?

CAPTAIN FELLOWS: It could not be that long a name. Will you ask him just what the name of the man is of the Shanghai gendarmerie that came to talk to him?

A I know he was an officer but I don't remember his name.

Q What did this officer ask you to do?

(The witness then spoke for a considerable length of time.)

CAPTAIN FELLOWS: If the Commission please, I think this is going beyond the realm of reason.

COLONEL GAMBER: He is your witness. Stop him.

CAPTAIN FELLOWS: I will withdraw the question.

COLONEL MC REYNOLDS: At this time the Commission will recess.

(Whereupon The Commission took a recess at 1035 hours.)

COLONEL MC REYNOLDS: The Commission is in session. (1045 hours.)

LT COL HENDREN: Let the record show the Commission, the accused, attorneys for the prosecution and defense, reporter and interpreters returned to the courtroom. The witness is reminded he is still under oath.

Q General, just prior to the recess you stated that an officer of the Shanghai gendarmerie had come to you and requested the 13th Army military tribunal to try these fliers.

A Yes.

Q Was that an officer by the name of Ogata?

A I am not clear but he might have been.

Q Was there a Major Ogata who was commanding officer of the Shanghai gendarmerie?

A No, he was not commanding officer of the Shanghai gendarmerie.

Q Was Major Ogata a member of the Shanghai gendarmerie?

A Yes, he was.

Q Did this officer from the Shanghai gendarmerie that came to you have any documents in his possession?

A Yes.

Q What were these documents?

A Interrogation and investigation sheets.

Q Did he tell you why he was requesting the 13th Army to try these fliers?  
A He said that he received an order from the Nanking gendarmerie headquarters to request the 13th army to try them.

Q Did he tell you anything else?  
A He didn't say anything else.

Q Did you examine those documents that you referred to?  
A Yes, I examined them.

Q Did you make a copy of those documents?  
A Yes, I did.

Q Do you have a copy of those interrogation sheets with you?  
A Yes, I have.

Q Will you look at them please. Do they bear a report number?  
A Yes.

Q Is that Special Secret Service Report No. 352?  
A This is the secret document of the staff No. 12, subject No. 78.

Q Who is it from and who is it to?  
A It was sent by the chief of staff of Imperial Japanese Forces to the chief of staff Ushiroko Jun, of China Expeditionary Forces.

Q What did that report consist of?

MAJOR DWYER: Just a moment please. If this witness is about to testify from this document we wish to object.

CAPTAIN FELLOWS: I am trying to identify the document so far.

MAJOR DWYER: All right, no objection at this time.

A One is interrogation sheet of the eight pilots and another one is report on conditions of investigations conducted by gendarmerie headquarters in Tokyo.

Q What is the date of the report of the interrogation of the fliers?  
A May 22, 1942.

Q What is the date that the report was forwarded?  
A June 13, 1942.

Q And what is the other report that you received? What is the substance of the other report?

INTERPRETER: I don't quite get it.

CAPTAIN FELLOWS: I'll rephrase the question.

Q In addition to the report of interrogation, did you receive another report?

A Report on conditions of investigations.

Q Did you read those reports at that time?  
A I did.

Q Did you then make an answer to the Shanghai gendarmerie to their request?  
A Yes, I have.

Q What was your answer?

A I told him that we can not conduct the trial here because of lack of regulations at the time.

Q What answer did you receive?

A He said that the headquarters of the Nanking Supreme Headquarters will send the regulations soon.

Q Were you convinced from reading these reports that there was sufficient evidence of guilt against these fliers?

A Yes, I did, I thought so.

Q Was there, in your opinion, sufficient evidence to justify sending the case to a military tribunal?

A If I had received an order I have them tried.

Q In your opinion was there sufficient evidence?

COLONEL MC REYNOLDS: The Commission desires the witness either answer the question or that he does not know.

Q From these two reports you received from the Shanghai Gendarmerie were you convinced that there was sufficient legal evidence to sustain a conviction before your tribunal?

A I didn't think so.

MAJOR DWYER: I didn't get that answer.

INTERPRETER: I didn't think so.

MAJOR DWYER: Did not or did?

INTERPRETER: Did not.

Q Did you ask the gendarmerie to submit further evidence?

A I did request.

Q What was your request?

A I requested them to submit a report of damage inflicted by the raid in Nagoya and Tokyo.

Q Did they say they would try and get such a report?

A Yes, he did.

Q Did you take this request and these reports into Major Hata and discuss it with him?

A Yes, I have.

Q Did he concur in your opinion?

A Yes, he was.

Q Did you thereafter receive this new law or regulation that the Shanghai gendarmerie said would be sent to you?

A Yes, I received it.

Q What was the date of that new law?

A August 13, 1942.

Q Was that a law relating to enemy airmen who raid Japan or Japanese territory?

A Yes, it was.

CAPTAIN FELLOWS: I call the Commission's attention to the fact that this law is already in evidence as Inclosure 3 to Major Hata's statement.

Q Did you examine this new law?

A Yes, I did.

Q As head of the legal department was it not your duty to examine and interpret the new law?

A Yes, I was.

Q Did you reach a conclusion as to the legality of the law?

(No response.)

Q Is the question not clear to him?

INTERPRETER: He says the question is not clear to him.

Q I'll rephrase the question. Did he believe that the law that we are referring to was legal?

A Yes, it was.

Q Attached to the copy of the law were there any endorsements or letters?

A Yes, there was.

Q Can you tell me what those letters were?

A Supreme commander of China Expeditionary Forces, General Hata.

Q Do you have a copy of those letters and endorsements?

A Yes, I have.

Q Was there a letter from the Vice-Minister of War, Kimura, attached?

A Yes, there is.

Q Was that document No. 2190?

A Yes, it is.

Q Was there a document from the office of the assistant chief of staff, Grand Imperial Headquarters attached?

A Yes, there was.

CAPTAIN FELLOWS: I call the court's attention to the fact that both of these documents are already in evidence under statement of Major Hata.

Q Do you have a copy of the letter from the assistant chief of staff?

A Yes, I have.

Q Is that staff document No. 383-1?

A Yes, it is.

Q What is the last sentence of that document?

MAJOR DWYER: May it please the Commission, is there any question of the valid translation of the exhibit in evidence?

CAPTAIN FELLOWS: One sentence was left off the translation which we think should be brought to the court's attention.

MAJOR DWYER: It's not in evidence.

COLONEL MC REYNOLDS: It's not in evidence. If you care to put it in evidence, it should be properly presented.

Q Is that document you have in your possession a copy of staff document 383-1?

A Yes, it is.

CAPTAIN FELLOWS: If the court please, before putting this document into evidence the prosecution has agreed to stipulate to the last sentence. It is therefore stipulated by and between the prosecution and the defense that the last sentence of document 383-1 is Inclosure No. 5 to Major Hata's statement read as follows:

COLONEL MC REYNOLDS: Is that the one that is indicated in Major Hata's statement "Rest Omitted,"?

CAPTAIN FELLOWS: Yes, sir. It reads as follows: Regarding the provisions of the military law the enclosed draft be used as a reference. Is that agreeable to the prosecution?

LT COL HENDREN: It is agreeable. No objection.

Q General Ito, in your examination of these enclosures, did they reveal a new source of this request to you?

A Are you referring to 383-1?

Q No. The question isn't clear. I will rephrase the question. After receiving this law and these endorsements and letters, did you come to any conclusion as to whether you would try this case or not?

A Yes, I considered.

Q Did you consider these documents as an order from the Minister of War or the chief of staff to try this case?

MAJOR DWYER: Just a moment, before that question is answered, we object to that question. The conclusion of this witness as to what he determined from these documents is immaterial. These documents speak for themselves. They are in evidence. Whether or not they were an order to do anything is within the province of this commission to determine, and what this man may have thought as to any conclusion that he might have drawn from these documents is immaterial to the issue.

COLONEL MC REYNOLDS: Objection overruled. The witness may answer the question.

A Yes, I thought so.

Q Did you or any member of your staff go to Nanking to inquire on that basis?

A I don't remember.

Q Is it necessary in the trial of any foreigner other than Chinese to secure the consent of the supreme commander?

MAJOR DWYER: Just a moment. We object to this question also upon the grounds that if counsel is seeking to obtain from this witness a statement of law, we submit that the law which is in evidence speaks for itself. Now if that is so, counsel can refer to the law. Any statement of this witness is improper because the law speaks for itself and that is something for the Commission to determine. If counsel is referring to Article 6 which apparently has the language which he is using, I suggest we can shorten this up by simply referring to the law which is in evidence. We have no objection to him reading any portion thereof if he so wishes. As a matter of fact it has already been read in the record.

CAPTAIN FELLOWS: If the Commission please, this witness has been asked a question concerning what was required of his own tribunal. He has been a member of the Japanese military judicial for a long period of years. I think he is certainly qualified to interpret the Japanese

law to this Commission.

MAJOR DWYER: The prosecution hopes to expedite rather than delay this proceeding by this objection. We hope it will govern the future conduct of the evidence. Now Article 8 reads, "In the trial of a foreigner other than a Chinese the Military Tribunal shall first obtain the official sanction of the Commanding General of the China Expeditionary Army." Now that is in evidence and before the court. Now it is useless to keep asking this witness his opinions as to what this law states and what he should do as a legal advisor to the 13th Army. If counsel wishes to re-read the exhibit or do anything else, quote parts of it, we have no objection, but to keep continuously asking this witness what this law says when it is already in evidence, we think merely delays the issue and if anything probably may confuse it.

COLONEL MC REYNOLDS: Prosecution's objection is sustained.

Q During the time of your deliberation on this request for trial, where was General Sawada?

A He was at the front line.

Q Was he at the front lines in Shanghai or away from Shanghai?

A Between Shanghai and the front line.

Q Did he take with him his staff?

A Yes, he did.

Q Did any officers come to Shanghai from any other headquarters to replace his staff?

A Yes, there were.

Q Who were these officers and where did they come from?

A They came from supreme headquarters in Nanking.

Q Does the general remember their names?

A I remember their names.

Q What were their names?

A Lt Colonel Ogawa, Major Ogasawaru.

Q During all this time do you know where the fliers were?

A What time are you referring to?

Q During the month of August, until August 28, do you know where the fliers were confined?

A Yes, I do.

Q Where were they confined?

A Shanghai gendarmerie headquarters.

Q Did the 13th Army have any control over the Kempetai headquarters?

A There wasn't. The 13th Army had no jurisdiction over the gendarmerie.

Q Were the persons of the fliers ever turned over to the 13th Army prior to the day of trial?

A No.

Q General, the letter referred to as Staff Document No. 383 requested action by the middle of August 1942?

A Yes, it was.

Q Why was the trial delayed until later?

A Evidential documents from Tokyo were delayed.

Q Are those the reports that you requested from the Shanghai Kempetai?  
A Yes.

Q Did you receive those reports that you requested?  
A Received.

Q When did you receive them?  
A August 20, about August 20.

Q Did you believe then that you had sufficient evidence to send this case to trial?  
A Yes, I thought so.

Q What was the nature of this report that you received from Tokyo?  
A It was the conditions of damage inflicted in the indiscriminate bombings.

Q Was there included in that report any detailed interrogation of these fliers? Strike the question. I'll rephrase it another way. What evidence did you then have in your possession to present to this tribunal?  
A A report on conditions of damage by the bombings and statements of those fliers. These two documents are in complete coordination.

Q In addition to the statement of interrogation and report of bombing damage, did you not also have a report of the investigation of the fliers?  
A Yes, there was.

Q Was that report in detail?  
A Yes, it was detailed report.

Q Did that report lead you to place reliance upon the truth of the confessions?  
A Yes.

MAJOR DWYER: We object to this type of questioning as being improper and ask the answer be stricken. What reliance this witness may have put on anything is immaterial to the issues of this case. This man is nothing but a witness. He may state what was done, what he observed with reference to procedure and he may state what, if anything, any of these accused did and anything material to the issues in this case. What reliance he may put on anything is immaterial and we ask the answer be stricken from the record.

CAPTAIN FELLOWS: If the Commission please, these accused are charged with having tried these fliers under false and fraudulent evidence and false and fraudulent charges. The very essence of the word fraudulent is ill intent, bad intent as to what these parties relied upon, what they considered. Anything that changes from bad to good intent is admissible before this Commission. It is the essence of the charges against these accused.

MAJOR DWYER: That might be a proper question to ask an accused, but to put a question like that to a witness on direct examination and have him testify as to his beliefs and conclusions which he may have been thinking about sometime during the trial of the Doolittle case or its preparation certainly serves no material purpose. It doesn't prove or disprove any issue in this case. These accused may take the stand and testify what they may have relied on but what this man may have or may have not relied on is immaterial to the issues. And for the further reason there is no evidence in this record yet that anything which this man was asked to testify was placed before this court that tried these men.



CAPTAIN FELLOWS: If the Commission please, this witness, the head of the legal department of the army that conducted this trial, is a man who considered these documents. He is a man who I think the evidence will soon show made up his mind whether the case was a proper case for trial or not. The one who received the instructions from above whose decision is probably the only decision made. These accused are not tried only with a trial. These accused are charged with having presented false charges, wrongfully referred a case for trial. I can think of no more important witness than this witness and what his mental attitude, outlook was based upon, that is why I am going into such detail with this witness.

COLONEL MC REYNOLDS: Objection sustained. The witness has stated he felt he had sufficient evidence with other documents.

Q General Ito, was the evidence that you have just referred to discussed with Hata?

A Yes, I did.

Q Did Major Hata have occasion to read all this evidence?

A Yes, he did.

Q Were these fliers brought to trial before a tribunal of the 13th army?

A Yes.

Q On what date?

A It was either August 24th or 25th.

Q Are you sure of that date?

A Yes.

Q General Ito, will you explain to the Commission how the judges are appointed for these tribunals? I will withdraw the question and ask it a different way.

Prior to the departure of General Sawada from Shanghai did he appoint a pool of officers for his military tribunal?

A Are you referring to the Doolittle case?

Q No. Not to the Doolittle case, but to the tribunal in general.

A He ordered it.

Q How many pool of officers did he have?

A Fifteen or sixteen.

Q Is that 15 or 16 officers in the group?

INTERPRETER: He doesn't understand group. No such expression.

Q Prior to General Sawada's departure from Shanghai did he select certain officers that could be used as judges on the military tribunal?

A Are you talking about prior to General Sawada's departure for the front lines?

Q That is right.

A You cannot say General Sawada appointed any judges before his departure because of the fact that there were judges all the time appointed before.

Q Is it true then at the time General Sawada left Shanghai for the front there existed a group or pool of judges?

A Are you referring to the case of Doolittle?

Q I am referring in general.

A The judges were appointed before.

Q How many judges were appointed before?  
A As I stated before there were 15 or 16.

COLONEL MC REYNOLDS: At this time the Commission will recess until two o'clock P.M.

(Whereupon the Commission adjourned at 1205 hours on 3 April 1946 to reconvene at 1400 hours on 3 April 1946.)

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AFTERNOON SESSION

... Pursuant to adjournment, the Commission reconvened at 1400 hours, 3 April 1946, 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.

SHOSHIN ITO

witness on behalf of the defense, who was testifying at the close of the morning session, resumed the witness stand, was reminded he was still under oath, was examined and testified through interpreter Captain Hahn, as follows:

DIRECT EXAMINATION

- Q (By Capt Fellows) General Ito, at the close of the last session you were being interrogated about the selection of judges for the 13th Military Tribunal. I believe you had just stated that General Sawada, prior to leaving Shanghai, had selected a group of officers as eligible to be judges for the tribunal. Can you state to the Commission about when this selection was made?
- A I don't remember the exact date but it was before he departed.
- Q At that time did you or anyone in the 13th Army Headquarters know of the Doolittle case?
- A No.
- Q General Ito, was Okada, Wako and Nakajo on that list?
- A Yes.
- Q Was Nakajo the Chief Judge at the Doolittle trial?
- A Yes.
- Q Who were the judges selected for the Doolittle trial?
- A Selection was made by the Chief of the Judicial Department.
- Q What were the names of the judges selected?
- A Lieutenant Colonel Nakajo; 2nd Lieutenant, at that time, Okada; 1st Lieutenant Wako.
- Q Their selection was made by your department?
- A Yes.
- Q At that time where was General Sawada?
- A He wasn't there.
- Q Did General Sawada himself select these judges?
- A He did not select them because he wasn't here.
- Q Who was the prosecutor at the trial?
- A Major Hata at the time.
- Q How was his selection made?
- A He was the standing prosecutor for all time.
- Q Did you consider taking the job of prosecutor, yourself, for a while?
- A I did have that thought at the time.

Q Was the case referred to this tribunal for trial?

A Yes.

Q Did General Sawada ever personally direct that the case be referred to that tribunal for trial?

A No, he did not.

Q Did you talk to Major Hata concerning the trial procedure in advance of the trial?

A Yes, I have.

Q Do you know of your own knowledge what evidence the trial considered?

A I knew it.

Q What evidence was considered by the court?

A We used three documents. One, interrogation conducted by the Tokyo Gendarmerie Headquarters. Second, report on damage inflicted by raid which was received at Shanghai Gendarmerie Headquarters from Tokyo, and the other one is a complete detailed information obtained from those fliers in Tokyo.

Q General, did that interrogation report include any statements by the fliers?

A Yes, it was.

Q Did you make a copy of that report?

A Yes, I did.

Q Do you have that copy with you?

A I have.

Q I will ask the witness to refer to his copy. Is that report in the nature of questions and answers?

A Yes.

Q Is that report from Nakamura Akahito, Commander of the Gendarmerie in Tokyo?

A Yes.

Q Does it bear a number?

A Nakamura Akahito was the Commanding Officer of Tokyo Gendarmerie Headquarters.

Q Is that report number 352?

A Yes, it is.

DEFENSE: At this time the defense would like to offer in evidence the translation of this report #352, from Nakamura Akahito. The translation was made by SINTIC.

PROSECUTOR: (Maj Dwyer) Prior to objection we would like to ask this witness one or two questions.

CROSS EXAMINATION

Q (By Maj Dwyer) Is this record which you speak of a personal record of yours?

A It belongs to myself.

Q It belongs to you?

- A I copied this document for future reference for myself.
- Q You made the copy yourself, in your own handwriting?  
A I asked my secretary to copy it.
- Q Whose handwriting is on that document?  
A A reporter at the Bureau of Judicial Affairs in Tokyo.
- Q Did he copy it at your direction?  
A I asked him to copy it.
- Q So that you don't know of your own knowledge whether this copy you have is the same as the original, do you?  
A I know it.
- Q Well you didn't make the copy, did you?  
A He copied it before my presence.
- Q If there is something in that copy that was not in the original, there is nobody but you and that reporter would know that, is there?  
A There is another person who knows about it.
- Q Is this a complete copy of the record of the Doolittle case that was tried in Shanghai?  
A It is not a complete record.
- Q It is a series of parts or extracts taken from the record, is that right?  
A I took some parts which would be my reference in future.
- Q And to your knowledge you don't know whether the questions and answers you are referring to here were ever actually taken from these Doolittle boys, do you?

DEFENSE: (Capt Fellows) May it please the court, the prosecution has time to go into that type of questioning later on. This is not supposed to have been questions prepared by this witness. They are taken from the documents that were received from Tokyo.

PROSECUTOR: (Maj Dwyer) Counsel is introducing an exhibit. We are entitled to ask any question and elicit any information which will give the Commission evidence as to whether this is or is not an admissible exhibit. First of all this is shown to be a copy. He does not know whether it is a true copy of the original. Secondly it is only extracts of the document, and not the document in its entirety. Those are all good reasons against its admissibility as we see it. Now we object to the admissibility of this offer of evidence first of all that, upon the grounds of the witness' own testimony, this is shown not to be an official but a personal document. Secondly that whatever it is a copy of, these are only extracts and not the document in its entirety, and thirdly, that the witness cannot testify, of his own knowledge, whether or not it is a copy -- even a true copy -- of what he claims to be an official document. We have no objection to this witness testifying what he may have asked these fliers himself, but to admit this piece of evidence is improper and we object to its admissibility.

DEFENSE: (Capt Fellows) If the Commission, please, this does not purport to be a full copy of the record. Both defense and prosecution

have looked for a copy of the record and cannot find it. This is the best we can then do to show the court what was considered by that court. As I recall the witness statement, he said it is a true copy. We have the best evidence we can bring,-- the copy made in his presence of parts of the record which he considered important for future reference.

COLONEL MURPHY: Is that part of the record of the trial?

DEFENSE: Part of the consideration,-- of the record considered at the trial.

COLONEL MURPHY: Will you ask the witness if these reports are a part or a complete record considered at the trial?

Q (By Capt Fellows) General Ito, is this copy that you have a complete copy of the confessions?

A Almost the entire part. Almost complete.

COLONEL MURPHY: What does he mean by almost complete? What has been left out?

Q General Ito, what parts of the confession have been left out?

A Two questions are missing.

Q Can you state what those two questions are?

PROSECUTOR: (Maj Dwyer) We object to this upon the ground that counsel is now asking the witness to testify to something that is not even in the exhibit. I think we should pass, first of all, upon the admissibility of the exhibit.

DEFENSE: This is the request of the Commission.

PROSECUTOR: Is this the request of the Commission?

COLONEL MURPHY: It is the request of the Commission.

PROSECUTOR: I beg your pardon. I withdraw my statement.

A The two missing questions are personal history of those fliers and air activities prior to the raid.

COLONEL MC REYNOLDS: Objection sustained unless the document is complete the Commission will not consider it as evidence.

DEFENSE: The defense takes exception to the ruling of the Commission.

Q (By Capt Fellows; General Ito, in your talk to Major Hata, prior to the meeting of this court, did you discuss the Enemy Airmen's Law?

A Yes, I have.

Q Did you discuss with Major Hata, Article III of that law?

A Yes.

Q Did you give Major Hata any opinion as to what that article means?

A Yes, I did.

- Q What was your opinion?  
A It was concerning the penalty to be sentenced to death.
- Q In other words it was your opinion that the death sentence was the only allowable sentence?  
A Although there is -- I expressed my opinion that the penalty of death but there is an exception.
- Q Was it your opinion that if the court found the fliers guilty they would have to give a death sentence?  
A Yes.
- Q Were you present in court at the hearing?  
A I attended as an audience.
- Q What time of day did you arrive at the trial?  
A It was a little after ten A.M.
- Q What time of the day was it when you left the trial?  
A At twelve o'clock.
- Q Was the trial still going on?  
A It was continuing when I left.
- Q Did you observe any part of the trial while you were there?  
A Yes, I did.
- Q Were any questions asked the fliers?  
A It is not clear but I think it was being asked about the raid.
- Q About the raid on Tokyo?  
A I think it was on Tokyo.
- Q Did the fliers have an interpreter?  
A There was an interpreter.
- Q Do you know who he was?  
A I don't remember his name.
- Q Did the fliers have a defense counsel?  
A There wasn't any defense counsel.
- Q Under the Japanese tribunal system do they have a defense counsel for persons accused?  
A No.
- Q Was this trial -- were the proceedings followed in this trial the regular and customary proceedings for Japanese military tribunals?  
A It was the same.
- Q General Ito, I will refer you again to Document No. 2190, letter to Chief of Staff from the Vice Minister of War. Was the procedure followed in this trial in conformity with the last sentence and paragraph of that letter?  
A Yes, it was.
- Q General, did you or General Sawada or any member of General Sawada's staff attempt to influence the decision of this court in any way?  
A Nobody spoke to the judges.

Q Was the court, therefore, free to determine the guilt or innocence of these fliers?

PROSECUTOR: (Maj Dwyer) We object to the question as calling for a conclusion of this witness. This is only an opinion of his at best. He may state as to his conversation with the members of the court but to ask for a statement as to the court's freedom to act, is without the province of this witness' knowledge to decide and is a matter for this Commission to decide.

DEFENSE: (Capt Fellows) If the Commission, please, this witness was there. He attended the trial, he appointed the judges and referred the case to trial. I would be interested in the answer to that question if I were on this Commission.

COLONEL MC REYNOLDS: Objection over-ruled. The witness may answer.

A Yes, it is.

COLONEL GAMBER: I don't make any sense out of that answer.

DEFENSE: What was that answer.

INTERPRETER: Yes, it was.

REPORTER: Yes, it is.

COLONEL GAMBER: Yes it is or yes it was?

DEFENSE: Ask him then if he means "Yes it is" or "Yes it was".

INTERPRETER: Yes it was.

Q Was General Sawada still absent from Shanghai at that time?

A He wasn't there. He was absent.

Q Did the court reach a finding on these fliers?

A Yes.

Q Did the court find them guilty or innocent?

A They find that they were guilty.

Q General, what was the charge against these fliers?

A Violation of military law concerning punishment of Enemy Airmen.

Q Were they charged with having violated this act of 13 August 1942?

A Yes.

Q What sentence did the court give the fliers?

A They all were sentenced to death.

Q Was a report of this trial made to Tokyo?

A Yes.

Q Was that report made immediately after the trial?

A They telegraphed Tokyo through Nanking and a written report was sent to Tokyo later.

Q When was this written report sent to Tokyo?

A It was a letter of August 29 or 30th.



Q Was this report a record of trial?

A It was a written statement of sentence.

Q Why was it necessary to send this report to Tokyo?

A We received an order from the Chief of Staff saying that -- asking us the time finding was made a written statement of sentence be sent Tokyo immediately.

Q Had General Sawada returned from the front when that report was made?

A He did not return at the time.

Q Was the report submitted to General Sawada prior to it being sent to Tokyo?

A Because he was at the front line, we did not submit it.

Q Did General Sawada have any chance then to approve, commute or in any way change this sentence prior to the report to Tokyo?

PROSECUTOR: (Maj Dwyer) Object. It is not up to this witness to state what chance General Sawada had to do anything. He may state what he did himself and it is up to the Commission to determine what opportunities General Sawada had.

DEFENSE: (Capt Fellows) If the court, please, this report was made from this witness' office and by him sent to Tokyo. He is the only person who would know whether he had a chance to approve it in any way.

PROSECUTOR: (Maj Dwyer) I submit the question can be answered directly, did he or did he not. The question, as it is phrased, is improper.

COLONEL MC REYNOLDS: Objection sustained.

Q Did General Sawada approve this report before it went to Tokyo?

A He did not approve at the time.

Q Did General Sawada disapprove the report before it went to Tokyo?

A (None)

(There was discussion between the witness and interpreter at which time the President of the Commission finally spoke up.)

COLONEL MC REYNOLDS: If counsel please, the witness can answer that question "yes" or "no" without any further statement. Let him answer "yes" or "no".

A He did not approve.

Q Was the report submitted to General Sawada at any time before it went to Tokyo?

A This document wasn't submitted to him at all.

Q Why was the document not submitted to him?

A Because he was at the front line and there was no means of sending it over there.

Q General Ito, in view of the orders directing this case to be tried was it necessary to first secure the approval of General Sawada?

A General Sawada didn't leave any instructions on this particular case, therefore he did not -- it wasn't necessary for him to approve it.

Q Did Tokyo approve the findings and sentence of this court?

A Yes.

Q On what date did they approve the findings and sentence?

A Approval was sent by telegram dated October 10, 1942.

Q On October 10, 1942, who was the Commanding General of the 13th Army in China?

A Lieutenant General Shimomura.

Q Did you receive any instructions from General Hata concerning the approval or execution of this sentence?

A I did not receive any orders from General Hata directly but received indirectly.

Q What did that message consist of?

A General Hata received an order from Tokyo that three men be executed and five men would be reduced for life imprisonment and General Hata transmitted this message to the Commanding General of the 13th Army and the Commander of 13th Army transmitted this message to the Lieutenant General.

Q Was that the actual approval of this court martial sentence?

A It was the approval by Tokyo Headquarters.

Q Was General Sawada given any chance to ever formally approve this record?

PROSECUTOR: (Maj Dwyer) Same objection as we raised to the previous similar question. The question was "Was General Sawada given a chance"? It is an improper question; calls for conclusion of the witness and invades the province of the Commission. I suggest a proper question would be, "What did General Sawada do, if anything?" We object to the question.

DEFENSE: I will rephrase the question.

Q When did Sawada -- did Sawada depart from Shanghai?

PROSECUTOR: (Lt Col Hendren) If it please the Commission, this question has been asked the witness several times and has been answered over and over again. There is no doubt General Sawada left Shanghai. It has been asked and answered by this witness three or four times today. I object to the question on the grounds of repetition. If it will help counsel we will stipulate he left the city if he will tell us what date he left on.

DEFENSE: I will rephrase that question.

Q Did General Sawada lose command of the 13th Army?

PROSECUTOR: (Maj Dwyer) Now we object to that question, as most certainly calling for a conclusion of the witness. The proper way to prove that, if at all, is bring an order or official document or put General Sawada on the stand himself. This witness is not qualified to answer that question.

DEFENSE: (Capt Fellows) If the Commission, please, I think even I, as Captain in the China Theater would know when the Commanding General lost command of the theater.

PROSECUTOR: (Maj Dwyer) Do you really think you could answer that question, now, Captain, of your own knowledge? I will rest our objection on that statement.

COLONEL MC REYNOLDS: Objection over-ruled.

INTERPRETER: The question is not clear.

DEFENSE: I will rephrase it.

Q Did General Sawada cease to be the Commander of the 13th Army?

INTERPRETER: Officially or unofficially?

PROSECUTOR: (Maj Dwyer) May we ask you to fix the date of this, at least?

A (None)

Q Did General Shimomura become the Commanding General of the 13th Army in China?

A The order was issued to Lieutenant General Shimomura October 8, 1942.

Q At that time did General Sawada cease being the Commander of the 13th Army in China?

A Yes, on October 8, 1942.

Q Did General Sawada return from the front to Shanghai prior to that date?

A He returned to Shanghai at that time.

Q Did you talk to General Sawada concerning the Doolittle fliers case when he returned?

A Yes, I did.

Q What did you tell him?

A I reported to him about the conditions prior to the trial and the findings of the trial and also I told him that I did not receive any orders from Tokyo as yet.

Q What was the date of this conversation?

A I don't remember clearly but it was around September 20th.

Q Did General Sawada express any concern over the case?

A He didn't say anything about it.

Q Did you give General Sawada, at that time, a copy of the record of trial?

A I sure did.

Q Did you ask General Sawada at that time to approve the findings of the court?

A I did not request anything but I made a report to him.

Q General, was there any announcement made to the fliers concerning the sentence?

A Yes.

Q Tell the court how that was done.

A An order from the Supreme Headquarters in Nanking, sent to the 13th Army that three men are to be executed and five men will be commuted to life imprisonment, and the prosecutor announced this matter to the fliers.

Q Was this by a meeting? Were the fliers present?

A Only the five men were there.

Q Was Okada present at that meeting?

A He was not there.

Q Was a similar meeting held for the three fliers who were to be executed?

A No, there wasn't any meeting.

Q Were you present at this meeting?

INTERPRETER: What meeting?

Q Were you present at the meeting that the sentence was announced to the five fliers?

A Yes, I was there.

Q Where had the fliers been confined between the date of trial and the announcement of their sentence?

A Kiangwan Branch Prison.

Q Was that under the jurisdiction of the 13th Army?

A No.

Q Does the 13th Army have a prison system of its own?

A No.

COLONEL MC REYNOLDS: At this time the court will recess for fifteen minutes.

(Whereupon at 1530 hours the court recessed until 1545 hours, at which time the members of the Commission, the accused, counsel for the prosecution and defense, the interpreting staff and official reporter resumed their seats in the court room.)

(General Ito resumed the witness stand after adjournment and was reminded he was still under oath. Sgt. Arita assumed the interpreting position. Direct examination continued.)

Q (By Capt Fellows) General Ito, did you know Captain Tatsuta?

A Yes.

Q Did you know him in October 1942?

A Yes, I did.

Q What was his rank at that time?

A He was a civilian employed by the Army. His rank was equal to Sergeant in the Army. That is second degree official, Hanninkan.

PROSECUTOR: (Lt Col Hendron) What is --what kind of official is that?

INTERPRETER: (Capt. Hahn) There are four different kinds of officials in Japanese. They are first, Shinninkan, appointed by the Emperor; Chokuninkan, appointed by Imperial Edict; Sonninkan, appointed by the Emperor on the recommendation of the Cabinet; Hanninkan, appointed by Commanding or Superior Officer in charge of a Bureau or Prefecture.

- Q Was Tatsuta the officer or superior in charge of the prison located at Kiangwan airfield?  
A He was the person in charge of the prison which was a branch of Nanking Prison that was in the area of the 13th Army.
- Q Was he in charge of the prison where these fliers were confined?  
A Yes.
- Q Did he have any right to go beyond the sentence of the tribunal in confining these fliers?

INTERPRETER: Will you repeat the question please.

REPORTER: (reading) "Did he have any right to go beyond the sentence of the tribunal in confining these fliers?"

PROSECUTOR: (Maj Dwyer) We object to this question and ask that the witness be asked what he did with respect to the sentence. The question in its present form is improper as to what his rights were.

DEFENSE: (Capt Follows) I don't understand the objection.

COLONEL MC REYNOLDS: Will the reporter read the question again?

REPORTER: (reading) "Did he have any right to go beyond the sentence of the tribunal in confining these fliers?"

PROSECUTOR: (Maj Dwyer) I withdraw my objection to the question.

A He does not -- he did not have.

INTERPRETER: (Capt Hahn) This question is not very clear but Tatsuta did not have the right.

INTERPRETER: (Sgt. Arita) I will correct my translation.

A This question is not very clear but Tatsuta did not have the right.

Q When a military tribunal under Japanese law gives a sentence of confinement, must the person in charge of the prison accept that sentence?

A Yes.

Q Can the person in charge of the prison question the validity of the sentence?

A He cannot question its validity.

Q General, were the three fliers whose sentences to death were approved, were they executed?

A Yes.

Q Where were they executed?

A At the public cemetery at Kiangwan in Shanghai.

- Q Under the Japanese law must the prosecutor of the court be a witness to the execution?  
A Yes.
- Q Was Major Hata present at the execution?  
A Yes.
- Q Who was in charge of the preliminary arrangements of the execution?  
A Chief of Guard, Tatsuta.
- Q After the preliminary arrangements were complete, what did Tatsuta do?  
A Tatsuta would report to the Commander of the unit, that is the firing squad--that the preparations had been completed.
- Q Who was the Commander of the firing squad?  
A I do not remember the name.
- Q Was he an officer?  
A Yes.
- Q Was it Tatsuta?  
A No.
- Q What did the Commander of the firing squad do upon receiving this notice from Tatsuta?  
A He ordered his subordinates to prepare to fire.
- Q Did Tatsuta ever order the firing squad to fire?  
A No.
- Q General Ito, did the 13th Army have any other tribunal it could have tried these fliers under?  
A Yes.
- Q What was the other tribunal?  
A There was another tribunal which always tried the Chinese people.
- Q Did that tribunal have any different procedure than the tribunal that tried these fliers?  
A In general it was alike.
- Q General Ito, were the confessions of these fliers considered by the court in reaching its findings?  
A I cannot answer that because that is something that the judge does.
- Q Were the confessions of the fliers before -- taken before the court?  
A Yes.
- Q Were the confessions of the fliers considered by you in deciding that the case should be sent to trial?  
A Not only the confessions, there were other evidences also.
- Q Were the confessions signed by the fliers?  
A Yes.
- Q Did the thumb print of the fliers appear at the end of each confession?  
A I do not remember that, but it was signed.

COLONEL MC REYNOLDS: Due to the objection by members of the Commission, the extract copies of the confessions of the United States fliers taken by the Gendarmerie in Tokyo, now in the possession of the witness, will be accepted as an exhibit and be read in evidence.

PROSECUTOR: (Lt Col Hendren) If the Commission, please, the prosecution objects to these exhibits being presented to the Commission. They have been examined by the prosecution. The exhibit is only extracts from a report that has not been testified to before this Commission. They are not complete. They are abstracted portions of the statements, as testified to by the witness and I don't believe it is entirely fair, not only to the prosecution but to the men that were tried, to take these particular questions and answers out of their setting in the document and say these are the statements of the men. There is no signature of any of the fliers or of any other person on the documents. They are purely extracts. This witness has testified they are copies he had somebody else copy for him. There is no evidence that the fliers were questioned by the court at the time of the trial and until there is evidence, the prosecution submits that these documents are inadmissible and for the reasons stated, we do not wish to argue with the Commission but their use could not be of a reliable nature before this Commission and they have no probative value.

PROSECUTION: (Maj Dwyer) I would like to add a further statement that the reason why official documents are admitted with some latitude is because the signature or statement of the official custodian is on the document. There is no trace, on these extracts in the hands of the witness, of any official custodian nor any official seal. That is why it opens the door wide to this witness or any other witness they might call from Tokyo who could falsify any document he wishes to bring in to this court and say this is part of the record. There is no evidence here as to any official who took the document down or had it in his custody, nor is there any official here to authenticate that document.

DEFENSE: (Capt Fellows) If the Commission, please, paragraph 16, subparagraph 5 of the Rules and Regulations Governing the Trial of War Criminals, provides that a copy of any document or other secondary evidence of its contents, if the commission believes that the original is not available or cannot be produced without undue delay, is admissible as evidence.

PROSECUTOR: This is a copy of a copy.

COLONEL MC REYNOLDS: The Commission is aware of the rules.

DEFENSE: (Capt Fellows) Being a copy of a copy does not in any way detract from the admissibility. It may detract from the credibility. I think it is certainly on a level with the statement of Major Hata. No one saw it signed in any way. It came through the mails.

PROSECUTOR: (Maj Dwyer) We have no further argument.

DEFENSE: (Capt Fellows) Pursuant to the statement of the Commission defense at this time offers in evidence, Defense Transcript Exhibit No. 14, the confessions of the fliers.

COLONEL MC REYNOLDS: Defense Transcript Exhibit No. 14 is received in evidence.

(Defense Transcript Exhibit No. 14  
was received in evidence.)

DEFENSE: If the Commission, please, we will read this document later after the prosecution has concluded its examination of the witness.

PROSECUTOR: (Maj Dwyer) May it please the Commission, we would like to make a short statement for the record with respect to the exhibit just submitted. We have not had a chance to read it but upon reading it, it may be possible that we should want to recall to the stand Captain Nielsen. I would advise the Commission that Captain Nielsen is under orders to leave at once for the States. In fact, he was supposed to have left this morning because of an emergency in his family. The latest word we have is that he will leave tonight. Now, if upon reading this exhibit it is necessary to recall Captain Nielsen, we would like to have the opportunity of doing it, which might necessitate calling him in here in the next hour or so and calling him out of turn. We don't want to hold him unnecessarily. I believe counsel for both sides and the Commission realize the urgency for his return. We make the request, first of all if we deem it necessary and secondly if it is possible for him to get here, we would like to call him out of order.

#### CROSS EXAMINATION

- Q (By Major Dwyer) General Ito, are you a lawyer by profession?  
A Yes.
- Q How long have you been a lawyer?  
A As a legal expert I served twenty-five years in the Army.
- Q You first saw the Doolittle fliers about the 13th or 14th of August, 1942, is that correct? I beg your pardon, make that the 14th or 15th.  
A That was the first time.
- Q You talked to them at Bridge House, didn't you?  
A Yes.
- Q Did you talk to the eight of them at Bridge House? To the eight fliers at Bridge House?  
A Yes.
- Q When they were picked up in Ningpo around April 20th 1942, they were picked up by the 13th Army Military, weren't they?  
A I do not know about that time.
- Q 13th Army had jurisdiction over Ningpo, didn't it?  
A Yes.
- Q When you questioned the eight men at Bridge House on August 14th, you were preparing a case for their trial, weren't you?  
A Yes, I was conducting preliminary investigation for the trial.
- Q Had you ever heard of the Doolittle fliers before that time?  
A Yes, during the first part of August.
- Q As a matter of fact you heard at 13th Army Headquarters back in April 20th that they had been picked up, didn't you?  
A Yes, I did not hear about it on the 20th but I heard about it later on.



Q Now the 13th Army exercised military tribunal jurisdiction over the entire area in which it was located, isn't that correct?  
A Yes.

Q These men in Bridge House were subject to the military tribunal jurisdiction of the 13th Army, is that correct?  
A When were they there?

Q Well don't you know when they were there?  
A I did hear that they were there at the first part of August.

Q The 13th Army tried these men on the 28th of August 1942, didn't it?

INTERPRETER: August or October? You said August didn't you?

PROSECUTOR: Yes.

A Yes.

Q The 13th Army took these men from Bridge House out to the court room in Kiangwan and tried them, isn't that correct?

A Yes.

Q The sentence of this court was death, is that correct?

A The sentence was not delivered that day. They had only decided to sentence them to death.

Q When did the court sentence the eight men to death?

A It was either the 14th or the 15th of October.

Q You mean to tell this Commission that the court didn't sentence these men to death on the 28th of August 1942?

A They were not sentenced. They were not sentenced on that day although the judges had decided to have them sentenced to death.

Q Are you a lawyer?

DEFENSE: (Lt Col Bodine) I object to this question. He has already asked the witness and received an answer.

A I am not a lawyer. I am a legal expert but not a lawyer.

Q Well that is a good answer. You are a legal expert, however, are you?

A I served in the position as an expert in legal matters.

Q You are a graduate of Tokyo Imperial University, aren't you?

A Yes.

Q Do you know what I mean when I say a court sentences men to death?

A I cannot get the meaning.

Q Were you in the court room when the trial was held?

A During the trial I attended it as an audience.

Q You examined the record of this trial, didn't you, after the trial was over?

A I looked over the record quite a while after that.

Q Did Wako vote death?

A At the time when the judges vote, nobody is allowed and we do not, - I do not know about it.

Q Did you read the record of what Wako voted?

A In the record such things are not written. It is regulated that it be not written.

Q Do you know whether Okada voted death?

A I do not know.

Q How about Nakajo, what did he vote?

A That I do not know, also.

Q Do you want to tell this Commission that you don't know that Okada, Wako and Nakajo voted death for all eight fliers?

A I do not know the individual opinions but I did hear the conclusion of them. Their conclusion.

Q You heard it or you read it?

A Is that the conclusion?

Q Did you hear the decision of the court or did you read the decision of the court?

A On that day after the trial I heard from Lieutenant Wako the result of the trial and later read the record.

Q Did the record say they were all guilty and sentenced them to death?

A Yes.

PROSECUTOR: (Maj Dwyer) Now I would like to ask the Commission to instruct this witness to either answer these questions or, if he does not understand the questions to say so. There is continual evasiveness on the part of this witness. This man is a lawyer, a legal expert, Chief of the Judge Advocate Department of the Japanese Army for 13 years. I suggest these questions can be answered without all this evasiveness and will save the time of the court.

DEFENSE: (Lt Col Bodine) If the prosecutor would ask the witness specifically what he wants, he will get an answer. If he said voted guilty, he would get an answer but he said "sentenced" which was held off until October 15th or 14th.

PROSECUTOR: (Maj Dwyer) I asked this witness a very simple question, "Did they vote death?" If there is anything simpler than that I should like to have counsel tell me what it is. I again ask the instruction.

COLONEL MC REYNOLDS: Both prosecution and defense have similar trouble in phrasing their questions due to the differences in the language and I do not think the prosecutor has any more trouble than the defense but the witness should, if possible, answer the question "yes" or "no" without unnecessary dissertation or variations that are being given by the witness in answering.

Q (By Maj Dwyer) Was General Sawada the Commanding General at the time the Doolittle fliers were tried?

A Yes.

Q Did he give authority for the use of his "chop" while he was at

- the front?  
A Yes.
- Q Who had that authority?  
A The Adjutant.
- Q Who was he?  
A I forgot his name.
- Q You are sure you forgot his name?  
A There was an Adjutant, rank of Major, but I can't recall his name at the present time.
- Q Isn't it a fact you had authority to use his chop?  
A I did not have the authority.
- Q Didn't you affix the chop of General Sawada to the order directing this court to try these men?  
A The Adjutant put the chop on the order.
- Q The chop was put on, wasn't it?  
A Who put the chop on?
- Q I repeat, General Sawada's chop was placed on the papers, is that right?

DEFENSE: (Lt Col Bodine) I object to that question. There has been no proof brought into this court or before the Commission, by the prosecutor, that any chop has been put on any document so far.

PROSECUTOR: (Maj Dwyer) This is proper cross-examination and General Sawada's own statement, which is Transcript Exhibit for the prosecution, No. 27, in which on answer to my own question, he said, "I gave authority to affix the chop" and that "the chop was affixed by Colonel Ito". That is why I am asking the question.

COLONEL MC REYNOLLS: Objection over-ruled. Proceed.

- Q Was it the Adjutant who fixed General Sawada's chop to the papers?  
A Yes.
- Q When the record containing the decision of death was sent to Tokyo was General Sawada's chop affixed to that, too?  
A Yes.
- Q Who affixed that chop?  
A Generally the adjutant has the chop and affixes the chop.
- Q And that was done with this record of the Doolittle case?  
A Is that the Adjutant?
- Q Yes.  
A Yes.
- Q And that was all with the authority of General Sawada, wasn't it?  
A Yes.
- Q Before he went to the front, did General Sawada say anything to you or to anyone that you know of about what should be done with the Doolittle fliers?

A He did not.

PROSECUTOR: (Lt Col Hendren) May it please the Commission, we have obtained Captain Nielsen and there is a breaking point in this testimony at the moment so far as chronological order is concerned, and if it is satisfactory to the Commission, we would like to call Captain Nielsen at this time.

COLONEL MURPHY: May I ask one question of this witness?

Q These confessions, purported confessions which were written in Japanese and presented at the trial in Shanghai, were they read in English to the accused at the trial?

A Yes.

COLONEL MC REYNOLDS: The witness will be excused if there is no objection by the defense.

DEFENSE: No objection.

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

#### CHASE J NIELSEN

recalled as a witness for the Prosecution, was reminded he was still under oath, was examined and testified as follows:

#### DIRECT EXAMINATION

Q (By Lt Col Hendren) Captain Nielsen, in Defense Transcript Exhibit No. 14, that has been offered in evidence, purporting to be extracts of testimony given by the Doolittle fliers in Tokyo in May of 1942 to the Tokyo Military Police, it is stated that the following questions were asked you and the following answers given. I will ask you if this question was asked and this answer given, "Question, Explain your mission in the air attack?" And the answer "I received an order from Colonel Doolittle to bomb Tokyo, and I boarded the B-25 North American bomber as navigator." Was that question asked and that answer given?

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

Q I will ask you if this question was asked and this answer given. The question "Second Lieutenant Nielsen, in what manner did you conduct yourself during the bombing?" Answer "My duty was the navigation of the sixth plane and I had intentions of flying to China after the bombardment of Japan. I assisted the bombardier during the bombardment of Japan." "During the bombardment of Japan" is the last words.

A That is the question asked and the answer is correct this far, that our --

Q Correct it.

A That our intention was to fly to China after the bombing, but I did not assist the bombardier.

Q Did you give that answer, then, to the Japanese interrogators?

A I never gave the last part of it where I assisted the bombardier. That was not my job.

- Q I will ask you if this question was asked and this answer given? Question "Explain to us the conditions existing at the time of the bombing." Answer "At that time, I was observing the conditions through the window. The altitude was approximately 1500 meters, and as soon as we were over Nakagawa in the northeastern part of the city of Tokyo, the captain ordered us to bomb. Although our targets were the factories, I think that with such methods the bombs will not hit the targets." Was that answer given?
- A That answer was not given.
- Q Captain Nielsen, did you have an opportunity to discuss the answers given by the other fliers in the questioning conducted at Tokyo during May of 1942?
- A After we arrived here in Shanghai and were put in one cell together, that is the main thing we talked about, the bombing at Japan.
- Q Did you discuss with them the questions the Japanese had asked them in Japan and the answers they had given to those questions?
- A Yes sir.
- Q The following is quoted from Transcript Exhibit 14, as to the examination of Lieutenant Hite, wherein in question #6 this question was asked "Did you fire your guns while fleeing from Nagoya?" Answer "I did not mention this point before today, but, honestly speaking, five or six minutes after we left the city, we saw a place that looked like a primary school and saw many children playing. The pilot lowered the altitude of the plane rapidly and ordered the gunner to get prepared. When the plane was in the oblique position, the pilot ordered us to fire; therefore, we fired at once. Of course, it was just for a moment so I don't know the extent of the damage." Do you remember whether Lieutenant Hite stated to you that he made or did not make that statement to the Japanese?
- A In all our discussion the only thing I ever remember Lieutenant Hite saying they bombed an aircraft factory and oil tank farm. I don't ever remember him saying anything about any school children at all.
- Q Did you ever discuss the questioning of Lieutenant Farrow with Lieutenant Farrow, that he received at Tokyo?
- A Yes sir, I did.
- Q I will ask you if you heard any statement from Lieutenant Farrow that he had made this statement, Question "Although you say that you aimed at military installations, in reality you injured innocent civilians." And this answer is purported to have been given, "I'm sorry about that. We are only temporary personnel and did not receive full training, so we cannot be sure of hitting the target. Moreover, at the time the Japanese Army was firing anti-aircraft guns at us so all I cared for was to drop the bombs as quickly as possible and go. This is why homes were destroyed and civilians were killed. Looking at it from that viewpoint, as the pilot of the plane I am responsible." Did Lieutenant Farrow ever discuss this matter and that answer with you?
- A He never did say anything to us about anything like that. He said he bombed an aircraft factory. I knew he did because I saw his bombs drop and his incendiaries were dropped on an oil tank farm.

- Q I will ask if he ever discussed with you this question and answer. Question #6: "You fired at the children in the primary school on your way out to the sea after leaving the city of Nagoya, didn't you?" And the answer: "Really, I'm sorry about that. I did not mention this until today. After leaving Nagoya, I don't remember clearly the locality, but I saw many people at a spot that looked like a school. With the feeling of "JAPS", and as a final splurge, we dove and strafed them; then we headed for China. There was no resistance from the ground." Did you ever hear Lieutenant Farrow discuss that question and answer given to the Japanese in Tokyo?
- A No, I never did.
- Q The following question and answer is purported to have been made to Lieutenant Hallmark, and I will ask you if you ever heard him discuss this. Question: "What do you think after killing and wounding many civilians?" Answer: "It was my intention to flee to China as soon as possible after the bombardment of Tokyo, therefore, I dropped the bombs on objects other than the ordered targets and left immediately. Consequently, many civilian homes were bombed and many people were killed and wounded." Do you remember Lieutenant Hallmark discussing that question and answer?
- A I never did. As a matter of fact, Lieutenant Hallmark was pretty proud of the job we had done because we had bombed our target.
- Q I will ask you if you heard this question and answer discussed between yourself and Sergeant Spatz. Question: "You personally strafed after the bombing of Nagoya, didn't you?" Answer: "I'm very sorry. We left Nagoya and headed southward over the land for a while. During that flight the pilot detected a certain school and started to lose altitude rapidly, then he gave us the order to prepare to fire. I aimed at the children in the school yard and strafed only once, then flew out to the sea. My personal feeling at that time was to feed those "JAPS" their own medicine. I'm very sorry about that now. Looking from the point of view of humanity, I think it is inexcusable." Did you ever hear Sergeant Spatz discuss that question and answer?
- A No, I never did.
- Q Did you ever hear Sergeant Spatz discuss strafing a school building after they left Nagoya?
- A I never did hear him say anything about strafing or shooting anything.
- Q The following question and answer is reported to have been made by Sergeant DeShazer. I will read the question and ask you if you ever heard Sergeant DeShazer discuss this question and answer. Question "Didn't you think that it was wrong for the bombardier to kill innocent civilians even though your pilot told you to drop them freely?" And this answer is purported to have been given, "Even though we wanted to be accurate, it was impossible because of our poor technique and the conditions of such an air operation." Did you ever hear Sergeant DeShazer discuss that question and answer?
- A No sir, I never did.
- Q Captain Nielsen, was the statement you signed in Tokyo written in Japanese?
- A The statement was written in Japanese.
- Q When that statement was translated to you, was there anything in

that statement such as I have read to you today pertaining to the questions and answers, except those that you said you did answer that way?

A Those two or three I said were that way were that way but so far as the others are concerned, when they were interpreted, they weren't in it.

Q Did you ever hear any of these men admit that they bombed schools or indiscriminately dropped their bombs over Japan?

A No sir, I did not.

Q Captain Nielsen, were any of these questions and answers read in court at the time you were tried on the 28th of August 1942?

A No sir. None of those questions and answers were ever in court in either trial.

#### CROSS EXAMINATION

Q (By Lt Col Bodine) Captain Nielsen, when you -- were you and all of the other fliers examined in Tokyo?

A Yes sir, we were all interrogated in Tokyo.

Q When you were examined at Tokyo were you examined singly or in group?

A We were examined singly.

Q Then you don't know of your own knowledge what the answers were of the other pilots, then, do you?

A Only I base my opinion on what they told me when we were all together after we came to Shanghai.

Q You don't -- I will ask you again, you don't know all the answers they gave to their interrogation in Tokyo, do you?

A No sir, that I don't know.

Q Had you ever seen these questions and answers that Colonel Nielsen asked you when you came in court this afternoon? Colonel Hendren asked you?

A No sir, I have never seen them before.

Q Were you the navigator on the B-25 that you were on, that bombed Tokyo?

A Yes sir, I was the navigator.

Q Were you on the 6th plane that took off from the carrier?

A Yes sir, I was on the 6th plane.

Q Did you see the bombing from the window when you were over Tokyo, from the navigator's compartment?

A I saw some of the bombs through the drift meter and some through the window.

Q When you were confined with the pilots after you came back to Shanghai, did any of the pilots say that they were asked questions and denied to answer them all?

A They stated they had denied to answer questions until they were shown maps and charts that had been picked up from one of the planes.

DEFENSE: No further questions.

PROSECUTION: (Lt Col Hendren) At this time I can furnish the Commission with the transcript of the testimony of Captain Nielsen.

(Whereupon the prosecutor distributed copies to each of the members of the Commission.)

DEFENSE: (Lt Col Bodine) I don't exactly object to the prosecutor giving you the statement. Did I understand Colonel Hendren to say it was a statement of Captain Nielsen?

PROSECUTOR: (Lt Col Hendren) No, this is the testimony which Captain Nielsen gave at the beginning of this case. The Commission requested it.

DEFENSE: (Lt Col Bodine) I beg your pardon.

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

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

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

COLONEL MC REYNOLDS: At this time the Commission will adjourn until 9:00 o'clock in the morning.

(Whereupon, at 1720 hours, 3 April 1946, the Commission adjourned to reconvene at 0900 hours, 4 April 1946.)



MORNING SESSION

... Pursuant to adjournment the Commission convened at 0900 hours on 4 April 1946 ...

COLONEL MC REYNOLDS: The Commission is in session.

LT COL HENDREN: Let the record show the Commission, the accused, counsel for prosecution and defense, reporter and interpreters are present in the courtroom.

General Ito hasn't arrived yet, if the Commission please. I don't believe the last exhibit has been read, Defense Transcript Exhibit No. 14.

LT COL BODINE: Does the Commission desire this be read in English?

COLONEL MC REYNOLDS: That depends on prosecution and defense.

LT COL HENDREN: Has the Commission read a copy of Transcript Exhibit No. 14?

LT COL BODINE: That is the record of examination of captured American airmen at gendarmerie headquarters.

COLONEL MC REYNOLDS: It shall be read.

(Whereupon Colonel Bodine read Defense Transcript Exhibit No. 14 which is attached hereto.)

HEADQUARTERS  
UNITED STATES FORCES  
CHINA THEATER  
SINTIC

A.P.O. 971  
25 March 1946

DOCUMENT TRANSLATION #274

DOCUMENT NUMBER : SINTIC 2857  
PLACE AND DATE OBTAINED : Lt Col BODINE, JAGD, AAF, CT - 19 March 1946  
AUTHORITY : Copy of official document  
TITLE : Record of examination of captured American  
airmen at Gendarmerie Headquarters  
TRANSLATED BY : RPB, KA, HU  
DISPOSAL OF DOCUMENT : Returned with translation to Lt Col BODINE, JAG

FULL TRANSLATION:

Gendarmerie 3, Special Secret Service Report #352.

To : Gen SUGIYAMA Hajime, C of S  
From : NAKAMURA Akihito, Commander of Gendarmerie  
Date : 26 May 1942

We are sending the following separate copies of reports of the investigation of occupants of aircraft (including officers) which made emergency landings at NANCHANG and NINGPO in Central China. These planes came from a group of American aircraft which raided the Imperial mainland on 18 April.

EXAMINATION RECORDS: (The following are extracts from the originals).

POW HITE

Q #3: Next explain the mission of the air attack.

A : I received an order from Col DOOLITTLE to bomb the city of CSAKA, so I boarded a North American B-25 medium bomber, acting as co-pilot on plane #16. Assisting Lt FARRELL, I entered Japan proper, but because of difficulty in attacking CSAKA we changed our course to NAGOYA. We reached the NAGOYA area about 1400 hours and dropped four incendiary clusters on army installations in the city. After the bombing, we flew to China and were forced to land in the vicinity of NANCHANG.

Q #4: What were your feelings when bombing NAGOYA:

A : Because of our sudden change in course, it seemed as though we were searching for our targets blindly. At first, I thought it would be all right to drop the bombs centered on the tanks and factories; subsequently, I thought it natural to drop bombs without locating the targets, destroying civilian houses and wounding civilians. I thought that this was one of the objectives of guerrilla warfare. While bombing I was filled with feelings of fear and thought it would be much more prudent to drop the bombs anywhere as quickly as possible and flee. At that time I thought it was too much for me to bomb accurately.

Q #6: Did you fire your guns while fleeing from NAGOYA?

A : I did not mention this point before today but, honestly speaking, five or six minutes after we left the city, we saw a place that looked like a primary school and saw many children playing. The

pilot lowered the altitude of the plane rapidly and ordered the gunner to get prepared. When the plane was in the oblique position, the pilot ordered us to fire; therefore, we fired at once. Of course, it was just for a moment so I don't know the extent of the damage.

22 May 1942

Tokyo Gendarmerie Headquarters

Military Judicial Police Officer and Gendarmerie Warrant Officer: NEMOTO Tsune

Witness:

Military Judicial Police Officer and Gendarmerie Sgt Major: HORI Keisaku

Interpreter:

NISHIMURA Chisema

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POW FARROW William G. - Age, 23.

Q #3: Next explain the mission of the air attack.

A : I received an order from Col DOOLITTLE to command four persons who were co-pilot HITE, navigator BARR, machine-gunner SPATZ, and bombardier DE SHAZER, and to bomb the city of OSAKA. I boarded a North American B-25 medium bomber, #16, as pilot. I entered Japan proper, but due to the difficult conditions of bombing OSAKA we changed our course to NAGOYA. We reached NAGOYA at about 1400 hours and dropped four incendiary bombs on military installations in that city. After the bombing we fled to China and were forced to land in the vicinity of NANCHANG.

Q #4: Although you say that you aimed at military installations, in reality you injured innocent civilians.

A : I'm sorry about that. We are only temporary personnel and did not receive full training, so we cannot be sure of hitting the target. Moreover, at the time the Japanese Army was firing anti-aircraft guns at us so all I cared for was to drop the bombs as quickly as possible and go. This is why homes were destroyed and civilians were killed. Looking at it from that viewpoint, as the pilot of the plane I am responsible.

Q #5: Wasn't this point clear in Col DOOLITTLE's order?

A : No, we picked and decided the suitable targets, but the object of this air-raid was to demoralize the Japanese people; therefore, it was natural for us to take this measure against innocent civilians. Especially because of the sudden change of our course from OSAKA which was the original target to NAGOYA, was, for me, nothing more than guess work in selecting the targets.

Q #6: You fired at the children in the primary school on your way out to the sea after leaving the city of NAGOYA, didn't you?

A : Really, I'm sorry about that. I did not mention this until today. After leaving NAGOYA I don't remember clearly the locality, but I saw many people at a spot that looked like a school. With the feeling of "JAPS!", and as a final splurge, we dove and strafed them; then we headed for China. There was no resistance from the ground.

22 May 1942

Tokyo Gendarmerie Headquarters.

POW HALLMARK Dean Edward - Age 27

Q #3: Next explain the mission of the air attack.

A : I received an order from Col DOOLITTLE to bomb TOKYO and boarded a North American B-25 medium bomber, #6, as pilot. I left from the air-craft carrier, HCNET, at 0900 hours on 18 April 1942 and headed for TOKYO. My mission was to bomb two steel works.

Q #4: Explain in detail the contents of your orders.

A : I was assigned to the sixth plane of the TOKYO bombing group. As to the target, we chose the targets among those indicated on the 1/100,000 map which had been previously made. All the pilots of the planes consulted with each other in selecting the targets and Col DOOLITTLE approved them. As previously mentioned, I selected target number three hundred something which was approved.

Q #5: What precautionary orders did you receive concerning your bombing?

A : I was told not to bomb the Imperial Palace. It is not that we pay respect to the Imperial Palace but because it might cause a reactionary result if we were to bomb it.

Q #6: Then, did you have the idea that only the Palace was to be avoided and the general public was to be bombed?

A : Well, we were not told to do things at random; therefore, I think the reason why Col DOOLITTLE did not stress this point is because in an air operation it is quite natural to injure the civilians and their homes.

Q #7: How did you verify the effect of the bombing?

A : As I have just told you, our objective was not necessarily to destroy the steel mill installations; therefore, we thought it was proper to drop the bomb focussing on the steel factories in general so we did not take pains to verify the effect. The only thing in my mind was to drop the bombs and flee as quickly as possible because of the firing from anti-aircraft guns, and I also was worried that the Japanese fighter planes might come any minute.

Q #8: Honestly speaking, what result did you expect with your technique and that day's method of bombing?

A : I'm afraid most of it was blind bombing.

Q #9: What do you think after killing and wounding many civilians?

A : It was my intention to flee to China as soon as possible after the bombardment of TOKYO; therefore, I dropped the bombs on objects other than the ordered targets and left immediately. Consequently, many civilian homes were bombed and many people were killed and wounded.

22 May 1942

Tokyo Gendarmerie Headquarters

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POW SPATZ Harold A - Age 20.

Q #2: Next explain the mission of the air-raid.

A : I received an order from Col DOOLITTLE to bomb the city of OSAKA; therefore, I boarded a North American B-25 medium bomber, #16, as a mechanic and machine gunner,.....About 1400 hours, presuming that we were over the city of OSAKA as in accordance with our first order, we dropped four incendiary bombs focussing on the military installations in that city. After the bombing we fled to China over the sea and were forced to land in the vicinity of NANCHANG.

Q #4: What do you think about the fact that your plane actually bombed many innocent civilians?

A : I am merely a machine-gunner and not a person directly in charge of the bombing; therefore, I don't know the method of bombing and the effect of the bombing. Nevertheless, if the purpose of our bombing was to demoralize the people; even if the civilians and their homes were aimed at, we don't consider it as a serious act.

Q #5: You personally strafed after the bombing of NAGOYA, didn't you?

A : I'm very sorry. We left NAGOYA and headed southward over the land for a while. During that flight the pilot detected a certain school and started to lose altitude rapidly, then he gave us the order to prepare to fire. I aimed at the children in the school yard and strafed only once, then flew out to the sea. My personal feeling at that time was to feed these "JAPS" their own medicine. I'm very sorry about that now. Looking from the point of view of humanity, I think it is inexcusable.

22 May 1942

Tokyo Gendarmerie Unit Headquarters

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POW DE SHAZOR Jacob - Age 29

Q #3: Explain the mission of that bombing.

A : I received an order from Col DOOLITTLE to bomb OSAKA and boarded the plane with the other crew members including the pilot..... Our order was to bomb the petroleum tanks in OSAKA.

Q #4: How did you bomb?

A : Although I am a bombardier, I dropped four incendiary bombs on the oil tanks and other civilian houses with the aid of three crew-members excluding the pilot.

Q #5: Tell us the conditions at the time of the bombing.

A : I thought it was the city of OSAKA because I saw two or three large oil tanks, but later I found out that it was the city of NAGOYA. From an altitude of five hundred feet above the city we dropped the bombs and they struck the oil tanks and civilian homes.

Q #6: Why did you bomb the civilian houses which were not included in the order?

A Well, with such bombing methods, it is natural that some of the bombs will drop on civilian homes; therefore, we expected casualties from the start. We thought that it would be permissible to drop the bombs as rapidly as possible, killing, injuring, and confusing as many as possible, and flee as safely and as quickly as possible. Col DOOLITTLE and other senior officers, and of course, the pilot, too, did not give us any special precautions. Of course, the original target was the oil tanks; though the civilian homes around the tanks were also sought.

Q #7: Didn't you think that it was wrong for the bombardier to kill innocent civilians even though your pilot told you to drop them freely?

A Even though we wanted to be accurate, it was impossible because of our poor technique and the conditions of such an air operation.

22 May 1942

Tokyo Gendarmerie Unit Headquarters

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POW NIELSEN Chase J. - Age 25

Q #3: Explain your mission in the air attack.

A I received an order from Col DOOLITTLE to bomb TOKYO, and I boarded the North American B-25 medium bomber, #6, as navigator.

Q #4: 2d Lt NIELSEN, in what manner did you conduct yourself during the bombing?

A : My duty was the navigation of the 6th plane, and I had intentions of fleeing to China after the bombardment of Japan. I assisted the bombardier during the bombardment of TOKYO.

Q #5: Explain to us the conditions existing at the time of the bombing.

A : At that time, I was observing the conditions through the window. The altitude was approximately 1500 meters, and as soon as we were over NAKAGAWA in the northeastern part of the city of TOKYO, the captain ordered us to bomb. Although our targets were the factories, I think that with such methods the bombs will not hit the targets.

22 May 1942

Tokyo Gendarmerie Unit Headquarters

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POW MEDER Robert J. - Age 24

Q #3: Explain to us the mission of the bombing.

A : I received an order from our Commander, Col DOOLITTLE, to bomb TOKYO, and I boarded the North American B-25, medium bomber, #6 as co-pilot. The order was to bomb two factories which were indicated on the map.

Q #4: 2d Lt MEDER, how did you conduct yourself during this bombing?

A : The pilot was piloting the plane while I was earnestly trying to locate the targets. Meanwhile, we flew over BOSO Peninsula, and as soon as we were over NAKAGAWA, I saw certain factories; therefore, I notified the pilot. The pilot ordered us to continuously drop the bombs, but

at that time, the anti-aircraft guns were being furiously fired at us from the ground; therefore, I only thought of escaping. Consequently, I could not confirm the effect.

Q #5: You bombed many homes of civilians and killed many of them, besides hitting the factories; what do you think about that?

A : We bombed TOKYO, and it being such a densely populated place, it is natural that the vicinity around the target would be affected. Especially with our poor technique, I think that this was inevitable, because we bombed while frantically fleeing. We didn't mind their casualties too much because Col DOOLITTLE, in his order, did not specially caution us to avoid bombing them.

Q #6: Don't you even feel sorry about injuring innocent women and children?

A : As an individual, I personally feel sorry, but I think that it is inevitable in modern warfare. We cannot help but ignore such conditions because demoralization of the people achieves one of our objectives.

22 May 1942

Tokyo Gendarmerie Unit Headquarters

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POW BARR George - Age 25

Q #3: Next, explain to us the mission of the air-raid.

A : I received an order from Col DOOLITTLE to bomb the city of OSAKA, and I boarded a North American B-25, medium bomber, #6, as navigator.

Q #6: Did you fire at the primary school on your way out to the sea after the bombing of NAGOYA?

A : We certainly did fire. As for myself, I learned of it after the pilot lowered the altitude rapidly and started firing.

22 May 1942

Tokyo Gendarmerie Unit Headquarters

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#### CIRCUMSTANCES LEADING TO THE CAPTURE OF EIGHT AMERICAN FLIERS

1. Names and positions of those who were captured by the Japanese Army:

Nationality - American

Army Air Force, 17th Bombardment Group, 95th Squadron (pilot)  
2d Lt. AC - Dean E. Hallmark Age: 27

Nationality - American

Army Air Force, 17th Bombardment Group, 95th Squadron (co-pilot)  
2d Lt. AC - Robert J. Meder Age 24

Nationality - American

Army Air Force, 17th Bombardment Group, 95th Squadron (Navigator)  
2d Lt. AC - C. J. Nielsen Age 25

Def Ex 14

Nationality - American

Army Air Force, 17th Bombardment Group, 34th Squadron (pilot)

2d Lt. AC - William G. Farrow Age: 23

Nationality - American

Army Air Force, 17th Bombardment Group, 34th Squadron (co-pilot)

2d Lt. AC - Robert L. Hite Age: 22

Nationality - American

Army Air Force, 17th Bombardment Group, 34th Squadron (Navigator)

2d Lt. AC - George Barr Age: 25

Nationality - American

Army Air Force, 17th Bombardment Group, 34th Squadron (machine-gunner)

Sgt. AC - Harold A. Spatz Age: 20

Nationality - American

Army Air Force, 17th Bombardment Group, 34th Squadron (Bombardier)

Cpl. AC - Jacob De Shazor Age: 29

2. Conditions until the capture after the bombing.

A.

<u>Plane Number:</u>	<u>Names of Air-Crews</u>	<u>Condition of Actions:</u>
6th Plane	Hallmark, 2d Lt Meder, 2d Lt Nielsen, 2d Lt	After they had killed and wounded several people in the city of TOKYO at approximately 1300 hours on the 18th, they were forced to land on the water in the vicinity of NINGPO, CHEKIANG Province. They were captured in the vicinity by the Japanese Army on the 20th.

B.

<u>Plane Number</u>	<u>Names of Air-Crews</u>	<u>Condition of Actions</u>
16th Plane	Farrow, 2d Lt Hite, 2d Lt Barr, 2d Lt Spatz, Sgt DeShazor, Cpl	At about 1515 hours, on the 18th, they blindly bombed the city of NAGOYA and strafed the children playing in the school yard and building. Several people were killed or injured. At about 2140 hours, they ran out of fuel over NANCHANG, KIANGSI Province, China and they were captured by the Japanese Army after they parachuted to the ground.



MAJOR DWYER: Inasmuch as this is an exhibit offered by the defense and the exhibit itself is a translation from their own Japanese document does the Commission desire that this be retranslated back to the accused or not? Will counsel for the defense make an expression on that?

LT COL BODINE: The defense doesn't wish it to be read to the accused. The accused have read it.

MAJOR DWYER: General Ito to the stand.

SHOSHI ITO

a witness on behalf of the defense, resumed the stand, was examined and testified (through Interpreter Kranz) as follows; having been reminded he was still under oath:

CROSS EXAMINATION

- Q (By Major Dwyer) Did you ever hear of the Geneva Prisoner of War Convention?
- A I don't remember clearly but I have read of it.
- Q Have you ever read the terms of the convention?
- A I read it once.
- Q I call your attention to your personal record which is now Defense Exhibit No. 14. Isn't it a fact that the Tokyo report which you copied refers to each of the Doolittle fliers as a POW - prisoner of war?
- A Yes.
- Q Do you know that on February 4, 1942 the Japanese Government agreed with the United States government to abide by the terms of the Geneva Convention?
- A I read it once but I don't remember now.
- Q When did you read it?
- A It was around 1939.
- Q The agreement was made by Japan on February 4, 1942. Now do you remember when you read it?
- A I don't remember, and I haven't read it.
- Q Did the 13th Army during 1942 generally treat prisoners of war according to the Geneva Convention?
- A I don't remember clearly but if Japanese government have agreed it was supposed to be enforced.
- Q Was General Sawada in command of the 13th Army on February 4, 1942?
- A Yes, he was.
- Q And he continued in command until relieved around the first part of October 1942?
- A Yes.
- Q Was the agreement of the Japanese government binding upon General Sawada and the 13th army?
- A If Japanese government had agreed it was supposed to be bound.
- Q As a legal expert for that army you know that agreement was in effect don't you?
- A I remember that I didn't receive any official order from the Central Government.

- Q Did you ever talk about this with General Sawada?  
A No.
- Q Do you want this Commission to believe that you and General Sawada never talked about this agreement although he was in command of an Expeditionary Army actually fighting in China?  
A I don't know whether General Sawada knew about it or not.
- Q Did you treat the Doolittle fliers as prisoners of war or war criminals? Withdraw that.  
Did the 13th army treat the Doolittle fliers as prisoners of war or war criminals?  
A At the military tribunal of the 13th army they actually were suspected of being war criminals.
- Q I am going to re-ask the question. I ask you again, did the 13th army treat the Doolittle fliers as prisoners of war or as war criminals? Answer it one way or the other.  
A We didn't treat them as prisoners of war nor as war criminals.
- Q Article 61 of the Convention requires that a prisoner of war be given an opportunity to defend himself. Was this given the Doolittle fliers at the trial?  
A They didn't have any chance to defend themselves.
- Q Article 62 of the Convention requires that a prisoner of war shall have a qualified counsel, lawyer of his own choice. Did the Doolittle fliers have that?  
A They didn't have any.
- Q Did you advise the 13th Army as to how to treat these fliers?  
A I didn't have any right to advise them.
- Q Did you?  
A I made connections to conduct affairs in accordance with the Central Government orders.
- Q You were present at the trial itself?  
A What do you mean by attending the court?
- Q Were you in the courtroom when the trial took place?  
A Are you referring to the trial?
- Q On August 28 were you in the courtroom when the Doolittle fliers were tried?  
A Yes, I was.
- Q You have stated that the questions and answers in your personal copy of the Tokyo record, now Defense Exhibit 14, were read in English to the fliers, is that correct?  
A It was supposed to be read.
- Q I ask you, was it read in English?  
A There was an interpreter and he was supposed to read it.
- Q General, I am asking you as a lawyer and a man of some intelligence to try and answer this question. Did you hear these questions and answers read to the Doolittle fliers in English?  
A As I stated before, I don't know much about the details because I was there a short time.
- Q How long were you there?  
A From 10:30 to a little before twelve o'clock.

Q The questions and answers in this personal record of yours, now Exhibit 14, you don't know yourself whether these answers were given to the Doolittle fliers in Tokyo, do you?

A Are you referring at the trial?

Q I will ask you again. Were you present in Tokyo when the questions and answers in Exhibit 14 were taken?

A Are you referring to the interrogation of the Tokyo Gendarmerie?

Q I am referring to the interrogation of the Tokyo gendarmerie.

A I wasn't in Tokyo.

Q So you don't know whether these questions and answers in your personal copy were actually asked and answered at the Tokyo investigation, do you?

A I didn't see them at the time in Tokyo.

Q And you don't know whether those questions and answers were read to the fliers in English at their own trial, do you?

A I don't know exactly but I suppose so.

LT COL BODINE: That was interpreted wrong.

MAJOR DWYER: I suggest the interpreters get together and decide whether the interpretation is right.

LT COL BODINE: You want the right answers don't you?

Q The whole trial lasted about two hours, did it?

A I suppose it took more than two hours because when I got to the court at 10:30 the trial was started already and I came out of the courtroom little before twelve o'clock, but it was still going on.

Q Okada says it lasted one to two hours, what do you say to that?

A I am telling you this by memory. I don't know the exact length of time.

Q Hata said it took one hour, do you agree with that?

A I think it's impossible that the trial took one hour, but since he was the prosecutor at the time his word alone might have taken one hour. I don't know what Hata says, but if he says so it is correct.

Q Now there were eight fliers being tried.

A Yes.

Q You have been in this courtroom a couple days haven't you?

A Yes.

Q Do you think it is possible to try eight fliers and interpret everything that goes on to them in this proceeding in a period of say two hours?

A That is the reason that I told you that it was impossible to complete the trials within two hours.

Q Well, what do you say it took, how many hours?

A Counting from the time when I was in the courtroom I know only that it took more than two hours.

Q Isn't it a fact, General Ito, that there never was any interpretation into English at that trial?

A Yes, there was an interpreter.

Q You didn't hear any interpretation into English, did you?

A Yes, I heard.

Q Do you know Captain Tatsuta?

A Yes, I do.

Q Now Captain Tatsuta says that he was there and there was no interpretation into English; it was all from English into Japanese. What do you say to that?

LT COL BODINE: I object to that statement. Tatsuta said in his statement that he was there and left the place and came back again and he was therefore not there all the time during the trial.

MAJOR DWYER: I call the courts attention to Prosecution's Transcript Exhibit No. 27, at the top of the third to the last page and the previous question on the bottom of the previous page.

Q General Ito, Tatsuta says, speaking of the interpreter, this: "Q. All he did was to translate the English statement of the fliers into Japanese for the court? A. Yes." Now what do you say to that?

COLONEL MC REYNOLDS: An objection is still pending here.

LT COL BODINE: Was the question asked, "Was the Japanese translated back into English by Tatsuta? You said you gave one question.

MAJOR DWYER: I will withdraw the question and restate it this way.

COLONEL MC REYNOLDS: Proceed.

Q Captain Tatsuta has made a statement which is before this Commission in which he says in substance that the only interpretation was from English into Japanese. Now do you agree with that?

A I do not agree with his statement.

Q General Ito, Article 62 of the Convention says that a prisoner of war shall be entitled to the services of an interpreter. Did you know of that before?

A Yes, I agree with it.

Q General Ito, isn't it a fact that in the trial of the Doolittle fliers on August 28 the 13th Army court failed to abide by the provisions of the Geneva Convention to which the Japanese government had agreed?

CAPTAIN FELLOWS: If the court please, the defense objects to that very strenuously for this reason. We have contended all along that these people were tried as war criminals, therefore whether or not they have complied with the provisions of these particular sentences read by the prosecution has no bearing on the answer he now wants. They could still not do that and still comply with the Geneva Convention.

MAJOR DWYER: One of the charges, and in fact one of the most serious charges, is that they were denied the honorable status of prisoners of war. That is one of the issues in this case. We submit that if this Commission in its deliberations finds as a fact that these fliers were entitled to the honorable status of prisoners of war then General Sawada's court has not only violated the terms of the Geneva Convention and International Law but has not even followed the agreement of its own government. We submit the question is proper.

CAPTAIN FELLOWS: If the court please, it's the form of the question I am objecting to. The form of the question was worded so that this witness couldn't answer the question the way it was put. We realize there

was no defense counsel furnished. I asked that question of this witness, Was there a defense counsel? and he said no. The point is this, in this case, what type of trial were they entitled to? They were not given the type of trial in the Geneva Convention. The question calls for a conclusion - Did they violate the Geneva Convention? not what type trial was given.

COLONEL MC REYNOLDS: Objection overruled. Proceed.

MAJOR DEYER: I suggest the question be read back.

(Whereupon the reporter read back the last question as follows: "General Ito, isn't it a fact that in the trial of the Doolittle fliers on August 28 the 13th Army court failed to abide by the provisions of the Geneva Convention to which the Japanese government has agreed?")

A The military tribunal was supposed to comply with the government orders.

Q General Ito, do you remember Lt. Hallmark?

A Yes, I do.

Q At the August 28 trial he was in the courtroom on a stretcher, wasn't he?

A Yes, he was.

Q He was sick?

A Yes, he was sick.

Q Was he sick when you took his statement at Bridge House on August 14?

A He was sick.

Q The 13th army put 7 of the fliers into the prison in the compound there after the trial didn't they?

A Yes.

Q Why did the 13th army send Hallmark back to Bridge House?

A I wasn't in charge of sending him or not sending him to any place.

Q Why was he sent to Bridge House, do you know?

A He was under jurisdiction of the prosecutor and I didn't know anything about it. If you want me to state my guess I shall do it.

Q You have been doing a lot of guessing you might as well do that. What is your guess?

A I suppose that he was sent to Bridge House for his further treatment - medical treatment.

Q Further treatment?

A As there was no medical facilities in Kiangwan. It was for Lt. Hallmark's benefit to get further treatment at the Bridge House.

Q Do you think the treatment at Bridge House was better than at Kiangwan?

A I suppose the gendarmerie headquarters had better facilities than Kiangwan prison.

Q Do you also suppose that the 13th army headquarters had no medical personnel?

A Most medical officers went out to the front line and there wasn't any medical officers at the time.

Q You were the chief prosecutor for the military tribunal of the Japanese army at this time, weren't you?

A Yes, I was.

Q You signed the report of execution of the three Doolittle fliers in October 1942 as prosecutor didn't you?

A I don't remember exactly but if there is any my signature it is there.

Q Well now you know you signed that don't you?

A I don't recall.

Q You have already testified about an indorsement from Tanabe, assistant chief of staff, Grand Imperial Headquarters to Ushi Romiya, chief of staff Expeditionary Army in China, yesterday you testified, do you remember that?

A Yes, I remember.

Q That was dated 28 July 1942 do you remember that?

A Yes, I remember it.

MAJOR DWYER: For the benefit of the Commission and counsel for defense this is the second to the last paragraph of Inclosure 5 of the Hata statement.

Q General Ito, part of that indorsement reads as follows: "In regard to military document 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 scheduling of the date of execution of the American airmen." Now you saw that document around the 28th of July 1942.

A I have read it.

Q Isn't it a fact that long before these fliers were tried by the military tribunal that General Sawada and the legal department had decided the death penalty in advance?

CAPTAIN FELLOWS: I object. This witness could not have possibly known what somebody else decided.

MAJOR DWYER: This man is the legal expert, a staff officer, and I am asking him whether it isn't a fact that General Sawada and the legal department had made this decision. It's a proper question.

CAPTAIN FELLOWS: He may be a legal expert but he is not a psychiatrist or mind reader. He is asking what other people have made up their mind to do.

COLONEL MC REYNOLDS: Objection overruled. The witness will answer the question to the best of his ability.

MAJOR DWYER: You may answer.

A It was absolutely no.

Q Isn't it a fact that this indorsement was an order from Imperial Headquarters through channels to the 13th army directing you to hold up action pending their declaration of the military law and their scheduling of the date of the execution already agreed on? Isn't that a fact?

A It's very difficult for me to answer this kind of question, but it was not decided to sentence to death but to punish them.

Q Hata was in your office?

A Yes, he was.

Q Okada was in your office?

A Yes.

Q Wako was law member of the military tribunal on 28 August?

A Are you referring to two or to one?

Q Pardon?

A Are you referring to Wako or Hata or both?

Q Was Wako in your office as a legal officer?

A Yes, he was.

Q He was law member of the military tribunal?

A Yes.

Q You talked this over with Wako, this trial, didn't you?

A About what?

Q Withdraw the question. Did you talk to Wako about these papers that came from Tokyo?

A I don't remember but I was supposed to have a talk with him.

Q You actually talked with him about this indorsement, didn't you?

A Wako read it before I did.

Q Wako read it before you did?

A Yes.

Q The only thing that was decided in advance then was just punishment, is that true?

A It was not decided before.

Q You just said about two or three questions ago that the only thing that was agreed on in advance by the 13th Army and Tokyo was just punishment, is that correct?

LT COL BODINE: I object to that question because the prosecutor is basing his questions on an interpretation of the message in English and the schedule of the date of the execution of American airmen. We have a copy of that but we were not presented by the prosecutor with a copy of the Japanese. We ourselves had a copy of the Japanese and it does not state "execution of the American airmen."

MAJOR DWYER: Counsel may introduce some other exhibit if he wishes, but already in evidence is a translation made by Allied Translator and Interpreters Section, U.S. Forces, Pacific. We will stand upon the validity of that translation.

COLONEL MC REYNOLDS: The question of interpretation of the word "execution" has been brought up before the Commission before this. It is evident that the Japanese language has no word with the same meaning.

MAJOR DWYER: I think the matter before the Commission at the moment, if I may say, is an objection to the form of my question, so I will withdraw that question to see if I could expedite this to finish the two questions I have before the recess.

LT COL BERRY: Would it help you if you have the question you gave a few minutes ago and the answer read back from the record?

MAJOR DWYER: Yes, that is helpful. I will ask the reporter to read

that answer to the witness and ask him if that is his answer as put on this record.

(Whereupon the reporter read back the answer as follows: "It's very difficult for me to answer this kind of question, but it was not decided to sentence to death but to punish them.")

Q I ask you, is that your answer? The question is, I ask you whether or not that is your answer? What is your answer to that question?  
A I did not say so.

MAJOR DWYER: I think it's time we have a recess.

COLONEL MC REYNOLDS: The Commission will recess at this time until five minutes to eleven.

(Whereupon the Commission took a recess at 1040 hours.)

COLONEL MC REYNOLDS: The Commission is in session. (1055 hours.)

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

Q (By Major Dwyer) General Ito, did General Sawada have the power as Commanding General of the 13th Army to change the decision of the military tribunal?

A Yes.

Q He could revoke the decision of that tribunal, couldn't he?

A Yes.

Q He could reduce the penalty, couldn't he?

A Yes.

Q He could order a new trial, couldn't he?

A Yes.

Q Did General Sawada do that in the Doolittle case?

A In the Doolittle case he did not do so. I would like to explain the reasons why.

Q You have answered the question. You testified yesterday that you showed General Sawada the record of trial in the Doolittle case.

A Yes.

Q Did General Sawada take any action on that record?

A He just read the report, that is all.

Q Was General Sawada's chop put on this record after the trial was over?

A He did not apply it.

Q Was the chop put on the record of the trial?

A He affixed his chop when the report was made.

Q The prison at Kiangwan was in the same compound with the 13th Army, isn't that correct?

A Yes.

Q Do you know whether General Sawada ever visited that prison between the time he got back from the front and the time the three fliers were executed?

A No.



Q He did not visit?

A No.

Q How far away was General Sawada's office from this prison?

A About 300 meters.

Q General Sawada wasn't very interested in these fliers was he?

A He did have interest in them.

Q When he left for the front did he have enough interest for them to instruct his court that they abide by the rules of the Geneva Convention?

CAPTAIN FELLOWS: If the court please, the record shows I think that these fliers were brought to Shanghai long after Sawada had gone to the front. He could not have known they were going to be brought here at that time. For that reason, the question is based upon a foundation of fact that does not exist.

MAJOR DWYER: Captain Nielsen testified that he and Hallmark and Meder were at Kiangwan about the 21st or 22nd of April and if I recall the record correctly, received some rather rough treatment there. The 13th army was in control. It's a proper question.

CAPTAIN FELLOWS: I don't believe the witness made that statement. The statement was they were at an airfield around Shanghai. Nielsen imagined it might have been the 13th army.

COLONEL MC REYNOLDS: Objection sustained.

Q I ask you, General Ito, did General Sawada instruct his court or his legal department to abide by the Geneva Convention in the treatment of the Doolittle fliers?

A I don't remember that.

LT COL BODINE: What was the answer?

(Whereupon the reporter read back the last answer.)

Q This operation that you speak of that General Sawada went on, was a large operation?

A Yes.

Q Would you say General Sawada was more interested in fighting the Americans and Chinese on the front than he was in the treatment of the Doolittle fliers?

CAPTAIN FELLOWS: Defense objects to that question as calling for a conclusion of this witness what was in someone else's mind.

MAJOR DWYER: I will withdraw the question and rephrase it.

Q Did General Sawada manifest to you as much interest in the Doolittle fliers as he did in the operation at the front?

CAPTAIN FELLOWS: Object to that question for the same reason.

MAJOR DWYER: It's a question of fact for this Commission to decide. I submit it's a proper question.

COLONEL MC REYNOLDS: Objection overruled. Proceed.

A To me, I wouldn't know about it.

- Q Were you present at the execution of three of the Doolittle fliers on 15 October 1942?  
A Is it the carrying out of the execution or is it the sentencing them to execution?
- Q I ask, were you present at a cemetery in Kiangwan on 15 October 1942 when 3 American fliers were shot to death?  
A Yes.
- Q Did you see the entire proceeding?  
A Yes.
- Q Do you know Captain Tatsuta?  
A Yes.
- Q Was he present?  
A Yes.
- Q Did you see him?  
A Yes.
- Q Did you see him talk to the fliers?  
A Yes.
- Q What was said?  
A He was saying something in the nature of, "Do you want to say something as a final word?"
- Q Did Captain Tatsuta do anything else?  
A Yes.
- Q What did he do?  
A He made the preparations for the carrying out of the execution.
- Q Do you remember Sergeant Spatz?  
A I do not remember.
- Q Didn't you see Tatsuta tie him to the cross?  
A I do not remember who it was but I did see him tie someone to the cross.
- Q Did you see the firing squad shoot?  
A Yes.
- Q Did you see the three men killed?  
A Yes.
- Q Did you hear the command "fire"?  
A Yes, I saw it.
- Q Did you see who gave the command to fire?  
A I saw him.
- Q Was it Captain Tatsuta?  
A It was not him.
- Q Are you sure?  
A Yes.
- Q Is that answer as true as every answer you have given here?  
A Yes.
- Q I show you a typewritten statement of 9 pages with a signature on the 9th page and ask you if you have ever seen that before?  
A Yes.

- Q Is that your signature?  
A Yes.
- Q Did you affix that both in English and Japanese yourself?  
A Yes.
- Q Do you remember a Colonel Hendren?  
A Yes.
- Q Is he here in the courtroom?  
A Yes.
- Q You gave him a statement in Tokyo on the 6th and 7th of January 1946, didn't you?  
A Is it that document there?
- Q Yes.  
A I did not give it to him on the 7th.
- Q When did you give him a statement in Tokyo?  
A I did give him a document.
- Q Was that through a lieutenant of the U.S. Army, an interpreter named Matsumoto?  
A I did not give to Matsumoto.
- Q When you talked to Colonel Hendren was there an interpreter present?  
A An interpreter was there but it was not Matsumoto.
- Q Before you signed this paper was it read to you in Japanese by an interpreter?  
A He did.
- Q And you swore to that before a Lt. Watson of the U.S. Army?  
A When the document was signed there was just Matsumoto and myself.
- Q How about Lt. Watson?  
A He was not present.
- Q Are you sure of that?  
A Yes.
- Q You initialed each page of this statement didn't you, both in English and in Japanese?  
A Yes.
- Q When you gave this statement to Colonel Hendren, were you asked this question and did you give this answer? "Q. Were you present when the fliers were executed? A. I was."  
A Yes.
- Q Were you asked this question and did you give this answer: "Q. Tell how the fliers were executed. A. By a firing squad."  
A Yes.
- Q Were you asked this question and did you give this answer: "Q. Who gave the order to fire the guns? A. Tatsuta, the prison warden."  
A I did not answer it in that way.
- Q Did you or did you not give that answer?  
A I did not answer it in that way.
- Q Do you wish the Commission to believe that you were lying when you gave that answer?

CAPTAIN FELLOWS: If the Commission please, he stated he did not give that answer. That question is improper.

MAJOR DWYER: Withdraw the question.

Q Is the answer you have just given as true as every other answer you have given in this proceeding?

A Yes.

MAJOR DWYER: May it please the Commission, this is a rather lengthy statement and in order to shorten the record and in the interest of time and expeditious procedure, we would like to ask the defense counsel to stipulate that Colonel Hendren took the statement of General Ito, and we will only quote from that statement just those three questions and answers.

CAPTAIN FELLOWS: The defense has no objection to referring to only that part of the statement but we won't agree that that part is admissible.

MAJOR DWYER: We will withdraw the offer at this time and if it is necessary for rebuttal, we shall put that in at the proper time.

No further questions of this witness at this time.

RE-DIRECT EXAMINATION

Q (By Captain Fellows) General Ito, you stated on cross examination that the chop of General Sawada was placed on the record of trial, is that right?

A Yes.

Q Did General Sawada put that chop on the record of trial?

CAPTAIN HAHM: Record is not clear. What document?

Q General, on the report that was sent to Tokyo as to the trial of the Doolittle fliers, did you state that General Sawada's chop was placed on that report?

A Army commander himself did not personally affix the chop on the documents.

Q Then when you stated on cross examination that the chop was affixed you did not mean that General Sawada himself placed the chop on that document?

A When General Sawada returned from the front lines and saw the report of the findings of the court he applied his chop.

Q Was that on the report sent to Tokyo or later?

A After it was reported to Tokyo.

Q Then General Sawada did not chop the report that was sent to Tokyo.

A He did not personally affix the chop.

Q General Ito, will you look again at military document No. 2190. What headquarters is that document from?

A This was sent from the Vice-Minister of the Army - War Ministry - Vice-Minister Kimura to the Nanking Supreme Headquarters addressed to the chief of staff.

Q Does it state whether or not these fliers were to be considered as prisoners of war or as war criminals?

A It does instruct on the handling.

- Q What does it instruct?  
A Those captured personnel who did not violate International Law will be treated as prisoners and those who did violate International Law will be handled as war criminals.
- Q General Ito, on cross examination you made the statement that the fliers were not given an opportunity to defend themselves, is that right?  
A That is right.
- Q What did you mean by that statement?  
A The meaning was that they could not choose a defense counsel and have themselves tried.
- Q Is that all that you meant by that statement?  
A It was in that light.
- Q General Ito, will you explain why General Sawada did not change the penalty or alter the decision of the court in the Doclittle case?

MAJOR DWYER: I object to this. This is re-direct examination and to ask this witness to explain why somebody else did or did not do something is improper. It is calling for a conclusion of this witness, and now counsel is apparently trying to do what he objected to - my feeble attempt - and that is inquire into somebody else's mind and I object to the question as being improper.

CAPTAIN FELLOWS: I should have asked one question before I asked that question to lay the premise for it, so I will withdraw the question at this time.

- Q General Ito, do you know why General Sawada did not change the decision of the court, or change the penalty or order a new trial on the Doclittle case?

MAJOR DWYER: We object to this question upon the grounds previously stated. By hypothesis it is impossible for this man to know what is in the mind of anybody else. He may state whether General Sawada stated to him to which he has already testified, and I think any conclusion of this witness as to what may have been in the mind of General Sawada can not be reached either directly or indirectly as this question seeks to do. We object to it.

CAPTAIN FELLOWS: I agree with Major Dwyer that this witness can not state what was in the mind of General Sawada, but the answer to this question does not require him to know what was in the mind of General Sawada. I ask him if he know why a thing was or was not done.

COLONEL MC REYNOLDS: Objection overruled. Proceed.

- A I know the reason why.
- Q Will you state what the reason was?  
A In this Doclittle case, although in court martials he did have the authority to commute or alter the sentences of the tribunal, it was not necessary to do so in this case. I will explain further. First, that General Sawada was away at a great distance from Shanghai. There was an order from Tokyo saying "Do not take any actions on the findings of the court until further orders." There was an order from Tokyo saying, "Report the findings quickly to Tokyo." It was that since the findings were sent to Tokyo the alterations in the sentence would be made by Tokyo or approved by Tokyo.

- Q Then did General Sawada in the Doolittle case have the right or opportunity to alter the decision of the court in any way?  
A He did not have any opportunity to change the sentence.
- Q General Ito, in regard to the statement that you signed in Tokyo following your interrogation by Colonel Hendren, who was present when the statement was signed?  
A At the time that I signed the document there was Matsumoto, the interpreter, alone.
- Q Was the statement read to you prior to your signature?  
A Matsumoto read it back to me.
- Q How was his interpretation at that time?  
A I thought that he had interpreted the statement as written at that time.
- Q Did you question the statement at that time to Matsumoto?  
A Yes.
- Q What did Matsumoto tell you?  
A You did not ask what I asked about or questioned him about therefore I can't answer what.
- Q What did you question Matsumoto about?  
A When Matsumoto read the document back to me in Japanese I told him that the statement was not as complete as when I stated to Colonel Hendren, the prosecutor.
- Q Then what did Matsumoto say?  
A He said, "Being the only interpreter and having no authority to alter the statement, it can't be helped."
- Q Did he tell you whether or not Colonel Hendren had already returned to China?  
A Yes.
- Q Did he tell you he had to have this statement right away?  
A You mean the interpreter?
- Q The interpreter.  
A Yes.
- Q I ask you again then, did you ever state to Colonel Hendren or any one that Tatsuta was the man who gave the order to fire the guns?  
A I did not say so.

RE-CROSS EXAMINATION

- Q (By Major Dwyer) General Ito, were you asked this question by Colonel Hendren and did you give this answer: "Q. Is a military tribunal appointed by a commander of the army such as the commander of the 13th army? A. The appointments are made by the commander in both types of courts - courts martial and military tribunal. The members of the court and the prosecution are appointed by the army commander."  
A Yes, I did answer that.
- Q Were you asked this question: "Q. Does the commander who appoints the Commission approve the actions of the commission or the tribunal - does he approve the results reached by the tribunal? A. The Army commander receives the finding of the court and if he feels the findings are not appropriate he may order a new trial. In minor cases

the action of the court are usually final. However, in cases of great importance the Army commander receives instructions from higher authority as to how the case is to be handled." Did you give that answer?

A I do not get the meaning of that very clearly but if it was written there I did answer.

MAJOR DUYER: No further questions at this time.

THE WITNESS: I believe that the difference between the military tribunal and a court martial is also explained in there.

RE-DIRECT EXAMINATION

Q (By Mr. Kumashiro) Why could not the fliers have their defense counsel?

A It was a regulation in the Regulations for Trial.

Q Did you or the 13th army receive the Japanese government instructions in connection with the Geneva Convention?

A We did not receive that.

Q What kind of instructions did you receive from the Tokyo headquarters in connection with the treatment of the eight fliers?

A The instructions were something like as follows: Those prisoners that did not violate International Law will be treated as prisoners of war. Those that did violate International Law will be treated as war criminals, and were they suspicious, they be tried by a tribunal.

Q I am not asking you the general question. I'd like to ask you the special case of the eight fliers.

A The order was the eight fliers were to be tried as persons suspected of war crimes and to be tried by a court.

Q Is the general appointment of associated judges by the commander an order?

MAJOR DUYER: I am sorry, we had difficulty in getting that question, will you repeat that please?

LT COL BODINE: Let the reporter read it.

(Whereupon the reporter read back the last question.)

A Yes.

COLONEL MC REYNOLDS: At this time the Commission will recess until two o'clock P.M.

(Whereupon the Commission adjourned at twelve o'clock noon on 4 April 1946 to reconvene at 1400 hours on 4 April 1946.)

##

AFTERNOON SESSION

... Pursuant to adjournment, the Commission reconvened at 1400 hours, 4 April 1946, at which time all of 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. General Shoshin Ito who had been testifying at the close of the morning session resumed his seat on the witness stand and was reminded that he was still under oath. T/Sgt Morozumi interpreting...

COLONEL MC REYNOLDS: The Commission is in session.

SHOSHIN ITO

resumed his seat on the witness stand, was examined and testified as follows:

REDIRECT EXAMINATION

- Q (By Mr. Kumashiro) When did you select Captain Okada, Captain Wako and Nakajo to be the judges of the Military Tribunal of the American fliers?
- A I think it was three or four days prior to the date of the trial, 28 of August.
- Q Can any officer reject the appointment by the Commander to be judges?
- A They cannot.
- Q Once appointed as an associate judge, can he reject to attend the tribunal for which he is instructed to attend?
- A He cannot.
- Q In the Doolittle case did the judges have any option to decide the sentence in its kind or in its degree when they decided the fliers guilty?

INTERPRETER: May I have that question again?

REPORTER: (reading) "In the Doolittle case did the judges have any option to decide the sentence in its kind or in its degree when they decided the fliers guilty?"

A Legally they did not have an option.

Q This morning you stated the interpretation of Article III of the Military Law concerning the punishment of Enemy Airmen. What is the special reason of this interpretation?

PROSECUTOR: May we have that question read back?

REPORTER: (reading) "This morning you stated the interpretation of Article III of the Military Law concerning the punishment of Enemy Airmen. What is the special reason of this interpretation?"

A In the event that the court finds the defendants guilty, then according to the 3rd Article, they must pass a sentence of death for the 3rd Article states that the sentence will be death.

Q I would like to know the special reason why you gave the interpretation. I would like to ask you why you gave this interpretation?



A The law reads that military punishment will be death, therefore there is no other interpretation to make than to say death.

Q According to the conventional phrasing of military law, is there not any difference of phrasing?

PROSECUTOR: (Maj Dwyer) We will object to this question upon the grounds that the law speaks for itself. Any question as to what this law means and what the interpretation is, the Commission can determine from a reading of the law.

COLONEL MC REYNOLDS: Objection sustained, Proceed.

DEFENSE: (Lt Col Bodine) We would like to have the court instruct the interpreter to not make any comments.

PROSECUTOR: (Maj Dwyer) We object to that. The interpreters are doing a splendid job and some of these questions that are being asked are certainly difficult to follow. I don't believe that comment of counsel was called for.

COLONEL GAMBER: Well I for one fail to understand that last question.

DEFENSE: (Lt Col Bodine) Well if they don't understand it they can always request that the question be rephrased. I know the Japanese counsel for the defense isn't an expert in English but the interpreter can request that it be rephrased if he doesn't get it.

PROSECUTOR: (Maj Dwyer) Prosecution has no objection to the question being asked again

INTERPRETER: I am afraid I cannot interpret it in its present form.

DEFENSE: I will withdraw the question.

Q Was this interpretation of the law decided by the responsibility of yourself?

COLONEL BERRY: I would like to be advised what you speak of when you refer to "this interpretation". I have not heard the witness give any interpretation of anything. I would like to know what you are referring to.

DEFENSE: (Mr. Kumashiro) What I mean by "this interpretation" is that what he stated this morning, according to Article III concerning the punishment of the American Airmen.

COLONEL BERRY: I guess I do not recall what he said this morning. Can it be restated now so that we can be refreshed upon the point?

DEFENSE: I will rephrase the question.

Q According to the Article III concerning the Military Law of the punishment of Enemy Airmen, it is said that in that case "however this sentence may be commuted to life imprisonment or to a term of imprisonment not less than ten years, depending on the merits of the case." I would like to know whether there is any difference of phrasing of this special Article comparing to the Article of other military law.

PROSECUTOR: (Maj Dwyer) We again object to this question upon the ground that the law is in evidence and the law speaks for itself. Now any interpretations which this witness wishes to personally put on here for himself are immaterial. He was not a member of the court. He had nothing to do with the court's decision and the application of this law. They acted on their own and we say to the court that this is an improper question of this witness on direct examination.

DEFENSE: May I ask the Commission I would like to know the interpretation of this question from this witness as Chief of the Legal Department.

PROSECUTOR: (Maj Dwyer) His interpretation is immaterial. The law is in evidence. It speaks for itself.

DEFENSE: May I repeat that this is the Japanese Military Law and I would like to know the interpretation of that Military Law from the man who was the head of the Legal Department.

COLONEL BERRY: In your last question you did not ask for an interpretation. You seemed to ask for a comparison of phrasing.

DEFENSE: My question now is for an interpretation. This is from the beginning.

COLONEL MC REYNOLDS: Objection over-ruled. Proceed.

(Whereupon the witness started to speak in Japanese but was reading from a document which he held.)

PROSECUTOR (Maj Dwyer) May I interrupt. The witness is obviously reading from something which is not in evidence. This is improper. This witness has been asked a question which he should be able to answer. We object to his reading.

DEFENSE: (Lt Col Bodine) The Article referred to is Inclosure #3 of Hata's statement which has been put in evidence.

PROSECUTOR: (Maj Dwyer) Ask this man what he is reading from, please.

DEFENSE: (Lt Col Bodine) He can be reading notes -- his own notes.

PROSECUTOR: (Maj Dwyer) Not without our objection, counsellor. We ask, please, what is this witness reading from. It is an obvious reading from something that is not in evidence so far as we know. Will you please ask the witness what he has been reading from.

DEFENSE: Ask him what he is reading (to interpreter).

A I am just reading the Article III, Military Punishment, in order to clarify the difference between this Military Law here and other law.

PROSECUTOR: (Maj Dwyer) Okay.

A Normally, law would state "military punishment will be death, life imprisonment or not less than ten years imprisonment." In that case when the court finds the accused guilty, they have the option of determining the type of punishment to apply -- impose. However,

in the -- this Article III, of the Military Law, it states that the military punishment will be death. Therefore the court has no alternative but to apply that sentence -- impose that sentence.

Q When you received the damage report of the air raid in Tokyo on April 18, were you convinced that the evidence were enough?

A I thought that it was sufficient.

Q Was the decision of the findings of the military tribunal of the 13th Army in connection with the Doolittle fliers announced by the tribunal?

A Do you mean the decision reached by the court on 28 August?

Q Yes.

A What do you mean by announced. Do you mean that whether the findings were announced to the accused?

Q Yes.

A At the time the eight fliers have not been notified of the decision.

Q Why were they not notified to that decision?

A The decision reached by the court was immediately transmitted to the Supreme Headquarters in Nanking in order that they transmit it to Tokyo. The decision was not announced because it had to be approved by Tokyo first before the decision were to be announced.

Q Do you think that the decision of the findings of the military tribunal of the 13th Army the final decision?

A I did not think that it was the final decision.

Q Are you sure that there was no announcement of the sentence made for those three fliers who were sentenced to death?

A They had been notified.

Q Does the 13th Army has any jurisdiction over the Gendarmerie in Ningpo?

A The 13th Army had no jurisdiction over the Gendarmerie.

Q This morning you stated that the Commander has the right to remit, to revoke and commute the sentence of the tribunal. I would like to ask you again whether the Commander has such right.

PROSECUTOR: (Maj Dwyer) We object to that question. The witness has already answered the question. This is direct examination of the defense own witness. This witness has categorically stated that General Sawada had those rights and this is an attempt to impeach his own witness.

DEFENSE: (Lt Col Bodine) He also stated that General Sawada did not have the power to remit the sentence of the Military Tribunal, also.

PROSECUTOR: (Maj Dwyer) The Commission will --

DEFENSE: (Lt Col Bodine) We withdraw the question.

Q You stated that the Commander has a right to commute or to revoke or to remit. State the reason why you say it..

A A Military Tribunal is under the jurisdiction of the commanding power. That is why I interpreted it that way.

Q Is that your own interpretation?

A Yes

Q Were there any difference between the Military Tribunal of the Doolittle fliers and other military tribunals in respect to the suit and the decisions of the findings and announcement of sentence and carrying out of the sentence?

A There were many differences. Shall I state them in order?

Q Please state them.

A The tribunal for the Doolittle case was established by order of the Chief of Staff in Tokyo. This order was transmitted from Tokyo to the CG, the Supreme Headquarters in Nanking and subsequently to the CG of the 13th Army for trial. Whether it be Commanding General Sawada or whether it be anyone else, such an order as this from the Chief of Staff, Tokyo, transmitted to the Nanking Commanding General, such orders had to be obeyed. In a normal military tribunal, General Sawada has the authority to request such a tribunal. However, in the case of the Doolittle tribunal he had no authority for the reason that it was ordered from above. Although I had thought that the -- that Commanding General Sawada had authority to commute or to remit sentence of the military tribunal, in the case of the Doolittle military tribunal because the sentence had to be approved by the Chief of Staff in Tokyo, the Chief of Staff in Tokyo had the authority to commute or to remit and not the Commanding General of the Army.

Q Is that all?

A Another point of difference is that normally Lieutenant General Sawada has the authority to order the execution of the sentence. However, in the -- in this Doolittle case such authority laid in Tokyo and Tokyo had to order the three to be sentenced to death and the five commuted to life imprisonment. Therefore, in this respect and in this particular case, Lieutenant General Sawada did not have authority.

Q (By Mr. Shinji Somiya) I would like to ask you a few questions, regarding establishment of sentence, of finding, and the effective date of execution. I would like to ask you a few questions regarding the establishment of judgment and the effective date of punishment, when is the decision established?

A A decision is established when -- a decision is established by the convening of the judges by agreement.

Q Is this -- does this agreement have to be by majority vote?

A Yes.

Q Is this agreement carried out in -- behind closed doors?

A Yes.

Q When the decision becomes effective?

A The decision becomes effective when it is announced to the accused.

Q Is this announcement made in court?

A Yes.

Q When was the decision reached in the Doolittle case?

A On 28 August 1942.

Q When was the sentence announced?

A 15 October, the same year.

Q Was it announced in court?  
A It was rendered in court.

Q Were all eight notified together?  
A They were notified separately in groups of three and five.

Q Can the authority to commute, to remit a sentence be utilized prior to the announcement of the decision? of the sentence rather?  
A Sentences can be commuted or remitted prior to the rendering of such sentences of the court.

Q Can actual execution of sentence be commuted or remitted?  
A That can be done subsequent to the rendering of the sentence.

Q Were the sentenced Doolittle fliers confined as suspects between the period August 28 and 15 October?

PROSECUTOR: (We object to the question as asking for the characterization of the confinement. He cannot testify as to the characterization. He can testify as to whether they were confined or not, and how. He cannot characterize their confinement. We object to the question.

I withdraw the objection. Go ahead.

A Yes.

Q Were they -- was it by warrant?  
A They were confined in the Kiangwan prison by warrant.

Q Who issued that warrant?  
A I recollect that it was by the President of the tribunal, Chujo-- by the President of the Tribunal, Chujo Nakajo.

Q And were five of the fliers confined in the Kiangwan Prison between the period 15 October 1942 and 17 March 1943?  
A They were.

Q By whose order?  
A I recollect -- I seem to recollect that it was by order of the prosecutor.

Q To whom was that order given?  
A It was directed to Chief of the Prison, Ooka Takijiro.

Q Were any instructions received from the Chief of Staff in Tokyo transmitted to the Nanking Supreme Headquarters in regards to this Doolittle case?  
A There were instructions transmitted by the Chief of Staff in Tokyo through the Commanding General of -- Supreme Commanding General in Nanking.

Q What type of instructions were they?  
A That the eight -- those fliers were to be tried by the 13th Army military tribunal?

Q When was that?  
A I think it was in the early part of August 1942.

Q Was this transmitted from the Chief of Staff in Nanking to the Chief of Staff, the 13th Army?

A I do not know whether or not these instructions were transmitted to the Chief of Staff of the 13th Army but I did hear about it from the Chief of Staff.

Q Was that an order for the death of the eight fliers?

A No.

Q What type of an order was it?

A It ordered that the prosecutor should demand the death penalty.

Q Have you ever instructed Judge Wako to reach certain decisions?

A I have not.

Q How about Okada?

A No.

Q How about Nakajo?

A No.

Q Has there been any instructions as to what sort -- what decision that these three judges should make. Were any instructions given by any one, such as the Chief of Staff?

A I don't think that there were anyone who instructed the judges in such manner.

Q I will now ask questions on another problem. Can witnesses be called on the stand in military tribunal?

A There are hardly any cases where witnesses are examined.

Q Why is it?

A The reason is because prior to the trial such persons will have been investigated by either the Gendarmerie or by the prosecuting officer and a statement taken which is introduced into court as evidence.

Q Who examines the witness in the court room?

A The President is supposed to examine witnesses.

Q Are there times when there are differences between the statements obtained from witnesses by the Gendarmes and the evidence given by a witness in court upon examination by the President?

A There are no differences. They are given the same value.

Q How long -- normally how long does a trial before a military tribunal last?

A It is difficult to say how long a trial before a military tribunal lasts because it varies according to the nature of the case and according to the number of defendants. However, in the event of one defendant it usually lasts about one hour.

Q Is the Kiangwan Prison under the jurisdiction of the 13th Army?

A It is not.

Q In the event that a prisoner escapes from Kiangwan Prison, who assumes responsibility for it?

A The prison staff assumes responsibility for it.

Q By the prison staff is meant, who?

INTERPRETER: That is not clear.

Q Whom do you mean when you say prison staff? The head in Nanking?  
A Ooka Takijiro.

Q Who exercises disciplinary power over the members of the Kiangwan prison? Does the 13th Army exercise such power?

A Such authority does not lie in the Commanding General of the 13th Army. It is the responsibility of the Chief in Nanking, Ooka.

Q How many pages was the report,--the damage report that you received from the Gendarmerie?

A I seem to recall that in pages there were ten pages.

Q When you studied the confessions of -- obtained by the Tokyo Gendarmerie, did you think that the statements made therein were the truth?

PROSECUTOR: (Maj Dwyer) Objected to as immaterial what this witness thought they were, as to their truth or untruth.

COLONEL MC REYNOLDS: Objection sustained. Proceed.

Q Did you have evidence which pointed to the guilt of the Doolittle fliers?

A We did have the fundamental sufficient evidence.

Q What kind of evidence which -- what kind of evidence did you have against the -- against plane No. 16 which attacked Nagoya?

PROSECUTOR: (Maj Dwyer) We object to this as being a leading question and if this witness is going to testify to that we insist that he testify as to something of his own knowledge. There is nothing in these prepared reports. There is nothing infers to which plane or refers to that plane. That is an improper question and suggests the answer and we ask that it be stricken.

DEFENSE: (Capt Fellows) I think that objection goes to credibility more than admissibility.

PROSECUTOR: (Maj Dwyer) We won't object if all this witness is going to do is testify as to the evidence of his own knowledge and what is in the copy which is before this court. If that is all he is going to do, we won't object. But if he is going to say something else then we do object upon the previously stated grounds.

COLONEL MC REYNOLDS: I will ask the witness to confine his answers to those pertaining to airplane No. 16, from the extracts of the reported confessions which has been put in evidence as his notes.

A We had the confessions taken by the Gendarmerie in Tokyo and also a report on the damage situation and condition.

Q What evidence did you have against Hallmark's plane No. 6?

A We had confessions taken in Tokyo by the Gendarmerie from these men and the contents thereof is as already stated before.

PROSECUTOR: (Maj Dwyer) Does the Commission wish a recess at this time?

COLONEL MC REYNOLDS: The Commission will recess and reconvene in fifteen minutes, at 3:45.

(Whereupon, at 1530 hours the Commission recessed until 1545 hours at which time all of the members of the Commission, the accused, the counsel for prosecution and defense, the interpreting staff and the official reporter resumed their seats in the court room. General Shoshin Ito returned to the witness stand and was reminded he was still under oath. Recross examination continued, with Maj Robert Dwyer interrogating and Mr. Krantz interpreting.)

COLONEL MC REYNOLDS: The Commission is in session.

RECROSS EXAMINATION

Q (By Maj Dwyer) General Ito, did Wako object to being on this court-military tribunal?

A He did not object.

Q Did Okada object to serving on the military tribunal?

A He did not.

Q It was an honor to serve, wasn't it?

A I imagine they all thought so.

Q General, turn to this indorsement of document #2190, I asked you about this morning in your papers. This is dated July 28, 1942 and is the second last paragraph of Inclosure 5 of the Hata statement. Now, General, that reads as follows: "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." Now, my question is, as I understand it you say that that translation should read, as to the last clause as follows: "And the scheduling of the date of execution of the punishment of the American airmen". Is that correct?

A Yes, it is.

Q That is the way it should read?

A Yes.

Q General, isn't it true that under the Enemy Airmen's Law by which these Doolittle fliers were tried the only punishment that could be found was death?

A The only punishment is death but this sentence could be commuted.

Q So that, when Wako read these papers before you read them, the only punishment that could have been given as referred to in that document was the punishment of death. Isn't that correct?

INTERPRETER: He doesn't understand the meaning very well and I cannot explain it.

Q General, isn't it a fact that if the tribunal found these men guilty, as -- the only penalty was death, isn't that correct?

A Yes, that is so.

Q Then isn't it a fact, as shown on this document that Tokyo, on July 28, 1942, told the 13th Army to hold up execution of that punishment until they promulgated this law and announced the date of that punishment?



- A I believe Tokyo has not said so.
- Q You can read Japanese can't you?
- A Yes.
- Q You heard me read this paragraph from the 28th of July inclosure, in English to you, didn't you?
- A Yes.
- Q And that has been translated to you, hasn't it?
- A Yes.
- Q And you have volunteered the statement that what this really says is and "the scheduling of the date of execution of the punishment of the American airmen", those are your words, aren't they?
- A Yes.
- Q And you have testified that the only punishment that could be given was death, is that correct?
- A Yes.
- Q So that Tokyo was asking the 13th Army to withhold the execution of death until they had announced the date for the death, isn't that correct?

DEFENSE: (Lt Col Bodine) I object to that question. The prosecutor is putting words in the mouth of the witness. The document speaks for itself.

PROSECUTOR: (Maj Dwyer) I submit this is proper cross-examination. I am entitled, I think, on cross-examination to ask this witness any question that will explain the making of his own interpretation. He saw these documents in the original. He gave us his own interpretation, which is different from the original which we have. I am willing to accept his own words. I think it is a proper question.

DEFENSE: (Lt Col Bodine) You argue that the copy of this message that the interpreter has is not correct. Now the prosecutor hasn't the Japanese, we have, but as to his opinion, the witness opinion, we object to prosecution asking the witness of his opinion for what that means.

PROSECUTOR: (Maj Dwyer) We will submit this to a ruling of the Commission.

COLONEL MC REYNOLDS: Objection over-ruled.

PROSECUTOR: (Maj Dwyer) Will the reporter repeat the question.

REPORTER: (reading) "So that Tokyo was asking the 13th Army to withhold the execution of death until they had announced the date for the death, isn't that true?"

- A In the issue it means so.
- Q In the issue it means so?
- A To consider the whole thing means that way.  
(INTERPRETERS conferred.)
- Q Let us get the answer on the record here.
- A It could be interpreted in that way.

Q General Ito, isn't it a fact that the 13th Army and the 13th Army Military Tribunal had decided a month before the trial took place that the punishment was going to be death in the Doolittle case?

DEFENSE: (Capt Fellows) If the Commission, please, I think we are a little mixed in the dates. This law was passed the 13th of August 1942. The indorsement is dated the 28th of July and the law was delivered the 15th of August; that was thirteen days in advance of the trial. You are trying to mislead the witness. The indorsement specifically refers to it.

PROSECUTOR: (Maj Dwyer) The indorsement specifically referred to the pending proclamation of the military law and the scheduling of the date of punishment. I submit the question is proper.

COLONEL MC REYNOLDS: Objection over-ruled.

A They had not decided at that time.

Q Isn't it a fact that you had, yourself, decided these men were guilty long before the trial?

PROSECUTOR: (to interpreter) Strike the word "long" before the trial. Please just say "before the trial".

A I never done so.

Q Didn't you testify here in this court room today that you received the evidence against the Doolittle fliers and considered it as sufficient for a finding of guilty?

A I haven't said so.

Q Do you state to this Commission now that you have never said to this Commission that the evidence against the Doolittle fliers, in your opinion was sufficient to establish a finding of guilty before the military tribunal?

A I have said that the proofs were sufficient for prosecution.

Q Now, I ask you the question, did you think the Doolittle fliers were guilty before the trial took place?

A The prosecutor had sufficient evidences to make -- to prosecute these fliers but so far as decision is concerned it was to remain in the power of the judges.

Q General Ito, a short time before the trial you sent to Tokyo for more evidence, didn't you?

A Yes.

Q And when you got that evidence from Tokyo which was the so-called damage to property and persons report, didn't you tell the Commission before, that then you decided there was enough evidence to show these men were guilty?

A I said it as a prosecutor, --from the standpoint of a prosecutor.

Q Well, that is exactly what you were, weren't you, a prosecutor?  
A The prosecutor in charge was Hata.

Q You were Hata's superior officer, weren't you?

A Yes.

Q And you were the one, as legal officer for the 13th Army, who prepared this case for trial, isn't that correct?

A I prepared it under orders from the Commanding General.

Q General Sawada?

A Yes.

Q Now I ask you again when you talked with Captain Wako and he had these papers from Tokyo, didn't you talk to him about this indorsement of 28 July 1942?

A I do not recall.

Q Isn't it a fact that you and Wako talked this case over many times before it was actually tried?

A I believe I think I have never --we have never done so, especially when judges are decided upon we could not do so.

Q Then why did Captain Wako have access to these papers from Tokyo concerning what should be done to that case?

DEFENSE: (Lt Col Bodine) Object to that question. First, because it is leading the witness and second because there has been no evidence to show that Wako had possession of these records.

PROSECUTOR: (Maj Dwyer) May I reply? My reply to that is that in the first place a leading question is proper on cross examination and secondly, the uncontested testimony is that Wako had access to this before General Ito did.

COLONEL MC REYNOLDS: Objection over-ruled. It appears that the defense is not keeping up with the testimony that is being given.

PROSECUTOR: (to reporter) Will you please repeat the question, Miss Moyle?

REPORTER: (reading) "Then why did Captain Wako have access to these papers from Tokyo concerning what should be done to that case?"

A Wako had not depended on these statements but he had judged independently.

Q He had judged after he read these documents?

A I do not know but Wako knows it.

Q The trial was secret wasn't it?

A It is -- it was not secret.

Q The news of this trial was kept from the public wasn't it?

A They informed the public on the paper about the 20th of October.

DEFENSE: That is all for this witness at this time. We may wish to recall him at a further point in the proceedings.

#### REDIRECT EXAMINATION

Q (By Capt Fellows) General Ito, you made the statement that you prepared this case for trial under orders of General Sawada?

A Yes, I did so.

Q When did you see General Sawada and receive that instruction?

A Before he left for the front I received the orders not especially -- not in particular for this trial but trials in general.

Q Then by that statement you meant that as head of the Legal Department it was your duty to prepare all cases for trial, is that right?

A Yes as the head of the Legal Department I had that responsibility.

DEFENSE: (Capt Fellows) Has the Commission any questions?

QUESTIONS BY THE COURT

COLONEL BERRY:

Q I would like to put a question to the witness. General Ito, yesterday morning you testified here that after you had read the papers which the Gendarmerie brought to you late in July or early August, 1942, with respect to the Doolittle case and that if you had an order you would put those fliers to trial. My first question is --

PROSECUTOR: (Maj Dwyer) Colonel Berry, may I suggest that be translated up to now so that the translator can get it?

(Whereupon it was translated and Colonel Berry continued.)

Q My first question is: When you mentioned that if you had an order you would put the fliers to trial, were you referring to the order which is mentioned in Article 8 of the Military trial regulations law which became effective on 1 October 1939, which reads as follows: "The presiding officer of the military tribunal shall first obtain the authority of the Supreme Commander before proceeding with a trial of a foreigner other than a Chinese."

A Yes I said so, I said that I would try them if I received the orders from the superior.

Q Well, but my question is: is the order that you are speaking of the order that is referred to in Paragraph 8, Article 8 I mean, of the law of 1 October 1939, which was just read to you.

A That is my opinion.

Q Well then, what order are you referring to?

A That was my --

COLONEL BERRY: May I interrupt? It seems to me the General can answer this question "yes" or "no" as to whether the order he spoke of yesterday morning in his testimony is the same order or the order which is referred to in paragraph 8 of the law which became effective 1 October 1939. Interpreter, will you tell him that I think the question is susceptible to an answer of "yes" or "no"?

DEFENSE: (Lt Col Bodine) If the Commission, please, I don't understand the question myself. I believe the witness doesn't understand.

COLONEL BERRY: May I restate it or state it again? At the testimony yesterday morning of this witness, he stated that after reading the papers the Gendarmerie in Shanghai had brought to him in the latter part of July or early part of August, that he was convinced of the guilt of the fliers and that if he had an order he would have had the fliers tried. That is very simple to me up to that point. Now, in the law of October 1939, I read: "The Military Tribunal shall first obtain the authority of the Supreme Commander before proceeding with the trial of a foreigner

other than a Chinese." My question is, is his testimony of yesterday morning referring to that order in paragraph 8?

A Yes.

Q My next question is this: General, the law of October 1939, you have stated, was in effect in and during August 1942 as indicated in Inclosure #1 to the Hata Exhibit which is Transcript Exhibit No. 25, and you say there is another military law of the Japanese Expeditionary Army in China. I ask you whether the fliers could have been tried under those two laws or any other law that was in effect at the time you received the papers from the Gendarmerie in late July or early August, 1942?

A Yes, of course.

COLONEL BERRY: Those are all the questions I have.

COLONEL MC REYNOLDS:

Q General Ito, on what day did General Sawada leave Shanghai for the front?

A I remember it to be in the early part of May, 1942.

Q Whom did he leave in command of the 13th Army during his absence?

A At that time a military officer from -- a military officer of the staff from Nanking whose name is Lt. Col. Ogawa came to Shanghai to take the Command of the 13th Army.

Q Were you not the ranking officer present?

A My rank was superior. I was the highest officer in the Army here.

Q Did you have authority to command?

A The legal officers of the Army have no right to command the Army.

INTERPRETER: I would like to correct a statement back there. I believe when he said Lt. Colonel, he also said Lieutenant Colonel who is a general staff officer.

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

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

DEFENSE: We have one more witness. I don't think he will take too long.

MASAZUMI SHIMADA

called as a witness on behalf of the defense, was examined and testified as follows (through interpreter Sgt Morozumi):

DIRECT EXAMINATION

Q (By Maj Dwyer) Prior to the affirmation of this witness, prosecution would like to ask one or two questions. Do you have a religion?  
A Yes, Buddhism.

Q Do you know the difference between truth and untruth?  
A I do.

Q Will you be bound in your conscience and by your religion, in testifying before this Commission, to tell the truth, the whole truth and nothing but the truth?

A Yes.

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

Q (By Lt Col Bodine) State your name, rank, organization and Army.  
A My name is Masazumi Shimada, Captain, 13th Army Judicial Section, position is a legal officer, Japanese Army.

Q Japanese Army?

A Yes.

Q You are stationed at Kiangwan at the present time?

A Yes.

Q Where were you on August 28, 1942?

A I was in Japan.

Q What was the date that you first came to the 13th Army?

A 10 September 1942.

Q What was your duty with the 13th Army?

A At that time I was acting prosecutor of the 13th Army, of the military temporary court-martial and 13th Army military tribunal. I also was attached to the legal section.

Q Did you read the record of the Doolittle trial?

A Yes sir.

Q Did you read this record thoroughly?

A I do not remember anything concerning its contents.

Q Were you present at the execution of the 3 American fliers?

A I went there.

Q Can you tell us what you saw there?

A It was sometime in October. I do not clearly remember the exact date. I went to the execution grounds with Ito who was a Colonel at that time, Hata, a Major at that time, and Wako, a first Lieutenant at that time. I went by automobile with them to the execution grounds. When I arrived at the execution grounds the crosses and other preparations had already been made for the execution. I think that soon after the three Doolittle fliers arrived by truck. I think that then the soldiers who came at that time were placed in position for security, about fifteen meters away. I seem to remember that soon after, Tatsuta, the Prison Chief, notified the prosecutor, Hata, that preparations were completed. Prior to this I seem to recall that Tatsuta was speaking to the three (meaning prisoners) through an interpreter. However, I do not know of the nature of the conversation. I think that as soon as preparations had been completed the execution took place. After the execution and after the medical inspection by medical officer, the corpses were placed in a coffin.

Q Was Captain Okada at the execution?

A I do not remember.

Q When Tatsuta was talking to the fliers, did the American fliers shake hands with him?

A They may have but I do not remember.

Q How many men composed the firing squad?

A There were six, that is a total of six which include the rifleman and assistant rifleman.

Q Who gave the command to fire at the execution?

A I did not have any recollection as to who actually gave the orders to fire. During the early part of March this year I spoke to the driver who took me there and he stated that one of the non-commissioned officers issued the orders to fire and I presently believe that to be the fact.

Q Were you at the second trial when the sentence was given to the three American fliers -- the death sentence?

A I do know that the sentences were passed separately on three and five of those airmen and I remember the instance of the five airmen but I do not clearly remember about the three airmen.

Q You just stated that somebody told you a non-commissioned officer gave the order to fire to the execution squad. You mean to tell me that you were there and you didn't know who gave the command?

A I do not clearly recall but in the early part of March --

DEFENSE: (Lt Col Bodine) I withdraw the question and the answer.

Q You say you are assistant prosecutor in the legal section or department of the 13th Army, is that correct?

A Prosecutor, yes.

Q Do you know whether the Commander of the Army has the right to commute or revoke the sentence of a military tribunal in the Japanese Army?

A The Army Commanding General does have the power to commute or revoke the sentence as of May of last year. However, I believe that the Supreme Commanding General, the Commanding General of the Chinese Expeditionary Forces does have power to do so.

DEFENSE: The defense has no further questions.

PROSECUTOR: (Lt Col Hendren) It is rather late to start in on any cross-examination. I doubt seriously if we wish to ask the witness any questions but he might be asked to return in the morning and the Commission may wish to ask him questions.

COLONEL MC REYNOLDS: The prosecution wants the witness in the morning?

PROSECUTOR: We might. I am not certain.

COLONEL MC REYNOLDS: The witness is excused and will return in the morning.

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

COLONEL MC REYNOLDS: The Commission will adjourn to reconvene at 9:00 o'clock in the morning.

(Whereupon at 1700 hours, 4 April 1946, the Commission adjourned to reconvene at 0900 hours, 5 April 1946.)

MORNING SESSION

... Pursuant to adjournment the Commission reconvened at 0900 hours on 5 April 1946 ...

COLONEL MC REYNOLDS: The Commission is in session.

LT COL HENDREN: Let the record show the Commission, the accused, counsel for the prosecution and defense, reporter and interpreters are present in the courtroom.

CAPTAIN FELLOWS: Does the court have any questions they would like to ask Captain Shimada?

LT COL HENDREN: Prosecution has no questions at this time.

CAPTAIN FELLOWS: At this time the accused Captain Wako would like to take the stand.

YUSEI WAKO

was called as a witness on his own behalf.

LT COL HENDREN: I'd like to ask the accused Wako some preliminary questions.

Q What is your religion?

A Buddhism.

Q Do you know the difference between truth and untruth?

A Yes, I know.

Q If you take an oath before this Commission to tell the truth will you be bound by your religion and your conscience to tell the truth?

A Yes, I will.

LT COL HENDREN: Is the Commission satisfied that the oath can be administered now?

COLONEL MC REYNOLDS: The Commission is satisfied.

Q Are you testifying before this court voluntarily?

A Yes.

(Whereupon the witness was affirmed, and testified (through Interpreter Arita) as follows:)

Q (By Lt Col Hendren) State your name.

A Wako, Yusei.

Q Do you hold a rank in the Japanese army?

A At the present time, Japanese army Judicial Captain.

Q Are you one of the accused in this case?

A Yes.

DIRECT EXAMINATION

Q (By Captain Fellows) Captain Wako, when did you become a member of the Judicial Department?

A I entered the army in December 1940 as a probationary officer.

Q When did you become a member of the Judicial Department?

A I became a first lieutenant in the Judicial Department on 1 April 1942.



- Q On that date where were you assigned?  
A I was in Tokyo.
- Q When did you first become assigned to the 13th Army?  
A I landed at Shanghai on 30 May 1942.
- Q Were you then assigned to the Judicial Department of the 13th army?  
A Yes.
- Q Who else was in that department?  
A About June there was Colonel Ito, Major Hata, 1st Lt. Yamada, at that time. Towards the end of July, due to illness, tuberculosis he was not present. In August there were just three of us - Colonel Ito, Major Hata and myself.
- Q Were you the junior member of the Judicial Department?  
A I was the lowest ranking officer.
- Q What were the duties of the Legal Department of the 13th army?  
A The duty of the Judicial Department was the handling of legal matters of the 13th army, handling of the preparations for the trials placed in the hands of military tribunals and court martials. And also indoctrination of the personnel of the army in legal matters.
- Q What was the direct relationship between the legal department and the tribunals and court martials?  
A Since the members of the judicial department held positions as prosecutors and judges they did work in general, covering all.
- Q What were Colonel Ito's duties in regards to court martials and tribunals?  
A Colonel Ito was the department chief of the Judicial Department and was the prosecutor and judge at the same time.
- Q Did Colonel Ito have a big influence over the tribunals and court martials of the 13th army?  
A Due to the fact that he was the one that interpreted the meanings of the various military laws, being the senior officer among the prosecutors and being the person in charge of the direction of personnel he was the person with the greatest amount of influence and power.
- Q Wako, what were your duties in the legal department?  
A Being the lowest ranking officer in the department I was doing miscellaneous office work.
- Q Were you in a position of responsibility within the legal department?  
A Being the person in charge of miscellaneous matters in the office I supervised messages, received documents, brought documents to the higher ranking officers for their approval and chops, brought documents over to the ranking officers to show them the documents and other miscellaneous things.
- Q Captain Wako, how did Colonel Ito receive his appointment as head of the legal department of the 13th army?  
A Since he was the judicial department chief for about three or four years previous to my arrival I do not know what had occurred at that time.
- Q Are not the department heads of legal departments designated by the War Ministry in Tokyo?  
A All personnel of judicial department are appointed by the War Ministry, that is, Hata, the colonel and myself; we are all appointed by the War Ministry.

- Q Did the War Ministry also appoint you to your post within the 13th army?
- A The order was an order of a member of the judicial department, 13th army. I would like to explain further. Court martials and military tribunals are established by the commanding general, therefore the appointment of prosecutors and judges is not done by the War Ministry but by the commanding general.
- Q Captain Take, what is the normal procedure of bringing a case to trial before a military tribunal in Japanese law?
- A In ordinary military tribunal or court martial trial the procedure is that the prosecutor addresses a statement of his opinion on the case to the commanding general stating whether it should be or should not be placed before the tribunal or court martial. At that time the commanding general will issue an order whether to place the case before a court martial or military tribunal or to cancel it. The prosecutor writes out his charges for the prosecution.
- Q Did the prosecutor in examining a report recommend that the case not be tried, a normal case?
- A In general cases the prosecutor reports to the chief of the judicial department whether it should or should not be placed before a tribunal or court martial. After reporting to the chief of department he in turn reports to the commanding general.
- Q If the chief of the legal department believes that the evidence is insufficient or that the case could not be tried can he refuse to try the case?
- A Placing myself as a prosecutor in a case, should I feel that the case should not be tried and if I do report to the chief of the judicial department and he says that it should be tried then the statement to the commanding general must be amended to read that it should be tried, or if I feel that it should be tried and the chief of the judicial department feels that it should not be tried then the statement must also be changed to read so.
- Q In other words, it is Colonel Ito, as head of the legal department, who determines what the recommendations shall be.
- A When the prosecutor brings his recommendation to the chief of the judicial department he decides whether it should be tried or not tried and that report is sent to the commanding general.
- Q Captain Take, when did you first find out that the 13th army had been requested to try the Doolittle fliers?
- A According to my memory it was on or about the 23rd or 24th of August that I was appointed the prosecutor to prosecute the case.
- Q Was General Sawada in Shanghai at the time?
- A When I landed in Shanghai General Sawada was not present already.
- Q Do you know when General Sawada left Shanghai?
- A After coming to Shanghai I learned that they all left for operations during the first part of May.
- Q Had General Sawada's entire staff departed Shanghai with him?
- A Yes.
- Q Did General Sawada return to Shanghai at any time prior to this trial?
- A I never did meet General Sawada before the trial.
- Q Do you know whether or not he came back to Shanghai?
- A I don't think he came back.

- Q Was an authorization to pursue this case secured in advance of trial?  
A I can't get the meaning of the question.
- Q I will rephrase the question. Was any order prepared in Colonel Ito's office directing that this case be brought to trial?  
A It was decided that the case would be tried on or about the 23rd or 24th after the presentation of the prosecution's statement of opinion.
- Q Was a chop affixed to that order directing trial?  
A Colonel Ito orders the persons to be judges and that decides who is to be judge.
- Q Who prepared the report of the prosecutor?  
A The person that received the case was Colonel Ito, and the prosecutor that wrote the statement of opinion as to the fact that the case should be tried was Colonel Ito, also.
- Q Was the chop of the 13th headquarters affixed to any document at that time?  
A Is that the chop of the commanding general?
- Q I don't know. Was any chop affixed to any document at that time?  
A The statement of the opinion of the prosecutor was written by Colonel Ito and that approval was necessary by the Nanking headquarters. On or about the 22nd or 23rd of August Major Hata went to Nanking, supreme headquarters and received the permission of the commanding general, General Hata, to prosecute the case.
- Q After his return to Shanghai what happened?  
A Thereupon a document ordering the prosecution of the case was drawn up by General Sawada.
- Q Did General Sawada draw that document up himself?  
A Since General Sawada when leaving for the front had left certain duties to the officers of the judicial department and administrative departments, Major Oyama, assistant adjutant, he had stationery with the signature of General Sawada on it. After having the stamp placed on the order for the prosecution on the document by the assistant adjutant we showed the document to Colonel Ito.
- Q Was this document in any way shown to General Sawada or his staff at the front?  
A I do not know whether it was shown to them at the front lines, however, the chief of the judicial department had been delegated the authority in legal matters, also Lt. Colonel Ogawa, who was dispatched from the Nanking headquarters must also have seen. This document was the document from General Sawada to the prosecutor, Colonel Ito.
- Q Is that from General Sawada or you said in the name of General Sawada?  
A This order from General Sawada to Colonel Ito is an order saying "you will prosecute the case."
- Q Wake, when you say from General Sawada do you mean it is personally from General Sawada or issued in the name of General Sawada?  
A It is a document to Colonel Ito, the prosecutor, in the name of General Sawada. The authority to use the name of the General had been given previous to his departure.
- Q Wake, who was the prosecutor at the trial of the Doolittle fliers?  
A After the order to prosecute the case has been given to the prosecutor the prosecutor writes out the charges for the prosecution and that was done also by Colonel Ito. And as for the prosecutor to be present at the trial, Major Hata was ordered by Colonel Ito.

Q Colonel Ito selected Hata as prosecutor?

A Yes.

Q Were you selected as a judge for that trial?

A Yes.

Q How was your selection made?

A When I reported to Colonel Ito that Hata was not going to be the judge he said that Hata was to be the prosecutor. Colonel Ito told me then "you will be the judge," and that is the way it was decided.

Q Under the law, did a member of the legal department have to be on the tribunal?

A Yes.

Q Did Hata and Ito talk over this case a lot in advance of trial?

A Concerning the incident I did not find out until after about the 15th or 16th of August, but previous to that I did know that Hata had been going to Colonel Ito's office quite often. On or about 15 or 16 August when the new regulation concerning enemy airmen was received from Nanking I deduced that the incident, the case was placed in our hands.

Q Is it not true that originally it was planned that Ito would be the prosecutor and Hata the presiding judge?

A I guess it could have been in that manner.

Q Did Hata ever complain to your knowledge of having been selected as a judge for the case?

A I don't think that anything definite had been decided upon, that is, that Hata was to be the judge. I do not know what Hata and Ito talked about in Ito's office but in the department office in which I and he were together I did hear from him that he would not be the judge.

Q Was this not an important case for the 13th army to handle?

A It was important.

Q Had you not received letters and instructions from Nanking headquarters and Tokyo headquarters directing the trial of this case?

A There was instructions from the Grand Imperial headquarters in Tokyo to the prosecutor as to what he should request of the tribunal as punishment. This and there was just another case in which we did receive instructions from Tokyo.

Q Then can you explain why you, as a brand-new first lieutenant in the judicial department was selected by Ito as an associate member of this court?

A When Major Hata told Colonel Ito "that I will not be the judge for this case," Ito said "then you will be the judge and Hata will be the prosecutor of the trial."

Q Did you want to be a judge in the case?

A Usually the senior or the ranking officers become the judges in important cases, however, in this case I just followed the order of Colonel Ito.

Q Did you want to be a judge in the case?

A At that time Hata being my superior I believe that it should be him that is the judge, however, when I was selected to be the judge I received my appointment and I obeyed my orders humbly.

Q Were you present at the trial?

A I was present as a judge.

- Q Where was the trial held?  
A Within the 13th army headquarters compound.
- Q Who was present at the trial?  
A As prosecutor, Major Hata, as chief judge, Lt. Colonel Wakajo, 2nd Lt. Okada and myself as judge.
- Q What time did the trial start?  
A I believe it began at about ten o'clock on 28 August.
- Q What time did the trial end?  
A About noon or mid-day.
- Q Were the fliers there?  
A Yes.
- Q How long were they there?  
A During the entire trial.
- Q Will you tell the Commission just what took place at the trial?  
A First there were the eight prisoners, then the judge, the prosecutor, interpreter came in. Then the chief judge announced that the court is in session.
- Q Then what happened?  
A Then the chief judge asked their name, their ranks, their units, their place of birth, residence, and so forth.
- Q Was that through an interpreter?  
A Yes.
- Q Did the fliers answer the questions?  
A Yes.
- Q Then what happened?  
A Then the prosecutor requested they be tried for the charges against them in the charges of the prosecution.
- Q What were those charges?  
A The case of violation of military law concerning punishment of enemy airmen.
- Q What were the specifications against these fliers?  
A That is the bombing of Tokyo, that is, they bombed Tokyo and Nagoya.
- Q Vako, at the trial were these fliers accused of having violated the Martial Law concerning indiscriminate bombing?  
COLONEL GAMBER: Do you mean military law? You said martial law.
- Q Strike that. I will ask it again. At the trial were the fliers accused of having violated the terms of the law relating to enemy airmen?  
A Yes.
- Q Was this accusation translated to the fliers?  
A Since the entire charges was long we told them that they would be tried for the bombing of Tokyo and Nagoya.
- Q What plea did the fliers make?  
A In the Japanese court there is no provision for pleading of guilty or not guilty.

- Q Did the fliers deny their guilt?  
A Not only this case but in Japan the defendant can not say I am guilty or not guilty.
- Q Did the fliers make any statement concerning what they were being tried for?  
A They did not say anything.
- Q What happened after the charges were read and the substance of it told to these fliers?  
A Then we began the trial.
- Q Tell what happened at the trial.  
A They were all asked concerning their education, their date of enlistment and volunteering and other matters in general.
- Q And then what happened?  
A Also they were asked how much training they had received, when they left the states and in what manner.
- Q Then what happened?  
A Then they were asked things that occurred between the time they left the aircraft carrier until the time they arrived over Tokyo and Nagoya.
- Q Then what happened?  
A Then looking over the report from the gendarmerie and the charges against them I asked them concerning the situation and the time of the bombing.
- Q Did the fliers answer these questions that were asked them?  
A Yes.
- Q Tell the court what happened when you interrogated the fliers concerning the situation of the bombing?  
A In the report from the gendarmerie there was a portion which said even if you aim at a target there may be times when you fall on civilian homes, therefore I asked each one of them whether it was true or not.
- Q What did they say?  
A They answered yes.
- Q Then what happened?  
A And in Tokyo since there was a great deal of casualties from strafing I asked them whether they - I asked the situation of the strafing.
- Q What did they reply?  
A Since the damage report from Tokyo showed that elementary schools and so forth had been fired upon I asked them about it and to that they said they did not fire.

COLONEL MC REYNOLDS: At this time the court will recess and reconvene at 1045.

(Whereupon the Commission took a recess at 1030 hours.)

COLONEL MC REYNOLDS: The Commission is in session.

MAJOR DYER: Let the record show the Commission, the accused, counsel for prosecution and defense, reporter and interpreters returned to the courtroom after the recess, and the witness is reminded he is still under oath.

- Q Captain Wako, just prior to the recess I believe you stated that the fliers denied that they strafed schools in Tokyo, is that right?  
A Yes.
- Q Will you tell the court what happened after that?  
A Then I heard about the planes that raided Nagoya. As regards the question "Would the bomb fall on the residential section?" they answered yes. In the document presented by the gendarmerie it was stated that the fliers gunned the school children. To that I asked whether they knowingly gunned them or not. They did not answer to this question very easily but they could not recognize whether these people were men or children. They had gunned, but they could not recognize whether these people were men or children.
- Q Do you recall which of the fliers made that statement?  
A That was Farrow and Spatz. To the question "Did you say this in the gendarmerie?" they did not answer.
- Q Then what happened?  
A After this I received the gist of the documents presented by the gendarmerie.
- Q Were the gist of the documents of the gendarmerie read to the court?  
A Yes.
- Q What did they consist of?  
A It was that which concerned the damaged condition.
- Q Was there also read to the court any statements made by the fliers in Tokyo?  
A The gist of the documents presented by the gendarmerie was read and this document came from Tokyo.
- Q Did it include any statements purportedly made by the fliers in Tokyo?  
INTERPRETER: He is repeating the same thing.
- A The documents by the gendarmerie was read whereas the statement personally given by the fliers was not read in court.
- Q Did these documents contain any confessions by the fliers?  
A Yes, and to this document they signed it, was printed the thumbprint.
- Q Was that the document that you used in questioning the fliers and they made no answer?  
A Yes.
- Q Wako, describe the appearance of the courtroom.  
A On the bench there was one prosecutor, three judges, interpreter and reporter, Colonel Ito and one or two others.
- Q Did the court sit on a raised platform?  
A They were sitting on a raised platform but the interpreter did not.
- Q How many people sat on a raised platform?  
A There were five sitting, and behind these five men the audience were present.
- Q Who sat in the middle?  
A That was chief of judges, Nakajo.
- Q Who sat to his left?  
A Facing the chief of judges, on the left was Captain Wako; next to him was Major Hata. On the right were 2nd Lt. Okada and the reporter.

- Q Where were the fliers?  
A The fliers were in front of the judges, the court.
- Q After the gist of the statements from Tokyo were read, what happened?  
A Then the report on the casualties of the raid was read.
- Q Then what happened?  
A Then Hata stood up and presented the prosecution.
- Q What did Hata do?  
A Does it concern to what Hata said or what he did?
- Q If he spoke, tell the court what he said.  
A He read the report on the casualties, the gunning in Nagoya, the bombing of residential areas, the affidavits of the eight fliers, the statements provided by the gendarmerie headquarters in Tokyo and the report of the casualties were read in his prosecution.
- Q Did Hata say anything else?  
A The acts of the eight fliers are in accordance in violation of the military law of the China Expeditionary Forces. The prosecutor requested the death penalty on the fliers.
- Q Was the substance of that law made known to the court?  
A In the beginning the court mentioned that which concerned the violation of the law.
- Q Were the terms of that law known to the court?  
A No, it was not mentioned to the court.
- Q Do you mean to say the court did not know what law they were trying these fliers for?  
A They all knew it.
- Q I will ask you again, did the court know the provisions of this law of the China Expeditionary Force of 13 August 1942?  
A Yes.
- Q What happened after Hata asked for the death sentence?  
A The chief of the judges addressed the eight fliers and asked them whether they had anything more to say.
- Q What did the fliers say?  
A They had nothing to say and the session ended.
- Q Did the fliers have a defense counsel at the trial?  
A There was none.
- Q At the end of the trial, what did the court do?  
A After Hata and the three judges finished their lunch they discussed the matter over. The three judges discussed the matter over.
- Q How long did the court deliberate?  
A Nearly one hour.
- Q During that time did they discuss whether or not the fliers were guilty or innocent?  
A Yes.
- Q What did the court decide?  
A These three judges decided on the death penalty of the eight fliers.



- Q Did the court decide that the fliers were guilty?  
A The three judges decided that these eight fliers were guilty.
- Q Did the court discuss what punishment to give the fliers?  
A The court decided that the penalty is death.
- Q What was the opinion of the court as to whether or not the death sentence was discretionary with the court or mandatory?  
Let me rephrase the question. Was the death sentence mandatory in that case?  
A The decision was reached by three of us.
- Q Under the law passed by the China Expeditionary Force of 13 August 1942, if the fliers were guilty, did the court have to give a death sentence?  
A We did so because we received instructions - interpretation from Colonel Ito.
- Q Captain Wako, did you vote that the fliers were guilty?  
A Yes, I did.
- Q After hearing the evidence and the trial proceedings, was it your honest opinion that the fliers were guilty?  
A Yes.
- Q Wako, what is your personal opinion as to the death sentence in normal cases?

MAJOR DWYER: The prosecution will have to object to what the opinion of this witness is as not material to the issues in this case.

CAPTAIN FELLOWS: In view of the statement of the witness that the sentence of death is mandatory, there was reluctance on his part to give a death sentence, his belief in capital punishment is something for the court to consider - how much discretion he exercised in that particular case.

COLONEL MC REYNOLDS: Objection sustained. Proceed.

- Q Captain Wako, was the record of this trial proceedings prepared?  
A That question is not clear.
- Q Was a report, - Did the court make any report of its decision?  
A A telegram was sent to the Grand Imperial Headquarters through Nanking Supreme Headquarters.
- Q What did that report say?  
A It was concerned to the decision of the death penalty of the eight fliers.
- Q Why was a report sent to Tokyo concerning the trial?  
A We have an order to report it. An order was received to report the decision of the court immediately.
- Q Did that order also say to withhold any action on the sentence of the court?  
A Yes.
- Q Did Tokyo take any action on the report rendered to it?  
A Instructions were sent from Tokyo to execute three fliers and reduce the other penalties for life imprisonment for five fliers.

- Q Did those instructions approve the findings of the court as being considered fair and just?  
A We thought that we could have saved those three too from the death penalty.
- Q Did the instructions from Tokyo approve the finding of the court?  
A Yes.
- Q Wako, have you sat on very many court proceedings?  
A I had only less than one year experience at the time.
- Q Since that time you have sat on many courts, have you not, as judge?  
A I have served as a judicial officer until last August - cessation of war.
- Q In trial by military tribunals are the accused normally given a defense counsel?  
A They do not have.
- Q Under the law setting up military tribunals, are the persons to be tried given defense counsel?  
A There is no provision for defense counsel.
- Q In any of the tribunals you have sat on did they have defense counsel?  
A There wasn't any defense counsel at military tribunal or court martial.
- Q Had the military tribunal of the 13th army been trying a Japanese soldier would he have had a defense counsel?  
A He could not have.
- Q Did the trial proceedings in the Doolittle case differ from the trial proceedings in any other case?

INTERPRETER: He is speaking of some other angle. He is not answering that question.

- Q I will rephrase the question. Wako, did the type of trial that you, Okada, and Nakajo gave differ in any respect from the type of trial in the courtroom that you would have given a Japanese soldier?

LT COL HENDREN: May it please the Commission, prosecution has been very patient on these questions, but this question is immaterial, irrelevant. It makes no difference in this case what kind of trial the Japanese give each other, what kind of trial the Chinese give each other or any one else. It is whether or not this trial conformed with the rules of the Geneva Convention and rules of humanity relative to the conduct of the war. Now how they try each other in Japan, how they try each other in military commissions is irrelevant to this law suit and has no bearing on the guilt or innocence of the accused. It is whether or not they gave a fair trial according to the rules of International Law, not the rules of Japan and therefore we object to the question.

COLONEL MC REYNOLDS: Objection sustained. Proceed.

CAPTAIN FELLOWS: If the court please, before proceeding, --

COLONEL MC REYNOLDS: Objection sustained. Proceed.

LT COL BODINE: The court has to hear the reasons and rules of the defense counsel.

COLONEL MC REYNOLDS: The Commission decided to sustain the objection.

- Q Wako, were the Doolittle fliers given a chance to speak to the tribunal at their trial?  
A The court spoke to them and they spoke to the court also.
- Q Did you give the Doolittle fliers a chance to explain, deny or make any statement concerning what they were charged with?  
A They had an opportunity to explain themselves at the examination.
- Q Did they have a chance to defend themselves?  
A Yes, they did.
- Q Were you present at a second hearing these fliers were brought before a military tribunal?  
A Yes, I was.
- Q At that time was the sentence of the court of the decision of the Tokyo fliers read to the fliers?  
A Yes.
- Q Who read the decision of the court to the fliers at that time?  
A Chief Judge Nakajo read it to the three men on 15 October.
- Q Was a similar meeting held for the other five fliers?  
A There wasn't any such meeting at the time because the chief judge went to his unit and did not return until the evening.
- Q Wako, does a commander who appoints a tribunal have the right to alter the decision of that tribunal? Strike the question. I will start over. Wako, were you present at the execution of three of the Doolittle fliers?  
A Yes, I was.
- Q Did you see the actual execution?  
A Yes, I saw it.
- Q Do you know Captain Tatsuta?  
A Yes, I know him.
- Q Did he give the command to the firing squad to fire upon the fliers?  
A Captain Tatsuta was the director of preparations.
- Q Who actually was in command of the firing squad?  
A He was first lieutenant of the unit of the guards.
- Q Did he give the command to the firing squad to fire upon the fliers?  
A The order was given by this first lieutenant but detailed orders were given by eight non-coms and I think that record shows all these things.
- Q Wako, how old are you?  
A In Japanese counting 38 and American age 37.
- Q Are you married or single?  
A Yes, I am married.
- Q Is your wife alive?  
A Yes, she is alive.
- Q Do you have any children?  
A We have three but one was born at concentration camp so I don't know anything about it.
- Q What are the ages of these children?  
A In Japanese counting one is eight, the next one is four and the last one is two years of age.

- Q. How old would they be in American counting?  
A. In American counting one is 7, next one is 3, and the last one is less than one year because it was born in last December.
- Q. Where is your family at this time?  
A. They are at my domicile, Yamanashi.

COLONEL MC REYNOLDS: At this time the Commission will adjourn and reconvene at two o'clock P.M.

(Whereupon the Commission adjourned at 1205 hours on 5 April 1946 to reconvene at 1400 hours on 5 April 1946.)

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AFTERNOON SESSION

... Pursuant to adjournment, the Commission reconvened at 1400 hours, 5 April 1946, at which time all 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.

DEFENSE: Captain Wako will take the stand, please.

(Captain Hahn interpreting).

WAKO YUSEI

resumed the witness stand, as witness for the defense, was reminded he was still under oath, was examined (through interpreter, Captain Hahn) and testified as follows:

DIRECT EXAMINATION

Q (By Capt Fellows) Captain Wako, prior to closing your direct examination, is there any statement that you want to make to the court concerning the trial of the Doolittle fliers? Do you wish to make a statement?

A On 25th or 26th of August, Colonel Ito explained the meaning of the military law. He interpreted the law that there is only one penalty in case of the guilt in the military law. If they are guilty that penalty will be death. When the court reached the decision of being guilty it had no alternative but to impose the death sentence. Although the court made the decision it was up to the Supreme Grand Imperial Court for change, if any change is estimated. General Shimomura issued the order of execution.

INTERPRETER: I cannot understand what he says here.

DEFENSE: Ask him to repeat that part of the answer.

A (continued) Lieutenant General Shimomura issued the order of execution. I remember that I went to Lieutenant General Shimomura's office to get his signature on the order of execution.

INTERPRETER: That is not signature. It is chop.

A (continued) That chop was a square. His chop was one centimeter square. The order was addressed to Colonel Ito from General Shimomura; the directing prosecutor of the execution was Colonel Ito but it was addressed to Ooka Takijiro of Nanking. Colonel Ito was the prosecutor in the execution record.

PROSECUTOR: (Maj Dwyer) What does he mean by that?

DEFENSE: (Lt Col Bodine) What is meant by prosecutor of the execution record?

A In other words, Colonel Ito's name was signed in the execution record.

Q Under the Japanese law the head of the legal department is ordinarily the prosecutor and differs from the trial prosecutor?

INTERPRETER: What he is saying is that Colonel Ito was the Legal Department prosecutor and he signed the order.

Q Captain Wako, you have been accused before this court of having failed to afford a fair trial to certain American fliers. I want to extend you the opportunity to say anything to the court with regard to that accusation. If there is anything else you want to say in regard to the law, will you at this time explain it to the court. Is there anything further you want to say? Do you understand that statement?

A Yes.

Q Do you want to say anything else to the court?

A No.

#### CROSS EXAMINATION

Q (By Lt Col Hendren) Captain Wako, do you remember when I talked to you in Japan in January?

A Yes.

Q Your memory is better today than it was that day, isn't it?

A Yes.

Q What education have you had, Captain Wako?

A In 1931 I majored from Japan University and passed examination for judicial offices in 1940.

Q When you were in law school did you study International Law?

A I didn't study International Law while I was in the school.

Q Are you familiar with the rules of International Law for the treatment of prisoners of war?

A I have never seen it.

Q Are you familiar with the rules of the Geneva Convention for the treatment of war prisoners?

A I did not know.

Q Did you know that your Government, in February 1942, agreed to abide by the rules of the Geneva Convention?

A We didn't receive through any instructions from Central Government.

Q What instructions did you receive on the treatment of prisoners of war?

A Are you referring to the eight fliers?

Q No, just general instructions on treatment of prisoners of war.

A I haven't seen any instructions in general.

Q Did you see any specific instructions?

A The instructions was received to treat those fliers as suspects.

Q When did you first see any of the papers relative to the Doolittle trial? What date?

A Are you referring to the court?

Q Any of the papers. Any correspondence from Tokyo, Nanking or any place with reference to the Doolittle trial.

A I did not know any correspondence about this case until the 15th or 16th of August.

- Q Isn't it a fact, Wako, that you and Ito and Hata all discussed this case at your office several times prior to the trial.  
A Three of us alone never discussed about it.
- Q Did you ever discuss it with Ito?  
A I received the interpretation of the law from Colonel Ito on the 24th or 25th of August. That is, the interpretation of the military law.
- Q Did you agree with his interpretation of the law?  
A The Chief of the Judicial Department is the responsible interpretation.
- Q Did you see any of the papers from the Gendarmerie in Tokyo prior to the date of the trial?  
A You mean the record?
- Q No, the statements of the fliers and the report of bomb damage.  
A I began to read those documents from the 24th or 25th of August.
- Q Then isn't it a fact that you had your mind made up of what you were going to do prior to the time you walked in the court room on the 28th of August?  
A No.
- Q Well you had read all the evidence, hadn't you?  
A Yes, I read it.
- Q Well, what other evidence did you want to find whether the men were guilty?  
A We decided -- we made the decision at the discussion of judges based upon the -- the decision was based upon interrogation, investigation record and a report on damage from Japan.
- Q Now, Wako, you knew that there wouldn't be any other evidence before that court than what you had already read prior to the time you went in the court room, didn't you?  
A There wasn't no other evidence.
- Q There wasn't any other evidence. That is what I thought. Then you knew what your verdict was going to be before you walked in the court room, didn't you?  
A No.
- Q Now, when Colonel Ito told you you were going to be a member of the Commission, did you object to sitting on it?  
A I only obeyed his order.
- Q You enjoyed sitting on that court, didn't you?  
A It was an order and there was no other person available, therefore I obeyed his order.
- Q This was a big case, wasn't it, Wako?  
A Yes, it was an important case.
- Q It was a great honor to sit on the court, wasn't it?  
A It was by his order and in a way I felt pleased.
- Q In a way you felt pleased. Now it was the first case ever tried under this Enemy Airmen's Law, wasn't it?

A Yes, it was the first case.

Q Captain Wako, when the fliers came in the court room that day, how were they dressed?

A They wore what they used to wear.

Q What they used to wear. Had they been shaved?

A Yes.

Q Wako, didn't you tell me in Japan that they all had beards?  
A I didn't mean that they had long beards--but very short ones.

Q Wasn't Lieutenant Hallmark laying on a stretcher?

A I think that sometimes he stood up, sometimes he sat down and sometimes he rested.

Q Now, Wako, you know as a matter of fact that Hallmark was laying on a stretcher on the floor all the time during the trial, don't you?

A He was able to stand up and to sit down.

Q Now did he stand up or did he sit down or did he lay down? What did he do?

A I think that he -- sometimes he stood up and reclined. Sometimes he sat down and listened to the procedure and he might have been laying down.

Q Wako, did the record of the trial contain everything that happened in the court room that day,-- the record that was made up by the reporter?

A Yes.

Q What happened to that record? Where is it?

A I was transferred to Japan. Before I was transferred to Japan it was at the 13th Army Headquarters.

Q Do you know where it is now?

A While I was at the Omuri Prison I met Major Inoue. According to what he said, the document was brought to Tokyo and burned.

Q Now, Wako, you said this morning that the fliers were advised in court as to what they were charged with. Is that correct?

A Yes.

Q You told the Commission this morning that the charges weren't read to them, they were just told that they were being tried for bombing Tokyo and Nagoya, is that right?

A I said this morning that the court announced that this trial is on the charges of violation of the military law concerning enemy airmen.

Q Was that announced in English or Japanese?

A The announcement was made in Japanese and interpreted.

Q You also told the Commission that each of the fliers was questioned as to his home, his education and military training and what he did on the air raid, didn't you?

A Yes.

Q And you said each one of them was questioned on what they bombed and each admitted that they bombed other than military targets, didn't you?



A I told true.

Q And you stated to this Commission that it was read to the fliers -- the report from Tokyo on the questions asked the fliers over there and the report of the bombing, were read to the fliers, is that right?

A I said the outline was read.

Q All that was read?

A Yes.

Q Was that interpreted into English?

A Yes.

Q And each one of the fliers were questioned separately? You told the Commission they were each separately questioned, didn't you?

A Sometimes question was asked the fliers individually and sometimes by groups such as Nagoya group and Tokyo group.

Q How long have you been testifying today on this witness stand.

A Since nine o'clock this morning.

Q And you stated to this Commission that that trial lasted from ten o'clock to twelve o'clock didn't you?

A I think that the trial lasted around twelve o'clock, maybe a little bit later.

Q Now do you want this Commission to believe that you could question each of the eight fliers and read all of that report that you had from Tokyo and translate the whole thing into English and explain what they were being tried for and translate that into English, all between ten o'clock and twelve o'clock?

A The entire document of the Gendarmerie wasn't read to the court but the part which was related with the raid was read.

Q Was it read in English, too?

A It was interpreted.

Q Was everything interpreted, and translated, in that court room the same way it is being translated in this court room during this trial?

A Yes. The document, the entire part of the document of the Gendarmerie was not read.

Q How long did it take you to question all the eight fliers about what they did on the raid?

A The trial took a little over two hours.

Q How long did it take you to question the eight fliers? Now you can answer that. You were there.

A It took an hour and twenty minutes.

Q You questioned all the eight fliers in an hour and twenty minutes and translated all the answers into Japanese? Is that right? Is that what you want to tell this Commission?

A The trial lasted a little over two hours, including translating some of the parts.

Q Did you do all the questioning of the fliers yourself? Did you ask the fliers all the questions yourself?

A Yes.

Q Did you call any witnesses before the Commission?

A There wasn't any witnesses.

Q Was the American Government notified through the Swiss Government that you were going to try these men?

A This kind of business must have been conducted by Grand Imperial Headquarters.

Q Was the United States Government advised that you had sentenced these boys to death?

A An order was received from the Grand Imperial Headquarters that all the matters concerning this case was to be conducted by the Grand Imperial Headquarters and the 13th Army has no authority to announce anything.

Q Do you remember when I took your statement in Sugamo Prison in Japan?

A Yes.

Q I will show you Prosecution's Transcript Exhibit No. 29 and ask you if that is your signature on that statement?

A Yes, it is mine.

Q And I will ask you if I asked you this question and didn't you give me this answer. Question "Did the fliers make any statements before the court?" Do you remember that? Do you remember me asking you that question?

A Where is the answer.

Q Do you remember, did I ask you that question?

A I remember.

Q And you gave me this answer, didn't you? "There were read the charges but besides that they never made any statements."

A I didn't say that they did not make any statements.

Q Now, Wako, you signed this statement, didn't you?

A Yes, I signed.

Q And before you signed it, it was read to you in Japanese by an enlisted man named Takashima at Sugamo Prison, wasn't it?

A He translated it in a hurry.

Q In a hurry? Well, you signed it didn't you?

A Yes, I signed it.

Q You told me at the time you signed it you understood it, didn't you? Because he translated it in a hurry I might have misunderstood some part.

Q Is that the same kind of translation you used August 28th on the Doolittle trial?

A He translated it to me but I didn't understand English.

Q He translated it in Japanese, didn't he?

A Yes.

Q Now, Wako, you told the Commission this morning that under this law you had to impose the death penalty if you found the fliers guilty, is that right?

A Yes.

Q Could you have found the fliers "not guilty"?

A After the trial the three of us met together and made the decision.

Q That is not what I asked you. Couldn't you have found the fliers "not guilty"? Was that within the province of the court?

A It was made in accordance with the military law. The decision was made accordingly.

Q What would have happened to you if you had found them "not guilty"? What would have happened to you?

A The meaning is not clear.

PROSECUTOR: I withdraw the question.

Q Isn't it a fact, Wako, that Colonel Ito told you to find the fliers guilty before you ever walked in that court room that day?

A He did not advise us that way. Only he explained to us concerning the penalty.

Q He told you to sentence them to death, didn't he?

A He told us that if it indicates of being guilty, there is no other penalty but death.

Q Well, did he tell you that you could find them "not guilty" if you wanted to?

A He did not say either way.

Q How many military commissions have you sat on? Military courts?

A Including all the cases?

Q Yes. How many times have you been judge on a case? Approximately?

A While I was in Japan I handled some cases of court-martial and since I arrived in Shanghai, I don't know what is the exact number. It was one case in a week or ten days.

Q Did you ever find anybody "not guilty" in one of your courts?

DEFENSE: (Capt Fellows) If the Commission, please, how many times this man has found a man "not guilty" I don't believe has any probative value in this case. All the men were required to do was --

PROSECUTOR: (Lt Col Hendren) The prosecution desires to establish the point that before this court everybody was guilty. They didn't have any chance. That when Wako got his instructions from Ito he went to the court room like that and brought back a verdict. There was no other alternative. I think the Commission is entitled to know that.

DEFENSE: (Capt Fellows) The prosecution's point might be well taken if the question were well taken. There is no evidence to show that.

PROSECUTOR: Well, you get an innocent one once in a while.

COLONEL MC REYNOLDS: Objection sustained.

Q Now, Wako, in these papers you saw prior to the time the case was referred for trial, was it indicated in these papers that Tokyo desired these fliers to be found guilty?

A I don't understand. Tokyo decided their guilt.

Q You took their pictures after the court, didn't you?

A Yes, I remember.

Q Why did you take the pictures of the fliers?

A In order to pay my respects to them.

Q Well after you had found them guilty and sentenced them to death, you mean to tell this Commission you wanted to pay your respects to them. Is that what you want to say?

A (None).

PROSECUTOR: I will withdraw the question.

Q Did you take pictures of all the rest of the people that were tried before your court?

A No.

Q Did you take a picture of the execution at the time the boys were shot?

A No.

Q Were there any pictures taken at the execution?

A No.

Q Now this morning you told the Commission that Captain Tatsuta did not fire the shots -- or did not order the shots fired that killed the pilots, is that right?

A Yes.

Q I will refer you again to Prosecution's Transcript Exhibit No. 29, being the statement you gave me in Tokyo and ask you if this question was asked you and this answer given. This is the question: "Who gave the order to execute the fliers?" And your answer, "Captain Tatsuta."

A My memory was not clear at the time and there were Tatsuta and the Chief Guard at the execution grounds. I meant that Tatsuta made a report to the Chief Guard that all the preparations were made.

COLONEL MC REYNOLDS: At this time the Commission will recess until 3:45.

(Whereupon the court recessed at 1530 hours, and reconvened at 1545 hours, at which time all the Members of the Commission, the accused, the attorneys for prosecution and defense, the interpreting staff and official reporter resumed their seats in the court room. Captain Wako resumed his seat on the witness stand and was reminded he was still under oath. Cross examination continued with Lt. Col Hendren propounding the questions and Sgt Arita interpreting.)

COLONEL MC REYNOLDS: The Commission is in session.

Q Captain Wako, before recess you stated that your memory had improved since I took the statement from you in Tokyo, is that correct?

A Yes.