

File of Memos to Legal Section
Chief ~~1944~~

(5)

(95)

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: ABE, Genki

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 8 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 6 June 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be retained in custody for further investigation and possible indictment as a Class "B" or "C" war criminal.

Exhibit I

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: ANDO, Saburo

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 11 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 6 May 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be retained in custody for further investigation and possible indictment as a Class "B" or "C" war criminal.

Exhibit II

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: AOKI, Kazuo

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 12 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 14 June 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be retained in custody for further investigation and possible indictment as a Class "B" or "C" war criminal.

Exhibit III

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: GOTO, Fumio

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 12 December 1945, as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 27 February 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be retained in custody for further investigation and possible indictment as a Class "B" or "C" war criminal.

Exhibit IV

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: IWAMURA, Michiyo

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 8 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 25 February 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be retained in custody for further investigation and possible indictment as a Class "B" or "C" war criminal.

Exhibit V

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: KISHI, Shinsuke

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 8 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 24 April 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be retained in custody for further investigation and possible indictment as a Class "B" or "C" war criminal.

Exhibit VI

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: TANI, Masayuki

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 12 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 12 June 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be retained in custody for further investigation and possible indictment as a Class "B" or "C" war criminal.

Exhibit VIII

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: TERASHIMA, Ken

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 8 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 25 February 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be retained in custody for further investigation and possible indictment as a Class "B" or "C" war criminal.

Exhibit VIII

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: TOYODA, Soemu

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 13 December 1945 as a Class "A" war crimes suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 18 April 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be held in custody for further investigation and possible prosecution as a Class "B" and "C" war crimes suspect.

Exhibit IX

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: ISHIHARA, Koichiro

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 10 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCE OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 17 May 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be held in custody for further investigation and possible prosecution as a Class "B" and "C" war crimes suspect.

Exhibit X

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: KODAMA, Yoshio

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 25 January 1946 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 24 May 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be retained in custody for further investigation and possible indictment as a Class "B" or "C" war criminal.

Exhibit XI

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: SASAKAWA, Ryoichi

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 11 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 4 June 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be retained in custody for further investigation and possible indictment as a Class "B" or "C" war criminal.

Exhibit XII

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: NISHIO, Toshizo

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 12 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 2 June 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject's custody be offered to the Chinese Government for trial in China on possible Class "A", "B", and "C" charges.

Exhibit XIII

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: TADA, Hayao

I. PRESENT STATUS:

Subject has been under house arrest since 15 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 7 June 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject's custody be offered to the Chinese Government for trial in China on possible Class "A", "B", and "C" charges.

Exhibit XIV

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: AMAU, Eiji

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 12 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 19 June 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be released from custody immediately.

Exhibit XV

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: HONDA, Kumataro

I. PRESENT STATUS:

Subject has been under house arrest since 1 December 1945 as a Class "A" war crime suspect. His address is 1102, 7-Chome, Kamime-Guro, Meguro-Ku, Tokyo, Japan.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 17 May 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be released from custody immediately.

Note: It is possible that the Chinese Government may be interested in subject due to his service as Ambassador to the Nanking puppet government.

Exhibit XVI

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: KUZUU, Yoshihisa

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 22 November 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 29 April 1945, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be released from custody immediately.

Exhibit XVII

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: SUMA, Yakichiro

I. PRESENT STATUS:

Subject has been under house arrest since 6 December 1945 as a Class "A" war crime suspect. His address is 101 Ni-chome, Ogikubo, Tokyo, Japan.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 22 April 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be released from custody immediately.

Exhibit XVIII

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

30 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: TAKAHASHI, Sankichi

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 15 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the nineteen (19) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 9 June 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be released from custody immediately.

Exhibit XIX

✓ ABE, Genki

✓ ANDO, Saburo

AMAU, Eiji

✓ AOKI, Kazuo

✓ GOTO, Fumio

HONDO, Kumataro

✓ ISHIHARA, Koichiro

✓ IWAMURA, Michiyo

✓ KISHI, Shinsuke

✓ KODAMA, Yoshio

✓ KUZUU, Yoshihisa

NISHIO, Toshizo

OKAWA, Shumei

✓ SASAKAWA, Ryoichi

SUMA, Yakichiro

TADA, Hayao

✓ TAKAHASHI, Sankichi

✓ TANI, Masayuki

✓ TERASHIMA, Ken

✓ TOYODA, Soemu

INTERNATIONAL PROSECUTION SECTION
DOCUMENT DIVISION

23 March 1948

MEMO FOR: Mr. Lipscomb, Room 379

SUBJECT : Narcotics Division Agents in Tokyo

1. Relative to your recent request I have located the two subject agents. They are:

Mr. Speer) c/o Public Health and Welfare Section
Mr. Tollenger) Room 102-A, Mitsubishi Shoji Building

2. These two men are on temporary leave from the Narcotics Division of the U.S. Treasury Department. Both have had extensive experience in narcotics problems in the Orient and would appear to be very valuable contacts for the investigation of individuals connected with the opium or narcotics trade in Japan.

Yale Maxon
Yale Maxon

cc: File 286
Mr. Monaghan
Mr. Sandusky

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

17 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP

SUBJECT: Report on Nineteen (19) Class "A" War Crime Suspects.

I. INTRODUCTION:

The writer regrets that limitations on personnel have made it necessary for him to complete the preliminary investigation of the 19 Class "A" war criminals who are being examined for possible "B" and "C" offenses without having the collaboration of any other attorney in making this survey. Due to the magnitude of the task, the survey is in no sense complete, but it has proceeded to a point where very definite and positive ideas can be advanced as to the disposition of these cases.

It had been hoped that the exhaustive examination of source material located with the International Prosecution Section would develop considerable new evidence and enable the establishment of some new hypotheses and predicates upon which charges could be preferred. This has not been the case. Basically, the original ideas remain the same. Insofar as matters of form are concerned, rather than substance, several worthwhile changes in the original plan can now be projected.

This report is based on the examination of all files, documents and information in the possession of Legal Section, SCAP, the Investigative Division of the International Prosecution Section, the Record, with Exhibits attached thereto, of the International Military Tribunal for the Far East, and the documents in the Document Division of the International Prosecution Section which were not utilized as evidence before the IMTFE.

The suspects can arbitrarily be divided into four classes:

1. Cabinet members.
2. Those subject to indictment, other than Cabinet members.
3. Those subject to indictment, but on whom recommendations are being made to transfer, if desired, to the control of another government.
4. Those suspects not subject to indictment for "B" or "C" crimes.

Memo: Report on 19 Class "A" War Crime Suspects (Cont'd)

II. FORM OF INDICTMENT AGAINST CABINET MINISTERS:

The charge against members of the Cabinet will be substantially the same as that now preferred against war criminals at the Yokohama trials, with the addition of the words, or words to like effect, "did commit high crimes against humanity".

The specifications fall into three distinct categories. Against some of the Cabinet members all three categories can be charged; against some, two; and against others, only one. The categories are:

1. Cabinet decisions which were per se violations of the Laws and Customs of War or were crimes against humanity.
2. Overt acts on the part of individual ministers or overt acts committed by their subordinates for which they were responsible which violated the Laws and Customs of War or were crimes against humanity.
3. Category "B" and "C" crimes committed by the armed forces or civilian populace during the time period when the individual Cabinet member held office.

III. MANNER OF SUSTAINING CHARGES AGAINST CABINET MINISTERS:

1. The Charge:

The common denominator to the Charge (exclusive of considerations of the Specifications) against all Cabinet ministers is the basic proof of the general responsibility of the Japanese Cabinet for war crimes committed during their tenure of office, whether by direct participation or indirect responsibility. It is believed that sufficient evidence can be adduced to sustain this proposition, but it is not in any sense elemental. The peculiar wording of the then existing constitution of Japan, plus the de jure divorcement, forces the Prosecution to the final, but **tenable**, position that the ones who control the purse strings must **perforce** be able to control the acts of those who would spend the money. It is believed that the difficulties inherent in establishing this proposition can be overcome and that the proof can be adduced to sustain the Charge.

Memo: Report of 19 Class "A" War Crimes Suspects (Cont'd)

2. The Specifications:

- a. Cabinet decisions which were per se violations of the Laws and Customs of War or were crimes against humanity:

In making the proof under this particular specification, it may be well to abridge the use of the term per se. There is a possibility of developing proof that certain Cabinet decisions which may have appeared harmless on their face were actually violations of the Laws and Customs of War or crimes against humanity. It is the writer's opinion, however, that unless we could show scienter on the part of the individuals participating in such a decision, that they would have a good defense. If the particular Cabinet decision was deliberately camouflaged in its words, to charge knowledge of the camouflage, without proof, would be ridiculous. This is a proposition that will require considerable thought and study before a final conclusion can be reached. Of course, the responsibility for wrongful acts would still exist; it would simply have to be established under one of the other two type specifications irrespective of any Cabinet decision.

It had been hoped that many additional per se Cabinet decisions could be discovered in this current search; but on the cursory analysis no per se decision that was not previously contemplated as a possible charge has been discovered, although there are some decisions that can be utilized if knowledge could be established as to the effect of the decision. Only three of the Cabinet ministers were members of the Tojo Cabinet at the time of Pearl Harbor.

- b. Overt Acts on the part of individual ministers or Overt Acts committed by their subordinates for which they were responsible:

This type of specification is self-explanatory insofar as the means and method of proof. The only catch to it is, as will be later discussed in detail, that some of the ministers did not appear to have committed overt acts, nor is there evidence now available that such was done by their subordinates.

- c. Category "B" and "C" crimes committed by the armed forces or civilian populace during the time period that the individual ministers held office:

Memo: Report on 19 Class "A" War Crimes Suspects (Cont'd)

It had been hoped that many additional per se Cabinet decisions could be discovered in this current search; but on the cursory analysis no per se decision that was not previously contemplated as a possible charge has been discovered, although there are some decisions that ~~could~~ be utilized if knowledge could be established as to the effect of the decision. Only three of the Cabinet ministers were members of the Tojo Cabinet at the time of Pearl Harbor.

b. 2. Overt Acts on the part of individual ministers or Overt Acts committed by their subordinates for which they were responsible:

This type of specification is self-explanatory insofar as the ~~amount~~ and method of proof, the only catch to it is, as will be later discussed in detail, that some of the ministers did not appear to have committed overt acts, nor is there evidence now available that such was done by their subordinates.

c. 3. Category "B" and "C" crimes committed by the armed forces or civilian populace during the time period that the individual ministers held office:

Establishing this proposition is simply a gigantic job of research, and separation of evidence into time periods that correspond to the tenure of the individual minister. Some of the serious defects inherent in its establishment will be discussed later.)

IV. THE INDIVIDUAL CABINET MINISTERS:

1. ABE, Genki.

ABE was Home Minister for a short period of five months preceding the Japanese surrender. He is exempt entirely from the first class of specification. If any real guilt can be established against him, and there is some evidence that it can, it must be established under the second class of specification. There is considerable information and evidence in hand that indirect responsibility can be established under Class 2 through the acts of his subordinates, but there is no evidence now before us of any personal overt acts during this period.

Insofar as establishing the Class 3 specification, we are ~~again~~ confronted with the limitations of time in that he held office for such a short period.

ABE was Vice Chief of the Cabinet Planning Board from December 1941 to November 1943. In this particular position he presents a special case. It is believed that, while this office was not of Cabinet level, certain overt acts committed by the

Memo: Report on 19 Class "A" War Crimes Suspects (Cont'd)

Planning Board that were in violation of the Laws and Customs of War, such as the decision to utilize Prisoners of War in industry, could be charged and established against ABE, as well as being an overt act for which an attempt will be made to hold all of the Cabinet members in office at the time of the decision.

2. ANDO, Saburo:

ANDO was Minister without Portfolio in 1942. A Minister without Portfolio hold a rather anomolous position in the Japanese Government. The question of his responsibility in this type of position will be most vigorously defended.

He can, however, be charged with some acts under the Class 1 type of specification. There is no indication that he can be charged under Class 2 and his responsibility under Class 3 would be defended specially on the grounds that a Minister without Portfolio has no responsibility.

ANDO was Home Minister from April 1943 to July 1944. In this position there is some evidence of Class 2 violations insofar as acts of his subordinates are concerned and it is believed that further investigation may develop personal acts. He can be charged with considerable Class 3 crimes which are known to have occurred in this time period.

3. AOKI, Kazuo:

AOKI's tenure as Minister without Portfolio in the Tojo Cabinet was for a three-month period prior to the organization of the Greater East Asia Ministry in November 1942, of which he became the first minister. He held this position continuously to July 1944. The charges against him are doubtful in the Class 1-type of specification.

The time period has not allowed a thorough analysis of the operation of the Greater East Asia Ministry, but it is believed that a considerable mass of evidence can be adduced against AOKI on the Class 2 type of specification.

His long tenure in office will allow considerable evidence under the Class 3 specification.

4. GOTO, Fumio:

GOTO's only connection with the Cabinet was that of Minister without Portfolio from May 1943 to July 1944. Some of the inherent defects in establishing a case against a Minister without Portfolio have been previously discussed under ANDO.

Memo: Report on 19 Class "A" War Crimes Suspects (Cont'd)

There is no present evidence to charge him under the Class 1 type of specification.

There is no present evidence to charge him under the Class 2 type of specification. ^{v 2} The only remaining possibility to convict GOTO would lie under the Class 3 type. (it is understood that this conclusion is reached only on the basis of the present survey). ~~but a case against GOTO appears very doubtful.~~
a good.

5. IWAMURA, Michiyo:

IWAMURA was Minister of Justice from July 1941 to July 1944.

He can be charged under the Class 1 type of specification.

There is no present evidence that he or his subordinates have committed overt acts under the Class 2 type of specification.

His long tenure in office will enable substantial evidence to be adduced under the Class 3 type of specification.

6. KISHI, Shinsuke:

KISHI was one of TOJO's most trusted assistants. He was Minister of Commerce and Industry from October 1941 to October 1943 when this ministry was abolished, then continued as Vice Minister of Munitions (Tojo himself held this Ministry) and Minister without Portfolio until July 1944. KISHI can be indicted on the Class 1-type specification.

It is believed that evidence can be adduced to sustain some charges under the Class 2 type, particularly on the proposition utilizing Prisoner of War labor.

He is subject to a long time period under the Class 3 type of specification.

7. TANI, Masayuki:

TANI was Foreign Minister from September 1942 to April 1943 and concurrently held the post of Chief of Cabinet Information Bureau.

It is doubtful whether Class 1 type of specification can be sustained against him. U

Under the Class 2 type of specification, although TANI was a minister for a short period of time, there is a mass of evidence connecting him with diplomatic correspondence through neutral nations ~~with the responsibility for permitting mistreatment of Allied Prisoners of War.~~

x sent by various allied Powers to protest specific violations of the laws and customs of war and to demand compliance.

Memo: Report of 19 Class "A" War Crimes Suspects (Cont'd)

The Class 3 type of specification can only cover the nine-month period during which he held Cabinet post.

8. TERASHIMA, Ken:

TERASHIMA was Minister of Railways and Minister of Communications from 16 October 1941 to 8 October 1943.

He is subject to some charges under the Class 1 type of specification. There is no evidence that he or his subordinates committed any overt acts under the Class 2 type of specification.

He can be charged, as others, for responsibility for Class 3 type of specifications during his tenure in office.

V. METHOD OF TRIAL OF CABINET MEMBERS:

Although the writer is reluctant to make new observations in view of the previous ideas that have been ~~concerned~~ as to best possible method to try these Cabinet ministers, it is now his studied opinion that time, energy, and money can be saved and equal, or better, results be obtained by trying them all in a common trial.

While there is not an absolute coincidence as to their tenure in office, there is a definite continuity and rhythm in the manner, form, and nature of the proof that must be presented against them and the greater bulk of it can be presented against two or more of them concurrently. Exclusive of the specifications, the charge will perforce have to be proved in an identical manner against each. The problem of preparing cases against individuals is simplified in a great degree when we consider the evidence first as a whole against all of them and then proceed to break it down into component parts. It is believed that fewer attorneys will be required to do the job and that the entire personnel necessary to work with them will be correspondingly smaller. Without going to any great length at this time in arguing in favor of a common trial, the writer believes that, for every sound argument advanced against the plan, he can bring forth two just as sound in favor of it.

VI. PATENT DEFECTS IN PROPOSED CASES AGAINST CABINET MEMBERS (EVIDENTIARY):

The results of this preliminary survey indicate that the cases against the eight (8) Cabinet members are much weaker than was anticipated. The most glaring defect is to be found in the lack of participation on the part of individual Cabinet members in specific overt acts. The International Prosecution Section had to

Memo: Report of 19 Class "A" War Crimes Suspects (Cont'd)

concentrate on the top and the bottom of the over-all picture of Japanese aggression. The intermediates, the middlemen and the subordinates have been more or less ignored. Insofar as overt acts are concerned, it is in this middle strata that we must search to determine where the greatest crimes were committed by the civil, executive, and administrative agencies of the Japanese Government. It is now apparent that the development of this type of evidence will call for original investigation into areas and at sources that have been hitherto neglected.

Another serious defect, from an evidentiary standpoint, is the inability to develop a continuity under the Class 3 type of specification, from 7 December 1941 to 14 August 1945. With the exception of ABE's short tenure of five months in 1945, we have no members of the Cabinet to consider subsequent to July 1944; thus, some of our most fertile fields of "B" and "C" evidence as to atrocities and crimes against humanity cannot be presented. Some of the years themselves are broken to a considerable degree, particularly the years 1942 and 1943 when the greatest number of the eight suspects were serving at the same time. Where atrocity evidence can be divided into monthly periods, it presents no great problem, but a great deal of the general evidence as to war crimes is too vague for such a monthly division and there will be a serious question as to whether this type of testimony will be admitted against the individuals in these broken periods.

Although it is impossible to form an accurate opinion as to various degrees of guilt, it readily appears that the conduct of certain of these Cabinet members, from a standpoint of participation, far outweighs the others and, the manner, period of time in which they held office, also effects the degree of guilt or, it should be said, the measure of punishment under the evidence now available for use.

It has been previously pointed out that where a minister participated in a Cabinet decision which developed later to be a violation of the Laws and Customs of War, it will be necessary to charge knowledge on his part in order to sustain the Charge. This presents a very serious handicap from the standpoint of proof and it will require considerable effort on the part of the Prosecution to make this type of allegation stand up.

VII. PATENT DEFECTS IN PROPOSED CASES AGAINST CABINET MINISTERS
(LEGAL):

Colonel Mornane presented the IPS Summation to the IMTFE on Counts 53, 54, and 55 of the Indictment, which counts charged conventional war crimes and crimes against humanity. This presentation was complete and exhaustive insofar as the consolidation of

Memo: Report of 19 Class "A" War Crimes Suspects (Cont'd)

all evidence before the International Tribunal was concerned and the writing of a proper legal predicate to require from the Tribunal a finding as to the responsibility of the accused for the commission of these "B" and "C" atrocities. It is this writer's opinion that the Summation has placed the question of the legal responsibility of Cabinet members so squarely before the Tribunal that an adverse ruling by the Tribunal to the facts would place Legal Section in such a position that the established precedent would be an overwhelming obstruction to hurdle in the presentation of our proposed cases under the Class 3 type of specification.

The YAMASHITA and HOMMA cases set an adequate predicate for command responsibility against military or naval commanders, no matter how high or low their degree. No precedent has yet been set that will arbitrarily hold heads of State responsible for the same type and character of crimes that have previously been charged against field commanders. It was not necessary for them to pass on this proposition at Nuerenberg. The writer feels that the IMTFE is going to apply the YAMASHITA doctrine squarely to the facts and hold the heads of State responsible, but this is only a personal opinion.

At any rate, it must be borne in mind that our present legal theories are subject to a serious modification or revision in the event of an adverse ruling by the IMTFE.

^aAnother great advantage ^{for} in holding individuals responsible for "B" and "C" crimes on the command theory ~~that~~ is held by the IPS and will be available to Legal Section, ^{is} found in the theory of conspiracy. IPS contends that if an individual once became a part of the conspiracy, he is responsible for all acts that flowed from the conspiracy, whether in office or out of it. Thus, a Cabinet member who served in the HIROTA Cabinet in 1936 is charged with atrocities that occurred between 1942 and 1945. If the IMTFE goes as far as the IPS would like in applying this theory, it should at least make our task somewhat easier, even though we cannot adopt the terms in pleadings.

VIII. THE CASES AGAINST TOYODA AND ISHIHARA:

1. TOYODA, Soemu:

TOYODA was at one time Commander of the Kure Naval District, Commander of the Yokosuka Naval District, Commander-in-Chief of the Combined Fleets, and, finally, Naval Chief of Staff from 29 May 1945 to the end of the war. He can be charged and tried in conventional manner now employed for the trial of cases at Yokohama. The case against him has not yet been constructed. Only the threads of evidence that will lead to a full development are now in existence and it will require hard and concentrated effort on the part of attorney and investigator to develop this evidence within a reasonable period of time.

Memo: Report of 19 Class "A" War Crimes Suspects (Cont'd)

2. ISHIHARA, Koichiro:

ISHIHARA was an industrialist who had extensive mining interests in Malay, Japan, and possibly in Manchukuo. There is considerable evidence against him as a Class "A" suspect, but the only information of value as to "B" or "C" crimes lies in the fact that he employed Prisoner of War labor during the war.

From what little examination the writer has made of the two Prisoner of War camps where labor for ISHIHARA's mines lived, there did not appear to be sufficient evidence to indict any of the camp personnel. There are a great number of testimonials in the file thanking this personnel and ISHIHARA for the kind and considerate treatment extended to them during their imprisonment. While it is true that a violation of the Laws and Customs of War can be charged, it is difficult to see how a very strong case could be developed if these circumstances remain the same. Certainly, a more thorough investigation should be made before a final decision is reached.

IX. NISHIO AND TADA:

~~IX. NISHIO, Toshizo:~~

NISHIO, Toshizo, and TADA, Hayao, were both generals who spent most of their active military careers on duty in China. The writer has previously recommended that these two individuals be released to the Chinese Government if they so desire them. The basis for this recommendation has previously been submitted in two separate reports. Copies of these previous reports are attached hereto as Exhibits A and B.

X. SUSPECTS AGAINST WHOM CHARGES CANNOT BE SUSTAINED:

1. AMAU, Eiji.

AMAU was the subject of a previous report. A copy of said report is attached hereto as Exhibit C.

2. HONDA, Kumataro:

HONDA was the subject of a previous report. A copy of said report is attached hereto as Exhibit D.

3. SUMA, Yakichiro:

SUMA was the subject of a previous report. A copy of said report is attached hereto as Exhibit E.

Memo: Report of 19 Class "A" War Crimes Suspects (Cont'd)

4. TERASHIMA, Ken:

TERASHIMA was the subject of a previous report. A copy of said report is attached hereto as Exhibit F.

5. KUZUU, Yoshihisa:

A report previously written on KUZUU has never been submitted. The original of this report is attached hereto and marked as Exhibit G.

6. KODAMA, Yoshio:

No "B" or "C" case exists against KODAMA at the present time. It is believed, however, that it is to the interest of the Occupation to hold him as long as possible and as soon as investigators are available, there are several avenues of investigation now open which might develop a "B" or "C" case against this suspect.

7. SASAKAWA, Ryoichi:

SASAKAWA is in the same category as KODAMA. There are several leads available that may allow the development of a "B" or "C" case against him. He should be held as long as possible.

XI. SUMMARY:

The results of this analysis show the following:

1. ~~Eight former~~ Cabinet Ministers against whom there is a possibility of sustaining "B" and "C" Charges.
2. Two non-Cabinet members against whom there is a possibility of sustaining "B" and "C" Charges in the conventional manner.
3. Two suspects who have been guilty of "A", "B", and "C" Charges, but whose crimes were all committed against the Chinese and recommendations have, therefore, been made that their custody be transferred to the Chinese Government.
4. Five suspects against whom no "B" or "C" Charges can be preferred.
5. Two suspects who, on the basis of information now in hand, are not guilty of "B" or "C" crimes, but whom it is deemed advisable to hold for further investigation.

On the basis of this summary, only ten of the 19 suspects could possibly be tried by Legal Section.

Memo: Report of 19 Class "A" War Crimes Suspects (Cont'd)

It has further been indicated that the preliminary investigation has been rather disappointing in developing new and concrete evidence against the remaining suspects. There are also several problems of law that are subject to a later change or clarification. While the basic case remains against the remaining ten suspects substantially as it was originally contemplated, the investigation upon which this report was based has at least developed some angles that are worthy of further consideration.

XII. RECOMMENDATIONS:

It is recommended that this report be submitted to a small panel of competent attorneys; that a careful examination be made of the substance for the purpose of a de novo reconsideration of the entire project; and that as many comments and criticisms as possible be registered with the idea of strengthening the theory of the case and the evidentiary presentation thereon.

Incls. - 7

L. P. B. LIPSCOMB
PROSECUTING ATTORNEY

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

2 November 1947

MEMORANDUM:

SUBJECT : PROPOSED PLAN OF PROCEDURE AGAINST CERTAIN
NAMED MAJOR WAR CRIMINALS, NOW IN CUSTODY
AND NOT UNDER CHARGES, AND OTHERS.

1. INTRODUCTION.

Fifty-one so-called "Class A" War Criminal suspects were not placed on trial before the International Military Tribunal of the Far East but held in prison or under house arrest for disposition at a later time. Through several processes of screening by various agencies the original group has now been reduced to nineteen and the balance released from confinement.

The International Prosecution Panel, originally charged with the duty of prosecuting cases against this type of War Criminal Suspect, has now released their control over these suspects to Legal Section, SCAP, and requested that this Section proceed with the preparation and prosecution of cases, if any exist, against these individuals.

This brochure will attempt to analyze the various factors involved and present a plan upon which Legal Section, SCAP, can proceed to facilitate the disposition of these cases and others which are now under the present jurisdiction and control of Legal Section.

2. CLASS "A", "B", and "C" CRIMES.

The first difficulty arises due to the lack of jurisdiction in Legal Section to prosecute crimes in the Class "A" category. This authority was apparently delegated by Presidential Executive Order to the IMTFE. Thus individuals who were originally held for their suspected part in the "planning, preparation, initiation, or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing" must now be considered from an entirely different standpoint.

Legal Section has analyzed the evidence against the suspects strictly by the standards of Class "B" crimes, violation of the laws and customs of war, and Class "C" crimes, crimes against humanity. This may well prove to be a blessing in disguise. The ramifications in proving a Class "A" crime are enormous. There is practically no limitation on the evidence either in quantity, quality, or time. In "B" and "C" cases the issue can be more or less restricted to specific overt acts on the part of the accused.

3. RESULT OF THE ANALYSIS IN REGARD TO THE NINETEEN SUSPECTS.

Twelve of the nineteen suspects, on the evidence now in hand, can be charged with Class "B" or "C" crimes. These twelve are:

~~TOYODA, SOEUM~~
✓ ANDO, Saburo
✓ KODAMA, Yoshio
✓ SASAKAWA, Ryoichi
✓ KISHI, Shinsuke
✓ TADA, Hayao (Shun)
✓ TANI, Masayuki
✓ NISHIO, Toshizo
✓ ABE, Genki
✓ AOKI, Kazuo
✓ ISHIHARA, Koichiro
✓ IWAMURA, Michiro
TERASHIMA, Ken
✓ GOTO, FUMIO

The following seven cannot be charged with "B" or "C" offenses at the present time:

✓ AMAU, Eiji
✓ HONDA, Kumataro
✓ KUZUU, Yoshihisa
✓ GOTO, Fumio
✓ TAKAHASHI, Sankichi
TOYODA, Soemu
✓ SUMA, Yakichiro
✓ OHAWA,

4. OTHER MAJOR WAR CRIME CASES NOW IN LEGAL SECTION.

There are a series of cases now under the process of preparation that cannot well be tried before an Eighth Army Commission as they are now constituted. An analysis will be

made of these cases at a later point in this outline. It is believed that the best results can be obtained by SCAP establishing a new form of Military Tribunal for the disposition of this combined class of cases. In an accompanying brochure the proposed Tribunals are described in detail and they will not be referred to again in this outline. One Tribunal will handle each of the six classes of cases later to be described.

5. DESCRIPTION OF PROPOSED CASE CATEGORIES.

There will be six classes of cases within which trials will be held. All perpetrators under each class can be combined in either common or joint trials. Suspects who are among the 19 previously-mentioned former Class "A" perpetrators will be indicated by an asterisk. The classes are:

a. Former Members of the Imperial Japanese Cabinet:

~~Former members of the Japanese Cabinet now in custody and not yet tried will be charged with "B" or "C" class crimes only.~~ The charge will be substantially the same as is now provided in Class "B" cases that "the following-named Japanese, formerly a member of the Imperial Japanese Government at the time and places set forth in the specifications attached hereto did violate the Laws and Customs of War and commit high crimes against humanity".

The specifications will allege the detailed acts complained of against the accused. The general type of overt acts to be charged will be as follows:

- (1) Participating in Cabinet decision to make an illegal declaration of war against the United States and its allies.
- (2) Participating in the Cabinet decision to make a sneak attack upon Pearl Harbor and Singapore.
- (3) Participating in the Cabinet decision to import Chinese slave labor into Japan and any and other specific acts in violation of the Laws and Customs of War in which an accused participated as a member of the Japanese Cabinet. Secondly, specifications

will allege responsibility on the part of the individual Cabinet minister for ordering, authorizing, and permitting the Commanders-in-Chief of the several Japanese Naval and Military forces in each of the several theaters of war in which Japan was then engaged, and the officials of the Japanese War Ministry, and the persons in charge of each of the camps and labor units for Prisoners of War and civilian internees in territories of or occupied by Japan and the military and civil police of Japan, and their respective subordinates frequently and habitually to commit the breaches of the Laws and Customs of War, against the armed forces of the countries hereinafter named and against many thousands of Prisoners of War and civilians then in the power of Japan belonging to the United States, the British Commonwealth of Nations, the Republic of France, the Kingdom of the Netherlands, the Commonwealth of the Philippines, the Republic of China, the Republic of Portugal, and the Union of Soviet Socialist Republics.

Members of the Japanese Cabinet now in custody who will be so charged and tried are:

GOTO, FUMIO
*ANDO, Saburo
*KISHI, Shinsuke
*TANI, Masayuki
*ABE, Genki
*AOKI, Kazuo
~~*NISHIMURA, Koichiro~~
*IWAMURA, Michiro
*TERASHIMA, Ken

b. The Chinese Slave-Labor Cases:

From 1942 to 10 September 1945, the Japanese Government violated the Laws and Customs of War and committed high crimes against humanity by the importation into Japan of Chinese nationals, noncombatant civilians, to work in Japanese industries as forced slave labor. This violation was first effected on 10 November 1942 by Cabinet Order No. _____

and the following-named members of the Japanese Cabinet, not now on trial before the International Tribunal of the Far East and presently held under arrest as major war criminals, did order, authorize, and permit the said illegal act:

*TANI, Masayuki, Foreign Minister

*IWAMURA, Michiro, Minister of Justice

*KISHI, Shinsuke, Commerce and Industry

*TERASHIMA, Ken, Communications Minister

*AOKI, Kazuo, Greater East Asia Minister

*ANDO, Kisaburo, Minister Without Portfolio

In February of 1944, the Ministers and Vice Ministers of the following-listed Ministries were responsible for the issuance of the Rules and Regulations and execution of the said policy with respect to the importation of Chinese slave labor into Japan:

*ANDO, Kisaburo, Home Minister

KARASAWA, Toshiki, Vice Home Minister

*UCHIDA, Shinya, Agriculture and Commerce Minister

*SHIGEMASA, Seishi, Vice Minister of Agriculture and Commerce. (This Ministry was charged with the duty of feeding Chinese slave labor.)

*KISHI, Shinsuke, Vice Minister of Munitions

*AOKI, Kazuo, Greater East Asia Minister

YAMAMOTO, Kameichi, Vice Minister, Greater East Asia.

KOIZUMI, Chikahiko, Welfare Minister

TAKAI, Muratsugu)
AIKAWA, Katsuroku) Vice Ministers of Welfare

YAMAZAKI, Iwao, Vice Home Minister

HIROSE, Hisatada, Minister of Agriculture
and Commerce; Minister of
Welfare

SHIMADA, Toshio, Minister of Agriculture
and Commerce

FUJIWARA, Ginjiro, Munitions Minister

YOSHIDA, Shigeru, Munitions Minister

TAKEUCHI, Kakichi, Vice Minister of Munitions

MAEDA, Yonezo, Minister of Welfare

NAKAMURA, Keinoshin, Vice Minister of Welfare.

TAKEUCHI, Shimpei, Vice Greater East Asia Minister.

The charge under this class of cases will also include all individuals in the Government, industry, and Army who implemented, put into effect, and administered the Chinese slave-labor program.

c. Field Commanders:

Two field commanders from the Manchurian-Chinese theater of operations are now in custody.

*NISHIO, Toshizo, Former Chief, General Staff, Kwantung Army; Commander of the Second Army in North China; and Commander-in-Chief of the Expeditionary Forces in China; will be tried on command responsibility for atrocities committed by his troops during his service in China and other violations of the Laws and Customs of War.

*TADA, Hayao, former Chief of Staff, 16th Division, Manchuria; Commander of the 14th Heavy Field Artillery Brigade; Commander, North China Garrison; Commander, 11th Division; Commander-in-Chief, Japanese Expeditionary Forces in North China will be charged with command responsibility for atrocities committed by his troops in China and for other violations of the Laws and Customs of War.

Additional field commanders in the Manchuria and Chinese incident, not desired by the Chinese Government, can be tried under this same category for atrocities committed by their troops and other violations of the Laws and Customs of War.

d. Ultimate Responsibility for Treatment of Prisoners of War and Internees:

Throughout every theater of operations in War Crimes trials, the lower echelons of perpetrators responsible for the ill-treatment of Prisoners of War and internees have been and are being tried and convicted. The culmination of this series of trials can best be effected by consolidation of cases against Japanese commanders and officials above the level of area commanders up to, and including, the War Ministry and Cabinet, who were charged with the duty and responsibility of administering the Prisoner of War and internee program, in a common trial to finally and ultimately conclude this class of cases.

e. Submarine Warfare Cases:

A series of cases arising out of Japanese submarine activity in the Indian Ocean have not yet been tried. Members of the Allied armed forces and civilians were ruthlessly and brutally slaughtered by submarine commanders and crews after the ships were torpedoed. Many of the perpetrators in the lower echelons are now in custody. Investigation has indicated that this entire program of submarine activity was the result of an order issued by the Admiralty. Responsibility should also extend to the Cabinet. It is believed that these cases can best be disposed of by a vertical consolidation of all responsible parties from the highest to the lowest echelon.

f. Opium and Narcotic Cases:

One of the most striking pictures of Japanese aggression in China and Manchuria is found in the ruthless and brutal use by the Japanese of narcotics to enslave, undermine and destroy the Chinese and Manchurian people. A mass of evidence is now available upon which to base specific charges of crimes against humanity on individual Japanese perpetrators.

*ANDO, Saburo, was Vice Chairman of the New Peoples Association in North China, working with the KO-A-IN and Special Service Board organized by the Army. The opium and narcotic traffic in China and Manchuria was controlled and supervised in its entirety by these agencies.

OIKAWA, Genshichi, was the Director of the KO-A-IN and the Ministries of War, Navy, Finance, and Foreign Affairs, and other Ministries were represented on the Board. This was the Ministry Control Agency for opium traffic.

*KODAMA, Yoshio, and *SASAKAWA, Ryoichi, accumulated vast fortunes in China and Manchuria during the war. Information now on hand indicates that substantial portions of this money were obtained through the opium and narcotic trade.

SATOMI, Hajime, an employee of the Special Service Department in China, admits that he personally sold 10,000,000 ounces of opium.

Paul YIP, a naturalized citizen, was Head of the Government Opium Monopoly Board at Fukien and was the unquestioned opium king.

The Mitsubishi Trading Company and the Mitsui Bussan were active in the narcotic trade at Shanghai and had an absolute monopoly on all opium brought from Persia for sale in China. Japanese destroyers escorted the opium ships.

The entire picture of the opium and narcotic traffic in China, Manchuria, Formosa, and Korea can be developed in one common trial and all perpetrators brought before the bar of justice to answer for one of the most heinous crimes against humanity in the history of civilization.

6. CONCLUSIONS:

Upon the adoption of the plan outlined above, the program of War Crimes trials in the Far East can be brought to a successful conclusion. The gaps that have been left open between the activity of the International Military Tribunal of the Far East and the current program of Legal Section, SCAP, will be closed and the perpetrators responsible will have been brought to justice.

MEMORANDUM

17 November, 1948.

17 November 1948.

MEMORANDUM TO: Chief, Legal Section
FROM : Chief, Prosecution, War Crimes Tribunal Branch
SUBJECT : Effect of IMTFE Judgment on the Proposed Trials of Eight Former Japanese War-time Cabinet Ministers.

1. The Prosecution Branch of WCT has always maintained that there was a direct and intimate connection between the Judgment of the IMTFE and the prospective trials of eight former Japanese war-time Cabinet members now in Sugamo Prison or under house arrest on possible B and C war crimes charges. For this reason it has been impossible to give a final opinion on the advisability of holding these subsequent trials and the manner in which they should be conducted until the IMTFE Judgment was available. A careful analysis has now been made of the 1,211 page opinion and verdict. The results of the analysis have a seriously adverse effect on the tentative plans and preparations that had been projected for the trial of these war crime suspects.

2. The first phase that was to be presented in the proposed trials involved the violation of Hague Convention No. III on the part of TOJO's war-time Cabinet in that the Cabinet was responsible for the unlawful opening of hostilities against the United States of America and certain members of the British Commonwealth of Nations. The terms of Hague Convention No. III are short, clear and specific. It provides:

"The contracting powers recognize that hostilities between themselves must not commence without previous and explicit warning in the form of either a reasoned declaration of war or of an ultimatum with a conditional declaration of war."

The Prosecutor charged with developing this phase of the case was convinced under the evidence then available to him a case could be made against IWAMURA, TERASHIMA and KISHI on the violation of this convention. The liability of these Cabinet ministers was predicated upon the fact that they took part in:

1. The approval of the opening of hostilities against the United States and Great Britain;
2. Approved the final note sent to the United States on 7 December, 1941; and
3. Signed the formal declaration of war against the United States and Great Britain after the commencement of hostilities.

While it is true that this Convention could be called an international treaty agreement or assurance, it has been incorporated into and is an integral part of the laws and customs of war. The International Prosecution Section in drawing its original indictment

against the major Class A war criminals did not set out a count predicated squarely on Hague III but used the alleged violation of the Hague Convention No. III as a predicate on which to charge the accused with unlawfully killing and murdering certain described persons. This so-called murder group of counts in the Indictment (some not necessarily involving Hague III) are contained in Counts 37 to 52. In the outset of its Judgment, the IMTFE first eliminated all counts involving conspiracy to commit crimes in breach of the laws of war thus eliminating 37, 38 and 44. The Tribunal then disposed of the balance of these counts generally in the following words:

"If, in any case, the finding be that the war was not unlawful then the charge of murder will fall with the charge of waging unlawful war. If, on the other hand, the war, in any particular case, is held to have been unlawful then this involves unlawful killings not only upon the dates and at the places stated in these counts but at all places in the theater of war and at all times throughout the period of the war. No good purpose is to be served, in our view, in dealing with these parts of the offences by way of counts for murder when the whole offence of waging wars unlawfully is put in issue upon the counts charging the waging of such wars." (IMTFE Judgment, page 36)

Had the Tribunal been satisfied with this action and comment insofar as these counts are concerned, no difficulties would have been presented to obtaining in a later trial a definitive verdict on a count laid squarely upon violation of Hague III. Unfortunately, the Tribunal did not remain silent. At a later point in the Judgment in the phase that deals with the Pacific War generally, from page 978 to 989 of the Judgment, they go into an involved statement of facts regarding the termination of negotiations with the United States, Pearl Harbor, Kota Bharu and the Japanese note delivered in Washington on 7 December 1941. As to the final note the Court finds at length:

"Hague Convention No. III of 1907, relative to the opening of hostilities, provides by its first Article that 'The Contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war'. That Convention was binding on Japan at all relevant times. Under the Charter of the Tribunal the planning, preparation, initiation, or waging of a war in violation of international law, treaties, agreements or assurances is declared to be a crime. Many of the charges in the indictment are based wholly or partly upon the view that the attacks against Britain and the United States were delivered without previous and explicit warning in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war. For reasons which are discussed elsewhere we have decided that it is unnecessary to deal with these charges. In the case of counts of the indictment which charge conspiracy to wage aggressive wars and wars in violation of international law, treaties, agreements or assurances we have come to the conclusion that the charge of conspiracy to wage aggressive wars has been made out, that these acts are already criminal in the highest

"degree, and that it is unnecessary to consider whether the charge has also been established in respect of the list of treaties, agreements and assurances - including Hague Convention III - which the indictment alleges to have been broken. We have come to a similar conclusion in respect to the counts which allege the waging of wars of aggression and wars in violation of international law, treaties, agreements and assurances. With regard to the counts of the indictment which charge murder in respect that wars were waged in violation of Hague Convention No. III of 1907 or of other treaties, we have decided that the wars in the course of which these killings occurred were all wars of aggression. The waging of such wars is the major crime, since it involves untold killings, suffering and misery. No good purpose would be served by convicting any defendant of that major crime and also of "murder" eo nomine. Accordingly it is unnecessary for us to express a concluded opinion upon the exact extent of the obligation imposed by Hague Convention III of 1907. It undoubtedly imposes the obligation of giving previous and explicit warning before hostilities are commenced, but it does not define the period which must be allowed between the giving of this warning and the commencement of hostilities. The position was before the framers of the Convention and has been the subject of controversy among international lawyers ever since the Convention was made. This matter of the duration of the period between warning and hostilities is of course vital. If that period is not sufficient to allow of the transmission of the warning to armed forces in outlying territories and to permit them to put themselves in a state of defence they may be shot down without a chance to defend themselves. It was the existence of this controversy as to the exact extent of the obligation imposed by the Convention which opened the way for TOGO to advise the Liaison Conference of 30th November 1941 that various opinions were held as to the period of warning which was obligatory, that some thought it should be an hour and a half, some an hour, some half an hour. The Conference left it to TOGO and the two Chiefs of Staff to fix the time of the delivery of the Note to Washington with the injunction that that time must not interfere with the success of the surprise attack. In short they decided to give notice that negotiations were broken off at so short an interval before they commenced hostilities as to ensure that the armed forces of Britain and the United States at the points of attack could not be warned that negotiations were broken off. TOGO and the naval and military men, to whom the task had been delivered, arranged that the Note should be delivered in Washington at 1.00 P.M. on 7th December 1941. The first attack on Pearl Harbor was delivered at 1.20 p.m. Had all gone well, they would have allowed twenty minutes for Washington to warn the armed forces at Pearl Harbor. But so anxious were they to ensure that the attack would be a surprise that they allowed no margin for contingencies. Thus, through the decoding and transcription of the Note in the Japanese Embassy taking longer than had been estimated, the Japanese Ambassadors did not in fact arrive with the Note at Secretary Hull's office in Washington until 45 minutes after the attack had been delivered. As for the attack on Britain at Kota Bharu, it was never related to the time (1.00 p.m.) fixed for the delivery of the Note at Washington. This fact has not been adequately explained in the evidence. The attack was delivered at 11.40 a.m. Washington time, one hour and twenty minutes before the Note should have been delivered if the Japanese Embassy at Washington had been able to carry out the instructions it had received from Tokyo.

"We have thought it right to pronounce the above findings in fact for these matters have been the subject of much

"evidence and argument but mainly in order to draw pointed attention to the defects of the Convention as framed. It permits of a narrow construction and tempts the unprincipled to try to comply with the obligation thus narrowly construed while at the same time ensuring that their attacks shall come as a surprise. With the margin thus reduced for the purpose of surprise no allowance can be made for error, mishap or negligence leading to delay in the delivery of the warning, and the possibility is high that the prior warning which the Convention makes obligatory will not in fact be given. TOJO stated that the Japanese Cabinet had this in view for they envisaged that the more the margin was reduced the greater the possibility of mishap." (IMTFE Judgment, pp. 985-989)

It is impossible to read the foregoing so-called statement of facts without arriving at the conclusion that it was the Tribunal's studied judgment that had the final note been delivered to Secretary Hull prior to the attack on Pearl Harbor it would have fulfilled the conditions of Hague III in that it was with a reasoned declaration of war or an ultimatum with a conditional declaration of war. This conclusion of the Tribunal is in opposition to the overwhelming mass of testimony both by the United States and Allied authorities and Japanese authorities as to its meaning and purport. Far from being a declaration of war or an ultimatum, most authorities are in agreement that it did not even constitute the termination of diplomatic relations between the two powers. But whatever may be the true meaning of this final note as a matter of law the prosecution in any subsequent case would be placed in an almost impossible position in attempting to offset the judgment and findings of fact of this august Tribunal.

Further it is implied in the finding that the members of the Cabinet other than TOJO are without fault insofar as the delivery of this final note is concerned and the subsequent opening of hostilities against the United States and the British Commonwealth of Nations.

As far as is now known by this Branch the Cabinet had no knowledge whatsoever that hostilities were going to commence at Kota Bharu at 11.40 a.m., Washington time. Many contingencies were considered that could arise from certain findings by the IMTFE but it was never dreamed that an interpretation of Hague Convention III in relation to the opening of hostilities against the United States and the British Commonwealth of Nations could be so confused and complicated. Even if it were possible to establish a violation of Hague III in accordance with the original plan, a further effect of this finding by the IMTFE would be to reduce to nominal or nothing any sentence that might be imposed upon one of the accused for having violated this Convention.

3. The second phase to be presented involves Cabinet responsibility for the treatment of prisoners of war and civilian internees and the general atrocities committed by the Japanese armed forces. This phase was laid on the basic premise that under the Constitution of Japan members of the Japanese Cabinet were the ultimate governing power of the country and therefore charged with certain fundamental duties and obligations upon which they could be found criminally responsible for both acts of commission and omission. The nature of this responsibility was believed to be both general and specific. In developing this phase it was proposed to lay out the entire picture of unlawful acts committed by the Japanese armed forces and civilian populace against members of the armed forces, civilians and prisoners in every theater in which the war was waged between the period December 1941 and August 1945. The International Military Tribunal for the Far East in discussing law involved in the beginning of its Judgment was in whole-hearted agreement with the basic principle set forth above. It stated:

"Prisoners taken in war and civilian internees are in the power of the Government which captures them. This was not always the case. For the last two centuries, however, this position has been recognized and the customary law to this effect was formally embodied in the Hague Convention No. IV in 1907 and repeated in the Geneva Prisoner of War Convention of 1929. Responsibility for the care of prisoners of war and of civilian internees (all of whom we will refer to as "prisoners") rests therefore with the Government having them in possession. This responsibility is not limited to the duty of mere maintenance but extends to the prevention of mistreatment. In particular, acts of inhumanity to prisoners which are forbidden by the customary law of nations as well as by conventions are to be prevented by the Government having responsibility for the prisoners.

"In the discharge of these duties to prisoners Governments must have resort to persons. Indeed the Governments responsible, in this sense, are those persons who direct and control the functions of Government. In this case and in the above regard we are concerned with the members of the Japanese Cabinet. The duty to prisoners is not a meaningless obligation cast upon a political abstraction. It is a specific duty to be performed in the first case by those persons who constitute the Government. In the multitude of duties and tasks involved in modern government there is of necessity an elaborate system of subdivision and delegation of duties. In the case of the duty of Governments to prisoners held by them in time of war those persons who constitute the Government have the principal and continuing responsibility for their prisoners, even though they delegate the duties of maintenance and protection to others.

"In general the responsibility for prisoners held by Japan may be stated to have rested upon:

- (1) Members of the Government;
- (2) Military or Naval Officers in command of formations having prisoners in their possession;
- (3) Officials in those departments which were concerned with the well-being of prisoners;
- (4) Officials, whether civilian, military, or naval, having direct and immediate control of prisoners.

"It is the duty of all those on whom responsibility rests to secure proper treatment of prisoners and to prevent their ill-treatment by establishing and securing the continuous and efficient working of a system appropriate for these purposes. Such persons fail in this duty and become responsible for ill-treatment of prisoners if:

- (1) They fail to establish such a system.
- (2) If having established such a system, they fail to secure its continued and efficient working.

"Each of such persons has a duty to ascertain that the system is working and if he neglects to do so he is responsible. He does not discharge his duty by merely instituting an appropriate system and thereafter neglecting to learn of its application. An Army Commander or a Minister of War, for example, must

"be at the same pains to ensure obedience to his orders in this respect as he would in respect of other orders he has issued on matters of the first importance.

"Nevertheless, such persons are not responsible if a proper system and its continuous efficient functioning be provided for an conventional war crimes be committed unless:

- (1) They had knowledge that such crimes were being committed, and having such knowledge they failed to take such steps as were within their power to prevent the commission of such crimes in the future, or
- (2) They are at fault in having failed to acquire such knowledge.

"If, such a person had, or should, but for negligence or supineness, have had such knowledge he is not excused for inaction if his Office required or permitted him to take any action to prevent such crimes. On the other hand it is not enough for the exculpation of a person, otherwise responsible, for him to show that he accepted assurances from others more directly associated with the control of the prisoners if having regard to the position of those others, to the frequency of reports of such crimes, or to any other circumstances he should have been put upon further enquiry as to whether those assurances were true or untrue. That crimes are notorious, numerous and widespread as to time and place are matters to be considered in imputing knowledge.

"A member of a Cabinet which collectively, as one of the principal organs of the Government, is responsible for the care of prisoners is not absolved from responsibility if, having knowledge of the commission of the crimes in the sense already discussed, and omitting or failing to secure the taking of measures to prevent the commission of such crimes in the future, he elects to continue as a member of the Cabinet. This is the position even though the Department of which he has the charge is not directly concerned with the care of prisoners. A Cabinet member may resign. If he has knowledge of ill-treatment of prisoners, is powerless to prevent future ill-treatment, but elects to remain in the Cabinet thereby continuing to participate in its collective responsibility for protection of prisoners he willingly assumes responsibility for any ill-treatment in the future.

"Army or Navy Commanders can, by order, secure proper treatment and prevent ill-treatment of prisoners. So can Ministers of War and of the Navy. If crimes are committed against prisoners under their control, of the likely occurrence of which they had, or should have had knowledge in advance, they are responsible for those crimes. If, for example, it be shown that within the units under his command conventional war crimes have been committed of which he knew or should have known, a commander who takes no adequate steps to prevent the occurrence of such crimes in the future will be responsible for such future crimes.

"Department Officials having knowledge of ill-treatment of prisoners are not responsible by reason of their failure to resign; but if their functions included the administration of the system of protection of prisoners and if they had or should have had knowledge of crimes and did nothing effective, to the extent of their powers, to prevent their occurrence in the future then they are responsible for such future crimes."
(IMTFE Judgment, pp.28 to 32)

After making this exceptionally fine and adequate statement of the relative duties and obligations of certain individuals and classes and matters of law which should govern the decision in the case, it proceeded at a later point with an exhaustive review of the facts concerning atrocities and conventional war crimes. This review can be found in Part B, Chapter VIII of the Judgment. Among other findings, it found that the Japanese Government condoned ill-treatment of prisoners of war and civilian internees by failing and neglecting to punish those guilty of ill-treatment of the whole by prescribing trifling and inadequate penalties for the offenses, that the Government also attempted to conceal the ill-treatment and murders of the prisoners and internees and in every respect set out a finding of fact against the accused upon which the legal principles stated above could be applied with accuracy and without question. Up to this point nothing more could have been asked as to a definitive statement of the law and an outline of adequate facts.

The damage done in subsequent trials of Cabinet ministers on responsibility for conventional war crimes was achieved entirely in the verdicts. KATA, SHIGEMITSU, SHIMADA, SUZUKI and TOGO were all members of either TOJO's war-time Cabinet or of another Cabinet during the period of the Pacific War. Counts 54 and 55 of the Indictment charge each of them with the responsibility for conventional war crimes; first, by ordering, authorizing and permitting; second, by failing to secure observances of the conventions and laws and customs in war.

If the legal principles established by the Tribunal as a criterion for determining the guilt or innocence of members of the Government, were sound, under the finding of facts, no other conclusion was justified but that the Cabinet members joined in the Indictment were responsible parties under Counts 54 and 55. Such was not the case. KAYA was found not guilty on Counts 54 and 55. He was given a life sentence and the severity of this sentence is predicated upon his long and intimate experience with the conspiracy to wage aggressive war and the waging of aggressive war.

SHIMADA, in addition to being Minister of the Navy during the entire TOJO Cabinet, also served concurrently as Chief of the Naval General Staff from February to July 1944. SHIMADA was found not guilty on Counts 54 and 55. As to SHIMADA's guilt or innocence of war crimes the Tribunal commented:

"Some most disgraceful massacres and murders of prisoners were committed by members of the Japanese Navy in islands of the Pacific Ocean and on survivors of torpedoed ships. Those immediately responsible range in rank from Admirals downward. The evidence, however, is insufficient to justify the finding that SHIMADA is responsible for these murders, that he ordered, authorized or permitted the commission of war crimes or that he knew they were being committed and failed to take adequate steps to prevent their commission in the future".

With deference to the findings and verdicts of the Tribunal it must be stated that if this plenitude of evidence as to naval atrocities and the treatment of the prisoners and civilians by naval personnel is not sufficient to hold the naval member of the Japanese Government responsible in some degree it is most difficult to see how it would ever be possible to hold any member of the Japanese Government responsible. SHIMADA was given a life sentence.

SUZUKI was Chief of Cabinet Planning Board and Minister without Portfolio. He was found not guilty under Counts 54 and 55. Additional consideration will be given to SUZUKI's case in a discussion of a later phase. SUZUKI was given a life sentence.

TOGO was Foreign Minister and Minister for Overseas Affairs under TOJO for only a short period of time but during the critical phase preceding Pearl Harbor and after Pearl Harbor to March 1942. He was later Foreign Minister and Greater East Asia Minister under SUZUKI. He was found not guilty on Counts 54 and 55. His sentence was 20 years.

SHIGEMITSU was Foreign Minister under TOJO and later under KOISO from April 1943 to April 1945. He was found guilty on Count 55. The reason for this particular finding will be discussed under a later phase. He was sentenced to seven years with credit being given for time already served.

The greatest damage that is done to prospective cases by the above findings is not to be found in the sentences that were given but in the fact that they were completely ^{exonerated} from B and C charges of the Indictment. A finding of guilty with a light sentence would have presented a slight handicap but one that could be overcome by the addition of new and original evidence. However, such new and original evidence as now exists does not establish a casual relationship between the atrocities and the ministers. Unless a direct causal relationship is established, if the decision of IMTFE is to govern, it would be utterly impossible to establish guilt under this phase.

On the basis of investigations to date, with the possible exception of ABE, ANDO, AOKI and TANI, there is only a remote possibility of obtaining a direct causal connection between the ministers and the atrocities.

4. The third phase would have involved an introduction of allied protests and diplomatic correspondence in regard to violations by Japan of the laws and customs of war. In all there were over 3,000 items filed during the Pacific War. A large number of these protests were introduced before the IMTFE. The Judgment devotes some 19 pages to a discussion of this correspondence and outlines the manner in which it was received in Japan and circulated through the various ministries and departments concerned. The Tribunal found as a fact that through these protests and by other means, including broadcasts which were recorded by the Japanese Foreign Office, the Japanese Government was placed on notice as to violations of the laws and customs of war by the armed forces of Japan.

Further, the testimony and evidence of the representatives of the Protecting Power under the Geneva Conventions was set out to show that the Japanese Government consistently refused to supply the information and do those other acts that were required under the terms of the Convention with reference to prisoners of war and civilian internees. A careful examination of the verdicts in regard to the individual accused reveals that TOGO and SHIGEMITSU (Hiroshi) after the outbreak of the Pacific War, were the only two Cabinet members against whom these protests served as agencies for putting the individual members of the Government on notice as to the violations of the laws and customs of war.

SHIGEMITSU was found to have received grave protests regarding the inhuman treatment of prisoners and refusal to allow the Protecting Power to inspect, interview and be informed regarding prisoners. In the verdict the Tribunal went so far as to say:

"We do no injustice to SHIGEMITSU when we hold that the circumstances, as he knew them, made him suspicious that the treatment of prisoners was not as it should have been. Indeed a witness gave evidence for him to that effect. Thereupon, he took no adequate steps to have the matter investigated, although he, as a member of the Government, bore overhead responsibility for the welfare of the prisoners. He should have pressed the matter, if necessary to the point of resigning, in order to quit himself of a responsibility which he suspected was not being discharged."

For these reasons SHIGEMITSU was found guilty of Count 55. Clearly here the Tribunal had at last applied the legal principles it set forth in the outset of its opinion but since those principles are applied only to SHIGEMITSU and to no other member of the Government it is difficult to see how this one isolated application could be advantageous in a subsequent trial.

TOGO was also a Foreign Minister but the Court held that at the time of his resignation atrocities committed by the Japanese troops had not become so notorious as to permit knowledge to be imputed to him. He was acquitted on count 55.

It would appear that both SHIMADA, the Navy Minister, and OKA, the Chief of the Military Affairs Bureau of the Navy and later Vice Minister of the Navy, were exonerated from any and all guilt in regard to protests made as to violations of the laws and customs of war on the part of naval forces since there was a finding of not guilty as to both of them on Count 55. SATO, who held the position of Chief of Military Affairs Bureau of the War Ministry from April 1942 to December 1944, through whom all protests in regard to the Japanese Army would necessarily be channelled, was exonerated on Count 55.

The Tribunal did not see fit to impute knowledge to any other members of the Government as a result of these protests. In a subsequent trial it may be possible to give the Court a more accurate picture as to the exact channelling and handling of these allied protests but in spite of more detailed evidence it will be most difficult to offset the adverse findings of fact in regard to the individual accused in the IMTFE trial as set forth above.

5. The fourth phase, a short one, was designed around a Planning Board decision authorizing the use of prisoners of war labor in work directly connected with the war effort in Japan. SUZUKI was President of the Planning Board and Minister Without Portfolio in the TOJO Cabinet at the time this Planning Board decision was made. The evidence in regard to this decision was in controversy but the Tribunal reviewed it in the judgment. In the verdict SUZUKI was found not guilty on Counts 54 and 55. The Prosecution Branch believed that this decision was an unlawful act on the part of ABE, who was vice-chief of the Planning Board at the time and that knowledge of the decision was actual or imputed on the part of the Cabinet. If there is no guilt on the part of SUZUKI, it is difficult to see how it could be established against anyone else.

6. The fifth phase would have involved the opium and narcotic traffic in China and Manchuria charged as a crime against humanity for which the Japanese Cabinet should be held responsible in the same manner for which it would be responsible for prisoners of war,

civilian internees and atrocities generally. The IPS Indictment did not contain a count in regard to narcotics. The theory adopted by the prosecution was that the development of the opium and narcotic traffic in China and Manchuria was part of the waging of aggressive war both in supplying funds for Japan and its puppet governments and in destroying and undermining the will to fight on the part of the Chinese victims. The Tribunal made a finding of fact in regard to the traffic in narcotics and held that the Economic Division of the Asia Development Board and the Japanese Army were both responsible for the furtherance of this traffic. It is not believed that on the basis of evidence now available any general responsibility could be laid on the Japanese Cabinet for the furtherance of this traffic as a crime against humanity. In order to establish this premise a specific and causal responsibility would have to be made out. This could possibly be done only in the case against AOKI whose Greater East Asia Ministry absorbed or operated the Asia Development Board.

7. The sixth phase is only incidentally involved by the DMTFE verdict. This phase is concerned with the importation of slave labor into Japan from occupied territories and their subsequent mistreatment. It primarily involves Chinese nationals. Seven of the eight Cabinet ministers are either directly or indirectly involved. The verdict will place upon the prosecution a heavier burden as to the degree of proof necessary to establish responsibility on the part of the individual ministers.

8. The general plan upon which all of the cases were designed was to first present the phases as outlined above. After the presentation of the phases the individuals would then be taken in turn. With time limitations and lack of personnel, it was absolutely essential that this course be adopted.

While it was anticipated that some shift and change would have to be made to conform with the DMTFE verdict, the extent of the damage that was done to the plan was not foreseen! To go back through the voluminous mass of evidence involved in each of the phases and segregate therefrom the material which specifically affects an individual will require an enormous number of man hours on the part of attorneys and will necessarily require a staff much larger than that now available to the prosecution branch if the 45 day deadline is to be met. It is entirely possible that the situation would have worked itself out had Legal Section not been suddenly confronted with new deadlines and time limitations imposed by virtue of the War Department Radio of 15 September.

9. It is believed that an alternative method of procedure must be adopted if the subsequent trials of these Cabinet ministers are to be conducted in a manner that will do the fullest credit to the attorneys involved, the chief of Legal Section, Supreme Commander for the Allied Powers, and the various members of the various allied nations who have a direct interest in the outcome of the trials. Without a more thorough investigation and examination, it is impossible to suggest at this time whether the alternative method that will now be proposed can accomplish the desired results.

10. The original plan was designed on the assumption that the equality of responsibility on the part of each accused concerned, made it advantageous to introduce evidence against all as a class - rather than to treat them individually. It will now be necessary to take each individual case and let it stand or fall on its own merits, and to only consider two or more together when evidence as to overt acts so involves them.

11. A period of at least two weeks or more will be required before any determination can be made as to whether this alternative method will prove worthwhile. On the information now in hand, it is certain that no case could be made insofar as at least four of the eight accused are concerned.

12. It is the opinion of this branch that the substance of the judgment of the International Tribunal for the Far East has so adversely affected the original phase plan upon which it was contemplated the trials would proceed that serious consideration should be given to discarding this plan in toto. While the severity of sentence is not the most important consideration in trying war criminals, it is certainly an element that must be taken into account when the time involved, the amount of work necessary and the cost, is balanced against the results that can be obtained.

13. It is recommended:

(a) That the original plan of procedure for the prosecution of the cases against the eight Cabinet members, upon which this branch has been proceeding from the outset, be discarded.

(b) That a two week period be allowed for re-consideration and re-examination of each individual to determine the advisability of placing the particular accused on trial in a common rather than a joint trial.

L.P.B. LIPSCOMB
Chief of Prosecution Branch
WCT Division.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

5 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: TADA, Hayao

I. PRESENT STATUS:

Subject has been under house arrest since 15 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the twenty (20) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 7 June 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject's custody be transferred to the Chinese Government for trial in China on possible Class "A", "B", and "C" charges.

Memo: TADA, Hayao (Cont'd)

V. DETAILS UPON WHICH THE RECOMMENDATION IS BASED:

1. Pertinent curriculum vitae:

Chief of Staff, 16th Division (Manchuria)	Aug. 1929 - April 1931
Major General, attached to Kwantung Army Headquarters, concurrently Councillor to Minister of War, Manchukuo Government.	1932 - 1934
Commander, North China Garrison	Aug. 1934 - April 1936
Commander, 11th Division (in China)	April 1936 - Aug. 1937
Vice-Chief of General Staff and concurrently Director of Army Staff College.	Aug. 1937 - Aug. 1938
In Manchuria.	Aug. 1938 - 1939
Commander-in-Chief, Japanese Expeditionary Forces in North China.	1939 - July 1941
General and Member of Supreme War Council.	July 1941
Retired.	September 1941

2. Subject was placed on the reserve list prior to Pearl Harbor and subsequent to his retirement he held no military commands or staff position. It is not believed that his membership on the Supreme War Council is in itself sufficient to predicate charges and sustain a case for "B" or "C" war crimes.

3. There can be little doubt but that subject is guilty of "B" and "C" crimes in Manchuria and China. Due to the relationship of the Army to the political situation existing in Manchuria and China, it can be further surmised that subject was guilty of "A" crimes during his service in China.

Memo: TADA, Hayao (Cont'd)

4. In one of the interrogations of subject, he admitted that as Vice-Chief of Staff, he prepared all the plans for the Japanese conquest of Nanking, Hankow and Canton.
5. It is submitted that the nature and character of the possible war crimes committed by this subject do not justify a trial by a tribunal financed by and composed of almost exclusive United States personnel. Further, a commission so constituted, under the present authority of SCAP, could not consider any possible "A" crimes that might have been committed by subject, whereas no such handicap exists in a trial that would be conducted under the exclusive jurisdiction and control of the Chinese Government.

L. P. B. LIPSCOMB
PROSECUTING ATTORNEY

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

5 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: HONDA, Kumataro

I. PRESENT STATUS:

Subject has been under house arrest since 1 December 1945 as a Class "A" war crime suspect. His address is 1102, 7-Chome, Kamime-Guro, Meguro-Ku, Tokyo, Japan.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the twenty (20) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 17 May 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be released from custody immediately.

Note: It is possible that the Chinese Government may be interested in subject due to his service as Ambassador to the Nanking puppet government.

Memo: HONDA, Fumataro (Cont'd)

V. DETAILS UPON WHICH THE RECOMMENDATION IS BASED:

1. Pertinent curriculum vitae:

Born 18 December 1874.

Served in various capacities in the Foreign Ministry and diplomatic corps of the Japanese Government.	1895 to 1926
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Retired.	1926
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Ambassador Extraordinary and Plenipotentiary to the Nanking puppet government.	Dec. 1940 to Jan. 1941
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Diplomatic Advisor to Foreign Ministry.	May 1944 to May 1945
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2. Subject had what appears to be a long and honorable career in the Japanese foreign service prior to his retirement in 1926.
3. During his retirement, from 1926 to 1940, he held no official position and devoted most of his time to writing and lecturing on diplomatic subjects as a member of the Kokuhonsha (National Foundation Society). Nothing that he wrote or said in this interim could in any sense be construed to constitute a possible "B" or "C" crime.
4. There is no evidence that any of his activities as Ambassador to the Nanking puppet government were of such a nature as to make him suspect to "B" or "C" crimes. The reviewing authorities at the International Prosecution Section were of the opinion that the evidence was wholly insufficient to sustain a Class "A" indictment against subject. It was further believed that additional investigation would be of no value.
5. There is a possibility that the Chinese Government might be interested in subject for his activities in China during 1940 to 1942, but it is this writer's opinion that intense investigation of the subject during this period could not develop evidence of "B" or "C" crimes that would justify subject's prosecution before an American military commission.

Memo: HONDA, Kumataro (Cont'd)

6. Subject's relationship to the Foreign Ministry as Advisor in 1944 and 1945 did not place him in the Ministerial or Cabinet level and he could not have had any part in decisions on the formation of policy and the execution thereof. It is not believed that subject could have possibly committed any "B" or "C" crimes during this period.

L. P. B. LIPSCOMB
PROSECUTING ATTORNEY

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

5 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: SUMA, Yakichiro

I. PRESENT STATUS:

Subject has been under house arrest since 6 December 1945 as a Class "A" war crime suspect. His address is 101 Ni-chome, Ogikubo, Tokyo, Japan.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the twenty (20) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 22 April 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be released from custody immediately.

Memo: SUMA, Yakichiro (Cont'd)

V. DETAILS UPON WHICH THE RECOMMENDATION IS BASED:

1. Pertinent curriculum vitae:

Second Secretary, Japanese Foreign Ministry, on duty in China.	Oct. 1927 to Jan. 1930
Secretary in the Government General of Formosa.	Feb. 1930 to July 1932
Subject held various diplomatic posts in China.	1932 to 1937
Councillor, Japanese Embassy, Washington.	April 1937 to July 1939
Chief of the Information Bureau of the Foreign Ministry.	Oct. 1939 to Dec. 1940
Envoy Extraordinary and Minister Plenipotentiary, Japanese Legation, Madrid.	Dec. 1940 to Aug. 1945

2. Subject is a career diplomat who held many and varied posts in the Japanese foreign service. There is no indication in the files that he could have been guilty of "B" or "C" offenses while serving his long tours of duty in China.
3. He spent the entire war period as Ambassador to Spain and the files reflect no possible "B" or "C" offenses during this tour of duty. The last reviewing authority in the International Prosecution Section did not believe there was sufficient evidence in hand to sustain an indictment against subject as a Class "A" war criminal, although he was of the opinion that further investigation might uncover such evidence as to Class "A" crimes.
4. It is possible that the Chinese Government might be interested in subject in regard to his activities in China, but there is no evidence now in the files that it has ever evidenced such interest.

L. P. B. LIPSCOMB
PROSECUTING ATTORNEY

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

5 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP

SUBJECT: TAKAHASHI, Sankichi

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 15 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the twenty (20) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 9 June 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be released from custody immediately.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

5 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP

SUBJECT: TAKAHASHI, Sankichi

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 15 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the twenty (20) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 9 June 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be released from custody immediately.

Memo: TAKAHASHI, Sankichi (Cont'd)

V. DETAILS UPON WHICH THE RECOMMENDATION IS BASED:

1. Pertinent curriculum vitae:

Commander, First Air Squadron.	April 1929 to Feb. 1932
Vice-Chief of Naval General Staff.	Feb. 1932 to Nov. 1933
Commander-in-Chief of Combined Fleet.	Nov. 1934 to Dec. 1936
Appointed Supreme War Councillor.	December 1936
Placed on the reserve list.	April 1939
Member of the Asia Development Committee.	July 1939
Member of the Greater East Establishment Council.	February 1942

2. Subject, a career naval man, was retired from active duty more than two years before Pearl Harbor.
3. Although he was appointed Supreme War Councillor in 1936, it is not believed that his activity in this capacity is sufficient to justify an indictment on a "B" or "C" charge.
4. His very slight activities during the war as a committee member in Greater East Asia affairs appears to have been nominal and he took no decisive or active part in the formation of Greater East Asia policy. For this activity, he could not be charged with "B" or "C" crimes.
5. The last reviewing authority to submit a recommendation for the International Prosecution Section recommended further limited investigation, but the nature of this investigation involved possible activities that could only constitute Class "A" crimes.

Nemo: TAKAHASHI, Sankichi (Cont'd)

6. Subject was active in the Navy at the inception of and throughout the first years of the Manchurian aggression and at the time of the first Shanghai incident. The Chinese Government has not evidenced any interest in having his custody transferred.

L. P. B. LIPSCOMB
PROSECUTING ATTORNEY

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

5 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: NISHIO, Toshizo

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 12 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the twenty (20) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 2 June 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject's custody be transferred to the Chinese Government for trial in China on possible Class "A", "B", and "C" charges.

Memo: NISHIO, Toshizo (Cont'd)

V. DETAILS UPON WHICH THE RECOMMENDATION IS BASED:

1. Pertinent curriculum vitae:

Chief of Staff, Kwantung Army in Manchuria and concurrently Chief Military Affairs Division, Headquarters, Kwantung Army.	March 1934 - March 1936
Vice-Chief of Army General Staff.	March 1936 - Dec. 1936
Commander, Second Army (in China)	Aug. 1937 - April 1938
Inspector General of Military Education.	April 1938 to Sep. 1939
Commander-in-Chief of Japanese Expeditionary Forces in China, concurrently Commander, Third Army.	Sep. 1939 - Aug. 1941
Appointed Member of Supreme War Council.	March 1941
Placed on the reserve list.	May 1943
Mayor of Tokyo.	July 1944 to Aug. 1945

2. After subject's appointment as a member of the Supreme War Council, he held no active military commands or staff positions. It is not believed that service on the Supreme War Council in itself is sufficient evidence on which to predicate "B" or "C" charges.

3. There can be little doubt but that subject is guilty of "B" and "C" crimes in Manchuria and China. Due to the relationship of the Army to the political situation existing in Manchuria and China, it can be further surmised that subject was guilty of "A" crimes during his service in China.

Memo: NISHIO, Toshizo (Cont'd)

4. It is submitted that the nature and character of the possible war crimes committed by this subject do not justify a trial by a tribunal financed by and composed of almost exclusive United States personnel. Further, a commission so constituted, under the present authority of SCAP, could not consider any possible "A" crimes that might have been committed by subject, whereas no such handicap exists in a trial that would be conducted under the exclusive jurisdiction and control of the Chinese Government.

L. P. B. LIPSCOMB
PROSECUTING ATTORNEY

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION

4 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: AMAU, Eiji

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 12 December 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the twenty (20) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 19 June 1947, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be released from custody immediately.

Memo: AMAU, Eiji (Cont'd)

V. DETAILS UPON WHICH THE RECOMMENDATION IS BASED:

1. Pertinent curriculum vitae:

Secretary and later Councillor to the Japanese Embassy in Soviet Russia.	Sept. 1929-June 1933
Chief of the Intelligence Section of the Foreign Ministry.	June 1933-April 1937
Minister Extraordinary and Plenipotentiary to Switzerland.	April 1937-Aug. 1939
Envoy Extraordinary and Ambassador Plenipotentiary to Italy.	Sept. 1939-March 1941
Vice-Foreign Minister.	Aug. 1941-Oct. 1941
Chief of Cabinet Information Bureau.	April 1943-July 1944

2. Subject is a career diplomat who never ascended the highest rungs in the Japanese diplomatic corps. His greatest claim to infamy rests on the famous "Amau Statement" made to the press on 17 April 1944, wherein the Japanese policy of Asia for the Asiatics and the claim for an absolute Japanese sphere of influence in China was first baldly announced. His statement was not a policy that was originated by subject, but an announcement of policy that had been determined in the Foreign Ministry.
3. The Tri-Partite Pact was negotiated at the time subject was Ambassador to Italy. He has admitted that he was extremely angry at ~~subject~~ because this pact was negotiated without him having any knowledge of what was going on.
4. Subject's position as Chief of the Cabinet Information Bureau was a purely administrative position. He did not have cabinet or ministerial rank and had nothing to do with the formation or execution of high policy in Japan.
5. Reports in the files of the International Prosecution Section are unanimous in that it was not felt subject could be charged with a Class "A" crime on the basis of the evidence then in hand and serious doubt was expressed that additional investigation would develop any evidence upon which a Class "A" charge could be preferred.

AMAU, Eiji (Cont'd)

6. This writer concurs in the opinion that existing evidence is insufficient to charge subject with a Class "A" crime. Examination of all evidence and information does not indicate a single act on the part of subject which makes him suspect to a "B" or "C" crime and it is not believed that additional investigation could develop any evidence of "B" or "C" crimes.

L. P. B. LIPSCOMB,
PROSECUTING ATTORNEY.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

12 March 1948

MEMORANDUM:

TO: Chief, Legal Section, SCAP
SUBJECT: KUZUU, Yoshihisa

I. PRESENT STATUS:

Subject has been incarcerated in Sugamo Prison since 22 November 1945 as a Class "A" war crime suspect.

II. PURPOSE OF MEMORANDUM:

This report is based on the oral request of the Chief, Legal Section, to examine all available evidence against the twenty (20) Class "A" war crime suspects now held in custody to determine whether or not they can be indicted for "B" or "C" war crimes.

III. SOURCES OF MATERIAL EXAMINED:

1. All files and information available in Legal Section.
2. The complete G-2 report, dated 29 April 1945, with reference to subject.
3. All files, records and reports available at the International Prosecution Section of the International Military Tribunal for the Far East.

IV. RECOMMENDATION:

It is recommended that subject be released from custody immediately.

Memo: KUZUU, Yoshihisa (Cont'd)

V. DETAILS UPON WHICH THE RECOMMENDATION IS BASED:

1. Pertinent curriculum vitae:

Born.	1874
Helped organize Kokuryu Kai (Black Dragon Society).	1901
President, Black Dragon Society.	1937 to 1945

2. In addition to subject's lifelong connection with the Black Dragon Society, he was a member of twelve or more other ultra-nationalistic organizations. His entire career has been tied up in the work of these organizations.
3. On 30 May 1943, subject published an open letter in the Nippon Times, "Black Dragon Society Demands Unconditional Surrender by United States and Britain". This long and vitriolic communication is a perfect example of the arrogant jingoistic propaganda that was so long disseminated throughout Japan by the Black Dragon Society.
4. Subject has never held an official position in the Japanese Government and he was in no way connected with the armed forces or any other agency actively engaged in fighting with men, machines or materials. The writer will forgo the expression of an opinion as to whether subject is or is not guilty of Class "A" war crimes. It can be definitely said, however, that there is not one iota of evidence or information upon which a charge for a "B" or "C" crime could be predicated.
5. Due to subject's extreme age and the fact that the International Prosecution Section has recommended *release* release from internment on any possible Class "A" charges, it is with reluctance that this writer now recommends his release from prison.

L. P. B. LIPSCOMB
PROSECUTING ATTORNEY

War Crimes Tribunal Division, Legal Section, is charged with the original responsibility of examining evidence against the former Class A war criminals now incarcerated in Sugamo or under house arrest to determine whether or not indictments would lie against any of these suspects for B or C crimes.

Eight of the 20 suspects now in Sugamo are former members of one or more Japanese cabinets. Three of these eight were members of the TOJO Cabinet at the time of the attack on Pearl Harbor.

In previous memoranda and reports it has been pointed out with reference to possible charges against the Cabinet members that the Convention No. III was violated in that the Imperial Japanese Government unlawfully commenced hostilities against the United States of America and the British Commonwealth of Nations. The attorney assigned to develop this particular phase of the case has made an exhaustive and searching investigation. On the basis of information now in hand, it is believed that a legal and valid case can be established against the three members of the TOJO Cabinet.

But in many respects the evidence on this particular charge will be very weak. There is a very grave doubt as to whether any Cabinet ministers other than TOJO and SHINADA actually knew that the attack would be made upon Pearl Harbor prior to the delivery of the final note by the Japanese Ambassador to the Secretary of State in Washington. While the delivery of this final note can in no sense be taken as an ultimatum, a declaration of war or even a severance of diplomatic relations, a tremendous amount of time and energy was devoted by the defendants before the International Military Tribunal for the Far East to argue that the ignorance of the few in the dock as to the legal effect of the negotiations then going on between the Japanese Foreign Office and the United States and their further ignorance as to the actual time of the attack on Pearl Harbor tended to a great degree to mitigate their guilt, if any guilt was present.

As a legal proposition, it is believed that all members of the TOJO Cabinet, regardless of whether scienter was present or not, are criminally responsible for the attack. But in developing the proof as to this basic proposition, the evidence adduced to support it has indicated that the same individuals are guilty of a much greater crime than the unlawful opening of hostilities. This greater crime is outside the scope of the present jurisdiction of war crimes tribunals and before a final decision is made as to whether the division will proceed only under its original jurisdiction, earnest attention is invited to a consideration of the following.

The basic authority for the trial of war criminals in the Pacific Theater as delineated by SCAP in the directive, dated 5 December 1945, Subject, Regulations Governing the Trials of Accused War Criminals with Amendments Thereto, embraced crimes in three categories A, B and C, which correspond to the crimes in the European Theater known generally as crimes against the peace, common war crimes and crimes against humanity. The so-called A crimes, crimes against the peace or to use the full specific definition "The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing" are included in one sentence but this one sentence charges many separate and distinct crimes and is capable of being broken into several component parts, each of which is a whole crime within itself.

This division is interested in only two of these component parts, the initiation of a war of aggression and the waging of a war of aggression. For the purpose of the present memorandum, the discussion is going to be confined exclusively to the charge initiating a war of aggression.

There is a very basic and fundamental difference in approach by this division to the subject of Japanese war criminals generally and that that was made by the International Prosecution Section of SCAP. The International Prosecution Section was forced to consider the question of Japanese aggression from its inception in the modern history of the

Far East, and after a full consideration of the entire story of Japanese aggression then reach a determination as to what individuals were most responsible for this policy and how these individuals could best be brought to justice. The basic charter of the Tribunal, just as did the basic charter of the Nurenberg Tribunal, permitted the charge of a participation in the common plan or conspiracy for the accomplishment of any of the acts delineated above as A crimes or crimes against the peace.

With the jurisdiction to proceed on a conspiracy or common plan charge, it was natural to then attempt a selection of the arch conspirators and proceed to present a case that would portray the complete picture of Japanese aggression. In drawing indictments presenting the evidence and arguing the reasonable and logical deductions that could be made from the evidence, the emphasis was necessarily placed at all times upon the conspiracy and conspirators. The mere fact that the indictments were so drawn, the evidence so presented, the arguments and inferences so deduced does not in any way indicate or prove that the proposition of individual guilt for war crimes cannot be established by an entirely different approach. The War Crimes Tribunal Division was forced by the circumstances to make an entirely different approach. It was confronted with a fact accomplished. Twenty accused were in jail and the individual himself had to first be examined to determine his possible guilt or innocence rather than to first consider the crime and then determine who was most responsible for its commission. There is a very serious doubt as to whether there can be degrees in responsibility for commission of crime where any person committed an overt act of a criminal nature. The degree would always be a matter of sentence or extent to which the individual must pass to society for his criminal act.

The attorney assigned to develop the unlawful opening of hostilities phase has made exhaustive interrogations and examinations of TERASHIMA and IWANURA, two of the three Pearl Harbor TOJO Cabinet ministers.

Particularly in the case of IWAMURA, who was Minister of Justice during the tenure of the TOJO Cabinet, it appears that a deliberate attempt is being made on his part to admit certain damaging facts concerning crimes which it is not within the jurisdiction of this division to try in order to minimize or contravene his guilt on those crimes for which he knows this division does have jurisdiction. TERASHIMA furnished a considerable amount of evidence to the prosecution; this evidence for the period from October 18, 1941 to December 8, 1941 has little bearing as to his guilt for B or C crimes but definitely establishes his guilt for one or more A crimes. The evidence against TERASHIMA on possible A crimes is equally valid against IWAMURA and OKI.

Without a lengthy discussion in this memorandum for the purpose of establishing certain classes of B and C crimes (and also establishing A crimes), it is necessary to prove the basic place and responsibility of a member of the Japanese Cabinet in relation to the system of government that existed in Japan during the period the alleged crimes were committed. (Tab "A" contains a comprehensive brief on the functions of the Cabinet and the responsibilities of ministers in Japan.)

To commit an overt act in a conspiracy or common plan to accomplish a certain end is vastly different from performing an overt act as an individual in an official position where established law sharply delineates the duties and responsibilities inherent in the position itself.

Regardless of what else might have been done, one thing can be established by an overwhelming weight of credible evidence and that is that the Japanese governmental officials and those with vested interest outside the government scrupulously followed the established forms prescribed by the constitution, usage and custom in Japan and never at any time deviated from them. Under the Japanese constitution, the Cabinet Council occupy the most critical and most responsible position in its relation to the official acts of the Japanese Empire. Acts that may have been wrong morally and otherwise and illegal in their inception were always brought to the proper de jure source, i.e., cabinet for enactment and enforcement. Three agencies, two of them recognized by the Japanese

constitutional system, the other unknown, were mostly involved in committing the overt acts leading up to the initiation of aggressive war against the United States, the British Commonwealth of Nations and the Netherlands East Indies. These were liaison conferences, the Imperial conferences and the Cabinet Council. The Imperial Conferences at the outset can be eliminated because it was purely a formal agency through which the Minister of State let it be known to the Emperor ~~what~~ what unanimous decision had been reached. The Liaison Conferences had no constitutional standing, was unknown under the Japanese law and was a device by which conflicting elements in the Japanese governmental system got together and thrashed out their differences as a committee before coming before the Cabinet Council with decisions upon which they had reached a degree of unanimity. The decisions of a Liaison Conference were in no wise binding upon the Cabinet Council. It was the absolute power of the Cabinet to reject any and all recommendations. On the other hand, an Imperial Conference was forced under the law to accept any and all recommendations. Thus it is seen that the balance wheel upon which the whole structure of the Japanese government turned was in the final analysis a Cabinet Council. Whether or not the individual Ministers of State who composed this council chose to take their legal responsibility as a ~~xxx~~ personal burden or to act as a rubber stamp is immaterial in the light of the positive duties that were delegated to them individually and inherent in the very nature of the office they held.

The TOJO Cabinet was formed on the 18th day of October 1941. Prior to the formation of this Cabinet on the 6th day of September 1941, an important decision had been made by an Imperial Conference. This decision was in fact that in order to secure self-existence and self-defense, Japan with a determination for war with the United States, Britain and the Netherlands would complete her preparations by October, but meanwhile strive to fulfill her demands through diplomatic measures. If negotiations had no hope of being fulfilled by the beginning of October, Japan would immediately determine to wage war against the three Powers. (Exh. 588, Transcript 10,217-8. See Tab "B".) This decision, arrived at during the Third KONOYE Cabinet, was not absolute. It was conditional, and the way was left open for Japan not to go to war against the three Powers.

TOJO caused the fall of the KONOYE Cabinet on October 16, and under memorandum given to him by the Emperor, was requested to form a new Cabinet with slate wiped clean and the question as to whether or not to follow the decision of September 6th be left open for re-examination. It is at this point on October 18th that the three suspects in whom this section is now interested (and one of the suspects who is now at large) enter the scene of action. The evidence as to what occurred within the Japanese Cabinet Council from October 18th to the time of the outbreak of hostilities is best found in the personal notes of one of the Cabinet ministers TERASHIMA taken in his own hands contemporaneously with the meetings of the Cabinet. A translation of these handwritten notes during this period is attached hereto as Tab "D". A new series of Liaison Conferences were instituted. They met on October 23rd, 24th, 25th, 27th, 28th, 30th and meeting of 1st November extended into November 2nd. The results of these Liaison Conferences were submitted to the Cabinet on November 4th (See Tab "B", p. 6 and subsequent.).

The Cabinet adopted the recommendations that were made by the Liaison Conferences. Three alternative plans have been considered:

- (1) To avoid war at any cost. Persevere under difficulties.
- (2) Immediately resolve to open war and concentrate our efforts upon the search of war, diplomacy shall not be attached weight.
- (3) Ask the Emperor to resolve to open war and prepare for it.
(Tab "D", p. 9)

In the meanwhile we engage earnestly in the diplomatic negotiations and continue diplomatic intercourse by means of the influence of military activity and if our aim in diplomacy had been obtained within a certain time, we shall not open war, otherwise we will. The Cabinet on this day unanimously adopted the same conclusion as the Liaison Conferences and chose to follow Plan 3. This action was taken on the part of the TOJO Cabinet after the slate had been wiped clean from the September 6th decision as a new and original act on the part of the Japanese Government for which each Minister of State was inherently responsible. This new national policy was approved on November 5th at Imperial Conference in

the presence of the Emperor and given Imperial sanction (Tab "D", p. 12). At a Cabinet meeting on December 1, 1941, it was determined to open hostilities against the United States, Great Britain and the Netherlands (Tab "D", p. 20).

Examining evidence from an entirely different source. It will be noted that the militarists themselves always conceded that within the Cabinet and only within the Cabinet lay the power to stop proposed hostilities even after the fleets had sailed from the home waters on their mission towards Pearl Harbor (See Tab "E").

It will be noted that on page 3 of "The Campaign of the Pacific war" in dispatch from the Commander-in-Chief of the Combined Fleet of the First Task Fleet, dated 25 November 1941, that the condition is made "Should the negotiations with the U.S. prove successful, the task force shall hold itself in readiness forthwith to return and reassemble." The dispatch from the Chief of the Naval General Staff to the Commander-in-Chief of the Combined Fleet, dated 1 December 1941 (Tab "E", p. 4) has this note: "The commencement of hostilities was decided upon by Cabinet Council of 1 December." The dispatch from the Commander-in-Chief, Combined Fleet, Pearl Harbor, Task Force, dated 2 December 1941, ~~XXXXXXXXXXXX~~ has this note: "The decision to commence hostilities was made by Cabinet Council on 1 December." (Tab "E", p. 5.) On 2 December 1941 from the Chief of the Naval General Staff to the Commander-in-Chief of the Combined Fleet, "The hostile action against the United States of America, the British Empire and the Netherlands shall be commenced on 8 December. Bear in mind that order. If it appears certain that Japanese-American relations will reach an integral settlement prior to the commencement of hostile action, all forces of the Combined Fleet are to be ordered to reassemble and to return to their bases." The military itself was not willing to initiate hostilities without the full approval and consent of the Cabinet Council, and the Cabinet Council through its Foreign Minister, Premier, and as a whole, had the absolute power to stop the designs of the military up until the very moment that the bombs started falling at Pearl Harbor.

The Cabinet was the sole and only agency that had the power to initiate war on the United States, Great Britain and the Netherlands. Others may have conspired for the initiation of war, entered into a common plan leading up to the initiation of war, advocated and preached the initiation of war, but under the facts as we now have them, the inescapable conclusion remains that it was the Japanese Cabinet which in fact did initiate war against the United States, Great Britain and the Netherlands.

The next matter to consider is the relative difference between the initiation of aggressive war and the unlawful opening of hostilities. It is this writer's opinion that while the unlawful opening of hostilities is a very serious and consequential matter, that it can well be argued that in many respects it constitutes a near violation of what might be termed a technical rule of war. To a great degree it is a matter of timing and as has been pointed out in the earlier part of this memorandum, a defense made before the International Military Tribunal for the Far East on behalf of some of the defendants more or less evolved around this question of timing. The basic field manual on the rules of land warfare of the U.S. Army support to a degree this contention. After setting out the substance of Hague Convention No. III requiring a declaration of war or an ultimatum with conditional declaration of war, it adds

"15. Surprise Still Possible -- Nothing in the foregoing rule requires that any particular length of time shall elapse between the declaration of war and the commencement of hostilities. It is still possible, therefore, to make a sudden and unexpected declaration of war and thus surprise an unprepared enemy."

Would the situation at Pearl Harbor have been changed one iota had this rule been scrupulously followed? Every element of surprise would still have been present. (This assumes we do not have the Japanese proper code.)

It is this writer's opinion that the prosecutors who drew the indictment for the International Prosecution Section appreciated this inherent defect in Hague III in regard to the possible enormity of the crime, and thereby conceived what is to him the unique theory of murder which comprises Counts 39 to 52 of the Indictment. (Counts 37 and 38 also allege murder but under a conspiracy theory.)

The basic difference in international law between the initiation of hostilities and the initiation of aggressive war is now accepted under established precedence to be great. The Nurenberg decision which must be accepted at the present moment as the highest authority on the question of war crimes is pointed and specific. At page 16 of the opinion and judgment as appearing in the printed volume published by the United States Government Printing Office in 1947 (See Tab "F"), it is stated "To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole." This writer can add nothing to the above definition as to the enormity of the crime initiating aggressive war. Further, it is believed that it will not be necessary in any subsequent trials to make proof de novo as to the fact that the Japanese Government planned, prepared, initiated and waged a war of aggression. This legal proposition will in all probability be settled finally and completely by the International Military Tribunal for the Far East in their forthcoming opinion and judgment. It will not be necessary in a subsequent trial to prove that the war was aggressive in nature, that is with original proof. It will be sufficient to establish that the accused had a personal responsibility for initiating war.

TOJO, TOGO, KAYA and SHIMADA are defendants before the International Military Tribunal for the Far East.

Authorization for Temporary Overstrength

G-1

Legal Section
Thru: CPS

17 May 1948

1. As approved by the Chief of Staff, 15 May 1948, a temporary overstrength of 39 positions (37 civilian and 2 military) is authorized Legal Section. The following personnel will be transferred to these positions, in grade, from the International Prosecution Section effective on the beginning of the pay period following receipt of this directive:

Arthur A. Sandusky	Attorney	P-6
Smith M. Crowe	Attorney	P-4
Helen G. Lambert	Attorney	P-4
Kurt Steiner	Attorney	P-3
Denzel R. Carr	Chief, Language Division Translator	CAF-14
Alexander Ashton	Executive Officer, Language Division	CAF-12
Edward P. Monaghan	Chief, Investigative Div.	CAF-12
Robert M. Boyd	Legal Translation Supervisor	CAF-11
George R. Koontz	Translator	CAF-11
Arthur Y. Hirayama	Checker	CAF-9
James Hoyt	Supervisor, Legal Translation Analyst	CAF-9
Yoshiaki Ogita	Checker	CAF-9
Henry Shimojima	Investigator	CAF-8
Lillian Anderson	Secretary-Shorthand Reporter	CAF-8
Ingeborg E. Nyden	Administrative Asst.	CAF-7
Betty J. Donnell	Clerk-Stenographer	CAF-7
Louise B. Wiehle	Clerk-Stenographer	CAF-7
Marguerite B. Allen	Clerk-Stenographer	CAF-7
Dinah Braum	Clerk-Stenographer	CAF-7
Toshichika Hara	Clerk-Document Recorder	CAF-7
Raymond M. Kawashima	Clerk	CAF-7
Hiroshi Matsuda	Clerk-Translator	CAF-7
Shichi Asada	Clerk	CAF-6
Herbert Nagatori	Translator-Interpreter	CAF-6
Willianna Settle	Secretary	CAF-6
Frances C. Mattison	Legal Analyst	CAF-6
Marion A. Linhart	Clerk-Stenographer	CAF-6
Nina O. Briggs	Clerk-Stenographer	CAF-6
Jewel E. Newman	Clerk-Stenographer	CAF-6
Lenorae B. Scott	Clerk-Stenographer	CAF-6
Thelma Walker	Clerk-Stenographer	CAF-6
Ethel E. Kajiwara	Clerk	CAF-5
Ann L. Kobel	Clerk	CAF-4
Mary H. Nishida	Clerk	CAF-3
Capt. Turner D. White		
Capt. Steve S. Yamamoto		

Authorization for Temporary Overstrength

G-1

Legal Section

17 May 1948

Thru: CPS

1
(Cont)

2. In addition to the above, the following listed civilian personnel currently assigned to the International Defense Panel, will be integrated into Legal Section, by transfer, without change in manning level:

George F. O. Blewett	Attorney	P-7
Floyd J. Mattice	Attorney	P-7
Alfred W. Brookes	Attorney	P-7
John G. Brannon	Attorney	P-6
Emanuel R. Harris	Attorney	P-6
Ester L. Hoadley	Stenographer	CAF-7
Mary E. Cooke	Stenographer	CAF-6
Charlotte L.H. Hutchinson	Stenographer	CAF-6
Agatha McDermott	"	CAF-5
Frances L. Way	"	CAF-4

3. The following personnel, presently assigned to IMFFE, will be made available to Legal Section on a temporary duty (detail) basis for Court Reporting and Court Interpreting duties. This temporary duty assignment will be for the period prior to rendering of judgement.

Juliam Wolf	Reporter	CAF-12
Lorraine Yelden	Reporter	CAF-12
Antoinette Duda	Reporter	CAF-12
Daphne Spratt	Reporter	CAF-12
Irene Mielman	Reporter	CAF-8
Ann Reichers	Reporter	CAF-8
Robert W. Nafe	Clerk of Courts	CAF-9
E. Kraft	Language Arbitrator	CAF-13
M. R. Anderson	Interpreter	CAF-12
H. Hayaashi	Interpreter	CAF-11
D. Itami	Interpreter	CAF-11
L. Miyamoto	Interpreter	CAF-11
F. Onodera	Interpreter	CAF-11
F. Nagano	Interpreter	CAF-11
J. Sano	Interpreter	CAF-11
Clement O. Jones	Interpreter	CAF-7

4. The action indicated in paragraph 1, above, increasing the temporary overstrength authorization for civilian personnel, Legal Section, establishes the following ceilings:

Authorization for Temporary Overstrength

G-1

Legal Section

17 May 1948

Thru: GPC

1
(Cont)

Authorized Positions	202
Overstrength Positions	<u>37</u>
Total	239

Copies furnished:
IMTFE
IPS

-----W. A. B.-----

AIR MAIL

7 June 1948

151-11

SUBJECT: War Crimes Cases Tried by the United States Army in Shanghai

TO: Supreme Commander
Allied Powers
APO 500, c/o Postmaster
San Francisco, California
ATTN: Legal Section

1. Reference is made to FEC Item 1 of Teleconference of 24 May 1948.

2. A chart listing all war crimes cases tried by the United States Army in Shanghai is inclosed, in partial compliance with your request.

3. A list of war crimes cases tried in Guam is being prepared and will be forwarded to you as soon as it is completed.

FOR THE CHIEF, CIVIL AFFAIRS DIVISION:

1 Incl.
Listing of War Crimes
Cases - Shanghai

EDWARD H. YOUNG
Colonel, GSC
Chief, War Crimes Branch

AIR MAIL

Memo: Report on 19 Class "A" War Crime Suspects (Cont'd)

to sustain this proposition, but it is not in any sense elemental. The peculiar wording of the then existing constitution of Japan, plus the de juri divorcement of the War and Navy Ministries from the cabinet, forces the Prosecution to the final, but tenable, position that the ones who control the purse strings must perforce be able to control the acts of those who would spend the money. It is believed that the difficulties inherent in establishing this proposition can be overcome and that the proof can be adduced to sustain the Charge.

2. The Specifications:

a. Cabinet decisions which were per se violations of the Laws and Customs of War or were crimes against humanity:

In making the proof under this particular specification, it may be well to abridge the use of the term per se. There is a possibility of developing proof that certain Cabinet decisions which may have appeared harmless on their face were actually violations of the Laws and Customs of War or crimes against humanity. It is the writer's opinion, however, that unless we could show scienter on the part of the individuals participating in such a decision, that they would have a good defense. If the particular Cabinet decision was deliberately camouflaged in its words, to charge knowledge of the camouflage, without proof, would be ridiculous. This is a proposition that will require considerable thought and study before a final conclusion can be reached. Of course, the responsibility for wrongful acts would still exist; it would simply have to be established under one of the other two type specifications irrespective of any Cabinet decision.

It had been hoped that many additional per se Cabinet decisions could be discovered in this current search; but on the cursory analysis no per se decision that was not previously contemplated as a possible charge has been discovered, although there are some decisions that can be

Memo: Report on 19 Class "A" War Crime Suspects (Cont'd)

to sustain this proposition, but it is not in any sense elemental. The peculiar wording of the then existing constitution of Japan, plus the de jure divorcement of the War and Navy Ministries from the cabinet, forces the Prosecution to the final, but tenable, position that the ones who control the purse strings must perforce be able to control the acts of those who would spend the money. It is believed that the difficulties inherent in establishing this proposition can be overcome and that the proof can be adduced to sustain the Charge.

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It had been hoped that many additional per se Cabinet decisions could be discovered in this current search; but on the cursory analysis no per se decision that was not previously contemplated as a possible charge has been discovered, although there are some decisions that can be

Memo: Report on 19 Class "A" War Crimes Suspects (Cont'd)

7. TANI, Masayuki:

TANI was Foreign Minister from September 1942 to April 1943 and concurrently held the post of Chief of Cabinet Information Bureau.

It is doubtful whether Class 1 type of specification can be sustained against him.

Under the Class 2 type of specification, although TANI was a minister for a short period of time, there is a mass of evidence connecting him with diplomatic correspondence through neutral nations sent by various allied Powers to protect specific violations of the laws and customs of war and to demand compliance.

The Class 3 type of specification can only cover the nine-month period during which he held Cabinet post.

8. TERASHIMA, Ken:

TERASHIMA was Minister of Railways and Minister of Communications from 16 October 1941 to 8 October 1943.

He is subject to some charges under the Class 1 type of specification.

There is no evidence that he or his subordinates committed any overt acts under the Class 2 type of specification.

He can be charged, as others, for responsibility for Class 3 type of specifications during his tenure in office.

9. METHOD OF TRIAL OF CABINET MEMBERS:

Although the writer is reluctant to make new observations in view of the previous ideas that have been discussed as to best possible method to try these Cabinet ministers, it is now his studied opinion that time, energy, and money can be saved and equal, or better, results be obtained by trying them all in a common trial.

While there is not an absolute coincidence as to their tenure in office, there is a definite continuity and rhythm in the manner, form, and nature of the proof that must be presented against them and the greater bulk of it can be presented against two or more of them concurrently. Exclusive of the

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DOCUMENTS NOS. 1341 - 1575

DOCUMENT NUMBER

EXHIBIT NUMBER

1408	--	UNWCC Report
1409	--	<u>War Criminals</u>
1420	1227	" "
1423	--	
1438	not translated recheck	POW's
1439	" " "	"
1463	--	
1465	1496, 1957, 1958	
1469	1490-93	
1498	--	
1501	--	
1502	2032	
1509	475, 2166, 2167	
1515	--	
1523	--	
1527	--	
1530	1238	
1457	1131, 1139	
1551	--	
1552	3357A-B	
1568	--	
1571	1969	

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DOCUMENTS NOS. 1576 - 1830

DOCUMENT NUMBER

EXHIBIT NUMBER

1576	---	1966*, 1966A
1577	---	1229
1580	---	--
1581	---	--
1582	---	--
1586	---	--
1596	---	--
1613	---	--
1614	---	--
1623	---	--
1627	---	1265
1630	---	1962, 1963, 1964*, 1964A
1635	---	--
1662	---	--
1672	---	--
1681	---	1992
1697	---	--
1700	---	371*
1704	---	326
1705	---	--
1707	---	402
1708	---	345
1712	---	404
1716	---	--
1793	---	1993-97
1802	---	--
1804	---	2031
1810	---	473
1817	---	--

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DOCUMENTS NOS. 1831 - 2194

DOCUMENT NUMBER

EXHIBIT NUMBER

1839	---	--
1867	---	--
1948	---	254
2001-2006	---	--
2007	---	174, 1106
2008-2070	---	--
2099-2103	---	354-358
2104	---	--
2105	---	359
2106-2115	---	331-340
2137	---	540, 541, 1305, 1306, 1310, 1317
2172	---	--

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DOCUMENTS NOS. 2195 - 2475

DOCUMENT NUMBER

EXHIBIT NUMBER

2197	---	--
2200	---	--
2201	---	--
2202	---	--
2117	---	454, 454A
2118	---	209
2119	---	207
2120	---	376
2121-2126	---	--
2127	---	728
2128	---	--
2129	---	725
2130	---	710
2131	---	727
2132	---	726
2133	---	717
2134	---	713
2135	---	185*, 186
2136	---	185
2137	---	540, 541, 1305, 1306, 1310, 1317
2138-2145	---	--
2146	---	749
2147	---	767
2148	---	714
2149	---	756
2150	---	729
2151	---	712
2152	---	722, 3372
2153	---	833
2154	---	--
2155	---	2223*, 2223A, 2281
2156	---	477, 478, 488, 497
2157	---	487, 490, 604
2158-2165	---	--
2166	---	443, 443A
2167	---	--
2168	---	444, 444A
2169	---	350
2170	---	351
2171	---	--
2172	---	--

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DOCUMENTS NOS. 2195 - 2475

DOCUMENT NUMBER		EXHIBIT NUMBER
2173	---	375
2174	---	--
2175	---	1236
2176	---	--
2177	---	467
2178-2190	---	--
2191	---	191
2192-2193	---	--
2194	---	181; 181, Part 1 181, Part 2
2195	---	--
2196	---	851
2197	---	--
2198-2210	---	--
2211	---	200
2212	---	201
2213	---	251
2214	---	180
2215	---	1245A-K
2216	---	1104
2217	---	341
2218	---	342
2219	---	352
2220	---	353
2221	---	343
2222	---	344
2225	---	--
2258	---	--
2295-2296	---	--
2297	---	2029
2313	---	--
2354-2360	---	--
2362	---	1240
2390	---	--
2407	---	2027
2425-2426	---	--
2427	---	2233*, 2233A
2428-2445	---	--

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DOCUMENTS NOS. 2470 - 2701

DOCUMENT NUMBER

EXHIBIT NUMBER

2483	---	1998
2485	---	--
2489-2494	---	--
2580	---	1237
2581	---	1223
2616	---	--
2618	---	1340
2619	---	--
2620	---	1341
2621	---	--
2622	---	1342
2624	---	1339
2647	---	475
2662	---	1891, 1892, 1921-24
2686	---	--
2687-2695	---	2002-2010
2696	---	--
2697-2701	---	2011-2015

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DOCUMENTS NOS. 2702 - 3030

DOCUMENT NUMBER		EXHIBIT NUMBER
2702	---	2028
2703	---	--
2707	---	1438*, 1438A-B
		1446, 1463-65
2709	---	1422
2713	---	1448
2714	---	--
2715	---	--
2716	---	--
2717	---	--
2718	---	1466
2719	---	1400
2720	---	1372
2721	---	1403
2722	---	--
2723	---	1417
2724	---	1402
2725	---	1388
2726	---	1418
2727	---	1401
2728	---	1407
2729	---	1404
2730	---	1357
2732	---	1988
2733	---	1977
2734	---	1999
2735	---	1420
2737	---	--
2738	---	--
2739	---	--
2742	---	1456
2743	---	--
2744	---	1989
2747	---	1355
2749	---	1443
2750	---	1351
2751	---	2024
2753	---	1589
2765	---	2022

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2766	---	2025, 2025A
2767	---	2023, 2023B
2768	---	--
2772	---	2113-56
2776	---	1441
2777	---	1444
2778	---	--
2781	---	2026
2782	---	1489
2783-2784	---	--
2790	---	1374
2791	---	1391
2792	---	--
2793	---	1379
2794	---	1371
2795	---	1459
2796	---	1375
2797	---	1376
2798	---	1368
2799	---	1452
2800	---	1380
2801	---	1359
2802	---	1363
2803	---	1406
2804	---	1416
2805	---	--
2806	---	1382
2807	---	1386
2808	---	1458
2809	---	1450
2810	---	1378
2811	---	1431
2812	---	1361
2813	---	1360
2814	---	1370
2815	---	1437
2816	---	1393
2817	---	1413
2818	---	1390
2819	---	--

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DOCUMENT NUMBER		EXHIBIT NUMBER
2820	---	1415
2821	---	1397
2822	---	1409
2823	---	1383
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2825	---	1411
2826	---	1454
2827	---	1385
2828	---	1396
2829	---	1396
2830	---	1460
2831	---	1451
2832	---	1398
2833	---	1389
2834	---	1377
2835	---	1387
2836	---	1394
2837	---	1461
2838	---	1365
2839	---	1373
2840	---	--
2841	---	1405
2842	---	--
2843	---	1399
2844	---	1421
2845	---	1362
2846	---	--
2847	---	1424
2848	---	1426
2849	---	1364
2850	---	1447
2853	---	2016, 2016A
2855	---	1457
2856	---	1408
2857	---	1412
2858	---	1428
2859	---	1392
2860	---	--
2861	---	1434
2862	---	1429
2863	---	--

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2864	---	1369
2865	---	1419
2866	---	1432
2867	---	1433
2868	---	1430
2869	---	1455
2870	---	1453
2871	---	210*, 1356, 2026
2872	---	1425
2873	---	1367
2874	---	1366
2875	---	--
2876	---	1427
2877	---	1414
2878	---	--
2879	---	1449
2880	---	1436
2881	---	1435
2882	---	1488
2883	---	1384
2884	---	1381
2885	---	1358
2886	---	1423
2901	---	2159
2933-2939	---	--
2940	---	1990
2942	---	2033
2944	---	--
2950	---	1990
2963	---	2157
2972-2976	---	--
3025	---	--