

3/26 m 12/3/46

REDIRECT EXAMINATION

Q (By Maj Levin) Is this a complete stenographic transcript of the interview or are parts left out?

A It is complete.

Q Isn't it true that at various times the accused said "I beg your pardon, repeat that"?

A He may have done that and we repeated and in case he desired to consult the interpreter, he consulted him.

Q That doesn't appear in this document, does it?

A No. That was the day he gave the statement and it was taken down stenographically and the next day we went out and went over it page by page and read it out loud in English and made corrections on the statement in his own handwriting and signed it.

Q But this is not a complete stenographic report of all that went on there. Everything wasn't put down here?

A You mean whenever he talked in Japanese to the interpreter or he talked to the interpreter, that doesn't appear in here, but when I asked the question he would consult the interpreter and answer in English after he was satisfied in his mind.

Q Are you sure he understood every word?

A I was there and he read every word aloud and I asked him if he understood and he said "yes".

Q You are convinced he understood everything?

A. Yes.

DEFENSE: No further questions.

PROSECUTOR: No further questions by the prosecution. Does the Commission desire to ask any questions of the witness?

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

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

DEFENSE: I object to the introduction of this statement on the ground that it was not taken in Japanese. The very fact that an interpreter was brought down at the various interrogations and the very fact that an interpreter was used to clarify statements in the case, are evidence that the accused was not sufficiently familiar with the English language to permit him to answer in English and he should not have been asked to make a statement in English. There are plenty of affidavits here and certainly there are plenty of interpreters in Shanghai. Why an interpreter wasn't used in taking these statements, I cannot understand. I suppose they felt, we don't have enough interpreters, we can save the interpreters and he speaks English so we won't take the time to write it down in Japanese and have to translate it. I think this is a definite imposition and I think this is going too far, to ask a Japanese to make a statement and read and sign a statement in English; a statement that will be subject to criticism when he could very easily have gotten the same statement in Japanese. He signed it, it is true, and he made some changes in English, it is true, and I admit he does understand some

3/27 m 12/3/46

English but I have tried to speak to him and there are times I have had to use an interpreter. If he used fluent English, I would not make this objection but I think it is a very definite imposition on this man to have had this statement made in English and I therefore object to its admission into evidence.

COLONEL MIDDLETON: Anything further by the Prosecutor?

PROSECUTOR: I would just like to point out to the Commission that the reasons given by the defense are not quite as complex as he tries to make them. The very simple reason it was drawn in English was the simple fact that Miki could understand English. It makes no difference even if he couldn't read English. It would have had appended a certificate of the translator which said that "I have read the document to the accused, to Miki, and append this certificate to it". It -- there is no fundamental objection to the tongue it is written in. He put his signature to it. The testimony from the witness stand is that he did read it. He did understand it and he did sign it freely and voluntarily.

COLONEL MIDDLETON: Anything further by the defense?

DEFENSE: The reason why this is objected to is that this is the statement of an accused, from a man who is undergoing investigation so that they can build up a case in order to charge him with the commission of a crime. This man should have received every possible protection of language and otherwise, but no, he didn't receive that protection. He was queried in a language that was not his own; an interpreter was there it is true and there were many times he had to use the interpreter and then he was given this to read in English. Now if he was so fluent in English, why did they use an interpreter at all? Because he wasn't fluent in English. There is no statement on this affidavit that it was read to him. That is one of the things I object to, -- the fact that this statement was taken from the accused who is Japanese, and it was taken in English. He has had an interpreter provided for him here at the trial. I don't know how far we are going to go in admitting a statement of this sort but I think there are certain limits where we have got to stop.

COLONEL MIDDLETON: Are there further remarks by the Prosecutor?

PROSECUTOR: Since the defense is now objecting very seriously on one point, I think we should make this further remark, that is, that on the basis of the testimony from Lieutenant Osborne, the document is admissible. His statement is that the accused read the statement aloud in English and made corrections in English and he signed it freely and voluntarily. The defense is trying to put before you facts not in evidence, to-wit, that Miki did not understand the document. If he wants to contest the document he should put Miki on the stand to prove his point. I will tell you this, going outside the record also, I have prepared numerous documents and I found that many Japanese who didn't speak a word of English could read English. That is outside the record just as much as remarks of the defense counsel. The remarks of defense are outside the record and if he wants to contest the document on the ground that Miki did not understand it, he should be forced to put Miki on the stand to prove his point.

COLONEL MIDDLETON: The Commission adjourns at this time and will reconvene at 2 o'clock this afternoon. (1130 hours)

(Whereupon the Commission adjourned to reconvene at 1400 hours, 12 March 1946.)

AFTERNOON SESSION

... Pursuant to adjournment, the Commission reconvened at 1400 hours on 12 March 1946. All the members of the Commission, Counsel for the Prosecution and Defense, the Interpreting Staff, the Official Reporter, and the accused were present ...

COLONEL MIDDLETON: The Commission is in session. The Commission would like to have called as a witness the American who was present at the time the accused made his statement which has been introduced in evidence to the Commission. I would like to have the prosecution conduct the examination to develop the conditions under which that statement was secured. Is that man available?

PROSECUTOR: Yes, if the Commission please.

DEFENSE: You mean offered in evidence, not introduced in evidence.

COLONEL MIDDLETON: Offered into evidence, yes.

STEPHEN H. GREEN

called as a witness by the Commission, having been first duly sworn, was examined and testified as follows.

EXAMINATION BY THE PROSECUTOR

Q State your full name, rank and serial number.

A Stephen H. Green, Sergeant, 19187611.

Q Are you a member of the United States Military Forces?

A I am.

Q Where are you presently assigned?

A War Crimes Commission.

Q Sergeant Green, are you able to speak the Japanese language?

A I am.

Q And read it?

A Yes, sir.

Q Where did you secure your training in that language?

A My army training was at the Military Intelligence Service Language School at Ann Arbor, Michigan, and Fort Snelling, Minnesota.

DEFENSE: I will concede he speaks the language and is well qualified to act as an interpreter.

Q I show you Prosecution's Exhibit No. 25 for Identification and ask you if you have ever seen that document before?

A I have.

Q Where did you see it before?

A I saw it in the Interrogation Room at the War Road Jail when it was signed by the defendant in this case.

Q Did you identify this document yourself?

A Yes, sir.

Q Is the name Stephen H. Green appearing on the last page of the document?

A Yes, sir.

Q Sergeant Green, were you present during the time that Miki was interrogated prior to the time this statement was typed?

A Yes, sir.

Q Who interrogated Miki?

A Lt. Osborne.

Q What language did Lt. Osborne ask his questions in?

A English.

Q In making his reply, what language did Miki use?

A English.

Q During the time he was being interrogated did he ask explanations of you in Japanese as to the meanings of words?

A Yes, sir.

Q Was that done frequently or infrequently?

A Occasionally.

Q Approximately how long did that interrogation take?

A Three hours.

Q During that period of time did you form any opinion as to the ability of Miki to speak the English language?

A Yes, sir.

Q What was that opinion?

A That he could.

Q You were also present when Miki signed Prosecution's Exhibit No. 25 for Identification?

A Yes, sir.

Q Did Miki read that document?

A Yes, sir.

Q At the time he read the document did he ask you in Japanese for explanations?

A Once or twice.

Q Did he read the document silently or out loud?

A Out loud.

Q I will again hand you Prosecution's Exhibit No. 25 for Identification and ask you to look at certain changes that have been made in ink on the document. I will ask you who made those changes?

A Miki.

Q Did he write those himself?

A Yes, sir, he did.

Q In what language do those changes appear?

A English.

Q Describe to the Commission the circumstances of those changes, what Miki said at the time?

A There is one on page 4 at the bottom of the page. The question was, "Who else was present at the execution?" "Answer, Myself, and the chief commander of MP, Mukden, and the commander of the territorial guards, and the jurisprudence officer of Kwangtung Army." At that time, someone said, "Someone else was present," I believe Lt. Osborne said it, and Miki wrote, "and chief of the jail of Mukden." He wrote that in.

- Q At the time the changes were made in the document, Lt. Miki was reading out loud, is that correct, prior to the changes made?
- A Yes, sir.
- Q At that time did he make some objection to the wording of the document in English?
- A Yes. He changed Colonel Matsuyama to Colonel Matsuda. He corrected it. That is on page 6 and 7.
- Q In other words, during the time he was reading the document and correcting it, he was speaking in the English language, is that true?
- A Yes, sir.
- Q During the time you were associated with Miki during the time he was reading that document, did you form any opinion as to the ability of Miki to read the English language?
- A Yes, I did.
- Q And what was that opinion?
- A That he could read it.
- Q Did Miki appear to understand that document as he read it?
- A Yes, he did appear to understand it.
- Q Is there any question in your mind but that he did understand it?
- A No, sir, there is no question.
- Q Did he make that statement freely and voluntarily in the first instance under verbal questioning?
- A Yes. Before he signed, Lt. Osborne said, "Do you understand this? Is there anything you'd like to have interpreted or explained more fully?" He said, "No, I understand.
- Q Did he make the statement in the first instance freely and voluntarily?
- A Yes, in response to a question.
- Q And did he sign the document freely and voluntarily?
- A Yes.
- Q At any time was he under compulsion, force or threats?
- A No.

PROSECUTOR: You may examine.

DEFENSE: No questions.

EXAMINATION BY THE COMMISSION

- Q Did the defendant at any time indicate he would prefer to make a statement in Japanese?
- A No, sir.

COLONEL MIDDLETON: There appear to be no further questions. The witness is excused.

(Witness excused.)

DEFENSE: If there are no more witnesses to be called I'd like to point out something from some of these affidavits, if I may.

COLONEL MIDDLETON: You are reminded your motion before the Commission has not been acted upon.

DEFENSE: I realize it and this is in rebuttal of this witness' testimony.

COLONEL MIDDLETON: All right, you may address the Commission.

DEFENSE: This morning, while I was arguing, Captain Gillard pointed out that I was talking about things outside of the record and perhaps I was incorrect in doing that. After lunch I looked at the record and now I'd like to talk from the record itself. With reference to what the record states as to this man's ability to speak English, I have here Prosecution Exhibit No. 5, the affidavit of Charles Shelton which says on page 2, down at the bottom, "...Miki spoke fair English. I have Prosecution Exhibit No. 16, the affidavit of George Robinson which states at the bottom of page 2, "...then Miki addressed us through an interpreter." I have Prosecution Exhibit No. 14, the affidavit of Joseph Stanke, which states on page 2 at the bottom, "...after we had counted off, Lt. Miki had an interpreter call the numbers of three men." And in the same affidavit on page 3, it says, "...at the time he was stationed in my camp he was learning to speak English." Referring to Miki. Prosecution No. 13, the affidavit of Joseph Majewski Jr, questions with reference to Miki. "Q. What language did he speak? A. He spoke broken English." Prosecution No. 15, the affidavit of Cpl Marcus E. Gordon. "Lt. Miki approached the formation and through his interpreter called the sailor and me out of ranks in front of the formation." Prosecution No. 17, the affidavit of Herman Hall, which states at the bottom of page 3, describing Lt. Miki, "He spoke some English." Also in the affidavits you will notice there was a mention of Cpl. Noda, always close to Miki. Noda was the interpreter. He went around with Miki. He was an interpreter for Miki. Miki needed an interpreter. I just want to show you these things from the record from statements by men who were not concerned with the particular question as to whether he was qualified to be interviewed in English. They made these statements as to his ability to speak English, more or less, in vacuo, without this particular question involved. Naturally, at the present time, those who were involved are going to say that he spoke English. How can Sergeant Green, for example, state that he knows that Miki understood. He can't get into his mind. He doesn't know what is going on his mind. All he can say is that he saw him read it or he heard him read it. The very fact there was an interpreter there, that he had to answer some questions in Japanese indicates that an interpreter was necessary. So I say in spite of this testimony by obviously partial witnesses, you have on the other hand the testimony in these affidavits made by people who made the statements when the present issue was not involved and they are unanimous in stating that he was not a perfect speaker of English. One or two of the statements says he spoke it very well. That is true. But here is the preponderance of them which shows that he even had this interpreter around with him all the time, Sgt. Noda. Certainly, if he spoke English just fair to middling in the position he was in it would not have been necessary for him to have an interpreter. There is one affidavit I know which says he spoke English fluently, but that was just one affidavit.

COLONEL MIDDLETON: Any further remarks by the prosecution?

PROSECUTOR: I feel compelled to make an answer to that. For one thing defense counsel has, without cross examining verbally, attempted to reduce the effect of the testimony of Sergeant Green. Sergeant Green was under oath and Major Levin was not under oath and he is making his remarks. He made no attempt to cross examine Sergeant Green or to impeach his testimony in any fashion. Secondly, a man can tell whether or not Miki can understand English. If you talk to him, if you talk to Miki right now, if he makes logical replies to the questions you ask him in English you know he understands what you are talking about. Sergeant Green testified he was there for three hours during the original interrogation; a few times Miki would ask questions in Japanese for explanations, the balance of the time Lt. Osborne was asking questions in English and Lt. Miki was making replies in English. Certainly under those circumstances it is not difficult to tell whether or not the man does understand English, and with reference to these affidavits that Major Levin has pointed out, Miki may not be able to speak English perfectly, his pronunciation is a little bit deficient, but that does not detract from his ability to understand the language or read the language. For those reasons I submit the objection of the defense is not well founded.

COLONEL MIDDLETON: The Commission is closed. (1425 hours.)

(Whereupon the Commission was closed.)

COLONEL MIDDLETON: The Commission is in session. (1535 hours.)

The motion by the defense counsel that Prosecution Exhibit No. 25 not be received in evidence is denied. Prosecution's Exhibit No. 25 will be received in evidence by the Commission.

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

DEFENSE: Sir, may I suggest in reading that, there is a great deal of material that is not relevant to the subject and that quite a number of pages could be cut out. The affidavit is 12 pages long, single spaced and at least two-thirds of it has no relevancy whatsoever to the case.

PROSECUTOR: The affidavit deals generally with the camp. It goes into many subjects which are not at issue here today but it does take up the condition of the camp generally. I make no recommendations one way or the other. That is up to the Commission.

DEFENSE: There is some stuff about an execution, a firing squad and who is in charge of the firing squad and things of that sort which really don't belong in the record here. It's just a matter of saving time. I know the Commission will weed it out.

COLONEL MIDDLETON: Prosecution's Exhibit No. 25 will be received in its entirety.

PROSECUTOR: I will now read Prosecution's Exhibit No. 25 for the record.

Shanghai, China
30 November 1945

"I, MIKI Toru, make the following voluntary, signed statement to 1st Lieutenant Raymond J. Osborn, whom I know to be a member of the War Crimes Board, United States Army. No threats or promises were made to me, and I am aware that anything herein may be used against me.

Q What is your full name?

A MIKI Toru.

Q Where is your home?

A Tokyo.

Q Were you a member of the Japanese Imperial Army?

A Yes, I was.

Q What was your rank?

A At that time, 1st Lieutenant.

Q Do you have a serial number?

A No.

Q Are you a regular officer or a reserve officer?

A I was reserve officer.

Q When did you enter on active duty?

A 1st of November, 1940.

Q Were you ever stationed at Camp Hoten in Mudken, Manchuria?
A I was Superintendent Officer.

Q When did you arrive there?
A The end of October, 1942.

Q Had the Americans arrived when you first arrived there?
A Not yet.

Q Did you help prepare the camp for prisoners of war that were coming to Camp Hoten?
A Yes, we did.

Q Who was in charge of the camp at that time?
A The commander was Colonel MATSUYAMA Suetomo.

Q When did the Americans arrive?
A I remember 10th or 11th of November, 1942.

Q What was their physical condition when they arrived?
A I think very poor.

Q Will you explain that answer, please.
A Many men were suffering from diarrhea and amoebic dysentery, and malaria and beri-beri.

Q Were these men given medical attention when they arrived?
A Yes, the Medical Department tried hard to stop all this suffering.

Q What were the conditions at the camp when these men first arrived? By that I mean how were your medical supplies, your heat, your food and your clothing?
A We installed stoves for them, and what they call very thick and fur overcoats. After they built up a baking oven they made buns and bread themselves, and some soup and vegetables, cooked themselves.

Q What did they do before they built these stoves?
A We bought bread from the city and provided them.

Q Approximately how many prisoners of war died while you were at Mudken?
A More than 200 men died until I left the camp; especially a very large number two or three months after they arrived.

Q What were the causes of death?
A I think their physical condition went down and down, and at Camp Cabanatuan more percentage of them died compared to the new camp, and also on boat trips and on the train trips they died because of the trip. They went from a very warm place to a cold place and became weakened and thin from that. We call it in Japan malnutrition caused from the war, because of war-time life.

Q You say the prisoners of war told you that in the Philippines they ate monkeys and they had one can of sardines between how many people?
A Between fifty men, not even one a day.

Q After the Americans arrived, what were your duties?
A My own, to look over, supervise them, and have charge of labor at the factory and in the camp also.

Q What was the name of the factory?
A Manshu Kosaka Mikai Company.

Q What type of work did the Americans do at the factory?
A To make parts of machines; drafting, drawing, milling.

- Q What was the factory producing?
A Machines to make machines.
- Q Was the factory considered a war plant?
A War plant?
- Q Yes; making guns for the war?
A Yes.
- Q What were the hours that the men worked there?
A I think about seven hours.
- Q What time did they start in the morning, how much time did they have for lunch, and what time did they finish in the evening?
A At first they started to work about 9 or half-past 9 in the morning, and continued, with 10 minutes rest in the morning. At 12 they stopped labor and 1 p.m. they started again, and 10 minutes rest again in the afternoon, and 4 or half-past 4 they stopped labor, at first. After, in the summer they started, I think, 8 o'clock in the morning, and the rest the same. They continued until 12 at noon and they started at 1¹/₂, half-past 1, until 5 o'clock. That means 7 hours and a half.
- Q If the men were sick did they have to work?
A No.
- Q Did they work with their shoes and shirts on or off?
A Firstly they worked with their shoes on and with their shirts on, but afterwards they wear, sometimes, sandals because the camp and factory were very near, and we have not enough shoes. When the shoes broken we have, of course, try to repair, but to save the shoes.
- Q When did you start saving the shoes and shirts?
A They all wear the shirts except they feel very hot and they want to take them off.
- Q When did they start working without shoes?
A We never ordered to work without shoes, but they themselves feel difficult if their shoes -- many of their shoes broken and they themselves went out to factory with some wooden sandals or slippers made of blanket.
- Q Were the prisoners ever forced to stay out in the cold for a long period of time?
A Immediately after they arrived, we provided them coal.
- Q Were the men ever kept outside in very cold weather for a long period of time while they were being questioned, or while you were trying to find out who had done a particular thing?
A No, we never did.
- Q Did any of the men ever have frostbitten or frozen hands or feet?
A Yes, some of them.
- Q Approximately how many?
A I think in that winter less than twenty.
- Q How did they get their hands and feet frostbitten or frozen?
A The cause, because they are not accustomed to extremely cold weather, and against our warning they incarefully keep their hands or feet outdoors, naked.
- Q Were you present when the three Americans escaped from camp?
A Yes, I was.

- Q Do you remember the names of the Americans?
A Cheston, Maringo and Pariotti.
- Q Approximately what date did they escape?
A I think 23, or near that date, of June, 1942.
- Q What was the date that they were brought back to camp?
A About the sixth or seventh of the next month, but they firstly were brought back to MP's in Hoten.
- Q Did you see the men when they came back?
A Yes, I have seen them.
- Q What was their physical condition?
A Because during that period they ate potatoes and raw vegetables, their physical condition very poor, and also they were wounded because when they had been caught the Mongolian farmers hit them with scythes.
- Q On what part of the body were they wounded?
A Some of them here (indicating head) and here (indicating back) and I think on the legs, also.
- Q Did the wounds appear to be bayonet wounds?
A No.
- Q Were you present when the men were executed?
A Yes, I was.
- Q How were they executed?
A (They sat down like this (indicating cross-legged position), and a wooden cross here (indicating arms outstretched) like this, and here to hide the eyes a cloth, and about 7 meters distant six Japanese soldiers shoot like this (illustrating shooting), and two shots for one man, here (indicating head) and here (indicating heart) and all of them immediately dead after the shooting.
- Q Where were they buried?
A Their graves with all other men.
- Q With the other Americans?
A In the same place.
- Q In Hoten camp?
A Yes.
- Q Who else was present at the execution?
A Myself, and the chief commander of MP, Mukden, and the commander of the territorial guards, and the jurisprudence officer of Kwangtung Army, and chief of the jail of Mukden.
- Q Why were the Americans executed?
A Because they escaped and killed one Mongolian policeman and hurt one Mongolian guard.
- Q Were they given a trial?
A Yes, court-martial of Kwangtung.
- Q Did you attend the trial?
A No, only I went there at the MP Hoten. I met them; not attended the trial.
- Q Who presided at the trial?
A I think the commander of Kwangtung.

- Q Were any Americans present at the trial?
A I don't believe so, but I don't think so.
- Q When these men were returned to Mukden were they quartered in your camp?
A Yes, once we brought them up to camp.
- Q Did you let the other Americans see them?
A Yes, we prohibited the others to see the scene because we examined them, investigate what course and what way they succeeded to escape from camp. They made them re-enact the escape and we prohibited the others to see that scene.
- Q Did they stay in your camp after they were brought back?
A No.
- Q Where were they detained?
A MP at Hoten.
- Q Who was in charge of the firing squad?
A Second Lieutenant delegated from Hoten infantry.
- Q Do you remember his name?
A No, I do not.
- Q Were there any other men executed while you were at Hoten?
A No. That means shot?
- Q Shot or killed in any manner?
A No.
- Q Was the rest of the camp punished because these men escaped?
A Yes.
- Q What was the punishment?
A Good behavior, one week.
- Q Describe what you mean by good behavior for one week.
A They sat down on the mats like this (illustrating cross-legged position) and prohibited to talk to each other and also to move about except when they went down to the latrine, I remember, after the breakfast until dinner.
- Q From breakfast to dinner?
A Yes.
- Q Where did they sit like this, in the barracks or in the guardhouse?
A In the barracks.
- Q Was this all the men in the camp or just the men in the barracks where these three escaped men lived?
A Not all of the men, only the barracks where these three men escaped.
- Q Who gave this order of good behavior?
A The Colonel, Colonel Matsuda.
- Q Who enforced it?
A Also Colonel Matsuda.
- Q Did he do it personally, or did he have you do it?
A He ordered that practice to me.
- Q And you carried out the order?
A Yes.

- Q Were these men kept in that position in the guardhouse or in their barracks, did you say?
A In the barracks.
- Q How many guardhouses did you have at the camp?
A At the old camp we had four, I remember, and at the new camp perhaps ten, I think.
- Q Describe the guardhouses.
A The old one, this earth floor and wooden bed. The barracks where the prisoners stayed was right next to the guard's house and the stove in that guard's house can heat the prisoners' room. The new camp was about the same, but concrete floor and walls were wood, and this relationship almost the same, the Japanese guardhouse here and the two stoves here.
- Q When was this new guardhouse built, or when was it put into operation?
A I remember September, 1943.
- Q What did the prisoners eat when they were placed in the guardhouse?
A Two kinds. One, light confinement, they eat quite the same as the others; that means all the others, and blanket, also. And heavy confinement, just the same as the Japanese soldiers. They can eat bread and water and salt every two days and every three days they can eat full chow. As for blanket, I don't remember quite well, but every two days two blankets, and every three days six, I think. Anyway, they cut down the number of blankets every two days and every three days they can wear the same as others, just the same as Japanese soldiers when they are punished.
- Q Did the prisoners receive a trial before they were placed in the guardhouse?
A Yes,
- Q Were records kept of these trials?
A No, only the sentence.
- Q Who kept the records?
A No, after investigation and trial, the Colonel decided the sentence and also the reason why they are punished. That record kept in the camp.
- Q Did the Colonel always make the sentence?
A Yes.
- Q You mean Colonel Matsuda?
A Yes. I wrote the manuscript and Colonel Matsuda saw that manuscript and sometimes he correct and decide it.
- Q When you speak of manuscript, you mean the charge?
A Yes.
- Q Did the prisoners appear before the Colonel personally when they were charged with an offense?
A No. When the Colonel punished them, that means to read the sentence, at that time they appeared but until that time they didn't appear.
- Q Were men ever confined without a trial?
A No: not court-martial, but trial.
- Q How long were men confined in the guardhouse?
A The short one, only one day and the long one, more than 25 days.
- Q What was the maximum period of time?
A 30 days, I think.

- Q Did you ever strike any of the Americans?
A Yes.
- Q What did you use to strike them?
A Sometimes some bar (stick), and sometimes a Kendo stick.
- Q How big was the bar?
A Length like this and thickness like this (illustrating with hands.)
- Q About how many feet or inches long was the bar?
A One foot and half.
- Q How thick?
A About one centimeter.
- Q Why did you strike the prisoners?
A We repeatedly and repeatedly warned them that they don't violate the rules or regulations. In spite of that warning, they repeatedly and repeatedly violated the rules and regulations and break the discipline. Sometimes even Major Hankins or some staff of Americans told me to punish someone severely because they do not obey to the order. Before I strike them like that, I announced in the presence of almost all of them that because they didn't obey our order and also violated the rules and disciplines they were punished. Moreover, the guardhouse was almost always full house at that time because those eight-balls men were so many. Henceforth, hereafter we didn't put you into the guardhouse when you violate the rule. Instead of that, I would strike you. It is a short-cut way to cut down the crimes and disobedience and violation of the rules and regulations. I announced it like that and even after that time sometimes they steal the meat from the stoves and sometimes drank the industrial alcohol at the factory, and sometimes change their bread for cigarettes at the factory with Chinese. I mean they gave their bread to the Chinese and from Chinese they get the cigarettes. We prohibited to talk with Chinese and any relations or connections with Chinese at the factory.
- Q How many men did you strike?
A I don't remember quite well, but about 20, I think. Not always we use that bar, sometimes only hand.
- Q Approximately how many did you strike with the bar?
A How many times?
- Q How many men?
A About 15, ten to fifteen.
- Q How many did you knock unconscious?
A I think one I clearly remember, but others I don't remember.
- Q Do you remember his name?
A Yes, Schroeder. He was sick at that time. I don't know he was sick. When he became unconsciousness after that case I have heard from the others that he was sick.
- Q Can you approximate how many became unconscious?
A No, I don't think so.
- Q Was it five or ten?
A Strike to unconsciousness?
- Q Yes.
A No, I don't think so many.

- Q Approximately how many?
A Only two or three, I think. Some pretended to be unconsciousness, but really not so.
- Q Do you remember striking an American named Jones?
A You said Jones yesterday and I said at that time I don't remember, but was he the servant of the American officer? I don't know, but one of the servants of the American officer by the name Johnson, I remember.
- Q Johnson or Jones?
A Jones I can't remember.
- Q Do you remember an American named Cooley?
A No.
- Q Majesti?
A No.
- Q Do you remember calling three men out of the ranks and when they came forward to you, you struck them with a stick before the rest of the Americans?
A Yes, I did, and at that time I said to them because there were men continuously -- anyhow, many men violate the rules and discipline and the guardhouse was full; I will strike them like this, henceforth. I announced to all of them.
- Q Did those men become unconscious?
A No. Some pretended to be unconscious but really not so.
- Q Did those three men fall to the ground?
A Yes.
- Q Did you strike them with your bar?
A Yes.
- Q Were they injured seriously?
A No.
- Q Do you remember striking one man and placing him in the guardhouse, and shortly afterwards he contacted pneumonia and died?
A No, I can't remember. What is his name?
- Q Jones.
A I don't know. Because I did have intimate contact with the Americans, I remember Johnson was the servant of one of the officers. Jones I do not remember.
- Q Can you remember the names of any other Americans you struck besides Schroeder?
A Schroeder is the only name I remember.
- Q Did any of these Americans receive permanent injuries from these beatings, to your knowledge?
A No, I don't think so.
- Q Were the rations of the prisoners ever cut because of some violation of one of the prisoners?
A Except this regular heavy confinement?
- Q Yes.
A Yes, quite vaguely I remember one or two days we cut down their chow, but what reason I have forgotten. I quite vaguely remember that.

- Q Who gave the order to cut down the chow?
A Perhaps Colonel Matsuyama. This case was happen when Colonel Matsuyama was in command.
- Q Did you ever cut down the food because one of the men lost his clothes?
A No.
- Q Did any other Japanese officer at the camp ever cut down the chow because a man lost his clothes?
A No, I have never heard.
- Q Were any of the Americans ever forced to stand in a torture position like this (illustrating arms outstretched sideward)?
A Yes, I know some cases.
- Q Describe those cases.
A Like this (illustrating arms outstretched) and like this (indicating push-up position on floor). I have seen sometimes the interpreters order them to do so.
- Q Who were the interpreters?
A All the interpreters? Corporal Noda, Lance Corporal Kawashima, and Lance Corporal Waku.
- Q Did these interpreters order this punishment under your direction?
A No directions but it was my responsibility.
- Q Would you tell them to do it?
A No.
- Q You have seen them do it though?
A Yes.
- Q And you didn't stop them?
A Yes. That is my responsibility.
- Q How long would they be forced to stay in one of those positions?
A Sometimes more than five minutes, I think.
- Q What would be the maximum time?
A I don't know quite well, because those interpreters or other civilian guards made an effort to give them this punishment when I was not there.
- Q Did you ever see any of the interpreters strike any of the prisoners?
A Yes, I have seen them.
- Q Did you ever see Corporal Noda strike any of the prisoners?
A Yes, by hand.
- Q Did you see Corporal Waku strike any of the prisoners?
A No, I never. He is a very silent and mild man and I have never seen him strike them.
- Q Have you seen Corporal Kawashima strike any of the prisoners?
A Yes, I have seen him.
- Q Did they ever use a club or a stick when they would strike the prisoners?
A No, very rarely they used.
- Q What did they use?
A The same stick with me.
- Q Would they use your stick?
A No.

- Q Do you mean they had a stick just like your stick, or did they use your stick?
A I think hands. Once Kawashima use the same kind of stick I had.
- Q Did you ever see Captain Ishikawa strike any prisoners?
A Perhaps I haven't seen, but I have heard that he struck the prisoners. Because also in my presence he don't like to strike the prisoners. I have heard from the prisoners and Japanese guards also he did.
- Q Do you remember striking a prisoner who later had an attack of appendicitis?
A His name was Schroder? Yes. At that time I don't know he was suffering from appendix, but afterwards I have heard. I remember his name, Schroder.
- Q Did he have an operation?
A Afterwards, yes. No, afterwards, after the operation I struck him. At that time I don't know he is suffering from appendix.
- Q Is that when he became unconscious?
A Yes. I think his name was Schroder.
- Q While you were at Hoten did they move into a new camp?
A Yes, I think September 1943.
- Q Which was the better camp?
A The new one.
- Q When did you leave the camp?
A December, 1943.
- Q Where did you go from Mukden?
A I went back to Tokyo through Kobe, and again go down back to Kobe because my company, my job with the steamship company was there.
- Q Were you discharged from the army at that time?
A Yes.
- Q Did you leave Kobe?
A Yes, April last year, 1944.
- Q Did you pay a visit to Hoten?
A Yes.
- Q On what date?
A About middle of April that year.
- Q Did you talk to any of the Americans?
A Yes.
- Q Where did you go when you left Hoten at that time?
A At that time I think one or two days after I met them.
- Q Where did you go?
A To Shanghai.
- Q Were you called into the army again?
A Yes.
- Q On what date?
A On 3rd March, this year.
- Q Where were you stationed?
A South of Kiangsu.

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- Q When were you discharged?
A 26 August this year.
- Q What was your rank?
A At that time, Captain.
- Q Did you see any other member of the staff strike or mistreat the Americans while they were in Hoten?
A Yes, I have seen sometimes, but I don't remember quite well the names of the guards and, of course, the name of the prisoners.
- Q What did they do to mistreat the American prisoners?
A Other cases I think they all hit by hand, sometimes because of disobedience.
- Q Do you have anything else to add to what we have asked you today?
A No, nothing.
- Q Will you give us the names of the officers on the Japanese staff at Camp Hoten while you were there?
A Yes. The commander at that time was Colonel Matsuyda; Captain Ishikawa, Adjutant; 1st Lt Murata, Inf, intelligence officer; 2d Lt Fukazawa, Inf, supply officer; Captain Joichi Kuvishima, medical officer; 1st Lt Yamazoe, K., Intendance Officer, and 2d Lt Yamasura, Inf, Food Supply.

I have read the above statement and understand it, and it is true and correct.

s/ Toru Miki (also signature in Japanese characters)

s/ Stephen H. Green."

PROSECUTOR: At this time I'd like to have this document marked as Prosecution's Exhibit No. 25 for Identification.

(Document so marked.)

DEFENSE: I have the same objection to this one as I had to Prosecution's Exhibit No. 25.

PROSECUTOR: At this time I offer into evidence the signed statement of Toru Miki dated 28 January 1946 at Shanghai, China and marked as Prosecution's Exhibit No. 26 for Identification.

COLONEL MIDDLETON: Who took that affidavit?

LT OSBORN: I did.

COLONEL MIDDLETON: Was it taken under the same circumstances as Exhibit No. 25?

LT OSBORN: Yes, sir, except Sergeant Matsumoto was along as interpreter in case he needed any help.

DEFENSE: Sir, you see, here again he brought an interpreter along in case he needed any help. If he knew English so well, he wouldn't have brought an interpreter. That is the contention I am making.

COLONEL MIDDLETON: In that affidavit, is there a statement by the accused that he read and understood the statement?

LT OSBORN: Yes, sir.

COLONEL MIDDLETON: The objection by the defense is not sustained. Prosecution's Exhibit No. 26 will be received in evidence.

(Prosecution Exhibit No. 26 for Identification was received in evidence.)

PROSECUTOR: I will now read Prosecution's Exhibit No. 26 for the record

"Shanghai, China
28 January 1946

"I, Toru Miki, make the following voluntary signed statement to Lt. Raymond J. Osborn, whom I know to be a member of the War Crimes Board of the United States Army:

- Q You mentioned that you have some information which you wanted to add to your previous statement.
- A The Japanese Army and Japanese Central Bureau of War Prisoners strictly prohibited to us to strike any of the war prisoners, and Col. Matsuyama and Col. Matsuyda both did not know that I was striking some of them, and one more thing, as for our treatment they were quite satisfied. Major Han'ins, representing the American war prisoners, often offered to the Colonel the letter of thanks.
- Q When you struck the American prisoners did you do it entirely on your own?
- A Yes.
- Q Were you drunk at the time?
- A No, I was sane.
- Q Were you taking any drug or dope?
- A No, never.
- Q You said that you made a mistake in your other statement when you mentioned that Kawashima struck the American prisoners.
- A Kawashima, the interpreter, never struck the American prisoners by bar.
- Q Did he strike them with his hand?
- A Yes, very rarely.
- Q Who was in charge of the guard house?
- A In the day time myself and afterward the officer of the day.
- Q As superintendent of the camp, were you directly in charge of the American prisoners?
- A Yes.
- Q What did your duties include?
- A Supervision of them and in charge of punishment and in charge of the labor at the factory at the camp post. Punishment and recommendation also.
- Q What do you mean by punishment and recommendation?
- A We often recommended their good behavior for those men who were diligent and honest.
- Q You say you were in charge of punishment. What did you do to see that the punishment was carried out?
- A When we find someone had misconduct or bad behavior we have investigated them and when I find they are guilty I report to the Colonel and the Colonel decides.

- Q Who would be in charge of placing them in the guard house?
A Myself.
- Q Did the prisoner personally appear before the Colonel?
A Yes, always, accompanied by Major Hankins and Lt. Hanson and the barracks leader.
- Q Did Major Hankins and the barracks leader always appear?
A Yes, always.
- Q Is there any other information which you desire to furnish us at this time?
A No.

I have read and understand the above statement and it is true and correct.

s/ Toru Miki
t/ Toru Miki

s/ M/Sgt Roy H. Matsumoto, CMP (also signed in Japanese characters.)"

PROSECUTOR: At this time I request this document be marked as Prosecution's Exhibit No. 27 for Identification.

(Document so marked.)

PROSECUTOR: I offer into evidence the signed statement of Toru Miki dated 4 February 1946 at Shanghai, China, marked as Prosecution's Exhibit No. 27 for Identification.

COLONEL MIDDLETON: Are there objections by the defense?

DEFENSE: I object to it on the same grounds advanced in opposition to the introduction of Exhibits 25 and 26.

COLONEL MIDDLETON: Lt. Osborn, state to the Commission the circumstances under which that document was made.

LT. OSBORN: It was made in War Road Jail, downstairs in the conference room. At that time Sergeant Matsumoto was present and I also think Captain Hahn was there at the time. It was signed by Miki in Matsumoto's presence.

COLONEL MIDDLETON: Were you present at the taking of that affidavit?

LT. OSBORN: Yes, sir. I asked the questions and the stenographer from our office recorded the answers and this is a transcription of it.

COLONEL MIDDLETON: Does that document represent voluntary statements by the accused?

LT. OSBORN: Yes, sir.

COLONEL MIDDLETON: The objection by the defense counsel is not sustained. Prosecution's Exhibit No. 27 will be received in evidence.

(Prosecution Exhibit No. 27 for Identification was received in evidence.)

PROSECUTOR: I will now read Prosecution Exhibit No. 27 for the record.

Shanghai, China
4 February 1946

"I, Toru Miki, make the following voluntary signed statement to Lt. Raymond J. Osborn, whom I know to be a member of the War Crimes Board of the United States Army:

- Q Do you remember the time that you struck Schroeder?
A I think August 1943.
- Q What were the circumstances?
A They hanged blankets on the rope and that rope was the boundary line within which they are allowed to move.
- Q Who saw them?
A Some of the soldiers.
- Q Japanese soldiers?
A Yes.
- Q Did they report it to you?
A Yes.
- Q How many Americans were there?
A Three men hanged on rope and one threw off his blankets over the rope.
- Q Do you know any of their names besides Schroeder?
A No, I don't know.
- Q When it was reported to you what did you do?
A I went over there to see the circumstances and I called up the three men who had hanged their blankets on the rope and I asked them the reason.
- Q What did they say?
A I can't remember.
- Q Did you beat the men?
A Yes.
- Q Where?
A In front of my office.
- Q What did you use to beat them?
A Wooden bar.
- Q Did any of them become unconscious?
A One, his name is Schroeder, became unconscious.
- Q What did you do when he became unconscious?
A Right away I poured water on his face - canteen water.
- Q What happened when you poured the water on his face?
A He at once recovered his consciousness.
- Q Had Schroeder just been operated on for appendicitis?
A More than 10 days after he left Hoten Army Hospital.
- Q Did you place these three men in the guard house?
A Yes, but I think afterward.
- Q How long afterward?
A I can't remember, I'm sure.

- Q Why were they placed in the guard house?
A At least they must have across their hands in the area they are prohibited to walk around, and also they showed some disobedience to the camp authorities.
- Q Were these men given a trial before they were placed in the guard house?
A I am not quite sure but I think so.
- Q How long did they stay in the guard house altogether?
A I think two months or more than two months.
- Q Were they placed in the guard house as a form of punishment or to prevent their escape?
A To prevent their escape.
- Q Was the guard house your responsibility?
A Yes, after they were put in the guard house, to take care of them. It is my responsibility to take care of them.
- Q Did you visit the prisoners in the guard house every day?
A Yes, almost every day.
- Q If a prisoner became sick would it be your duty to get him medical attention?
A Yes.
- Q Or more food, more clothing?
A No, that is not connected to us to increase the food and blankets.
- Q Would it be your duty to take him out of the guard house if he were sick?
A Yes.
- Q Did you ever strike any one while they were in the guard house?
A No.
- Q Did you ever see your interpreter strike any one while they were in the guard house?
A No.
- Q Did you take away some of their clothes while they were in the guard house?
A No.
- Q Who would decide what kind of confinement a prisoner would receive?
A The Colonel - Commander of the Camp.
- Q Did you carry out the type of confinement which he decided?
A Yes.
- Q Do you remember the name of any other American prisoner that you struck?
A I remember Ross.
- Q With what did you strike him?
A When I was in barracks he came from the outside smoking cigarette.
- Q What did you do?
A I hit him by kendo stick.
- Q Did he fall to the ground?
A Not on the ground, on the floor. (Illustrated by going to the floor on one knee).

Q How many times did you strike him?

A One time.

Q On what part of the body did you strike him?

A Shoulder.

Q When a prisoner would do something wrong who would conduct the investigation?

A Myself.

Q Would you report the results of your investigation to the Colonel?

A Yes.

Q And from your report the Colonel would decide what punishment to give -- is that correct?

A Usually so, and if needed the Colonel himself made some investigation.

Q But generally would you conduct the investigation?

A Yes.

Q Anything else you desire to add?

A No, nothing.

I have read and understand the above statement and it is true and correct.

s/ Roy H. Matsumoto
M/Sgt. CMP

s/ Toru Miki
t/ TORU MIKI
(also signed in Japanese characters.)"

PROSECUTOR: The prosecution rests.

COLONEL MIDDLETON: Does the defense desire to make an opening statement?

DEFENSE: No, sir, the defense rests.

COLONEL MIDDLETON: Does the accused desire to take the stand in his own behalf?

DEFENSE: No, sir. We have discussed that; he does not.

COLONEL MIDDLETON: Does he desire to make a sworn or unsworn statement?

DEFENSE: He does not wish to take the stand or make a sworn or unsworn statement.

COLONEL MIDDLETON: The Commission will now hear the argument by the defense. Is the defense prepared to make an argument?

DEFENSE: Yes, sir.

MAJOR LEVIN: Gentlemen, you will observe that in this case I have argued strenuously against the use of affidavits alone. I have done so not in order to obstruct justice but in order to achieve justice. I realize the Commission is guided by certain rules and I realize the Commission is bound by certain directives, but I do contend that the Commission can give a certain amount of leeway, or is given a certain amount of leeway, and may use its discretion. During the course of the trial I have at some length objected to the introduction of certain documents upon which the prosecution attempts to base its case. As an attorney who has been steeped in the customs and traditions of American jurisprudence I find it just

impossible to adjust myself or to yield to rules of this Commission which permit the introduction of the type of evidence which has been admitted before this Commission. Naturally in making a closing argument it will be necessary for me to analyze these affidavits. I am not going through all the affidavits. I am going to show, however, by an analysis of the affidavits which have been submitted in connection with the first specification just how unwise it is to attempt to prove a case by affidavits. I am going to show how unreliable they are. I am going to do it by pointing out specific affidavits and comparing them with other affidavits and other evidence that we have in the case.

In connection with specification 1, that the accused beat Jones and as a result, Jones died of pneumonia, I would like to say that the prosecution has failed to show a causal connection between the alleged beating and the so-called exposure and the pneumonia. I have a feeling-- I don't say it is true--but I have a feeling that when this whole thing was over, the boys up at Camp Hoten resented the fact that Jones died and they got together and cooked up a story--not the details of it--but the broad general outline and I think the story they tried to get up was that the man was beaten, he was subjected to exposure, that the beating and exposure were so close to the time he went into the hospital that he died as a result of this exposure and beating. But I would like to look at the evidence admitted in this case to see if that has been proven.

Exhibit 9, the death certificate, states that Jones died on the 20th of November. This is confirmed by Exhibit 8, the affidavit of Dr. Mosiman. Neither of these exhibits try to fix the time of any beatings. Exhibit 24, this book, which is a record of punishments in Camp Hoten shows that on the 2nd of October 1943, No. 946, Jones, Seaman First Class, Navy, charge: attempting to smuggle cigarettes into camp; Sentence: 5 days guard house, heavy confinement. Now this book which is a record--and I think we can assume it is a record of every one of the confinements in the guard house--shows that Jones was confined on October 2, 1943, and if you recall, the affidavits say the reason he was confined was because of smuggling cigarettes and that is what this book says too. So we have from these documents, we have the death certificate which was more or less an official document which shows the man died on the 20th of November; we have the statement of the doctor who attended him that he died on the 20th of November and we have this punishment book which states that he was put in the guard house on the 2nd of October and was confined there for five days, and it is on the basis of this that I feel perhaps some story was created by the boys at camp.

Let's look at the affidavits and see if their affidavits don't confirm that. Exhibit 1, the affidavit of Smallwood, states that the beating took place at the end of October and that Jones died on the 1st of November, 1943. He doesn't state the 20th, but he is sure it happened on the 1st of November. He could have very easily said in the beginning of November, the middle of November or the end of November, but no, he set a date. Exhibit 2, the affidavit of Markham, states the beating took place in January of 1944 and I quote: "Jones died of pneumonia in the guard house a few days later." You will notice he says he died in the guard house, and almost every other affidavit, including the one of the doctor showed that he died in the hospital, and this man places it in January 1944. Exhibit 3, the affidavit of Diemert. It states that the beating took place on November 6, 1943; very definite about the date. He states that Jones remained in the guard house for 10 days. He spent one day in the barracks, then two days in the hospital at which time he died. That would make it around the 19 or 20 of November. He has that very carefully figured out, but this record of punishment doesn't show Jones as having been in the guardhouse the 6th of November. It shows he was there the 2nd of October. Exhibit 4, the affidavit of Adams. He states

the beating took place in the fall of 1943 and he says, and I quote: "Subsequently he was removed from the brig to the hospital where he died. The Japanese stated that his death was caused by pneumonia, but it was the belief of the American prisoners that he died as a result of the beating." So the American prisoners are now getting up a belief as to why this man died. Exhibit 5, the affidavit of Shelton states the beating took place in the winter of 1944 and then he says that several days later he saw Jones in the hospital and a few days after, Jones died. One fellow says it was 10 days; this fellow says it was several days. Generally, several days are three or four days. The affidavit of Exhibit 6 states that the beating took place on the 10th of November. He is positive about the date. Then he says on the 18th of November Jones was taken to the hospital and died on the 20th.

Exhibit 7, the affidavit of Stuckey. It says he was beaten; he was in the guard house for 10 days, then one day in the barracks, then in the hospital for a few days before he died, but no date whatsoever given as to when this happened.

Now lets look at the statements as to the witnesses of the beatings. Those quotations I have given you showed that there was so much conflict as to the date he was beaten, if he was beaten. Let's look at the statement as to the witnesses of the beatings. This will show some more conflict. From Exhibit 2, it is not clear whether the man actually saw the beating or not. My impression from that affidavit is that either somebody told him or he may be giving the impression that he saw it but he doesn't actually state that he did see it. Exhibits 3, 4, 5 and 7 definitely state that they did not see the beatings. Exhibit 7 on page 5 says that there were no eye-witnesses to the beatings. But Smallwood in Exhibit 1 describes the beatings and Smallwood, you will recall, is the one who said the beating occurred at the end of October and that the man died on the 1st of November. Hedemark also describes the beatings, but if you compare the affidavits of Smallwood and Hedemark I think you will see--I am not sure of this, this is what I think--I think they both come from the same place. They are the only ones who say they saw the beatings. Here is another thing. These people who say that they heard about the beatings, all say they heard of it from Jones. If Hedemark and Smallwood had seen these beatings, wouldn't some of these other affiants have said Hedemark told me or Smallwood told me? but no, so it is obvious that these fellows didn't see the beatings and that is something else that shows they are not telling the truth.

Here is another thing. It is obvious that if Jones had gone to the hospital so soon after the alleged beating, he would have showed signs of it. The beatings, as described, were very terrible beatings and certainly he would have showed signs of it but let's look at Exhibit 8, the affidavit of Dr. Mesiman. He says, on page 5, "Question. When you first examined Seaman William Beecher Jones on admission to your ward, did you attribute his condition to misconduct by the Japanese? Answer. No. At that time I was not aware that he had been beaten."

Let's look at some other affidavits, however. Exhibit 1, the affidavit of Smallwood again, speaking of visiting Jones at the hospital, ".He was in a semi-conscious state and he looked terrible. His face was puffed out almost beyond recognition and was covered with ugly looking cuts." That is Smallwood who said the beating was in October, the man died in November and he claimed he saw the beatings.

Diemert, in Exhibit 3, says, "Jones' body was covered with bruises and swollen welts and his face was cut and swollen." Adams in Exhibit 4 says, "His face was very badly swollen and bruised and there was dry blood around his ear and on his face." Exhibit 5, Shelton, who saw him at the hospital, "...at the time I saw numerous welts and black and blue marks on the face and head of Jones." Shelton also is the fellow who states this all took place in the winter of 1944. Here the doctor who examined this man didn't see a sign of a beating and these fellows saw him he looked terrible, he had welts and bruises. What does that make you think? Exhibit 8, the affidavit of Dr. Mosiman, "Q. Are you in a position to state what the contributing causes were to Seaman Jones' pneumonia? A. When he came in my ward he was in a serious condition and I did not determine by talking to him or by examining him what the exact causes were for his pneumonia." Exhibit 1, the affidavit of Smallwood, says, when he saw him in the hospital, "Though I saw him I could not get him to talk; he was in a semi-conscious state." But let's look at Exhibit 3 of Diemert who also visited him in the hospital. "Jones told me that First Lieutenant Miki, the camp superintendent, beat him every day he was in the guard house." And Exhibit 5, the affidavit of Shelton, states that he talked to Jones two hours after he got into the hospital. In Exhibit 8, the affidavit of Dr. Mosiman, he states that he didn't know of his own knowledge if Jones died of exposure, but take the affidavit of Diemert, Exhibit 3, and I quote, "Lt. Mosiman, U.S. Army was the camp doctor for the prisoners. He told me that Jones died of pneumonia brought on by exposure and a general weakened condition." That shows you the danger in hearsay evidence. We couldn't cross examine Diemert, but Mosiman himself said he didn't know it. Diemert said Mosiman told him. The affidavit of Adams, Exhibit 4, and I quote, "It was the belief of the American prisoners that he died as a result of the beating." Here is the affidavit of Hedemark, Exhibit 6, "The doctor told me that Jones died of double pneumonia, contracted as a result of his weakened condition and exposure." In the light of all these conflicting statements I have brought out, which were shown to be used as a basis to prove the first specification, I think the Commission can clearly see the danger in hearing and the use of affidavits. While the Commission has accepted these affidavits, I have gone into them at great length in order to show that these affidavits, for the purpose of proving Specification 1, are not worth the paper they are written on. They tried to build a story of a man having been beaten, having been put in a cold guard house and then having died in the hospital of pneumonia. They have tried to show that all these three events occurred so close together that the beating and the exposure were the cause of the pneumonia, but when we look at the conflicting statements and when we look at the written record that we have here, it is uncontroverted that Jones who was being punished for smuggling cigarettes was put in the guard house on October 2, 1943 and that he was sentenced to spend five days there. Whether or not there were beatings at that time we don't know, but even assuming there were beatings while he was in the guard house, he was there for five days which means he would have been out on October 7. He was not admitted to the hospital as a pneumonia case until the 18th of November and died two days later. That is all in the record. These are documents introduced by the prosecution. There is no other record any place except the affidavits of these people, that he was incarcerated at any other time between October 2 and November 18, and we have shown that the affidavits are so uncertain as to the date that it is clearly a put up job to squeeze all the dates together. So I say, even if he was beaten in the guard house on the 2nd of October 1943, and we can even take that beating with a grain of salt, but even if he was beaten he must have gotten over that because by the time he got into the hospital he didn't show any signs of having been beaten and it might very well be that he was in a weakened condition from perhaps not having had enough food or any one of a number of things, and I think it is just as clear as day that there was absolutely no connection between the incarceration, the alleged beating and the pneumonia and the death by pneumonia. I don't see how any other conclusion can be reached other than that there was no connection whatsoever.

I would like to point out also that the specification goes beyond the charge itself. The charge says he did willfully and unlawfully commit cruel, inhuman brutal atrocities and other offenses against certain prisoners of war. In specification 1 he is charged with killing. The Charge is not broad enough to cover a killing, Certainly in our court martial procedure it would not be considered such. While of course we are not bound by court martial procedure, except insofar as we find it applicable, this Commission may be guided by that in this particular instance. I am not too concerned with that because the evidence clearly doesn't substantiate this specification, but I am calling that to the Commission's attention.

There is only one other specification I'd like to deal with and that is specification 2, the portion which reads, "and did willfully and unlawfully confine...Coley..Haron...and Schroder in the guardhouse without trial." In the first place, the evidence as to that is just about non-existent. In the second place, such evidence as there is indicates that somebody gave these three men what might be considered summary punishment, and such summary punishment is provided for in the Rules of Land Warfare, Paragraph 126.

I am not going into all the evidence at length because I have done so, and the Commission has been very kind and generous with its time permitting me to argue on each affidavit as they have been introduced. I would just like to state as far as the affidavits are concerned with respect to the other specifications, they should be looked at very carefully. In many instances the dates are not correct. In certain instances the specification says he was beaten with a club whereas the affidavit would show that a man was beaten with a pole. Now those may seem like immaterial technicalities but we are dealing with a question of criminal law at the present time where technicalities are quite important since a man's life or liberty may be at stake and technicalities should be considered.

I have very little more to say about this. I feel certain that the Commission will go along with me in my argument with reference to Specification 1, and since I don't know whether or not the prosecution is going to ask for any sort of sentence I would like to speak to the Commission for just one moment about sentence. I think the type of sentences to be given by military commissions in cases of brutality has been pretty well fixed by one of our own American court martials sitting in England. I am referring to the court martial which tried Sgt. Judson H. Smith who is one of the American sergeants working at Litchfield, England. Of course I don't have the official record but I do have a copy of Time Magazine of February 25, 1946 and they refer to the type of sentence that Smith received. Smith, you recall, was accused of brutality to American prisoners. There was an American being brutal to American prisoners. I would like to quote one paragraph. "Then after 55 days of hearings, often disorderly, in which 12,500,000 words of conflicting testimony had been heard, the case of Sergeant Judson H. Smith came to an end. Firelight from an open grate flickered on Smith's grey-lined face as the court President, Colonel Louis P. Leone, announced the verdict. Guilty of making prisoners eat excessive amounts of food, of administering castor oil, of two charges of felonious assault and four charges of simple assault, i.e. beatings. The sentence: Dishonorable discharge and three years at hard labor. But Smith was only a symbol. The prosecution was after the system and the man it held responsible for the system--Kilian. A contempt of court charge against Kilian was already prepared. Others were reported to be in the making, one involving conspiracy. The imperious colonel had the hot potato and had need of a miracle."

That is what an American court martial did to an American who was brutal towards American prisoners. You might say that the sentence of

dishonorable discharge is a very bad thing. I don't know whether you gentlemen are familiar with this--you probably are--but at the present time when a man is sentenced to be dishonorably discharged from the army, the sentence is suspended during the time that he is serving out his term and if at the end of the time he shows that he had good behavior, the sentence of dishonorable discharge is completely suspended and he goes out of the army a free man with all the rights he had before he was tried. I am referring you to this decision which gives a man three years--a man who we expect would know better than the accused.

COLONEL MID LETON: Is the prosecutor prepared to make his closing argument?

LT. OSBORN: Yes, sir.

I don't intend to discuss the facts in this case because I think the Commission has heard the facts and they are certainly a competent judge of the facts just as well as I am or Mr. Levin might be. All the facts we have have been presented to you and it is for this Commission to draw their own conclusion as to what the facts might be. Regarding the first specification, Major Levin has tried to get across the idea that these American prisoners of war got together and concocted this story so that they could place a charge of killing Jones against the accused. First of all, I don't believe that any American prisoner of war would do such a thing. Secondly, I think if they did get together, if there was any concerted action there, or any meeting of the minds, you would have had a regular story; all the facts would have gibed. But what do we have here? We have cases where a fact might be a little different in this particular case; it might be a little different in the next affidavits. Some of these affidavits were taken shortly after the war ended when these men got back to America. Some of them have been taken recently when they have had a good chance to think this matter over and had plenty of time to get any animosity against the Japanese at that camp out of their mind. That statement of Smellwood's was taken recently during the month of February. If that man had not been able to dismiss any of his bad feelings against the accused or the Japanese, or forget some of his experiences up there, I don't know when he would.

Regarding those affidavits and this book right here, when this book was introduced into evidence, we all agreed that we did not know who kept it or whose handwriting it was or whether it was kept by the Japanese or the Americans. It is in English. It is not sworn to. These affidavits that we have are sworn to and I think that these Americans are aware of the fact that when they take an affidavit they are to incorporate the truth in that affidavit. It is just a question of whether or not you are going to take this as it is against the sworn testimony in the affidavits. There is nothing in here precluding the idea that Jones might have been confined say again in November on the same charge. Maybe that is why he was treated so severely. Then again there might have been a mistake in the date.

In these affidavits, particularly with the first charge, the prosecution went at some length to point out the discrepancies in there. I would like to point out to you the fact that they set forth a pattern. They show a course of conduct in which this fellow Jones was first beaten, placed in a guardhouse, denied the proper attention that health requires and shortly afterwards he contracted pneumonia. In one detail, one affidavit might differ from another and the defense has taken the advantage of all those differences and has objected to them, but as I said before, this Commission is the judge of the facts and you have heard all the facts. It is not for Major Levin or for me to decide what the facts are but it is for this Commission.

Throughout the course of the trial, and in his closing argument, Major Levin has made much ado about the rules and regulations of this

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Commission. Once again, as I said before, we didn't make these rules. I am sure the Commission didn't make these rules. The Supreme Court of the United States has heard these matters and has not reversed a trial conducted under similar means, so it is not for us to fix the policy in this matter. They say that these war crimes are to be conducted under such procedures and we are conducting them under such procedures.

Major Levin has referred to Time Magazine in his closing argument when he speaks of some sergeant in England. He didn't have to go to England to get a case where the sentence is light. I am not going to make any recommendations in this matter, that is up to the Commission, but he could have used this court room right here for his illustrations in the Hankow trial. Some of those accused were found guilty of the first specification, and the second specification; some of them were ordered to be executed; others were given 18 months. Why? Because of the particular facts involved; because of their particular part in the offense. So until you know all the facts in that particular court martial you can't decide whether or not that sentence was light, whether it was proper, or whether it was too heavy. In these war crime trials, it is the position that the position that the accused did hold to the American prisoners of war was one of guardianship or ward. They had no opportunity to be heard. They were far removed from their home land. They depended entirely upon this man exercising just a small bit of human kindness to them and in exercising some of the rules which have been laid down by nations. That is the reason why we can't compare these particular war crimes with some other case where we are treating our own prisoners, because we also have the right to appeal in these cases, but these prisoners were far removed here, they were wards and this man was their guardian.

In human experience, as we all know, whenever an incident happens, and afterwards we are told to relate it, and there are several people relating it, you know from your own experience that there is going to be discrepancies in some of the details. The pattern will be there; the general course of conduct will be there; the fact that such a thing did happen will be there, but the versions of it might differ a bit. And I say, if five members of this Commission were to relate upon a particular fact there would be five different statements, and in those five different statements there would be small discrepancies, and I think that way we can account for whatever discrepancies there are in these statements. But I do maintain once again that they show a pattern.

As far as the other specifications are concerned, from the second to the ninth, there is very little comment about them. The defense has not taken time to make any mention of them, so I take it that he is aware that those affidavits applying there carry the proof that is necessary.

COLONEL MIDDLETON: The Commission will now adjourn to meet at my call very probably Thursday morning. The Commission is adjourned.

(Whereupon the Commission adjourned at 1600 hours on 12 March 1946 to reconvene at the call of the President.)

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... Pursuant to adjournment, the Commission reconvened at 0900 hours, 14 March 1946, at which time the accused, all members of the Commission, counsel for prosecution and defense, the interpreter and official reporter were present in the court room ...

COLONEL MIDDLETON: The Commission is in session.

The Commission is prepared to announce its findings and sentence in the case of the United States of America against Toru Miki. I would like to have the accused take a position before the Commission, and Captain Hahn, you take a position to assist the accused and explain anything to him that is not clear to him.

FINDINGS

(Addressing accused) Toru Miki, the Commission has reached its findings and sentence. The Commission in closed session, by secret written ballot, two-thirds of all of the members present at the time the vote was taken concurring, finds you, Toru Miki, guilty of specification one except the words :

"bayonet, rifle butt, and saber, and by confining him in an unheated guard house in sub-zero weather" and
"said treatment causing death of said William B. Jones on the 20th of November 1943"

and of the excepted words, Not Guilty.

The Commission finds you Guilty of Specification 2 except the words:

"and did willfully and unlawfully confine the said Edward Coley, Douglas Haron and John Doe Schroeder, in the guard house without trial"

and of the excepted words, Not Guilty.

The Commission finds you guilty of Specifications 3, 4, 5, 6, 7, 8 and 9, and finds you Guilty of the Charge.

SENTENCE:

The Commission in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences you to be confined at hard labour at such place as the reviewing authority may direct for twenty-five years.

COLONEL MIDDLETON: Is there other business to bring before the Commission at this time?

PROSECUTOR: No further business at this time.

COLONEL MIDDLETON: The Commission is adjourned. (0907 hours)

(Whereupon the Commission at 0907 hours, 14 March 1946, adjourned.)
