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

RESTRICTED

*Not Available to Defence*

*Doc # 476*

UNITED STATES OF AMERICA

-vs-

SHIGERU SAWADA  
YUSEI WAKO  
RYUHEI OKADA  
SOTOJIRO TATSUTA

PUBLIC TRIAL

VOLUME V

PAGES 424 TO 551

SHANGHAI, CHINA.

DATE 1 MAY 1946



AUTHENTICATION

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

Dated 1 May 1946.

*Edwin R. McReynolds*

EDWIN R. McREYNOLDS  
Colonel, IGD,  
President of Commission



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MORNING SESSION

... Pursuant to adjournment, the Commission reconvened at 0900 hours, 8 April 1946, at which time all the members of the Commission, the Accused, counsel for prosecution and defense, the interpreting staff and official reporter resumed their seats in the court room...

COLONEL MC REYNOLDS: The Commission is in session.

(Captain Okada who was testifying at the close of the last session, resumed the witness stand, was reminded he was still under oath, was examined and testified (through interpreter, John Krantz) as follows:

CROSS EXAMINATION

Q (By Maj Dwyer) Captain Okada, you have told this Commission that the Doolittle fliers gave testimony before your commission, is that correct?

A Yes.

Q You understand English, don't you?

A A little.

Q You understand more than a little, don't you?

A No, just a little.

Q Wako understands English too, doesn't he?

A I believe he scarcely knows anything.

Q He knows just about as much as you do, doesn't he?

A I do not believe so. I think I know better than he does.

Q Isn't it a fact that whatever these Doolittle fliers said in that court room you understood, isn't that correct?

A I could not understand all.

Q Isn't it a fact that whatever these fliers said you understood and didn't need the services of an interpreter?

A No, that is not so.

Q You are sure of that?

A Yes.

Q You have understood about everything I have said to you here, haven't you?

A No, I didn't understand.

Q You knew enough to correct me once, didn't you, on a question?

A I do not think so.

Q You have been present in this court room when the statement of Takahashi was put in evidence, Defense Exhibit No. 1, right?

A I do not remember.

Q Nagasawa. Do you remember that statement?

A Yes.

Q And Hayakawa Fuyo, Defense Exhibit 3, do you remember that one?

A Yes.



- Q And you remember the statement of Hiraoka and the others of the Tsurumaki National School, Defense Exhibit 4, do you remember that one?
- A Yes, I do.
- Q And do you remember the statement of -- do you remember being in court when the statement of Furusawa and Okamura, Defense Exhibit No. 5, were read?
- A Do these statements concern that of the casualties?
- Q Yes, everything?
- A Yes, I do.
- Q You remember all of these statements being read, don't you?
- A I believe I heard all.
- Q When did you first see these statements?
- A These statements?
- Q Yes, the statements contained in these Defense Exhibits?
- A I heard them in this court.
- Q Is that the first time you ever heard any statements of any kind from these people?
- A Yes.
- Q These statements were not submitted to your Military Tribunal in the Doolittle case, were they?
- A No, never.
- Q Nor were any statements of these people submitted to the Doolittle tribunal, were they?
- A No.
- Q And these people all came from either Tokyo or Nagoya, isn't that correct?
- A Yes.
- Q Why didn't you ask for some statements of the people who were in Tokyo and Nagoya to be submitted to your court in the Doolittle case?
- A I attended several military tribunals and usually the legal officers prepare the documents and the evidence and it is a custom not to request these documents, therefore I did not demand them.
- Q You could have gotten people to come and talk to your court about this, couldn't you?
- A I was appointed Judge three days before the Military Tribunal, therefore I had no time to do so.
- Q If you had the time would you have done it?
- A There has never been such an example.
- Q I am asking you a question. If you had the time would you have done it?
- A I don't know.
- Q This was an unusual case, wasn't it?
- A This was an important case.
- Q It was so important that you passed the Enemy Airmen's Law for this particular case, isn't that correct?



A Yes.

Q You could have taken a recess for about a week, couldn't you?

DEFENSE: I object to that question. Now the prosecutor has been saying "you should have" or "you could have" or "why didn't you". The Commission wants the facts. What did he do, not he should have done it or he could have done it. He says "you passed the law". Yet he had nothing to do with passing the law.

PROSECUTOR: (Maj Dwyer) On direct examination this witness has categorically stated that as a member of this tribunal he gave these Doolittle fliers a fair trial. This line of questioning has brought out the fact that there are certain things he didn't do. This line of questioning has brought out that these men did not have a fair trial. I am asking him now why he didn't do those things. Perfectly proper on cross-examination.

COLONEL MC REYNOLDS: Objection over-ruled.

PROSECUTOR: Will the reporter state the question please.

REPORTER: (reading) "You could have taken a recess for about a week, couldn't you?"

A I do not know anything about this matter.

Q You didn't ask about it, either, did you?

A No.

Q You didn't care much about that, did you?

A On this matter usually the legal officer prepares this, therefore I thought there was no mistake about this.

Q You didn't bother to inquire whether there was any mistake, either, did you?

A I did not do this.

Q You say you gave the Doolittle fliers a chance to defend themselves, is that correct?

A They had the opportunity.

Q Did you give them a chance to ask any questions of the prosecutor who prepared these documents?

A Was it at the time of the interrogation?

Q At the time of the trial, in front of you?

A The judges asked them if the statements were true or not and at that time the fliers could either deny these facts or accept them.

Q And that is all that was done?

A And at the end they were given an opportunity to speak up. The judges asked them if they had anything to say.

Q I am asking you did you let the Doolittle fliers ask any questions of the prosecutor who prepared these papers for trial?

DEFENSE: If the court please, I don't believe the witness has testified the prosecutor prepared it. He presented it.

PROSECUTOR: (Maj Dwyer) Withdraw the question.



- Q The Tokyo Kempei Tai investigation, you relied on that in making your decision, didn't you?
- A Yes.
- Q Do you know who the Kempei Tai officer was who prepared that?
- A I do not know.
- Q Did you ask him any questions about that investigation? Did you ask the Kempei Tai officer who prepared that investigation any questions?
- A No, I did not.
- Q So you accepted the statement of a man whom you never saw in that trial, is that right?
- A No, that is not the meaning.
- Q Well, what is the meaning?
- A In the first place, on these documents -- on these statements there were the signatures of the fliers as well as their finger prints. In the second place I heard from Major Hata that these statements had been already verified by the prosecutors at the Kempei Tai and also that somebody else in the Kempei Tai had been already verified by the prosecutor or someone else in the Kempei Tai.
- Q That is right, I understand that too, but the officers who verified this -- the Kempei Tai officers who verified these statements, did you, yourself, ever ask them any questions?
- A I have not done it.
- Q You testified on Saturday that only the gist of the kempei Tai questions and answers were read, is that right?
- A That is right and besides that there was an explanation regarding this by Captain Wako, and after, for myself, I just looked it through and I did not know -- I did not entirely read it.
- Q Did you or anybody on this tribunal ever ask that a Tokyo Kempei Tai officer come to your court and make a statement?
- A Nobody came from the Kempei Tai, Tokyo.
- Q Now, then, have you told this Commission everything that happened in the court room on the day of the trial and everything that happened with respect to you just before the trial?
- A I believe I have said nearly everything.
- Q And your finding of the death penalty was based on what you told this Commission in this court room, is that correct?
- A There is no mistake in what I said.
- Q I am going to ask you again, you made this finding of the death penalty for the Doolittle fliers, based on the facts that you have told this Commission in this court room on this trial, is that correct?
- A Yes, that is right.
- Q You told this Commission you were a professor of ethics. How long were you a professor of ethics?
- A About twelve or thirteen years.
- Q And you are a graduate in ethics of the Imperial University of Tokyo, right?
- A I am a graduate of the section of philosophy - department of philosophy, yes.



Q Of the Imperial University?  
A Yes.

Q Do you know what a dictionary is?  
A Yes.

Q I am going to read you the definition of ethics as given by Webster and ask you if that is your idea of ethics. Webster says "Ethics is the science of moral duty, broadly, the science of ideal human character." And his other definition is "moral principles, quality or practice." Do you agree with that definition?

A That is a general meaning. That is rather abstract but that is the meaning.

Q You think that is pretty abstract, do you?  
A Yes.

Q Isn't there anything concrete about humanity or human character?

(Whereupon the witness started to speak in Japanese without waiting for the completion of the question.)

PROSECUTOR: (Maj Dwyer) Aren't you going to wait for the interpretation?

DEFENSE: (Capt Fellows) If the court please, I think the prosecutor is getting away from the clear facts of this case and has gone off into an argument between himself and the witness.

PROSECUTOR: (Maj Dwyer) There is no argument. He agrees it is a good definition but thinks it is abstract. I will withdraw the question.

Q What philosophy did you study and teach? Was it German?  
A Mostly German.

PROSECUTOR: No further questions.

#### REDIRECT EXAMINATION

Q (By Capt Fellows) Captain Okada when the documents were read in evidence before the Japanese Tribunal, and when the fliers did not deny their confessions, were you individually, honestly, convinced they were guilty?

A Yes, I was certain of this.

Q Had you not been convinced they were guilty, would you have voted they were guilty?

A Yes, I would have done so.

DEFENSE: (Capt Fellows) Does the court have any questions?

COLONEL MC REYNOLDS: There appear to be none.

DEFENSE: May the witness be excused?

COLONEL MC REYNOLDS: The witness is excused.

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



DEFENSE: The defense calls General Sawada.

SHIGERU SAWADA

one of the accused, took the stand in his own behalf, was examined and testified (through interpreter John Krantz) as follows:

Q (Lt Col Hendren) I will ask the witness a few preliminary questions. General Sawada, what is your religion?

A Buddhism.

Q General Sawada, do you know the meaning of truth and untruth?

A Yes.

Q General Sawada, will you feel that you are bound by your conscience and by your religion to answer truthfully to the questions asked by the prosecution, the defense and the commission?

A Yes, I do.

Q Are you one of the accused in this case?

A Yes.

Q Are you making this statement and testimony of yourself, voluntarily?

A Yes.

PROSECUTOR: Is the Commission satisfied with the qualification of the witness for an oath?

COLONEL MC REYNOLDS: Yes.

(Whereupon the oath of affirmation was administered to the witness.)

Q What is your name?

A Sawada Shigeru.

Q What is your rank in the Japanese Army?

A Lieutenant General.

DIRECT EXAMINATION

Q (By Lt Col Bodine) General, when did you take command of the 13th Army?

A In the early part of December, 1940.

Q What was your rank at that time?

A Lieutenant General.

Q Do you remember when you and your staff moved from Shanghai to the front in 1942?

A Yes, I remember.

Q Do you remember the exact date?

A Maybe I am mistaken about this. As I know --

Q What month in 1942?

A I believe that was the 7th of May 1942, but that may be a mistake.

Q When you left Shanghai in May 1942 for the front, did you leave anyone in command at Shanghai?



A I request two officers from the Supreme Headquarters to take care of the work in the Headquarters of Shanghai; that which concerned the law I left it up to Colonel Ito.

Q Therefore there was no one man in command at Shanghai?

A No, there was not.

Q Do you know if these two men, -- two staff officers you requested from Nanking, -- did they arrive before you left for the front or after you left?

A They came before I left.

Q Did you give these two staff officers any special instructions?

A That which concerns the -- that which is to be directly ordered by the Commander in Chief I told the two staff officers that that which concerns the orders directly to be given by the Commanding General they should await for my orders but for other works they could manage of their own.

Q Did they have authority to use your chop on documents while you were away?

A Yes.

Q General, how long were you away at the front?

A I believe I returned to Shanghai on the 17th of September 1942.

Q How far was your Headquarters at the front from Shanghai?

A By railway it would be about three hundred miles away.

Q General, when you were at the front, how many troops did you have under your command?

A There were five divisions, five mixed brigades and two or three independent brigades.

Q Would you say then there was about sixty to seventy thousand troops under your command?

A In all there must have been about a hundred thousand.

Q Did you know that the Doolittle fliers were to be tried at Shanghai prior to your departure for the front?

A I did not think about this.

Q You did not know or --

A I did not know anything about this.

Q Well, when was the first time that you knew that the Doolittle fliers were tried by the Military Tribunal of the 13th Army?

A I heard it when I returned from the front.

Q Had you received any messages or any orders or any other communications regarding the Doolittle fliers and the trial while you were at the front?

A I had not received anything.

Q Then you had not heard anything about the Doolittle fliers or the military tribunal prior to the time that you returned to Shanghai on September 17th?

A Yes.

Q Now, General, before you left for the front did you appoint a pool of judges to sit on court-martials?



A They were appointed in ordinary times approximately several chief judges and over ten judges, and if there were anything and they needed any new judges, they would soon replace them from these judges on the list, that had been appointed for always.

Q Then there were two general pools of judges or classifications of judges. One, you say the presiding judges and one the associate judges, is that right?

A Yes, that is right.

Q General, did you select Wako and Okada to act as judges for the Military Tribunal that tried the Doolittle fliers? In other words did you tell Wako and Okada to try the Doolittle fliers?

A I did not directly appoint them but they had been appointed previously in general.

Q Did General Ito select Wako and Okada for the Doolittle tribunal?

A General Ito selected them and appointed them in my name.

Q When you returned to Shanghai you say that was the first time you heard of the Military Tribunal for the Doolittle fliers. At this time did General Ito go over the whole trial with you?

A Yes, that is right.

Q What did General Ito tell you in regards to this trial when you returned to Shanghai?

A He related to me what had happened in the court and the result of the trial.

Q Did he tell you what action had been taken by him in sending the documents to Tokyo?

DEFENSE: I withdraw that question.

Q Did he tell you that he had sent the decision of the Military Tribunal to higher Headquarters?

A Yes, he reported that to me.

Q When General Ito told you about the trial, the results and the action taken by him in sending this decision of the court to higher Headquarters, did you send any message to higher Headquarters concerning your opinion as to the decision of this court?

A The documents sent by General Ito were in my name, therefore I did not send anything personally.

Q General, did you have the authority to revoke the decision of the court in the Doolittle trial?

A (None - but some discussion with interpreter).

Q General, did you have the opportunity to revoke the decision of the Doolittle trial before that decision was sent to higher Headquarters?

A I could not do it.

Q General, did you have the authority to revoke the decision handed down by Tokyo in regard to the execution and life imprisonment of the fliers?

A At that time I was already in the front and I was not in Shanghai. At that time I was transferred and therefore I did not know about this.



Q In other words, General, you were transferred before the decision was handed down by Tokyo, is that true?

A Yes.

Q Now, General, after you returned to Shanghai and you had a talk with General Ito in regards to the Doolittle trial, did you at any time thereafter go to Nanking to talk to General Hata in regards to this case?

PROSECUTOR: (Lt Col Hendren) If the Commission, please, we don't mind the counsel leading the witness but we do object to him testifying for the witness. He can ask the witness what he did and what he said but we do believe these questions are quite leading and improper.

DEFENSE: (Lt Col Bodine) I will withdraw the question.

Q After you talked with General Ito about the Doolittle trial, did you go to Nanking?

A Yes, I went to Nanking after this.

Q Why did you go to Nanking?

A To report what has occurred on the front and also to report the result of the trial set for the Doolittle fliers.

Q What did General -- who did you speak to while you were up at Nanking?

A I talked to Supreme Commander, General Hata.

Q What did General Hata say about the Doolittle trial?

A I told him that the trials are over -- were over -- and that I was awaiting for the orders from Tokyo. To that General Hata said I am doing the same. I am awaiting the orders from Tokyo and I cannot do anything about this.

Q General Sawada, do you know if General Hata, as the Supreme Commander in China, could he have revoked the decision of the trial of the Doolittle fliers?

A I believe he had no authority to do so, to change -- to revoke the sentence placed on the Doolittle fliers.

Q Was General Ito the Chief of the Legal Department of the 13th Army?

A Yes.

Q Did he personally -- was his duty to personally advise with regard to all legal matters of the 13th Army?

A Yes, that is right.

Q Could General Ito have changed or revoked the decision of the Military Tribunal of the Doolittle fliers in any way?

A He had no authority to change or revoke the sentence.

Q Now, when you had this conversation with General Ito on his return to Shanghai, did he mention any new law?

A He explained it to me.

Q What did he tell you about the new law?

A He explained fully the meaning of the military punishment is death.

Q Do you remember, General, the name of this law.

A Yes, I know.



Q What was the name of it?

A Military law concerning the punishment of Enemy Airmen.

Q Did he tell you the decision of the court in the Doolittle trial?

A Yes, he did, and on this document -- on the statement of judgment I attached my chop -- placed my chop on that statement.

Q Ito placed his chop?

A I personally placed my chop.

Q Did Colonel Ito say anything about your authority to commute or revoke the decision of the military tribunal?

A We cannot do that in the 13th Army, he said, but Tokyo is considering the commutation of the punishment of the fliers, he said.

Q You just mentioned, General, that you put your chop on the documents. Was this after the decision was sent to Tokyo?

A I put my chop on the statement -- on the documents which was to be filed in the -- to be kept in the Army itself, and this was not the document to be sent to Tokyo.

Q Was this the document that was to be kept in the files of the Legal Department?

A Yes, that is right.

Q General, did you have anything to do with the new law that was established by the Headquarters in Tokyo?

INTERPRETER: Anything to do with the fliers?

DEFENSE: I will repeat the question.

Q Did you have anything to do with the establishing of this new law that was sent down from Tokyo?

A No, I did not have anything to do with the establishment of the law.

Q Do you know of a place called the "Bridge House"?

A Yes, I know.

Q Was the Bridge House under your command?

A No.

Q Was the Kiangwan Prison under your command?

A No, that was not under my command.

Q Did you give Colonel Ito authority to send the decision of the Military Tribunal of the Doolittle fliers to Tokyo?

A In my opinion I wished to report it myself to the Supreme Commander but as I was absent Colonel Ito sent it directly to Tokyo.

Q What was the date that you were relieved of command of the 13th Army?

A I received the orders on the 8th of October 1942, and I left Shanghai on the 12th of October 1942.

Q General, were you ever criticized by your superiors for being too lenient with the foreign population of Shanghai?

A I heard of that rumor.

Q Were you ever actually criticized. You said you heard of the rumor, but were you ever called in and criticized?



- A There were two or three times.
- Q What was the reason for this?
- A I was criticized several times because I had generous attitude toward the foreign population in dealing of their life, freedom, withdrawal of money from banks, as long as they had no antagonistic attitude against the Japanese Army.
- Q General, was that the reason you were relieved from the 13th Army?
- A I do not know the reason.
- Q Did you ever receive a letter from the Red Cross, General, at any time while you were in command of the 13th Army?
- A Yes, I received it.
- Q What was the content of the letter or letters?
- A There was a certain representative of the International Red Cross, a Mr. Hegley, and he inspected the prisoner of war camp as to their condition and their treatment and he was satisfied with what the Japanese Army afforded.

COLONEL MC REYNOLDS: At this time the Commission will recess until 10:45.

(Whereupon at 1030 hours, the Commission recessed until 1045 hours, at which time all the members of the Commission, the accused, personnel of the prosecution and defense, the interpreting staff and the official reporter, resumed their seats in the court room.)

COLONEL MC REYNOLDS: The Commission is in session.

(Whereupon Shigeru Sawada who had been testifying at the recess period, resumed the witness stand, was reminded he was still under oath, was examined and testified on direct examination, (through interpreter, Captain Ryong C Hahn), as follows:

- Q (By Lt. Col. Bodine) Prior to recess you stated that letters you received from the Red Cross were from a Mr. Hegley?
- A Yes.
- Q General when you went to Nanking, you spoke to General Hata, did you express any opinion, personal opinion, about the Doolittle fliers?
- A Yes, I have.
- Q What was that, that you expressed?
- A I told him that their punishment is too severe. "Will you do something about it?"
- Q What did General Hata say to you about that?
- A He said that we can't do anything about it as Tokyo will decide.

COLONEL GAMBER: Will the reporter repeat the question and the answer, please, the previous question and answer, not the last one.

REPORTER: (reading) "What was that, that you expressed?" And the answer was "I told him that their punishment is too severe. Will you do something about it."

- Q General, did you ever personally request that the Doolittle fliers be put to a Military Tribunal of the 13th Army?



- A I didn't do anything directly.
- Q Did you personally direct that the Doolittle fliers be charged with having violated the provisions of the Enemy Airmen's Law?
- A I didn't do anything myself, directly.
- Q Did you, General, ever personally direct or order that any mistreatment be given to Lt. Dean E. Hallmark?
- A There is none.
- Q General, was the 13th Army under the Supreme Headquarters, China Expeditionary Army at Nanking?
- A Yes.
- Q When you had this conversation with Colonel Ito when you returned to Shanghai, did he tell you that Tokyo and Nanking had ordered the case to be put to trial?
- A Yes.
- Q General, do you remember giving a statement to Colonel Hendren at the Sugamo Prison in Tokyo, in January 1946?
- A Yes.
- Q Were you asked this question and did you give this answer? Question, "Was the Kiangwan Military Prison under your jurisdiction?" Answer, "I had authority over Kiangwan,"
- A Yes.
- Q Now when you answered that question did you mean Kiangwan or did you mean Kiangwan Prison?
- A It was Kiangwan Branch Prison.
- Q Now, was Kiangwan Branch Prison at Kiangwan under your command?
- A It was not an important organization. I don't think it was under my command but I found out later that it was under the jurisdiction of Nanking.
- Q General, did you make a statement to Major Robert T. Dwyer, on February 12, 1946, at the Ward Road Jail?
- A Yes.
- Q Were you asked this question and did you give this answer? Question, "The sentence of death imposed by the court was approved by your Headquarters?" Answer, "The Commanding General of the 13th Army had no power to change the court sentence."
- A Yes.
- Q You were asked this question? Question "You approved the sentence, didn't you?" And the answer was "Yes." Now what did you mean when you said "yes" to that question?
- A I meant that it was approved when I returned to Shanghai.
- Q General, do you know what you are on trial for now?
- A Yes, I do.
- Q General, do you know of the Japanese agreement with the United States concerning the Geneva Convention, February 1942?
- A Yes, I know.
- Q Did you know about it in September?



INTERPRETER: September when?

DEFENSE: September 1942.

A Yes, I did.

Q General, how old are you now?

A In Japanese counting, 59.

Q How long have you been in the Army?

A Over 40 years.

Q Were you retired before the end of the war?

A Yes, I was retired.

Q Are you married, General?

A Yes.

Q Have you any children?

A Two.

Q How old are they?

A 29 and 24.

Q How old is your wife?

A 46.

Q Is there anything, General, that you want to tell this Commission at this time in regard to the charges against you or in regard to anything in regard to the Doolittle trial?

A Yes, I have.

Q Explain it.

A The trial of the Doolittle fliers was ordered by Tokyo and it was not tried under my order. Those regulations used for the trial was established by Tokyo also. Concerning their treatment, it also was awarded by Tokyo. The trial was conducted in a fair way under those regulations. Those conducting the trial could not indulge in their own wishes. Everything done by them was fair under the laws and regulations. I regret now that I could not conduct this case myself. On the other hand I sympathize with them that they conducted this trial without much experience and by themselves.

COLONEL BERRY: Will the reporter please read the first two or three sentences of that?

REPORTER: (reading) "The trial of the Doolittle fliers was ordered by Tokyo and it was not tried under my order. Those regulations used for the trial was established by Tokyo also. Concerning their treatment, it also was awarded by Tokyo."

COLONEL BERRY: That is far enough. Thank you.

DEFENSE: There are no more questions by the defense.

COLONEL GAMBER: Will you ask the witness whether that was Tokyo or Tojo?

INTERPRETER: His reply is "Tokyo."



## GROSS EXAMINATION

- Q (By Lt Col Hendren) General Sawada, what education have you had?  
 A I graduated from Military Preparatory School, Military Academy and Military University.
- Q Have you held any Diplomatic Posts in the Japanese Government during your career?  
 A Frequently I served as Military Officer, Deputy Official to various embassies.
- Q What foreign countries did you serve in?  
 A Ever since I graduated from the Military University I spent half time of my time --my entire time.
- Q What countries did you serve in during that time?  
 A In Russia before the Russian Revolution. In Turkey right after the First War. In Poland and Manchuoko.
- Q Did you ever serve in France?  
 A I visited there frequently.
- Q Did you ever serve in Switzerland?  
 A I travelled there frequently.
- Q Have you ever been in the United States?  
 A I went there twice.
- Q Have you ever been in England?  
 A Twice.
- Q When you visited these foreign countries did you ever visit their courts?  
 A No.
- Q General, you stated you were familiar with the fact that Japan had agreed to abide by the terms of the Geneva Convention for the treatment of prisoners of war.  
 A Yes.
- Q Were you familiar with the terms of the Geneva Convention for the treatment of war prisoners?  
 A I read it once but I don't remember.
- Q Did you give any instructions to the members of your command as to how they should treat prisoners of war?  
 A Yes, I have.
- Q What instructions did you give them?  
 A In general I told them to treat the prisoners fairly and with a kind attitude.
- Q General, were you the senior officer in Shanghai during the period April 1, 1942, to October 1, 1942?  
 A Yes, --or in the Army.
- Q What jurisdiction did you have over the people in Shanghai?

INTERPRETER: You mean --

PROSECUTOR: Jurisdiction -- Army Jurisdiction.



A I had the responsibility to maintain order and peace in the territory which was under my jurisdiction.

Q General, during the period did you go around and visit these various places where the prisoners were kept to see if they were getting the proper treatment under the Geneva Convention?

A I didn't visit just the camp.

Q Did you visit the Union Jack Club here in Shanghai to see how the prisoners were treated there?

INTERPRETER: Union Jack?

PROSECUTOR: Yes, that is the English Club. Union Jack Club.

A (None)

Q Did you know at the Union Jack Club they had a contraption there that virtually pulled people apart that they used when they questioned prisoners?

DEFENSE: If the court please, that is not in evidence.

PROSECUTOR: I can ask him any question regarding the details of the treatment of prisoners under his command.

DEFENSE: If you first show his responsibility.

PROSECUTOR: He said he was the Senior Officer and as Senior Officer that was a part of his duty. we submit to a ruling.

COLONEL MC REYNOLDS: Subject to objection by members of the Commission, the objection is over-ruled.

A During my service in Shanghai it was taken out.

Q Did you know how prisoners were treated at Bridge House or by the Military Police?

A I didn't know anything about what was going on there.

Q Didn't you, as Senior Army Commander here in Shanghai, have responsibility for the conduct of the Japanese Army in Shanghai?

A There were many units directly under Nanking Supreme Headquarters and I don't know anything about them.

Q That is not what I asked you. Didn't you, as Senior Army Commander have responsibility for the conduct of Japanese soldiers in Shanghai during that period?

A I was only responsible for my own Army.

Q Was your Army stationed out near the Kiangwan airfield?

A Yes.

Q Whose Army did the soldiers belong to who questioned the Doolittle fliers when they first came to Shanghai in April, 1942?

INTERPRETER: Was that October or April?

PROSECUTOR: April.



A I think the Gendarmes conducted the investigation because they were handed over to the Gendarmerie.

Q Didn't members of your Army capture three of the Doolittle fliers down there at Ningpo?

A Yes.

Q And didn't the members of your Army bring the three Doolittle fliers to Shanghai right after they were captured?

A I received a letter telegram from Tokyo --

(At this point the witness interrupted the interpreter, who then continued with the following answer)

A Before those fliers were brought in to Shanghai, Nanking ordered -- instructed us to send them over to Nanking and Tokyo.

Q Did you know that they were captured when they were first captured down at Ningpo by your Army?

A Yes.

Q Were you advised when they were brought in to Shanghai from Ningpo?

A Yes.

Q Did you listen to Captain Nielsen testify on the witness stand in this case?

A I heard it.

Q Did you hear him tell how he was treated out at the Airfield the night before he was taken to Tokyo?

A I heard.

Q Well who was responsible for his treatment at the Airfield that night?

A The Gendarmerie took them over already and if there is any responsibility it is the Gendarmerie.

Q How do you know the Gendarmes took them over?

A The Chief of Staff reported me so.

Q Well they were personnel of the 13th Army, weren't they?

A The Chief of Staff made a report to me that they were brought to Shanghai and to be sent to Tokyo right away.

Q You didn't answer my question. Those boys were prisoners of your Army at that time, weren't they?

A As soon as the Gendarmerie took them over, my responsibility -- there isn't any of my responsibility at all.

Q Didn't you tell this Commission that you had instructions to send them to Tokyo?

A I gave orders in accordance with the orders of the Supreme Commander.

Q Well, now, did you send them to Tokyo?

A I didn't send them to Tokyo, the Gendarmerie did.

Q I thought you told the Commission that you had instructions to send them to Tokyo, is that right?

A Nanking ordered us to hand them over to the Gendarmerie and in order to send them to Tokyo, the Gendarmerie took the command.



- Q Did the Gendarmes fly them over to Tokyo in their airplanes?  
A I didn't see them, but, yes.
- Q Who had charge of the airfield out here at that time? Kiangwan Airfield?  
A The Kiangwan was not a military airfield. It belonged to China Aviation. It belonged to China Aviation Company.
- Q Who had control over the Japanese Army airplanes that were out there?  
A There was a division command of airforce in Nanking. It was responsible for it.
- Q Well, did you have any responsibility for what happened at the airfield?  
A No, I didn't.
- Q Did you make any inquiry to see how these prisoners were treated when your Army brought them in here?  
A No.
- Q The fact of the matter is, General, you didn't care how they were treated, did you?  
A I thought that they were treated fairly.
- Q You heard Captain Nielsen testify about being given the water treatment out there, didn't you?  
A I heard him say that he received it from the Gendarmes.
- Q Did you ever hear of anyone else around there having the water treatment given to them before this trial?  
A I never heard of it.
- Q You didn't make many inquiries around Shanghai did you, while you were the Big General here?  
A There was no detailed instruction because I ordered my subordinates to treat prisoners of war fairly and I knew that they followed my instructions.
- Q Did anyone ever complain to you while you were Commanding General of the Army in Shanghai as to being mistreated by the Japanese?  
A No.
- Q Well, do you think any of the foreigners here ever were mistreated while you were here?  
A No.
- Q How far was your office, General, from that Kiangwan Prison out there at Kiangwan Military Prison that you spoke of?  
A About 300 meters.
- Q Did you ever walk back there and see what was going on in that place?  
A No.
- Q Did you know that a Mr. Powell that was back there, the Japanese had pulled his toenails off and gangrene set in and they had to cut his feet off during the spring of 1942?  
A Where did it happen?



- Q Right back in that jail in your compound.  
A What month.
- Q Along in February or March 1942.  
A I didn't receive any report of that.
- Q And you tell this Commission, -- you want this Commission to believe that you never went back in that Kiangwan Prison any time while you were in Command of the 13th Army?  
A I haven't gone there.
- Q Why didn't you go back there and look around to see what was going on?  
A I couldn't attend to all the small details of my command. However, concerning the Doolittle fliers I expressed my desire to the Chief of Staff that I wanted to see them.
- Q Well did you go back and look at them?  
A I was transferred from here at the time and I didn't have time to see them.
- Q Well you were here during the latter part of September and early part of October, weren't you?  
A I was very busy on account of military operations.
- Q General, you told this Commission you were familiar with the rules of the Geneva Convention for the treatment of prisoners of war, didn't you?  
A Yes.
- Q Now, you want the Commission to believe that you never went back in that prison to see what was going on back there and the prison was only 300 meters from your office?  
A In regard to the Doolittle fliers, their treatment was a little different from prisoners of war because the War Ministry ordered us to treat them as war criminals but not prisoners of war.
- Q Then you knew how they were being treated when they were back there, didn't you?  
A Colonel Ito made a report to me that they were treated as suspects of war criminals of the Japanese.
- Q Did you do anything about their treatment? Did you try to improve it any?  
A I didn't give any orders.
- Q Did you give the order to treat them as war criminals?  
A There was an order from the War Ministry that they were to be treated as suspects of war criminals.
- Q The treatment of the prisoners was carried out under your command responsibility, wasn't it?  
A Yes.
- Q And when General Ito -- anything General Ito did, he did at your command or under your command responsibility, didn't he?  
A Because Ito acted for me, whatever he has done is my responsibility.
- Q And whatever Wako and Okada did is your responsibility, isn't it?  
A Whatever any subordinates have done is my responsibility.



Q And whatever Hata did was your responsibility? Major Hata?

A Yes.

Q And whatever Tatsuta did was your responsibility too, wasn't it?

A He is not -- I am not responsible for him.

Q You told me in Tokyo you were responsible for the Kiangwan Military Prison?

DEFENSE: I object to that question. He did not say he was responsible for the Kiangwan Prison. He said he was responsible for Kiangwan. You should read the question.

PROSECUTOR: I looked at the question. I am asking him what he told me in Tokyo.

DEFENSE: You asked him to explain it. Look at what is in the statement. It said Kiangwan, and also, if it please the Commission, the General has already testified that Kiangwan was not under his command; the Bridge House was not under his command, and he had no authority or jurisdiction over the Gendarmes.

PROSECUTOR: Withdraw that question. I will ask it this way.

Q General, when I took your statement in Tokyo, did I ask you this question? Question "Was the Kiangwan Military Prison under your jurisdiction?" And did you give me this answer "I had authority over Kiangwan."

A I did.

Q And when did you find out you didn't have any authority over that prison?

A I misunderstood the question in Tokyo. Since I came to Shanghai I learned from Captain Wako that the Branch was not under the jurisdiction of the 13th Army but under the Nanking prison.

Q In 1942 did you think you had jurisdiction over that prison? Kiangwan Prison?

A I misunderstood about that at the time.

Q Answer my question. In 1942 did you think you had jurisdiction over Kiangwan Military Prison?

A I also thought a mistake.

Q Then you thought you had jurisdiction over that Prison in 1942 when the Doolittle fliers were there, didn't you?

A I thought so, but I did not have. That wasn't under my command.

Q Then in 1942 you thought you had responsibility over warden Tatsuta there, didn't you?

DEFENSE: I object to that question. The General just stated one minute ago that Tatsuta was not under his command. If the Commission please, we object.

PROSECUTOR: If the Commission, please, I would like to have the counsel let me cross-examine the witness. This is proper cross-examination. The witness stated in 1942 he thought he had responsibility for the prison out there in 1942. It is a proper question to ask him if he didn't think he had responsibility for the prison warden. That is proper cross-examination.



COLONEL MC REYNOLDS: Objection over-ruled.

- Q I will ask you the question again. In 1942 you thought you had jurisdiction over Tatsuta, didn't you?
- A I thought so. I thought he was under my command but it is not a fact.
- Q And you didn't find out he wasn't under your command until about two months ago when you talked to Captain Wako, did you?
- A Yes.
- Q And that prison of his was about 300 meters from your office in the same compound, wasn't it?
- A It was an unimportant place and I misunderstood about it.
- Q Now that is where all prisoners were confined who were tried before your military courts, wasn't it?
- A Yes.
- Q And there was a lot of foreign prisoners back there, wasn't there?
- A Yes.
- Q And you knew they were back there, didn't you at the time they were there?
- A I knew.
- Q And you knew what kind of treatment they were getting back there, didn't you?
- A Yes, I knew.
- Q And did you do anything to change that treatment?
- A I instructed my subordinates to treat them as well as Japanese officers and take it further.
- Q Did you check up on your subordinates to see if they carried out your order?
- A Yes.
- Q What did you do? Just tell the Commission what you did to see that your order was carried out.
- A Are you referring in general?
- Q Just in general. What did you do to see that the prisoners were treated all right out at Kiangwan Military Prison.
- A I always received reports from Colonel Ito.
- Q You received reports from Colonel Ito. What kind of reports did he give you?
- A He said that they were treated as well as Japanese officers.
- Q As Japanese officers? Were Japanese officers required to live in a cell about four feet wide and six feet long?
- A Yes.
- Q They were? Were there some Japanese officers imprisoned back there?
- A Yes.
- Q Did you ever go back there to see any of them?
- A No.
- Q The fact is, General, you didn't pay much attention to that prison back there, did you?



A I had my subordinates in charge and received reports from Colonel Ito.

Q But you never went back there yourself and looked around, did you?  
A No.

Q Did you ever attend one of these Military Tribunals that Colonel Ito put on back there?  
A I never attended any tribunal.

Q Did you ever read the record of the trial before you approved it?  
A It is customary procedure that Colonel Ito explained and made a report to me and explained me all about it, then I placed my signature on it.

Q Then those courts back there in the back there of your compound were carried on under your responsibility, weren't they, that Colonel Ito had?  
A Yes.

Q And you were responsible for what went on in that court room back there, weren't you?  
A Yes.

PROSECUTOR: If the Commission please, before we go into another phase of the cross-examination, does the Commission desire to recess?

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

(Whereupon, at 1158 hours, the Commission adjourned to reconvene at 1400 hours, 8 April 1946.)

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AFTERNOON SESSION

... Pursuant to adjournment the Commission reconvened at 1400 hours on 8 April 1946 ...

COLONEL MC REYNOLDS: The Commission is in session.

LT COL HENDREN: Let the record show the Commission, the accused, attorneys for prosecution and defense, reporter and interpreters were present in the courtroom after recess.

We have a new interpreter we would like to swear in at this time.

COLONEL MC REYNOLDS: Proceed.

(Whereupon Mr. Inoshita was sworn as interpreter.)

SHIGERUO SAWADA

a witness testifying in his own behalf, resumed the stand, was reminded he was still under oath, was examined and testified (through Interpreter Kranz) as follows:

CROSS EXAMINATION (Resumed)

Q (By Lt Col Hendren) General Sawada, when you left Shanghai in May of 1942 did you have direct communication with your headquarters after you arrived at the front?

A It depended on the occasions, but communications were very difficult and we communicated by means of radio.

Q Then you always had radio communication with your headquarters here in Shanghai?

A Yes.

Q And during that period did you receive radio reports from your headquarters as to what was going on at your headquarters?

A This came into my hands in the form of radiogram.

Q Did you receive any information about the Doolittle case during the summer from May until you arrived back here in Shanghai in September?

A I have not.

Q Isn't it a fact you were back in Shanghai during the summer of 1942?

LT COL BODINE: I object to that question. The general has already stated he did not return to Shanghai when he left in May and that he didn't return until September.

LT COL HENDREN: I can interrogate this witness whether he was back in Shanghai or not during the summer of 1942. It is proper cross examination.

COLONEL MC REYNOLDS: Subject to objection of any member of the Commission the objection is overruled.

LT COL HENDREN: You may answer the question.

A I did not return to Shanghai.

Q Was General Karakawa with you all the time when you were down at the front?

A Not only Karakawa but the chief of staff and his adjutant were in the same house as I was.



Q Did any one come down from Shanghai and tell you what was going on in Shanghai during the time you were at the front?

A I believe nobody came from Shanghai.

Q During all this time you were still in command of the 13th army, is that correct?

A Yes.

Q And these men that came down from Nanking did not take over command of the army while you were away?

A They were assigned to do routine work in the headquarters but they actually did not have the authority of the commanding general.

Q Then on August 28, 1942 you were the commanding general in command of the 13th army, is that correct?

A Yes.

Q And the trial held there that day was held under your authority, is that correct?

A Yes.

Q When you came back in September you stated that you approved the record of trial that General Ito brought to you, is that correct?

A Yes, that is true.

Q And you did that personally by putting your chop on this record of approval, is that correct?

A Yes.

Q Now General, this record of trial was never sent to Tokyo was it - the actual record itself?

A The document which I signed was kept in the headquarters but was never sent to Tokyo.

Q And your headquarters only sent a radio report to Tokyo of the results of the trial, isn't that correct?

A I was explained so by Ito.

Q And that record of trial was never sent to Nanking, was it?

A All the radiograms were sent to Tokyo through Nanking Supreme Headquarters.

Q But I mean the actual record of the trial itself was never sent to Nanking, isn't that correct?

A This was first sent to Nanking, then to Tokyo.

Q You are talking about the radio message now. I am talking about the record of the trial itself. The record stayed here in your headquarters all the time and a radio report was sent to Nanking and Tokyo, isn't that correct?

A The document I signed remained in the headquarters.

Q And no copy of that document was ever sent to Tokyo was it at that time? No copy of the document you signed was ever sent to Tokyo at that time?

A The copy was immediately sent after the trial through Nanking.

Q Now was that a copy of what you signed or just a radio report of the results of the trial?

A The statement of judgment was sent immediately after the trial and when I came back from the front I signed to this statement.

Q Then isn't it a fact that you were the only one that actually approved the record of trial?



- A I signed it as the commanding general of the military tribunal.
- Q And at the time you signed it it called for death for all eight of the fliers, didn't it?
- A Yes.
- Q Now general, isn't it a fact that you had authority at that time to order a new trial or refuse to approve the result of the trial?
- A I could not revoke or change the sentence placed upon the fliers. Since I approved of this trial there was no need of having another trial but if I had not approved it there could be another trial. But when I returned from the front it was already 20 days after the trial therefore it was not possible to have another trial set up as all the documents were sent to Tokyo.
- Q Well, I thought you just told the Commission that the documents and the record of the trial stayed here in Shanghai?
- A Yes.
- Q Well then, you could have approved it or disapproved it, couldn't you at that time?
- LT COL BODINE: I object to that question, if the Commission please. The question asked is He could have approved it or disapproved it. I don't know what he is talking about right now. I don't think the witness does either.
- LT COL HENDREN: I will stand with the witness. I think he knows what I am talking about. He can answer the question.
- COLONEL MC REYNOLDS: Objection sustained.
- Q Then General, you could have either approved the record of trial, the conviction, or have disapproved the record of trial at that time, couldn't you?
- A Yes.
- Q You heard General Ito testify in this courtroom, didn't you?
- A Yes, I remember.
- Q And you heard him say that you had the authority to revoke or remit the sentence that had been passed, didn't you?
- A He said so, but that must be a misunderstanding.
- Q Well then, isn't it a fact, General, that you did have the authority at that time to either revoke the sentence or remit it?
- A I had no authority.
- Q Now you told the Commission that you went up to Nanking and told General Hata that you thought the sentence was too severe, is that correct?
- A Yes.
- Q Was this after you had approved the sentence, the record of trial?
- A Yes, that is after I approved these sentences.
- Q Well, did you think the sentences were too severe when you approved them?
- A I had that feeling.
- Q Well, why did you approve them then if you thought they were too severe?
- A At that time Tokyo demanded that the prosecutor request the death penalty and therefore I could not change the sentence.



- Q Well, the fact is you didn't do anything to change the sentence, did you General?
- A Ordinarily I have no authority to change the sentence and at that time I was informed to wait the orders from Tokyo so I could not do anything about it.
- Q Now when you went up to see General Hata up at Nanking what did you say and what did he say about this Doolittle case?
- A I told them that the sentences imposed upon the eight fliers are death and I feel sorry for them, for the fliers. To that General Hata said, "I feel the same way but since the orders are to wait for the approval of Tokyo, we have to wait."
- Q Well then, did you send any radio over to Tokyo and ask them to disapprove the sentences?
- A Since that was 20 days after the trial was over and they had used my name on the document I could not do anything about it.
- Q Well, the fact is you didn't try to do anything about it, General, except to talk to General Hata about it.
- A I did not do anything other than that.
- Q Do you know why these Doolittle fliers were tried here in Shanghai? Why were you ordered to try them?
- A I received information about this matter from Ito.
- Q What information did you receive from Ito?
- A The original order is from Tokyo but the actual order came from the Supreme Headquarters of Nanking to try these American fliers in a military tribunal.
- Q Well, General, if these boys did anything wrong they did it in Japan and not in China, isn't that a fact?
- A Yes, that is right.
- Q And ordinarily they would have been tried in Japan, isn't that correct, because that is where the offense was committed?
- A I think that should be so but I do not know why this was tried in China.
- Q These airmen hadn't done anything in Shanghai to deserve being tried for had they?
- A I think there was no reason but since that was the order we could not refuse it.
- Q Then you don't know of your own knowledge anything they did wrong at any time, do you?
- A Before I left for the front in May, 1942 I received the investigation documents from the MP headquarters in Nanking and I studied the acts of the fliers then.
- Q Well, what did that report say?
- A I will say what I remember clearly. There were two things. First, that these fliers were ordered not to bomb the Imperial Palace. Secondly, they were not to land in Soviet Russia. It was also stated that the fliers had gunned school children in the compounds of a preparatory school in Nagoya. I do not know who has confessed this, but one said he had dropped his bombs hastily and therefore this would result in hitting non-military objectives. One reason for bombing Tokyo was to disturb the morale of the people. That is all.



- Q Was that a report made prior to the time the fliers were taken over to Tokyo for questioning?  
A I think I saw this document in the early part of May.
- Q Where did you see that document?  
A I saw it in the headquarters in Shanghai.
- Q Well, at that time did you tell Colonel Ito to go ahead and try these fliers?  
A I did not do that since the fliers were already sent to Tokyo.
- Q Did you make up your mind then that they ought to be tried?  
A I did not decide upon that matter.
- Q The fact is at that time you didn't have any law to try them under.  
A There were no laws at that time.
- Q Then prior to the time you went to the front you knew all about this thing, didn't you?  
A I did know the result of the raid but nothing else.
- Q Well at that time did you know the fliers would be sent back over here from Tokyo?  
A I did not know.
- Q Now General, if you had the power to remit or revoke the sentences would you have revoked the sentence passed by the court?  
A I can not say now because I have to study the circumstances and the conditions at that time but as regards commuting the sentences on some of the fliers I would have given consideration.
- Q But you didn't give them any consideration when you approved the sentences in September, did you?  
A At that time I had no power to alter or to revoke the sentence and I also received orders to wait for the approval of Tokyo.
- Q General, could that sentence have been carried out without your approval?  
A Since the order said to wait for the approval of Tokyo nobody could alter the sentences.
- Q Now isn't it a fact, General, that that sentence couldn't have been carried out if you hadn't approved it?  
A Concerning this case we were informed to await the orders from Tokyo therefore we could not do anything about it.
- Q General, did you give a statement to Major Dwyer here at Ward Road Jail?  
A Yes.
- Q I will ask you if this question was asked at that time and if you gave this answer: "Q. If you refused to put your chop on the sentence of the court the sentence could not have been carried out? A. Without my signature the sentence can not be carried out." Was that question asked and that answer given?  
A I answered that in regards to general authority.
- Q Weren't you and Major Dwyer talking about this case at that time?  
A At that time the question concerns general authority.
- Q Then you and Major Dwyer weren't talking about the Doolittle case at that time, is that right?  
A We were talking about the Doolittle fliers but this question concerned with the law of the general authority.



Q Well, in this case you appointed the court, didn't you? It was appointed under your responsibility?

A Yes.

Q And the case was referred to trial under your authority, wasn't it?

A This was referred by my authority but the orders were to wait for the approval of Tokyo therefore I could not do anything about it.

Q You misunderstood my question. I said this case was referred to trial before this court under your authority, wasn't it?

A There was a restriction given by Tokyo and under this restriction we carried out the trial.

Q And isn't it a fact that the sentence of a court martial even under your law can't be carried out unless the commanding general who appoints the court approves the sentence, isn't that right?

A If I had received orders I had to put up the military tribunal.

Q That's not what I asked you. I say, isn't it true that even under this type of court the sentence couldn't be carried out until the commanding general who appointed the court approved the sentence.

A But in this case we were ordered to wait orders from Tokyo, therefore we could not do anything.

Q General, you don't understand my question. Now listen carefully to what he (the interpreter) says. Isn't it true that even if this kind of court, the sentence could not be carried out, the men could not be shot until you had approved the findings of the court?

A If I had the authority, that would be true, but since Tokyo held all the authority I had nothing to say.

Q Then why did you approve the sentence? Why didn't you just leave it alone?

A In this trial the judges give the sentences and these sentences were immediately sent to Tokyo in a form of a statement and I was just between the two parties and I could not do anything but to sign it since I thought this was proper.

Q Then you thought the sentence was proper, didn't you, that is why you approved it?

A Yes.

Q And at that time you didn't feel very sorry for the fliers, did you?

A I felt very sorry for them.

Q You felt so sorry for them you approved their death sentences, didn't you?

A This is given in the law therefore I had to obey it.

Q Well, after you got to feeling sorry for them did you go back to the back end of your compound there and see them?

A If I knew they were to be executed I would have gone to see them.

Q Well, you did everything in your power to see they were going to be executed, you approved the sentences.

A Yes, but the final approval comes from Tokyo therefore I did not know the sentence.

Q Isn't it true the only approval from Tokyo was to give five life imprisonment and you have given all eight death. That is what that amounted to, isn't that a fact?



LT COL BODINE: Let me here that question again.

(The last question was read back.)

A At that time I was already transferred to another post, therefore I did not know the decision of Tokyo.

Q Well, Tokyo turned out by treating them better than you did, didn't they?

A Yes, that is right. And since there was an order from Tokyo to wait we expected them to commute the sentences on some of the fliers.

Q Well, if it had been left up to you you would have shot all of them wouldn't you?

A That would never have been.

Q Well, how would you have stopped it?

A In that case I would talk over this matter with the supreme commander of the army and the commanding general would return the report to Tokyo and we would get a different result.

Q You had already approved it to shoot all of them, hadn't you?

A In that case, according to the law I could confer with the commanding general and we could have changed the sentences.

Q By that time you had approved the execution of all eight of them, hadn't you?

LT COL BODINE: I object to that question, if the Commission please. It has been asked four times by the prosecutor. I don't know if it is wasting the Commission's time, but it is sure wasting the defense's time. He has asked that question four times and he has got the same answer all the time. It appears he is trying to trick the witness into answering the way he wants him to.

LT COL HENDREN: I will withdraw the question.

Q General, did you hear General Shimomura's statement read here the other day?

A Yes, I remember.

Q Well, in that statement he said that he had a conference with you on the 15th of October out at your headquarters. Was he telling the truth?

A We disagree in that point.

Q Well, in Defense Transcript Exhibit No. 10, he states that you were down here at the Astor House and he came out here and had a conference with you on the day these boys were shot.

A I stayed in the Astor House just one night before I left for Tokyo and I never met Shimomura in this hotel. I stayed on the night of the 11th at the Astor House, but I never met Shimomura there.

Q Well, Shimomura says that on the 15th of October about ten o'clock or a little after that he went to your headquarters out at the 13th army and had a conference with you. Was he telling the truth?

A I remember it to be the 11th of October.

Q When did this order come over from Tokyo to have these boys executed, have them shot?

A I left Shanghai on the 12th and till then I never knew about the sentences.



- Q Well, isn't it a fact that Tokyo advised your headquarters to carry out the execution on the 10th of October?
- A About then I visited my friends to bid farewell and I was not present at the headquarters therefore I do not know anything about it.
- Q So General Shimomura is not telling the truth when he says he had a conference with you here on the 15th of October, is that right?
- A I can not say anything concerning Shimomura's memory but as far I know I have just stated.
- Q Well, which one of you is telling the truth, you or Shimomura? Were you here on the 15th or were you not here on the 15th?
- A On the 11st of October I gathered the officers of the staff of the headquarters and I bade them farewell. After this I met Shimomura and spoke to him. I left on the ship Shanghai Maru on the 12th of October and for reference you could find it out for yourself in the ship company in the city.
- Q Did you talk to Shimomura about the Doolittle case?
- A I transmitted the report to Shimomura.
- Q What did you tell him about it? Did you tell him you were still sorry for the boys?
- A I told him there would be the final orders from Tokyo, to wait for it.
- Q What did he say to that?
- A He said, "I fully understand."
- Q Now General Sawada, the court was appointed under your jurisdiction, is that correct?
- A That is the truth.
- Q And the case was referred to the court under your authority, is that correct?
- A That was ordered in my name but I did not directly order.
- Q But you were responsible for the army at that time, is that right?
- A Yes.
- Q And the members of this Commission, the court, the prosecutor were all working for you at that time and their acts were committed under your authority, is that right?
- A They were not directly ordered but they were ordered under my name.
- Q Then whatever they did was done under your command responsibility, isn't that right?
- A I am the commanding general of the military tribunal therefore I hold responsibility as commanding general.
- Q And you approved the sentences that the tribunal gave the fliers, didn't you?
- A I approved the trial but not the sentence.
- Q Then you were responsible for whatever happened to those boys, weren't you?
- A Yes, I had the responsibility of the army.
- Q And you were responsible for them all the time they were here in jail, weren't you?
- A The treatment they were given in the prison was not within my responsibility.



- Q You approved their sentence didn't you?  
A I meant the decision of the trial but not the sentence.

LT COL HENDREN: That is all.

RE-DIRECT EXAMINATION

- Q (By Lt Col Bodine) General, what were the Doolittle fliers, prisoners of war or criminal suspects?  
A They were suspects of war crimes. That is according to the orders of War Ministry.
- Q Now General, had the Doolittle fliers been prisoners of war and under your command would you have treated them as such?  
A Yes.
- Q The Bridge House was under whose jurisdiction?  
A The Bridge House was under the head of the headquarters in Shanghai but in turn was under the command of the commanding general military gendarmerie in Nanking.
- Q Who was the head of the gendarmerie at Nanking under? Who was the commanding officer?  
A He was under the command of General Hata.
- Q Now when you stated a little while ago, General, that you were responsible for the acts of Wako, Okada and the prosecutor, Hata, did you mean that you were responsible as the commanding general of the 13th army or that you were personally responsible?  
A If that is stated in the law I am responsible for it, but I stated in the meaning that as their superior officer I am responsible for their acts.
- Q All right then, did you, General, personally direct or cause their acts?  
A I did not believe in that meaning, but I am indirectly responsible for the education of the judges.
- Q General, if you had not signed the record of the trial would the three Doolittle fliers been executed by the order handed down from Tokyo?  
A Yes, that is true.
- Q General, could you have wired Tokyo without getting General Hata's permission?  
A No, I could not.
- Q Then if you wanted to wire Tokyo in regards to the Doolittle fliers trial you would have had to go or get permission from Nanking? From General Hata, is that true?  
A Having had to be approved by Hata before being sent to Tokyo.
- Q And General, isn't it true then that also General Hata referred these Doolittle fliers to trial? Isn't it true that General Hata was the one who referred the Doolittle fliers to be tried in Shanghai?  
A Yes, sir, that is true.
- Q General, did you know that the United States Commanding General of China requested that General Shimomura be brought to China as one of the accused in this trial?

LT COL HENDREN: May it please the Commission, I object to that question. I don't know whether he is telling him that the Commanding



General of the China Theater asked for it or whether he is asking the question. And even if the Commanding General of the American Army sent a message for Shimomura wouldn't prove or disprove any issue in this case. It is immaterial. It is not within the province of this witness to know whether he did or not.

LT COL BODINE: I'll withdraw the question.

Q General, did you know or do you know that General Shimomura had been confined to prison in Tokyo?

A Yes, I know.

Q And have you heard General Ito state that General Shimomura signed the execution order of the Doolittle fliers?

A Yes, I do remember.

LT COL BODINE: Does the Commission desire a recess at this time?

COLONEL MC REYNOLDS: We will recess until 3:45.

(Whereupon the Commission took a recess at 1530 hours.)

COLONEL MC REYNOLDS: The Commission is in session. (1545 hours.)

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

LT COL BODINE: I have no further questions of the witness.

LT COL HENDREN: Prosecution has no further questions at this time.

#### EXAMINATION BY THE COMMISSION

Q (By Lt Col Berry) General Sawada, I call your attention to the testimony of General Ito last Wednesday, the 3rd of April wherein the General said to this effect that a report of the trial on the 28th of August 1942 was sent by telegram to Tokyo through Nanking and that on or about the 29th or 30th of August a written report was sent to Tokyo. I ask you whether you know what was in that report?

A That written document was the verdict of the military tribunal.

Q Is that all it was?

A That is all.

Q (By Col Murphy) That was the same document as the one a copy of which General Sawada affixed his chop to when he returned in September, was it not?

A It is the same document.

Q (By Lt Col Berry) May I ask you again, General, you described the document you affixed your chop on or about the 20th of September as the record of trial and now, a moment ago, you said that the written report that was sent to Tokyo was merely a statement of the sentence. When I heard this answer I thought you meant a different report than the one signed in September. Do you now mean they are both the same?

A It was not a record of the trial but the verdict.

Q What were the papers to which you affixed your chop on or about the 20th of September 1942?



A That is the verdict of the military tribunal.

Q The same report that was sent to Tokyo on or about the 29th or 30th of August 1942?

A The contents were the same though the documents were different.

Q (By Col Murphy) You say the documents were different - you mean they were different copies physically?

A It was a copy of the other document.

Q (Lt Col Berry) If I understand you clearly now the document to which you affixed your chop in September was an identical copy of the report that was sent to Tokyo on the 29th or 30th of August.

A Yes, they are identical.

COLONEL MC REYNOLDS: Any more questions?

LT COL HENDREN: I'd like to ask the witness another question.

RE-CROSS EXAMINATION

Q General Sawada, isn't it a fact that when Tokyo was advised they were only advised as to the result of the trial and the entire record was not sent to Tokyo in August of 1942?

A I don't know just exactly how many documents were sent but I know that the verdict was sent because General Ito informed me of that.

Q And what you signed when you came back from the front was the entire record of the trial, isn't that true?

A It was the verdict.

Q Was the record attached to all the papers that had been presented to the court?

A No, they were not. General Ito brought only the verdict and a statement of the verdict and after some talk I chopped the verdict itself.

Q Then did you ever read the record of the trial?

A I have not.

Q General, the record of the trial, all the papers is about an inch and a half thick - they stayed out at your headquarters, isn't that true?

A I don't know anything about where the documents are kept.

Q But the entire record of the trial was not sent to Tokyo, isn't that right?

A I do not know.

Q General, isn't it true that the entire record of that trial remained in the headquarters of the 13th army until Major Inoue came here from Japan in 1944 to get the record and take it back to Japan?

A They ought to have been kept there.

Q They should have been kept there. You mean in the headquarters, 13th army?

A The headquarters.

Q And didn't Lt. Hayama say he gave the record to Major Inoue in 1944?

A I was with Major Inoue in the prison in Omeri and there I heard about it from Major Inoue.



- Q Did Major Inoue say he came over in September 1944 and got the record and took it back to Tokyo at that time?  
A Major Inoue said that the same type of trial was being held in Tokyo and the records of this trial were needed as reference material but due to bombings the documents were burned.
- Q But Inoue did come over to Shanghai and get the record and take it back to Tokyo in December 1944?  
A As I said before - what Major Inoue told me was the same as I have said before.
- Q And Major Inoue told you the record burned up in an air raid in May of 1945, didn't he?  
A I do not remember the date.
- Q But he told you it burned in an air raid?  
A Yes.
- Q And as far as you know, there never was a record of this trial in Tokyo until Inoue came over to Shanghai to get it in December 1944 isn't that a fact?  
A I do not know very well what they did at Tokyo.
- Q But all Tokyo got was a report of the trial, report of the sentences that were passed?  
A I believe the proceedings of the trial were sent with the report but General Ito has not given me the details so I do not know the detailed information.
- Q And you were not in Shanghai at the time they were sent?  
A I was not.
- Q So you don't know whether the record was sent over there or not at that time?  
A What do you mean by at that time?
- Q In August 1942?  
A I do not know the concrete details about what documents were sent.

LT COL HENDREN: No further questions.

LT COL BODINE: I have a few more questions.

RE-DIRECT EXAMINATION

- Q (By Lt Col Bodine) General, you remember when Major Dwyer questioned you at the Ward Road Jail?  
A I do.
- Q At that time did Major Dwyer take a personal diary away from you?  
A At the time I reached Shanghai my diary was taken away when I entered the prison.
- Q Who took it away from you?  
A One of the workers here.
- LT COL BODINE: That is all the questions I have.
- Q (By Lt Col Hendren) General Sawada, you got your diary back, didn't you?  
A I did.



Q That is it right in your hand, isn't it?  
A It is.

Q (By Lt Col Bodine) When did you get it back, General?  
A About two or three days ago.

Q Was it Saturday?  
A Yes, Saturday.

COLONEL MC REYNOLDS: The witness is excused.

(Whereupon the witness was excused and resumed his seat among the accused.)

LT COL BODINE: Defense calls Captain Fellows to the stand.

CAPT CHARLES R. FELLOWS

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

DIRECT EXAMINATION

Q (By Col Bodine) Captain Fellows, when you were in Tokyo, did you take a statement from General Karakawa?

LT COL HENDREN: May it please the Commission, the prosecution and defense will stipulate that Captain Fellows took a statement in Tokyo from General Karakawa. We have no objection to its admission in evidence as a transcript exhibit. It will be marked Defense Transcript Exhibit No. 15.

LT COL BODINE: Does the Commission receive Defense Transcript Exhibit No. 15?

COLONEL MC REYNOLDS: It is accepted.

(Defense Transcript Exhibit No. 15 was received in evidence.)

LT COL BODINE: No more questions.

(Witness excused.)

LT COL BODINE: At this time the defense will read Defense Transcript Exhibit No. 15.

(Whereupon Captain Fellows read Defense Transcript Exhibit No. 15 which is attached hereto, after which Captain Hahn translated the document to the accused.)



CIRCUMSTANCES RELATING TO LT. GENERAL SAWADA

- 1) Lt. General Sawada, the Commanding General of the 13th Army started from Shanghai to the front, on the 20th of May, 1942, for the purpose of conducting the operation accompanied by his staff officers and me.

After having accomplished his purpose, he came back to Shanghai on the 15th of September, 1942.

- 2) The judgment of the fliers was entirely directed by the orders issued from the Imperial Headquarters.

While the authorities of the China Expeditionary Army and the 13th Army considered the case very serious, they were influenced by the opinion in Tokyo that the fliers were to be condemned to death. It is to be noted that, under such circumstances, they treated the case very naturally in accordance with the intention contained in the orders from Tokyo.

- 3) However, as Commanding General Sawada was well versed in international questions, he regarded the problem of the fliers' punishment as of great importance and assumed a careful attitude toward it.

Namely his telegram to Tokyo on the finding of the trial was that he wished "the authorities in Tokyo to reflect and take a more sympathetic dealing at" the finding of the death penalty for the fliers.

In fact three of them were sentenced to death and five were mitigated of penalty.

- 4) And when he, who was deeply sympathetic and familiar with international relations, called at the prison camp in Shanghai, he found the position unsuitable and the equipment bad and so he soon ordered and fulfilled the removal of the prison camp to Kanghaiwan, and improved the equipment and treatment.

Hereafter the representatives of the international Red Cross in Shanghai visited there once a month and were always so content with the equipment and treatment there that they sent him a thankful letter throu the Japanese consulate.

March 7 1946

Signature /s/ Yasuo Karakawa  
in Tokyo

In my presence: /s/ Lt Col Edmund J. Bodine

Subscribed and affirmed before me by Maj. Gen.  
Yasu Karakawa on 7th March 1946.

/s/ Charles R. Fellows  
Capt J.A.G.D.



LT COL BODINE: Defense calls as its next witness, Tatsuta.

SOTOJIRO TATSUTA

one of the accused was called as a witness on his own behalf.

MAJOR DWYER: Prior to affirming this witness, the prosecution will ask one or two qualifying questions.

Q What is your religion?

A Buddhism.

Q Do you know the difference between truth and untruth?

A I do.

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

A I do.

MAJOR DWYER: Is the Commission satisfied with the foundation laid for the affirmation of this witness?

COLONEL MC REYNOLDS: The Commission is satisfied.

(Whereupon the witness was affirmed and testified (through Mr. Inoshita) as follows:

Q (By Major Dwyer) The statement which you are about to give, Tatsuta, are you making it voluntarily?

A It is.

Q You are a defendant in this case?

A I am.

Q State your complete name?

A Sotojiro Tatsuta.

Q What is your rank?

A Captain, handling legal affairs.

Q Japanese army?

A Yes.

MAJOR DWYER: May it please the Commission, at this time, I have been advised by the reporter that in that part of the record already transcribed the captain's name appears in several places T-a-t-s-u-i-a. With the consent of defense counsel can we at this time enter into a stipulation that wherever the captain's name appears in the record, it is Captain Tatsuta, T-a-t-s-u-t-a, one of the defendants in this case? Is that satisfactory?

LT COL BODINE: It is satisfactory.

DIRECT EXAMINATION

Q (By Lt Col Bodine) When were you first employed by the Japanese army?

A In April 1923.

Q Have you been employed by the army ever since?

A Yes.



- Q During all the time you have been with the army what has been your duties?
- A At first I was employed as a court reporter and then in August 1938 I became the head of the jail. I was working in Nanking and from there I was sent to the Shanghai Branch. This is December, and I think December 24 of 1938. I was head of the branch jail here in Shanghai but in March 1944 the branch jail here was abolished.
- Q Wait, that is enough. When you were head of the prison in Shanghai what was the name of that prison?
- A Position was chief guard and at the same time head of the branch prison. After the Shanghai branch jail was abolished it became the 13th army's detention jail and there I worked under the chief jailer Kikuchi.
- Q Were you head of the guards of this jail in Shanghai in 1942?
- A Yes.
- Q Who was your commanding officer?
- A My superior officer was Tokijiro Ooka, who was chief of the Nanking jail.
- Q What was your rank in April 1942?
- A I had no rank but I was chief of the prison here, chief guard in Shanghai.
- Q You were a civilian then at this time?
- A I was a civilian employ of the army.
- Q Now when you were at this prison in Shanghai, you say you took orders from Ooka, Tokijiro. Did he give you orders in regards to the condition of the prison, the food and the discipline?
- A Yes.
- Q Do you remember the date when the Doolittle fliers were sent to your prison?
- A It was very vague in my mind before the questioning began but coupled with the testimony of other witnesses I think I know now. I do know now.
- Q What is the date?
- A August 28, 1942.
- Q Did you receive a writ of detention on these fliers?
- A Yes, I did.
- Q How many American fliers were there?
- A Seven.
- Q Who issued that order of detention?
- A The writ was issued by Lt. Colonel Nakajo, the chief judge in the 13th army's military tribunal under the direction of the prosecutor, Hata.
- Q Did you notify your superior, Ooka, about this?
- A I informed Ooka by telephone immediately upon the arrival that the seven fliers arrived and later I was told to send the names, their native places, addresses and the charges against these persons to Nanking for transmission to the commander, - the chief of the legal department in Nanking.
- Q Did these orders that you received concerning the prisoners state anything about the treatment, what treatment they should receive?



- A I was only told that 7 American soldiers charged with war violations had arrived and to send their names and the other facts as soon as possible.
- Q Did you have any orders from Ooka or any higher authority to confine prisoners upon orders from the 13th army?
- A On the day before they arrived the prosecutor informed me that eight American prisoners would arrive on that date or the following day and they would be kept apart from the Chinese and Japanese prisoners and given separate cells and at that time there were 7 Japanese being kept in cells and I had these cells vacated.
- Q What was the prison, a prisoner of war camp?
- A It was a jail to detain persons who were to come up for trial before the military tribunal of the 13th army.
- Q Were you chief of this prison?
- A I was the senior official and chief guard but the person directly in charge was my superior, Ooka.
- Q Who put you in charge of this prison?
- A I am attached to the headquarters of the Expeditionary Forces in China and the personnel in other matters concerning the jail were all in the hands of Ooka.
- Q Were these American fliers treated the same as the other prisoners in the jail?
- A The treatment was better than that given to Japanese officers because the order from the prosecutor said that they should be given separate cells and Japanese officers had to be moved out of these cells to put them in.
- Q Did they get the same food as these Japanese officers received?
- A The food was the same as that given to Japanese officers. At first they were given bread and jam and other foreign food but after a while, I don't remember how long afterward, they said they would like to try Japanese food once a day and so they were given Japanese food. Then later about two weeks later, I believe, they began to take Japanese food twice a day.
- Q Did these American prisoners take the same exercise as the other prisoners?
- A They were given the same facilities for exercise as the other prisoners. Every morning from 30 minutes to one hour and every afternoon from 30 minutes to one hour, depending upon the time of the year.
- Q Who was in charge of the American fliers when they did get this exercise?
- A At first I was always present when they exercised but later the relationship between the guards and the fliers became so good that there were times when I was not there.
- Q Were any of these American prisoners beaten or hit?
- A By whom?
- Q By the Japanese soldiers or guards?
- A There never was a case like that.
- Q Were any of the American prisoners ever sick?
- A None of them became sick.



Q Did any of the prisoners write letters?

A None of them did except those who were executed and before they were executed they wrote letters.

Q Do you know if these fliers were given a court martial, or taken before a military tribunal?

A There was a court martial on the day they entered the prison.

Q Do you know the results of this court martial or military tribunal?

A I did not know at the time but later I learned that they were sentenced to death.

Q Did you state there were 7 American prisoners or 8 American prisoners detained in your prison?

A When I was given the order by the prosecutor I heard it was 8 so I emptied out 8 cells and had them cleaned out, but as a matter of fact, only 7 came.

Q Do you know how many of these fliers were executed?

A Yes, three.

Q Were you present at the execution?

A Yes, I was there.

LT COL BODINE: I have quite a bit more testimony from this witness and I am going into a new phase of it. Do you desire me to start on it now or go into it tomorrow?

COLONEL MIDDLETON: The Commission will recess until nine o'clock tomorrow morning.

(Whereupon the Commission adjourned at 1655 hours on 8 April 1946 to reconvene at 0900 hours on 9 April 1946.)

###



29/1 m 9 Apr 46 AM

MORNING SESSION

... Pursuant to adjournment, the Commission reconvened at 0900 hours, 9 April 1946, at which time all the members of the Commission, the accused, counsel for prosecution and defense, the interpreting staff and official reporter resumed their seats in the court room...

COLONEL MC REYNOLDS: The Commission is in session.

(Whereupon Captain Tatsuta who was testifying at the close of the previous session resumed the witness stand, was reminded that he was still under oath, was examined and testified (through interpreter John Krantz) as follows:

DIRECT EXAMINATION

- Q (By Lt Col Bodine) Captain Tatsuta, before the recess yesterday you were asked were any of these fliers executed and you said that three of the fliers were executed.
- A Yes, that is right.
- Q Were you present at the execution?
- A Yes, I was present at the execution.
- Q Did you receive an order to be present at the execution?
- A I was ordered to attend -- be present at the execution.
- Q Do you remember when the Prosecution's Exhibit No. 25 was read in court, that was the statement of Hata?
- A Yes, I do remember.
- Q The order that you received to be present at the execution, do you remember what it said in regards to yourself and your duties at the execution?
- A I do remember.
- Q Did your order say that -- in paragraph 3, the executioner, Tatsuta, Warden, Expeditionary Army at Shanghai, representing Ooka Takijiro Head Warden, Military Army Penitentiaries? Did your order read the same as that?
- A This was the order from Ooka Takijiro, requesting my presence at the execution ground.
- Q Now what was your duty as executioner?
- A Make the preparations before the execution, before and during the execution, and clearance of the execution ground after execution.
- Q Now in the order that you received, did it also state the names of the witnesses that should be at the execution?
- A I do not remember that point very well.
- Q For the Commission's benefit, I am reading from number 8. In that order you received to be present, or that established you as the executioner, did that order say that the firing squad and security guards would be under the command of First Lieutenant Tajima?
- A I remember the orders said that Tajima and a non-commissioned officer and men -- I remember the orders say that there would be Tajima and ten other men including non-commissioned officer and soldiers under Tajima's command.



Q Now, who signed this order delegating you as the executioner?  
A I was personally given orders by the Chief warden, Ooka Takijiro but the prosecutor of the counsel also gave orders.

Q Who selected the method of execution of the fliers?  
A The day before the execution I was called to Hata's office and there he told me that this execution will be done in accordance with that which -- the one that took place at the time of the February 26th case.

Q You were at the execution grounds when the American prisoners were brought there, weren't you?  
A Yes, I was there.

Q Did you talk to them?  
A Yes, I did.

Q Explain what conversation went on between you and the American prisoners.

A I arrived at the execution grounds and there I saw the American fliers. Major Hata was looking after the execution preparations and I read, at the time, the statement which was prepared by the prosecutor -- which was prepared by Hata but which actually was issued by Colonel Ito and this statement was in accordance with the orders given by the Supreme Commander of the -- the Commander of the 13th Army and was signed in the name of Ooka Takijiro, the Chief Warden at Nanking.

INTERPRETER: (Capt. Hahn) The interpretation is incorrect. It should be:

A I went to the execution ground. Major Hata explained something about the execution and he read a statement written by the prosecutor of the 13th Army Military Judicial to Ooka Takijiro, the prison warden at Nanking. Then I told the fliers, --

(Whereupon the interpreter on duty, Mr. Krantz, continued the interpretation of the answer which the witness continued to give.)

A I do not know what relation I had with you in the previous life but we have been living together under the same roof --

DEFENSE: (Lt Col Bodine) Did you say that to the fliers?

INTERPRETER: Yes, that is what he said to the fliers.

A (cont'd.) And on this day you are going to be executed, but I feel sorry for you. My sympathies are with you. Men must die sooner or later. Your lives were very short but your names will remain everlastingly. I do not remember if this was Lieutenant Farrow but he came up to me and said "Thank you very much for all the trouble you have taken while we were in your confinement, but please tell the folks at home that we died very bravely." And I told them that your ashes will be sent through the International Red Cross to your homes.

Q Was this done through an interpreter?

A Yes, we did it through an interpreter who came from the Gendarmerie. I told them that Christ was born and died on the cross and you on your part must die on the cross but when you are executed -- when you die on the cross you will be honored as Gods, and I told them



to pray and they made a sign which resembled the sign of the cross and they prayed. I told them you will be soon bound to the crosses and when this is done it is a fact that it is a form that man's faith and cross will be united. Therefore, have faith. Then they said -- they smiled and said they understood very well. Then I asked them if they had any more to say and they said they had nothing more to say. That was all that was said.

- Q Now, under the Japanese Law does the superintendent in charge of the prison have to be present at the execution?  
 A At the execution grounds the warden, the medical officer, the prosecutor, the Chief of the firing squad, they must always be present and the reporter must always be present.
- Q Was Lieutenant Tajima there -- present at the execution?  
 A Yes, he was present.
- Q Was he in charge of the firing squad?  
 A Yes.
- Q And was he the one that gave the order to fire?  
 A Shimada stated previously that a non-commissioned officer gave the order to fire and I believe Tajima gave the order.
- Q At the time of the execution of the fliers, were you an officer or a Sergeant?  
 A I was at that time a civilian attached to the Army. So was Ooka and the guards. Ooka was a high civil official with Kotokan rank and I was the clerical rank. If this is compared to the Military Army rank, Ooka is an officer while I am a non-commissioned officer.
- Q Captain, did you give the order to the firing squad to fire?  
 A I did not.
- Q Now, when the American fliers were in prison, did you have them sign pieces of paper?  
 A Yes, I had.
- Q Why?  
 A I was asked by the prosecutor whether any papers were signed by the fliers. At that time I did not remember anything therefore I asked my interpreter and he told me that at the interrogation office the fliers were made to sign pieces of paper, one at the top of the paper and one in the middle and another at the bottom of the paper.
- Q Now did all the fliers sign papers?  
 A Only three. I thought these papers were made for the receipt of the personal belongings but according to what Suzuki stated the other time, he said he had received four or five pieces from me and on these were signed the names of the fliers with pencil and he believes that these papers were letters addressed to the family. Last letters addressed to the family.
- Q Now the fliers who signed these papers were they the three fliers that were to be executed?  
 A Yes.
- Q Was this before or after the trial they signed these papers?  
 A The evening before the execution.



- Q Did you talk very much with the American prisoners when they were in prison?
- A In the beginning I personally attended their exercises and then I talked to them about little flowers and plants and so on.
- Q Did you ever bring them any food from Shanghai?
- A When I was informed of the execution of the three fliers I gave them extra food but to the others I did not, and I gave them on the night before the execution.
- Q Did you give any of the fliers any extra clothes?
- A Customarily prisoners are given three blankets in summer and four in winter but these fliers I gave five in summer and six when it was cold.
- Q Did they have any heat in the cells?
- A There was none.
- Q Have you got any heat in your cell?
- A In my room which is an office, I had --
- Q Wait, wait, have you got any heat in your cell here at the prison?
- A We get charcoal in the morning and for one or two hours we get heat.
- Q Did you attend the trial of the Doolittle fliers?
- A I did not. I was not present at the trial but since the guards were outside of the court room I went to see them and at the same time I looked in and came out.
- Q You just looked in? You did not go in, is that right?
- A There were two entrances to the court room and I entered from one and remained in the court room for about two or three minutes and went out of the other door.
- Q In other words you went through the court room, is that right?
- A That is about the meaning.
- Q Were you supposed to be there in the court room?
- A According to the law I could not be present at the court and since it was my duty I just passed by.
- Q Tatsuta, were you a member of the 13th Army when the Doolittle fliers were in Kiangwan Prison?
- A I was under the command of the prison at Nanking which was in turn under the command of the Supreme Headquarters, Army Headquarters, Nanking.
- Q And your superior was General Hata?
- A Yes, the Supreme Commander is General Hata.
- Q How old are you?
- A I am 59 in Japanese counting and 58 in American counting.
- Q Are you married?
- A I have been very unhappy at marriage. I lost three wives. Three wives died and I have four children at present.
- Q How old are your children?
- A The eldest is 28 years old. The next is a girl, 20 years old. Then a boy 17 years old and a 14 years old girl.



- Q Are all of your children now living?  
 A The oldest son is in the Army -- was in the Army and I did not receive any letters since last spring -- since February of 1945. The next is a daughter married and the second eldest son was working in an Army factory in Japan.
- Q What education have you had?  
 A I am ashamed to say this but our family was very poor and I am only a graduate of a primary school.
- Q Do you remember Lieutenant Nielsen, now Captain?  
 A Yes, I remember him very well.
- Q Did you ever tell Lieutenant Nielsen that he reminded you of your son?  
 A They were -- the fliers were all very young therefore I imagined and compared them to my son and especially Sergeant Spatz who was executed. He -- I especially compared him to my son.
- Q Do you know what you are charged with?  
 A I do not remember my charge but I remember the specification -- what was written in the specification.
- Q You do remember what is in the specification?  
 A I do know what is in the specification.
- Q At this time, Captain Tatsuta, do you want to tell the Commission anything regarding the charges and specifications against you?  
 A In the first place it was written on the specification that I was the Army Warden -- Warden of the Army Prison but I think this is a mistake. In the second place it was written in the specification that the trial was unfair but I think that this case had been handled very seriously and it went through the trouble of -- it went through many channels before Tokyo gave orders to execute them therefore I think this was a fair trial. It was also stated that I commanded the firing squad but since I was a civilian attached to the Army, I could not do so as this was against military law and that was impossible. On the second specification it is stated that eight fliers were confined in Kiangwan Prison and that the International Law was not applied to them but a warrant was issued by the prosecutor and the orders came from the Headquarters of the 13th Army. The warrant was issued by the Chief Judge of the 13th Army. I interned these eight fliers after having received the warrant issued by the Chief Judge of the Judicial Department of the 13th Army under the direction of Major Hata, prosecutor. This was done in that manner, therefore I was not the one who treated them as war criminals. It was either the Chief Judge or the prosecutor who gave orders to treat them so.
- Q Did you say seven or eight?  
 A There was seven.
- Q Is there anything else you want to say?  
 A And in the second paragraph that comes subsequent to the specifications it is stated that these fliers were mistreated in Kiangwan Prison, but as Captain Nielsen has already testified, he said that the fliers were never mistreated in this prison and in three of the statements which have been presented to this court it is also stated that these fliers were never mistreated there. Captain Nielsen said something about the solitary confinement but according to the law solitary confinement is only given to officers and



to civilians who have the rank of a high civil official and therefore according to the law, what I mean, it is a rather a good treatment applied to the fliers and usually prisoners are given one cell -- usually prisoners are put together in one prison cell and this solitary confinement is a very good treatment. I have nothing to say in regards to the specifications.

DEFENSE: Defense has no further questions.

CROSS EXAMINATION

- Q (By Major Dwyer) (through interpreter, Mr. Inoshita.)  
When the eight fliers,--Doolittle fliers-- were brought out to trial -- for trial at Kiangwan, did you see them?  
A Yes, I did.
- Q Where did you first see them?  
A At the court.  
(After a moment's hesitation)  
I made a mistake. I saw them for the first time in the sitting room in front of the court room. Near the court room.
- Q Did you later see them in the court room?  
A Yes, I did.
- Q Did you see Hallmark?  
A Yes, I did.
- Q He was lying on the floor, wasn't he?  
A I believe that he was lying on a blanket on the floor.
- Q He was sick too, wasn't he?  
A I believe he was.
- Q Well you know he was, don't you?  
A I don't know what he was sick of, but because he was lying on the floor I believed he was sick.
- Q Did you put seven of the Doolittle fliers in your prison out there as soon as the trial was over?  
A Yes, I did.
- Q That was all but Hallmark, is that correct?  
A All but Hallmark.
- Q Now, yesterday you told the Commission that in the beginning you gave these seven fliers western style food, is that correct?  
A At first, for the first week or two I gave them bread and I don't know about the other things but bread and some western food.
- Q Now tell the Commission just exactly what this western food was.  
A Bread, soup, and I believe some fruit, one or two.
- Q Also you told the Commission yesterday that you gave these seven fliers private rooms, is that correct?  
A Yes, I did. That was the order from the prosecutor and I moved out the Japanese officers who were in the cells to give them separate cells.
- Q How wide was the private room?  
A It was one room four meters by four meters, was partitioned off



into two cells, four meters by two meters.

PROSECUTOR: Instruct the witness to answer "yes" or "no" as much as possible. He is very voluble.

Q You regard these accommodations for these prisoners as being pretty good, don't you?

A It was a little better than the treatment given to our officers.

Q Did you give these men medical attention when they needed it?

A I do not know that they were sick.

Q Did you have any medical officers there that you could give them medical attention?

A There was a medical officer who came twice each week and there were soldiers of the medical unit present there all the time.

Q Right there in the compound, eh?

A Yes.

Q Why did you send Hallmark to Bridge House?

A I do not know.

Q You don't know about that, do you?

A I do not know. Unless I receive a writ of detention I do not keep them.

Q Isn't it a fact that you sent him to Bridge House because you were afraid he was going to die on your hands?

A No, that is not true. Unless I have a writ from the prosecutor I cannot put them in my prison.

Q You had them all at one time -- on August 28th, didn't you?

A Not in my prison.

Q You have told this Commission that the fliers said they would like to have some Japanese food and you gave that to them, is that correct?

A It is true. The bread came from Shanghai and sometimes all the bread for three meals came at one time and sometimes they were hard and so I think they did not like it.

PROSECUTOR: (Maj Dwyer) I am going to ask the interpreter to direct this witness to answer these questions briefly and with a "yes" or "no" where the answer is susceptible to that statement.

Q Did you give them sukiaki?

A No.

(The witness started to make some further comment after the interpreter had given the answer, and the prosecutor spoke up)-

PROSECUTOR: He has answered.

Q Isn't it a fact, Captain Tatsuta that all you gave these prisoners was six ounces or seven ounces of rice by weight, three times a day; a dish of soup in the morning; at noon sometimes fish or stew. Now, how about that?

A The food rations were 700 grams per day of rice and that was as much as the others were getting.



Q You remember me, don't you?

A Yes, I do.

Q Do you remember giving me a statement?

A I do.

Q Did I ask you this question and did you give me the answer: Question, "What was the daily food ration to the fliers while at Kiangwan?" Answer, "At first when they arrived at the prison they were given bread but after two weeks they were given same as Japanese prisoner food."

A Yes, that is true.

Q And this question, "What was that?" And the answer, "Same amount as given to the Japanese prisoners."

A Yes.

Q And this question, "How much was that?" Answer, "They were given six or seven ounces of rice by weight three times a day; a dish of soup in the morning; at noon sometimes fish or stew and the night same as at noon."

(Whereupon the witness started what appeared to be a lengthy discussion to the interpreter, and the prosecutor again interrupted.)

PROSECUTOR: Tell this witness to answer the question I have directed to him, were you asked that question and did you give that answer, with yes or no.

A Yes.

Q Now, you told the Commission that in the beginning you took these fliers out for exercise, is that correct?

A Yes.

Q And the exercise was thirty minutes a day, right?

A Thirty minutes a time and sometimes an hour.

Q What happened when it was raining?

A On rainy days they exercised inside the cells and they were not allowed out.

Q So that through the twenty-four hours of the day, these men spent their time in individual cells except for a half hour and occasionally an hour a day, is that correct?

A Every morning they were allowed out, to wash and twice a week they were allowed opportunity to take baths.

Q Did you consider this exercise?

A No, that do not come under the head of exercise.

Q Did you hear Mayama testify in this court room?

A Yes, I did.

Q Did you hear him tell about a plot of ground out there where you were growing some vegetables?

A Yes, I did.

Q Why didn't you let the prisoners work out there and get some exercise all day?

A In the first place I was afraid that there might be some incident



if they were allowed to mingle with the Japanese and Chinese prisoners and I did not think it desirable to make them work.

Q What you mean is you did not think it desirable to let them get some exercise, isn't that right?

A I had -- the prosecutor cautioned me not to let them mingle with the Chinese or Japanese prisoners.

Q All the Japanese hated these boys, didn't they?

A No. They were given separate cells where the Japanese had to sit on mats, they had to sit on blankets.

Q You just said you didn't want them to mingle with the Japanese because you were afraid of an incident, didn't you?

A Yes, that is I did not want to take the responsibility for any incident that might occur and I was cautioned not to let them mingle with the others by the prosecutor.

Q And isn't it a fact that you were also cautioned to keep it a secret that they were in your prison?

A As long as they were in the prison the other people in the prison would know but I was told not to let people outside know they were there.

PROSECUTOR: Does the Commission wish to recess at this time?

COLONEL MC REYNOLDS: At this time the Commission will recess until 1045 hours.

(Whereupon, at 1030 hours, the Commission recessed until 1045 hours at which time all members of the Commission, the accused, counsel for prosecution and defense, the interpreting staff and official reporter resumed their seats in the court room.)

COLONEL MC REYNOLDS: The Commission is in session.

(Whereupon Captain Tatsuta who had been testifying at the close of the previous session, resumed the witness chair, was reminded that he was still under oath, and cross-examination continued with Major Dwyer interrogating and Mr. Inoshita interpreting.)

Q Captain Tatsuta, the Doolittle fliers were treated as war criminals rather than as prisoners of war, isn't that correct?

A Yes, that is true.

Q When did they bring Lieutenant Hallmark out to Kiangwan from the Bridge House for the execution?

A I think now it was the day before the execution.

Q Prosecutor Hata told you the day before the execution to get ready for it, didn't he?

A Yes, he did.

Q What time on October 14th did Hallmark arrive?

A I am not sure about the time but it was in the afternoon, I believe.

Q Daylight?

A I believe it was a little after noon.

Q He was sick wasn't he?



- A When I saw him he did not seem to be sick but he seemed a little weakened.
- Q He was staggering, wasn't he?
- A I do not believe so although I believe that he was in a weakened condition.
- Q Do you remember the two Russian gentlemen, Hindrava and Sterelny who testified before this court?
- A Yes, I do.
- Q Do you remember them telling the Commission that they saw him leave the Bridge House and he could hardly walk?
- A Yes, I do.
- Q Well, now, will you tell the Commission what you remember about Hallmark's condition on that afternoon?
- A I just said that he was very weak but as I remember he was in a slightly weakened condition.
- Q Did you call a doctor for him?
- A I do not remember.
- Q You didn't call a doctor, did you?
- A There were medical soldiers in the compound all the time.
- Q Did you call a doctor for him?
- A I have no recollection of doing it.
- Q Did he partake of this meal that you described as having been given the night before the execution?
- A On that day I had just received -- I gave the food for all but I had just received the orders to prepare the execution grounds and I was not present at the prison most of the time.
- Q You weren't present at the prison during the evening of October 14th, then?
- A I believe I was.
- Q Where did you have the crosses made?
- A At the carpenter shop in the regimental headquarters..
- Q 13th Army?
- A Yes, in the 13th Army.
- Q You had three crosses made, didn't you?
- A Yes.
- Q That was the night before the execution?
- A Yes.
- Q Where did you have the coffins made?
- A At the same place.
- Q Three?
- A Three.
- Q Were they made up the day before the execution?
- A They were made up by the morning of the execution.
- Q The execution was on October 15th?



A I do not remember whether it was the 14th, 15th or 16th but in reading the records of the reporter it said that the execution was on the 15th so I believe it must have been on the 15th.

Q Well you signed that report of execution, didn't you?

A I signed the report as a member of the execution staff and I was merely recognizing the report of the reporter.

PROSECUTOR: (Maj Dwyer) Now I am going to ask the interpreter for the second time to instruct this witness to answer these questions briefly and where they can be answered "yes" or "no" to do so.

Q Who paid you?

A From Headquarters of the Expeditionary Forces but the money was given to the 13th Army and they paid me.

Q The 13th Army paid you, is that correct?

A The 13th Army is under the Headquarters of the Expeditionary Forces.

Q And the 13th Army paid you?

A From the standpoint of result, it might be that.

Q Now who was it gave you your orders to get the execution ground ready for October 15th?

A I made the report to the Chief Jailer, Ooka, and he told me to represent him and then the prosecutor ordered me to prepare the ground.

Q Was that Colonel Ito?

A The order was signed by Colonel Ito but Major Hata is who actually gave the order.

Q This execution at the cemetery was carried out by order of the 13th Army then, is that correct?

A Yes, because the order was issued in the name of the Commander of the 13th Army.

Q What time in the morning of October 15th did you go out to the execution ground?

A I believe I went about ten o'clock to prepare the ground.

Q Did Mayama go with you?

A I took three or four guards.

Q Who were they?

A I do not remember their names but since Mayama said that he went with me, the other day, then Mayama must have been one.

Q Did you bring the coffins and the crosses then?

A Yes.

Q Did you select the spot alongside that building out there in the cemetery?

A I believe it was about four o'clock in the afternoon before the execution that Prosecutor Hata came in an automobile and ordered me to go with him to select the place. Two places were selected for the approval of the Commander and that was one of the places chosen.

Q Now, when you got out to the cemetery on the morning of October 15th, did you also erect an altar there?



- A I made a small dais to burn incense and place the remains.
- Q Then you went back to the 13th Army Headquarters, is that correct?  
A Yes.
- Q And then you told the prosecutor's office of the 13th Army that everything was ready, is that correct?  
A Yes, I did.
- Q What time did you start back to the cemetery with the fliers?  
A I believe it was about three thirty.
- Q Then did they arrive in the same truck with you?  
A Yes.
- Q How many were there? How many fliers?  
A Three fliers.
- Q Hallmark, Farrow and Spatz, is that correct?  
A Yes.
- Q When you got to the cemetery what did you do with the fliers?  
A First the medical officer spoke to them and then the prosecutor spoke to them and then I had the few words with them that I mentioned before.
- Q Which prosecutor spoke?  
A Prosecutor Hata.
- Q Tell the Commission what Hata said.  
A I do not remember exactly but I believe that he said something to make them feel more easy about their coming death.
- Q Very sympathetic, you mean?  
A Yes.
- Q Was Hata very sorry?  
A I believe so because he gave them the deepest bow at the end of his speech.
- Q Did he say "I am so sorry"?  
A No, he did not say that.
- Q What did he say?  
A I do not recall.
- Q Hata asked for the death penalty, didn't he?  
A Yes, I believe so.
- Q And were you sorry too?  
A Yes.
- Q You were just about as sorry as Hata, weren't you?  
A I do not know what Hata's feelings were.
- Q Did you cry?  
A No; I did not cry.
- Q Did you use a handkerchief at all?  
A No, there was no such thing.



Q You were a civilian, you say? Is that correct?  
A Yes, I am civilian.

Q And you say that as a civilian who didn't have any standing with the military, is that correct?  
A I have no military standing.

Q You were doing quite a bit of talking here for somebody who was only a civilian, weren't you?  
A (None)

Q You were the head of the execution party, weren't you?  
A To supervise it, prosecutor Hata was the head.

Q And you and Ito were the only two that signed the report of execution, isn't that correct?  
A (None but considerable discussion with the interpreter.)

PROSECUTOR: (Maj Dwyer) This witness can answer this question "yes" or "no" and I ask the Commission to so instruct him.

(Before the Commission had an opportunity to issue the instruction, the witness made reply through the interpreter.)

A You asked the question of signing as witness?

PROSECUTOR: (Maj Dwyer) (to interpreter) Tell him I don't care how he signed it. I am asking him did he sign that report of execution with Ito.

A Yes I did, together with the reporter.

Q Which one of these fliers did you tie to the cross?  
A I am not sure but I believe it was Sergeant Spatz.

Q Captain Tatsuta, I show you picture number 8 of Prosecution's Exhibit "B" and ask you if the man you tied to the cross is in that picture?  
A I believe it is this person (indicating by pointing) but I have no clear recollection.

PROSECUTOR: (Maj Dwyer) For the purpose of the record, the witness is pointing to the man standing in the front row on the right, previously identified as Sergeant Spatz by Mr. Komano.

A (cont'd) I believe he resembled my son a little and I believe it was him I tied.

Q Who helped you to tie him to the cross?  
A Five or six guards.

Q They were guards of your prison?  
A Yes.

Q The guards who were under your command?  
A Yes.

Q Did you tie the cloth around Spatz' head?  
A I just tied his hands. I believe it was the guard who tied the cloth.



Q You tied his hands to the cross bars of the cross, is that right?  
A Yes, I believe so.

Q And you made him kneel down?  
A Yes.

Q Did you notice Hallmark?  
A I believe Hallmark was in the center.

Q What was his physical condition?  
A Hallmark was on the right.

(At this point the witness again started a lengthy dissertation and the prosecutor again cut in.)

PROSECUTOR: (Maj Dwyer) Mr. Interpreter, I have asked this witness what was his physical condition. Is he answering that question?

A The medical officer examined him there and he said that his condition is not too bad.

Q Did you raise any objection to Hallmark being executed at that time?  
A The head of the execution staff was there and so I could not object.

Q You were the head of the execution party, weren't you?  
A The prosecutor was supervising it, on the instructions of the 13th Army.

Q Did you raise any objection to Hallmark being shot? Answer that "yes" or "no".  
A I could not.

Q Did you?  
A I could not.

Q Now, before these men were shot you talked to them, is that correct?  
A Yes, I did.

PROSECUTOR: (Maj Dwyer) May I be pardoned just a moment please?

(The President of the Commission nodded his head in assent, and Major Dwyer conferred in a whisper with Lt. Col. Hendren, then proceeded to question the witness.)

Q You told this Commission on direct examination that among other things you said "my sympathies are with you". Did you say that?  
A I did.

Q Didn't you think these men were war criminals?  
A I did but that was a matter between nations and when it comes to personal contact, I could not help but sympathize with them.

Q You wanted them to die, didn't you?  
A No.

Q You didn't want them to die?  
A The people of the prison must be stern with the prisoners under their care but they rejoice in the same things as other people.

Q You have been in this prison business since 1923, haven't you?  
A Only 17 years.



- Q Well didn't you start this duty of being a prison officer in 1923?  
A That was as reporter for military court.
- Q All right. How many years have you been a prison officer?  
A Since 1938.
- Q How many executions have you handled?  
A I believe about twenty.
- Q Are you sure it is only twenty, Captain?  
A I do not remember exactly but I believe about twenty.
- Q It is nearer about fifty, isn't it?  
A This one was done in accordance with the execution of the February 26th incident but I believe some others -- there may be about forty or fifty altogether.
- Q Among other things you said that the fliers thanked you very much for what you did for them, is that correct?  
A They went through the formality of thanking me for the trouble I had taken with them.
- Q Do you want this Commission to believe that these men were thanking you for anything?  
A Whether the Commission believes it or not, that is what those fliers said.
- Q Did they thank you for the fact that you were about to execute them?  
A No, they did not.
- Q Did Hallmark thank you for treating him the way you were treating him in his condition?  
A He did not.
- Q As a matter of fact, Hallmark didn't know what was going on, did he?  
A No, that is not true. Hallmark prayed, among other things.
- Q He prayed among other things. Now, you have heard the statements, the written statements that have been read in this court room since the beginning of this trial, haven't you?  
A I may have missed some things but I have heard them.
- Q You have been pretty attentive haven't you?  
A Yes, I have.
- Q And do you remember the written statement of Captain Okada who said you gave the command to fire? Excuse me, I misquoted the record. Not Okada, wako.  
A Yes, I remember.
- Q Do you remember the written statement of Colonel Ito where he says you gave the command to fire?  
A I remember.
- Q And do you remember the written statement of Mayana, and Yonega and Yoneya, each of whom said you gave the command to fire or I think you gave the command to fire?  
A I do not recall the statements but I did not give the order to fire.
- Q All of these men whom I have just mentioned were at the execution, weren't they?



A Yes, they were all there.

Q Mayama, Yonega and Yoneya were all under your command, weren't they?  
A Yes.

Q You made all the preparations for the execution, didn't you?  
A Yes, I made the preparations and wound up things afterwards.

Q And you tied Spatz to the cross.  
A Yes, I helped in that.

Q And you gave a rather long talk to the three men just before they were executed, didn't you?  
A Yes, I did.

Q And you signed the report of execution with Ito, didn't you?  
A Yes, I did.

Q And you saw to the disposal of the bodies afterwards, didn't you?  
A Yes, I did.

Q Now, I ask you, isn't it a fact that you gave the command to fire the rifles that killed the three Doolittle fliers?  
A It was Lieutenant Tajima, attached to the Headquarters of 13th Army. He was sent there by the Commander of the 13th Army.

Q Did you tell him everything was ready? Did you tell Tajima when everything was ready?  
A I reported to the prosecutor.

Q What did you say to Tajima?  
A I did not speak to Tajima.

Q Do you still have Hallmark's flight jacket?  
A It should still be there but I left it with the 13th Army.

Q You had that tailored to fit you, didn't you?  
A I did not have it altered.

Q Did it fit you?  
A (None)

PROSECUTOR: I have asked this witness a simple question which he can answer "yes" or "no".

A No.

Q It didn't fit you. You took the name plate off that jacket, didn't you?  
A I do not remember.

Q Well, you took Hallmark's jacket, isn't that a fact?  
A I received it from the accounting section of the prosecutor's office.

Q You received it from them?  
A Yes.

Q Now, didn't you tell this Commission that the three executed fliers signed papers as receipts for their clothing? As records of their clothing?



A Yes, I did.

Q And their clothing and personal effects were all kept in your prison, weren't they?

A Yes.

Q And Suzuki had charge of those things, didn't he?

A Yes.

Q And Suzuki was in charge of your supply office, wasn't he?

A Yes.

Q All right, what did you do with Farrow's jacket?

A It was all taken over by the prosecutor.

Q What did you do with Spatz jacket?

A They were all taken over by the prosecutor's office.

Q What about their watches?

A Small things like watches and pictures and personal effects were sent over with their remains to the war prisoners camp to be sent back to their folks at home.

Q And all you did was keep the field jacket?

A (None)

(At this point the witness again started a lengthy dissertation with the interpreter and prosecutor again interrupted.)

PROSECUTOR: (Maj Dwyer) He may answer that "yes" or "no". Instruct this witness again to answer "yes" or "no". We will be here a week if we let him go.

A I did not take it.

Q How long have you been in the Japanese Army?

A Over twenty years.

Q You told these fliers when they were about to die that they were like Christ on the cross, didn't you?

A I said Christ died on the cross. I did not say they were like Christ.

Q Why did you say like "Christ"? Why did that come to your mind?

A Because those three were about to die on the cross and I wanted to ease their mind.

Q Do you know the story of Christ on the Cross?

A I do not know the story but I know the ceremony.

Q Isn't it a fact that these fliers got about the same kind of treatment as Christ did?

A I do not know.

PROSECUTOR: No further questions.

DEFENSE: (Lt Col Bodine) What was the answer to that last question?

REPORTER: (reading) "I do not know."



REDIRECT EXAMINATION

Q (By Lt Col Bodine) You were just asked about a certain amount of rice that was given to the prisoners. Do you know the weight of one ounce?

A I do not. I don't know.

Q Now, did you hear in court when Ito, Wako, Mayama, Yoneya, and Mizaki and Yoneda all testified in person before this Commission and said, either you did not give the order to fire or they did not believe you gave the order to fire?

A I was here.

Q You did hear it?

A I was present.

Q You told the prosecutor that you reported -- you just stated, rather, that you reported to the prosecutor when everything was ready at the execution?

A Yes.

Q Now, why did you report to the prosecutor?

A Because the order of the execution was being carried out under the supervision of the prosecutor and so the report had to be made to the prosecutor.

Q Is that stipulated in the Japanese Law that the prosecutor should be in charge of all executions?

A Under the law the prosecutor, the reporter, the medical officer and the firing squad and the Chief of the Jail had to be present at all executions.

Q And did the law state that the prosecutor is in charge of all executions?

A A written order to Ooka, from the prosecutor, ordering him to supervise the prosecution.

PROSECUTOR: (Maj Dwyer) Does the Commission have any questions?

QUESTIONS BY THE COURT

COLONEL BERRY:

Q Captain Tatsuta, this morning at the beginning of this testimony you stated that at the execution you read to the fliers a statement prepared by Ito, addressed to Ooka. What was the contents of that statement?

A The contents were an order that by order of the Commander of the 13th Army, the following persons were to be executed.

Q Did the order -- the communication, name the persons?

A There was one to each person.

Q What persons were named?

A The three were Hallmark, Farrow and Spatz.

COLONEL MC REYNOLDS: There appear to be no further questions.

PROSECUTOR: Prosecution has no further questions.

DEFENSE: No more from the defense.



COLONEL MC REYNOLDS: The witness is excused.

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

PROSECUTOR: At this time the defense, I believe has some statements they wish to introduce and prosecution will offer no objection to the admissibility of these statements in evidence but prosecution does not concede anything as to their weight.

DEFENSE: Pursuant to stipulation between prosecution and defense, the defense offers the written statement of Kasaki Hisashi, as Defense Exhibit No. 16. Is the prosecution agreeable to that?

PROSECUTOR: Yes, we will stipulate the admissibility of all these documents now offered but do not concede anything as to their weight.

DEFENSE: Defense offers in evidence as Defense Transcript Exhibit No. 17, the affidavit of Mr. T. Kubota.

PROSECUTOR: We will make the same stipulation with reference to this exhibit, also.

DEFENSE: Do you care to have these read now or after lunch?

COLONEL MC REYNOLDS: Defense Transcript Exhibits 16 and 17 are received in evidence and will be read this afternoon.

(Defense Transcript Exhibits No. 16 and No. 17, are received in evidence.)

PROSECUTOR: Does the Commission wish to recess at this time?

COLONEL MC REYNOLDS: The Commission will recess at this time until 2 O'clock this afternoon.

(Whereupon, at 1155 hours, the Commission adjourned to reconvene at 1400 hours, 9 April 1946.)

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AFTERNOON SESSION

... Pursuant to adjournment the Commission reconvened at 1400 hours on 9 April 1946 ...

COLONEL MC REYNOLDS: The Commission is in session.

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

CAPTAIN FELLOWS: At this time the defense would like to read in evidence Defense Transcript Exhibit No. 16 and Defense Transcript No. 17.

(Whereupon Captain Fellows read Defense Transcript Exhibits No. 16 and 17 which are attached hereto.)



HEADQUARTERS  
UNITED STATES FORCES  
CHINA THEATER  
SINTIC

APC 971  
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DOCUMENT TRANSLATION #273

DOCUMENT NUMBER : SINTIC 2856  
PLACE AND DATE OBTAINED : JAG, USF CT, SHANGHAI - 19 March 1946  
AUTHOR : KISAKI Hisashi  
TITLE : Written Testimony  
TRANSLATED BY : RPH, TS, RK  
DISPOSAL OF DOCUMENT : Returned with translation to Lt Col BODINE,  
JAG

FULL TRANSLATION:

Testimony of KISAKI Hisashi Concerning Lt Gen SAWADA

1. Witness KISAKI Hisashi was a staff officer (rank, colonel) when Lt Gen SAWADA was commander of the 13th Army. At that time he was the OIC of operations.
2. Lt Gen SAWADA was gentle and sincere and was world renowned as a soldier. He was a person that always felt that the position of commander should be looked upon with dignity and religious devotion. In observing the feelings of Lt Gen SAWADA towards the prisoners and the people, the following few facts will be given for reference purpose.

Testimony:

1. When the Greater East Asia War commenced in December of 1941, Lt Gen SAWADA gave the following instructions in regards to the movement into the Shanghai Settlement.

"The key to complete success in the movement into the Shanghai Settlement is absolute protection against bombs and destruction by fire and strict enforcement of discipline and calmness. Of particular importance is the prevention of any acts of violence or unnecessary hardships against enemy nationals and neutral nationals residing within the settlement, because of the fact that there are no enemy troops stationed in the concession."

Based on the foregoing instructions, the Japanese Army and Navy in a joint operation commenced their advance into the settlement on 8 December. This operation started at 1000 and not a single incident or clash occurred when the movement was completed at about 1130. In compliance with Lt Gen SAWADA's instructions, the advance was completed in a very short time without confusion or panic and this movement was acclaimed by the foreigners residing within the settlement.

Truly, Lt Gen SAWADA's sincerity and his efforts to prevent misery, which usually accompanies war, among the populace was due to his love for mankind.

2. After the advance into the settlement was completed, Lt Gen SAWADA did not enforce any particular restrictions upon the actions of the populace, irrespective of whether they were Americans, English or other foreigners.

The general policy of the settlement administration did not modify the existing system and was executed so as to establish public order and for the convenience of the populace. For this reason, even after the commencement of hostilities, no changes took place and life continued as usual. (On 8 December the shops were doing business as usual). Since the residents experienced no hardships, rumors spread among certain Japanese elements in Japan and Shanghai that Lt Gen SAWADA's administrative policy was too lax. However, Lt Gen SAWADA's policy was to prevent insecurity and unrest among the inhabitants. From the standpoint of administrative improvement in the future to assure the residents in the settlement security, Lt Gen SAWADA's policy was very appropriate and was applauded by the settlement people. Lt Gen SAWADA disliked radical policies because he was a person who believed that advancement was most successful when



honest and appropriate methods are utilized. The above fact is also accompanied by his expression of deep sympathy for the general public.

3. Around Oct of 41 Lt Gen SAWADA gave the following instructions:

"During operations and subjugation the enemy dead must not be abandoned but given a burial with due ceremony and we must mourn for their souls. Consequently, in reporting the results of the battle, the report should not read, "...number of enemy dead abandoned", but "...number of enemy dead buried by our troops".

According to these instructions, the front line units did their best to perform a decent burial for the enemy dead and the official reports and communiques of the results of battles read as follows:

"...number of enemy dead were buried by our troops".

Truly, this showed that Lt Gen SAWADA treated our dead and the enemy dead without distinction. This act is a manifestation of the noble conviction of the same Lt Gen who paid the same respect towards all dead soldiers. The fact that he dealt with an enemy soldier who had abandoned his weapons and become a prisoner in the same way bears witness to his type of mind.

4. In his instructions issued around July 1941, Lt Gen SAWADA especially emphasized the word "construction" (promotion of social order within the settlement). This was the first time that this term was used by a unit in any operation. In the long run, the ultimate objective of combat and subjugation by the aforementioned units is to establish public order. The belief that in order to establish public order one must keep in mind the thought of "construction" came from Lt Gen SAWADA. This same Lt General's character was such that he constantly tried his utmost to avoid destruction and violence and always looked for a peaceful solution of matters. Coupled with this attitude of constructiveness, he showed signs of constant worry over the pitiable hardships of the people living within the theater of operations.

14 March 1946.

/s/ Maj Gen KISAKI Hisashi.

Subscribed and affirmed to be true and correct before me at Tokyo, Japan this 14th day of March 1946.

/s/ Charles R. Fellows,  
Capt JAGD.



I, the undersigned, a retired government official, formerly a Governor of Prefecture, make on oath the testimony as hereunder.

(1) I am a personal and intimate friend of Lieutenant General SHIGERU SAWADA, the accused as a war criminal suspect in the case of the trial of American fliers in Shanghai, 1942. I know him very well personally since eighteen years, and ever since we have been in the most intimate terms with each other.

(2) During his career, several times he was assigned to the military or diplomatic missions oversea; he was on the military mission in Vladivostok from 1918 to 1920, and he was the military attache in Greece from 1921 to 1923 at the rank of Major, from 1927 to 1930 he was the chief of the military mission in Harbin at the rank of Lt. Colonel, from 1935 to 1938 he was the military attache of the Japanese Legation in Poland and concurrently in Roumania at the rank of Major General. He was twice the professor at the Military College, in 1920 and in 1924.

(3) As can be seen from his career he is well versed in the international law and usages and it is a perfect surprise to me to know that he is accused with the violation of international law.

(4) In character, he is very soft-minded, sympathetic, human, lenient and very circumspect and scrupulous in dealing the business. He is the type of a diplomat or a scholar rather than a general, as can be seen from his career as diplomatic attache and professor several times. He is not so much the fighting general in the field as a professor of strategy.

(5) Lt. General Sawada's aforesaid character can be inferred from his sons' leanings. His first son, now in New Guinea and whose life or death we can not know even now, is a graduate, from the Keio University, specializing in philosophy. He was enlisted about 6 years ago and now supposed to be in New Guinea. General's second son is now in the post-graduate course in the Tokyo Imperial University, specializing in Zoology. His two son's leanings clearly show also their father's inclination.

(6) I heard from General Sawada just at the time of the Japanese surrender that he might be implicated in the trial of American fliers in Shanghai 1942, but he firmly believed that he was not guilty because he was in the field commanding the operation, at the time of the trial of fliers. And only after his return to Shanghai he received the report of the trial and the sentences of the military tribunal, which tried the fliers. After hearing that all the trial and judgment had been instructed from Tokyo he ordered the staff officer to keep in good and safe deposit all those documents in file, to show that they were not responsible for all these dealings.

(7) I heard casually from his also that he was very much criticised among the Japanese residents and military officers in Shanghai, that he was too soft-minded and lenient in dealing with the enemy civilians at the outbreak of the war.

And in Tokyo, military circles in the War Ministry, certain section of them criticised general's attitude to the enemy nationals to be too lenient.

/s/ T. Kubota  
In Tokyo T. KUBOTA  
March 9, 1946

Subscribed and affirmed before me by Mr. T. KUBOTA this 12 day of March, 1946.

/s/ Charles R. Fellows  
Capt. JAG<sup>n</sup>



LT COL BODINE: The defense rests.

LT COL HENDREN: At this time the prosecution would like to state that on or about the 15th of February the files in this case were furnished to the defense for their assistance in preparing the defense of this case. The case was arraigned on the 27 of February, the case started on the 18 of March; five day recess was given at the close of the prosecution's case for the defense to have additional time for preparation. Prosecution would like to know if defense at this time has any other matters, any other witnesses, any other statements they desire to introduce for the accused in this case.

LT COL BODINE: The defense has a petition to the American Army Commission, which is signed by a number of Japanese who are friends of the accused. Does the Commission desire to hear it?

LT COL HENDREN: Prosecution has no objection and requests the Commission allow the defense to open their defense for any documents which have any bearing on the case in order to give them an opportunity for defense.

LT COL BODINE: It is not a form of evidence. It is merely a petition.

COLONEL MC REYNOLDS: Although the defense has rested, the Commission permits the petition to be read, if the defense desires.

LT COL BODINE: If the Commission desires, we offer this in evidence as Defense Transcript Exhibit No. 18.

LT COL HENDREN: No objection.

COLONEL MC REYNOLDS: Transcript Exhibit No. 18 will be received in evidence.

(Defense Transcript Exhibit No. 18 was received in evidence.)

LT COL BODINE: The accused know what it is about so if the Commission desires, it won't have to be read in Japanese.

COLONEL MC REYNOLDS: Translate that.

(Whereupon Captain Hahn translated the above to the accused.)

LT COL BODINE: I will now read Defense Transcript Exhibit No. 18.

"PETITION  
TO  
AMERICAN ARMY COMMISSION

By calling your attention to the fact mentioned below, we, the friends of Captain R. Okada, who have known him long personally, wish to make an earnest request for reconsideration of the situation he was in when he committed the action now accused.

That is, there must have been no room for Captain Okada to neither refuse to be an associated judge nor express his personal opinion about the sentence given by his superior who had taken the customary interpretation of the military laws and conventions accordingly. We firmly believe it for the following reasons:-

(1) That, being a philosophy professor of a college in Tokyo for some years before he was called out to the service, Captain Okada was liberal in his opinion; sincere and understanding in his way of thinking; honest and straightfoward in his attitude; and humanistic in his daily life;



(2) That, he has been in the same way right through the years of his military life in Shanghai, which was particularly shown in his attitude towards the Chinese organizations and institutions on the cultural field.

Without him, at least Two universities (Shanghai University (Japanese characters) and St. Johns University (Japanese characters), Four High-schools (Detatched high-schools to Shanghai University and St. Johns University, McTyeira Girls High-school (Japanese characters) and Bridgman Girls High-school (Japanese characters) and two primary schools (McTyeira First Primary School (Japanese characters) and Bridgman Primary School (Japanese characters) and Y.M.C.A. might have gotten into worse trouble in keeping hold of their administration and building.

Besides these, there might have been more institutions which the Captain helped to preserve their lives. Though he never told anyone what he did, he always kept it his principle to aid and further advance the cultural activities in China. Some Chinese of these institutions have been very grateful to him for his most sympathetic and understanding way of dealing with their problems under the heavy pressure of war-time situation.

We can well recognize the fact that only his sincerity and strong sense of righteousness, despite various criticism against him, could help these organizations from being suspended.

Relying upon your fair judgment and sympathetic consideration, we, the undersigned are willing to confirm his peaceful personality and his discreet conducts in the past.

Yours very faithfully  
March 3rd, 1946  
Shanghai, China

Signed by the followings.

<u>Signature</u>	<u>Names in English</u>	<u>Nationality</u>	<u>Sex</u>	<u>Occupation</u>
(Japanese characters)	T. Suckane	Japanese	Male	Representative of the natl. comm YMCA of Jap in China
(Japanese characters)	Yuki Naito	Japanese	Fem	YMCA Secretary
(Japanese characters)	Michiko Hasagawa	Japanese	Fem	YMCA Secretary
(Japanese characters)	I. Ikeda	Japanese	Male	YMCA Secretary
(Japanese characters)	Y. Hotta	Japanese	Male	A staff of International Cultural Society
(Japanese characters)	K. Kujiwara	Japanese	Male	Editor of the Tairiku Shinpo
(Japanese characters)	Y. Takahasi	Japanese	Male	Editor of the Kaizo Nippo
(Japanese characters)	T. Tokuda	Japanese	Male	Editor of the Kaizo Nippo
(Japanese characters)	S. Chiba	Japanese	Male	Writer
(Japanese characters)	K. Uchiyama	Japanese	Male	Writer
(Japanese characters)	I. Yamagishi	Japanese	Male	Educater
(Japanese characters)	M. Kikuchi	Japanese	Male	Society for the Internatl. Cultural Relations
(Japanese characters)	K. Nakamura	Japanese	Male	
(Japanese characters)	M. Hisano	Japanese	Male	
(Japanese characters)	Y. Shitara	Japanese	Male	
(Japanese characters)	Ken Kubo	Japanese	Male	



<u>Signature</u>	<u>Names in English</u>	<u>Nationality</u>	<u>Sex</u>	<u>Occupation</u>
(Japanese characters)	S. Tsukamoto	Japanese	Male	Business
(Japanese characters)	Kenzo Tsukamoto	Japanese	Male	Yasuda Trust Co, Shanghai
(Japanese characters)	Renji Ando	Japanese	Male	Misui & Co
(Japanese characters)	Susumu Isoda	Japanese	Male	
(Japanese characters)	Hitoshi Wada	Japanese	Male	Asahi Shinbun
(Japanese characters)	Toshiro Honda	Japanese	Male	Mitsui & Co
(Japanese characters)	T. Kawashima	Japanese	Male	Banker."

LT COL HENDREN: Does the defense have anything else to offer?

LT COL BODINE: That is all.

LT COL HENDREN: Does the defense now rest?

LT COL BODINE: The defense now rests.

LT COL HENDREN: Prosecution has two short stipulations we'd like to introduce on rebuttal. It has been agreed on, -- it is stipulated by and between the prosecution and defense that if Major Shiro Inoue were present and sworn as a witness he would testify that in December 1944 at the request of the Japanese military officials he came to Shanghai and picked up a record of the Doolittle trial from headquarters of the 13th army and delivered the record to the military authorities in Tokyo; that the record burned in a fire started by Allied bombings in May 1945.

The second stipulation is that if Lt. Hayama Toshiro, presently a legal officer in the Japanese 13th army was sworn as a witness he would testify that in December 1944 at Shanghai, China he delivered a record of the trial of the Doolittle fliers to Major Shiro Inoue and that there is no complete record of the proceedings in the headquarters of the Japanese 13th army.

Prior to the close of the prosecution's case, prosecution would like to make a motion to amend Specifications against General Shigeru Sawada for two reasons: One reason is that some members of the Commission have questioned the first and second specifications, and the other is that we would like to have the specifications conform to the proof. As a matter of explanation, prosecution might state that the charge is the gist of the offense against General Sawada and the specifications are more in the nature of a bill of particulars. However, if it will help the Commission, prosecution offers the following motion: Motion to amend specifications 1 and 2 to the charges against Shigeru Sawada to conform to the proof so that the said specifications as amended will read as follows: That on or about the month of August 1942 at Shanghai, China Shigeru Sawada as commanding general of the Japanese Imperial 13th Expeditionary Army in China did knowingly and willfully constitute and appoint a Japanese military tribunal and did direct the said Japanese military tribunal appointed by him as aforesaid to try by court martial Lt. Dean E. Hallmark, Lieutenant William G. Farrow, Sergeant Harold A. Spatz, Lieutenant Robert L. Hite, Lieutenant George Barr, Lieutenant Chase J. Nielsen, Lieutenant Robert J. Meador and Corporal Jacob DeShazer, United States Army Personnel on false and fraudulent charges and to designate said specification as Specification 1 and to renumber the remaining specifications consecutively.

CAPTAIN FELLOWS: If the Commission please, the defense objected to the first specification on the arraignment. At that time the court indicated while it can not say a war crime alleged, it would pass it for the time being. The prosecution has waited during the entire trial of the case and now seeks to amend the specification by combining the two



together. The defense has closed his case. The prosecution is ready to close theirs. I think the prosecution has waited too long to change the specifications in this case by attempting to tack on a specification which does not state a violation of law of war. Therefore, on behalf of the accused defense must object to the change at this time as being made entirely too late.

LT COL HENDREN: If it please the Commission, the prosecution has no desire to take advantage of the defense in any way and at any time. In a proceedings of this nature the specifications can be amended for the sake of clarity as long as the specifications do not allege a new offense and allege something that the defendant has done and not had an opportunity to defend himself in the trial. This is purely a clarifying motion at this time. It does not allege anything that has not been previously alleged, and it does not require any additional proof. I can see no additional defense that the defendants can bring before this Commission. If they have any I am perfectly willing to have the defense counsel bring any additional matters or point out any way where this amendment hurts the defendant in any way. It doesn't allege any new offense, it only clarifies the first two specifications.

CAPTAIN FELLOWS: If the court please, this does make this change. They are trying to keep something before the Commission that did not begin with the way it was alleged, does not under the evidence constitute a violation of the law of war. By combining the two they have a specification which they can at least contend violates the law of war. To bring the matter to a head I move the Commission to strike 1 as not stating a violation of the law of war, either the way it is alleged or under the evidence in this case.

LT COL HENDREN: If it please the Commission, there are no guide stones that I can point to the Commission as to the method of alleging a charge in a case of this kind. You are not bound by the court martial, you are not bound by the rules ordinarily applying to criminal cases in the United States. The rules under which this Commission was formed state that the charge should be set forth in clear, concise and simple language, in order to advise the accused to what they are charged. The specifications attached to the charge in this case are more or less a bill of particulars which we think clearly advise the accused, Sawada, in this case, as to what we think he did wrong. Your charge is the main offense as we see it in the case. The specifications attached thereto are mainly an outline of how he went about violating the laws of war in this case. We do not wish to argue the matter at this time. The case is closed. We thought this amendment would clarify the matter on the point that had been raised by some members of the Commission. It is not a point which will hurt or help this case in any way. The evidence is in. The Commission and the defense knows what they are charged with. It is not going to be a matter which will harm the decision, I don't think in any way. If this will help clarify it, that is why we offer it, and we ask the motion to amend be accepted. As against the motion made by the defense to strike, I would argue that that motion should be overruled for the following reasons: This specification, if we want to get down to technicalities, does allege violations of war. As the proof in this case, we state that General Sawada did knowingly, willfully constitute and appoint a military tribunal for the purpose of trying before that tribunal these eight men and we ended up by saying, "said personnel being entitled to the honorable status of prisoners of war." That alleges an offense under the laws of war - these men were entitled to the status of prisoners of war and not to be treated as war criminals.



This does allege an offense. It shows what Sawada is charged with down through the specifications and we move at this time to deny the motion made by the defense to strike Specification 1.

CAPTAIN FELLOWS: If it please the Commission, I wonder if the prosecution is contending that a prisoner of war is immune from being tried. The whole purpose of his case is to say a prisoner of war should be tried one way. I still say it is not a war crime to set up a tribunal to try a prisoner of war. They are subject to trial like a non-combatant member of your own army or anyone else if they commit an offense. A prisoner of war is not immune from trial.

LT COL HENDREN: If it please the Commission, it is not time for argument. One of the theories of the prosecution has always been in this case that these men should never have been tried at all, that they should never have been denied the status of prisoners of war and placed before a court for any offense. The second theory would be that if they were tried they should be entitled to a fair trial, so our theory has been that these men should never have been tried because they never violated any rules of warfare, but that is only an answer to the argument of the defense at this time and not in summation of the case.

COLONEL MC REYNOLDS: At this time the Commission will recess for 15 minutes.

(Whereupon the Commission took a recess at 1525 hours.)

COLONEL MC REYNOLDS: The Commission is in session. (1540 hours.)

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

COLONEL MC REYNOLDS: The Commission accepts the motion by the prosecution combining Specification 1 and 2 against General Sawada, and denies the motion by the defense to strike Specification 1 against General Sawada.

LT COL HENDREN: Does the Commission desire any further evidence to be offered by the prosecution?

COLONEL MC REYNOLDS: There is none.

LT COL HENDREN: Does the Commission desire any testimony brought on behalf of the Commission?

COLONEL MC REYNOLDS: Yes, there is.

LT COL BERRY: I would like General Sawada to take the stand, please.

SHIGERU SAWADA

was recalled as a witness by the Commission, having been reminded he was still under oath, was examined and testified as follows (through Interpreter Kranz):

Q (By Lt Col Berry) General Sawada, at any time after you returned from the front to Shanghai on or about the 17th of September 1942 did you send or direct to be sent as a personal message from you to Tokyo any telegraphic message to Tokyo?

A I could not directly communicate with Tokyo, therefore I did not do it.



Q General Sawada, I refer you to Defense Exhibit No. 15 which is a statement of General Karakawa taken before Captain Fellows on the 7th day of March 1946. For further reminding you of this exhibit I will read Paragraph 3, "However, as Commanding General Sawada was well versed in international questions, he regarded the problem of fliers' punishment as of great importance and assumed a careful attitude toward it, namely, his telegram to Tokyo on the finding of the trial was that he wished the authorities in Tokyo to reflect and take a more sympathetic dealing at the finding of the death penalty for the fliers." Now in that statement, General Karakawa alleges that you sent a telegram to Tokyo and he quotes one of the alleged phrases in that telegram. What do you have to say to that?

A I brought this matter up before the supreme commander of Nanking and therefore Karakawa may be mistaken about this and may have taken it for Tokyo authority.

Q What do you mean by that part of your answer which says "may have taken it for Tokyo authority."?

A I talked about this matter to the supreme commander of Nanking and Karakawa on his part thought that I sent a telegram to Tokyo and he must have been misunderstood - he must have made a mistake.

Q Isn't it a fact, General Sawada, you did not send a telegram to Tokyo?

A That is the truth.

Q And you did not direct a telegram to be sent which did contain this or similar language as quoted in General Karakawa's statement?

A No, I hadn't.

LT COL BERRY: Those are all my questions.

CAPTAIN FELLOWS: We have one question.

LT COL HENDREN: I believe the defense has closed its case.

CAPTAIN FELLOWS: We'd like to ask one question on that same point.

LT COL HENDREN: We have no objection.

COLONEL MC REYNOLDS: Proceed.

Q (By Captain Fellows) General, did you request General Hata in Nanking to send a telegram to Tokyo?

A I talked over this matter with the supreme commander, but he told me that Tokyo made its own decisions therefore it is better to wait for orders from Tokyo.

LT COL HENDREN: Is that all the questions of this witness?

CAPTAIN FELLOWS: No further questions.

COLONEL MC REYNOLDS: The witness is excused.

(Whereupon the witness was excused and resumed his seat among the accused.)

LT COL HENDREN: Does the Commission desire any further witnesses or evidence brought before it?

COLONEL MC REYNOLDS: There appear to be none.

LT COL HENDREN: Does the Commission desire the defense to bring any more evidence before the Commission?



COLONEL MC REYNOLDS: Does the defense have further evidence?

LT COL BODINE: No further evidence.

LT COL HENDREN: Before the prosecution rests at this time I suggest that the Commission set down a time for final arguments on the case and indicate the time that will be allowed for each side for their arguments. I might suggest at this time I believe it is practice for the prosecution to have the opportunity to open and close the arguments. Prosecution would like to divide its time for an opening argument and closing argument after the defense has argued his case.

COLONEL MC REYNOLDS: At this time does the prosecution feel it is necessary?

LT COL HENDREN: Defense has five defense counsel and they may need three hours. Prosecution didn't anticipate that long. The prosecution will need a maximum of two hours, probably less, but we'd rather have the time set by the Commission. I realize there are five lawyers on the defense side. They may desire to take a longer time than the prosecution.

COLONEL MC REYNOLDS: The Commission will allow both the prosecution and defense all the time they desire to make their arguments.

LT COL HENDREN: What date does the Commission desire final arguments to be made?

COLONEL MC REYNOLDS: The Commission will recess till nine o'clock Thursday morning, 11 April. That will be sufficient for the defense to work up his arguments.

LT COL BODINE: Yes, sir, that will be sufficient time.

COLONEL MC REYNOLDS: The Commission will now adjourn until nine o'clock Thursday, 11 April.

(Whereupon the Commission adjourned at 1600 hours on 9 April to reconvene at 0900 hours on 11 April 1946.)



MORNING SESSION

...Pursuant to adjournment, the Commission reconvened at 0900 hours, 11 April 1946, at which time all of the members of the Commission, the accused, counsel for prosecution and defense, the interpreting staff and the official reporter were present in the court room ...

COLONEL MC REYNOLDS: The Commission is in session.

PROSECUTOR: I would like to ask the defense if it is satisfactory to have the argument summarized by Captain Hahn and given back to the accused at the end of the argument?

DEFENSE: Yes, that is satisfactory.

PROSECUTOR: It becomes necessary at this time to summarize for you the evidence that has been given in this case and to see if we can be of some assistance to the Commission in arriving at the law in the case in the various elements of proof which both the prosecution and defense think are necessary in order for this Commission to adjudge the charges and specifications against the accused.

If it is satisfactory with the Commission, I will open for the prosecution. Defense will then be given an opportunity to present their argument and Major Dwyer will close for the prosecution after the defense has argued their case.

The Commission has listened patiently to all of the testimony produced; the opinions have been very fair and unbiased. I believe all the evidence has been produced before this Commission that could be produced by both the prosecution and defense. Both have been given an opportunity to bring their evidence before the Commission and both have completed their case.

First, I would like to analyze the charges against the accused and the prosecution's thoughts as to the gist and nature of the charges and necessary elements of proof which have been offered to support each of the specifications against the accused. We will start in first with the specifications against Sawada. The complete charge is set out in the charges preferred against him. The gist of the charge is that while he was Commanding General of the Japanese Imperial 13th Army in Shanghai, China, in August 1942, that he denied the status of prisoners of war to the certain named Doolittle fliers and caused them to be tried and sentenced by a Japanese Military Tribunal in violation of the Laws and Customs of War. That is the charge against Sawada, which charge, the prosecution contends, is complete in itself. In his position as Commanding General of the 13th Army he had certain responsibilities imposed upon him which necessitated him to see that members of his command treated prisoners fairly and that he did not deny to any prisoner the honorable status of prisoner of war in the time of war. I think the evidence has shown that this charge has been proven because it could not be doubted that these men were denied the status of prisoners of war. What elements are necessary to prove that? First, the evidence shows that these men came into the custody of General Sawada's army. There is no doubt they were on a combat mission at the time they were captured. Three of them were captured by Sawada's army near Ningpo and five by members of the army near Nanchang; that later all these men were brought back here and imprisoned by General Sawada's Army. I do not say he personally captured these men or caused them to be placed in confinement, but we do say that they were captured by members of his army and that these men caused them to be treated as war criminals rather than prisoners of war; that in the



treatment they received they were treated as war criminals and given this trial by members of General Sawada's command. That is the charge against him.

If you go over the specifications to that charge you will note that we have tried to apprise the General of the things we think he did in violation of the Laws and Customs of war. You gentlemen are familiar with the specifications but I will go over them briefly. The first and second specifications were amended at the last session and consolidated. The gist of the consolidated specifications is that he appointed, or caused to be appointed, a Military Tribunal. We do not say he does not have authority to appoint a Tribunal but we do think what he did wrong was to allow, under his command, a Military Tribunal to be chosen and a case referred to that Military Tribunal to try these Doolittle fliers under false and fraudulent charges. He should not, we think, have tried these men under any charge but when he did allow these men to be tried under the charges under which they were tried, he violated the Rules of Land Warfare.

The third specification, we believe, has also been proven when we say that General Sawada in his official capacity constituted and appointed the Tribunal which heard this case and judged it on false and fraudulent evidence and sentenced these fliers to death. That is something Sawada cannot duck. He cannot sidestep the fact that this Commission did hear false and fraudulent charges and false and fraudulent evidence upon which to base their finding.

The fourth specifications that he denied the status of prisoner of war to Lieutenant Dean E. Hallmark and authorized him to be imprisoned as a war criminal and to be denied proper food, clothing, medical care and shelter, and authorized and allowed cruel and brutal atrocities to be committed against Hallmark. We set it out separately because we thought probably Lieutenant Hallmark received more brutal treatment than the other prisoners. The defense will try to contend that these atrocities were committed against Hallmark while he was in the hands of the Military Police in Bridge House Jail but our contention is that we cannot see how Sawada can escape responsibility when these men were his prisoners and he turned them over and allowed those Gendarmerie members to treat them as they did, when he should have seen to it that they had proper treatment. We contend that General Sawada, as Commanding General of the 13th Army had the power to revoke those sentences and when he did not take that action but allowed the sentences to be carried out, that he cannot escape responsibility.

In the fifth specification, here again we contend that General Sawada as Commanding General of the 13th Army had the power to revoke the sentences of the Tribunal and that when he failed to take the action which was in his power to take, that he allowed these men to be imprisoned and to be executed and we believe there has been sufficient element of proof.

In the last specification we set out that he denied all of these men to be treated as prisoners of war and by his acts caused the death of these four.

What evidence have we produced before the Commission to sustain the charge and specifications? It has not been denied to the Commission that he was the Commanding General of the 13th Army. The fact that he left his command in the month of May 1942 and went to the front with his troops, he, by that action, did not escape his responsibilities, and in fact, General Sawada did not deny that responsibility when he took the stand.



Now our evidence has shown these fliers went on an authorized mission over Japan. That has been proven by the testimony of Captain Niclson and the affidavits of Barr, Hite and DeShazor. Their instructions were brought before you to show you that our military authorities were not lax in the training they gave these pilots and members of the crews. When they came over Japan on the authorized mission they were detailed to drop their bombs on factories, industrial plants, oil tank farms, but in that bombing raid there is some evidence to show that some of the bombs were dropped on civilian property and some civilians were injured and killed. Now you men know that in warfare that is bound to happen. There was no evidence brought in to show that these civilians were not within the factories or the industrial plants.

Now, when these fliers were captured and were brought to Shanghai after they were captured, they had every opportunity to treat them as prisoners of war and not as war criminals. The main element in the case was the agreement brought out at the start of the case between the Government of the United States and the Japanese Government that they would treat prisoners under the rules laid down by the Geneva Convention. The defense has tried to show that these men were not familiar with that agreement or the rules of the Geneva Convention. We think they are bound by the acts of their own Government. We think they did tell the truth when they said they had not been apprised of the agreement. That will be urged to this Commission as some type of defense in this case,-- that these men were not told by their Government. We do not think it is a defense or that it need be considered by this Commission. They cannot say that something their government failed to do authorized them to fail to treat these men as human beings. When their government agreed to that they should have taken these men and treated them as prisoners of war and not as war criminals.

The defense will try to contend that these men violated the rules of warfare in the bombing of Japan. Well, gentlemen, if they did, then every American pilot and every crew that went over Japan are equally guilty. We do not say that a man in an airplane cannot commit a war crime but when he is on an authorized raid and is attempting to attack a military target and carry out his mission, then, gentlemen, he is not a war criminal -- he is a combatant in the war, so that if you gentlemen find, in your deliberations, that these men were war criminals and not entitled to the Rules of the Geneva Convention then you must also find that every American pilot and every pilot on every ship, whether it be German, Japanese, English or any other, are guilty of violations of war.

Sawada, on the witness stand, admitted it was his responsibility. He knew the men were captured before he went to the front. He might not have known they were being returned to Shanghai from Tokyo but he knew it at the time he returned from the front because he admitted he discussed it with Colonel Ito and he approved the record of trial and that record showed that they had been sentenced to death. Now what did Sawada do then? He stated that he thought the sentences were too severe and he went to Nanking and talked to Hata. But did he go further? No, gentlemen, he did not. Colonel Berry asked him four or five specific questions when he was on the stand where he could have, if he had done anything to save these men, he could have admitted it at that time but he did not. We have shown that on every other occasion he had the power to revoke the sentences and the procedure. The Enemy Airmen's Law states no different regulation for procedure. All it states is that it authorized them to try Allied fliers for bombing Japanese territory. Any allied flier is an enemy suspected of being a war criminal at the time he has been captured and will be tried and if guilty, sentenced to death.



General Sawada said he had the power to revoke the sentence in every other case but this and General Ito said he could have revoked this one. I do not see how Sawada can come before this Commission now and say his hands were tied. He carried out an order, he says, in approving the sentence, but what did he do to keep from carrying out that order? Gentlemen, he didn't do anything except to discuss the matter with General Hata. I think it is a pretty late time in the game to come before you now and say he obeyed an order in 1942. I think there might be some mitigation if he said he had wired Tokyo, or if he could say I went over and talked with my superior in Nanking and after that I sent a letter to my superiors in Tokyo and told them I thought the sentence was too severe. He did nothing to keep from carrying out that order. He took his "chop" and approved the record. He didn't even say he read the record. He discussed it with Ito who told him what it was. He didn't even take the precaution that an ordinarily prudent man would use before approving anything important, to at least look in and see what evidence they had, but blithely approved the sentence of death against all eight men. Therefore, gentlemen, he convicted himself.

I want to go over briefly the gist of the charges against the two judges. They are exactly the same. The charge against the judges says that these two men, while they were members of the Japanese Army did try, prosecute and adjudge that these Doolittle fliers be put to death in violation of the Laws and Customs of war. The specification under which that charge is laid is just a little more complete and tells that they did these things without affording them a fair hearing or trial and without affording them the right to counsel and without an interpretation of the proceedings into English and without an opportunity to defend themselves. What evidence have we brought before the Commission on this charge and specifications? These two men contend that they went before the Commission and were members of the Tribunal after orders of their superior. We agree with that. When we ordered you men to sit here, you did. But there was an opportunity to withdraw and not sit on the Tribunal, but once they sat on that Tribunal and accepted that appointment, they had the responsibility at that time to carry out their duty in a fair manner. If they were going to give a decision in the case, that had to be supported by evidence. The statements of the accused, themselves, said that Wako was in the legal department of the 13th Army. He saw all of the correspondence, all of the evidence. It all came under his scrutiny as a member of the legal department. That in itself should have barred him from sitting on the Tribunal. Suppose we had brought all the evidence before you five men before this trial and let you go through all of the evidence. We even allowed a challenge of one member of this Commission because he had expressed an opinion on the guilt of the accused prior to sitting. They went further than that. They both say Okada came over to Wako's office and went over the testimony of the trial. I imagine that Nakajo, too, was there but they had an opportunity to prejudge the case before they went into the court room. Starting out from that point alone, it shows that there couldn't anybody have a fair trial before that commission. They walked in the court room and brought these eight fliers in. One of them was so sick he couldn't get off the floor, although these two men say he did sit up a while, but the others all say he lay on the stretcher. Just seeing him in the court room, laying on a stretcher without any particular sensibility about him or any emotion of any kind as to what was going on, should have started at least a spark of human kindness. You could have brought fifty witnesses and Hallmark, in his condition, couldn't have cross-examined them. You heard the testimony of Nielsen and the affidavits of the others. All of them say they were brought in the court room and lined up before the bench and that they knew it was some sort of an interrogation and the only thing they understood was the two or three questions addressed to them as to



their name, education, army training. Three of those boys gave statements in the United States where we didn't have an opportunity to talk to them. They did not know what the charges against these men would be or that they were being charged. They had no feeling in this case except their hatred against the Japs. Hite, DeShazer and Barr had no opportunity to be coached by me or Major Dwyer or anyone else to tell them what to say. Those boys all state that they were asked their name, their family history, their education and army training in English, and that all of the rest of the trial was conducted in Japanese.

The accused do not deny in totum that they explained the procedure in the court room. They say that the gist of the trial was explained in English. How could it have been? You gentlemen have listened to this trial patiently and we have been here sixteen days laboring with interpretations and at times it has almost worn me out. How could they, in a two hour session, take the report sent over by the Gendarmerie in Tokyo, the report as to what the boys bombed, and give each of these boys an opportunity to express themselves? Now, gentlemen, that just doesn't smack of the truth. You can take judicial notice of the fact as to how long it takes to interpret proceedings. They had no witnesses. They had no chance to defend themselves. They were simply tried before a Tribunal, two judges of which, at least, had preconceived ideas as to their guilt. Now if that is a fair trial, whether you use the rules of the Geneva Convention or any other set of rules, I fail to see it. Why, gentlemen, since the time of man on earth, man has been fighting for his rights. Clear from the time Christ was crucified, through the Magna Carta and down through the ages man has fought to protect his rights and to defend himself. Now the defense will say that is the same kind of trial they give their own people, but at least one of their own people would know what was going on in the court room. These boys that were being tried spoke a foreign tongue. They didn't know what was going on. I don't think there is any evidence to show they had a fair trial. They brought eight boys in there that hadn't even had a bath, or shaved or had an opportunity to change their clothes since they were taken prisoners, lined them up and sentenced them to death in two hours. I don't believe even a barbarian would try a man that way. I do not say these men are barbarians, but I don't believe even a savage would consider that a fair trial.

Then we get over to Tatsuta and there is some conflict in the charge against him. We charge that these men were kept out there in his prison as war criminals and that he commanded the detail which carried out the execution of the three fliers. They were locked up out there in his cells. You saw the cells. I would call them no more than dog kennels. Suppose they had been guilty of ruthlessly bombing and strafing civilians in Japan. For that matter even a guilty man or a condemned man is entitled to fair treatment but to take him out to the place Tatsuta ran and make him sit there day in and day out, with no furniture in the cell, no anything. Now, he is going to contend that Tatsuta is a man of very limited intelligence, of very limited education, and just carried out his orders. He is not a young man, he is an old man. He has been in the Japanese service twenty or thirty years and should know how to treat people and that it is inhuman to treat people as these fliers were treated at Kiangwan. I don't believe that because of his low mentality he should be found not guilty of the charge.

In the other specification which says that Tatsuta commanded a detail of military personnel which carried out the execution of the men and that he did order and command them to fire upon and kill these boys. We contend that Tatsuta is actually the man who gave the order to fire.



I will state this, that if he didn't give the order to fire, he had his nose stuck in so deep that he couldn't back out. We have brought evidence to show that he gave the order to fire. We had these enlisted men on the stand and none of them would say that he did not give the order. They all stated that they thought he did but they weren't sure of it. You will remember the train of his contention was that he was a civilian and therefore couldn't give an order to the military. You remember that was their contention but when I asked these men who gave the order to fire the shots you will remember Captain Wako said specifically it was Tatsuta. Ito said the same thing. These other enlisted men told me at the start they thought that was who it was. If he was a civilian and couldn't give orders then he was acting voluntarily and he was doing all these things because he wanted to do them not because he was following orders. Let us see, what did they do out there that day. This man is an executioner and says he had attended some forty or fifty executions. He was acting for Ooka because Ooka was sick or didn't want to come down that day. I am inclined to believe it was the latter, because he was too smart to get mixed up in it. He could have said to Hata, "I don't want to carry out these orders. I love these boys." But what did he do? He gathered up his henchmen and went out to the cemetery; he erected the crosses; he had the coffins built; he has admitted all that. He went back that night and slept good, I guess, because he loved these boys. He loved them so well he gave them paper to write letters on and then he got up bright and early the next morning and he brings the boys out to the cemetery and helps to tie one of them to the cross and he tells them, "You die like Christ died. You will be heroes." He loved all these boys because they reminded him of his son. He gets them all tied to the crosses and then he goes back and tells Hata everything is ready and we contend he told that firing squad to fire. Defense may say that some Lieutenant gave the order to fire, but, gentlemen, if Tatsuta didn't give the order to fire he did everything else. He took them out to the cemetery, had them tied to the crosses, had the blindfolds put on them. He was the executioner. He is carried on the official records of the trial as the executioner. He signed the execution papers signifying the orders had been carried out. What does that mean to us? If he didn't have any right, he sure had his nose stuck in somebody else's business a long way. He was a civilian. He didn't have to do that as a civilian -- he could have refused, and, gentlemen, it is a long time since then -- now four years -- to come back before this Commission and state "I couldn't help it. Everything I did, I had to do, I couldn't help it." If he had done anything to prevent it, then there would be some justification for mitigation of punishment. He got on this witness stand. He said he treated them fine. He gave them a private room. He gave them a single room all right -- a cracker box to live in. He gave them this thirty minutes of exercise, except on rainy days. He admits all that.

Going through the evidence,--I know you gentlemen have heard it all and there is no point in my categorically stating all the evidence that has been put into this trial but there are a few things to bear in mind in deliberating and making your decision.

We brought you five witnesses on the stand so that you could take the affidavits and throw them away. You had witnesses that testified and you could examine, and the defense could cross-examine. There wasn't one bit of evidence to refute anything we have said regarding the treatment these boys received. The defense has conceded everything that happened in Bridge House but they say none of these accused are responsible; that General Sawada was not in command of Bridge House,--it was not under his command. Now, we also brought before you the witnesses as to what happened at Kiangwan, and there has been very little by the



defense on that except as to the food. Tatsuta said he gave them bread and jelly for several days and they didn't like the bread and jelly so he gave them rice. These men testified as to what the prisoners ate. The enlisted men testified as to a garden somewhere out there and said they had greens and fresh vegetables which they gave the prisoners as side dishes but none of them said the prisoners were given a balanced diet. They all stated they lost weight; they were sick; they weren't given the ordinary treatment of a prisoner at Kiangwan. Tatsuta, himself, said he gave them their exercise because he was afraid of an incident.

The defense is going to try to say that General Sawada is not responsible for Meder's death. Now Meder did die in December 1943, but we contend that General Sawada put the forces in motion when he approved the sentence and confined the man in prison. He was a prisoner of the 13th Army and General Sawada was responsible for his treatment in Kiangwan until their transfer. When he approved the sentence, that is what caused Meder to be placed in solitary confinement. You will remember we had Dr. Armstrong on the stand and we gave him all the facts we had as to what happened to Meder and he stated those are the things that caused Meder's death. I don't see how the defense can say this boy died at Nanking and therefore Sawada is not responsible. I can't think of any way to get that logic through my head. If you are the motivating power which starts the thing, you must be responsible for your acts and I don't believe Sawada can dodge that. The statements which they gave us -- which these defendants gave us -- were all taken by the prosecution and in these statements the men contended that these prisoners had all violated the Rules of Warfare.

Now to go on to the defense testimony. There were two witnesses that got on the stand and I think the defense would have had a better chance if they had left at least one of them in Tokyo. You will remember during Mayamo's testimony he stated -- I don't think he meant to say it but it slipped out -- but he stated that as these fliers had confessed they should be executed, and as a warning to other Americans who violate Laws of War. That, gentlemen, was the whole reason for the deaths, -- not the violation of the Laws of War but because they had violated the Japanese mainland by dropping bombs on it, so they had to have an example and these boys were it. They had no law under which they could be tried so they passed the Enemy Airmen's Law. They would have convicted these boys if they had done nothing. If they had picked them up in a rowboat out in the middle of the ocean they would have convicted them because they had to save face and show the Japanese people at home that they caught these boys who had bombed them. That is the gist of their whole law suit. Ito didn't help them a bit. He spent most of the time on the stand trying to save his own neck. If I knew as much about Ito before this case started as I do now, he would have been sitting here with these men. He put Wako on the Tribunal. Ito is probably just as guilty as any of these men. The defense is going to try to say we got the wrong man. We should have Ito, too, as an accused. And there are others. But the fact that they are guilty is no reason or justification for letting these men off. They are not free of guilt. I see no defense in that.

The other evidence which the defense brought out, I want you to examine carefully. It is the bombing survey, and I want you to examine it very carefully. The statements that it contains, if you will go over it carefully, I think you will agree it was a very light bombing of civilians. If any of you have been in Tokyo you know that it is quite congested and you will realize that the number of civilians involved was very slight. They haven't shown, as I said before, that any of the civilians that were killed were killed in the factories itself. If you drop a great big bomb



on a factory, oil farm or industrial plant, some civilians are bound to be hurt. That report, I think, is the best evidence we have in the case that these boys carried out their orders and dropped their bombs on military targets.

And their next evidence, the statements that these boys are supposed to have made to the Japanese Gendarmerie. When you consider the statements the boys are alleged to have signed, and that those statements were made after 32 days in Tokyo, if ever duress was applied to anybody, it was applied there. In our courts those statements would not have been admissible, but when you consider it, consider what the Japanese said the boys said. They had dropped their bombs and were leaving the scene of the raid. We know they were low on gas and were trying to conserve every drop yet they tell us that one punched another and said, "There is a school house, let's go down and give it a good strafing." They could see the children playing. Now we know that American boys don't do that. They were attempting to get away from there as fast as they could, they certainly wouldn't fly out of their way and waste precious time and gasoline. That is a fabrication. The entire statement was not presented. Apparently they just picked up certain things which they had fabricated and wrote themselves in order to save face so when you look it over, look closely and see who would be the most served by evidence of that kind. I don't believe the boys said what they say they did. They made statements over there we know. They found out where the boys had come from and questioned them on it. We know the boys admitted where they had come from and gave their names, their education and their military training and what they dropped their bombs on. I don't believe that they admitted indiscriminate bombing and strafing.

There is some conflict as to whether the statements were written in English or Japanese. Barr says his was written in English. Nielsen says what he signed was in Japanese. If this Commission will consider that in their deliberations and consider also that under that evidence they found these boys guilty of the charge they placed against them, then I am sure you would find these defendants guilty of the charges and specifications against them.

Gentlemen, I thank you for all your attention to the evidence in the case. Major Dwyer will sum it up finally. All I ask is that you give a punishment commensurate with what has been done. It is a case that will go down in history as International Law in the trial of judges who have assumed the responsibility of judging others and what must be done in war time or in peace time. They must judge fairly. This is the first case tried on judges who have sat and heard evidence and passed sentences in cases based on false and fraudulent charges. The sentence in this particular case is going to be a guide-stone in the future. I ask you to give the supreme penalty that judges will know they cannot assume judgment in judging over their fellowmen and not give them an opportunity to defend themselves; that whether they pick their rules from the Geneva Convention or anywhere else, their judgment must be based on a fair trial. The fact that they are Japanese is immaterial. We would ask for the same penalty if they were Americans or any other nationality. The sentence on this case,--on this particular point in this case,--can have a great effect in the future in the trials of mankind during war time, that people will know that if judges do not judge fairly, they will get the supreme penalty for their acts, and I ask for the death penalty for all these men.

PROSECUTOR: Does the Commission desire recess prior to the opening of the defense argument?



COLONEL MC REYNOLDS: The Commission will recess for fifteen minutes, returning at 10:40.

(Whereupon the Commission recessed at 1025 hours, and reconvened at 1040 hours, at which time all the members of the Commission, the accused, attorneys for the prosecution and defense, the interpreting staff and the official reporter resumed their seats in the court room.)

COLONEL MC REYNOLDS: The Commission is in session.

DEFENSE:(Capt Fellows) At this time, prior to defense starting his argument, the defense desires to move on behalf of the accused, and each of them, that the court make specific findings of fact on their deliberations in this case. This motion is made for the reason that in this case there are four separate accused being tried on four separate and distinct charges, it being a common trial and not a joint trial. Defense feels for that reason that the Commission should make specific findings of fact as to each accused and would like to refer to the Commission a list of questions upon which they would like to have the Commission make specific findings.

PROSECUTOR: (Maj Dwyer) We oppose the motion upon the grounds that in the first place there is no authority for the request made in the motion; nothing in the rules of procedure that provide that a Commission would be or shall be required to make specific findings of fact as to facts upon which they base their decision as to any one or all of the accused and I assume that the Commission in any event would make a finding of "guilty" or "not guilty" as to each of the separately tried accused but that the Commission should be required to make findings of fact as to each of those accused is unheard of. Their request for findings may be from one to an interminable number and it imposes upon this Commission an obligation to make, at the request of the defense, a particular finding, for instance, as to whether or not the flight took off from the Hornet on the 18th day of April; whether General Sawada was in command or not from May until September 1942; a specific finding as to where Tatsuta was at any certain time; a specific finding as to what he did in all the recital of facts in which he took part, as given before this Commission, and is to impose upon the Commission a finding as to the basis of its deliberations in support of its own conclusion. There is nothing in the rules that provide for this procedure. Secondly, I know of no State in the United States which, in its criminal procedure, provides for this type of finding. The court has before it, and this Commission has before it, a recital of facts introduced by the prosecution and facts introduced by the defense. Some of those facts may be material and some may not. Some may have probative value and some may not, but based on the facts submitted before this Commission there has been either proven or not, the charges against each of the accused and it does not lie within the prosecution or the defense to require this Commission to disclose to anyone a fact or series of facts upon which they have made a finding. There is nothing in the courts-martial manual for this and so far as I know the only procedure of this type that is given cognizance in a court, is the Court of Equity, where you are asking for specific performance of a contract or asked to determine boundary lines, rights of ownership of stock in a corporation, or something of that sort. All this Commission is asked to do in this case is to consider, in the light of credibility, in the light of who is to be believed, whether or not the prosecution has established the guilt of these men. Some of the facts are attributable to all four and some are attributable only to one or two, but for this Commission to have imposed upon it findings, and unless it is an interminable list the evidence cannot be covered, we submit, it is an imposition upon this Commission to disclose its findings on deliberation



upon which it bases its conclusions in this matter. All the reviewing authority has to determine is whether on all the evidence submitted in this case, whether there is a finding of guilty and of course if there is no finding of guilty, it will not be before a reviewing authority, so that all the reviewing authority has to decide is whether there has been established a sufficiency of evidence upon which to sustain a verdict of guilty. We oppose the motion.

DEFENSE:(Capt Fellows) If the Court, please, the prosecution opposes the motion apparently on two grounds; one, that the Commission is not, under the rules, obliged to make specific findings. That reason is conceded to begin with. We do not say the Commission is obliged to make the findings, we are asking them to do so if they will. Second, to say it is too much work for the Commission, I think that the Commission is competent to decide what facts they have found. We have here in five pages, a request of findings of fact which we want for all four of the accused.

PROSECUTOR: (Maj Dwyer) Have you prepared conclusions of law for your findings?

DEFENSE: We have not.

PROSECUTOR: (Maj Dwyer) It is fundamental that before the court can pass on this procedure it also must have conclusions of law. There is no procedure in any court anywhere, where a court makes findings of specifications of facts without the necessary conclusions of law. I say again, we are not by-passing any work here, I think we have established the fact that we have done our share of the work. We are not ducking any assignment. I think the main reason that no statute has provided for this procedure in any criminal case is that all that any court is required to do is make a finding of guilty or not guilty on the evidence adduced. Counsel has had a long and distinguished career back of him and I think he knows that the reason that findings of fact are requested and upon which they are asked to predicate a verdict of guilty is that so long as the record in its entirety sustains the charges. Now what this could do is to cause the Commission to sit down for a considerable length of time and cause the defense and prosecution to argue interminably and make it necessary to prepare conclusions of law which would probably take a half hour each to discuss. I think it is an unusual procedure and has no basis in any criminal procedure. Where the Supreme Penalty is asked it certainly has no basis and we again oppose the motion.

COLONEL BERRY: From the point of number, how many findings of fact will you ask the Commission to make?

DEFENSE: (Capt Fellows) In our suggested findings of fact we have asked regarding General Sawada, twenty separate facts; in regard to Tatsuta we have ten separate facts and in regard to Wake and Okada, eight each.

PROSECUTOR: (Maj Dwyer) I might say without belaboring this point, I have not seen these proposed findings but I can pretty well guess and I think it is a fair assumption that all the suggested findings if found to be true as proposed by the defense, then the conclusions of law, at least one of them, would be, it is impossible to convict these men. It is another way of asking for acquittal. Then again, without seeing the proposed findings, I say that if you find a portion of them not guilty, then the same conclusion results. I say there are so many points in this record which may be found one way or another that this is an



imposition. It is introducing a form of procedure that can well end in a miscarriage of justice. We could submit, I suppose, forty, fifty or sixty questions of fact in which we ask for the affirmative and then again, suppose a finding is tied. Is there any procedure for you to follow? How many men have you got to have to vote "yes" or "no"? What is the penalty that will result from this finding? I submit this will only introduce into the entire proceedings a method of confusing the facts of law and the possibility of a miscarriage of justice. I have confidence that if this commission makes a finding of guilty and asks for confinement or for death, which is the extreme penalty of the law, I have confidence that the reviewing authority will sustain its verdict, no matter what it is.

COLONEL BERRY: Major Dwyer, if the Commission were to accept the request by defense counsel, would the prosecution then consider it necessary to, itself, offer a series of findings of fact for consideration?

PROSECUTOR: (Maj Dwyer) This is a very novel thing. The usual procedure in courts of equity where this procedure is adopted is for both sides to submit findings of fact together with conclusions of law. As far as we are concerned we have no proposed findings to make. We don't wish to make any. However, I don't know what position that would put us in. If the Commission decided to accept findings from the defense, then it would probably put us in position where we would have to submit proposed findings. This procedure has, to date, never been adopted by any Military Commission which has been convened under the authority of any convening power and I see no reason for it. It will only serve to confuse and make the issues resolve themselves down to a toss-up as to particular facts and how many would we have to have vote on any particular question. But, in answer to your question, having the usual legal tendency to be verbose, in answer to your question, sir, we would have to submit findings if you granted the motion to the defense.

COLONEL MC REYNOLDS: The Commission denies the motion of the defense at this time. It is naturally the duty of this Commission to find each defendant "guilty" or "not guilty" to each charge and specification, based on the evidence and its value as submitted by both the defense and the prosecution.

DEFENSE: (Lt Col Bodine) If the Commission, please, at this time the defense counsel and the accused want to thank the Commission for their attention during the time defense presented their evidence.

In regards to the facts before the Commission in this case, I would first like to give you the facts with respect to General Sawada. It has been proven before this Commission that the General was:

(1) Absent from Shanghai at the time of the trial. He did not return to Shanghai until twenty days after the trial. Also, the General had no knowledge whatsoever that the Doolittle fliers were being tried by the 13th Army at any time when he was at the front.

(a) From the General's own statement on the stand he testified that he had no knowledge that the trial of the Doolittle fliers was being held in Shanghai when he was at the front. The prosecution did not prove in any way nor deny this in any way, that the General was away from Shanghai and that he was ignorant of the trial.

From General Sawada's statement, Prosecution's Exhibit No. 27, the General stated: "I was away at the front from April until September and that during this time I never had a chance to discuss this trial with Colonel Ito."



General Karakawa's statement says "General Sawada and I were both away from Shanghai at the time of this trial and did not return until September 15, 1942."

General Mayano testified that General Sawada was away at the front and did not receive any instructions from the Nanking Headquarters in regards to the Doolittle trial. All instructions were sent to Shanghai and the trial was entirely handled by Colonel Ito. General Mayano also testified on the stand that General Sawada did not return until the 15th of September, long after the trial. He also testified that all communications for the 13th Army went direct to Shanghai and only the operational matter was sent to Sawada in short messages. Nothing concerning the trial was sent to Sawada.

Colonel Ito's own testimony on the stand in which he said that General Sawada had left Shanghai sometime in April and did not return until the middle of September. Colonel Ito also stated that he himself had handled all the details of the Doolittle trial and did not bother the General in this matter and consequently waited until the General returned to Shanghai to give him all the details.

From General Hata's statement: "When the sentence was rendered, the Commanding General of the 13th Army, Lieutenant General Sawada, was personally supervising operations in the field and was not in Shanghai."

It has been proven that General Sawada did not direct that a specific court Tribunal should be set up to try the Doolittle fliers, nor did he select Wako or Okada to try these American fliers. This has been proven by the General's own testimony on the stand in which he stated: "I did not directly select Wako or Okada to try the Doolittle fliers, these two officers were selected by Colonel Ito on orders from General Hata to set up a Military Tribunal to try the Doolittle fliers." In General Sawada's statement which was Prosecution's Exhibit No. 27, he stated: "General Hata gave the orders. I want to say that the order came down to China Area Headquarters from the Imperial Headquarters in Japan." In Prosecution's Exhibit No. 28, General Sawada was asked the following questions and gave the following answers: "Why were these men tried by court-martial instead of treating them as prisoners of war?" and he answered "There was an order from Tokyo." The next question was "Who gave you that order?" and the reply was "The order came from the War Ministry, General Tojo."

In Prosecution's Exhibit No. 26, inclosure No. 2, Military Trial Regulations under the Military Law of the Japanese Expeditionary Army in China, Article 4 of this law states as follows:

"The Supreme Commander shall be invested with the authority to designate the Military Tribunal, which shall have jurisdiction over a special case."

Article 8 of this same law states:

"The Military Tribunal shall first obtain the authorization of the Supreme Commander before proceeding with the trial of a foreigner other than a Chinese."

This law clearly shows and proves that General Sawada did not even have the power or the authority to set up a Military Tribunal but this power was vested solely in the Supreme Commander. It was on order of General Hata that this Tribunal was set up and consequently Colonel Ito did not have to obtain authority from General Sawada and that is why



Ito did not confer with the General before proceeding with the trial. General Mayano testified that the prosecutor, Major Hata, went to Nanking the 23rd of August in order to get the final verbal approval to try the case. The General also testified that Colonel Ito had sent Major Hata to get this approval.

The messages that were sent down from Tokyo to the Nanking Headquarters clearly show that the War Minister and the Chief of the General Staff in Tokyo ordered the trial of the Doolittle fliers and established the Military Law concerning the punishment of Enemy Airmen. In the message from the Vice-Minister of War, Kimura, to the Chief of Staff, Expeditionary Army in China, dated 13 August 1942, clearly orders that the Doolittle fliers shall be referred to a Military Tribunal. The message from Tanabe, Assistant Chief of the Grand Imperial Headquarters to the Chief of Staff, Expeditionary Army in China, states clearly the intention of the Chief of the General Staff concerning the disposition of the captured airmen and the pending proclamation of the Military Law.

These messages prove that all the matters concerning the trial of the fliers, the order to hold a Military Tribunal, the instructions concerning the law under which these fliers were to be tried and finally the approval of the decision could only be made by the Chief of the General Staff and hence definitely proves that neither General Sawada nor even General Hata had the power to remit, commute or revoke the decision of the Tribunal.

Colonel Ito testified on the stand that even though General Sawada did not have the opportunity to review the case, as he was away at the front, nevertheless, it was not necessary for him to do so for he did not have the power to commute, remit or revoke the decision of the Doolittle Tribunal, for the trial was not ordered by Sawada but by General Hata on orders from Tokyo.

In Major Hata's statement, Prosecution's Exhibit No. 25, the Major states, "I contend that those to be held truly accountable for this affair are those connected with the Grand Imperial Headquarters, the Ministry of War, and the Military Police Headquarters. It was they who instigated the enactment of this law, making it retroactive in order to fit it to past offenses." He also stated, "Upon approval of the Supreme Commander of the Expeditionary Army in China the fliers were indicted and committed to trial by the 13th Army Military Tribunal." The prosecutor in this trial has in no way established any proof whatsoever by which they can show that General Sawada knowingly and wilfully constituted the Military Tribunal to try the Doolittle fliers.

In Premier Tojo's statement he clearly stated as follows: "That the aforementioned POW's were tried in Shanghai by order of the CHU-O (I do not clearly recall whether or not it was by order of the Grand Imperial Headquarters or the Minister of War." He also stated, "That the Army C.G. has no authority to void or to mitigate such sentence; that Commanding General Sawada had no legal responsibility in relation to sentences passed by this court; moreover, the Army C.G. has no authority to alter the decision of the court."

In General Hata's statement, formerly Commanding General in all China, he said, "I ordered the 13th Army to appoint a court-martial to try the airmen." The General also stated, "An order for a stay of execution until approval of sentence was received by the Supreme Headquarters, China Expeditionary Forces from the Ministry of War was transmitted immediately to the 13th Army Headquarters."



General Mayano, who was General Hata's Chief of Staff, verified the above statement when he testified that General Hata did issue the orders for the trial to be held by the 13th Army. He also testified that General Sawada did come to Nanking to talk to General Hata in regard to the Doolittle sentence. It was then that Hata told Sawada there was nothing he could do about it as the verdict was up to Tokyo.

The prosecutor in this trial now has in no way disproved the above facts which I have just mentioned, nor have they brought in any evidence whatsoever contrary to the fact that orders were issued by higher headquarters to constitute and appoint the Military Tribunal for the Doolittle fliers. If the prosecutor was doing a thorough job of it, why didn't he bring in as the accused General Hata, General Fujii, General Shimamura, Colonel Ito, Major Ogata of the Shanghai Military Police, 1st Lieutenant Tajima, commanding officer of the firing squad that executed the fliers. These are the men directly responsible for the charges and specifications against the present accused.

Colonel Ito testified that when he first heard of this case the Gendarmerie approached him with the confessions of the fliers; that the fliers had bombed and strafed non-military targets in Japan. Colonel Ito requested more evidence from Tokyo and in reply he received the investigation by the Tokyo Gendarmerie and the report of the damage which was done by the fliers. Colonel Ito also testified that he examined the confessions made by the fliers and saw their signature and finger prints on these confessions. Thus with these documents, the investigation of the Tokyo Gendarmerie, the damage report and the signed confessions, plus his own personal interrogation of the fliers, he referred the case to trial.

In Prosecution's Exhibit No. 25, Major Hata states as follows: "Colonel Ito called attention to the fact that the findings of the investigation were limited to the testimonies of the defendants, and did not reveal such information as damages and losses sustained in the bombing and strafing. Accordingly Major Ogata and his colleagues made inquiries at the Tokyo Military Police Headquarters as to the extent of the damages and losses, the findings of which were appended to the investigation report and given to Colonel Ito."

The report of the Tokyo Gendarmerie Headquarters, Defense Exhibit No. 14, which was sent by the Gendarmerie to General Sugiyama, Chief of Staff of the General Staff, contained the full confessions of the fliers as to how they bombed and strafed schools, civilians and non-military targets.

The statements taken from the school teachers, Defense Exhibits No. 1, 2, 4 and 5, told how the schools were strafed and bombed by the American planes on April 18, 1942, killing school children and civilians and burning of hospitals.

The Defense Exhibit No. 6, gives a thorough and precise estimation of the damage done in Japan by the Doolittle fliers. Incendiary bombs burned 195 buildings and 16 buildings were strafed by machine gun fire. There were 88 persons killed and 561 persons wounded.

The defense also submitted in evidence bullets that were taken from one of the school buildings that were strafed. The school teachers of this same school gave statements to the fact that on April the 18th, 1942, an American plane strafed this school, killing one child. I have also testified that this same school building was in an isolated area and was not near any factories or other military targets.



Captain Nielsen testified on the stand that he had signed a statement in the United States in which he said "We dropped our incendiary clusters in a congested residential area." The Captain also testified on the stand "if any of these bombs went into the residential district, that is the way it happened."

Captain Nielsen also testified that he had signed a sworn statement before Carl L. Sebey, given to Carl L. Sebey on December 7, 1945, in the United States in which he said "I saw our 3 five hundred pounders hit directly on the dock area in Tokyo Bay, on what looked to be steel mills and large industrial plants. Our incendiary bomb we dropped in another district."

This all proves without a doubt that there was some indiscriminate bombing and strafing of non-military targets, and does prove that the reports submitted to the Military Tribunal of the 13th Army were not false or fraudulent.

General Mayano testified on the stand that Kiangwan Prison was a branch of the Nanking Prison and was under the control of the Nanking Prison Headquarters. He also testified that the 13th Army had no control over this prison whatsoever and hence General Sawada could not be held responsible for anything that went on in this prison.

General Sawada testified that Kiangwan Prison was not under his control, nor was the Bridge House under his control. The Bridge House Prison was under the jurisdiction of Shanghai Gendarmerie and General Sawada had no jurisdiction over the Gendarmerie. Will you tell me why the prosecution hasn't brought in one witness from the Bridge House or accused any one specifically from the Bridge House?

Colonel Ito testified that General Sawada did not have jurisdiction over the Kiangwan Prison but said prison was under the control of the Nanking Prison Headquarters. He also testified that General Sawada did not have any jurisdiction whatsoever over the Bridge House which was under the control of the Shanghai Gendarmerie and the Gendarmerie was not under the control of General Sawada.

Suzuki, Mayama, Yoneda, Yoneya and Minezaki all testified that the Kiangwan Prison was a branch of the Nanking Prison Headquarters and was not under the command of the 13th Army.

Tatsuta testified that he was head of the prison guards at Kiangwan and that he took all his orders from Ooka who headed the Nanking Prison Headquarters. Tatsuta also testified that he was not under the command of the 13th Army and took in prisoners only on the orders or verification of orders from Ooka of the Nanking Headquarters.

The prosecution has failed to show any military connection, or jurisdiction between the 13th Army and the two prisons, Kiangwan and the Bridge House, from this no responsibility can be given to General Sawada for any actions that were committed in these two prisons.

Okada and Wako acted under orders. Colonel Ito has testified that he selected both Okada and Wako to sit as judges on the Military Tribunal of the Doolittle fliers. Both Okada and Wako testified that Colonel Ito had selected them as judges to sit on the Tribunal. Both testified that the trial lasted more than two hours. Colonel Ito testified that he had been present at the trial and that after two hours he had left the court room and the trial was still in session. Colonel Ito also testified that the fliers were present during the whole procedure. That the fliers did



not say anything in response to the charges that were read against them but that they did answer the questions that were asked of them by the judges.

Colonel Ito also testified that the court considered as evidence, besides the interrogations of the fliers at the court, (1) the complete report of the Tokyo Gendarmerie; (2) the report of the damage done by the fliers and (3) the confessions of the fliers. This substantiates the statement made by Okada that the fliers did receive a fair trial according to the customary procedure of the Japanese Tribunal.

Colonel Ito also testified that according to the Enemy Airmen Law, Prosecutor's Exhibit No. 25, inclosure #3, he, Ito, interpreted the law as follows: "That if the fliers were found guilty of the charges, according to Article 3 of this law, the penalty can only be death." This was the interpretation that Ito gave to Wako preceding the trial. Colonel Ito further testified that there was no opinion given to the members of the Tribunal, nor were they given any instructions as to how they should vote, prior to the trial.

Both Okada and Wako testified that they made an honest and unbiased decision and both were convinced from the evidence submitted by the prosecutor, and the interrogation of the fliers in court, that the fliers were guilty of the charges.

Captain Nielsen testified on the stand that he was asked questions when he was before the Japanese Tribunal and did answer these questions. He also testified that all the other fliers were asked questions by the court and answered these questions.

Both Okada and Wako testified that they, the judges, deliberated on the decision for more than one hour.

This all proves that the evidence against the fliers was thoroughly considered by the judges, that the evidence was not false nor fraudulent and that the fliers were given a fair and just trial.

Captain Tatsuta has testified that he was head of the prison guards at Kiangwan Prison and that the first time he met the prisoners was sometime in August 1942 when they were ordered to his prison on a writ of Detention by Major Hata. He further testified that this order was verified by Ooka, Chief of the Nanking Prison. Tatsuta testified that the order did not direct how the prisoners were to be treated, so he treated them as ordinary Prisoners of War, the same as the Japanese Officers who were prisoners there. The American prisoners were given sufficient food, water and clothing and plenty of blankets while they were under Tatsuta's supervision. He also testified that he never mistreated the fliers and even kept them away from the other prisoners.

Captain Nielsen testified that he received the best treatment while he was at the Kiangwan Prison and was not mistreated nor tortured in any way while he was there. He also testified that he was given plenty of exercise, had washing facilities and was able to take a bath at least once a week.

Captain Nielsen also testified that when he arrived at Kiangwan he received three blankets and in the latter part of November two extra blankets from Tatsuta. Captain Nielsen also testified that he received reading material while he was at this prison, and did not in any way receive maltreatment from Tatsuta. Captain Nielsen also testified that at no time was he forced to do any labor of any kind.



In Captain Barr's statement, which is Prosecutor's Exhibit No. 21, Barr was not coached by the Prosecution, and he stated as follows: "While at Kiangwan Prison we had plenty of light and ventilation in our cells. The latrine facilities were adequate, we had a straw bed, blankets and were not troubled with lice or rats. They let us buy summer shirts and underwear. We were allowed to have a bath twice a week and were allowed clean water. We were given ample food, and tea at ten o'clock and three o'clock. We started to gain weight while at Kiangwan, and the cells were kept very clean. I never was mistreated while at Kiangwan."

I ask the Commission if this shows in any way that the American prisoners were treated as war criminals, or that they were denied proper food, clothing, medical care, shelter, water and sanitary facilities, or that they were given cruel and brutal treatment as the prosecutor tried to make you believe?

Tatsuta testified that he was at the execution and did make the arrangements by order of the Prosecutor, Major Hata, but he denied that he gave the order to "Fire" to the firing squad and further testified that a Lieutenant Tajima gave this order.

Colonel Ito and Captain Wako both testified that they were at the execution and both testified that Tatsuta did not give this order to fire.

Mayama, Yoneda, Yoneya, Minezaki and Suzuki all witnesses for the prosecution, testified that Tatsuta was not the one who gave the order "fire" to the firing squad. They all testified that Tatsuta was a civilian in the Army and could not possibly have a command function over regular army personnel.

In Prosecution's Exhibit No. 25, paragraph 6, Major Hata stated, "The condemned men were executed by a firing squad, headed by First Lieutenant Tajima."

In the same Exhibit No. 25, inclosure No. 8, "Record of Execution", paragraph 6, states, "Firing squad and security guards: under the command of First Lieutenant Tajima."

The prosecutor, in this case before the Commission, in no way tried to disprove this evidence nor did they attempt to bring in Lieutenant Tajima, or a statement from him to disprove this evidence.

If, as the prosecutor stated, Tatsuta had his nose so deep in the execution, and if that is the reason why he brought in this man, why didn't the prosecutor bring in the firing squad and all the guards who were at the execution? Those who drew the charges? Everyone else who had anything to do with this matter?

I therefore ask the Commission to study the facts in this case very closely, consider the evidence presented by the prosecutor, most of their evidence is based on statements in which questions are misleading and does not allow the person answering such questions to explain in detail. I ask the Commission, also, to consider the fact that most of the statements taken from the accused were done with Caesar as the interpreter, the same Caesar who was himself a prisoner of the Japanese and who now works as an employee for the prosecutors.

PROSECUTOR: Does the Commission wish to recess at this time? It is now twelve o'clock.



COLONEL MC REYNOLDS: The Commission will recess until 1400 hours.

(Whereupon, at 1200 hours, 11 April 1946, the Commission recessed until 1400 hours, 11 April 1946.)

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AFTERNOON SESSION

... Pursuant to adjournment the Commission reconvened at 1400 hours on 11 April 1946 ...

COLONEL MC REYNOLDS: The Commission is in session.

MAJOR DWYER: Let the record show the Commission, accused, counsel for prosecution and defense, reporter and interpreters are present in the courtroom

The defense counsel will make a statement to the Commission with respect to translation of subsequent arguments.

CAPTAIN FELLOWS: If the Commission please, of the arguments to follow by the defense counsel, the arguments of Hayama, and Shinji have been made known to the accused and will not be necessary to translate those arguments to the accused. The argument to be made by Kumashiro is now being translated and can be read from the translation. I think that will save quite a bit of time in translations.

COLONEL MC REYNOLDS: Is that satisfactory with the prosecution?

MAJOR DWYER: That is satisfactory to the prosecution.

COLONEL MC REYNOLDS: That is acceptable to the Commission.

CAPTAIN FELLOWS: At this time I would like to read a paper prepared by Mr. Hayama. This has been made known to the accused and no translation is necessary. The argument of Mr. Hayama is as follows:

The theory of punishment is the theory of responsibility. Without responsibility, there can be no punishment. "Nulla poena, sine culpa," is the first principle of the criminal jurisprudence. Again, the responsibility is the culpability. For a certain violation of law, one must be culpable before he can be held responsible. And what is the culpability?

Whether or not a man is culpable for an event depends not so much upon what he actually did, as upon whether or not he could be expected, to the best of his ability, not to bring about the unlawful result, that is upon whether or not the event can be imputed to him. A commanding general of an army might be culpable, accordingly, might be held responsible for the violations of international law, even when they were committed not by himself but by his men, because he could be expected to have an influence to prevent such crimes all over his subordinates. However, soldiers of a firing squad are not blameworthy even though they fired on execution. Nor can we reproach others with their infringement of law, if they had come to the infractions under great compulsion or with no knowledge of what law is. True, all the details of law are not required to be known to criminals. A murderer may be punished with death despite he knew nothing about criminal code, since there is no one on earth that can be supposed to know nothing about the wickedness of murder. Everybody is expected not to commit murder. But, as we cannot expect too much of soldiers, so can we never expect others not to violate law who are under great or know nothing about the illegality or at least unmorality of their own conducts. Hence, culpability means an ability of being expected not to do wrong. It has been defined by German jurists as "Zumutbarkeit," and regarded as one of the grounds on which all criminal responsibilities depend.

Further, I will examine concerning this case, especially for the three accused, i.e. for Wako, Okada and Tatsuta, whether or not they can be held responsible for the Doolittle fliers' treatment, whether or not



they could be expected to behave themselves in other ways than what has been described in their charges, supposing that some violations of international law had been committed by their own conducts.

It has been contended by the prosecution that Japanese, including these defendants, have infringed the Geneva Convention upon their treatment of Doolittle fliers; in spite of the Japan's agreement concerning the Geneva Convention with the United States government on February 4, 1942, the members of the Japanese army did not act up to the Convention. On their interrogation, Doolittle fliers were tortured by the Japanese government; at the trial they were not allowed to have any defense counsel, trial lasting only for one or two hours. Among them, lieutenant Dean E. Hallmark was most miserable. He was sick in trial court, being taken back to the Bridge House Prison, and ever since he was "sick and in prison" until his last day when he was fetched out again and put to death. To my great sorry, I can't but admit there were great many errors in the treatment of the fliers committed by the Japanese army. Needless to refer to the Geneva Convention, no excuse can be found for water-treatment if we wish to explain ourselves as a nation celebrated for good sense and humanity.

However, it is the farthest thing in the world from my wish to impute all the irregularities, the sources of misery and disease, the evils and defects of trial system that were endured in the Japanese army during the war to these persons now accused as war criminals. I don't like to assert their innocence simply under such formal a ground that Bridge House had never been under the jurisdiction of the 13th army. Their faults are nothing but those of the Japanese army itself. In order to treat them fairly, all the peculiar characters and conditions of the past Japanese army - some of them being quite notorious even among Japanese - must be taken into our consideration, or, I am sure, we shall never be able to do justice to these defendants, especially to Ueko, Okada and Tatsuta. Those that follow are some of the extenuating circumstances for these people:

1. Democracy and the Japanese army. It is a well known fact that there has been no room for democracy in the past Japanese army. There, the leading principles were rank, order and subjection. The upper ranks distinguished themselves from the lower as if they were of different races. Everything came down from above. Even Tatsuta - he doesn't know any English language nor even the weight of ounce - had mandatory power over his subordinates. One grade higher, and there was all the difference; an act of violence such as assault and battery against the superiors could be punished fifteen years imprisonment, while, in the severest cases, the same acts were never punished unless they came up to injury or cruelty. Under any circumstances or on any occasion, everybody was trained to be strictly submissive to the commands and orders of his superior, whether the former were under the latter's direct command or not. All orders had to be carried out sincerely and immediately. No discussion about their adequacy; no question of the reason why. (Army Regulation, 1943 Chapter 2.) Disobedience was punished with death, life imprisonment and so on. As well as in the feudal societies of the middle ages, power rested with some privileged staffs alone, and to them everything seemed for the best, in the best possible constitution. The miseries, unreasonableness and inconveniences arising from compulsion, on the other hand, were not readily evident owing to the poor intelligence of the Japanese in general.

Strikes and demonstrations were prohibited under the penalty of imprisonment. (Military Penal Law, section 104.) We have a story funny enough to describe the curious conditions of the Japanese army. Once, on a windy day, soldiers were ordered by their officer to water their camp ground because it was too dusty. Soon after that, down came a shower in torrents and in short time the ground got wet but the soldiers did not stop watering in the rain because the officer went out and they could not get order to stop. During the later part of the war, the chances turned



against Japan day day day. Some of the wise soldiers and officers more or less realized that Japan was losing the war; any step farther, it was evident, would make the matter worse. But, they have no authority to bring the war to its end, they were not permitted even to discuss the matter in loud voices. How to lead and carry out the war was in the hand of the privileged staffs and always decided by their opinions only. It was in this way that all the honest soldiers and lower officers had been driven to the losing battles.

Such a wild state of things, although often deplored secretly by some intelligent people, and now can I complain of them bitterly, have never been criticized in public before and endured until the Japanese lost the war. Ridiculous and deplorable as they might be, they could not be got rid of by human power and were always oppressive to the Japanese people. We might well say that they were an irresistible social compulsion.

Turning back to this case, it should be strictly borne in mind that both Wako and Okada were the lowest officers in the Japanese 13th army in August 1942. Almost everything they put hands to was in direct command of their superior, especially lieutenant Wako, being a legal officer, stood under an extraordinary control of Colonel Ito. Compared with Ito's rank and experiences for more than twenty years in the army, Wako's position was almost nothing. As a chief of the legal division, Colonel Ito was provided with a motor car and a horse for his own daily use, while Wako, Okada and Tatsuta every day, fine or rain, came to their office on foot. The interpretations of law were exclusively in the hands of Colonel Ito. Wako and Okada stated in this courtroom that they had sufficient evidence to try the Doolittle case. Who prepared the evidences? Supposing they had no good evidence, when Wako was ordered by Colonel Ito on 28th 1942 to try Doolittle fliers and write up their sentence before the next morning for the purpose of report to Tokyo, I believe, it would be almost impossible for Wako to make any such objection that the evidences were not sufficient or he had no time enough to try the case. A lieutenant can never criticize the insufficiency of the evidence that has been prepared by a Colonel. Impossibility makes no good excuse for disobediences. Thus, the short trial was inevitable. It was an order. And as to the treatment of Lieutenant Hallmark, Wako and Okada were not the only persons who saw Hallmark in the courtroom; Ito himself did see Hallmark lying sick on the floor. It was entirely subject to his discretion whether Hallmark should be put in Kianwang prison or taken back again to the Bridge House. Because, in order to send Hallmark back to the Bridge House, it was necessary to have an understanding with Shanghai Gendarmerie Headquarters concerning the matter. At that time, the chief officer in charge of foreigners in Bridge House was a major. How could Wako or Okada request this major to accept Lieutenant Hallmark again? The chief would not listen to or take any notice of them because of their ranks.

2. The Geneva Convention and the Japanese Army. It was to my great surprise that General Sawada testified in this courtroom few days ago, that he did know the Japan's agreement concerning the Geneva Convention with the United States Government on February 4, 1942. Being a legal officer, I have never been informed of the agreement. To the best of my knowledge, it has never been proclaimed by the Imperial Headquarters nor made public in any way. I believe General Ito told truth when he testified in this courtroom that he knew nothing about the agreement. Was the agreement reported from Tokyo only to the staffs of our army? Why did they not make it public? And why the supreme headquarters in Nanking did not set up any army regulation concerning the trial of war criminal suspects in order to afford them the privileges stated in the Geneva Convention? As a member of the Japanese army, it is not so difficult for me to tell the reason why.



Before December 8, 1941, the Japanese army had fought here in China, as if they were under no control of international law. Without any proclamation of war, great hostile operations were carried out in succession against Chinese people. Might was right. As regards the treatment of Chinese war prisoners too, hardly any notice was taken of the international law, to say nothing of the Geneva Convention. On the other hand, it had been strictly laid down by the Japanese army staffs that no Japanese could surrender to the enemies. We were taught over and over again we must sooner die than disgrace ourselves by being taken prisoners. For Japanese soldiers to be taken prisoner was far from honour. It was at once a disgrace and one of the most grave offenses that could be punished with death, life imprisonment or imprisonment for more than seven years (Japanese Army Penal Law, Section 77). If Mr. Nielsen were a Japanese, he would have been put to death by the Japanese court martial under the ground that he, being a captain, had stayed long in the enemy for more than three years, no matter whether or not he had any opportunity to escape. In this way before December 8, 1941, Japanese army already lost its humanity for prisoners of war; they became almost indifferent to war prisoners, even if these were their fellow-countrymen. I am sure that the Chino-Japanese incident was a flagrant crime against Chinese and Japanese that was ever committed by the leaders of the Japanese army. During the period, a great number of the Japanese humanists inside and outside of the army, who attempted to root up the standing abuses, were either put in prison on a charge of the allegedly dangerous thoughts or coerced into submission by the leaders of the army.

After the Pacific War broke out, this conditions were not entirely changed. True, here and there, the Prisoners of War Camps were newly established. But those were rather on compulsion. Still, we were taught that there is no material difference between foreign and domestic prisoners. And as to the misery which the Japanese prisoners suffered, the leaders of our army seemed not duly sensible of the favour of Providence which distinguished them from the sufferers. Since December, 1944, just after my arrival in Shanghai, I often proposed to my seniors and sometimes to the Supreme Headquarters in Nanking some improvements in the structure and management of army prisons, especially in view of the Kiangwan prison, which, it seemed to me, resembled one of those prisons once bitterly complained of by John Howard. But every time the answer was that they could not help it.

Therefore, it is small wonder that Tokyo Headquarters did not proclaim the Japan's agreement concerning the Geneva Convention, and that the Nanking Headquarters did not lay down any new regulations in accordance with the agreement. What these gentlemen were concerned about was not how to treat war prisoners fairly, but how to prevent their soldiers from surrender, because they ridiculously felt fear that soldiers might be ready to surrender if they were informed of the good treatment of war prisoners. It was a swift current caused by some privileged people. No other persons could row against it. If I were Wako, Okada or Tatsuta, I would have been charged as a war criminal as they are.

### 3. The indiscriminate bombing and these defendants:

In addition to the extenuating circumstances above mentioned, I beg leave to state a few words concerning the indiscriminate bombing and the positions of these defendants.

That some of the Doolittle fliers did bomb and strafe the non-military objectives in Tokyo and Nagoya was one of the main points at issue which were asserted by the defense counsel. Against this, it was contended by the prosecution that the casualties among civilians, if any, were not done



by Planes 2298 and 2268. Now, may please Commission, if you don't believe any indiscriminate bombing and strafing at all, or if you think these casualties were too small to be taken into consideration, I have nothing further to state here. But if you believe some of the Doolittle fliers did bomb and strafe to some extent indiscriminately, I beg you to pay attention to one of the established principles of the English Equity Law, "He who comes into Equity Court must come with clean hands." These defendants are prosecuted not by the crew of the Planes 2298 and 2268 but by the prosecution in the name of the United States. The accuser is the United States herself. Captain Nielsen's hands may be clean. But, whether or not all the Doolittle fliers' hands are clean, that's the question. And if not, it should be counted as one of the extenuating circumstances for these accused.

Further, some opinions from the different point of view will be stated by Mr. Kumashiro about the limits of responsibilities of these accused.

Here I express my heartfelt thanks for the kind treatment given to us, and, for the new Japanese, state my impressions of this trial with joy as once LaSalle did: *Das hinhören einer neuen zeit besteht immer nur in dem erlangten Bewusstsein über das, was die bisher vorhandene Wirklichkeit an sich gewesen ist.*" The new period begins just when we are conscious of what it is that hithertofore existed.

MR. KUMASHIRO: The significance of the issue facing this Commission today can not be over-emphasized. The four accused are now being rigorously blamed and tried as individual criminals for their conducts which they, as members of Japanese military organization, performed in compliance to the Japanese Military Statutes, military orders, military conventions and usages.

Military statutes, military organization, military orders, military conventions and usages of Japanese army, by which the four accused were bound themselves to conduct, are to be criticized for their universality righteousness from the international standard. For this there is no argument.

But, on the other hand, the result arising from the lack of universality righteousness of these military organization, military statutes, military orders and military conventions and usages should not be attributed entirely to the criminal responsibility of these individuals who were bound themselves to conform to them. General conditions and backgrounds, in which these individuals were put in at the time of their conducts, should at least be taken into consideration.

Through various evidences, statements submitted to this court, and through the cross-examinations of the witnesses, and through the preceding arguments of the defense counsel, almost all the legal questions and substantial facts have been disclosed for the judgment of the Commission.

Besides the charges and specifications for each accused in this trial, there are, as underlying current, at least two new principles or ideals which the United States in her mind wants to materialize as her national policy towards Japan. These two principles or ideals are, I think, as follows:

(1) Democratization of the Japanese social system, by revealing and denouncing through this trial, the undemocratic and uncivilized characteristics of Japanese military organization, statutes, disciplines, conventions and usages, etc.



(2) Democratization of the Japanese people, by revealing and denouncing through this trial the blind and false submission of individuals to the military orders, disciplines and traditional conventions. Advancing a step forward from the conservative principle of criminal laws to maintain public justice by its application for the materialization of new and higher social justice and ideals, has been more or less established in civilized countries where the improvement of social and public life is aimed for.

From this point of view, the aforementioned two ideals involved in this trial - disintegration of Japanese feudal system and democratization of Japanese people - should be regarded pertinent as an expression of the consistent national policy of the United States. This lofty ideal and incessant courage of the United States are well appreciated with hearty respect, for which we are second to none to cooperate with you.

For the impartial and earnest attitude of all the members of this Commission, prosecutors, interpreters and the American defense counsel revealed in this courtroom for last few weeks, not only myself but also, I believe, all the accused would like to express profound conviction and gratitude. It is deeply engraved on our hearts that this trial has not been motivated from some revengeful feeling towards their enemies, but that the United States wants to manifest through this trial her ideals to the world. I even as a subject of a defeated nation, understand and appreciate the ceaseless effort of your country for the attainment of ideals.

I am very much obliged and grateful to this Commission to have a chance to express my frank and sincere opinion concerning the present trial.

Democratization of Japanese Social System: Strong criticism against Japanese military system and social orders, which the Commission may have acquired from various statements and evidences and results of the cross-examinations together with the previous knowledge, I as a member of the Japanese nation, and the four accused, especially as members of the Japanese Military personnel are but to accept with greatest bitterness of hearts.

As a Japanese, who sincerely hopes for the time will come when a new-born Japan shall be a member of the world of nations, I am willing to acknowledge the evils and defects of the Japanese military and social organizations. It is a duty, I believe, of the Japanese to learn what have been their military and social system to the eyes of other countries.

I am quite sure that all the members of the Commission have already acquired some knowledge in respect to the Japanese military system, military tribunal, military disciplines and their oppressing militaristic background and environment.

But I would like to remind the Commission that in spite of various uncivilized and preposterous characteristics of the Japanese military and social system revealed during the time of war, these have not always been blindly obeyed and accepted by the whole nation. If this Commission or your government has any such preconception of the Japanese nation, I think it is as big a mistake which will deteriorate and hinder the smooth and due performance of your high ideals not only in this trial but also in the occupation administration of the United States in Japan. Without knowing what it is, it is almost impossible to give a fair and correct judgment.

It is obviously dangerous to determine a social entity from a mere



judgment of phenomena on its surface. Ideological, spiritual, conventional and emotional background veiled underneath its surface should not be overlooked. Especially it is more dangerous, during the time of war when militaristic oppression of government and society is so overwhelming as to subdue all individual judgments and actions. Social phenomena under these circumstances are most difficult to be scrutinized. Under war circumstances, on the one hand because of the supreme demand to fight through, and on the other hand because of the deplorable human nature, many social phenomena will come out on the surface which could not have been occurred under other circumstances. History of human civilization is full of these irrational and regrettable instances. We all know how a difficult task it is to give a fair and correct judgment of a society and its constituent members. We, the Japanese, are all aware of the evils prevalent in our military and social organizations. These should immediately be eradicated and replaced by new structures. But to enforce the application of a new form regardless of different historical background is one of the most dangerous enterprises. This danger is all the more imminent in case of the application of a certain law to other country. Coercive application of a law of a society to another is not only permissible but also contrary to the nature of law. This can be said even in the case when the law to be applied is of higher and more enlightened standard from the legal point of view. Law should be based upon the moral, intellectual and historical background of people to whom it is to be applied. It is now an open fact that certain capitalistic legislations are the nucleus of class-struggle in a country; and so within the international society. We cannot recognize, therefore, that it is fair to coerce the application of laws of a country to another.

Keeping these basic ideas in my mind, I cannot but regret that the present case is being tried under entirely an American regulation and mentality. Up to the present time there has not been established any international law in dealing with the so-called "war criminals." This kind of case should only be tried in a court by regulations of some international nature.

The four accused had acted according to their military statutes and orders. The justice or injustice in the criminal sense of the four accused is to be criticized only from the international point of view. The lack of international legislations and international court system for the so-called "war criminals" does not give any excuse to try the case by a certain law of a single nation. This should come under the jurisdiction of international court and regulations.

Democratization of Japanese people. The present four accused who are now facing the life and death trial are the victims of the mis-application of the Japanese military laws and conventions by the Japanese authorities.

Although we acknowledge to some extent the positive educational ideal of criminal laws for the reformation of society or its members, the mis-application of laws cannot achieve its educational aim but only result in adverse outcome. This is one of the most important points for the Commission of the leading nation today to consider for your judgment. Japan has already made this great mistake, for which these four accused are now being compensating individually. I sincerely hope that the same mistake shall not be repeated by the United States.

It is the most difficult task to give the fair judgment of the individual criminal responsibility to the evils and defects of the society of which he is a member. All the social evils and defects may be attributed



to its constituent members from philosophical or moral point of view. But it is a big problem whether the social evils and defects should be attributed to the criminal responsibility of its members.

The power or capacity of an individual, compared to that of his society as a whole, should not be over-estimated. It is just like and as humble as a human being is before nature. Even the highest man power cannot overcome the power of nature. Especially in a country at war, the militaristic power of the society entirely predominate the individuals. It is like kicking against the pricks. The stronger the power of society grows, the weaker the power of individuals becomes. How can we expect all people of a country to be such strong and religious minded people as the so-called "conscientious objectors." This is the nature of men, irrespective of their country or religion.

We cannot blame an individual as a single entity; he is only a single ring of a long chain of national philosophy and history. The oriental philosophy inherent to all individuals, consciously or unconsciously, lead them to abandon themselves for the fate of time. This philosophical and historical inheritance of an individual, together with the overwhelming power of society under war-fever, deprived him of all individuality and eventually made him a single leaf floating along the swift stream. When we determine the mental attitude or behavior of an individual especially in the case of the present accused, we cannot overlook the historical and philosophical inheritance of him. This is more important in the case of judgment of a man with entirely different history and philosophy. To judge from a single conduct or single mental attitude, in relation to its criminal responsibility, is such a blunder as to over-estimate the individual power than that of a society. This kind of mistake should not be made in the present case. We cannot blame a person for his conduct or his mental attitude, if we cannot under any circumstances expect him otherwise. This is one of the main principles of criminal punishment of civilian country.

In the case of international nature, as in the present case, this basic principle of criminal laws should not be neglected. I frankly admit that Japan has once made this big mistake; I sincerely hope that the United States, as the leading and therefore responsible nation for the human welfare and happiness, will not commit the same mistake.

Further to the foregoing argument, to penalize a man for his conduct duly performed according to the laws and customs of the society he belongs, will some time have a very bad effect on the law-abiding confidence, if it is not fully understood. Once the law-abiding spirit weakens, the foundation of the nation, as a law-governing country, will be threatened. Here lies the difficulty of the educational application of criminal laws. Evils and defects of laws and customs should be the last thing to be compensated by a man who acted according to them. We must not forget that the principal aim of the criminal law is not in its educational purpose by penalizing a man for the defects of the laws and customs by which he is bound. True democracy expects individual conscience and law-abiding spirit together. Either of them should not be sacrificed. Dignity of law should not be endangered by the individual discretion.

Considering these points mentioned above, the application of your ideal to the present case seems to me, as a some Japanese with the four accused, to miss the actual target. I earnestly hope for the Commission, not only for the honour of the American Nation but also for the equity of the human being, the fair and prudent judgment be given.

(Whereupon Captain Hahn translated the foregoing argument to the accused.)



CAPTAIN FELLOWS: I, too, would like to express my thanks to the Commission for the patience it has had, especially in the last few days when patience should be tiring. The court has been extremely patient and has given the defense every opportunity to present motions, final arguments and evidence. I want to express my gratitude and appreciation to the Commission for that.

I came into this case with some eagerness and some joyful expectations. I envisioned myself getting a trip to Tokyo, getting out of the office for a while, picking up some new courtroom experiences, something new, but after reading the statements that the prosecution had, after talking to these accused, after getting into my head the idea and the background of this case, I lost most of my anticipation and became in fact very humble, and approached this case with a great degree of humility. I realized I was representing not only these four accused, their families and their friends, but also to some extent the Japanese judicial system. That I also represented the one thing that we blame these Japanese for not giving the American fliers--I represent the defense. I, along with Colonel Bodine, represent what we say the American judicial system has that the Japanese did not have. I realize that the result of this case does set a precedent for future cases for years to come, that at some time an American officer may be on trial on the precedent set as a result of this case. The precedent of this case is setting an example whereby that officer may be tried. I have therefore tried to defend these accused as I would want to be defended. I am not satisfied with the results of my work; not satisfied with what I have done, but I have tried and am still trying.

This case is, I believe, one of the most important of the Class A war crime trials. It is important because it involves the trial of 8 American fliers by an enemy nation as war criminals and three of these fliers were actually executed as a result of those trials. It is important because the survivors of those trials claim that they were innocent. I, as an American subject, can not and will not minimize the importance of this case from that standpoint. The case, however, is also important from an international point of view because it is the first attempt by an American Military Commission to review the acts of a tribunal of another nation, to review the laws, rules and customs of another nation and to punish nationals of that nation who complied with those laws, rules and judicial decisions of that nation. This function is usually performed by an International Commission of selected jurists.

The facts in this case are long, detailed and in many respects very conflicting. However, a thread of evidence winds through the entire case which does not appear to be disputed. Some of this evidence is favorable to the accused; some of it unfavorable. In brief, I can say that eight of the Doolittle fliers who raided Tokyo crashed at or near the China coast and were captured by the Japanese armies. They were taken to Tokyo. In Tokyo they signed confessions which the prosecution has challenged here. The fliers returned to Shanghai upon orders from the top government officials in Tokyo and Nanking that they be put to trial by the military tribunal of the 13th Army on a charge of violating the new "Enemy Airmen's Act." This Act was drafted in Tokyo on order of the War Ministry. The draft was made by the Imperial Staff and the law was finally enacted by the Supreme Headquarters of the China Expeditionary Force. The trial of these fliers was according to the normal Japanese military tribunal system. It was a closed trial without defense counsel. The extent of the interpretation is under dispute. The extent of the participation allowed by the fliers is under dispute, but it is not disputed that the court convicted the fliers and sentenced them to death, nor that three of the fliers were executed and the other fliers were sentenced to prison as war criminals. Those are all the facts I need to discuss for my argument. I think they are sufficient for me to discuss three points primarily involving International Law. These three points are: