

Chinese Mission to escort these vehicles, testified that there was no firing from their jeeps, in complete agreement with witnesses for the prosecution who have stated there was no firing from these jeeps.

Third, no defendants have been identified as occupants of the third truck. However, if the Commission is to believe the testimony of Police Chief Tsuchida as well as other policemen the first flashes of gun fire were seen coming from that third truck. These shots, which the police claim gave them the right to fire 342 rounds in less than three minutes at all the vehicles, must therefore be shots which no defendant could have fired or been responsible for.

Fourth, the American eyewitness, Royal Bennett, saw no firing from any Chinese in the first convoy but saw the Japanese police open fire from both sides of the street. Bennett's presence on the scene during the incident and his ability to make these observations are corroborated by witnesses for the prosecution as well as for the defense. Policeman Kaiko testified that when the first group of vehicles were stopped he saw a jeep, a sedan, three trucks, and the light of another vehicle in the rear, coming from the position where Bennett testified he stopped in the rear of that convoy. Police Chief Tsuchida testified that although he was standing on the police station side of the road and was not in the line of movement of the convoy as it started he had to step out of the way of another vehicle which drove by at that time, and which he did not identify as part of the convoy. This testimony checks with Bennett's own testimony of how and when he passed the convoy. The driver of the first jeep, Low Chee Kwin, testified that after the shooting had occurred an American drove up along side of him and spoke to him but they had difficulty in understanding each other, again corroborating Bennett's own testimony that he overtook a jeep with several passengers but that the driver did not seem to understand what he said.

But, apart from the oral testimony, what physical evidence does the prosecution present allegedly to show firing by these defendants? First, one fully loaded pistol which smells as if it had been fired thirty minutes to one hour previous, an opinion which is extremely doubtful and was never probably qualified in this case; second, one expended cartridge case found on the street near the tracks in front of the police station, the only one found or presented although the police admitted to having fired 342 rounds themselves and although the Chinese were supposed to have been firing from the running boards and over the sides of the vehicles. Had the Chinese been firing as the police claim the street and trucks should have been littered with empty cartridge cases and empty magazines. Third, one fully loaded pistol found on the fourth truck with no evidence that it had been fired; fourth, four live rounds found on the fourth truck which were not fired; fifth, one fully loaded but unused pistol found the next morning in the garden as well as one loaded but unused magazine for a Browning pistol.

But there was evidence that many persons had been in that garden between the time some of the defendants were arrested and taken away and the time this pistol and magazine were found. A number of police testified that they, including some who were stationed on the bridge closest to the garden, had been armed with Browning pistols. The prosecution asked this Commission to make the unreasonable inference that the occupants of the vehicles after firing their pistols loaded the pistols and magazines and then all quit firing. Such an inference is foolish. Instead of producing physical evidence to corroborate the assertion that the occupants of the vehicles had done any firing the physical evidence presented completely denies that there was such firing.

It is conceded that the Japanese police have produced some witnesses willing to testify that they saw flashes from the trucks but such testimony is entitled to little credence from this Commission. It is self-serving and uncorroborated by physical evidence. Even the manner of its presentation shows its lack of credibility. As to certain details which the Japanese police authorities believe were vital there is exact similarity and clarity in all the testimony of the Japanese, but as to other matters there is dissimilarity and confusion, evasiveness and failure of memory. During the incident the police were tense and excited, the police chief had to order them to withdraw, they were busy unlocking the safeties of their pistols, it was dark, the vehicles were moving, but they still claim to be able to give positive and accurate testimony of some details, in fact all giving the same testimony on the same details. On the other hand the police could be inconsistent as to the number of vehicles even though the vehicles were stopped with their lights on from three to five minutes when they could easily be seen and counted. When it comes to the matter of who fired first, a matter of extreme importance to the Japanese police, they are consistent that there were three reports from the trucks, they assure you it was three flashes or reports, although they occurred in less than a second's time and although immediately afterwards a burst of shots was fired and more than 200 shots were fired in less than three minutes from all directions. Even as to the origin of the opening shots these same witnesses are confused and contradictory, with testimony that the shots came from the third of three trucks, the second of two trucks, and even the second of three trucks. We are told that Japanese will never state a fact as such -- they always say they "think" or they "believe" -- but as to the opening shots the testimony of the Japanese in this case is unqualified and positive that there were three shots from the trucks -- but I "think" there were three trucks or I "believe" there were two trucks, and I can not recall exactly but I "think" this happened or I "believe" that happened. The Japanese police want this Commission to find that the first shots came from a truck. The testimony of these Japanese police is of course self-serving. The police must attribute the creation of this incident to the Chinese.

Unless they can build up a case and fix the guilt on the Chinese they themselves can be held responsible for this incident. The acts and omissions to which they have already confessed would be sufficient to charge them with criminal conduct, with having caused the death and wounding of their own policemen as well as many Chinese.

The prosecution has struggled to prove that police sergeant Haga was shot by a person on the truck by attempting to prove that he was shot from above, but such testimony has little meaning or probative value. The slight angle at which the bullet entered his body was so slight that it would have been completely accounted for by any bent or crouched position, even if the shot had been fired horizontally. Police Chief Tsuchida was himself standing next to Haga and testified on direct examination that there were shots being fired by the police officers before "I saw Haga grab his shoulder", and another policeman in this court testified that he heard the chief testify that way. Police were deployed and firing on both sides of the street in such a manner that a shot fired from one side of the street could easily strike a policeman on the other side. Considering the testimony of the chief police himself that the police were already firing and the natural inclination to duck to avoid firing there remains little probative evidence that this fatal shot came from any of the trucks.

We call the attention of the Commission to the fact that the prosecution stated in open court that the official record made to Police Chief Tsuchida as to the examination of the bullet taken from Haga as well as the bullet extracted by Dr. Miki would be produced in evidence. Although both Tsuchida and Dr. Miki were witnesses in this case neither the report nor the bullet were ever offered in evidence for the Commission.

The prosecution has also tried to prove that policeman Kawakami was shot by persons on the truck merely on the ground that it appears by the path of the bullet in his body as if the shot came from a higher level. But any shift in Kawakami's position or posture could have produced the same result even if the shot had been fired horizontally.

In explaining the deployment of the police witnesses for the prosecution testified that there were police stationed in several places on the Hashiman Bridge and its approach. They testified that police were stationed before the shooting to the rear of the spot where Kawakami was shot. They also testified that these police were firing and they were firing in the direction of the Shibuya Police Station. Only when it was suggested that Kawakami was shot by one of these policemen was there a denial that there were any police in that area even though no explanation was given as to where these police did go or how it was known that they were no longer there.

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As to the second group of vehicles which approached the Shibuya Police Station there is little doubt that the police opened fire without any provocation. The driver of the jeep leading that group, together with his passengers, went into the station and spoke to the police chief. Police Chief Tsuchida himself testified that he spoke to them but he avoided recalling what he said. The jeep driver testified that the chief had told him that the "third truck of the convoy that went ahead of you started the shooting, the fact that you were shot at can't be helped." The failure of Tsuchida to assert any blame on the second convoy and evasiveness in his own testimony is tantamount to an admission by Tsuchida that the police themselves were responsible for the firing at the latter convoy.

Although all the evidence shows that to open fire would have been plain suicide for the Chinese, crowded together on trucks, driven by strange Japanese drivers, and surrounded and outnumbered on all sides at night by armed police, the evidence is clear that opening fire by the police was not only possible but extremely probable. To reach such a conclusion it is not necessary to find that all 305 policemen had a premeditated and deliberate attempt to murder the Chinese. The police were tense and excited and had been waiting at their posts for several hours. They had been instructed that Formosans were coming to attack the police and burn the station. They saw reinforcements pour in from other stations. Untrained as policemen in the use of pistols they were given pistols and told to use them if necessary. The distribution of pistols was an unusual measure and despite the limitations of the official instructions it could only mean to those police that they were expected to use them. They were alerted by gun fire and by police whistles when the convoy was brought to a stop. When the vehicles bearing the Chinese were at the Shibuya Police Station those police were in a mood to open fire. Even the backfire of a truck motor would have been sufficient for them to start firing.

It has been suggested during the trial that this incident could have been avoided by the Chinese if they had had any foresight and had gone out of their way to avoid the police station, but the fact that the Chinese did take what turned out for them to be the wrong road that night does not mean that these defendants are therefore guilty of every offense that occurred on the way. We respectfully suggest that this entire incident could also have been avoided if the officer in charge of the military police and the armored car had had any foresight and had inquired as to why there were hundreds of Japanese police milling about the area of the police station, and if he had posted and kept posted military police in such a position that trouble could have been possibly avoided rather than forcibly overcome. The police have claimed that they were protecting their station from attack by Formosans but this claim has no support in fact. Police Chief Tsuchida

admitted that the Formosans could not have attacked the police station if the armored car were in front of the station and he admitted that the Formosans would not cause any trouble if military police were present, and although the police chief had at other times asked and received assistance from the military police and knew of no reason why the officer in charge of the armored car would refuse a request to station the armored car in front of the police station, the police chief made no such request for assistance that night. An American officer spoke to the police chief twice that day and at neither time did the chief give him any particulars about the expected attack. He made no objection when the armored car was stationed at the railway station three hundred meters away, where its value in case of the expected attack on the police station depended on the time, nor did the chief advise the American officer that the danger of an attack still remained when he reported that the armored car was leaving. This action by the police chief and his treatment of what he admitted would have been sure protection against an attack is completely inconsistent with the police claim that their purpose was to protect the station. Their obvious purpose to strike a blow at the Chinese if the opportunity presented itself is plainly apparent. On the night of the 19th of July these Japanese police wanted no military police assistance; they wanted no military police hindrance; they wanted no military police witnesses; in short, they were not interested in seeking Allied cooperation.

Although this Commission has heard considerable evidence no particular defendant in this case has ever been identified as having fired a pistol, brandished a club, or used provocative language. Even if the Commission were to believe the testimony of prosecution witnesses that they saw some persons carrying a pistol or a club, there is no proof that any of these defendants did so. A mere possibility that any of these defendants were those persons can not be justly regarded by this Commission as proof of guilt by them of any offense.

Prosecution called more than sixty witnesses to testify of the four hundred eyewitnesses available, yet not one was able to identify a single defendant as having fired a shot, waved a club, or used any offensive language. The failure to produce such a witness permits but the single inference that no one observed any of these defendants committing such acts as charged. Not only have no witnesses been produced who saw the defendants commit any of these acts at the Shibuya Police Station but the prosecution has been unable to produce any confessions or admissions by the defendants themselves. A majority of these defendants were held in confinement by the Japanese police for several days after this incident and were subject to grilling and interrogation by experienced Japanese police investigators. All of the defendants were under investigation and were not brought to trial until approximately ten weeks after the incident. Yet despite their

unreasonably prolonged confinement and the opportunity for extensive interrogation not one confession or admission by any defendant has been introduced that he or any other occupant of the vehicles did any firing or carried any clubs or used any provocative language.

The only testimony which in any way tends to connect any of these defendants with the offenses charged is to the effect that certain of these defendants admitted that they were passengers on vehicles and were present in the area of the Shibuya Police Station on the night of 19 July 1948 but it is obvious that such evidence is wholly insufficient to prove that they themselves did commit any offense. Mere possibility or even a probability that they did commit certain acts is certainly no ground or justification for finding any one of them guilty of any crime. The complete lack of proof of guilt of any of these defendants can not be avoided by the allegation that the accused did act jointly or in concert with unidentified persons and the record is simply void of proof of any such joint or concerted action with respect to the act and offenses charged. Of course it could be argued that the Chinese did act jointly and in concert in attending a meeting at the Showa School, that they did act jointly and in concert in attending a meeting at the Chinese Mission, and that they did act jointly and in concert after both meetings in going home peacefully. But there is no evidence whatsoever that any of these accused did act jointly or in concert or did have any common intention to commit the offenses charged herein or any crime whatsoever on the 19th of July. In fact the prosecution has stated here in open court that the prosecution was not trying to prove a conspiracy and was not interested in what took place at the Showa School or at the Chinese Mission. If there is any positive evidence of the existence of such a plan or conspiracy to cause a disturbance and attack the Shibuya Police Station it originates in the testimony of Police Chief Tsuchida himself. He admitted he had no personal knowledge of such plans and he had made no investigation. His testimony was based upon reports allegedly received from the Metropolitan Police Board and from other Japanese police stations that Formosans were gathering to attack and burn the Shibuya Police Station, but this completely hearsay evidence was never enlarged upon or in any way corroborated. It was merely quoted by other Japanese police who learned it from the same police chief.

The inherent weakness of this evidence and its utter lack of probative value is made only more apparent by its self-serving purpose at this time. Now when thirty-eight Chinese are charged with responsibility for the incident of the evening of July 19th and when it is plain that the only alternative is his own culpability and the guilt of the Japanese police under his supervision Police Chief Tsuchida finds it convenient and to his own interest to state that he heard Formosans were planning to attack and burn his station. Yet on the afternoon of July 19th before this incident occurred the same police chief

found it to his own interest to make no such statement to Allied authorities. At that time he made no such report to the Allied Occupational authorities with whom we are told he and his force are in full cooperation. He made no request for military police; he made no disclosure to the American officer who spoke to him twice that evening. But even if it were true that the police chief did receive such reports there is nothing in that evidence which tends to corroborate or establish their authenticity. Neither the basis of the report nor the original source of the information has been disclosed. Taken at its best the evidence indicates that Formosans were planning to attack the station, Formosans unnamed, unidentified, but nothing in the evidence offered by the prosecution can connect these defendants with any such plans. Nothing in the evidence shows these defendants had knowledge of such plans; nothing in the evidence shows that these defendants took part in either the formulation or the execution of any such plans. Certainly they can not justly be held responsible for acts which no evidence demonstrates they either planned or committed.

Not only does the evidence in this case fail to warrant a finding of any unlawful conspiracy or combination among the defendants but in fact the evidence as to earlier events on the 18th of July is wholly inconsistent with such a conclusion. The evidence is that on the night of the 18th of July there were passengers riding in two jeeps, a sedan, and four trucks which were engaged in the incident and that these defendants were on one of the jeeps and three of the four trucks. Occupants from each of the vehicles -- each of these vehicles have testified that nothing took place on those vehicles on their way from the Chinese Mission which showed that the other passengers were planning or were bent on carrying out any previous plan to attack the Japanese police. The idea that such a conspiracy could be conceived by persons on seven different vehicles divided into two separate sections while enroute is impossible. Even if such a plan had been thought of by persons on one vehicle responsibility, therefore, could hardly be attached to persons on any other vehicle who had neither been informed of nor given approval to such intention. The entire conduct of the persons on the vehicles is inconsistent with the notion that there existed any unlawful conspiracy.

The vehicles traveling along a main thoroughfare in the direction of the Shibuya Railway Station and toward the homes of the passengers were forced to a stop and were delayed by the Japanese police themselves. Had the police permitted these vehicles to continue on their peaceful way and had not provoked a disagreeable situation by surrounding the vehicles in a threatening manner there is every reason to presume that no incident would have occurred at all. After the vehicles stopped all but one or two of the passengers remained on the vehicles. No one attempted to attack or to break into the

police station. The one or two persons who dismounted did so for the natural and reasonable purpose of inquiring why the vehicles had been stopped. The answers given to them by the police, according to the testimony of the police themselves, were both vague and evasive. Other passengers voluntarily told the police they were on their way home and identified themselves as coming from the Chinese Mission. After the shooting occurred some of the passengers even walked into the police station unarmed, unarrested and sought to learn the reason why the police had fired at them. Surely such conduct is inconsistent with any argument that these men had any intention to attack the Japanese police.

Earlier on the evening of the 19th of July the passengers on the vehicles had been present at an assembly at the Chinese Mission. However, all the evidence as to what took place at the Mission negates the idea that a conspiracy was formulated at that time. All the testimony indicates that the persons attending the meeting were advised that representatives of the Chinese government would investigate and settle their problems and that every one was satisfied and prepared to return home. A number of the persons at the Mission departed in a group bound for their homes in the direction of Shinagawa, which plainly indicates that there was no common intention to attack the Shibuya Police Station. Even those who went to Shibuya and Hakano left in two separated groups. The route which happened to bring the vehicles by the Shibuya Police Station was taken by the driver of the leading vehicle of each group for the simple and unobjectionable reason that it was the usual route to their destination, the Shibuya Railway Station, and was both shorter and a better road. No other passenger ordered or even suggested that such a route be taken. At no time has there been any evidence that the drivers of the two lead vehicles, the employees of the Chinese Mission, had taken part in any of the earlier meetings of that day or were even aware of the general situation. Contrary to the idea that any unlawful conspiracy was formulated at the Chinese Mission is the undisputed evidence that the Tokyo Provost Marshal was notified and his assistance was requested to make certain that the peaceful intentions of the Chinese convoy on its way home would not be misunderstood. It should be obvious that had a conspiracy existed or if the existence of any such conspiracy appeared officials of the Chinese Mission would not have supplied their official Chinese government vehicles to escort the group nor permitted the group to depart at all. The fact that these officials did not know of any conspiracy and saw no evidence of any conspiracy would not necessarily mean that no conspiracy could exist, but if these persons had knowledge of any conspiracy then it must also follow that other persons in that assembly including these defendants might have had no such knowledge, and without such knowledge and without knowing participation in the conspiracy they can not be responsible for whatever occurred. At no earlier time on the 19th of July does any evidence indicate that any

conspiracy to attack the Japanese police was formed, nor has the prosecution attempted to prove such.

The prosecution has introduced into the trial the trip of the Chinese between the Showa School and the Chinese Mission in an attempt to detract attention of the Commission from what happened at the Shibuya Police Station to what might have happened at Shinbashi. But the evidence shows that these persons did not engage in any incident at that time or at that place. The driver of one of the trucks testified that the persons on his truck were talking only among themselves and not disturbing others. The evidence shows that these Formosans did not fire any pistols at any one but actually were fired upon themselves near Shinbashi. Further the evidence shows that machine gun firing was heard at that time from the direction where the prosecution says the Matsuda Gumi office was located.

In obvious recognition of the weakness of the evidence that the defendants created a disturbance and did engage in a riot the defendants have been charged separately with the possession of dangerous weapons and, in further recognition of the lack of evidence that any of these defendants is guilty of the offense, the specification is that they did act jointly and severally with several unidentified persons. At no time has there been any positive proof or even any testimony identifying any of the defendants as carrying a club or stick or bar in the Shibuya area nor has there been any proof or even testimony that any of these defendants had any knowledge that there were any such instruments on any of the vehicles. Although occupants of the trucks have denied that there were clubs on their vehicles it is conceded that testimony has been presented by the prosecution that there were sticks on two of the trucks, but mere proof that there were sticks or bars on the trucks is not proof that the defendants did possess dangerous weapons. Wooden sticks or iron bars are not of themselves dangerous weapons. Such instruments on a Japanese truck used for ordinary transportation purposes is not uncommon, yet for such instruments to be dangerous weapons requires that they be first used as such. In this respect the evidence is plainly insufficient. There has been no testimony that any Japanese was struck or beaten by any such club or bar or that any passenger dismounted from a vehicle threatening violence with a club or bar. Of course there were some Japanese police who were willing to testify that they observed occupants of the vehicles waving clubs, but at the same time these Japanese police witnesses admitted that the vehicles were dark and crowded and that they did not identify or describe the responsible persons, or they confessed that they were looking at the glare of headlights when they made these observations, or they testified that the occupants of the trucks singled him out of the crowd of police to threaten him personally. Never was any logical or plausible explanation offered as to why occupants of the vehicles packed

together in the rear of open trucks, halted and surrounded on all sides by a much larger police who were armed, should be waving clubs in the face of these police. Such testimony can not be believed.

Some police witnesses have testified that they saw pistols held by some person or persons on the trucks but they can not identify such a person, although at that time it was their duty to report to their superiors whether the vehicles carried any weapons, and when it would have been important information these police made no attempt to report their observations to any one. It is unreasonable to believe such testimony now when the self-serving purpose of its offer and the prejudicial self-interest of the offerors are so apparent. Examination of the record in fact reveals that the only real evidence indicating that a club may have been used as a weapon is the fact that one of the defendants who was arrested and handed over to the police at the entrance to the Shibuya Police Station was then slugged into unconsciousness.

With respect to the specification that these defendants did unlawfully have pistols in their possession we respectfully submit that there is no legal evidence which warrants a finding of guilty. It is admitted that the prosecution has introduced in evidence three pistols and has offered the admission by one of the thirty-eight defendants that he carried one of the pistols on the 19th of July. But no evidence identifies any other defendant with possession of any pistol nor is there any direct evidence that any other defendant had any knowledge that there were pistols on any of these vehicles when they were on the way to the Shibuya Railway Station. On the contrary, representative defendants have testified that they did not possess any pistols themselves and did not see any other of the occupants of the vehicles were pistols. The defendant who has been identified as having admitted he carried a pistol stated to the same investigator that he didn't fire it. Even if some of the persons know of the presence of a pistol on the truck such knowledge can not be imputed to all the occupants of all the vehicles. Even if this Commission were to find that some of the defendants did possess pistols in the area of the Shibuya Police Station on the night of the 19th of July the prosecution has failed to show that such possession by these defendants was unlawful at that time. The prosecution has failed to cite any memorandum or directive which these defendants violated by the possession of these pistols. Even more apparent is the failure of the prosecution to cite any authority which makes it illegal to possess boy scout sticks, exercise bars, tent poles, or iron bars. The testimony of the prosecution even taken at its best fails to connect four of the defendants with any unlawful act in any way and in fact fails to show that three of these four were even present in the Shibuya neighborhood on the night of the 19th of July.

Defendant No. 26, Tsai Lung-Tu, has been identified by the prosecution as an occupant of the second jeep but no evidence has been introduced that any unlawful act whatsoever was committed by any of the occupants of that vehicle.

Despite the attempts of the prosecution unfairly to prejudice this Commission by irrelevant and ordinarily inadmissible evidence as to this defendant, no evidence has been presented that this defendant, No. 26, did commit any of the acts charged.

As for defendants No. 2, Chen Sung-Ming, No. 3, Liao Jung-Chin, and No. 4, Hung Tsung-Jen, the evidence even fails to warrant a finding that they were present in the Shibuya area on the 19th of July. The only testimony introduced with respect to them is that No. 2 was being treated for wounds of unknown character in the Hiroo Hospital on the night of the 19th of July, and that No. 3 and 4 were admitted to the 62nd General Hospital for gunshot wounds at 2400 hours on the 20th of July. No testimony connects any of these defendants with any of the vehicles.

It is respectfully submitted to the Commission that no amount of argument can overcome the complete lack of evidence of guilt of these defendants. At the beginning of this trial the prosecution suggested that this would not be an ordinary proceedings and stated that it would not attempt to prove the commission of any one particular crime as we ordinarily know it. The fact that this has not been an ordinary proceeding and that no crime has been proved as we ordinarily know it is now obvious, for not only has there been no proof beyond a reasonable doubt that an offense has been committed by the Chinese but there has been no proof to a moral certainty that these defendants did commit any unlawful acts or that they had joined in any unlawful conspiracy to commit such acts. It is respectfully submitted to the Commission that the evidence is insufficient to warrant a finding that any defendant has committed an act prejudicial to the objectives of the occupation and that the defendants be found not guilty of the charge and of the specifications.

PRESIDENT: Has the prosecution any closing argument?

MR. HAGEN (PROSECUTION) If the Commission please, I want to call the court's attention that we are not back in an American police court. The war has not officially been terminated and we don't have peace like that in the peace time days. This is an occupation and obviously we can't have. I think it's rather a farce to argue from the basis of a police court under the conditions existing today. The only rules the court is bound to observe are according to the order signed by General Michelberger, that the Commission shall assure that they have a full and fair trial. Any evidence of probative value shall be admitted which to a reasonable man is adequate to support a conclusion. That is all. I think the court is

well aware of that. We are criticized because the Japanese police didn't ask the U. S. authorities for more help. Under SCAP directives it is the duty of the Japanese police to maintain law and order without our help. That is one reason we have one of the specifications because these defendants did interfere with the duty that the police were charged with by the Commission.

But let's look at the facts. On that day there was an armored vehicle sent out. The Metropolitan Police Bureau ordered Chief Tsuchida to increase his force -- it wasn't his idea -- and under cross examination defense counsel brought out from Tsuchida that in addition the military police made short interval patrols all during the way -- I think you will recall that answer. Certainly what more was he supposed to do?

This witness Bennett which he makes a lot of. Remember he said he parked behind the last parked truck and he said he was parked right over here (indicating) and he described the road so well. Then when it developed that was the wrong place he said, "No, I couldn't have been here." Then the map wasn't long enough. Where was he? He certainly -- I believe he did see some part of the incident, but he certainly wanted to know all about it, every detail, but when he realized he was in the wrong place then he didn't know but he was down by some clearing works on the other side of the bridge. He is the witness who told about ambushing the police station. He recited to the court, if I remember quite well, there was such a thing as ambushing the police station.

Now about the trucks, counsel referred to the fact that these were Japanese trucks, that they entrusted themselves to Japanese drivers. Let us look. I think counsel for the prosecution has been rather diligent in trying to bring in and tie up every driver we could. Who drove the first truck? We don't know. Of all the drivers we have been able to interrogate and brought into court none of them drove the first truck. The jeep was a Chinese jeep, the sedan was Chinese, the first truck we don't know -- there is no evidence to show -- but we do know who drove the last one was a Chinese driver, a man from Shibuya, so they weren't trusting the lead and the tail of this convoy to Japanese drivers. They had their own. That may have been purely accidental and then again it may not.

As to the number of pistols we must remember that we only caught one truck. And if there were three pistols actually found as a result of that truck collision, even assuming there were no more on the others, that would make it twelve. Even assuming that we caught every pistol on this truck, which is very doubtful because we know that some people actually escaped, other than the four we caught trying to escape, we also know the opportunity of throwing the pistols in the river or other places which were available, so we don't have the witness that we didn't catch.

As to these clubs from the school and various places, the fact that they had been carried for several hours does give us some indication that they were intended to be used. A man doesn't normally take a club, carry it on a truck, for three hours for no purpose. The principal of the school testified that almost all the people at the school were armed with something.

Counsel objects to the fact that on some things the police are very definite, then again he says on others they are so vague. He criticizes us when we are definite and he criticizes us when we are vague, but of course that's a good thing and an old trick. Now then his insinuation naturally is that the police had built this up, that it's necessary for their own hides to do so. I will only submit one thing -- if that is true they certainly did a mighty poor job. Certainly if you were going to frame anybody in a case of this kind you would have had the shots coming from the first truck. But what did the chief say? As far as he remembered he thought it was the third one. Kalko said he thought it was the second; Okada said the first or second; Motoki, the second, thought it was the second; Kinoshita thought it was the third; Suzuki said it was "behind my truck and I rode the second one." Miyata was in the third and he said it was behind him. All right, it would have been very, very simple for us -- for the police or us if we would be guilty of it -- to have said the shots were from the first truck but they didn't do it. The accusation that the Japanese police have framed this case is one that is absolutely unwarranted and I think counsel well knows it. The discrepancy in testimony is quite obvious because the witness is standing here, or here, or here, or on the other side looking into the headlights, looking with them, looking across, naturally will vary. No people would see the same thing. And I think the fact that the testimony is in that order is the best indication that there isn't any frame-up. And under defense's contention you would have to believe that it was a frame-up. They would like very well to get around the shooting of Hags and the angle of the bullet, but the evidence is, the only evidence is that he was standing, and he surmised that he might have been lying down or crouching. There isn't one bit of evidence in the case and the evidence we do have is that he was standing.

Then we are criticized because the chief didn't talk to Mr. Sai. You remember the chief of police said that he was very busy -- and I don't doubt that he was. He said, "I didn't talk to Sai. I was too busy. I had a lot to do. Beside that, Sai didn't tell the truth." Then on top of that, on cross examination I recall well, counsel brought out that Sai had at one time approached the chief of police Tsuchida and asked him to let up on the boys that were selling prohibited items in the Shibuya area -- and then he was criticized because this chief didn't take time out on a

night like this to talk to that kind of a man, and not only that, if this was such a tremendous important thing why didn't Mr. Sai take the stand. If he knew all about it he could have told it and either put the chief in a very embarrassing position or brought out some very interesting information. Instead of that, Sai the most prominent mentioned man from the start of the trial to the end is deliberately kept off the stand. It can't be that he can't understand Japanese because he has talked to many Japanese police, as the evidence well illustrates. Then there is the other prominent man -- when he said we can't identify anybody, there wasn't any shooting from the jeeps or the sedan -- the people that were talked to. Where is this fat man that sat in the first jeep? -- did all the talking, that was so prominent, that shook hands with the chief of police. He isn't here. We don't know who he is. Defense could have very well cleared up some points. It's obvious they haven't wanted to clear it up; they haven't wanted to help the Commission but relied wholly on that we wouldn't be able to point out a certain particular individual.

They say they wouldn't have come and attacked the police had they known they were armed. The evidence shows that the Formosans in that area have time and again beaten police when the police were actually armed and failed to shoot. They didn't expect the police to shoot that night. They didn't expect there would be as many armed as there were. They have failed to explain why Formosans were here from Osaka, Kobe and Yokohama. I was waiting anxiously for the defendant from Kobe to take the stand. I think the Commission would like to know if he was going home that night too -- but, no, he didn't take the stand. They didn't want to take up more time of the Commission.

Then they wanted to know, they said about the Provost Marshal, why he didn't ask the Provost Marshal for escort. He said something about law and order and according to the Provost Marshal it would have been a physical impossibility for him to have gone back to the Mission and observed the wounded and gotten back, the inference drawn from that is that he didn't go, it was the last minute attempt to build up a case for himself.

We have in this case the unusual spectacle of two men in the diplomatic corps and, well, I will grant they are probably less lenient with the truth than most of us suddenly confronted with a bull they made. They failed to handle the situation and then they come in and make a story which is -- turns out the letter they had written, the report absolutely is contradictory to what they have said before.

I want to call attention to another red herring in the case, which we haven't heard anything about, in counsel's final argument, that the people were enraged at the insult to the Chinese nation because of an eroway, try to bring in that somehow this case had some bearing or might have some bearing on

a thing of that kind, yet in the Shibuya letter, the official report, they tell about the origin of the clash, dispute, and there is no mention that there had been an insult and I don't think the Commission believes it and I think that's one of the reasons that counsel for the defense seem to have suddenly forgotten about it.

As far as the statement made that we introduced no evidence to the fact that it is unlawful to possess a weapon is laughable. The Commission will take judicial notice that one of the proclamations is all weapons are prohibited and must be turned in.

I want to close with one other point. Why were these Formosans escorted home? Remember we asked the defendants who took the stand if they could think of any reason why they should be escorted and they couldn't. Defense counsel closed the case well knowing that had not been answered and well knowing it was an important one. The drivers, the truck drivers knew their way around. This one defendant said he was going to ride to Shibuya, then he was going to walk home twenty minutes. Well, if a man needed any protection from anybody he would need it more when he is alone walking at night than he would when he is riding in a truck with 20 - 30 or 40 compatriots. The others were going to go to their various homes, obviously in one, two, or three's, no protection then, but when they are all together that's when they needed it. I think that argument is rather a farce. We find that the truck -- the jeep which escorted the other trucks escorted one a short distance, the second one it only escorted two kilometers, and then it says, "Well, goodbye, I guess everything is all right," and let them go on the way out past Shinagawa. The other one -- What influence would a Chinese Mission jeep have, an unarmed Chinese Mission jeep have on any one who wanted to attack? Obviously none. It would give no protection whatsoever. But if the jeeps of the Chinese Mission did have any influence, on whom would they have it? That's quite obvious. They took them out to the Mission and a Major General of the Chinese Army had just given a talk and told them to go home. These people being a minority in this country, being in an enemy country, do look to some one for protection and obviously the Chinese Mission did have an influence and Ling and Li undoubtedly believed that the influence of these two jeeps would be sufficient to control these boys and see that they got dispersed safely. And the other truck to Shinagawa as you know dropped them off here and there and they dispersed peacefully. Ling and Li misjudged the situation. The boys apparently weren't completely pacified; they weren't controlled. There is no explanation given and I don't see how we can draw any other conclusion than that the escorts were for the purpose of controlling or trying to control the Formosans who were on the trucks.

MR. SCOTT (PROSECUTION): If the Commission please, first of all I would like to comment on several statements made by counsel

for the defense which I believe were not borne out by the record. The Commission is familiar with what the record is but I would sort of like to call their attention to several things. First of all, he states that the Japanese police at the Shibuya Police Station when the trucks stopped were busy releasing the safeties of their pistols. I know of nothing in the record in this case which indicates that is true. There is no proof in the record so far as I know that the chief of police did not report every detail to the Provost Marshal. Counsel has stated that the chief of police did not. The record happens to speak for itself.

Also counsel for the defense would like to read into the record that Sai Ryu To was not under arrest. I know of no where in the record of this case that there is any testimony to the effect that Sai Ryu To was not under arrest. As I recall the testimony, the chief of police didn't happen to know whether or not he was under arrest. He was asked on cross examination whether he was and he said he didn't know. I think the record will bear me out.

I would like to clarify a little more in detail for the Commission the question of burden of proof. Defense has made quite an issue of the question of being convinced beyond a reasonable doubt. If I understand the directive, this is the directive of the Supreme Commander of the Allied Forces. His directive is tantamount to law, nothing shall supercede it. What does he say in his directive? "That the commission shall receive such evidence and such evidence shall be admitted as would have probative value to a reasonable man, or such relevant evidence as a reasonable mind might accept as adequate to support a charge." That, if the Commission please, burden of proof is always of course upon the prosecution. It follows then throughout the trial, but once a prima facie case is established then the burden of proof, proceeding with the evidence, falls upon the defense. If this Commission thinks that such evidence of probative value has been offered then they are justified in finding these defendants guilty. If they believe an offense has been committed and that these defendants participated in it, prosecution has adopted the theory -- and I think we are correct -- that we need not prove that the individuals did individual acts.

We are concerned with military rule in a state of war. Our concern is one of substantial justice, not justice as we ordinarily would consider it in peace time. There is a good reason for that. We must sacrifice some things. Some rights must be sacrificed in time of war. Those rights that are protected are protected by this directive. So it is the prosecution's theory that if we place the defendants on the scene, that although they may not themselves have had a club, although they themselves may not have used language that was abusive or threatening, or that they may not themselves have had a pistol, we believe that their presence under the circumstances which have been shown, to-wit, that there was firing

from every truck involved in this incident, that clubs have been identified from at least two of the trucks, and that violent language was used. If that is true, if the Commission believes that is true, the very fact that these men were physically present, unexplained presence, at a time of an incident of this kind, we believe that that testimony or that that proof will support a conviction.

Also I would like to call the court's attention to the fact that they have made a great deal of issue here about the credibility of the witnesses. Much of the testimony which the Japanese police have put on is absolutely undenied in the record, but the defense would have you believe that the Japanese were so interested in defending themselves that they have misrepresented the facts, but I would like to call the Commission's attention to this fact. Here is a Japanese truck driver who testifies that a man puts a pistol in front of his face and fires out the window from one of the trucks, a civilian who lives in the neighborhood saw what he thought was Naga being shot. There's other civilian testimony of people against whom no interest has been shown. I think the Commission in passing upon the credibility of the witnesses should first of all take into consideration their interest or lack of interest, if any be shown, and the knowledge about the things in which they testify. Now, applying that test to Bennett, I believe his name was, his knowledge about the things which he testified to, he placed himself quite a number of places on this chart. He had been there many times, he had many friends there, yet he didn't know where the post office was.

In regard to the defendants which the defense claim have not been identified, I would like to spend a few moments. Defendant No. 2, Chen Sung-Ming, if I recall correctly, was identified by Miyachi. Defendant No. 4, Hung Tsung-Jen, I think we showed that an incident happened in the Shibuya Police Station, that orders were received by the 4th General Hospital to admit patients which had been injured in the Shibuya incident, and that these two individuals were present, were admitted to the hospital. I think we also proved the record showing the type of wounds that they had. I think also we offered proof of Dr. Broadus who testified about some of the men that he sent back who had wounds according to those attributed to by the hospital records of No. 4 and No. 5. In addition to that the prosecution offered further proof by Captain Miller of the Provost Marshal's office inasmuch that the only incident in which there was any shooting in the Tokyo area or in which any one was wounded took place at the Shibuya Police Station. In regard to Sai Ryu To we have placed him on the scene. There is nothing in the record to show whether he was under arrest or not under arrest, but certainly we have placed him on the scene. We haven't shown what vehicle he was from. There is no evidence that he was aboard the jeep, so on the prosecution's theory the mere physical presence unexplained will be sufficient to tie him in.

Another thing I would like to deal with just briefly again is the question of constructive possession of weapons. I believe the Commission will recall at the time we were offering these that considerable pains were taken to place them in the bed of the truck where they were located. There were many things in that truck. Among other things were some spare tires. Somewhere between twenty and thirty men were aboard this truck. These weapons were on the floor of the truck. They had left in daylight the Chinese Mission; they had all climbed aboard this truck. Either they knew or should have known that there were weapons here. The other unexplained fact in this case which we believe is quite material is the fact that they climbed aboard the trucks when they had knowledge that there were massed Japanese policemen at the Shibuya Police Station and none of them, although they had opportunity, attempted to abandon the trucks and go on their way with no -- they elected to stay. They elected to act as comfort, they elected to give encouragement. The very act of their presence is sufficient under the circumstances of this case, under the circumstances of occupation, and as a matter of substantial justice. As I have previously said, people who are living in occupation zones must exercise at least ordinary care to keep themselves out of trouble, at least ordinary care. We believe that under the circumstances in this case we have justified a conviction on all charges.

One thing more that has just come to my attention, if the Commission please, I would like to quote from the record, Page 1021 on cross examination of O Sen Re by prosecution:

"PROSECUTION: Will the defense have defendant Chin Sei Hoi stand, No. 27

"Q. The defendant who is standing now was he one of the ones who was brought into the police station with you on this particular evening?"

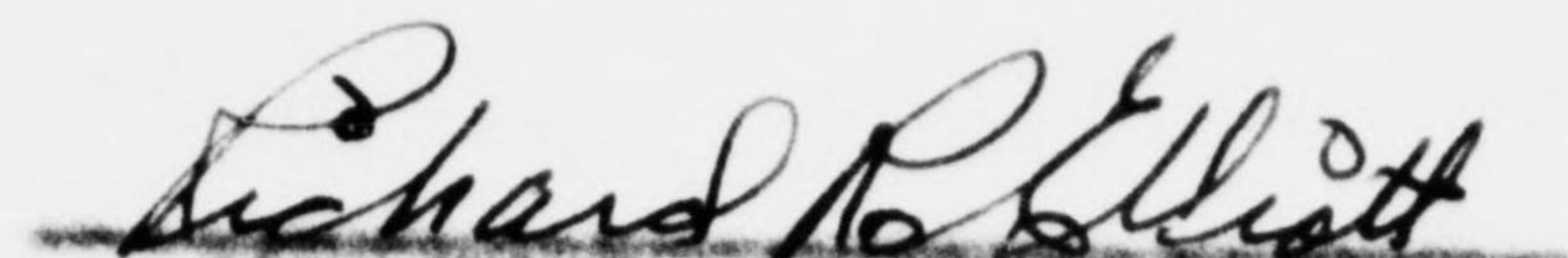
"A. When I became acquainted with him at the hospital I heard that he was taken together with me."

"Q. Who told you that?"

"A. From him."

PRESIDENT: The Commission will go into closed session and will open at 1215 tomorrow.

The Commission then went into closed session at 1200 hours on 9 December 1946.


Mr. Richard R. Elliott,
Chief Prosecutor

Metropolitan Police Station
Tokyo, Japan
10 December 1946

The Commission met, pursuant to adjournment, at 1315 hours, all the personnel of the Commission, the prosecution and defense, the accused and the interpreters, and the reporter who were present at the close of the previous session in this case being present.

PRESIDENT: The Commission is in session.

PROSECUTION: At this time the prosecution moves that it be allowed to withdraw certain exhibits in evidence, Exhibits 23, 8, 9, 10, 16, 6, 25, 12, 26, 15, 13, 11, 14, 26, 27, 28, 29 which are x-rays, and No. 1, 5, and 7.

PRESIDENT: The exhibits, with the exception of No. 1, have been photographed, have they not, and will be appended to the record?

PROSECUTION: Yes, sir.

PRESIDENT: That being the case, the motion is granted.

Before proceeding, I wish to advise the prosecution and defense both that the copies of the transcribed testimony now in your possession will be turned over to the reporter for return to the JA 8th Army. The JA 8th Army advised me that if the defense desires a copy it's separate official request must be made for same justifying the request. It's a ruling based upon necessity over here.

Will the defense cause Defendant No. 3, Lyou Yong Ching and No. 4, Hung Chang Jen to take their place in front of the judges' stand.

The above named defendants then stood forth.

PRESIDENT: Defendant No. 3, Lyou Yong Ching and No. 4, Hung Chang Jen: The Commission in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken, concurring in each finding, finds you:

Of specification 1	:	Not Guilty
Of specification 2	:	Not Guilty
Of specification 3	:	Not Guilty
Of specification 4	:	Not Guilty
Of specification 5	:	Not Guilty
Of the charge	:	Not Guilty

Remove the prisoners.

The above named prisoners were then removed.

PRESIDENT: Will defense cause Defendant No. 21, Chu To Fu to appear before the judges.

The above named defendant then stood forth.

PRESIDENT: Chu To Fu: The Commission in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken, concurring in each finding of guilty, finds you:

Of specification 1	:	Guilty
Of specification 2	:	Not Guilty
Of specification 3	:	Guilty
Of specification 4	:	Guilty
Of specification 5	:	Guilty
Of the charge	:	Guilty

And again in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences you to be confined at hard labor at such place as the reviewing authority may direct for three years and to be deported by first available transportation and to be ineligible for return to Japan during the period it is occupied by any of the Allied forces. So much of this sentence as pertains to confinement at hard labor will be suspended on date of deportation.

Remove the prisoner.

The above named prisoner was then removed.

PRESIDENT: Will defense cause Defendants No. 2, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 42, and 43 to take their place. That's all the remaining prisoners.

The last named defendants then stood forth.

PRESIDENT: You: Ching Shim Ming, Shie Chai Fun, Chen Jung IA, Leong Cheng, Li Sun Tei, Kwei Chu Ho, Sung Ben Shong, Kang Bo Shong, Ling Yu Shong, Yung Ching Tsui, Chang No, Liu Chou Kong, Ong Eng Hong, Lieu Jin Yung, Chang Ah Ting, Nam Hogi, Li Mo Ru, Li Te Tun, Ko Shaku, Lim Ka Sun, Chai Lun Tu, Tian Shu Tsu, Chai Lit Sho, Liyang Chun King, Gan Lai Ming, Lo Shu Kan, Chan Ting Tieu, Chang Hung-Kai, Wang Ching Tow, Chiu Yu Chong, Liu E Chang, Chang Teh Wang, Wang Tong-Long, Fang Yun Ho, Chin Kin Lyu: The Commission in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken, concurring in each finding of guilty, finds you:

Of specification 1	:	Not Guilty
Of specification 2	:	Not Guilty

Of specification 3	:	Guilty
Of specification 4	:	Guilty
Of specification 5	:	Guilty
Of the charge	:	Guilty

And again in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences you to be confined at hard labor at such place as the reviewing authority may direct for two years and to be deported by first available transportation and to be ineligible for return to Japan during the period it is occupied by any of the Allied forces. So much of this sentence as pertains to confinement at hard labor will be suspended on date of deportation.

Remove the prisoners.

PRESIDENT: Is there any further matter to be brought before the Commission at this time?

PROSECUTION: No further matters.

COMMISSION MEMBER HENRY CHIU: I desire the record to show my dissent from the decision rendered by this Commission, except I concurred to the Defendants No. 3 and 4 who were found Not Guilty, and concurred in the finding as to Defendant No. 21 on the specification No. 1 only.

My dissent is based upon the ground that the guilt of the accused must be established beyond reasonable doubt. After drawing every inference from the testimony that may properly drawn it is clear that the evidence offered by the prosecution fails to establish the guilt of each of the accused beyond reasonable doubt. The prosecution has not claimed nor by facts brought out in the trial established the existence of a conspiracy, therefore, the law requires that the evidence shall establish the individual guilt of each of the accused beyond reasonable doubt. This burden the prosecution has not sustained; therefore, there can be only one decision by this Commission, namely, Not Guilty, and a dismissal of the charges.

I shall file my dissenting opinion as part of the record in the proceedings within a reasonable time.

PRESIDENT: The action taken by a member of this Commission does in fact violate the oath taken by said member of the Commission upon the time he took his seat here at the beginning of this trial. Any further action in this matter will have to be taken by the reviewing authority and the convening authority.

COMMISSION MEMBER HENRY CHIU: I wish to make it clear that it is the right of a judge, whether he be a commission, a military

tribunal, or court, in the interests of justice to dissent from an opinion of his colleagues and to voice such dissent so I don't believe that any such right naturally attached to a judge in administering justice should be deprived him.

PRESIDENT: There being no further business, the court will adjourn sine die.

The Commission then adjourned at 1344 hours on 10 December 1946.

Richard R. Elliott

MR. RICHARD R. ELLIOTT
Chief Prosecutor

This is a criminal action begun against forty three named defendants, against five of whom the specifications have been withdrawn, leaving thirty eight defendants.

CHARGE

Acts Prejudicial to the Objectives of the Occupation.

SPECIFICATIONS

The specifications of the charge are:

1. Wrongfully and unlawfully having and possessing dangerous weapons;
2. Wrongfully and unlawfully aiding, abetting and engaging in disorder and fight by using reproachful and provocative language, by acting in a violent and threatening manner and by firing pistols to the disturbance of the peace, resulting in the death of several people and the wounding of others;
3. Wrongfully and unlawfully aiding, abetting and engaging in disorder and fight by using reproachful and provocative language, by acting in a violent and threatening manner and by firing pistols to the disturbance of the peace;
4. Wrongfully and unlawfully aiding, abetting and engaging in a disorder and fight by using reproachful and provocative language, by acting in violent and threatening manner and by firing pistols, thereby interfering with the lawful performance of the functions and duties of the Japanese police;
5. Wrongfully and unlawfully aiding, abetting and engaging in a disorder and by the possession of pistols and other weapons, disturbing the peace and terrorizing the people in the neighborhood, all to the prejudice of the objectives of the occupation.

SUMMARY OF EVIDENCE OFFERED BY THE PROSECUTION

Prior to 19 July 1946, Formosans were involved in a number of incidents with the Shibuya police and other Japanese individuals. They, among others, were engaged in black marketing operations in Shibuya and goods were confiscated from them by the Shibuya police on 17 and 18 July. Reports were received by the police

on 18 and 19 July that Formosans were to attack the Matsuda Gumi, a group of notorious Japanese who had been involved in many fræases with Formosans on account of a squabble over question of repossession of a piece of land in Shim-bashi, as well as the Metropolitan Police Board and the Shibuya Police Station. As a precaution against the rumored attack, the normal complement of the Shibuya Police Station was reinforced on the evening of 19 July by extra units sent by neighboring police stations totalling 386 men in all, including some in plain clothes and 190 armed with pistols specially provided by the Metropolitan Police Board. The policemen were deployed in separate units in the police station, in its yard and on the road running in front of the station, forming road blocks to check all vehicles coming toward the direction of the Shibuya Police Station. At about 2100 hours on 19 July, a convoy of vehicles bearing Formosans and escorted at the head by a jeep of the Chinese Mission in Japan approached the scene and was halted by the police. Conversation ensued between an occupant in the jeep and the police and the latter were told that the occupants in the vehicles were returning to their homes from a gathering at the Chinese Mission. By order of the police chief, the convoy was permitted to proceed and a policeman was put on the jeep to guide the passage. One occupant in the jeep then thanked the police chief and two or three shook hands with him.

The occupants on the trucks were in the meantime shouting, cursing, brand-ishing clubs, spitting and two of them were seen pointing pistols at the police-men. When the convoy, consisting of a jeep, a sedan and three trucks resumed procession, three shots were fired from the third truck of which one hit Sergeant Haga. Thereupon, the police fired at the trucks and firing continued on both sides for a short time. Approximately twenty to thirty seconds after firing ceased, another jeep approached the scene followed by another truck. The occupants of this truck were shouting and shooting and so the police opened fire at it. The driver of the truck was shot and the truck turned and collided with a house across the vegetable patch opposite the police station. The occupants of the truck, many of them wounded, were arrested but no weapon was found in their possession. Later that night, a search on the trucks resulted in the recovery of two loaded pistols, four extra rounds of ammunition wrapped in paper and eleven sticks and rods. The following morning, search in the vegetable patch resulted in the discovery of another pistol, a loaded magazine and cider bottle containing gasoline.

Takechi Suzuki, a Japanese driver of another (third) truck, found three clubs on his vehicle which were turned over to the police during his interrogation on 21 July.

SUMMARY OF EVIDENCE OFFERED BY THE DEFENSE

In the afternoon of 19 July, 1946, there was a gathering of about 400-500 Chinese, chiefly Formosans, in the Showa Primary School, the meeting being prompted by an armed attack perpetrated on 16 July by Matsuda Gumi hoodlums against Formosans in Shibuya and the wrecking of Formosan stalls in Shinbashi. At the request of Mr. Chen Li-Kwei, President of the Chinese Federation, Mr. Ling Ting-Ping, Chief of the Consular Affairs Section of the Chinese Mission in Japan, arrived and addressed the group stating that the incidents would be investigated by the Chinese Mission and properly attended to. When it was suggested that the Matsuda Gumi was planning another mass attack against Formosans, Mr. Ling advised that that it was impossible inasmuch as Tokyo is under Allied occupation. The meeting then broke up and the participants started going home as suggested by Mr. Ling at the end of his speech. However, one Chinese, on his way home from the Showa Primary School, was insulted and threatened by Japanese hoodlums in Shinbashi after learning he was Chinese. The incident was immediately reported by this individual to those who were still at the school and it was then decided that an appeal should be made in person directly to the Chinese Mission. This group then proceeded to the Chinese Mission and was addressed by General Lee Li-Pai, Advisor of the Chinese Mission, after their arrival. The substance of General Li's talk was much the same as that of Mr. Ling, but adding that representatives should be selected by the Formosans to confer with the Consular Affairs Section of the Chinese Mission on all related matters. The gathering then dispersed after the Formosans expressed their satisfaction with the speech by a show of hands. After the meeting was over, General Lee, at the request of a few Formosans who were fearful of a rumored attack against Chinese by the Matsuda Gumi, assigned three jeeps to escort the Formosans in going home. Mr. Ling learned in the meantime from some other Formosans of a large gathering of armed Japanese policemen and mobs in Shibuya. In order to avoid any possible misunderstanding, Mr. Ling then proceeded to the Provost Marshal's office, made the report and requested some form of assistance in safeguarding the passage of the Formosans who had to go to Shibuya to return to their homes. The trucks, six in number bearing

the Formosans, had in the meantime left before Mr. Ling returned. The vehicles left in three convoys, each led by a jeep. One convoy consisting of a jeep and two trucks headed for Shinegawa and reached the destination without any mishap. Another convoy, consisting of a jeep, a sedan and two trucks, left for the Shibuya Railway Station and was stopped by the Japanese police near the Shibuya police station on the road running in front of it. After the occupants in the jeep informed the police that the Formosans were returning home from a gathering at the Chinese Mission, permission to proceed was given by the police chief who ordered a policeman on the jeep in order to protect their passage through the remaining police. However, shortly after the convoy began moving, a burst of shots broke up from both sides of the road, fire being directed by the policemen at the trucks. The jeep subsequently got way and returned to the Chinese Mission with the convoyed trucks with dead and wounded. Another convoy of one jeep and two trucks which left the Chinese Mission a short time later for homes in Shibuya and Nakano, was also fired upon by the Japanese policemen without any provocation when it approached the Shibuya Police Station. The driver of the last truck was shot and the vehicle thus collided with a house opposite the police station. All occupants on this truck, many of them wounded, were surrounded and arrested by the Japanese police, and subsequently charged, together with others, for the specified offenses. The total casualties among the Formosans as a result of the shooting by the police were six dead and twenty one wounded.

CONCLUSIONS

The defendants were charged, jointly and severally, with committing various acts in concert as specified in the charge. However, no conspiracy on the part of the defendants was alleged by the prosecution and, in fact, was disavowed by them. Although the Commission is empowered to admit any evidence having probative value, there was nothing whatsoever to support a reasonable belief of the existence of a conspiracy on the part of the defendants against anybody at any time. Unless there is proof of a conspiracy, the evidence as to what occurred prior to 19 July, 1946 actually has no proper place in this case. It cannot be considered as a background for the acts complained of since there is no relation between the two; more so as the prosecution did not even attempt to show that the defendants, with one exception, were in any way involved. The only other evidence that might have given some ground for belief of the existence of a conspiracy was the gatherings in the Showa School and at the Chinese Mission. But all the testimony of the

witnesses present at the gatherings as to the purposes and outcome forestalls any such belief. At the Showa School, Mr. Ling, Chief of the Consular Affairs Section of the Chinese Mission, advised the persons assembled that acts of violence perpetrated against them as well as other matters brought up would be investigated and attended to by the Consular Affairs Section of the Chinese Mission. The meeting then broke up and the persons began to disperse. What later developed on account of the new Shimbashi incident was quite unconnected with the meeting at the Showa School although it afforded another opportunity for the relative objects of the meeting to be brought up once again. In face of the appeal made in person by the Formosans, a high official of the Chinese Mission addressed them on the issues he had learned. The speaker, General Lee, Advisor of the Chinese Mission, testified that the substance of his address on the issues previously raised was much the same as what Mr. Ling had earlier spoken at the Showa School. The Formosans were free to disagree if they were not satisfied with the advice given but they might also accept such advice if they were satisfied. Even conceding that those Formosans at the Chinese Mission had not been satisfied with Mr. Ling's talk given earlier in the afternoon at the Showa School, it does not follow ipso facto that they could or should not later accept similar advices given either by the same person or by somebody else. In fact, the show of hands by the Formosans at the end of the speech clearly expressed their satisfaction with General Lee's speech and precludes any other interpretation or conjecture. Not only does this evidence show no conspiracy existed, but the fact is that conspiracy was not charged in the specifications and was disavowed by the prosecution.

That no conspiracy did exist on the part of the Formosans is further demonstrated by the following:

1. The gatherings at the Showa Primary School and at the Chinese Mission were prompted by the desire of the Formosans to redress the wrongs done to them by the Matsuda Gumi through appeal to the Chinese Mission. The speeches given by Mr. Ling and General Lee also referred to this, and at no time during the gatherings was anything concerning the Shibuya police known to have been said or discussed.

2. After the gathering at the Showa School, approximately one-half of the Formosans departed and these were not involved in the later events. When the

subsequent gathering at the Chinese Mission dispersed, two truck-loads of Formosans departed for Shingawa in the opposite direction from the Shibuya Police Station. If there had been a conspiracy against the Japanese police assembled at the Shibuya police station, it is extremely illogical that they should have returned to their homes and that only such a small group should have been sent to stage the attack.

3. The route taken by the two jeep drivers in convoying the trucks to the Shibuya Railway Station and to Nakano was chosen naturally and of their own accord simply because it was better and shorter. If the drivers had taken any other route, the convoys would not have passed the Shibuya police station at all and the alleged conspiracy conspiracy could not have succeeded. Netherless, no instruction whatsoever was given by anyone to the drivers as to which road they should take in going to their destinations. It is difficult to conceive that if the Formosans had conspired to attack the Shibuya Police Station, they should have left completely to the individual decision of strange drivers the choice of a route, making it entirely uncertain whether the vehicles would pass the police station or not.

4. The conversation that took place between the occupant of the jeep and the police after the first convoy of vehicles had been halted is incompatible with any inference that there was conspiracy. If there were, it is far more reasonable and logical to assume that the Formosans would have started their attack the moment they were stopped by the police, whom they were to attack, rather than halt their vehicles as ordered by the police and begin negotiations with them requesting permission for passage.

In view of these facts, I am unable to conceive of any conspiracy on the part of the Formosans to attack the Shibuya police or any other persons on 19 July 1946. In the absence of any allegation or proof of a conspiracy, there must be explicit evidence connecting each defendant with the particular offense with which he is charged and the prosecution has the "burden of proof" to prove the defendants guilty beyond a reasonable doubt (see WIGMORE ON EVIDENCE, Sec. 2511, Vol. IX, pp. 406-7). Even if a conspiracy were considered, the prosecution would be required, of necessity, to introduce evidence indicating the participation and guilt of each of the defendants. It may be noted that in the trial of the alleged major war criminals before the IMTFE now in progress, counsel for the defense have objected to various evidence on the ground that they had not been connected

with the conspiracy. President Webb stated time and time again that, unless the defendants were so connected, they could not be held and the prosecution also assured the court that these defendants would ultimately be connected with a conspiracy. However, in the present case, while it is a joint trial, there has been no charge or proof of conspiracy and although no request was made by the defendants for severance, nevertheless, for purpose of conviction of the defendants, the evidence must show beyond a reasonable doubt the Criminal acts of each of the defendants.

The only contention by the prosecution as to the guilt of the accuse was based upon the mere presence of the defendants in the area at the time the incident occurred and upon their failure to get off the trucks and leave in order to dissociate themselves from any participation and responsibility. However, I do not believe such a theory can prevail in view of the facts as brought out in the trial. The vehicles were stopped by the police, but after a few minutes' conversation, permission to proceed was given by the police chief who did not see it necessary to order the Formosans off the trucks. Although testimony shows that one policeman had motioned the occupants of a truck to get off, yet he made no further effort whatsoever to order the occupants off, in view of the negotiation going on between the police chief and the occupant in the jeep. Such being the situation, I doubt whether there was any reason for the Formosans to expect trouble on the part of anyone which would necessitate their leaving the trucks and dissociating themselves from the rest of the group. On the contrary, the fact that they did not jump off the trucks at that time indicates that there was no conspiracy to attack the police. Furthermore, the permission given by the police chief for the vehicles to proceed and the failure of the policemen to take any action vis-avis alleged disorderly conduct on the part of the Formosans on the vehicles leads only to the inference that their conduct did not actually amount to any great confusion and did not constitute any disturbance of the peace, as otherwise timely action on the part of the police would have been taken to cope with the situation. Certainly as to the second convoy of vehicles which was not stopped by the police, it cannot be said that the occupants even had any

opportunity to get off and dissociate themselves. I therefore disagree with the contention that mere presence of the defendants and their failure to get off the vehicles has lawfully established the guilt of the accused.

There was no evidence that any particular defendant fired a pistol or otherwise engaged in the disturbance of the peace. There was not even evidence of firing by the one defendant who admitted possessing a pistol. The testimony of the Japanese police witnesses as to what took place was vague and insufficient to substantiate any charge against the defendants as specified. Not only was it countered by testimony of witnesses for the defense, but it was also contradicted by another prosecution witness, Kojiro, a Japanese driver of the trucks, who testified that the occupants on the trucks after being stopped were talking loudly and did not do anything besides that. The testimony of the police witnesses regarding the actual start of the shooting was likewise confusing and inconsistent although they were agreed that firing by the police occurred only after three shots had been fired by the Formosans, of which one hit Sergeant Haga. Further testimony as to where the three shots came from, however, was contradictory in spite of the fact that many of the police witnesses claimed to have seen the flashes. Police chief Tsuchida testified that he saw the flashes and that the three shots came from the third truck which was the last of the three trucks that had lined up and passed him. Policeman Okada, however, testified that the three shots were fired from "the truck in front of the truck that had stopped in front of me" and that he saw the flashes. Policeman Higuchi Tosaio testified that the first shot was fired by a person on the right, a little forward of the center of the first truck from which he was five or six meters away.

Regarding the origin of the alleged first three shots, the testimony of the police witnesses, who were all interested parties in the incident, was very confusing, to say the least. Considering such confusion and inconsistencies in the testimony as well as considering the testimony of witnesses for the defense who all stated that a burst of shots fired by the police came unprovoked from both sides of the road, I believe there is substantial doubt whether the three initial shots, if any, did come from any of the trucks. The failure of the prosecution to offer, as promised, the bullet extracted from the body of Sergeant Haga further deepens the doubt, since so much significance was attached to the three shots which allegedly started the incident.

Balancing all the evidence, it is difficult at least to see that there is evidence showing these defendants, with one exception, are guilty of any specification or specifications in the charge. On the contrary, in addition to other defense witnesses who all attributed the responsibility of shooting to the police alone, the only completely disinterested witness, Reuel Bennett, an American civilian employee of the U.S. Army, testified to the effect that firing was done by the police on both sides of the road, that he did not see any shooting on any of the trucks, and that there was no commotion among occupants on the trucks although there was on the part of the police men and the civilians on the road. True it is that his testimony appeared to be in error in certain respects, such as, he did not place the point where he parked his jeep correctly on the map prepared by the police, he was mistaken in the number of trucks he had seen and also he might possibly be mistaken in the manner how the vehicles were brought to stop by the police. However, inasmuch as he was the only disinterested eye-witness, I do not believe his testimony in substance can be rejected entirely merely because of some possible inaccuracies.

It is not only axiomatic in a civil criminal trial, but also in a trial by Military Commission, that the guilt of the accused must be proved beyond reasonable doubt. Section 112 in the Manual for Courts-Martial provides "an accused person is presumed to be innocent until his guilt is proved beyond reasonable doubt." It is a matter of interest to note that in the beginning of the trial before the IMTFE, President Webb stated on May 3, 1946 that the onus will be on the prosecution to establish guilt beyond reasonable doubt. Similar views were expressed by the Chief Prosecutor, Mr. Keenan, in his opening statement. It is apparent that irrespective of what the law the Commission was to apply, fundamental principles of justice demand that the guilt of the accused be proved beyond reasonable doubt. To deny this is to deny the defendants a fair trial to which all accused are entitled, whether before a civil court or a Military Commission, by the laws of all civilized countries.

In conclusion, I wish to reiterate that the evidence must show beyond a reasonable doubt that each of the defendants is guilty of the offense or offenses set forth in the specifications. It must be borne in mind that conspiracy was neither charged nor found in this case. Therefore, there must be explicit evidence to connect each defendant with the offense or offenses with which he is charged. No evidence, was, however, adduced in this case to substantiate the guilt


of any of the defendants with the exception of defendant No. 21 who admitted having in his possession a pistol at the time the incident occurred although evidence shows that he did not fire it at any time during the incident.

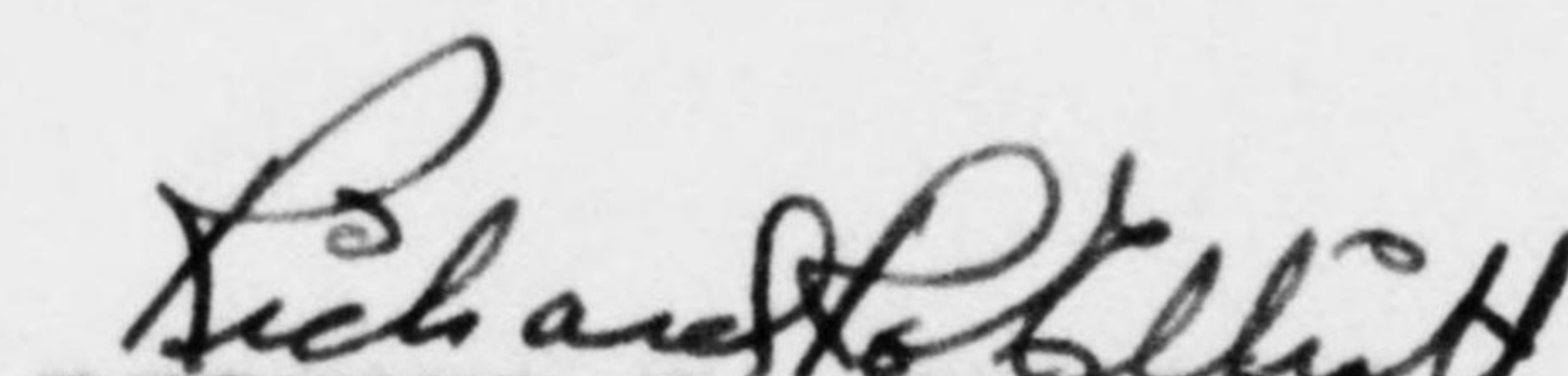
For the above and foregoing reasons, I respectfully dissent from the decision of the Commission and I am of the opinion that there should be a verdict of "not guilty" concerning all defendants with the exception of defendant No. 21 who should be found guilty on specification 1 only for the unlawful possession of a dangerous weapon.

(Signed): Henry Chiu
Member of the Commission

AUTHENTICATION OF RECORD

The foregoing typewritten record of trial, together with Prosecution exhibits 1 to 32, inclusive, and Defense exhibits A to C, inclusive, accompanying and referred to, and identified therein, except such exhibits withdrawn or such portions of the exhibits as have been lined out, deleted, and initialed, constitute the complete record of trial in this case.

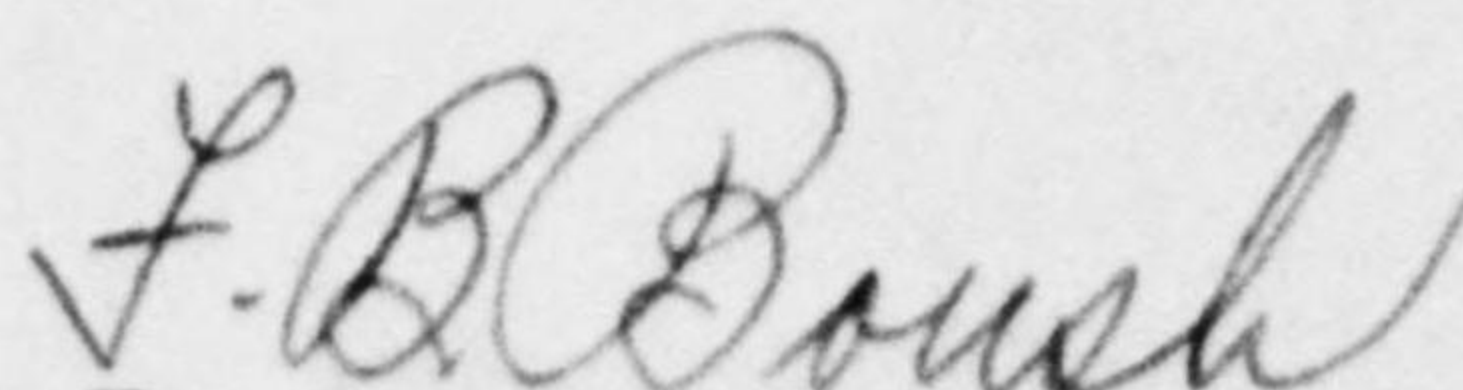

SEXTON BERG
Colonel, IGD
President


RICHARD R. ELLIOTT
Chief Prosecutor

I examined the record before it was authenticated, and Prosecution exhibits 1 to 32, inclusive, and Defense exhibits A to C, inclusive, accompanying, referred to, and identified in the record are a part thereof, except such exhibits withdrawn or such portions of the exhibits as have been lined out, deleted, and initialed.

/s/ Herbert L. Berman
HERBERT L. BERMAN
T/5, 31504920
Advisory Counsel

Original signature of President and Prosecution.
Authentication by Defense Counsel: A TRUE COPY.


F. B. BOUSH
Capt. AUS WAC

7 January 1947

SUBJECT: Proceedings of a Military Commission in the case of United States of America vs Cheng Shung et al

THRU : Judge Advocate, Eighth Army.

TO : Commanding General, Eighth Army.

1. Reference: par. 43, Special Order Number 243, Headquarters Eighth Army, dated 23 September 1946.

2. The following is submitted on behalf of the accused for consideration by the Reviewing Authority in these proceedings:

THE FINDINGS AND SENTENCE OF THE COMMISSION SHOULD BE
DISAPPROVED BECAUSE THE DEFENDANTS HAVE NOT BEEN PROVED GUILTY
BEYOND A REASONABLE DOUBT AND TO A MORAL CERTAINTY.

1. The evidence submitted in this case is legally insufficient to support the findings of the Commission that the defendants are guilty of Specifications 3, 4 and 5 and of the Charge that they committed acts prejudicial to the objectives of the occupation.

It is a firmly established principle of law and justice that an accused is presumed to be innocent until proved guilty beyond a reasonable doubt and to a moral certainty. No accused can be found guilty without such proof. Proof must establish not merely that an offense did occur, but also that these accused did themselves commit the offense. Although the technical rules as to the admissibility of evidence were simplified in the instant case by SCAP directives, no SCAP rule has taken away the presumption of innocence, nor has any SCAP order reduced or changed either the amount or the necessity of proof of guilt beyond a reasonable doubt and to a moral certainty.

2. In the present case, all of the defendants were found not guilty of Specification 1 (except CHU Teh-Fu, defendant #21) and of Specification 2 but were found guilty of Specifications 3, 4 and 5. But it is clear that there has been no proof beyond a reasonable doubt and to a moral certainty that these defendants are guilty of the latter three Specifications.

With respect to these three specifications there has been no evidence of any unlawful act committed by any particular defendant (with the possible exception of CHU Teh-Fu, defendant #21). The most that has been shown as to these

defendants is that they were present in the area surrounding the Shibuya-ku police station on the 19th of July, 1946, when an incident occurred and when several other unidentified persons were present. Nothing further as to any particular defendant has been shown. None of these defendants has been identified as possessing or firing a gun, as possessing or using a club in a violent or threatening manner, as using reproachful or provocative language, or as shouting and spitting. Nothing is established by the evidence except presence in the area.

Without evidence of individual guilt there is not even proof of the existence of a conspiracy or preconceived joint plan in which these defendants participated or of which they had knowledge. In fact, the Prosecution conceded that it was not attempting to prove a conspiracy and was not basing its case on the existence of a conspiracy.

It is contended, however, that since it was shown that the defendants were present in an area where there were several other unidentified persons and where pistols were fired, clubs brandished and provocative language used, then these defendants should be found guilty of committing those acts --- even though there is absolutely no evidence that these defendants did such things. But presence without proof of a common unlawful purpose is obviously not sufficient to establish guilt when one considers all the circumstances. The defendants were all crowded together on moving trucks with many other persons, so that even if, and when, the situation did appear to become dangerous, they were unable as a practical matter to get away from the area. They had no alternative, under those circumstances, but to remain with the others. In fact, one Japanese policeman testified that he personally arrested four persons who were trying to run away from the area. (R.183). Of course, the first group of vehicles did stop near the Shibuya-ku police station for a few minutes. But at that time nothing took place which required any of the passengers to run away. The second convoy of vehicles was not stopped or ordered to stop by the police at all. Escape from those vehicles was therefore impossible, no matter how strongly any of the occupants may have desired to withdraw his presence when the danger of the situation became apparent.

3. The evidence further is legally insufficient to support a finding of guilt of the Charge, namely, "Acts prejudicial to the objectives of the occupation."

These words are given exact but limited meaning in Operational Directive Number 29/2, Headquarters Eighth Army, dated 17 August 1946, paragraph 3, which states:

"Acts prejudicial to the objectives of the occupation are defined as acts which violate any directive issued to the Imperial Japanese Government by the Supreme Commander for the Allied Powers or which violate any orders or instructions issued by occupation force commanders to implement SCAP's directives."

The defendants have not, and cannot violate any directives issued to the Imperial Japanese Government or any implementing orders or instructions issued by occupation force commanders, which are not directed to them. In order to sustain this Charge, it is not sufficient merely to allege that an offense was committed in an area under the jurisdiction of the Occupation Forces. Otherwise, every offense so committed would constitute an act prejudicial to the objectives of the occupation. Such an interpretation is obviously precluded by the clear and restricted definition set forth in Operational Directive Number 29/2.

THE COMMISSION HAD NO JURISDICTION BECAUSE IT WAS NOT PROPERLY COMPOSED IN CONFORMITY WITH GENERAL ORDERS NUMBER 56, HEADQUARTERS EIGHTH ARMY, 4 June 1945.

The Commission appointed by par. 43, Special Orders Number 243, Headquarters Eighth Army, dated 23 September 1946, was illegally composed of only three members. General Orders Number 56, Headquarters Eighth Army, 4 June 1945, paragraph 2a, applies to this military commission, and provides that military commissions shall consist of not less than five members, one of whom shall be a qualified lawyer designated as law member.

General Orders Number 56, with respect to the composition of military commissions, has not been rescinded or modified, and has in no way been amended by SCAP letter order or directive. Letter Order to the Commanding General Eighth Army, AG 015 (29 Aug. '46) LS-L, merely provides that at least one member of the Commission in this case be a representative of the Chinese Government but does not modify the existing General Order that the Commission have five members in all. Letter Order to the Commanding General, Eighth Army, AG 015 (19 Feb. '46) LS, as amended 19 September 1946, provides in effect that where a United Nations national is being tried by any military occupation court --- military commission or provost court --- that there be no less than three members on the court and that one be a

representative of the defendant's nation. But such a provision neither expressly nor impliedly modifies the existing and applicable requirement that any military commission appointed by order of the Commanding General, Eighth Army, as was this Commission, must be composed of five and not three members.

THE REVIEWING AUTHORITY SHOULD NOT APPROVE THE FINDINGS AND SENTENCE OF THE COMMISSION BECAUSE THE DEFENDANTS DID NOT HAVE A FAIR TRIAL.

1. These thirty-six defendants, together with five others, were brought to trial on 30 September 1946, upon charges dated 23 September 1946, after having been held in confinement for approximately ten weeks without any charges being preferred or served upon them. Most of these accused, although all Chinese nationals, had been confined by the Japanese police for a week before being delivered to the Allied authorities. Others were placed in confinement immediately after they were released from hospitalization. One defendant (CHEN Ching-Lung, defendant #43), although also a Chinese national, was kept in Japanese custody and remained there throughout the trial. The accused while in confinement were entitled to be promptly advised of the exact nature of the charges against them and to be brought to trial within a reasonable time. The failure to grant the accused these fundamental rights was prejudicial and constituted an undue deprivation of their rights to a fair and speedy trial.

Not only were these defendants unlawfully confined for an excessive period of time before trial, but during that period these defendants were individually subjected to interrogation by Japanese policemen within their stockade cells. Although the accused were then in confinement and charges were being prepared against them, none of the accused was warned or advised that whatever statements he made could be used against him and that he could remain silent. (R. 1106). Significantly the admissions thus obtained from some accused --- to the effect that they were present in Shibuya on certain trucks on the 19th of July 1946 --- was the only evidence whatsoever having any probative value with respect to these accused.*

*CHUANG Ting Piao, defendant #32
LIU Wei-Chiang, defendant #36

HWANG Chin-Pao, defendant #34
CHEN Ching-Lung, defendant #43

In presenting its evidence in chief, the Prosecution offered a written statement from only one of the forty-one defendants --- and it should be noted that he was the one defendant who had always been in the control and custody of the Japanese police.

2. When the defendants were finally brought to trial for an incident in which it was highly questionable whether they, the Chinese nationals, or the majority of the prosecution witnesses, the Japanese policemen, were the guilty persons, a temporary court room was arranged in a room at the Headquarters of those same Japanese police. It is not contended that the Commission was deliberately influenced in its decision. However, it is certainly clear that the trial was not conducted in the neutral and impartial surroundings, implied in a fair trial. (R. 2-3). Each defendant was individually entitled to such a trial and could not be deprived thereof merely because other authorities deemed it more practical to try a large number of other accused at one time in a place convenient for the Japanese police.

3. Although it is a primary principle of law and justice that an accused be confronted with the witnesses against him and that he be aware of the actual proceedings, the rights of the defendants in this respect were denied. CHEN Ching-Lung, defendant #43, was not present in the court room during all of one afternoon session while the Commission heard additional testimony. (R. 49).

Furthermore, the Commission erroneously considered that the purpose of the interpreters was for the sole benefit of the Commission and witnesses and refused to authorized official interpreters, who were available, to make known to the accused the testimony of witnesses as it was presented. The use of official interpreters who spoke only English and the language of the witnesses was plainly insufficient without proof or fair inquiry as to what languages the defendants understood. Even if it were believed that Japanese was a language common to most of the defendants, the testimony of a number of witnesses as well as the arguments and rulings by the Commission were not interpreted even into Japanese.* The duty of informing the accused of the proceedings could not be simply avoided and delegated to Defense counsel. (R. 14).

* Three of the defendants do not understand the Japanese language at all:

CHENG Ah-Ping, Defendant #19

Lo Hsiu-Keng, Defendant #31

CHUANG Ting-Piao, Defendant #32

The defendants were even unduly restricted in their opportunity to learn the substance of the proceedings from others who had followed it themselves or had learned it from counsel, since during the period the trial was in progress all of the defendants were placed in solitary confinement --- except when attending the trial or at mess, when as a practical matter there was no true opportunity for relating the events of the trial. (R. 1077). The President of the Commission even questioned the action of one defendant who was seen taking notes during one session.

The order establishing the Commission specifically stated that the accused were to provide individual counsel and designated American counsel merely as Advisory. Yet at the very outset of the trial, the Commission ruled that Defense counsel, whether or not he spoke English, would have to provide questions in English first, and could then if he so desired ask them in Japanese, but would not be permitted to ask questions in Japanese and then have them interpreted into English by the official Interpreter before the witness answered. (R. 14-15). Such a ruling was neither necessary nor practical and merely obstructed effective participation in the trial by the non-American counsel the defendants were obligated to obtain in order to be represented.

4. That the defendants did not have a fair trial is plainly demonstrated by a number of erroneous and discriminatory rulings by both the President and the Law Member of the Commission.

a. The Commission wrongfully denied Defense counsel opportunity to impeach the credibility of adverse witnesses by showing that they had made prior contradictory statements inconsistent with their testimony on the stand. On the other hand, the Prosecution, in a similar situation, was permitted to do so.

For example, on cross-examination by Defense counsel, Police Chief Tsuchida stated that he did not receive any reports or rumors that members of the Matsuda Gumi were planning to attack Formosans, that he did not tell anybody such a thing, and that he did not make any preparations for such an attack. (R. 108-109). When Defense counsel attempted, for the purpose of impeachment, to introduce a document which would show that the witness had made statements contradictory to that testimony (R. 110-111), it was objected to as being only a report and not certified or sworn testimony. (R. 111). The Law Member then stated:

"It is a recognized fact that any report official or otherwise can be in error and is always subject to change. Your questioning the witness relative to this report will serve no purpose insofar as impeachment is concerned. The President has ruled that you may not use this document for impeachment purposes. The Law Member has ruled that you may not question the witness regarding it." (R. 113).

On the other hand, the Commission permitted the Prosecution in rebuttal to introduce for the purpose of impeaching Mr. Ling, a defense witness, a report which was not signed, not sworn, not certified, and without any proof that the report thus introduced was a true translation of a report which Mr. Ling had previously testified he prepared in Chinese. (R. 1165, 1168; see also R. 965).

Again the Commission permitted the Prosecution to go to great lengths in an attempt to impeach WENG Tien-Lang, defendant #38, when he stated, during cross-examination with respect to an interrogation by a Japanese policeman, that "I did not answer anything that he did not ask. I answered all his questions and nothing more." (R. 980), and later stated that he answered the questions he knew and didn't answer the questions he didn't know. (R. 981, 984). Defense counsel, however, attempted to impeach the credibility of policeman Morita's testimony by showing that he testified that he took written notes of answers during an interrogation of WENG Tien-Lang, defendant #38 (R. 1100-1102) after he had previously testified (R. 366), when questioned whether he obtained a written statement from the defendant. "When I interrogated him I just took down the name."

Defense counsel then asked (R. 1102),

"When you said at that time that 'I just took down names', were you telling the truth or are you telling the truth now when you say you took notes?"

but the Law Member sustained an objection (R. 1102) and the President of the Commission believed further questioning was not warranted. (R. 1104). Yet the Prosecution, in cross-examining WENG Tien-Lang, defendant #38, was permitted to proceed, over objection by Defense counsel,

"Q. Since you made both statements under oath, and liable to punishment for perjury, how do you reconcile those two statements," (R. 983)

and later, "A. I made a statement that I answered those questions I knew but did not answer those questions that I did not know."

"Q. Exactly. Therefore you were not telling the truth when you said you answered all of the questions, were you?" (R. 986).

Thus, where inconsistent statements by a defense witness were shown, his credibility could be impeached, but where a prosecution witness was shown to have made prior contradictory statements, it was the ruling and opinion of the President and the Law Member that there was no impeachment but only a language interpretation difficulty. (See also R. 67).

b. The Commission erroneously, and to the prejudice of the defendants, further limited the scope of cross-examination by Defense counsel but did not impose a similar restriction upon the Prosecution.

For example, Takeichi Suzuki testified on direct examination for the Prosecution that he drove a truck during the Shibuya incident and later found some clubs on his truck. (R. 316). But when Defense counsel in cross-examination sought to learn which truck he referred to, the Prosecution objected and asked, "that the defense be bound by this witness's testimony on collateral issues, since he is making his his own witness", (underlining supplied) and the Law Member ruled, "It is so ordered." (R. 317).

On the other hand, although the direct testimony of Mr. Ling, a witness for the defense, did not refer to any Chinese Self-Governing Youth Association or Youth Charity Organization or CHAI Lun-Tu, defendant #26, the Commission permitted cross-examination as to these matters, over the objection of Defense counsel that they were not brought up on direct examination and were not subjects of cross-examination. (R. 634).

c. Examination by the President of the Commission of witnesses for the defense was unfair and biased in that questions repeatedly implied facts which had not been shown in evidence, misquoted prior testimony of witnesses, and failed to allow for dual meanings of words.

For example, questions repeatedly implied as an established fact (R. 663, 747, 755) that persons had come from Yokohama, Osaka, and Kobe in order to attend meetings at the Showa School and Chinese Mission on the 19th of July but there was no evidence of any probative value to establish that fact. (See R. 42).

When witnesses for the Defense testified that persons gathered at the Chinese Mission were pleased with the decisions reached and were in a "happy" mood (R. 731), the President of the Commission preferred to state that "a convention atmosphere prevailed". (R. 749).

Again, when a defendant testified that he joined a group going to the Chinese Mission to make an appeal because he had never been there before and wanted to see the Mission, the President of the Commission presumed a "sight-seeing trip." (R. 1081).

When a defendant testified he went to the Mission with a group and "Because I saw everybody going into the auditorium I followed them", the President asked, "What did you do on the street? People go in all directions. Who do you follow?" (R. 1034).

When Major General LI testified that a jeep followed by one or more trucks might constitute a convoy, the President stated, "At that rate, General Li, I am convoying foreign nationals and other nationals every day. Do you believe that to be the case, that every time a truck falls in behind me I am convoying said truck?" (R. 752).

In another instance, CHENG Teh-Wan, defendant #37, on direct examination testified that he attended the meeting at the Showa School (R. 1047), and on cross-examination testified that while he was at the School,

".....two or three Chinese came and said that there would be a talk by Chief Ling downstairs and told us to listen to the lecture, so everybody went down." (R. 1058).

He later testified (R. 1079),

".....about two or three persons came into the room and said, 'There will be a talk by Mr. Ling downstairs.' Everybody started going out. So, I followed them."

Yet the President of the Commission further questioned the defendant (R.1079-1080),

"Q Didn't you previously testify that this person said, 'There will be a meeting and you had better attend'? Isn't that correct?"

"A I testified that they told us to come and hear the talk."

"Q You were under obligation to do as you were told, were you not?"

"A When those two or three persons came and told us that there would be a meeting downstairs, everyone went down and even the office employees went down. So, I could not register and I followed them downstairs."

"Q In other words, everyone was summoned to appear at the meeting, were they not?"

"A Yes."

"Q Who is this person or by what authority were you summoned to appear at the meeting?"

"A I do not know. He just said, 'Come and hear the talk.'"

Although the President of the Commission had thus misquoted previous testimony of the defendant and had picked words of dual meaning in order to reach the conclusion that the defendant had been ordered to listen to the talk, he denied Defense counsel permission to ask the defendant simply and directly whether he had been ordered. Contrary to the facts, the President stated,

"I am not trying to get into translation difficulties; I tried to find out if he was ordered, called or summoned or asked and he was told. He himself in his own words, in answers to my questions stated he better attend." (Underlining supplied) (R. 1085)

d. The rights of the accused were unfairly and illegally restricted because the Commission did not permit them to make unsworn statements not subject to cross-examination and did permit the Prosecution to comment on the failure of some of the defendants to testify.

By the well-settled rules of military justice, and as set forth in the Manual for Courts-Martial, an accused may remain silent or may testify in his own behalf if he so desires, and if he does so testify he may elect to make an unsworn statement not subject to cross-examination. The statement may be oral or in writing, and may be made by the accused or by his counsel. If the accused fails to take the stand, such fact must not be commented upon. Yet the Commission in the present case violated every one of these rules to the prejudice of the accused. (R. 1045-1044, 1247-1249). If Defense counsel had been permitted to make such statements on behalf of the accused they would have been able to put before the Commission their denial of guilt or participation in the offenses alleged. In view of the language difficulties of some of the accused necessitating the inconvenient introduction of additional interpreters, and in view of the strong and mounting pressure to expedite the trial, the ruling of the Commission made it, in effect, impossible for the large number of defendants to make any denial of the charges.

It is provided in both letter, GHQ, SCAP, 29 August 1946, AG 015 (29 Aug. '46) LS-L, Subject: "Establishment of Military Commission", and Special Order Number 243, Headquarters Eighth Army, 23 September 1946, that the proceedings of this Commission be governed by letter, GHQ, SCAP, 19 February 1946, AG 015 (18 Feb. '46) LS, Subject: "Establishment of Military Occupation Courts". In paragraph 4d of the letter it is stated that "The Military Occupation Courts shall be guided generally by the applicable rules of procedure prescribed by the Manual for Courts-Martial, 1928, as amended," and that the commission shall have power to make such rules as it shall deem necessary for a full and fair trial consistent with this

order, and that the convening authority shall have power to prescribe changes or make additional rules of procedure.

It is certainly clear that the rulings of this Commission as to these matters were completely contrary to the rules set forth as Procedure in the Manual for Courts-Martial (paragraphs 76 and 77) and did not come within the Commission's power to make rules "consistent with this order."

It is conceded that the Convening Authority had the power to change the rules of procedure for this Commission as was done for the trials of persons accused as war criminals. (See letter, Headquarters Eighth Army, 5 February 1948, AG COO.5 (YO) Subject: "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals"). But nowhere did it appear that the rules had been changed for this case or that this trial was to be considered as a trial of war criminals.

In fact, in properly ruling that the Commission would apply a war crimes trial rule to the effect that leading questions might be asked of non-English speaking witnesses, no indication was given that the present trial was to be considered as a war crimes trial or that all other rules would be applicable. (R. 53). And later the President of the Commission specifically stated, "The Commission is fully aware that this is not a war crimes trial", and recommended those rules only as helpful with respect to questioning Oriental witnesses, a matter common to the trial of the present case. (R. 161).

Only at the very end of the trial when Defense counsel objected to the Prosecution's improper comment on the fact that some of the accused had elected to remain silent, did the Law Member of the Commission, in overruling the objection, state that the Judge Advocate of the staff of the Convening Authority had ruled at the beginning of the trial that the rules for the trials of accused war criminals governed the present case. (R. 1248). But such a ruling, if made, was never reduced to writing or attached to any orders establishing the Commission, never introduced into evidence or incorporated into the record, never communicated to Defense counsel, except by the passing remark of the Law Member on the last day of an eleven-weeks' trial.

The administration of law in such a manner cannot be said to be in accord with fundamental conceptions of fairness and justice.

THE REVIEWING AUTHORITY SHOULD NOT APPROVE THE FINDINGS AND SENTENCE AS ANNOUNCED BY THE COMMISSION BECAUSE THEY ARE INCONSISTENT AND EXCESSIVE.

It has been established by the findings of not guilty of Specification 1 as to all of the defendants (with one exception) that they did not have or possess dangerous weapons, including pistols. Yet the majority of the Commission was of the opinion that each of these defendants was guilty of Specifications 3 and 4 which alleged the firing of pistols and guilty of Specification 5 which alleged the possession of pistols. These findings of Specifications 3, 4 and 5 are obviously inconsistent and contradictory and should therefore not be approved.

The sentence announced by the Commission illegally exceeds a fair and just punishment for the offenses alleged as well as the powers of the Commission. The defendants (with one exception) were found guilty actually of only a single offense, namely, engaging in a disorder. The repetition of the allegations into three specifications does not aggravate the offense nor warrant any increase in punishment. Furthermore, in any true view of all the findings of the Commission the defendants were found guilty of engaging in a disorder only in that they used reproachful language and acted in a threatening manner but did not possess or consequently use any dangerous weapons. The offense thus found can be regarded only as a minor one, while under the applicable Japanese Criminal Code even the offense of being a follower or being present at a riot, as was contended in this case, is punishable not by confinement but only by a fine of ¥50. Criminal Code of Japan, Article 106.

Furthermore, the sentence announced by the Commission is illegal in that it was beyond the authority granted in Letter Order to the Commanding General, Eighth Army, AG O15 (19 Feb. '46) 13, Subject: Establishment of Military Occupation Courts, paragraph 6a. Military Commissions thereunder can neither impose sentences which include both imprisonment at hard labor and also expulsion nor suspend the execution of sentences. The Reviewing Authority should not approve a sentence which inconsistently included confinement for a period of time as well as expulsion by the first available transportation, and therefore prior to the termination of that period, and which was illegally determined on the erroneous assumption by the Commission that a portion of the sentence was suspended.

It is plain that the sentence intended by the Commission was no more than confinement only until the first available transportation, then expulsion, and a suspended sentence of confinement for the remainder of the two years (or three in the case of one defendant).

Since the Commission had no power to impose the suspended sentence and since the Reviewing Authority does not have the power in any way to increase the sentence of the Commission, it is submitted that the Reviewing Authority does not have the power to approve more than so much of the sentence as imposes expulsion by the first available transportation with confinement until such time.

Respectfully submitted,

Herbert L. Berman
HERBERT L. BERMAN

John L. Murphey
JOHN L. MURPHEY

Paul F. Faison.
Ling Ting-Sheng.
Tsai Hsi-Yuan.
Yeh Chih-Mao.

14 February 1947

SUBJECT: Proceedings of a Military Commission in the case of United States of America vs Cheng Shung et al.

THRU : Judge Advocate, Eighth Army.

TO : Commanding General, Eighth Army.

1. Reference: par. 43, Special Order Number 243, Headquarters Eighth Army, dated 23 September 1946.

2. The following is submitted on behalf of the accused for consideration by the Reviewing Authority in these proceedings:

The testimony of the Shibuya police was to the effect that on the 19th July 1946, the Formosans opened fire and carried on a running battle with them; that the fighting took place in a small area on the street almost immediately in front of the police station. According to the police a great number of shots were fired by the Formosans. In their opening statement the prosecution described the shooting as all hell suddenly breaking loose; in another place the Formosans were described as fighting it out with the police volley for volley. The police admittedly shot 242 cartridges, but might in fact have fired a great many more. Yet despite the very small space in which this battle raged and the meticulous search that was carried out by the police that same night and the next day for evidence of Formosan shooting, not one empty cartridge case which could be attributed to the Formosans was found. Had the Formosans done any shooting at all, the police would have found, collected and produced in court the empty cartridge cases as irrefutable proof that the Formosans had attacked them.

It is confidently submitted that the only inference that can be drawn from this fatal weakness in the prosecution's case is that the police, highly tensed and nervous as they were and expecting to be attacked by the Formosans, did, because of some undisclosed cause or motive, open unprovoked fire upon the Formosans, and that they did not themselves realize that the Formosans had done no shooting until later that night or the next morning.

But unfortunately it was then too late to repair the damage that had been done--six persons had been killed and many seriously wounded. So the police had to choose between two courses: the one, to admit their mistake and take the

consequences; the other, to falsify a case of self-defence. They chose the second course and afterwards accomplished it with consummate skill, succeeding in bringing about the conviction of their innocent victims for an offence of which they themselves were guilty, and thus evading the criminal responsibility for their own wrong.

It is difficult indeed to understand how the military members of the Commission failed to draw the inference from the dearth of empty cartridge cases that the Formosans did no shooting; it is believed, however, that the civilian member of the commission appreciated its significance fully but considered reference to it superfluous in view of the legal argument incorporated in his dissenting opinion.

If the decision is approved, this case will probably go to the United States Supreme Court on appeal and achieve a notoriety that will reflect no credit on any one.

The subordinate charges in the case obviously rest upon grounds not less invalid than the charge of Formosan shooting, and it would seem hardly necessary to discuss them in detail. However, it may be said generally, that taking in view the whole of the evidence and the surrounding circumstances and the logic of the case, the entire case for the prosecution appears little less than fantastic, and at times dangerously near to becoming actually insulting to one's intelligence.

Rational thinking compels the conclusion that the findings of the Commission are not supported by the evidence and should therefore be disapproved.

Respectfully submitted,

F. F. Faison
F. F. FAISON
Assistant Defense Counsel

HEADQUARTERS EIGHTH ARMY
United States Army
APO 343

8 February 1947

In the foregoing case of Cheng Shang Tang, et al.:

As to defendant #2 Chen Sung Ming, the sentence is disapproved.

As to defendant #21 Chu Teh Fu, the findings of guilty of Specification 4 and 5 are disapproved, the finding of guilty of Specification 1, except the words connoting all other defendants, is approved; the finding of guilty of Specification 3, except the words connoting defendants #1 Cheng Shang Tang, #2 Chen Sung Ming, #3 Liao Jung Chin, #4 Hung Tsung Jen, #13 Yeh Hsung Ting, #39 Lin Shui Yuan, #40 Liang Chi Fa, and #41 Ryu Shi Zai, is also approved. The sentence is approved and will be duly executed but that portion of the sentence to confinement at hard labor remaining unexecuted on the date of his deportation from Japan is suspended as of such date. The Eighth Army Stockade, or elsewhere as the Supreme Commander for the Allied Powers or other proper authority may direct, is designated as the place of confinement pending deportation.

As to defendants #5 Hsieh Tsai Hsun, #6 Chang Jung Li, #7 Liao Tsiang Chin, #8 Li Wen Chih, #9 Kuo Chu Hou, #10 Sung Wen Hsiang, #11 Chien Ma Soong, #12 Lin You Soong, #14 Weng Hsing Chuan, #15 Chang Mao, #16 Liu Chao Kuang, #17 Wang Ying Fang, #18 Liao Chin Jung, #19 Cheng Ah Ping, #20 Fang Fong Yi, #22 Li Hou Ju, #23 Li Pei Tung, #24 Hsu Hsi Fu, #25 Lin Chia Wen, #26 Tsai Lung Yu, #27 Chang Shu Chi, #28 Tsai Li Tsao, #29 Liao Shan Ching, #30 Yen Lai Ming, #31 Lo Hsiu Keng, #32 Chuang Ting Piao, #33 Chiang Hung Kai, #34 Hwang Chin Foe, #35 Hsu Yu Cheng, #36 Liu Wei Chiang, #37 Cheng Teh Wan, #38 Weng Tien Lang, #42 Fang Yun Ho, and #43 Chen Ching Lung, the findings of guilty of Specifications 4 and 5 are disapproved; the findings of guilty of Specification 3, except the words connoting defendants #1 Cheng Shang Tang, #2 Chen Sung Ming, #3 Liao Jung Chin, #4 Hung Tsung Jen, #13 Yeh Hsung Ting, #39 Lin Shui Yuan, #40 Liang Chi Fa, and #41 Ryu Shi Zai, are approved. The sentences are approved and will be duly executed but those portions of the sentences to confinement at hard labor remaining unexecuted on the date of their deportation from Japan are suspended as of such date. The Eighth Army Stockade, or elsewhere as the Supreme Commander for the Allied Powers or other proper authority may direct, is designated as the place of confinement pending deportation.

R. L. NICHOLBERGER
Lieutenant General, U. S. Army
Commanding

A TRUE COPY

F. B. Boush
F. B. BOUSH
Capt. AUS WAC

To Mr. Berger

VOLUME II

EXHIBITS

to

RECORD OF TRIAL
(6th Original Carbon)

in the case of

UNITED STATES

vs

CHENG SHUNG, ET AL

Case Docket No. 6

MILITARY COMMISSION

Appointed by

Commanding General, Eighth Army

Tried at
Tokyo Japan
30 Sept - 10 Dec 1946

Certified a true translation of original

Todashi Yago
Interpreter for Prosecution

Ting - Sheng Lin Defense Commd
Interpreter for Defense

Doc. No.

- 1 We can not agree whole heartedly with your statement, which was submitted on 27 March 1946, and at the same time concerning this we find no need of further discussion.
- 2 With determination we can accomplish our goal regardless.
- 3 We absolutely will not approve of the arrogant conduct and wrongfull treatment of and by the Japanese to our race. We will do are utmost to cope with the situation and strive toward a solution.
- 4 We are not discriminating nor attacking the righteous claim of your people. Furthermore, we are confident that we have a tolerant view of this matter and will not hesitate to give full cooperation to your people.
- 5 In conclusion our association is not under the jurisdiction of the SHIBUYA Police Station and we do not recognize orders received from your office. If you are seeking our cooperation we desire that you do so thru proper channels. If we desire your assistance we might humbly request your cooperation.

28 March 35th year of the Republic

Chinese Self-governing Youth Association

PR EX-2

PROSECUTION
EXHIBIT 2

Doc 23549

SETAGAYA-KU, KANISAWA-CHO 64

SETAGAYA-KU, SHIMIZU 58 of 1

ADDRESS

SHIBUYA-KU, KANISAWA-CHO 64

ATSUBISHI-KU, KOSAGE-CHO 231 of 1

MEGURO-KU, KAMI MEGURO-CHO 2092 of 2
c/o To YOKO Apt.

SUGINAMI-KU, KAMI OGIKUBO, 30 of 2

SHIBUYA-KU, YUUGI, KAMIHARA-CHO 1129

KAWAGUCHI-SHI, SAKAI-MACHI, 82 of 1

MINAMITAMA-GUN, MACHIDA MACHI, HARAMACHIDA

SETAGAYA-KU, KITAZAWA-CHO, 1016 of 3

SETAGAYA-KU, KAMI UMA-CHO 275 of 3

NAKANO-KU, MIYAZONO-CHO 49 of 5

EDOGAWA-KU, KOIWA-CHO, 1252

IBARA-KU, IBARA-MACHI,
c/o MITSUKI, Mihana

MEGURO-KU, KAMI MEGURO-CHO 2092 of 2

SHIBUYA-KU, SAKURAGAOKA-MACHI, 543
c/o JIZO

SHIBUYA-KU, UGUISUDANI-MACHI, 28
c/o WAKOSO

PERSONS ARRESTED

Characters	NAME	CHINESE Reading
宋文祥	SUNG BEN SHONG	SUNG BEN SHONG
葉圳庭	BI JEN TIN	BI JEN TIN
簡木松	KAN BO SHONG	KAN BO SHONG
范雲鶴	FANG YUN HO	FANG YUN HO
郭主厚	KUEI CHU HO	KUEI CHU HO
林友松	LIN YUNG SHONG	LIN YUNG SHONG
翁星川	YUNG CHING TSUI	YUNG CHING TSUI
張茂	CHUNG MO	CHUNG MO
劉照光	LIU CHOU KONG	LIU CHOU KONG
王英芳	ONG ENG HONG	ONG ENG HONG
廖欽榮	IYOU CHING YONG	IYOU CHING YONG
顧來明	GAN IAI MING	GAN IAI MING
張樹枝	TIAN SHU TSU	TIAN SHU TSU
廖須	LIYANG CHUNG KING	LIYANG CHUNG KING

PROSECUTION EXHIBIT 3

PERSONS ARRESTED

Characters	NAME		OCCUPATION	AGE
	CHINESE Reading	JAPANESE Reading		
宋文祥	SUNG BEN SHONG	SO BUN SHO	Restaurant	25
葉圳庭	EI JEN TIN	YO KEN TEI	Street-trader	25
簡本松	KAN BO SHONG	KAN BOKU SHŌ	None	26
范雲鶴	FANG YUN HO	HAN UN KAKU	None	24
郭主厚	KUEI CHU HO	KAKU SHŪ KŌ	Foundry	21
林友松	LIN YUNG SHONG	RIN YŪ SHŌ	Street-trader	19
翁星川	YUNG CHING TSUI	Ō SEI SEN	Councillor of International Friendship Society	20
張茂	CHUNG MO	CHŌ MO	Street-trader	25
劉照光	LIU CHOU KONG	RYU SHO KO	Clerk (International Newspaper)	21
王英芳	ONG ENG HONG	O EI HO	TOKYO KAKYO Rengo Kai (Federation of CHINESE Assn.)	17
廖欽榮	IYOU CHING YONG	RYU KIN EI	Street-trader	22
顧來明	GAN IAI MING	GAN RAI MEI	None	26
張樹枝	TIAN SHU TSU	CHO JU SHI	None	26
廖須帶	LIYANG CHUNG KING	RYC JUN KEI	None	24

SUGINAMI-Ku, NAKADŌRI-Machi 2
 SETAGAYA-Ku, KAMIUMA-Chō 65
 SETAGAYA-Ku, SHINMACHI 58 of 1
 SHINAGAWA-Ku, KAMIOSAKI 234 of 4
 MEGURO-Ku, KAMIMEGURO-Machi 2092 of 2
 NAKANO-Ku, HONMACHI DORI 5 of 6
 c/o HONMACHI APT.
 SETAGAYA-Ku, SHIMOUMA-Chō 14 of 2
 SHIBUYA-Ku, SAKURAGAOKA, 55
 c/o KIZANKAKU
 SUGINAMI-Ku, AMANUMA-Chō 374 of 2
 c/o KAN
 SHIBUYA-Ku, YOYOGI, KAMIHARA-Chō 1288
 USHIGOME-Ku, YANAGI-Machi 21
 USHIGOME-Ku, HARAMACHI 19 of 3
 c/o RI
 KYOBASHI-Ku, MINATO-Machi 9 of 1
 c/o RYO
 MEGURO-Ku, JIYUGAOKA 131
 c/o SHIMIZU

樂秀根
 鄭阿炳
 蔡立灶
 蔡龍壘
 謝再勳
 張榮立
 李文習
 廖培豐
 朱德富
 范逢義
 李謀如
 李培棟
 許錫福
 林加文

LO SHU KAN
 CHANG AH TING
 CHAI LIT SHO
 CHAI IUN TU
 SHIE CHAI FUN
 CHON JUNG LI
 LI BUN TEI
 LEONG CHUNG
 CHU TO FU
 HAM HOGI
 LI MO RU
 LI TE TUN
 KO SHAKU
 LIM KA BUN

RAKU SHŪ KON
 TEI A HEI
 SAI RITSU TŌ
 SAI RYU TŌ
 SHA SAI KUN
 CHŌ EI RITSU
 RI BUN CHI
 RYŌ RYŪ KEI
 SHŪ TOKU FU
 HAN HŌ GI
 RI BŌ JO
 RI BAI TO
 KYO SHAKU FUKU
 RIN KA BUN

Cook
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I hereby certify that the foregoing 2 pages are a correct translation of the attached sheets marked
 The characters are given both Japanese and Chinese reading.

9 Oct 1946

RES doc
SUGITA
OKUBEN
P o/o
AMIGUS
TUGINE
DAWAN
MANIM
DATER
DATER
MAKAK
BOON
RAHI
To o
HURIN
HINE
o/o
SHIE
o/o

SUGINAMI-Ku, NAKADŌRI-Machi 2
 SETAGAYA-Ku, KAMIUMA-Chō 65
 SETAGAYA-Ku, SHINMACHI 58 of 1
 SHINAGAWA-Ku, KAMIŌSAKI 234 of 4
 MEGURO-Ku, KAMIMEGURO-Machi 2092 of 2
 NAKANO-Ku, HONMACHI DORI 5 of 6
 c/o HONMACHI APT.
 SETAGAYA-Ku, SHIMOUMA-Chō 14 of 2
 SHIBUYA-Ku, SAKURAGAOKA, 55
 c/o KIZANKAKU
 SUGINAMI-Ku, AMANUMA-Chō 374 of 2
 c/o KAN
 SHIBUYA-Ku, YOYOGI, KAMIHARA-Chō 1288
 USHIGOME-Ku, YANAGI-Machi 21
 USHIGOME-Ku, HARAMACHI 19 of 3
 c/o RI
 KYOBASHI-Ku, MINATO-Machi 9 of 1
 c/o RYO
 MEGURO-Ku, JIYUGAOKA 131
 c/o SHIMIZU

樂秀根	LO SHU KAN	RAKU SHŪ KON
鄭阿炳	CHANG AH TING	TEI A HEI
蔡立灶	CHAI LIT SHO	SAI RITSU TŌ
蔡龍塗	CHAI IUN TU	SAI RYU TŌ
謝再勳	SHIE CHAI FUN	SHA SAI KUN
張榮立	CHON JUNG LI	CHŌ EI RITSU
李文習	LI BUN TEI	RI BUN CHI
廖培豐	LEONG CHUNG	RYŌ RYŪ KEI
朱德富	CHU TO FU	SHŪ TOKU FU
范逢義	HAM HOGI	HAN HŌ GI
李謀如	LI MO RU	RI BŌ JO
李培棟	LI TE TUN	RI BAI TO
許錫福	KO SHAKU	KYO SHAKU FUKU
林加文	LIM KA BUN	RIN KA BUN

I hereby certify that the foregoing 2 pages are a correct translation of the attached. The characters are given both Japanese and Chinese reading.

9 Oct 1946

樂 秀 根	LO SHU KAN	RAKU SHŪ KON	Cook	38
鄭 阿 炳	CHANG AH TING	TEI A HEI	Restaurant	38
蔡 立 灶	CHAI LIT SHO	SAI RITSU TŌ	Street-trader	23
蔡 龍 塗	CHAI IUN TU	SAI RYU TŌ	None	26
of 2 謝 再 勳	SHIE CHAI FUN	SHA SAI KUN	Street-trader	22
張 榮 立	CHON JUNG LI	CHŌ EI RITSU	Street-trader	19
李 文 習	LI BUN TEI	RI BUN CHI	In the process of organizing Magazine Publishing Co.	22
廖 瑞 尊	LEONG CHUNG	RYŌ RYŪ KEI	Student	22
朱 德 富	CHU TO FU	SHŪ TOKU FU	None	24
1288 范 逢 義	HAN HOGI	HAN HŌ GI	None	24
李 謀 如	LI MO RU	RI BŌ JO	Head of the Relief Society	24
李 培 棟	LI TE TUN	RI BAI TO	None	20
許 錫 福	KO SHAKU	KYO SHAKU FUKU	Street-trader	19
林 加 文	LIM KA BUN	RIN KA BUN	Street-trader	18

at the foregoing 2 pages are a correct translation of the attached sheets marked PR EX 3.
with Japanese and Chinese reading.

Doc No 23754

Police Sgt HAGA (芳賀))	Orthopedic Dept 3rd Floor, Rm #4, 5th Group. A bullet lodged in the right side of the chest.
CHIANG, Chi-kai (25) (姜模楷))	SETAGAYA-Ku, KITAGAWA 4-302. An employee at the Cobalt Shop. A surface wound on forehead.
CHU, You-ting (26) (陈有亭))	MEGURO-Ku, SANYA-Cho, C/O OGAWA. An employee of NIITAKA Shop near KYOAI Market. A surface wound on the left side of the head.
WENG, Ta-liang (20) (翁天郎))	IBARA-Ku, IBARA-Cho, 7-576. An employee of the China Trading Co., SHINAGAWA-Ku, KITA SHINAGAWA-Cho, 3-194. Middle and index finger of the left hand broken, bruises on both shoulders.
TAKAHARA (高原))	UGUISUDANI 28, WAKO Apt. (?) A bullet lodged in the head.
CH'EN, Sheng-ming (17) (陈生明))	DOBEshi, IKUTA-Ku, SHIMO YAMATE-DORI, 4 Chome 2, C/O CH'EN CHI (陈吉). A fruit peddler. A surface wound above the left ear and bruises on the chin and mouth.
LIU, (First name unknown) (刘))	Employee at the MYOJO Cafe. Brain concussion.

16 Oct 46

I hereby certify the foregoing to be a true and accurate translation of the original document.

PROSECUTION
EXHIBIT 4



PROSECUTION
EXHIBIT 17



PROSECUTION
EXHIBIT 18



PROSECUTION
EXHIBIT

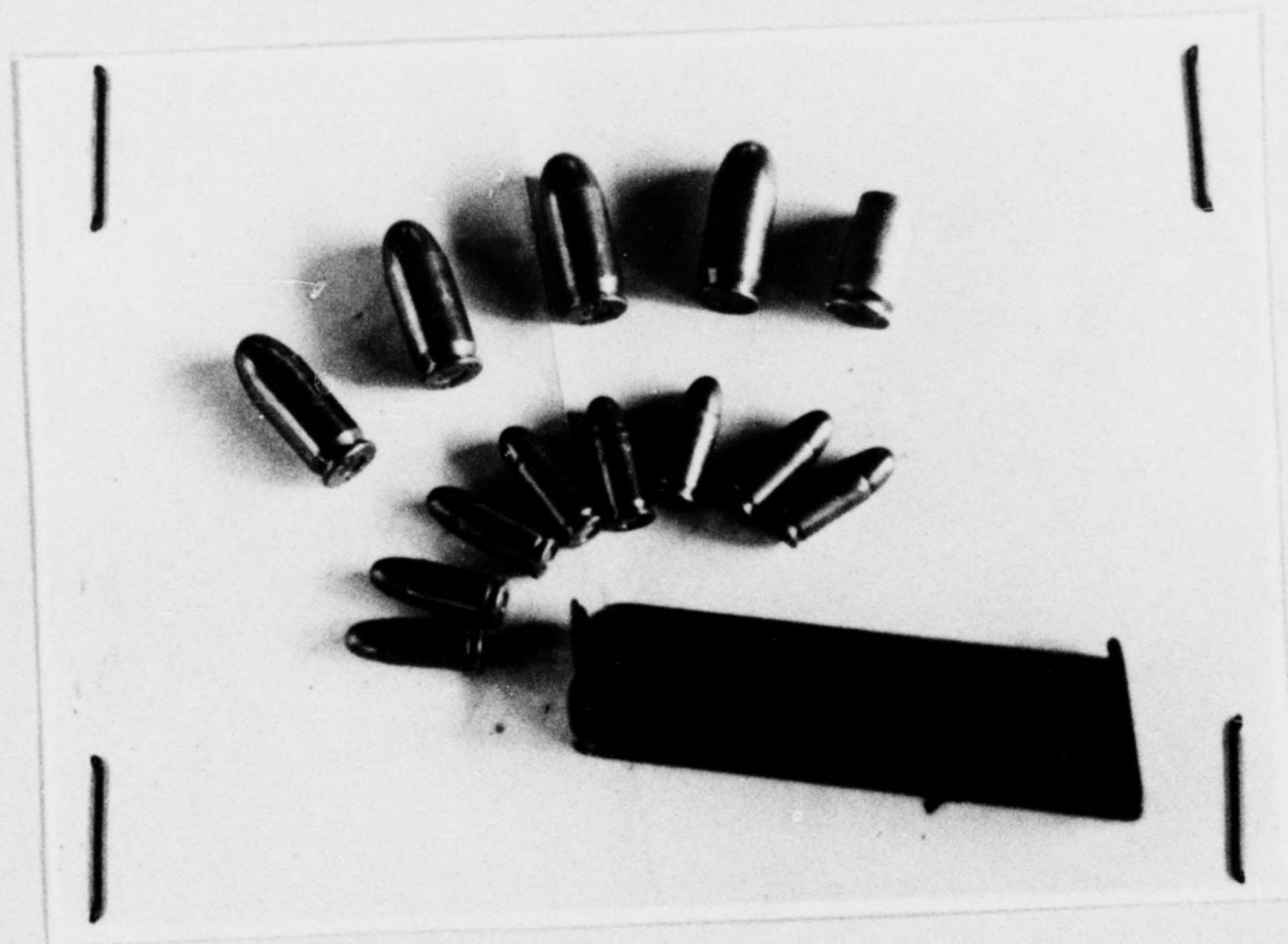
19



PROSECUTION
EXHIBIT 20



PROSECUTION
EXHIBIT 21



PROSECUTION
EXHIBIT

22

FUKIEN SPELLING
as adopted by Prosecution

OFFICIAL
CHINESE
SPELLING

JAPANESE
SPELLING

1. CHENG Shung	CHEN Shan-tang	CHIN Sen Do
2. CHING Shim Ming	CHEN Sung-Ming	CHIN Sei Mei
3. LYOU Yong Ching	LIAO Jung-Chin	RYO Ei Kin
4. HUNG Chung Jen	HUNG Tsung-Jen	KO So Jin
5. SHIE Chai Fun	HSIEN Tsai-Hsun	SHA Sai Kun
6. CHON Jung Li	CHANG Jung-Li	CHO Ei Ritsu
7. LEONG Chung	LIAO Tsiang-Chin	RYO Sho Kei
8. LI Bun Tei	LI Wen-Chih	RI Bun Chi
9. KUEI Chu Ho	KUO Chu-Hou	KAKU Ju Ko
10. SUNG Ben Shong	SUNG Wen-Hsiang	SO Bun Sho
11. KANG Bo Shong	CHIEN Mu-Seong	KAN Moku Sho
12. LING Yu Shong	LIN You-Seong	RIN Yu Sho
13. YO Shu Tei ***	YEH Hsun-Ting	YO Shu Tei ***
14. YUNG Ching Tsui	WENG Hsing-Chuan	O Sei Sen
15. CHUNG Mo	CHANG Mao	CHO Mo
16. LIU Chou Kong	LIU Chao-Kuang	RYU Sho Ko
17. ONG Eng Hong	WANG Ying-Fang	O Ei Ho
18. LIEU Jin Yung	LIAO Chin-Jung	RYO Kin Ei
19. CHANG Ah Ting	CHENG Ah Ping	TEI A Hei
20. HAM Hogi	FANG Fong-Yi	HAN Ho Gi
21. CHU To Fu	CHU Teh-Fu	SHU Toku Fu
22. LI Mo Ru	LI Mou-Ju	RI Bo Jo
23. LI Te Tun	LI Pei-Tung	RI Bai To
24. KO Shaku	HSU Hsi-Fu	KYO Shaku Fuku

*** This being an exception, where the prosecution uses the Japanese spelling.

PROSECUTION
EXHIBIT 24

FUKIEN SPELLING
as adopted by Prosecution

**OFFICIAL
CHINESE
SPELLING**

**JAPANESE
SPELLING**

25. LIM Ka Bun	LIN Chia-Wen	RIN Ka Bun
26. CHAI Lun Tu	TSAI Lung-Tu	SAI Ryu To
27. TIAN Shu Tsu	CHANG Shu-Chi	CHO Ju Shi
28. CHAI Lit Sho	TSAI Li-Tsao	SAI Ryo To
29. LIYANG Chun King	LIAO Shun-Ching	RYO Jun Kei
30. GAN Lai Ming	YEN Lai-Ming	GAN Lai Mei
31. LO Shu Kan	LO Hsiu-Keng	GAKU Shu Kon
32. CHUAN Ting Tiou	CHUANG Ting-Piao	SO Tei Hyo
33. CHANG Hung-Kai	CHIANG Hung-Kai	KYO Ke Kai
34. WANG Ching Tow	HWANG Chin-Pao	KO Kin Ho
35. CHIU Yu Chong	HSU Yu-Chang	JO Yu Sho
36. LIU E Chang	LIU Wei-Chiang	RYU I Jin
37. CHENG Teh Wang	CHENG Teh-Wan	TEI Toku Man
38. WANG Teng-Long	WENG Tien-Lang	O Ten Ro
39. LIM Sui Gen	LIN Shui Yuan	RIM Sui Gen
40. RYO Ki Hatsu	LIANG Chi-Fa	RYO Ki Hatsu
41. RYU Shi Zai		
42. FANG Yun Ho	FANG Yun-Ho	HAN Un Kaku
43. CHIN Kin Lya	CHEN Ching-Lang	CHIN Kin Ryu

Doc No 25131

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
MILITARY INTELLIGENCE SECTION, GENERAL STAFF
ALLIED TRANSLATOR AND INTERPRETER SECTION

NOTE: Translation Requested by Legal Section

Received ATIS: 22 Nov 46.

Description of Contents: A report of statements volunteered by RYO,
Tenro (翁天郎) a Chinese Formosan par-
ticipant in the SHIBUYA Incident.

PROSECUTION
EXHIBIT 30

D

Doc No 25131

TM

17 Sep 46.

By: Police Sergeant MORITA, Choji (森田長治)

Investigation section, Department of Criminal Affairs.

Report

When questioned between 1000 hours and 1200 hours on 17 Sep 46, RYO, Tenro (翁天郎) a Chinese Formosan participant in the SHIBUYA Incident, who is detained at the United States, 8th Army NAKANO Prison, voluntarily gave the following statements:

Statement:

Permanent residence and place of birth: Second Son of RYO, Jogen (翁狀元) TAIWAN Province, CHINA, TAICHU-Ken INRIN-Ku, NISUI-Kyo, 258 Banchi, HISHITO Mura ()

Residence

RYO, Tenro age 20, Street trader (soap), c/o YAMAZAWA, Itaro (山澤猪太郎), TOKYO-To, EBARA-Ku, EBARA, 7 Chome 576 Banchi

1. He arrived in TOKYO October 1941 and while in the fourth year of NIPPON DAIGAKU, DAISAN SHOGYO, the war ended and he left school.
2. In March of this year, he became a street trader and sold soap substitutes in front of Oi (大井) Government Railway Station.
3. When he went to obtain his cigarette ration on or about 1530 hours, 19 Jul 46 at the Chinese Association he was told by one of his associates that he should listen to a speech to be made at 1600 hours by the representative body (DAIHYO DAN) in regard to the incident involving the MATSUDA-Gumi in SHIMBASHI. He was acquainted with the dispute between the MATSUDA-Gumi and themselves and he waited thinking the talk would be related to this matter. At that time there appeared to be about 15 or 16 of his associates assembled there. While they waited, a large number of associates arrived on five or six trucks. Approximately 350 associates assembled, and among them there were those that were carrying clubs. Since they were saying that they were going to have a fight with MATSUDA-Gumi, I went into the association's garden to pick up a club.

A member of the representative body came a little after 1600 hours and told his assembled associates that the dispute with MATSUDA-Gumi was being negotiated, and to wait two or three days and avoid using force. The assembled members took heed to what the representative said but there seemed to be a few who insisted on fighting the MATSUDA-Gumi.

Doc No 25131

TM

The talk ended about 1700 hours. I heard the trucks were going to SHIBUYA and I wished to go home so I threw the club away and got on the truck. I do not remember which truck I rode on, but there were a great number of associates on the truck. When we had passed SHIMBASHI, a representative came by jeep to meet us and said there would be a speech by Lt General RI (李) at the Headquarters of the representative body, so we went to the Headquarters.

About five trucks went to the Headquarters with about 300 associates. On the way there were no attacks by the MATSUDA-Gumi. At the Headquarters of the representative body, Lt General RI gave a speech telling us to wait since negotiations were underway and not to use force, but place the matter in the hands of the representative body. It was about 1930 hours when the meeting broke up and it was dark. One of the associates said that there were armed police at SHIBUYA station, and since there was also the danger of being attacked by MATSUDA-Gumi the representative body decided to send a jeep along for protection.

We went by truck towards SHIBUYA. I was in the second truck. The order of advance was [Jeep] [Hired Taxi] [Truck] [Truck]

(I was in this truck)

I think there were about two or three trucks behind ours. All the trucks headed for SHIBUYA Station. When we had arrived in front of the SHIBUYA Police Station, our truck stopped since the jeep in front had stopped. At that time it seemed that there was some talk between the associates in the jeep and the policeman. We started to proceed in two or three minutes. There were sounds of pistol shots before our truck had advanced 1 meter. The police continued firing pistols, so I tried to take cover in my truck, but the number of associates on the truck made it impossible to take cover. The truck stopped after advancing about 10 meters and I jumped off the left side of the truck to try to escape. I ran into a river and while trying to return, the police came and caught me and took me to the SHIBUYA police Station. I received a wound on the middle finger of the left hand. On the same day I entered the St LUKE's Hospital and was dismissed on 4 August.

I did not carry a pistol and I do not know if my associates carried pistols, consequently, I do not know if they fired any shots.

End

Dec. No. 25131

I, the undersigned, hereby certify that the foregoing is a true and accurate translation of the original document.

2 Dec 46

Takao Takagaki
2d Lt. 448

Doc No 23100 B

JLB

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
MILITARY INTELLIGENCE SECTION, GENERAL STAFF
ALLIED TRANSLATOR AND INTERPRETER SECTION

NOTE: Translation Requested by Legal Section.

Received ATIS: 19 Sep 46.

Description of Contents: Police Report Regarding the SHIBUYA Incident.

PROSECUTION
EXHIBIT

31

Doc No 23100 B

JLB

2nd Investigation Section, Department of Criminal Affairs, Metropolitan Police Board.

Police Sergeant SATO, Fumio (佐藤文雄).

The following affidavit was made at the United States 8 Army's Nakano Prison on 16 Sep 46 between 1000 hours and 1150 hours in answer to my interrogation concerning the SHIBUYA Incident.

I. Residence: TOKYO-To, SUGINAMI-Ku, AMANUMA 2 Chome 454 Banchi, care of TEITOKU Hatsu (鄭德發). (TN: The Chinese pronunciation of this name is CHENG TE FA). Unemployed. TEITOKU Man (馬) (TN: The Chinese pronunciation of this name is CHENG TE WAN). Age 19.

II. On 19 July at about noon, I left the house and went to visit the AINOSATOKAN (愛乃里館) which is my friend's apartment in NISHIOGIKUBO. After this I went to a photographer, (the name of the firm is unidentified) in ASAGAYA to get some pictures I had taken previously. Then I went directly to register my identity at the Kyobashi Chinese Immigrants' Allied League, (KAKYO RENGO KAI) at about 1700 hours, but at the schoolyard of the primary school where the Allied League is located a large crowd of about 300 people had assembled. I tried to register immediately but there was no clerk in the office, and I was unable to do so.

Soon a compatriot came to the entrance of the office, and when I asked him what was happening today that such a crowd had gathered, he (the name is unidentified) said that they were gathered because there was to be a speech by a representative (TN: This refers to a representative from the Chinese Mission) concerning the recent SHIMBASHI Incident. This was of no concern to me but I thought that perhaps I would like to hear it so I waited for the representative's speech.

I had to wait about ten minutes, so in the meantime I looked over the schoolyard, and saw some among those in the crowd who were carrying sticks broken from school chairs. I overheard five or six men talking together about the street-stall merchants in SHIMBASHI whose shops had been smashed and whose goods had been taken by the hoodlums of the MATSUDA (松田) Gang. They also discussed the SHIMBASHI hoodlums who had forced their way into SHIBUYA and had fought there. They seemed extremely indignant.

Meanwhile, when everyone lined up according to the command, the representative got up on a high place and said something like "Please entrust the recent incident to the representative. Negotiations are now in progress, and I will report to you when the results are known." However, after the representative's speech was finished, some people did not support him and some obstinate ones wanted to hear an immediate answer.

Finally, the crowd began to disperse, and as I was leaving the schoolyard, intending to return home by streetcar, I noticed a large group riding in a truck, KO-san (黄), (TN: Chinese pronunciation is HUANG), a friend of mine who also seemed to have known about this meeting and to have come to it, was riding in the truck. He caught sight of me, and since he called out, "Hey, hey, we're going back; let's ride together", I thought it a good opportunity and boarded the truck. I did not know the representative's name.

Although I rode on a truck I do not remember which one it was, but we followed the leading truck. When we came near SHIMBASHI Station, we met a Chinese Officer riding in a jeep who requested us to stop. Because he told us to go to the ASABU Mission, (TN: This refers to the Chinese Mission), we turned around and went there.

Doc No 23100 B

JLB

At that time the truck in which I was riding took the lead. I do not know clearly what was behind, but it seemed that there were two or three vehicles following us.

After we reached the mission we went into the auditorium. The man who had told us at SHIMBASHI Station to come to the mission got up on the platform and instructed us to do nothing by arbitrary decisions and not to act upon our own authority but to leave things up to the Mission. Later I heard that the man was General LI (李). After the address was over, I got into the truck going to NAKINO-Ku, because we were returning to different districts. The order of the vehicles was: jeep, hired car, then the trucks; and the truck in which I was riding was the first of the trucks. I was riding on the edge of the truck on the left side. There were about 20 men in it. I believe that there were several trucks behind the one in which I was riding.

After we had been moving for a short while I saw that there were policemen on both sides of the street and at the same moment I heard three shots. Since the policemen came out in the street and gave orders to stop, the jeep in the lead stopped and the trucks following did likewise. The people riding in the jeep started talking about something to the police. It was at that time that I first noticed that we were in front of the SHIBUYA Police Station. After a couple of minutes the conversation ended. When a voice said, "OK," the jeep started to move and then the truck in which I was riding also started. When we had gone a short way I heard pistol shots, from somewhere, and everyone fell down on top of the truck. Meanwhile, the firing became intense from both sides, and while I was becoming more and more confused the man next to me was shot in the shoulder. Next my leg became numb and discovering that I was unable to move it I realized for the first time that I had been shot in the leg.

Thereafter I was dazed and did not know what was happening, and when I came to I was at the mission in ASABU where we had been a little while before. There I received medical treatment and afterwards entered the hospital.

I myself did not have a pistol and I do not know whether my compatriots used pistols or not.

Doc. No. 23100 B

GENERAL HEADQUARTERS
SUPREME COMMAND FOR THE ALLIED POWERS
MILITARY INTELLIGENCE SECTION, GENERAL STAFF
ALLIED TRANSLATOR AND INTERPRETER SECTION

I, the undersigned, certify that the foregoing is a true and accurate translation of the original document.

3 Dec 46

Takio Takagaki
Jd Lt. AUSA

C O N F I D E N T I A L

THE SHIBUYA AFFAIR

Origin of the Dispute

Shortly after Japan's surrender last year, a group of Formosans rented open lots in front of the Shimbashi Station from the so-called Matsuda Gumi and established a series of open-air stalls. It is reported that they were doing a flourishing business. By the middle of March this year, the Matsuda Gumi demanded the return of these lots which became the bone of contention between the two parties. Quarrels ensued.

Clashes before July 19th

On July 14th a little after 3 p.m. a Formosan by the name of Chang Yu-Hsun (Chinese Characters), while on his way home from Shimbashi, was assailed by ronins of the Matsuda Gumi, who stabbed him with a short sword, wounding his lower chin. The next day, a dozen of Formosans called on Matsuda Gumi demanding explanation for the stabbing of Chang, and a "free for all" resulted. On July 16th at noon, a few hundred ronins belonging to the Matsuda Gumi gathered at Shimbashi and began tearing down the Formosan stalls. Many of these stalls were thus torn down. Again in the evening of that very day, dozens of Matsuda Gumi ronins, equipped with swords, sticks and pistols, and alighted from two trucks, went to attack the Formosan stalls as well as their "Office for Charity Service" shooting and slashing at random. This attack was only halted by the timely intervention of the Japanese armed police aided by U.S. M.P.s. Three of the attacking Matsuda ronins were captured on the spot. The Formosans sustained an injury list of one seriously wounded and three slightly wounded.

What happened on July 19th

It was reported that on July 19th the Matsuda Gumi had massed a force of nearly twenty thousand men with the intention of launching a mass attack on the Formosans, thereby settling the dispute once and for all. The Formosans were of course scared. Some six hundreds of them met that afternoon in the "Chinese Residents Federation" and discussed measures of self-defense. The atmosphere was tense. Sensing impending danger, Chairman Chen (of the Federation) appealed to Mr. Ling of the Chinese Consular Affairs Office for help. Mr. Ling went to the Federation at once and urged caution, asking them to leave everything to the lands of law, and recommending dispersal immediately. Apparently a great majority of the assembled heeded Mr. Ling's advice. They had accordingly dispersed. But some three hundred of the Formosans remained. After a little while, one of the Formosans passing by Shimbashi was insulted and routed. This angered the crowd that remained still in the Federation, where the atmosphere became tense again. Again sensing danger, Chairman Chen of the Federation a little after six p.m. again went to Mr. Ling for help. Mr. Ling was on his mission of peace again, and

(EXHIBIT XI)

-1-

C O N F I D E N T I A L

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C O N F I D E N T I A L

this time he was accompanied by Maj. General Lee Li-Peh, Military adviser of the Chinese Mission to Japan. When he reached the neighborhood of Shimbashi, he met trucks of Formosans on the way. On seeing Mr. Ling's car, they cried aloud "Let's go to the Chinese Mission# and let's petition the Chinese Mission" Seeing no other alternative available, Mr. Ling permitted them to go to the Chinese Mission and asked Maj. General Lee to talk to them. Maj. General Lee followed the same line that Mr. Ling took two hours before and strongly urged dispersal. Again the crowd seemed to be pacified. On hearing that there were some three hundred police force in Shibuya Police Station where they had aggregated even a greater number of Japanese ronins, and fearing an ambushed attack on their way home, the Formosans were anxious concerning their safety. Mr. Ling undertook to inform the Provost Marshall's office of this possible danger and ask them to send M.P.s to the spot to maintain order if necessary.

Later, the Formosans left the Mission in trucks escorted by Chinese Mission jeeps for home: one convoy bound for Shinagawa and the other for Nakano. The Nakano convoy consisted of two jeeps, four trucks and one sedan. The Shinagawa convoy consisted of one jeep and two trucks. The two convoys proceeded to leave in an orderly manner and there were about ten minutes apart between the two departures.

According to witnesses interrogated by the Consular Affairs Office of the Chinese Mission, when the Nakano convoy led by a jeep of the Chinese Mission approached the Shibuya Police Station, there was a hostile aggregation of some two to three hundred armed policemen. A few of these armed policemen ordered the jeep to a halt by means of police whistles and shooting into the sky. Then the jeep was surrounded and cries of "kill, kill" and "shoot, shoot" were heard. One of the occupants of the jeep, a Cantonese by the name of Hsieh Kwan-Kwei (Chinese Characters), shouted aloud in Japanese "stop, stop", and asked "why halt car?" "why shoot?" The Japanese police ignored this query and asked the jeep occupants to vacate the jeep. One of the policemen with one hand holding the jeep, threatened to assault the occupants of the jeep. Then an officer of the Shibuya Police Station, came to the jeep. Another man, a native of Chokiang Province, by the name of Chow Hsiang-ken (Chinese Characters) told him "This is a dispersed group on its way home, escorted by the jeep". The police officer gave a signal for the convoy to pass and go.

After the jeep proceeded about 20 meters, a volley of shots was heard from behind, the firing being from both sides of the road. The jeep followed by the sedan and two trucks sped their way back to the Chinese Mission, with one of the occupants dead and twelve wounded. The Chinese Mission then informed the U.S. Provost Marshall's office of this affair, asking for military surgeons' help at the same time. After first-aid measures were administered right in the Chinese Mission, the dead and wounded were sent to 42nd Hospital.

The second half of the Nakano convoy, two trucks led by another jeep, came to the neighborhood of Shibuya Police Station twenty minutes later

(EXHIBIT XI)

C O N F I D E N T I A L

C O N F I D E N T I A L

the first group. They were fired on by Japanese police forces from both sides of the road. The driver of the jeep, Miao Hsi-chuen (Chinese Characters), who narrowly escaped death when a bullet pierced through the windshield of his jeep, went to the police station after the firing subsided, asking for explanation of the shooting. There he met two representatives of the C.I.C. and was brought to the C.I.C. office for inquiry and did not return until 1 a.m. the next morning. One of the two trucks sped away, while the other was stranded after the driver Fang Kiang Lee Yang (Chinese Characters) was shot at and killed by the Japanese police on the spot. Twenty eight occupants of the stranded truck were afterwards taken by the Japanese Police force.

The Shinagawa Convoy, which did not have to pass by the Shibuya Police Station on their way home went back to Shinagawa without mishap of any sort.

Up to July 31, 1946, the casualty list of the Shibuya affair, so far as the Formosans are concerned, consists of six dead, and twenty two wounded.

A true copy of the report submitted by the Chinese Mission.

James H. ...
Major ...
Investigation officer

(EXHIBIT XI)

C O N F I D E N T I A L

MFA002/S1946

Chinese Liaison Office
General Headquarters, SCAP
March 8th 1946The Supreme Commander for Allied Powers
General Headquarters, SCAP

Your Excellency:

I have the honor to report to you that instructions have been received by this office from the Ministry of Foreign Affairs of the Republic of China transmitting a governmental order issued by the Executive Yuan dated January 12th, 1946 to the effect that all the Chinese people of the province of Taiwan regained their Chinese nationality on and from October 25th, 1945.

In view of the fact that the vernacular papers in Japan still use the word of "Taiwanese", which is rather misleading, instead of the word "Chinese", I venture to ask Your Excellency to instruct the Imperial Japanese Government to the above effect and to observe the following:

1) All the Chinese people from the province of Taiwan now residing in Japan be given the same treatment as the Chinese here from any other part of China.

2) All Japanese news agencies and newspaper offices be instructed to use the word "Chinese" whenever reference is made to the Chinese of the Taiwan Province of the Republic of China.

Your kind consideration will be highly appreciated by the Chinese Government.

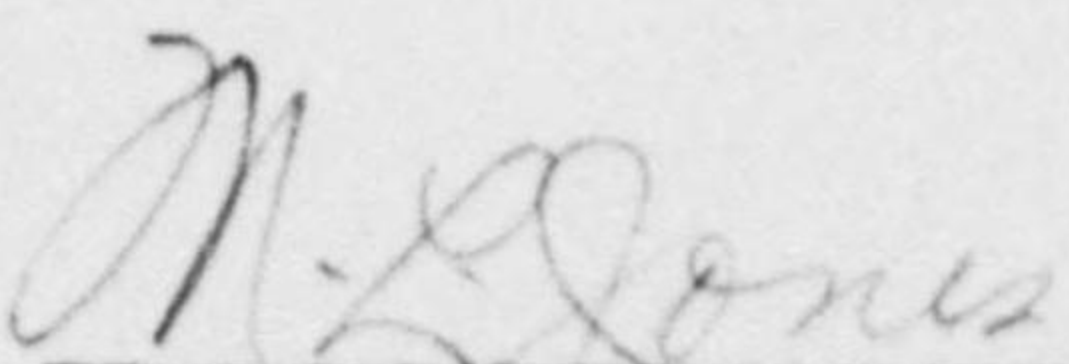
I have the honor to be,
Your Excellency
your obedient servant,

s/ Tseng-Hua Liu
t/ TSENG-HUA LIU
Representative of Ministry
of Foreign Affairs
of the Republic of China.

A CERTIFIED TRUE COPY:

s/ Lee Ping-Han
t/ LEE PING-HAN
Chief Secretary
Chinese Mission in Japan

A TRUE COPY


M. L. JONES
1st Lt., Inf.

DEFENSE
EXHIBIT A

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

Military Intelligence Section, General Staff

2 April 1946

SUBJECT: Official Status of People of Taiwan.

TO : Representative of Ministry of Foreign Affairs of
the Republic of China.

1. With reference to your letter of March 6, 1946, it is noted that you are in receipt of a governmental order dated January 12, 1946, issued by the Executive Yuan of the Republic of China restoring to the Chinese people of the Province of Taiwan their Chinese nationality on and from October 25th, 1945. You may rest assured that prompt and appropriate consideration will be given to any instances of discrimination against any Chinese national in Japan. All Chinese people, whether from the province of Taiwan or from any other province, must receive the same treatment in Japan as any other United Nations national. There are, of course, a number of problems involved. For example, the question arises whether the Chinese Government has clearly established its views in regard to the citizenship of individuals of mixed parentage (i.e. Chinese-Formosan, Japanese-Formosan, Chinese-Japanese, etc.), of persons who have established their residence in Japan and committed acts of active collaboration with the Japanese, and of persons who though born in the province of Taiwan, elect to remain in Japan rather than to accept repatriation. It would perhaps be helpful to clarify some of these questions if there were available copies of the laws and regulations of the Republic of China governing the citizenship of natives and former residents of Taiwan. It is assumed that the competent Chinese officials will in due course pass upon the bona fides of Chinese nationals or persons claiming Chinese nationality now in Japan.

2. With reference to your remarks concerning the use of the word "Taiwanese", it would seem that unless use of this term is in some way discriminatory or derogatory, action might be misinterpreted as not being in keeping with a democratic attitude toward the press if restrictive orders were to be given unnecessarily. It is believed that the use of this term might be comparable to the American vernacular expression of referring to a person from the State of California as a "Californian". However, if the Chinese Government should feel that by use of the term "Taiwanese" there is any derogatory or discriminatory connotation, due consideration will be given promptly to the views of the Chinese Government.

3. It is desired that any instances in which Chinese nationals from the province of Taiwan now residing in Japan receive less favorable treatment from the Japanese authorities than other Chinese nationals be brought to the attention of this Headquarters.

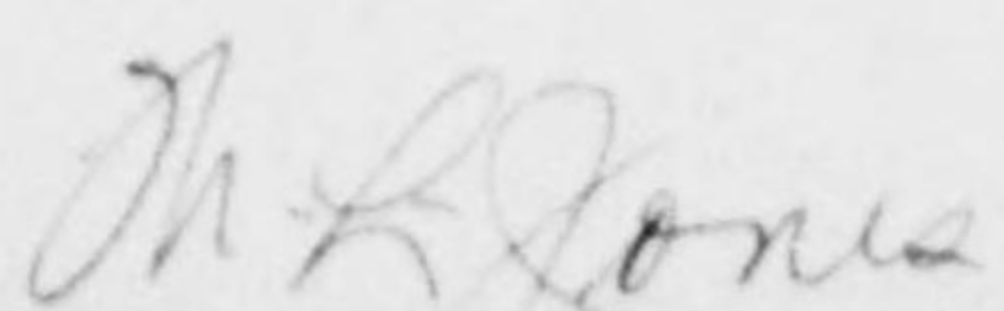
For the A. C. of S., G-2:

s/ F. T. Armstrong
t/ F. T. ARMSTRONG
Colonel, GSC
Executive Officer, G-2.

CERTIFIED A TRUE COPY:

s/ Lee Ping-Han
t/ LEE PING-HAN
Chief Secretary
Chinese Mission in Japan.

A TRUE COPY

M. L. JONES
1st Lt., Inf.DEFENSE
EXHIBIT

B

Ref. No. 0089/ST

The Consular Affairs Office, Chinese Mission in Japan, presents its compliments to the Diplomatic Section of General Headquarters, Supreme Commander for the Allied Powers, and has the honor to inform the Diplomatic Section, under instruction from the Chinese Government, that all Taiwanese (Formosans), whether living at home or abroad, are entitled to Chinese nationality as from 25 October 1945. It is requested that this information be given through General Headquarters to the Imperial Japanese Government and the occupation authorities concerned in all areas under the command of the Supreme Commander for the Allied Powers.

The Consular Affairs Office of the Chinese Mission is effecting a register of Taiwan residents in Japan, and will be glad to give its assistance in identifying their nationality.

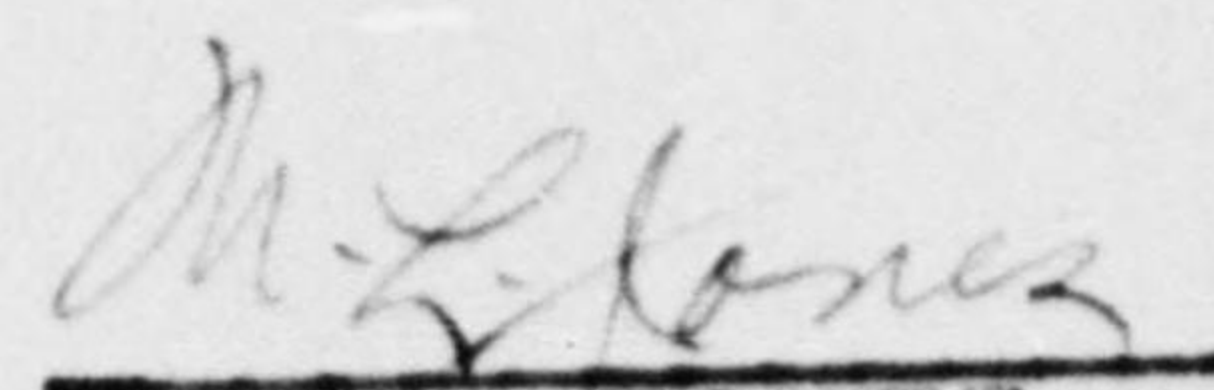
Tokyo, 12 July 1946

Info cy to: Foreign Liaison, G-2, GHQ, SCAP

A CERTIFIED TRUE COPY:

s/ Lee Ping-Han
t/ LEE PING-HAN
Chief Secretary
Chinese Mission in Japan

A TRUE COPY


M. L. JONES
1st Lt., Inf.

DEFENSE
EXHIBIT e

VOLUME I of IV

RECORD OF TRIAL
(6th Original Carbon)

in the case of

UNITED STATES

vs

CHENG SHUNG, ET AL

Case Docket No. 6

MILITARY COMMISSION

Appointed by

Commanding General, Eighth Army

Tried at
Tokyo Japan
30 Sept - 10 Dec 1946

*Mr. Bassin
7th Floor
Meiji Bldg.*

Ref. No. 0214/ST

The Chinese Mission in Japan presents its compliments to the Diplomatic Section of G.H.Q., SCAP, and with further reference to the sentence⁷⁷⁸ passed upon the Formosans in connection with the SHIBUYA incident of July 19, 1946, has the honor to request the following points kindly be brought to the attention of the Reviewing Authority.

Inasmuch as the decision of the Reviewing Authority has a direct bearing on the determination of the responsibility of Japanese police, it is further requested the Military Commission at present trying the three responsible Japanese police officers temporarily reserve its judgment until the decision of the Reviewing Authority in the previous case against the Formosans has been officially announced.

The points which the Mission desires to be brought to the attention of the Reviewing Authority are:-

1. During the trial of the Formosans, the prosecution introduced considerable evidence relating to the black-market operations and fracas between Formosans and Japanese Nationals of the Matsuda Gumi prior to July 19. It is submitted that such testimony irrelevant to the case unduly influenced the minds^{78b} of the judges.

2. On the night of July 19 when a large group of Formosans was fired upon by Japanese police, resulting in many people killed and injured, the Formosans were returning home from the Mission. The fact that they happened to pass by the SHIBUYA-KU Police station, taking a usual route to return to their quarters, did not constitute an offense or riot.

3. In the previous case against Formosans, as in the present trial of the Japanese police officers, the witnesses who testified for the police were mostly Japanese policemen directly involved in the incident. These men were possible accomplices of their superiors in their joint act for firing upon civilians. The police officers involved in the incident were never taken into custody nor suspended from the exercise of their authority. They were free at all times to influence witnesses or falsify testimony. Thus from a legal view-point, the testimony of the police witnesses has no probative value. Yet it was upon such testimony that the Commission found the Formosans guilty of having fired upon the police, although the only neutral and disinterested witness in the trial testified to the contrary.

4. The Formosans crowded together in a few trucks were out numbered and practically surrounded by the policemen who were armed and prepared for action. It is incredible that under the circumstances the Formosans would have provoked the firing of the police and thus place their own life in grave danger.

5. The police on their own admission fired a total of 242 shots, causing the death of 6 defenceless civilians and injured to many others. There was no sufficient evidence to prove that policemen were attacked or fired upon by the Formosans. (The death of Sergeant Haga may have been caused by police firing from the opposite side of the road).

6. Testimony given by the police witnesses would indicate the deep-seated ill feeling against the Formosans existed in the Japanese police. On the night of the incident the police not only were well prepared for action, but seemed mentally bent upon making an example for the Formosans, unless there was satisfactory proof that the police opened fire on the crowd in self-defense or under strong provocation, they would be guilty of cold blooded massacre which should under no circumstances be condoned.

The Mission has no intention whatsoever to interfere with the administration of justice. However, now that the trial has reached the result as it did, the Mission feels constrained to state its opinion as above and request the same kindly be brought to the attention of the Reviewing Authority.

The Mission is instructed by the Chinese Government to reserve its rights to make further representations pending a satisfactory settlement of this serious incident in the interest of justice.

Tokyo, January 20

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
6 February 1947

UNITED STATES OF AMERICA vs CHENG SHANG TANG et al.

Review of the Staff Judge Advocate

1. The attached record of trial of #1 Cheng Shang Tang, #2 Cheng Sung Ming, #3 Liao Jung Chin, #4 Hung Yung Jen, #5 Hsieh Tsai Hsun, #6 Chang Jung Li, #7 Liao Tsiang Chin, #8 Li Wen Chih, #9 Kuo Chu Hou, #10 Sung Wen Hsiang, #11 Chien Hu Soong, #12 Lin You Soong, #13 Yeh Hsun Ting, #14 Wang Hsing Chuan, #15 Chang Mao, #16 Liu Chao Kuang, #17 Wang Ying Fang, #18 Liao Chin Jung, #19 Cheng Ah Ping, #20 Fang Fong Yi, #21 Chu Teh Fu, #22 Li Hou Ju, #23 Li Pei Yung, #24 Hsu Hsi Fu, #25 Lin Chia Wen, #26 Tsai Lung Tu, #27 Chang Shu Chi, #28 Tsai Li Tsao, #29 Liao Shun Ching, #30 Yen Lai Ming, #31 Lo Hsiu Keng, #32 Chuang Ting Piao, #33 Chiang Hung Kai, #34 Hwang Chin Pao, #35 Hsu Yu Chang, #36 Liu Wei Chiang, #37 Cheng Teh Wan, #38 Wang Tien Lang, #39 Lin Shui Yuan, #40 Liang Chi Pa, #41 Ryu Shi Zai, #42 Fang Yun Ho, and #43 Chen Ching Lung, tried at Tokyo, Honshu, Japan, from 30 September 1946 to 10 December 1946, before a Military Commission appointed by paragraph 43, Special Orders No. 243, this headquarters, 23 September 1946, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

2. Personal Data Concerning the Accused:

Very little personal data concerning the accused was developed prior to or during the course of this trial. The trial of all accused by Military Commission was directed by the Supreme Commander for the Allied Powers. A few of the accused were originally residents of China, some were born in Japan of Formosan (Taiwanese) parents, most were themselves born on Formosa (Taiwan) at a time when that island was under Japanese domination. According to the policy of the Executive Yuan of the Republic of China, all persons of Formosan birth or extraction were declared to be citizens of China as of 25 October 1945. Many of the accused had arrived in Japan as laborers or students prior to and during the war. Since the defeat of Japan and its occupation by the Allies, the employment and schooling of most of the accused have been interrupted and they have been put to their own devices for livelihood. Some are being supported by relatives, others engage in street and shop merchandising, others are employed in Chinese associations and most are apparently unemployed. The majority of the accused are young men in their twenties and some are in their 'teens. Some have declared intention to accept eventual repatriation, whereas others intended to remain in Japan.

3. Synopsis of the Record.

Charge: Acts prejudicial to the objectives of the occupation.

Specification 1: All accused, and other unidentified persons, acting in concert on 19 July 1946, did, near Shibuya police station, Tokyo, Japan, wrongfully and unlawfully have and possess dangerous weapons, to-wit, pistols, iron bars, and wooden clubs.

Specification 2: All accused, and other unidentified persons, in concert on 19 July 1946, did, near Shibuya police station, Tokyo, Japan, wrongfully and unlawfully aid, abet, and engage in a disorder and fight by using reproachful and provocative language to the disturbance of the peace, the terror of the populace, and resulting in several deaths and injuries.

Specification 3: All accused, and other unidentified persons, in concert on 19 July 1946, did, near Shibuya police station, Tokyo, Japan, wrongfully and unlawfully aid, abet, and engage in a disorder and fight by using reproachful and provocative language, by acting in a violent and threatening manner, and by firing pistols, to the disturbance of the peace and the terror of the populace.

Specification 4: All accused, and other unidentified persons, in concert on 19 July 1946, did, near Shibuya police station, Tokyo, Japan, wrongfully and unlawfully aid, abet, and engage in a disorder and fight by using reproachful and provocative language, by acting in a violent and threatening manner, and by firing pistols, thereby interfering with the lawful performance of the functions and duties of the Japanese police.

Specification 5: All accused, and other unidentified persons, in concert on 19 July 1946, did, near Shibuya police station, Tokyo, Japan, wrongfully and unlawfully, aid abet, and engage in a disorder by using reproachful and provocative language, by acting in a violent and threatening manner, and by possessing pistols and other weapons, to the disturbance of the peace and terror of the populace.

As to accused #13 Yeh Hsung Ting, and accused #41 Ryu Shi Zai, prosecution withdrew the Charge and Specifications (Nolle Prosequi) (R. 6).

All others of the accused pleaded to the Charge and to each of the Specifications: Not Guilty (R. 8).

At the close of the prosecution's case the Charge and Specifications against accused #1 Chen Shang Tang, accused #39 Lin Shui Yuan, and accused #40 Liang Chi Fa, were withdrawn (Nolle Prosequi) for lack of identification (R. 888).

As to accused #3 Liao Jung Chin and #4 Hung Tsung Jen, the Commission reached findings of Not Guilty as to the Charge and each of the Specifications, thereby acquitting these accused (R. 1270).

As to accused #21 Chu Teh Fu, the Commission reached findings as follows:

Of Specification 1: Guilty
 Of Specification 2: Not Guilty
 Of Specification 3: Guilty
 Of Specification 4: Guilty
 Of Specification 5: Guilty
 Of the Charge: Guilty

Sentence: To be confined at hard labor for three years, to be deported by first available transportation, and to be ineligible for return to Japan during the occupation. Sentence to confinement at hard labor to be suspended on date of deportation.

As to accused #2 Chen Sung Ming, #5 Hsieh Tsai Hsun, #6 Chang Jung Li, #7 Liao Tsiang Chin, #8 Li Wen Chih, #9 Kuo Chu Hou, #10 Sung Wen Hsiang, #11 Chien Mu Soong, #12 Lin You Soong, #14 Weng Hsing Chuan, #15 Chang Mao, #16 Liu Chao Kuang, #17 Wang Ying Fang, #18 Liao Chin Jung, #19 Cheng Ah Ping, #20 Fang Fong Yi, #22 Li Hou Ju, #23 Li Pei Tung, #24 Hsu Hsi Fu, #25 Lin Chia Wen, #26 Tsai Lung Tu, #27 Chang Shu Chi, #28 Tsai Li Tsao, #29 Liao Shun Ching, #30 Yen Lai Ming, #31 Lo Hsiu Keng, #32 Chuang Ting Piao, #33 Chiang Hung Kai, #34 Hwang Chin Pao, #35 Hsu Yu Chang, #36 Liu Wei Chiang, #37 Cheng Teh Wan, #38 Heng Tien Lang, #42 Fang Yun Ho, and #43 Chen Ching Lung the Commission reached findings as follows:

Of Specification 1: Not Guilty
Of Specification 2: Not Guilty
Of Specification 3: Guilty
Of Specification 4: Guilty
Of Specification 5: Guilty
Of the Charge: Guilty

Sentence: To be confined at hard labor for two years, to be deported by first available transportation, and to be ineligible for return to Japan during the occupation. Sentence to confinement at hard labor to be suspended on date of deportation.

4. Prosecution Evidence:

As background out of which arose the incident for which the accused were being tried, prosecution showed that many Formosans lived in Tokyo and engaged in street and shop merchandising. Principally they were active in the Shimbashi and Shibuya areas of the city. To some extent, at least, their commercial activities embraced black-market items (R. 18) and the Japanese police often raided their stalls and shops, confiscating or destroying their illegal wares. These merchants resisted raids by the Japanese police on the ground that they were Allied Nationals and not subject to search and seizure by the Japanese police. Because of this attitude, the latter sometimes brought along American Military Police and whenever they were present the Formosans submitted to search and offered no resistance (R. 93, 97, 150). In July several incidents occurred that created additional ill-feeling between these Formosans and the Japanese police such as raids and the destruction by the latter of an archway (after failure to remove it following demand by the authorities) constructed by the former to welcome members of the Chinese navy arriving in Tokyo. The Japanese police also were aware of mounting friction between these Formosans and an organization known as the Matsuda Gumi, a group of Japanese engaged in business in the same area. There had been instances of attacks and raids by each organization upon the other (R. 100-125).

On 19 July the Chief of Police of the Shibuya police station heard rumors that the Formosans, were massing to attack the Metropolitan Police Board, the Shibuya Police Station, and the business quarters of the Matsuda Gumi (R. 261). Consequently, he obtained reinforcements bringing the complement of men at his station to 385 (R. 253). Among these he passed out 191 pistols (R. 254). He deployed 179 police in positions on the street in front of the station and on each of the three roads giving ingress to the area (R. 258). Around nine o'clock that evening, a convoy consisting of a jeep, a sedan, and two trucks carrying Formosan occupants approached the area and the shouting occupants were duly stopped by the police who were checking all incoming vehicles (R. 212, 213). The police flanked the halted vehicles on both sides and the Chief of Police approached the leading jeep. An occupant thereof inquired why they had been stopped and stated that they were a group coming from a meeting at the Chinese Mission, were on their way to the Shibuya Railroad Station, and did not intend and disturbance. The Chief of Police accepted this explanation, told the occupants of the jeep their convoy could continue on its way, ordered the surrounding policemen to let it pass, and ordered one of his men to climb aboard the jeep in order to disperse the remaining police ahead. During the few minutes in which the convoy was stopped, the occupants crowded together on the bodies of each truck were shouting, yelling, threatening, calling names at the police, spitting upon them, brandishing sticks and clubs, and even pointing pistols (R. 59, 213, 214, 215, 216, 217, 231, 242, 243, 244, 252, 453, 472).

As the trucks started moving, insults were renewed towards the police (R. 370) and three shots rang out, the flashes emanating from the trucks (R. 453, 454, 463, 582). A police sergeant, Haga, fell wounded beside the Chief of

Police (R. 60, 157). The police returned the fire on order (R. 266). In the melee the convoy moved on and a few seconds later another one, consisting of a jeep and a truck entered the area. There was shouting (R. 235) and shooting from the occupants of this convoy as it approached the station and the police returned the fire (R. 223, 234, 235, 268, 455, 554). A check of weapons afterwards showed that 242 rounds of ammunition had been expended from 90 pistols by the police (R. 166). Because the driver of the last truck in the second convoy had been shot and killed, the vehicle left the road, ran into a vegetable garden, and struck an adjoining building. After this truck was surrounded and lights turned on it, its occupants were ordered to dismount one by one and were searched and arrested. Some hours later, two pistols were found lying in the roadside garden plot and one was discovered on the bed of the truck. The latter was fully loaded but had not been fired (R. 279). Of the former, a U.S. Colt, was partially loaded with five rounds and had apparently been fired since last being cleaned (R. 282). A number of pipes, sticks, and clubs were also found on the bed of the wrecked truck and similar items were later turned over to the police by the driver of one of the other trucks who found them on his truck when he returned it to the garage. He testified that one of his passengers had fired a pistol at the police in front of him as he sat in the truck (R. 463). The police sergeant who was first shot, died of his wound several days later. Other police exhibited scars of bullet wounds received during the incident. Expert testimony tended to show that the deceased and the injured policemen received such wounds as could only have come from a height greater than the level on which they were standing, such as from the guns of persons riding on a truck, although cross-examination brought out the fact that the same type of wounds could have resulted from level fire had the victims been in a crouching position when shot. Each of the accused who were convicted except #2 Chen Sung Ming was shown to have been present on the vehicles at the shooting. Defendant #26 Tsai Lung Tu was identified as a leader (R. 171, 172, 271, 276). The Japanese police had been authorized by SCAP to maintain law and order and to arrest Formosans (R. 31, 572, 573, 579). [See also: Radio Z.21543 from CINCAFPAC to Commanding General, Eighth Army, 15 October 1946, wherein it is directed that "...Formosans will be examined for identification recognizing them as Chinese Nationals, in which case they will be treated as Chinese. If they have no such identification, their names and pertinent information will be submitted to this headquarters for clarification of their status before any action is taken." Also see: Memorandum for the Imperial Japanese Government, subject: "Exercise of Criminal Jurisdiction" AG 015 (19 Feb 46) LS, dtd 19 February 1946, (SCAPIN 756)].

5. Defense Evidence:

Also as background to explain the incident, defense showed that a feud existed between the Formosan-Chinese merchants of the Shimbashi-Shibuya areas and the Japanese group known as the Matsuda Gumi. For several months gangster tactics had been employed by the latter in raiding Formosan stalls and shops, beating the merchants and even their wives and children (R. 1212), and destroying their goods, their shops, and in several instances even their homes. The Matsuda Gumi allegedly were trying forceably to eject the Formosans from ground to which the former claimed title. In a big raid occurring on 17 July much damage was done, many Formosans were beaten up, and among the crowd was found one Japanese policeman from the Shibuya Police Station. This fact served further to confirm the Formosans' belief that the Japanese police were themselves aiding the Matsuda Gumi in these attacks.

The Formosans decided to spread the word that there would be a meeting on the afternoon of 19 July to be conducted at the Showa Chinese school where the offices of the Federation of Chinese Associations were located. This organization is a welfare group caring for rationing among the Chinese and aiding in solving problems of employment, repatriation, and rehabilitation. The purpose of this meeting was to determine what measures should be undertaken for common protection against the Matsuda Gumi and what steps should be taken

to obtain redress and compensation for the losses already suffered from the past raids. Word of this meeting reached the Diplomatic Mission of the Republic of China stationed in Tokyo and it appeared likely that the large group present might decide to move on to the Mission en masse to present their grievances and petition for redress. Feeling that the limited facilities of the Mission could not handle so large a gathering, the chief of the Consular Affairs Section of the Mission, a Mr. Ling, determined to attend the meeting at the Showa school and thus obviate the need for a gathering at the Mission.

Mr. Ling went to the assembly of Formosans at the Showa school, spoke with the leaders, heard their complaints and then addressed the gathering himself. He told the people he was acquainted with their problems and that the Chinese Mission was already acting to obtain whatever redress was possible. As it was rumored that a large gathering of Matsuda Gumi, possibly 20,000 in number, was planning an imminent attack on the Formosans, he explained to them that such an attack could not occur in Tokyo under Occupation control and thus quieted their fears. He told them it was unnecessary for them to go out to the Chinese Mission and that they should return to their homes and allow the Mission to act in their behalf. A show of hands by the assembly indicated satisfaction with this solution.

The meeting terminated and the Formosans began to depart. Shortly thereafter some of those who had left first returned and reported that, as they attempted to go through the Shimbashi area, they came upon members of the Matsuda Gumi who, spotting one of them as a Chinese, attacked him and tried to beat him up. He escaped and they all returned to the Showa school. It was decided to board trucks and head for the Mission. As these trucks passed through the Shimbashi area firing was heard including machine-gun fire coming from the roof of a building. No one was hit and the trucks continued on.

In the meantime word of the attempted beating at Shimbashi reached Mr. Ling back at the Chinese Mission and he also learned that the Formosans were preparing to come out to the Mission. He asked Major General Li Lee-Bai, an advisor at the Mission, to accompany him by jeep to the Showa school and head off the crowd. As they drove through Shimbashi they came upon some of the trucks loaded with the Formosans and decided to lead them back to the Mission since other trucks were already on the way. When all were assembled at the Mission, General Li himself addressed the people, repeated Mr. Ling's remarks that the Mission dealing with representatives of those complaining would take appropriate measures to protect their interests, and stated that he would supply jeep escorts to lead the trucks to various railroad stations where trains could be boarded for their homes. Again a show of hands indicated satisfaction on the part of the assembly with this plan.

Jeeps were provided by the Mission to accompany each group of two or three trucks. The first group set out for Shinagawa Station and reached there without mishap. The second group intended to go to the Shibuya Railroad Station. The third group was to take those people living in Nakano and was to pass through Shibuya to reach that section. General Li assured the people their presence on trucks would not be misunderstood since anyone could see they were being led by official Chinese Mission jeeps.

Two roads led to the Shibuya Railroad Station. Both the second and third convoys took the shorter which passed the Shibuya Police Station. When the second convoy reached the area near the Shibuya Police Station they were halted by the police who shot several times into the air to stop them. The occupants of the leading vehicle, the jeep, conferred with the police, explained they were returning from a meeting at the Chinese Mission, and merely wanted to pass through to get to the Shibuya Railroad Station. The police chief accepted their explanation, ordered other police to let them pass, and stationed one policeman on the jeep. Just as they got underway, shots rang out from police on both sides of the road surrounding the convoy. The Formosans claimed they neither uttered provoking language, spat upon the police,

brandished any sticks or clubs, nor pointed or fired any weapons. On the other hand one claimed several police shouted out that they would kill at least twenty Chinkaros (Chinese-Slaves) that night and that they would show them that Japan did not lose the war to China. As the shooting began the Formosans took cover as best they could on the crowded trucks. The trucks moved on.

Witnesses from the third convoy testified that as they approached the Shibuya area they heard shooting and were immediately fired upon themselves. They had not been stopped by the police and drove right through the crossfire. Some jumped from the wrecked truck after its driver was shot and were running for safety when halted and arrested by the police. Those still on board were ordered to come down and were then arrested.

The defense produced one American eye-witness, a War Department civilian employee, who was parked in his jeep on the street near the police station on the side from which the Formosans approached and faced away from the station. He testified that the very first shots came from the direction of the police and that at no time did he see any shots fired from the trucks. He said the police were deployed in a sort of battle formation prior to the approach of the first convoy, that they had their weapons in hand before the trucks arrived, that they were so placed that they were exposed to their own cross-fire, that they fired upon the final convoy immediately as it approached the area without any firing coming from its vehicles, and that he made a u-turn and drove past the trucks through the firing.

The undamaged trucks drove back to the Chinese Mission carrying their dead and wounded as well as uninjured personnel. Six Formosans were killed or died shortly thereafter, twenty-one were wounded, and one had been beaten after he had dismounted at the scene of the incident (R. 608).

After defense rested it was shown that at the Showa School, practically all of the Formosans present were armed with sticks or iron clubs (R. 1133) and that fixtures and equipment of the school susceptible of use as clubs had been torn out and otherwise removed. Some of it was found in the truck which was captured by the police.

6. Errors and Irregularities:

The record of trial contains a number of minor errors and irregularities none of which were prejudicial to the substantial rights of the accused.

At the outset of the trial (R. 6) defense challenged the jurisdiction of the Commission on the grounds that it was composed of only three members instead of five as required by General Orders No. 56, Headquarters Eighth Army, 4 June 1945. The challenge was correctly denied. This Commission was a special commission authorized by Letter Order GHQ, SCAP, 29 Aug 1946, AG 015 (29 Aug 46)LS-L, subject: "Establishment of Military Commission", and was only bound to meet the requirements therein set out and those set out in Letter Order GHQ, SCAP, 19 February 1946, AG 015 (19 Feb 46)LS to which reference was made in the former. In neither of these orders is a five-member commission required. The latter order requires that the commission be in accordance with paragraphs 38-47, section VII of the Manual of Military Government and Civil Affairs (W.D. FM 27-5) which merely provide that "not less than three [members] except in extraordinary circumstances" will be appointed (FM 27-5, sec. 40a, P. 50).

Defense objected to standing trial on the five Specifications to the Charge on the grounds of multiplicity and offered a special plea in that regard (R. 7). Counsel pointed out that Specification 1 charged unlawful possession of weapons by the defendants and that Specifications 2 to 5 alleged the aiding,

abetting and engaging in a disorder and fight. Specification 2 need not be considered in view of the findings of Not Guilty as to it. Specification 3 may well be considered to cover the matters alleged in Specifications 3, 4 and 5, and only findings as to Specifications 1 and 3 will, accordingly, be considered.

On two occasions during the course of this trial one of the defendants, #43 Chen Ching Lung, was absent for a complete session of the court. On the first occasion, 1 October, he was not brought to court for the afternoon session apparently because of failure to notify the officials of the jail in which he was confined. The absence of this defendant was not noticed until the following day at which time it was called to the court's attention by the prosecution. On the second occasion of this defendant's absence the court was informed that he had reported to the dispensary and was now sick in his cell. The defense was asked to agree to proceed in his absence and did so (R. 601). In neither instance does the absence of this defendant constitute a fatal defect in the trial as to him. There is no showing of prejudice, his counsel ably represented him during the brief absence, and the verbatim record of testimony was always available to him if he desired it. Such a brief departure is insignificant and without importance. The most partisan advocate could not demonstrate harm to the accused therefrom.

Prior to swearing interpreters for the court, the defense raised the question whether official interpreters, duly qualified in the languages of the defendants would be provided to translate the proceedings for all the accused. Defense offered to provide interpreters so qualified but prosecution objected to the official use of any interpreters save those already provided who were capable only of English-Japanese interpretation. The court ruled that the defense could use such interpreters to keep the accused advised of the proceedings. This is a substantial fulfillment of the requirement of section 5e of Letter Order, GHQ, SCAP, 19 February 1946, AG 015 (19 Feb 46)LS, subject: "Establishment of Military Occupation Courts" which states: "The following rights will be accorded to an accused ... to have present with him and his counsel a qualified interpreter in case the accused does not understand the language of the court."

The Commission was in error when it ruled that defense attorneys, including non-English speaking ones, would have to provide their questions in English first to be ruled upon by the Commission prior to translation into another language (R. 14). However, it is apparent from the record that the defense was well represented and that queries on direct and cross-examination completely covered the field. Therefore no prejudice to the substantial rights of the accused is perceived.

A number of minor erroneous rulings on points of law were given but none is found which can be magnified into an error which can be said to affect injuriously the substantial rights of the accused.

Allowance of the argument that failure of some of the accused to testify creates an inference of guilt was not prejudicial in view of the compelling evidence of guilt alibide such asserted presumption. Such a presumption in not indulged in during this discussion nor in reaching the conclusions later stated.

7. Opinion:

The evidence in the entire case, brushing aside over-legalistic minutiae and non-substantial trivialities of technical formalities, compellingly established the following facts beyond a reasonable doubt:

Formosans had arranged with a Japanese association, Matsuda Gumi, to use a burned over area for merchant stalls. Later, the latter attempted unsuccessfully to secure the return of this property. Blackmarketing by the Formosans resulted in raids by Japanese police, confiscation of the illegal articles, and their recapture by the Formosans. Uncertainty of the Japanese police as to their authority to cope with Formosans, due to their asserted status as United Nations' Nationals, caused such a weak attitude on the part of the former that when a police order to take down a sign was ignored, the Japanese authorities removed it in the dead of night to avoid trouble. The argument of the Formosans with Matsuda Gumi developed into raids and counter-raids in which the public peace and order were flouted by both sides. On one occasion a Japanese policeman, sent to investigate, was beaten by the Formosans.

With this background a meeting of Formosans at Showa School was arranged for 19 July by some one undisclosed in the evidence. Word was received by the Japanese police that this gathering of Formosans had as one of its objects to attack and burn the Shibuya Police Station in order to put an end to destructive police raids on Formosan blackmarketeers. Accepting this rumor as true, the Chief of Shibuya Police Station secured reinforcements and deployed them to repel any assault. As a precaution, all vehicles nearing the police station were stopped and checked.

Meanwhile a large gathering of Formosans at the Showa School was becoming restive. A representative of the Chinese Mission intelligently endeavored to quiet them by suggesting intercession by the Chinese Mission as their advocate, secured a show of acquiescence and asked them to disband and go home. Presently one of their number reported an attack upon him in the Shimbashi area. Excitement flared anew. Clubs both wooden and metal (some pilfered from the school equipment) were seen by the school principal in the hands of most of those present and a truck expedition set out for the scene of the reported attack in the Shimbashi area.

The Chinese Mission, commendably endeavoring to aid in the Occupational Mission of maintaining public order and avoiding violent group action, rushed a Chinese Major General out to intercept the Formosans. In this he was successful and he led them to the Chinese Mission. There he addressed them reiterating the requests of the previous speaker at the Showa School. To keep his finger on the explosive situation he sent a jeep with each of two convoys headed for the Shibuya Railroad Station. As the first group met the deployed police it was stopped after running by the leading elements. Indignation and anger were demonstrated by the Formosans by shouting opprobrious epithets, by waving clubs, pointing pistols, and spitting upon the Japanese police. The police chief appeared, questioned an apparent leader, furnished a policeman to accompany the group, and allowed them to pass. The "leader" shook hands with the chief but, as the cavalcade started, three shots in quick succession were fired from the Formosans' vehicles. A police sergeant close to the chief fell mortally wounded. Police leaders gave the order to fire and a general fusillade ensued in which both sides suffered severe casualties. As the first convoy pulled away the second appeared, the occupants shouting and yelling. Shooting commenced from this group and the police retaliated in kind. The driver of the last truck was killed and his vehicle ran into a garden, halting against a building. The occupants were cautiously surrounded by the police, a light was brought to bear on the truck, and the passengers brought out one by one, searched and arrested. The injured were treated and public peace restored.

Search of the wrecked truck revealed a number of clubs and a pistol; two pistols were found in the garden. A driver of a truck which had not stopped at the scene after the shooting later delivered clubs to the police which his Formosan passengers had left. Some of the clubs had come from Showa School.

Each of the accused who was convicted was shown as having admitted that he was in the convoy group at the scene of the disturbance, with the exception of #2 Chen Sung Ming. The one person who was convicted of wrongful possession of a pistol #21 Chu Teh Fu, was proved to have admitted such possession.

The finding of guilty of wrongful possession of a weapon as to this defendant is supported by the evidence including the defendant's own admission. Such possession is an offense under SCAP Memorandum for the Imperial Japanese Government, subject: "Instructions Concerning the Surrender of Arms by the Civilian Population of Japan", AG 388.3 (23 Oct 45) C/S, dtd 23 October 1945 (SCAPIN 181).

As to defendant #2 Chen Sung Ming, there was no proof that he was present in the convoy group at the time of the disturbance or participated in any way. Regardless of the fact that it is possible, the fact probable, that he was guilty as charged in Specification 3, the proof failed. Since guilty findings may be approved solely on the basis of proved guilt the findings and sentence against this defendant, #2 Chen Sung Ming, should be disapproved.

As to all others who were convicted, applying the measuring stick of substantial justice as employed in civilized nations, a strong case of guilt beyond a reasonable doubt was established. Filled with real or imagined grievances, armed with pistols and clubs, they entered an area where Japanese police officials (duly authorized by the Allied Powers as such) were stationed on duty, shouting imprecations, threatening, spitting upon and firing at the police. They defied their benefactors the Chinese Mission officials who had done everything in their power to quiet and pacify the young hot heads who had gathered. They were bent on the direct action of youth. They flouted the public peace, which the Allied Powers are undertaking to maintain through the Japanese Government and its instrumentalities (Annex 8 to Adm. 019, MG, Hq 8th Army, see copy of extract therefrom attached at end of Review), and set an example of rioting and public disturbance which might well unbalance the delicate scale of public order in Japan. Their conduct was precisely patterned after the sort of mob violence so emphatically condemned by the Supreme Commander for the Allied Powers. No evidence appears of an effort by a single one of the group in the convoy to quiet the disturbance or to disassociate himself therefrom. On the contrary, enthusiastic group participation by all in the riotous affront to the public peace is evident. Thus, each of the accused with the one exception mentioned, was shown to have been an active aid, an abettor and a participant in this un-called for and tragic occurrence.

In such a riotous affray everyone who is proved to have been intentionally present is prima facie guilty of participation and, to avoid conviction, must show that he at the time was actively engaged in quelling the disorder or dispersing the crowd (CM 267878 Lumpkins; 44 Bd. Rev. 149. II Wharton, Criminal Law (12 Ed) Sec. 1865).

The defense contention that Specifications 4 and 5 are duplications of Specification 3 is well taken under the facts in this case. The findings in Specifications 4 and 5 should be disapproved for that reason.

The portion of the sentences relating to suspension are not within the province of the Commission. They may properly be considered as surplusage and regarded only as recommendations.

In reviewing this trial, these considerations are believed to be of paramount importance: Did the accused receive a fair trial? Was the trial free of prejudicial error? Were they proved guilty beyond a reasonable doubt? Were they actually guilty? Were the sentences appropriate, adequate and not excessive? A meticulous and unbiased scrutiny of the record, the dissenting opinion, the well written brief of defense counsel, the intercessions by the representatives of the Chinese Government and the allied papers, compels an

affirmative answer to each of these questions except as to accused #2 Chen Sung Ming. Nothing suggesting insanity of any accused appears. They were competently, ably, adequately and expertly defended by lawyers of their own as well as of American nationality in a long trial in which they were permitted to present every conceivable element of their asserted defense.

8. Recommendations:

It is worthy of remark that all but two of the accused are in their teens or early twenties and most are listed as unemployed. It is apparent from their actions that their presence in Japan is serving no good purpose and is harmful to the interests of the Allied Powers. They have exhibited complete disregard for, in fact have acted in defiance of the helpful and intelligent efforts of their friend and advisor, the Chinese Mission, to steer them into ways of peace and channels of law and order. They are advocates of force and terrorism and are harming the good reputation of their law-abiding countrymen here. They have been confined for several months already. It is for the best interests of all concerned that they not be longer imprisoned but be immediately returned to their own lands and that their sentences to confinement be at the time of such return suspended. Accordingly, it is recommended that the findings and sentence as to defendant #2 Chen Sung Ming be disapproved in their entirety, that the findings of guilty of Specifications 4 and 5 as to the remaining defendants be disapproved but that their sentences, being adequately supported by the findings of guilty of Specification 1 (as to defendant #21 Chu Teh Fu only) and Specification 3 be approved and ordered executed, but that the sentences to confinement at hard labor be suspended upon the date of their expulsion from Japan. Since the convicted defendants are, with the exception of #2 Chen Sung Ming, to be repatriated, it will be necessary that a letter be sent from this headquarters through CINCPAC to SCAP informing the latter of the sentences to expulsion and recommending that immediate deportation of those concerned be accomplished through appropriate authority from that headquarters.

9. Actions:

Forms of actions to carry these recommendations into effect and the proposed letter to effect the resultant deportations are attached hereto.

Allan E. Browne

ALLAN E. BROWNE
Lt Colonel, JAGD
Army Judge Advocate

BY COMMAND OF LIEUTENANT GENERAL NICHOLSON

Headquarters Eighth Army
APO 343
20 March 1946

ANNEX 9 to ADM O 19, MILITARY GOVERNMENT

E X T R A C T

.....

2. Powers

b. The Supreme Commander for the Allied Powers will exercise control over Japan and the Japanese, to the greatest practicable extent, through the Emperor and various instrumentalities of the Imperial Japanese Government which prove suitable for this purpose. The Japanese Government will generally be permitted to exercise the normal power of government in matters of domestic administration, subject to the right of the Supreme Commander for the Allied Powers to require changes in the governmental machinery and personnel. The Supreme Commander for the Allied Powers will have authority to take direct action in the event of the unwillingness or failure of the Japanese authorities to act effectively.

.....

BY COMMAND OF LIEUTENANT GENERAL NICHOLSON:

CLOVIS E. BYERS
Major General, GSC
Chief of Staff

OFFICIAL:
BURGESS
G-4

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ALLAN R. BRONNE
Lt Colonel, JAGD
Army Judge Advocate

R-E-S-T-R-I-C-T-E-D

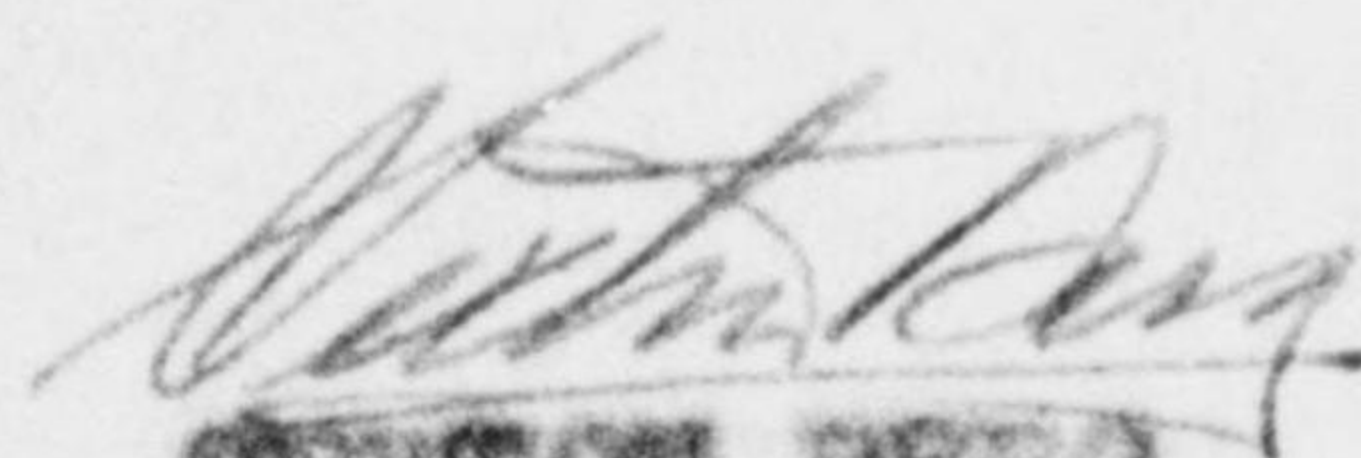
HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate
APO 343

December 1945

SUBJECT: Transmittal of Record of Trial.

TO : Commanding General, 8th Army, APO 343.

Transmitted herewith is the completed record of trial in the case of United States vs Cheng Shang, et al, tried by Military Commission.


SEXTON HERO
Colonel, ICD
President

Incls:
Vol I - Record of Trial
Vol II - Exhibits

MILITARY COMMISSION DATA SHEET

Name (including aliases) - Nationality - Military status at time of alleged offenses

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
1. Was the Commission ordered by proper authority?.....	✓					
2. Are all orders showing membership of the commission properly entered in record?.....	✓					
3. Are all official rules and regulations, or other directives, governing the proceedings of the court incorporated in the record?.....	✓					
4. Were there less than three members detailed or present at any meeting?.....		✓				
5. Was the law member designated by the convening authority?.....	✓					
6. Did the commission have jurisdiction of the person and the offense?.....	✓					
7. Does the record show the place, date and hour the commission convened?.....	✓					
8. a. Are all members of the commission and personnel of the prosecution and defense accounted for as present or absent?.....	✓					
b. If absent is reason for absence given?.....	✓					
c. Was accused asked whom he desired as counsel?.....	✓					
d. In case of filling of vacancy among members of the commission or alternates after trial has begun, was the substance of all proceedings had and evidence taken made known to the member or alternate in open court before the trial proceeds?.....						
9. Was accused given an opportunity to challenge for cause any member of the commission?.....	✓					
a. Was each member challenged for cause sworn for his examination on the challenge?.....						
b. Was the action of the commission upon challenges regularly and properly taken?.....						
10. Was the commission sworn?.....	✓					
11. Was any officer sitting as a member of the commission the accuser, a witness in the case, or did any such officer personally investigate the case?.....		✓				
12. Were the personnel for the prosecution sworn?.....	✓					
13. Were the reporters sworn?.....	✓					

(Military Commission Data Sheet Cont'd)

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
14. Were the interpreters sworn?.....	✓					
15. Was the accused properly arraigned?.....	✓					
16. Are there copied or incorporated into the record:						
a. Charges and specifications?.....	✓					
b. Name, grade and organization of person signing the charges?.....	✓					
c. Affidavit to the charges and specifications?.....	✓					
d. Name of the person who administered the oath verifying the charges and his official capacity?.....	✓					
e. The order of reference for trial?.....	✓					
17. Does each specification state an offense?.....	✓					
18. Are the pleas of the accused regularly entered?.....	✓					
19. Are the findings properly entered?.....	✓					
20. Was the vote upon each finding in closed session?.....	✓					
21. Was the vote upon the sentence in closed session?.....	✓					
22. Did at least two-thirds of the members present at time vote on each finding was taken concur therein?.....	✓					
23. Did at least two-thirds of the members present at time vote was taken concur in the sentence?.....	✓					
24. Does the evidence sustain the findings of the commission?.....	✓					
25. Are the findings legal?.....	✓					
26. Is the sentence legal?.....	✓					
27. Does any ruling of the commission on the admission of evidence or other matters injuriously affect the substantial rights of the accused?.....			✓			
28. Is the record properly authenticated?.....	✓					
29. Does it sufficiently appear that the defense counsel accepts the record as correct?.....	✓					
30. After each adjournment during trial, is presence or absence of members of the commission, prosecution and defense, and the accused properly accounted for?.....	✓					

(Military Commission Data Sheet Cont'd)

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
31. Is action of the reviewing authority properly entered in the record and signed?.....						
32. In the action of the reviewing authority:						
a. In cases not adjudging death, if the action approves sentence in whole or in part, does it order execution of the sentence and designate a proper place of confinement, if confinement approved?.....						
b. In death cases does the action refer the case to SCAP for final action?.....						
33. Is clemency recommended by the commission?.....						

Richard P. Elliott
Prosecutor

Date

Staff Judge Advocate of Convening Authority

Legal Advisor of Confirming Authority

8

HEADQUARTERS EIGHTH ARMY
United States Army
APO 343

BEFORE A MILITARY COMMISSION CONVENED BY AUTHORITY OF THE COMMANDING
GENERAL, UNITED STATES EIGHT ARMY, 30 SEPTEMBER 1946.

UNITED STATES OF AMERICA

VS

1. CHEN SHANG TANG 2. CHEN SUNG MING 3. LIAO JUNG CHEN 4. HUNG TSUNG
JEN 5. HSHIEH TSAI HSUN 6. CHANG JUNG LI 7. LIAO TSIANG CHIN 8. LI WEN
CHIH 9. KUO CHU HOU 10. SUNG WEN HSIANG 11. CHIEN MU SOONG 12. LIN YOU
SOONG 14. WENG HSING CHUAN 15. CHANG MAO 16. LIU CHAO KUANG 17. WANG
YING FANG 18. LIAO CHIN JUNG 19. CHENG AH PING 20. FANG FONG YI 21. CHU
TEH FU 22. LI MOU JU 23. LI PEI TUNG 24. HSU HSI FU 25. LIN CHIA WEN
26. TSAI LUNG TU 27. CHANG SHU CHI 28. TSAI LI TSAC 29. LIAO SHUN CHING
30. YEN LAI MING 31. LO HSIU KENG 32. CHUANG TING PIAO 33. CHIANG HUNG
KAI 34. HWANG CHIN PAC 35. HSU YU CHANG 36. LIU WEI CHIANG 37. CHENG TEH
WAN 38. WENG TIEN LANG 39. LIN SHUI YUAN 40. LIANG CHI FA 42. FANG YUN HO
43. CHEN CHING LUNG.

CHARGE

Acts prejudicial to the objectives of the occupation forces.

SPECIFICATIONS

1. In that Chen Shang Tang, Chen Sung Ming, Liao Jung Chin, Hung Tsung Jen, Hsieh Tsai Hsun, Chang Jung Li, Liao Tsiang Chin, Li Wen Chih, Kuo Chu Hou, Sung Wen Hsiang, Chien Mu Soong, Lin You Soong, Weng Hsing Chuan, Chang Mao, Liu Chao Kuang, Wang Ying Fang, Liao Chin Jung, Cheng Ah Ping, Fang Fong Yi, Chu Teh Fu, Li Mou Ju, Li Pei Tung, Hsu Hsi Fu, Lin Chia Wen, Tsai Lung Tu, Chang Shu Chi, Tsai Li Tsac, Liao Shun Ching, Yen Lai Ming, Lo Hsiu Keng, Chuang Ting Piao, Chiang Hung Kai, Hwang Chin Pao, Hsu Yu Chang, Liu Wei Chiang, Cheng Teh Wan, Weng Tien Lang, Lin Shui Yuan, Liang Chi Fa, Fang Yun Ho, Chen Ching Lung together with other unidentified persons acting jointly and severally, on or about the 19th of July 1946, in the area surrounding Shibuya-ku police station in Tokyo, Honshu, Japan, a public place under the jurisdiction of the Occupation Forces, did wrongfully and unlawfully have and possess dangerous weapons, to-wit, pistols, iron bars, and other instruments wooden clubs, to the prejudice of Law and Order and to the prejudice of the objectives of the occupation.

2. In that Chen Shan Tang, Chen Sung Ming, Liao Jung Chin, Hung Tsung Jen, Hsieh Tsai Hsun, Chang Jung Li, Liao Tsiang Chin, Li Wen Chih, Kuo Chu Hou, Sung Wen Hsiang, Chien Mu Soong, Lin You Soong, Weng Hsing Chuan, Chang Mao, Liu Chao Kuang, Wang Ying Fang, Liao Chin Jung, Cheng Ah Ping, Fang Fong Yi, Chu Teh Fu, Li Mou Ju, Li Pei Tung, Hsu Hsi Fu, Lin Chia Wen, Tsai Lung Tu, Chang Shu Chi, Tsai Li Tsao, Liao Shun Ching, Yen Lai Ming, Lo Hsiu Keng, Chuang Ting Piao, Chuang Ting Piao, Chiang Hung Kai, Hwang Chin Pao, Hsu Yu Chang, Liu Wei Chiang, Chen Teh Wan, Weng Tien Lang, Lin Shui Yuan, Liang Chi Fa, Fang Yun Ho, Chen Ching Lung, together with other unidentified persons, acting jointly and in concert on or about the 19th of July 1946, in the area surrounding the Shibuya-ky police station, in Tokyo, Honshu, Japan, a public place under the jurisdiction of the Occupation Forces, did, wrongfully and unlawfully aid, abet and engage in the disorder and fight, by using reproachful and provocative language, to the disturbance of the peace and to the terror of the people in the neighborhood, resulting in the death of several people and the wounding of others, all to the prejudice of the objectives of the Occupation.

3. In that Chen Shan Tang, Chen Sung Ming, Liao Jung Chin, Hung Tsung Jen, Hsieh Tsai Hsun, Chang Jung Li, Liao Tsiang Chin, Li Wen Chih, Kuo Chu Hou, Sung Wen Hsiang, Chien Mu Soong, Lin You Soong, Weng Hsing Chuan, Chang Mao, Liu Chao Kuang, Wang Ying Fang, Liao Chin Jung, Cheng Ah Ping, Fang Fong Yi, Chu Teh Fu, Li Mou Ju, Li Pei Tung, Hsu Hsi Fu, Lin Chia Wen, Tsai Lung Tu, Chang Shu Chi, Tsai Li Tsao, Liao Shun Ching, Yen Lai Ming, Lo Hsiu Keng, Chuang Ting Piao, Chiang Hung Dai, Hwang Chin Pao, Hsu Yu Chang, Liu Wei Chiang, Cheng Teh Wan, Weng Tien Lang, Lin Shui Yuan, Liang Chi Fa, Fang Yun Ho, Chen Ching Lung, together with other unidentified persons, acting in concert on or about 19th of July 1946, in the area surrounding the Shibuya-ku police station, in Tokyo, Honshu, Japan, a public place under the jurisdiction of the Occupational Forces, did wrongfully and unlawfully aid, abet and engage in, a disorder and fight, by using reproachful and provocative language, by acting in a violent and threatening manner, and by firing pistols, to the disturbance of the peace and to the terror of the people in the neighborhood, all to the prejudice of the objectives of the Occupation.

4. In that Chen Shan Tang, Chen Sung Ming, Liao Jung Chin, Hung Tsung Jen, Hsieh Tsai Hsun, Chang Jung Li, Liao Tsiang Chin, Li Wen Chih, Kuo Chu Hou, Sung Wen Hsiang, Chien Mu Soong, Lin You Soong, Weng Hsing Chuan, Chang Mao, Liu Chao Kuang, Wang Ying Fang, Liao Chin Jung, Cheng Ah Ping, Fang Fong Yi, Chu Teh Fu, Li Mou Ju, Li Pei Tung, Hsu Hsi Fu, Lin Chia Wen, Tsai Lung Tu, Chang Shu Chi, Tsai Li Tsao, Liao Shun Ching, Yen Lai Ming, Lo Hsiu Keng, Chuang Ting Piao, Chiang Hung Dai, Hwang Chin Pao, Hsu Yu Chang, Liu Wei Chiang, Cheng Teh Wan, Weng Tien Lang, Lin Shui Yuan, Liang Chi Fa, Fang Yun Ho, Chen Ching Lung, together with other unidentified persons, acting in concert on or about 19th of July 1946, in the area surrounding the Shibuya-Ku police station, in Tokyo, Honshu, Japan, a public place under the jurisdiction of the Occupational forces, did wrongfully and unlawfully aid, abet and engage in a disorder and fight, by using reproachful and provocative language, by acting in a violent and threatening manner, and by firing pistols, thereby interfering with the lawful performance of the functions and duties of the Japanese police, all to the prejudice of the objectives of the Occupation.

5. In that Chen Shan Tang, Chen Sung Ming, Liao Jung Chin, Hung Tsung Jen, Hsieh Tsai Hsun, Chang Jung Li, Liao Tsiang Chin, Li Wen Chih, Kuo Chu Hou, Sung Wen Hsiang, Chien Mu Soong, Lin You Soong, Weng Hsing Chuan, Chang Mao, Liu Chao Kuang, Wang Ying Fang, Liao Chin Jung, Cheng Ah Ping, Fang Fong Yi, Chu Teh Fu, Li Mou Ju, Li Pei Tung, Hsu Hsi Fu, Lin Chia Wen, Tsai Lung Tu, Chang Shu Chi, Tsai Li Tsao, Liao Shun Ching, Yen Lai Ming, Lo Hsiu Keng, Chuang Ting Piao, Chiang Hung Kai, Hwang Chin Pao, Hsu Yu Chang, Liu Wei Chiang, Cheng Teh Wan, Weng Tien Lang, Lin Shui Yuan, Liang Chi Fa, Fang Yun Ho, Chen Ching Lung, together with other unidentified persons, acting in concert on or about the 19th of July 1946, in the area surrounding Shibuya-ku police station in Tokyo, Honshu, Japan, a public place under the jurisdiction of the Occupational Forces, did wrongfully and unlawfully aid, abet and engage