

Very good impressions of the result of the Diet is reported from the whole area of the Greater East Asia. Germany and Italy felt keenly the strength and reliability of Japan. Britain stated calmly the real state of affairs. The USA is making use of this for counter-propaganda and calumny.

Merger of Newspapers.

TOKYO-SHIMBUN. It is planned to make it a "juridical person for the public benefit" to be managed in cooperation by both companies, but the plan was not approved on account of the difficulties in the appointment of a president.

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Transportation of lumber. The army planned to move 1,000,000 koku of lumber and transported 200,000 koku in this year. Using a ship of 250 tons, a raft with 20,000 koku lumber was transported from MURORAN. This raft sailed the whole course in 6 days. At the speed of 4 knots, surviving the rough weather perfectly. Six days were needed to make the raft, but if this lumber were carried by ships, the same time would be needed for loading. The rafts are now carrying coal (in straw-bags) and oil poured in rubber bags. These oil bags have had a capacity of 200 tons, but the bags which have a capacity of 500 tons shall be used from now on.

The entrance examinations for universities shall be held only once, and those who fail this examination shall be allotted to suitable universities.

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June 25, 1943.

Re: Renovation and Strengthening of Prefectural Administration.

It shall be forced together with the Government organization of Tokyo Metropolis. Administrative officers to be newly appointed shall be chosen from distinguished personnel of each office.

Student Mobilization Organization: It shall carry out instructive and educational training. Only the labor supply is insufficient. Special attention must be paid to the teachers. Must be precautionary not to leave students think little of learning, making a pageant out of it. Must also take into consideration connection with national mobilization.

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June 27, 1943

Revision of National School Ordinance, Re students sent from Great East Asia Area studying in Japan.

Outline of guidance for the Independence of Philippines (given back).

Policy for SIAM.

WATANABE /T.N. Chief of the General Affairs Department/

Koyoshi HAYASHI, Director of the Harbor Bureau.

Tokyo Metropolis (present director of the Intendance Bureau)

FUKUOKA (Shigeru YOSHIDA), MIYAGI (UCHIDA).

NAGAYA (YOSHINO), NIIGATA (MAEDA),

IHIME (AIKAWA), HIROSHIMA (YOKOYAMA) OSAKA (KAWAHARA)

(25 prefectures alternation).

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June 29, 1943

Committee members from all ministries are chosen. One person may be added.

Re insuring the construction of wooden ships

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July 13, 1943.

Premier: reported the result of inspection of southern countries.

In TAI (SIAM) saw PIBUN (on the 4th). To assist her in attaining Independence, to respect her territory and encourage her prosperity. As for the fact that four provinces of MALAY have been annexed by SIAM, he was moved, acknowledging that said provinces had been taken with Japanese blood.

In Saigon, FRENCH INDO-CHINA, saw Ambassador YOSHIZAWA; cooperation of FRENCH INDO-CHINA is becoming limited, and she is trying to alienate the ANNAM people from the Japanese.

BURMA. For the sake of her independence, invited BA MAW to Singapore and encouraged him to complete speedily the preparation for independence. He understood the real intention of Japan of conceding KEMPAN and one more province to SIAM, but he was worried about how he should report it to the people.

JAVA. Appointing original inhabitants to take part in the civil administration; to appoint as many as possible as government officials from lower than middle class.

PHILIPPINES. They said "We think that the Great East Asia war is our war and we cooperate with you." LAUREL and other twney-one persons are preparing for her independence on July 19. By the end of August.

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The criminal in case of LAUREL was one of the anti-Japanese group trying to assassinate pro-Japanese high officials.

Independence of India.

Military administration has been established smoothly.

The percentage of attendance (at work) of original inhabitants of Palembang is 90%.

In North Borneo, nails for wooden ships were made of hard wood.

In Java, main engine for wooden ships.

Crude oil production is 12,000 tons every day.

Wrapping bags were made of rubber.

Small-sized vessels are used for communication between southern parts and wooden ships are being constructed continuously.

Forests in southern lands were larger than expected. In future wooden ships can be built using these timbers.

In southern lands, only one-third of /T.N. necessary/ engines may be expected to be obtained; so other ships shall be moved by either tug-boat or sail.

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Arrangement of material mobilization.

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July 16, 1943.

Rise of prices in central China; scarcity of foodstuff is the cause.

North China Federal Bank issued currency amounting to 1,900 million till June of this year which is twice as much as last year. Reserve Bank notes were 3,600 million at the end of last year while they were 1,200 million in the last year /T.N. month is missing/ and at the end of June /T.N. of this year/ it amounted to 9,100 million (90% of which was due to Japanese demand).

Export to North China amounted to 500 million yen and import 1,300 million (300 million yen of material mobilization plan is included in the amount of export) that is to say, it is chiefly due to incapability of balancing account with our materials.

There are two counter-measures:

A. Compulsory purchase of cotton thread and cloth in the Shanghai Area (500,000 bales, 180,000 of which are possessed by Japanese). But not in cash, although money will be paid to the Chinese.

B. 25 tons of gold ingots shall be sent to North and Central China.

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Above measure has relation to controlled currency policy, so it must be done in secrecy.

Re Estimate of the 19th Fiscal Year.

Condition of rice.

According to the investigation on June 1, the crop of wheat and barley is expected to be 19 million koku (nearly 95 million bushels) while it was expected to be 17 million koku; and buckwheat to be 200 thousand koku.

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July 20, 1943

Railway vehicles:

	Engineers	Laborers.
Ministry	2,000	30,000
Civil /installations/	400	40,000

Expenditure which can be paid by the first reserve fund:

Death and injury allowances.

Compensation money for military reserves called to active duty.

War-time hard work allowance.

Expenses for prizes, grants and relief.

Expenses for sailors' insurance and allowances in aid of sailors.

Expense for national conscription.

Travelling expenses for inspection and examination of electrical equipment.

Travelling expenses for inspection, admiralty courts, and official inspection

of vessels. /T.N. The translator cannot understand the meaning of this line/

Travelling expenses for trials of sailors, quarantines both on land and sea, and Admiralty Court.

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Travelling expense for inspection of airplanes.

Pension.

Disaster allowance for air student crew.

Expense for wrecked ship.

Paid up commission for postal life insurance and postal pension.

Charge of payment of sailors' insurance.

Payment for cancellation of subscription of telephone.

Manchurian Emperor granted about two tons of material.

KAILWAN coal mine.

Amount of reserve and savings of the 1st term of the year 1943 is 7,904 million yen, of which postal savings make up 1470 million yen.

Issue amount of national debt is 5,000 million (last year it was 3,500).

*should be P. 441?*  
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July 23, 1943.

Relinquishment of extraterritorial rights in China. Of privileges of trial, police and taxation, the last one is to be transferred from August 1, first of all.

Increase of income of 6 million yen to the Chinese side by the aid of wine-tax and amusement-tax.

Decrease of income of 1840 thousand yen to the China Republic by the wine-tax and entertainment tax.

Privy Council. Matters required to investigate within this month:

Embassy in Burma. Extraterritorial rights in China. 28th; approval of independence of Burma may be investigated too, but it will be discussed this afternoon.

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July 27, 1943.

On the 29th, extraordinary conference of Privy Council will be held.

The state of affairs in Italy:

Change of number of communications between the Italian Embassy and Italy. Soviet Russia uses Italian vessel but she will give it up. (Supply boat.)

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August 3, 1943.

Premier:

Policy of mobilization of materials in 1944. 358,493 yen (compensation to strengthen loading and unloading labor in harbor; Home Ministry). Every plan will end in a scrap of paper unless carried into effect. In 1944, probably the country will

be led into more difficult condition. We must not manage matters with the idea based on the present condition. We must accommodate ourselves to the change. Thought question is also of great importance. Strong political power must be put into force. Secret movement of communism and movement of rightist groups must also be controlled thoroughly.

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War Minister:

Percentage of acceptable territorial armaments:

10 to 15% is the 1st term. From the 2nd term, i.e., April 1944, it will be increased to 20% and furthermore to 30%.

Copper and brass cartridge cases shall be changed to steel case till September 1944. Percentage of acceptable material shall be more than 90%.

Product per head shall be more than twice as much as the present.

Consumption of electric power, fuel and oils shall be reduced to one half of the present. Increase the efficiency of labor. If we give airplane industry priority, it is in danger of becoming so called "prodigal son". Special attention must be paid to the use of materials in said industry. The prosperity of our textile industry is due to the contrivance and effort of enterprisers. This must be looked up to as the pattern of industry.

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Navy: Saving of materials and increase of efficiency of labor. Took advantage of the opinion of the Efficiency Association and in the TOYOKAWA Navy Yard, 30% increase in general; and most prominent part displayed 100% increase.

P. 446 - August 13, 1948.

Plan of Arrangement of industry in the Southern Islands.

Ten vessels have been in service, but at present, only two remain. Note of exchange between Japan and Siam. To Foreign Minister of Siam with reference to the attribution of your provinces of Malay and two provinces of Siam.

Discussion with the Premier:

Q. What is the effect of the political change in Italy to the Axis Powers?

A. The purport of the Great East Asia War was not to rely upon the activity of Germany and Italy, but to make nations of Great East Asia free and to destroy America and Great Britain. Otherwise the future of both Japan and Great East Asia will be gloomy.

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There is no fear if a hundred million people consolidate, a thousand million people cooperate, justice and strategical points shall be secured for all peoples. There is no doubt that the political change in Italy is a defeat mark of the Axis Powers. Operation in North Africa and Sicily Island is a kind of outlying island operation. Whether in Japan or in Siam, if the leaders would be unsettled in the firm conviction of ultimate victory, it will be a cause of defeat; otherwise there is no fear.

We are struck with awe as the Emperor is so busy. His Majesty is going to consult with civil experts of key industries and increase the production of foodstuff. Mr. ISHIGURO is added to the consultants.



P. 448 - August 20, 1943.

Plan of urgent arrangement of scientific research. (Premier) President of the Imperial University must be bestowed with controlling power. Special attention must be paid to the point which is urgently necessary.

P. 449 - August 24, 1943.

Seamen's Registration Act.

Regulations of Traveling Expenses.

Domestic:

Railway fares (officials of "Sonin" or senior service secretary rank are subject to 2nd class fares). Traveling expenses for travel by air. Daily allowance, charges for board and lodging, expenses of removal.

Stevedore service in Shioama. Materials and outfits required for powered sailing vessels: Shipping instructions are delayed.

Explanation of the Regulations concerning Electric Power Consumption.

Control of Korean laborers in Japan proper.

Ratio of the men on the battle front to the industrial workers on the home front as witnessed in Germany: 1 to 2.

Besides, 8 million alien nationals are being encased. In the case of Japan, the ratio comes up to 1 to 12.

While male adults are called either to active service or to services connected with war production, the rest of activities are left to be done in collaboration with women.

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The "cancer" that forms a havoc in the way of the government's administrative efforts is the fact that the officials who take charge of one office or other fail definitely to grasp the real meaning of the objective, for pursuit of which they are called to duty; and also lies in the lack of effort on the part of these

officials effectively to lead and control their subordinates.

We must give our attention to this angle: how can we accomplish increased production at this very moment of decisive war. The superior must be capable of holding his grip on his subordinates in the true sense of the word. "Sectionalism" as is witnessed among the different ministries must be discarded. To quote an example, when there now has been scheduled by the Ministry of Agriculture a land reform of one million "chobu" /or 2.45 million acres/, none of the prefectural governors know the details of this program. As a matter of fact, managements in prosecution of which are often made through an exchange of telegrams between the engineers in the central ministries and the engineers in the provincial offices, while the governors are left uninformed.

There is another question. This is one of subsidies. The fact is that any substantial sum of money, when divided among a large number of provincial offices, comes to mean only a meagre aid, in some instances such money coming to no more than a few hundred yen available for each of the villages so that it carries not much practical value. Such state of affairs makes it difficult for us to appropriate the funds in an effective manner. As a remedy thereto, we once tried to use this sort of subsidy without dividing it up. Our experience in this case was that, plagued by a complexity of rules and provisions, we were able to achieve no tangible results.

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From the view of our major objective, one or two of the islands are immaterial and may well be overlooked. On the other hand, we have to anticipate such an instance where we may face difficulties in sending large-sized vessels to the South due to the increasing pressure. To meet such an eventuality, we must adopt a policy to build a substantial number of powered sailing vessels and use them effectively.

The internal shipment of ores and coal is now given priority; but what is essential is to put instantly any incoming supply into the field of production as each of the shipments reaches our end.

The designation of the Mining Control Bureau sounds rather undesirable. I now recall an instance where a certain person, having succeeded in discovering an iron ore reserve in a certain sector in Hokkaido, approached first the Cabinet Planning Board and then a certain mining control bureau. His experience was that he was bitterly criticized by the latter authorities to this effect: Why did you go to the Planning Board? And he was thus spurned by these authorities. It was only after belaboring himself to quell them with a thousand pardons that he was directed to approach the governor of the relevant prefectural office. So, he turned to the Hokkaido prefectural government, but here again he was simply told to go to the War Ministry on the grounds that the site is situated within a fortified zone. Such was the way in which he was treated by those authorities. It is quite essential that any matter which may have a material bearing upon national strength should be given attention or help or aid in the matter of liaison by any ministry no matter whether the issue directly comes within its purview.

P. 452 - August 27, 1943.

Administrative Inspector-General for the 3rd round of audit:

FUJIWARA, Ginjiro

To be studied further at the next session.

Metal-working machines /machine tools/ 53,000 units,  
600 million yen; of which 200 million yen for 20,000 units of  
lathes and millin machines.

The grinders manufactured by the Hitachi Seisakusho /T.N. the Hitachi Works/ are the best in respect of working efficiency. War time model: 30% saving in material, with a gain of double working efficiency.

(Some steps are to be taken in order that we can see an effective application of the "special cases" in dealing with matters relating to timber.)

Plants.

The training of government officials. We must be careful to avoid such an outcome that this plan will prove to be no more than a mere recitation of words. Home Minister will go over and fix up those aspects which are common to all the different ministries with regard to the proposed training.

Service Regulations for government employees. Disciplinary Punishment Regulations for government employees.

Government employees are, as a rule, too little, if at all, concerned with the result of the work in which they are engaged. They are prone to stick to the details of laws and regulations, and to neglect to go into the depths of their duties with their whole hearts.

Informed the Cabinet.

We know for a fact that in many a case service men on their return to our home land, after several years of active service in the theatre of hostilities, are put by their employers on lesser positions than those of their former fellow workers, or in some other cases they are thrown out of a job. Steps must be taken to give them better treatment. This point calls for our attention.

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Foreign Minister: Study of the enemy's attempts. On the occasion of the Casablanca Conference held prior to the launching of the North African campaign, our enemy adopted the policy of

"the European front first", and declared his intention to prosecute the present war at the same time until he can see unconditional surrender of the Axis Powers.

When the enemy nations held a conference in Washington during the end of May, they decided that while they lay stress on the European front, they will energetically push forward also in the Pacific area; thus we now see the enemy's counter-offensives there.

In July when they captured Sicily, they made another declaration, again claiming an unconditional surrender, which had the effect of influencing the Soviet Union.

Meanwhile, the construction in our occupied areas made a marked advance so that our enemy now began to feel serious concern. Thus, he called what was termed the Quebec Parley to consider a counter-measure; the following (P. 454) being the subjects then discussed. European operations after the capture of Sicily; next steps which are to be taken for North Africa; the question of operations in the Pacific.

On August 10th, Churchill arrived in Quebec, and opening on the 11th the conference was ended on the 21st. During this period Churchill had to make a trip over to the United States to meet and talk with Roosevelt. The latter came to Quebec on the 17th; while Eden arrived there on the 18th, who then had a talk with Hull.

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The essential purport: To consider ways and means with which to unify operations in the theatre in the West and in the East into one integrated front so as to ensure a unified conduct of operations. The question of the Soviet Union was taken up as one of the major subjects, and they came to the conclusion that steps were to be taken so as to keep the Soviets on their side,

particularly because of the fact that in the battles on the European Continent the Soviet forces are struggling to fight in some of the major key sectors. They further discussed how to get the Soviet Union ranged on their side also in the operations to be waged in the Far East.

Meanwhile, we, of course, are doing a good deal in the way of preventing the Soviets from being persuaded by them. I feel that we have been successful so far in accomplishing some substantial results in working upon the Soviets in this respect.

When our Ambassador SATO made a representation to the Soviet with regard to a U.S. aircraft, which was caused to make a forced landing at a certain point in Soviet territory after the raid of the Kurile Islands, Molotov admitted the fact, assuring that he would see to that a just and fair disposal thereof will be made by the Soviet as a neutral nation.

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The Soviet Union does not seem to lay much emphasis on Germany, viewed exclusively from the viewpoint of Europe /T.N. this passage of the original version is not clear/; and she is enthusiastically occupied in her attempt to defeat Germany first. For this purpose, the Soviets are strongly urging an early launching of the 2nd front to engage 40-50 divisions of German troops there.

Here we see that the attitude of the Soviet Union differs from that of the Anglo-American democracies and that what is advocated by her under the name "democratization" is nothing but a red campaign. The Soviets' intention is to communize Germany as soon as it is defeated.

The Soviets' attitude toward Italy is also different from what the unconditional surrender in an Anglo-American version suggests; in other words the Russians have a peculiar idea to suit their own purpose.

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With regard to the Balkan issue, the Soviets' view likewise widely differs from that of Britain and the United States. These latter two powers, from a strategical point of view, intend to avail themselves of the Soviet Union, while the latter is insistent on the launching of a second front war. In the realm of politics, differences between them are thus becoming more conspicuous.

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In the above conference, it is said, the Soviet delegates argued that they could see no need of participating in a war conference unless steps were taken to launch a second front war, and that Litvinov as well as the Soviet Ambassador to Britain would not be sent back to resume their duties.

As regards Anglo-American counter-moves to meet such reactions, the press is likely to lead the public opinion. But I wonder what steps these governments will choose to take up.

According to the announcement of the 25th, they find that the war situation has taken a favorable turn for them; and they decided to work out a plan of operations to cover the whole world, thereby to obtain a unified command of the operations in all the different areas. Politically, they seem to lay emphasis on the operations in the Pacific. They called in and talked with T. V. Soong with a view to giving increased assistance to China.

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The third of the items taken up for discussion was another conference to be held within the current year, including the Soviet Union.

Item 4 was to recognize the French Free State of North Africa.

Item 5 was one in which they declared that they have two sets of plans to deal with Japan, namely, a plan of prolonged war and one of short term war.

I understand that Stilwell has been named Supreme Commander, and further that the former Chief of Staff of U.S. Air Forces was assigned to the post of Commander of U. S. Air Forces in East Asia, with 14 units of U.S. Air Forces in China and in addition to which 19 units in India are to be put under him.

Britain has appointed a supreme commander for its own air forces in the Southeastern Pacific area.

Meanwhile, I am confident we can score victory if we push forward vigorously in the follow-up of our plans, for the enemy will then be compelled to display his weak points. We must proceed in this direction.

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Prime Minister:

We are now brought face to face with just what we have been anticipating some day as a matter of course. The war situation is becoming more and more serious and critical. Our government and all the people must march forward in unity in accordance with our established policy.

A drive is to be made in prosecution of our policy of Greater East Asia. The China policy is one of supreme importance. It is quite essential to take some appropriate steps which will leave nothing to be desired in maintaining the solidarity of the 100 millions of our people.

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September 10, 1943

Students of alien nationalities in Japan:

Manchurian nationals	- 1,158 enrolled in 5 bodies.
Chinese	- 1,432 enrolled in 18 bodies.
Mongols	- 150
Other alien national- als originating from the Southern area	- 134 enrolled in 4 bodies
Total	- 2,875

Besides, there are 175 Southerners (connected with military establishments).

There are some tutelar bodies, and when they are added to the aforementioned, these bodies will number in total 28.

Subsidy - ¥ 1,683,000.00.

Distribution:

400 Chinese

100 Manchurians /?/ enrolled in government universities.

400 Chinese

100 Manchurians, enrolled in private universities.



50 enrolled in government colleges

50 enrolled in private colleges.

Agricultural Corporation Law:

To cope with the restrictions set for the railway passengers:

Officials of the local governmental establishments or members of the control corporations might in the future better be summoned when required, by the different ministries under their joint request instead of separately making summons at random. Responsibilities should be shifted from the upper to the subordinate authorities as far as possible.

September 18, 1943

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Measures for tightening controls to curb the consumption of gas.

The house-to-house call of meter check-up, twice monthly.

Tokyo: It would be advisable to exercise a gas supply holiday whenever the coal stock happens to go below 10,000 tons (which is a quantity to support a 4-day requirement. The whole metropolitan area should be divided into 8 sectors, of which the stoppage of supply is to be made for two of these sectors at a time for the duration of 24 hours.

Prior announcement should be given, and such action is to be scrupulously conducted by the attendant workers in a kind-hearted manner. Care must be taken so as to avoid the gas company's assuming a bureaucratic color.

Saving among the munition plants:

The question of the gas company's switch-over with regard to the method of coal handling, B<sup>5</sup> should be discontinued.

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Transportation of coal:

This should be attended to by the Army.

There was an occasion where some rafts were employed in carrying coal. to be more specific, rafts with timber amounting to 12,600 koku in total, towed by a 300-ton tug, carried a 1,000 ton load of coal, and covered the whole course between Hokkaido and Ofuna-Watashi /T.N. original version not clear/ in period little above two days.

Prime Minister:

It is quite possible that the enemy's resistance will grow intensified to assume the shape of a full-fledged offensive.

The United States is now maintaining manpower strength of ten million, on top of which she is trying to increase her air power. We have to do all we can to smash the enemy's plans in this respect.

In conjunction with this, we may face a decrease in shipping space, so that every branch of our activities will some day begin to feel effects of restriction in one form or other.

Ministers of all the different departments must not fail to take some drastic steps to cope therewith.

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Routine jobs should be handled in all the ministries with the utmost speed; and efforts should be exerted to keep 100 millions of our countrymen rallied together.

If anyone offend this policy he should be sternly dealt with. Care must be taken in order to prevent the spread of a feeling of defeat among the people.

Dispersion of the metropolitan population.

The government must set an example for the people first with a view to strengthening the air defense structure, the government offices should promptly be evacuated to rural districts as far as possible; and such steps should then be applied to the public. It is undesirable that the evacuation of the inhabitants motivated by fear of air raids, as had been the case in Hamburg.

The personnel of the government's major offices should be reshuffled still further, and be transferred to provincial districts.

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September 23, 1943

Preparations for enforcement of the conscription of Formosan natives (including the Takasago race).

The first call registered a total of 400,000 men who applied as volunteers, of which 12,000 were inducted, 500 men out of which are already

undergoing active service; another 500 are expected to be enlisted shortly.

The second call registered 600,000 men who applied as volunteers. It is now planned to enlarge the volunteer system in the course of the fiscal year 1944, so that enlistment in the shape of conscription can be started from the following fiscal year, viz. 1945.

A Navy special volunteer system has been started from the current year; of which the number of applicants as volunteers reached a total of 310,000 (while applications in Korea numbered 80,000).

Communications: The items which have been cut or reinstated amount in total to ¥2,000,000.

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Supply of coal to B<sup>5</sup> furnaces should be discontinued in order to divert it to the gas companies. Indemnities to the B<sup>5</sup> companies should be considered independently and settlement thereof be effected promptly.

Ration of sewing thread: 7 momme per capita, which corresponds to a quantity enough for making 20 garments with lining.

Be rice harvested during the current year.

We have had consultations with all the different prefectures as to their respective delivery quotas.

No fewer than 65,000,000 koku /approx. 320,450,000 bushels/ are estimated in the plan of the Ministry of Agriculture and Forestry.

All the prefectural governors agreed to the figure of 65,040,000 koku. Deliveries for fulfillment of the quota: not less than 38,000,000 koku; Voluntary deliveries: 2,000,000 koku, according to the Ministry of Agriculture and Forestry. Quota deliveries: 38,000,000 koku /approx. 188,594,000 bushels/. Voluntary: deliveries: 1,970,000 /approx. 9,777,170 bushels/. Arrived at on basis of the prefectural governors' information . /T.N.: 1 koku = 4.9629 bushels/

Okinawa Prefecture was not included. In the case of Tottori Prefecture an estimated quantity was taken as basis of computation.

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September 28, 1943

Uniforms of the Army;

Clearer discrimination of ranks is wanted. Commanders mark must be obtained. "Campaign suit" for a civil administrator and "national suit" for the people.

Postponement of enlistment of college students. Enlistment of 100,000 (80,000 for inland) is scheduled on December 1. Medical examinations will be carried out in place of registration.

Re opening of an extraordinary session of the Diet.

Re establishment of the Munitions Ministry which is to control production, transportation and food. The officials of the Ministry of Commerce and Industry are engaged in negotiations with concerned offices, and the administrative policy is to prohibit everything. Violations of economic regulations are inclined to become more malicious. Brokers related to the army dominate the blackmarket, moving material from Navy to Army or Army to Navy, breaking economic laws.

Consequently, the brokers' pockets are enriched and the regulations are broken. But if we enforce too rigid a control, the production of munitions will be badly effected, and if we make it less severe, the black market will become a matter of course, resulting in a bad influence upon national sentiment.

The Munitions Ministry should control the confusion caused by foul means taken only to gain the end of production, taking no notice to the bad effects.

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October 2, 1943

Extraordinary Cabinet Meeting was held. Following the example of Burma, the Philippines, are to be independent in the middle of this month, and Adviser MURATA will be the Ambassador. Establishment of the Ministry of Public Welfare and Ministry of Transportation and Communication, and question of treatment of officials of these departments.

Ministry of Public Welfare, Ministry of Agriculture and Commerce.

Fundamental principles will be decided on Tuesday.

October 5, 1943

Foreign Minister stated as follows:

A. Relation with Germany, namely the union of minor powers. The only way to communicate with Germany without submarine or plane, is to go through Russia, but this is exceedingly difficult. So telegraphic communication is the only way left to us. The relation between Japan and Soviet should be understood well by Germany.

B. Independence of the Philippines. The words "liberal democracy" in the constitution should be replaced by "politics founded on morality." There is a rumour that Japan is going to utilize Philippine people for war while giving them independence or that Japan gives independence in order to monopolize their economic resources.

The constitution says that the natural resources shall be kept for the Philippine people, but the president may contact foreign countries (chiefly Japan) during the war.

1. Educational propaganda. Hidden losses of the enemy. Our strength and political powers.
2. To give enemy a feeling of despair. Only the darkness of death wait for Germans.
3. Encouraging propaganda for Germans. Make use of the letters of captured German soldiers saying that surrender is the way to cut their way to fortune. Use forged military post cards.
4. Cause division and contention among enemies. Comparison with Bavaria.
5. Instigate revolution. Kaiser militarism. "For the sake of the country." Hostility between soldiers and officers.

October 8, 1943

The Great East Asia Conference to be held by Japan, Manchukuo, China, Siam, Burma and the Philippines (independent government of India, in certain cases) for two days from November 5th in Tokyo. Japanese representatives will be the Prime Minister, Foreign Minister and the Great East Asia Minister.

The subject of the discussion will be the prosecution of war and the establishment of the Great East Asia Co-Prosperity Sphere. Program: 1st day: The Prime Minister's speech; statement by each representative (I RO. HA order). 2nd day. Deliberation on measures. Prime Minister's speech. Japanese shall be the formal language.

The conference shall not be open to the public, but be published later. The Vice Minister of the Great East Asia Ministry shall be the head official.

Munition Ministry, Transportation and Communication Ministry, Agriculture & Commerce Ministry. Every department of the government should have wartime system.

4 March 1946

MEMORANDUM

SUBJECT: The dissenting opinions in Ex parte Yamashita

It is my purpose herein to comment upon the dissenting opinions of Mr. Justice Murphy and Mr. Justice Rutledge in the Yamashita case on the basis of my knowledge, as Chief Prosecutor at the trial of Yamashita, of the preparations for and the conduct of the trial, and the evidence which was introduced.

Those dissents contain statements which are demonstrably inaccurate and seriously misleading. They are grossly unfair to the military commander who ordered Yamashita tried as a war criminal and who prescribed the regulations governing the method and conduct of the trial, as well as to the general officers who, in addition to the burdens of their normal military duties, conscientiously served as members of the trial commission.

The spectacular language employed by the two dissenting Justices, the serious nature of the charges which they angrily voice, and the emotional excitement so clearly revealed, are likely to attract to the dissenting opinions and attention not warranted by their substance and minority representation.

Their sweeping criticisms of the conduct of the trial and of the rules of evidence and procedure followed, and their conclusion that Yamashita was not accorded a fair trial in accordance with basic American standards of justice, have been noted rather prominently by the Press. They have inspired strong editorial criticism of the conduct of the trial in at least one substantial newspaper.<sup>1</sup>

<sup>1</sup>Washington (D.C.) Post, 6 February 1946, "...The military system of justice places on the military authorities themselves the full responsibility to see that justice is done. The court's ruling certainly does not give them a clean bill of health in this case. On the contrary, the record of the case piles up volumes of evidence indicating, as we said at the time, that the trial was not conducted in the true spirit of American justice. The Army itself should take steps to correct these shortcomings. We shall not make progress in establishing a regime of law and justice in the world by ignoring the basic elements of fair play--

*Handwritten signature:*  
M. J. Murphy

Such charges not only impugn the system and administration of American military justice; they must be disquieting to any person interested in the proper and effective punishment of Axis war criminals, whether Japanese or German.

Perhaps the general public will not be unduly disturbed by these criticisms of the Yamashita trial, and the similar comments by the same two Justices on the Homma trial, for there has been an obviously insistent public demand for expeditious and effective punishment of those responsible for major war atrocities, even including the highest military commanders and political leaders. Members of the legal profession, however, who naturally are suspicious of any apparent substantial departure from traditional methods of criminal trial, who are largely unfamiliar with the historical and legal background of military commissions and their procedures, and who are unaware of the practicalities involved, may be misled by the alarming assertions of the dissenting Justices, so intemperately phrased. The majority holding that the military commission's rulings on evidence and on the mode of conducting the trial are not reviewable by the courts, followed by the Court's statement that nothing we have said is to be taken as indicating any opinion on the question of the wisdom of considering such evidence", adds to this danger.

It is not necessary to discuss herein the issues of law covered by the majority and dissenting opinions. The grounds for the different conclusions on those questions appear in the opinions. Those issues are now authoritatively settled by the Court's rulings. The minority cry of "unfair trial", however, is not answered by the majority ruling that the method of trial is for the military authorities alone to determine and review.

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not even in the trial of war criminal." See also editorials, Washington (D.C.) Post. 16 and 17 February 1946. The 17 February editorial is especially misleading and inaccurate. A contrary point of view, concluding that the trial was fairly conducted, is expressed in New York Times editorial of 5 February 1946.



Sufficiency of the Charge

Mr. Justice Murphy's opinion in the Yamashita case makes only passing reference to the method of trial. He limits his discussion to a contention that the charge against Yamashita does not state a recognized violation of the laws of war. His thesis apparently is that a military commander cannot be held responsible for the conduct of his troops while they are engaged in battle, for he says (Murphy opinion 9):

"International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liability under such circumstances, for failure to meet the ordinary responsibilities of command . . . . To find an unlawful deviation from duty under battle conditions requires difficult and speculative calculations. Such calculations become highly untrustworthy when they are made by the victor in relation to the actions of a vanquished commander . . . . The probability that vengeance will form the major part of the victor's judgment is an unfortunate but inescapable fact. So great is that probability that international law refuses to recognize such a judgment as a basis for a war crime, however fair the judgment may be in a particular instance. It is this consideration that undermines the charge against the petitioner in this case."

This attempt to confine the duty of a military commander to prevent violations by his troops of the laws of war to situations where his troops are not in combat, is a novel approach. No authority is cited for such a distinction.

Further, Mr. Justice Murphy unabashedly trespasses upon the peculiar province of the trial commissioners when he concludes that a commander is unable to control his "troops under fire or attack by superior forces". Two questions, each purely factual, are involved: (1) Were his troops actually "under fire or attack by superior forces", and (2) Was he unable, under the circumstances, to control his troops? Surely the five general officers sitting on the trial commission were far better able to make a determination of these factual questions, involving matters within their own extensive professional training and military experience, than was Mr. Justice Murphy from the eminence of the bench located half way around

the world from the site of the trial.

Whether or not Yamashita did all he could have done to perform his duty, under the prevailing circumstances, was a question of fact for the commission to determine. The commission's findings (R 4063) show that it determined that issue against Yamashita.

Actually, the evidence shows that many of the worst atrocities were committed by troops not in contact with nor even close to the enemy. The units which devastated Batangas Province and massacre more than 25,000 noncombatants there were not then "under fire or attack by superior forces". Most of the tortures and murders committed by the military police under Yamashita took place far from the battlefields; they were a consistent practice throughout Yamashita's period and area of command. Mistreatment of prisoners of war and civilian internees was generally unconnected with any combat activity. Therefore even if the Commission had applied the Murphy version of command responsibility, it would have had to find that at least these substantial atrocities were not excusable as having been committed by troops engaged with the enemy and therefore necessarily beyond any control.

Finally, the Justice goes completely beyond the charge in order to apply his extraordinary version of the law of war. The Yamashita charge says nothing about troops in combat. To determine that the charge is defective on the theory that no commander can be held responsible for what his troops do in pressing combat, the Justice must supply his own independent finding of fact that the troops charged to have committed the atrocities were, at that time, engaged in such combat. It is submitted that this factual question, if relevant, was for the commission to decide, and has no proper hearing on the question whether the charge states a violation of the laws of war.

Apparently Mr. Justice Murphy's distaste for the Yamashita trial

arises at least in part from the fact that that Yamashita was a fallen military commander of a conquered nation" (Murphy opinion 1); "the probability that vengeance will form the major part of the victor's judgment is an unfortunate but inescapable fact" (Murphy opinion 9). In objecting to the trial of Lt. General Homma, on the other hand, Mr. Justice Murphy points out (Murphy opinion 1) that the accused was a "victorious" commander, and refers to his trial as "vengeful action" (Murphy opinion 2).

One might conclude that the true objection of Mr. Justice Murphy was not so much to the mode of trial, but that Yamashita or Homma should have been subjected to any trial or punishment whatever.

The Murphy opinion in the Yamashita case includes one further peculiarity. He broadly asserts that (Murphy opinion 13):

"Petitioner's rights under the due process clause of the Fifth Amendment were grossly and openly violated without any justification. All this was done without any thorough investigation and prosecution of those immediately responsible for the atrocities, out of which might have come some proof or indication of personal culpability on petitioner's part."

This is indeed a gratuitous comment: The Justice does not indicate the source of his information as to what investigations were made. Actually, the investigations of the atrocities charged against Yamashita began almost as soon as our troops landed in the area of his command. Thorough and painstaking investigations of many of these atrocities, particularly those in Manila, were undertaken by the 1st Cavalry Division, 37th Division, the XIV Corps, and other units as soon as they reached the scenes of the crimes. The investigations by the War Crimes Investigation Detachment of GHQ, AFPAC, were started early in May, 1945. Thus at least five months of intensive investigation preceded the Yamashita trial. All of these investigations included a thorough effort to identify and locate the actual perpetrators of the atrocities.

True, Yamashita was the first Japanese brought to trial as a war criminal. The perpetrators of some of the atrocities charged against him

as over-all commander were arraigned during the Yamashita trial and were convicted shortly after conclusion of his trial. Other perpetrators of such atrocities have been tried since that time. But what possible, conceivable bearing can that have on the propriety of the charge against Yamashita, or the fairness of his trial?

Mr. Justice Rutledge (Rutledge opinion 3) assails the Yamashita charge as "in language not sufficient to inform the accused of the nature of the offense". This contention is adequately refuted by the majority opinion (page 9). Furthermore, as the Court points out, the Prosecutor clearly defined at the opening of the trial the precise issue to be tried. The Prosecutor's statement thus referred to (R 100) is as follows:

"We will then show that various elements, individuals, units, organizations, officers, being a part of those forces under the command of the accused, did commit a wide pattern of widespread, notorious, repeated, constant atrocities of the most violent character; that those atrocities were spread from the northern portion of the Philippine Islands to the southern portion; that they continued, as I say, repeatedly throughout the period of Yamashita's command; that they were so notorious and so flagrant and so enormous, both as to the scope of their operation and as to the inhumanity, the bestiality involved, that they must have been known to the accused if he were making any effort whatever to meet the responsibilities of his command or his position; and that if he did not know of those acts, notorious, widespread, repeated, constant as they were, it was simply because he took affirmative action not to know. That is our case."

#### The Regulations Governing the Trial

The Rutledge opinion charges that Yamashita was not fairly tried. Objection is made to the general rule of evidence prescribed by the regulations (par. 16) governing the trial, the admission in evidence of ex parte affidavits and certain other documents, and receipt of hearsay testimony. It is also contended that Yamashita was denied opportunity to prepare a defense. All of these, it is concluded, deprived Yamashita of rights under the due process clause of the United States Constitution, and denied him a fair trial.

The majority opinion holds that the trial did not violate the due process clause or any other constitutional provision; and that the commission's rulings on evidence and the method of trial are reviewable only by the military authorities. This of course leaves open the question of whether the mode of trial, although legally unassailable, violates the general principles of fair trial.

The procedural regulations which Mr. Justice Rutledge so scathingly condemns are the same, in purpose and effect, as those which govern the trials of Japanese and German war criminals by the British. They were in fact derived from the Regulations for the Trial of War Criminals promulgated by Royal Warrant dated 14 June 1945.<sup>2</sup>

The Canadian<sup>3</sup> and Australian<sup>4</sup> regulations governing trials of war criminals closely follow the British regulations, and hence also are similar to the AFPAC rules.

Thus the Anglo-Saxon nations generally are following the same procedure, and applying the same rules of evidence, in their separate prosecutions of Japanese war criminals. We should have no reason to be embarrassed by our adherence to these common standards. Certainly the British tradition of justice and fair trial is no less respectable than our own.

The general rule of evidence. The AFPAC regulations (par. 16) require the trial commission to "admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man."

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<sup>2</sup>Published in Special Army Order dated 16 June 1945, A/081/1945.

<sup>3</sup>War Crimes Regulations (Canada) adopted by Order in Council dated 30 August 1945, "concurrent in by the Minister of Justice". P. C. 5831 Canadian War Orders and Regulations, Vol. III, No. 10, dated Sept. 10, 1945.

<sup>4</sup>War Crimes Act of 1945 (No. 45), effective 11 October 1945.

Mr. Justice Rutledge brands this as unprecedented (Rutledge opinion 31), and objects to it as making the tribunal "the sole and exclusive judge of the credibility, probative value and admissibility of whatever may be tendered as evidence" (Rutledge opinion 4).

This general rule of evidence is not, as the Justice apparently assumed, a wholly novel one. It is derived from two highly reputable sources. That part reading "such evidence as in its opinion would be of assistance in proving or disproving the charge" was lifted from the British regulations referred to Supra.<sup>5</sup> The same expression is used in the Canadian<sup>6</sup> and Australian<sup>7</sup> regulations.

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<sup>5</sup>Sec. 8 (i): "At any hearing before a Military Court convened under the Regulations the Court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to the Court to be of assistance in proving or disproving the charge, notwithstanding that such statement or document would not be admissible as evidence in proceedings before a Field General Court-Martial, and without prejudice the generality of the foregoing in particular:-

(a) If any witness is dead or is unable to attend or to give evidence or is, in the opinion of the Court, unable so to attend without undue delay, the Court may receive secondary evidence of statements made by or attributable to such witness;

(b) any document purporting to have been signed or issued officially by any member of any Allied or enemy force or by any official or agency of any Allied, neutral or enemy government, shall be admissible as evidence without proof of the issue or signature thereof;

(c) the Court may receive as evidence of the facts therein stated any report of the 'Comite International de la Croix Rouge' or by any representative thereof, by any member of the medical profession or of any medical service, by any person acting as a 'man of confidence' (homme de confiance), or by any other person whom the Court may consider was acting in the course of his duty when making the report:

(d) the Court may receive as evidence of the facts therein stated any depositions or any record of any military Court of Inquiry or (any Summary) of any examination made by any officer detailed for the purpose by any military authority;

(e) the Court may receive as evidence of the facts therein stated any diary, letter or other document appearing to contain information relating to the charge;

(f) if any original document cannot be produced or, in the opinion of the Court, cannot be produced without undue delay, a copy of such document or other secondary evidence of its contents may be received in evidence;

<sup>6</sup>Sec. 10 (1).

<sup>7</sup>Sec. 9 (1).

The second part of the AFPAC rule, which makes admissible "such (evidence) as in the commission's opinion would have probative value in the mind of a reasonable man", is the rule of evidence prescribed by President Roosevelt for the military commission appointed by him in 1942 to try German saboteurs.<sup>8</sup> That Presidential order was upheld by the Supreme Court in Ex parte Quirin, 317 U.S. 1. The AFPAC rule actually is more strict than that which governed the Quirin Commission, for it requires a decision on probative value to be made by the entire commission, rather than merely the presiding member.

The "probative value" standard is also that prescribed for the trial of European war criminals by the Allied War Crimes Tribunal now sitting at Nuremberg.<sup>9</sup>

The AFPAC rule therefore is supported by eminently respectable and authoritative precedent and example. It is closely similar to the rules of evidence applied by American administrative tribunals and repeatedly approved by the courts. (See Administrative Regulations, U.S. Dept. of Agriculture, 7 CFE 900.1).

Its effect in making the commission the exclusive and final judge of the weight of admissible evidence was also the effect of the Quirin rule, and is the effect of the rule applied by the British, Canadian and Australian governments. The British (Sec. 8(i)) and Canadian (Sec. 10(2))

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<sup>8</sup>7 F.R. 5103. The rule: "Such evidence shall be admitted as would in the opinion of the President of the Commission, have probative value to a reasonable man."

<sup>9</sup>Charter subscribed to by U.S., Great Britain, Russia and France, August 8, 1945, Article 19; "The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure and shall admit any evidence which it deems to have probative value."

regulations expressly provide that "It shall be the duty of the Court to judge of the weight to be attached to any evidence given in pursuance of this Regulation which would not otherwise be admissible." Such is implied in the Australian and AFPAC regulations.

Affidavits and other documentary evidence. The specification, in paragraph 16 of the AFPAC regulations, of various types of documentary evidence admissible "in particular, and without limiting in any way the scope of" the preceding general rule of evidence, again follows the form and content of the British<sup>10</sup> and Canadian regulations. The Australian regulations do not include this particularization, but in lieu thereof authorize the Governor-general to make supplemental regulations governing the admissibility of evidence.<sup>11</sup> Any such documentary evidence thus described in the AFPAC regulations is subject, of course, to the preceding general rule of evidence, and hence is admissible only if found to be helpful in proving or disproving the charge, or to have probative value in the mind of a reasonable man. The obvious purpose of this particularization of certain types of documentary evidence in AFPAC paragraph 16, and in the British regulations, is to make clear beyond question that these forms of evidence may be admitted, as well as other forms, if they meet the general requirements. Actually nothing is added to the substance and scope of the general rule of evidence.

Apparently the admission in evidence of ex parte affidavits aroused Mr. Justice Rutledge more than any other feature of the Yamashita trial. He refers to these, and perhaps other documentary exhibits, as "untrustworthy, unverified, unauthenticated evidence which could not be probed by cross-examination or other means of testing

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<sup>10</sup>Note 5.

<sup>11</sup>Commonwealth of Australia War Crimes Act 1945, Sec. 14 (e).



credibility, probative value or authenticity" (Rutledge opinion 10).

Yet the use of affidavit evidence in trials of this nature is not unusual. The British regulations authorize its admission. It is being utilized most liberally in the Nuremberg trial.

Tribunals enforcing international law customarily receive evidence in the form of ex parte affidavits under a well-established rule of the law of nations. It is for the tribunal to determine what weight should be attributed to them (Ralston, Law and Procedure of International Tribunals, p. 216; Sandifer, Evidence Before International Tribunals, p. 165; 1 Wigmore on Evidence, pp. 153, 156; Parker Case, Mexico, opinions of the Commissioners, Docket No. 127). Sandifer, op. cit., p. 1607, discusses the matter as follows:

"Over no phase of the law of evidence has there been such a divergence of views among jurists and counsel trained in the civil law and in the Anglo-American law, participating in international judicial proceedings, as with reference to the propriety of admission of affidavits and their evaluation as evidence. This is due largely to the fact that affidavits are quite foreign to lawyers accustomed to civil law procedure, there being few provisions concerning affidavits in the codes and statutes of the civil law countries .... The extensive use of affidavits as a form of evidence in international judicial proceedings is fundamentally a matter of necessity. In many cases no other form of evidence is available. The Permanent Court of International Justice has rules that the affidavit of a person may be presented without producing him as a witness."

In the Caldera Cases, 15 Court of Claims, 546, Davis, J., observed:

"International tribunals are not bound by local restraints. They always exercise great latitude in such matters and give to affidavits, and sometimes even to unsworn statements the force of depositions."

A military commission trying a person accused of violation of the laws of war is proceeding under and applying international law. there is basis in custom, therefore, for that commission to follow a liberal standard of evidence similar to that generally applied by tribunals applying international law. This is true despite the criminal nature of the military commission's proceedings, as distinguished from the civil claims against States involved before the usual international

tribunal. The reasons behind the general use of liberal rules of evidence by tribunals operating under international law apply equally to military commissions trying war criminals. The difference between the civil and criminal types of cases involved should properly bear only upon the degree of proof required. Surely a tribunal adjudicating vast claims against entire nations should be no less scrupulously careful, nor surrounded by any less exacting safeguards, than a tribunal which determines issues involving the life of a single individual.

In the Yamashita trial the commission received in evidence for the Prosecution 103 ex parte affidavits, and four for the defense. Many of these affidavits were not admitted in evidence in their entirety but various parts were excluded.<sup>12</sup>

Furthermore, the commission refused to receive various ex parte affidavits and other documents offered by the Prosecution (R 251, 642, 791, 1161, 1797, 2500, 2561, 2562, 2563, 2773, 3737, 3851). All evidence offered on six items (items 65, 71, 75, 81, 90, 110) was excluded. In thus excluding evidence the commission applied the general rule of evidence prescribed for it.

The fact that the commission thus excluded or limited so much documentary evidence offered by the Prosecution indicates the great care exercised by it in receiving that type of evidence.

The statement by Mr. Justice Rutledge (Rutledge opinion, note 19) that affidavits were introduced by the prosecution "as the sole proof of many of the specifications of the bills (of particulars)" is very much in error. Oral testimony covering the essential proof was used as to all but eleven of the 100 specifications on which evidence was offered.

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<sup>12</sup>For example see R1484, where a part of an affidavit expressing an opinion was excluded.

Thus 89% of those specifications was covered by oral testimony.

In the eleven instances where no oral testimony was offered in support of a specification, the evidence offered was as follows:

Affidavits only - 5 specifications (6, 76, 86,  
102, 116)

Affidavits and other documents -  
2 specifications (4, 40)

Official reports only - 2 speci-  
fications (45, 57)

Captured Japanese documents only -  
2 specifications (8, 92)

Reference to the bills of particulars will show that these eleven specifications covered solely by documentary proof could in no sense be considered in the aggregate as a major part of the case against Yamashita. Certainly no one of those items was essential to support the charge. They all could have been excluded without materially affecting the broad territorial and quantitative pattern of atrocities alleged. Exclusion of all of the documentary evidence used as to those eleven specifications would not have deprived the record of any evidence essential to a finding of guilty as charged, nor is it conceivable that the sentence prescribed the commission would have been any less severe.

As a matter of fact, the Prosecution cheerfully acquiesced in the commission's original refusal to receive affidavits in evidence as the sole proof of a particular specification. The commission was not proceeding under any rule (such as is applicable in some Federal courts) whereby all specifications of a bill of particulars must be proved in order to support the indictment. Thus the Prosecution, in framing the bills of particulars, had included numerous items not essential to establish the charge and on which proof might or might not be offered, depending upon the circumstances. Thus no effort was made to prove 23 of the 123 specifications (Items 5, 14, 18, etc.) for reasons such as

pressure of time, the relatively minor character of some of the items, and unavailability of certain witnesses.

Mr. Justice Rutledge was again in error in jumping to the conclusion that the commission's later reversal of its ruling against affidavits as the sole proof of an alleged atrocity, was due to "the necessity to the prosecution's case of the prohibited type of evidence and of its prejudicial effects upon the defense" (Rutledge opinion 11).

That reversal had nothing whatever to do with the case then being tried by that commission. It was due solely to a fear that the broadly phrased original ruling might established an unfortunate precedent for subsequent trials, particularly in Japan where oral testimony usually would not be available. The Prosecution was satisfied with the original ruling, so far as the Yamashita trial was concerned, and had prepared to proceed on that basis.

In revoking its earlier ruling, the commission merely affirmed "its prerogative of receiving and considering affidavits or depositions, if it chooses to do so, for whatever probative value the Commission believes they may have, without regard to the presentation of some partially corroborative oral testimony." The Commission thus did not rule that affidavits not orally supported would necessarily be received. It properly corrected the previous ruling to conform to the general rule of evidence governing the commission.

In passing, it should be pointed out that the defense itself took full advantage of the liberal rule of evidence. Its exhibits include ex parte affidavits, official reports, and even 15 newspapers. Incidentally, only the defense offered newspapers in evidence. Mr. Justice Rutledge's reference to newspapers on page 3 of his opinion therefore appears rather inappropriate.

The use of ex parte affidavits in the Yamashita trial did not necessarily deprive the defense of opportunity to examine the persons

involved. All of the affidavits were freely available to the defense prior to the trial together with any information the Prosecution may have had relative to the affiants. Of the 103 affidavits introduced by the Prosecution, 74 were of residents of the Philippines and 29 were of persons residing in the United States. The defense was free to interrogate, and call as witnesses, if desired, those persons available in the Philippines. They could have arranged for interrogation of those located outside that area, and presumably could have obtained additional affidavits therefrom had they cared to do so. Defense counsel had almost two full months, from the time of their appointment to the end of the Prosecution's case in chief, in which to evaluate the prosecution's affidavits and obtain counter-affidavits. They therefore were not wholly without means of "probing and testing" the affidavits which the prosecution used.

The use of ex parte affidavits in Japanese war crimes trials rests upon compelling practical considerations. The evidence which has been gathered for these trials has largely been "perpetuated" in affidavit form. American prisoners of war who experienced or witnessed prison camp or other atrocities have been returned to the United States, many of them for extended hospitalization. Their statements were taken in affidavit form.

In the Yamashita trial affidavits of persons available in the Philippines were used for corroboration purposes only. Usually those persons were located far from Manila, or as in the case of some prominent young woman who suffered rape, were extremely reluctant to appear at the trial in person.

More important were the affidavits of liberated internees or prisoners of war who had returned to the United States. Efforts to obtain the personal appearances at the Yamashita trial of the key witnesses among these persons were unsuccessful.

Hearsay. Mr. Justice Rutledge objects to the admissibility of hearsay testimony (Rutledge opinion 7, 8). The hearsay rule was designed to protect juries from evidence not subjected to cross-examination and which, due to their inexperience, they might not be able to weigh properly for probative value. It is a feature of trial by jury. (V Wignore on Evidence, Sec. 1426).

It is well established that administrative tribunals may consider hearsay evidence. (Consolidated Administrative Co. v. National Labor Relations Board, 305 U. S. 197, 229-230; National Labor Relations Board v. Cities Service Co. (301, 2d) 129 F. 2d 933).

Hearsay evidence is also common to international tribunals. (I Wignore on Evidence, p. 153; Ralston, Law and Procedure of International Tribunals, p. 216).

Certainly the proceedings of a military commission are not a jury trial. They are not considered or required to be judicial in character. (Ex parte Vallandingham, 1 Wall. 243). The general officers now sat on the Yamashita commission had extensive administrative and executive experience. Obviously they were competent to recognize, weigh and evaluate hearsay testimony.

Even for jury trials the hearsay rule, complicated and whittled down as it is by its numerous exceptions, is of questionable usefulness. As Wignore (V Wignore on Evidence, 3rd Ed., Sec. 1427) says:

"The needless obstruction to investigation of truth caused by the hearsay rule is due mainly to the inflexibility of its exceptions, to the rigidly technical construction of those exceptions by the courts, and to the enforcement of the rule when its contravention would do no harm, but would assist in obtaining a complete understanding of the transaction.-----In all probability, if we closed our eyes (a good deal of the time) to the Hearsay rule, and allowed the witness to tell his story, hearsay and all without interruption, we should not only secure a more lucid picture of events and a smoother trial, but should in all probability arrive just as near the truth in the end."

It would seem, therefore, that the military is amply justified in authorizing its war crimes commissions to receive in evidence hearsay testimony which they find to have probative value.

### Opportunity to Prepare Defense

The dissenting opinions charge that Yamashita was not given sufficient time to prepare an adequate defense. It is submitted that this conclusion arises from a misapprehension as to the extent and nature of the work required of the defense in this particular case.

The task of the defense in preparing for trial was greatly simplified by the fact that the atrocities charged against Yamashita had been investigated impartially by the War Crimes Investigation Detachment at Manila, for the purpose of determining whether wrongful acts had been committed, and by whom. The results of these investigations, including official reports supported by all the affidavits of eyewitnesses and survivors, were freely available to defense counsel. This material made it wholly unnecessary for the defense to undertake its own complete investigation of each item of the bills of particulars.

The gist of the defense on the facts was that Yamashita had not ordered or condoned, and had no knowledge of, any violation of the laws of war, and that he did, or made reasonable effort to do, everything possible to prevent such violations. All of this, of course, was peculiarly within the knowledge of the accused and his subordinated readily available to defense counsel.

The defense staff consisted of six American counsel, two Japanese counsel, one Japanese interpreter, two secretaries, and two officer-investigators. The commission on several occasions offered additional counsel or assistants if the defense so desired.

Counsel had three full weeks (or 33 days from service of the charge) before trial in which to determine, organize and prepare a defense, plus an additional three weeks during presentation of the prosecution's case.

In response to defense objections to proceeding on the supplemental bill of particulars filed at the beginning of trial, the commission refused to permit the prosecution to take up any of the items of that bill until all those of the first bill of particulars had been covered, unless the defense expressly agreed otherwise.

It is significant that none of the several defense motions for continuance or recess was supported by any showing, oral or written, of any precise grounds for such delay. Had the defense required additional time to locate some important witness, or to obtain an affidavit countering some prosecution affidavit, or otherwise to obtain some essential information, and had made a proper showing to that effect, presumably the commission would have granted a reasonable time for that purpose.

It would appear, therefore, that the defense actually did have a reasonably sufficient time to prepare their case. If it was contended that extraordinary circumstances required additional time, certainly the trial commission familiar with these circumstances was best able to determine that issue. The record does not support an assertion that the commission acted arbitrarily or unreasonably upon defense counsel's requests for additional time.

It may be noted that a defense motion in the Nuremberg trial for a three-week recess in which to prepare after close of the prosecution case was denied by the Allied War Crimes Tribunal. (Wash. D. C. Post, 20 Feb. 1946). There, as in the Yamashita trial, the tribunal had warned the defense early in the trial that no unnecessary delays would be tolerated.

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The ultimate issue raised by the dissenting opinions in the Yamashita case, so far as procedure is concerned, is whether war criminal



trials by military commissions can be conducted fairly without resorting to the technical rules of procedure applied by American criminal courts. Many of those rules were never intended to apply to a fact-finding body of men acting within the field of their own special training and experience, such as a military commission. Some would so hamper and restrict the functions of a military commission as to preclude successful prosecution of guilty war criminals under the circumstances usually surrounding such proceedings. That was the experience of the Leipzig Trials after World War I. An interpreter for the British Mission at those trials reported (Mullins, Leipzig Trials, 1921, p. 29-31):

"It is exceedingly difficult, if not impossible, for Englishmen to prove the conduct of ex-enemy general according to the standard of proof obtaining in British courts . . . . the immediate result was that it was impossible to proceed against many of the worst offenders."

The requirements of fair trial, as contemplated under international law and the principles of American justice, would seem to be met if the accused is informed of the charge against him, may be assisted by qualified counsel and if necessary an interpreter, may plead not guilty, is tried for the offense charged, and has opportunity to present his defense. (See Article 26, Convention for Creation of an International Criminal Court, 16 November 1936 (unratified), VII Hudson, International Legislation, p. 879.

It is submitted that all of these requirements are covered by the regulations under which Yamashita was tried, and that certainly the trial was conducted in accordance with those requirements. International law, the practice adopted by the other Anglo-Saxon countries, and the judicially approved procedure customarily followed by American non-judicial tribunals, all provide precedent and support for the regulations applied in the Yamashita trial.

Any proposal for substantial modification of the current regulations or the mode of trial followed in the Yamashita case must be weighed against

the practical difficulties which surround war criminal trials. If the hearsay rule and similar technicalities of jury trial are to be applied by the war crimes tribunals, the members of those tribunals must be men trained in the law, and the estimates of the time to be devoted to war crimes prosecutions must be radically revised.

If affidavits are to be excluded as evidence, arrangements must be made to transport overseas to the scenes of their suffering large numbers of men and women only recently returned to their homes and families; or resort must be had to depositions, or interrogatories and cross-interrogatories, administered by a large staff of attorneys here in the United States. Either of these latter methods would necessarily greatly delay the trials now prepared for on the basis of partial affidavit evidence.

There are compelling reasons why all nations undertaking the prosecution of war criminals have clothed their trial tribunals with broad, nontechnical procedural authority. There appears no reason why true justice cannot be done through such methods.

/s/ Robert M. Kerr  
/t/ ROBERT M. KERR  
Major, Infantry

GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS  
LEGAL SECTION, MANILA

FROM: Chief, Pros Div

TO : All Prosecutors.

The following enumerated briefs and reference material is available for your use. Chief Clerk, Pros Div will obtain desired material and proper receipt will be required.

I. Briefs:

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2-A	Articles of War, etc.
2-B	" " " , Applicability to Trials, etc.
2-C	" " " , " " " , "
	Bombardment by Naval Forces in Time of War, etc.
5	Collective & Individual Responsibility in International Law, etc.
6-A	Responsibility of Commanding General for Atrocities Committed by Subordinates
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10	Milligan & Vandigham
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22	Universality of Jurisdiction Over War Crimes
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P.W. camp regulations - pages 5-6 .

1. P.W. camp is a place where P.W., under the control of the army, are taken in.
2. P.W. camps will be established according to their necessity and the minister of war will decide the place and the opening and closing of the camps.
3. The minister of war will decide the place of P.W. camp. Army commander and garrison commander will supervise the camps but will be under the control of the minister of war.
5. The head of the camp will come under the army commander or garrison commander and will manage the affairs of the camp.
6. Members of the staff will receive the orders of the head of camp and will take charge of each assigned task.
7. N.C.O. and minor civil official will receive the orders of the higher official and will engage in the duties of the camp.
8. When it is necessary, army commander or garrison commander will dispatch subordinates who will assist in the duties of the camp.

Depending on the provisions of the former article, those who are dispatched will listen to the command and superintendence of the head of camp.

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REGULATIONS OF P.W. LABOR PARTIES

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A person, outside the Army, who has been authorized the use of a P.W. labor party, will comply with the P.W. camp commandants regulation in providing the necessary guards during the time of labor and have the guards take orders from the P.W. camp commandant.

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If a person, who is authorized to use P.W. working parties, carry on his work contrary to the regulations set forth by the commandant of the P.W. camp, such privilege will be cancelled.

Treaty concerning Treatment of P.W. pp, 134-135  
(Signed at Geneva on July 27, 1929)

In war, disaster that can be avoided will be minimized. Moreover, P.W. conditions will be mitigated. It is acknowledged that the above will be the duty of all countries.

Desire to exploit the Hague International Treaty especially the provisions in regard to the rules and customs of war as well as all attached rules of the original regulations.

#### General Rules

P.W. will always be treated with goodwill, moreover they will be especially protected against violence, insult and public curiosity. Means of revenge against P.W. will be prohibited.

The P.W. has the right to have his character and name respected.

P.W. will maintain the full enjoyment and capacity of his private rights.

The country which captures the P.W. will bear the duty of maintaining them.

It is unlawful not to treat P.W. according to their army rank, health, spiritual conditions and work ability.

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#### The Time Element in Criminal Cases

A crime, involving a killing, is provable by two classes of evidence:

1. The direct evidence of eyewitnesses
2. By circumstantial evidence.

Where there is only circumstantial Evidence to go on, in order to convict the perpetrator two important elements must be established:

1. The fact that a person died by unnatural means that exclude the conclusion of suicide, and
2. That some certain individual was the perpetrator.

In the case of Nanyo we have some seven specifications. I will deal with these specifications separately but because the 3rd, 4th, 6th and 7th have had the same alibi imposed as a defense I will direct my argument as to them as an entirety insofar as that defense is concerned. The first, second and fifth specifications have specific, special alibis interposed relating to each of the three specifications. Consequently I must refer to them separately.

The term alibi as I am using it is the strictly legal one not the popular one meaning any kind of an excuse.

In this connection and as referring to all seven specifications I quote from the 15 American Jurisprudence P. 14 Sec. 314:

"The x x x x x significance of the word "Alibi" x x x x indicates that line of proof by which a defendant undertakes to show that he did not commit and could not have committed the crime charged, because he was not at the scene of the crime at the time of its commission. It is a physical circumstance and derives its entire potency as a defense from the fact that it involves the physical impossibility of the guilt of the accused; and an alibi which leaves it possible for the accused to be the guilty party is no alibi at all."

Defendant offers as his alibi in defense of specification #3 which accuses him of the brutal mistreatment, torture and killing of Faustino Alindog and Ricarido Alindog on December 21, 1944 or thereabouts, and of Specification #4 which accuses him of the brutal killing of Ramon Dizon and Benito Mirivelles on or about 18 Feb. 1945 and of Specification #6 and #7 which accuse him of the murders of Dionisio La Tosa, on or about 5 Dec. 1945 and of the murders of three others and the attempted murder of Marcos de Tomas on or about 8 Dec. 1944, the claim that he was injured by a gunshot wound, a pistol bullet, in the leg which incapacitated and hospitalized him for a period of three and one half months; that these three and one half months included Dec. 21, 1944 the approximate date of the killings charged in Specification #3; Feb. 18, 1945 the approximate date of Specification #4 and December 4 and 8, 1944 the respective approximate dates of Specifications #6 and 7.

The time element in the defense of alibi is diametrically different in importance according to whether the facts of the crime are proven by eyewitnesses or by circumstantial evidence.

To illustrate: Specification #3 charges Nanyo with the killings of Faustino and Ricarido Alindog. Their arrest together with that of Leopoldo Agravante was witnessed by the wife of Faustino and the

mother of Ricarido, i.e. Romana Ballesteros; their slaughter that same day was witnessed by Leopoldo Agravante. The perpetrator, Nanjo, was recognized. He was fully identified. The facts of their arrest and killing and the identify of the perpetrator are established because they were seen not arrived at by some process of deductive reasoning. No presumptions have to be indulged in.

A fact according to Webster is "A thing done;" the quality of being actual." Once "the thing done" is established nothing in the world can "undo" it. It cannot be destroyed as a fact. Therefore the date or time when the facts became actualities is of no practical importance whatsoever. Every witness as to the facts could have varied concerning the date but so long as their testimony has not been discredited and is believed the facts are established actualities and cannot be undone.

Where we are dealing with eyewitnesses, and no questions involving statutes of limitation are involved, dates are less than of secondary importance. They are of relatively minor importance. For instance what did the respective members of this Commission do on August 25th last?

Think, for a moment; what do you remember better dates or events? Does the event- an actuality - become less so because you attribute to it a wrong date: Of course not. It is ridiculous to argue to the contrary.

Where we have the case of a murder to which there has been no eyewitness, the evidentiary facts necessarily are quite different. Identification of the pistol used, finger prints, foot prints, a motive perhaps, the day and hour of death become facts of prime importance. And when coupled together and a suspect is accused evidence that he was in the vicinity on the date and hour becomes of prime importance. If the fact of death occurring at midnight, for instance, becomes the established fact and the accused can establish the fact that he was at a country club dance two hours distant his alibi becomes perfect. The time element in such cases is of prime importance.

We have no such problems

Defense Counsel, banks on the date December 5, as the basis for their alibi to the charges in connection with the bayoneting of Marcos de Tomas and the murders of Felix Amador, Felicito Alba, Pablo Polonio and Dionisio La Tosa.

It is claimed that if Nanjo arrived with Takahashi's unit at Bago he could not have been in Bacolod on the dates Dec 5 to Dec 8th. The credible evidence is that he not only could have been there between and on those dates but that he was.

Bago is 18 kilometers from Bacolod, that is  $11\frac{1}{2}$  miles or 23 minutes by a truck travelling at 30 miles per hour. Murcia is about 12 kilometers from Bacolod or  $7\frac{3}{4}$  miles in and by South direction and about 15 kilometers northeasterly or  $9\frac{3}{8}$  miles an easy 3 hour hike from Bago. Granada is about  $9\frac{3}{4}$  kilometers or 6 miles from Bacolod.

Takahashi is one of three witnesses relied on to establish his alibi for the Dionisio La Tosa and Marcos de Tomas atrocities - respectively specifications 6 & 7. He testifies that he was at Victorias from the end of August 1944 (exact date unknown) to the first part of December. He states that it was really the fifth of December. He remembers that date because he was bombed on the road. He was bombed 20 or 30 times but can remember Oct. 22 or 23rd as the only other date of a bombing (Vol. XVI, 991).

This memory feat so timely and coincidental to Nanjo's injury is either a pure fabrication or a mistake. It is one or the other. He, Kanda and Soledad Pastrano can't all be right. Their testimony is completely irreconcilable. Soledad Pastrano positively fixes the date of Nanjo's hospitalization as December 8. That date was coincidental with the birthday of her daughter so she claimed. At any rate it is as good a memory fixer as is a bombing which proves to be one of 20 or 30, the dates of all of which were neither noted nor remembered.

Now, if Nanjo entered the hospital on December 8th then according to Kanda's testimony the unit arrived in Bago on December 2nd not Dec. 8 as Takahashi testified. Remember Kanda was with it. He arrived at Bago with it. Three days later he went to Bacolod distant about 23 minutes in a truck at 30 miles per hour, to get medical supplies. That

would be December 5th. He remained there 3 or 4 days and on the third day Nanjo came in having been injured on that same day. That would be December 8th.

The testimony of these two defense witnesses utterly distroys and refutes the claims that the unit arrived at Bago on December 5th and the claim that Nanjo received his injury the next day as made by Takahashi.

Any reliance on Takahashi's testimony is further destroyed, if that could be possible, by his own memory failures on critical and important personal events.

The record in the case of U.S. vs Takahashi discloses that he was found guilty of the 5th Specification to the charge therein. I was for the beheading by him personally of one Leonardo Bebit on March 7, 1944 in the Town of Silay. He conducted the raid and arrested Bebit. It was a large public execution. His guilt as to that charge contributed to his sentence of death yet when asked in this case whether he conducted a raid in March in the vicinity of the Hacienda Calasaf he was unable to remember whether it was in the early, middle or latter part of March. After prompting under cross-examination he conceded that perhaps it was the 7th of March. Assuming that he didn't behead men personally every day at public executions that should have been an outstanding date in Takahashi's life. Yet he had practically no memory of it at all. So what reliance can be placed on his memory as to dates in this case? None.

Apparently training activities in his unit became active as soon as it arrived at Bago. He distributed one platoon in Granada (P995) and two in Murcia. Nanjo operated with his accustomed activity. He was back on his old stamping grounds and started training men immediately by patrolling the vicinity of Granada where he picked up Marcos de Tomas, Dionisio La Tosa and four others.

The conclusion after weighing all this evidence is unavoidable that Nanjo conducted a raid or a training episode on or about December 2nd and perpetrated the murders of La Tosa and those named in Specification #7 a day or several days before he was wounded as he claims.

An analyzation of the testimony of these three witnesses, a weeding out of the incredible from the credible explodes this alibi as thoroughly as an atomic bomb could and leaves no other hypothesis than guilt.

The Time Element (Alibi) as to Specification #4.

This Charge states that on or about Feb. 18, 1945, Nanjo killed Dionisio Antera and Francisco Villasor, near the haciendas Presentacion and Matab-ang. Nanjo's defense is an alibi. His attorneys claim that he was in the Hospital on that date. Two months and 10 days after having received an alleged leg wound (Dec. 8th). This wound was inflicted by a 25 cal. bullet from a Japanese pistol. It is a matter of common knowledge that the Jap forces were armed with German Luger pistols of .25 cal. The scar at the point of entrance on Nanjo's leg bears this out. Competent Medical testimony says that a wound of the kind described and as shown by the X rays should not incapacitate a person a week; that he should be on his feet almost immediately. But allowing for some slowness in the healing process the man should be ambulatory in days and practically fully recovered in a -----.

Kanda was the last person who saw Nanjo in the hospital. He says it was about the middle of February. That could be the 15th or earlier. He didn't know whether or not Nanjo was an ambulant patient. He presumed that he could walk because he had crutches. There is no evidence that he was required or needed to use crutches. On the contrary competent medical testimony of record is to the effect that Nanjo should have been walking 6 weeks before February 15th.

Eyewitnesses positively declare that he certainly was walking on February 18th because he visited his old stamping ground, country and people that he was familiar with, with a patrol which came either from Boroboro or Bacolod and that he performed once more his favorite stunt of slaughtering Filipino civilians. This another alibi balloon has exploded. How desperately the chief defense counsel felt his case to be in this respect is evidenced by the dubiously tactics of talking to a defense witness without first inviting opposing counsel to be present and by attempting to have her retract testimony given.

Read from Vol. X - P. 615

In justice to the defense counsel involved, the license to interview defense witnesses had been accorded him. Good taste required that he avail himself of that license only after inviting prosecution counsel



to be present. That he failed to do. The time element is a specification 5 which charges that in or about the month of April, 1945 defendant Nanjo mistreated and killed Roman Dizon and Benito Miravelles near Magbugo.

Gil Tanique testified:

"I think only that it is about somewhere in the date of April 4, but I am not so sure." Vol. V P. 359

Jonota mentions the date as April 4th. VI -385.

The unit involved was a large one of over 100 men and was retreating towards the mountains. (P 444 - Vol. VII also Vol. VIII 518; X, 548, 582) Jonota later (P. 447) says "what I understand is that we were arrested before the date April 4. VII - 447. Gil Tanique testified that prior to April 4th he saw many groups of Japs headed for the mountains. (X-607). He was asked:

"Q Was that the last group of soldiers that you saw heading in the direction of the mountains from either Granada, Concepcion, Boroboro?"

A. That was the last I know because the Americans were coming and the Japanese soldiers were going into the mountains."

(X-609)

Defense Counsel has again made the fatal error of failing to distinguish the time element as related to a case where the corpus delicti and the perpetrator are respectively proven and identified by eyewitness and where the same elements must be proven by circumstantial evidence. Here we are dealing with eyewitnesses. Men who were on the spot in every sense of the word.

Tanique and Jonota have both disclaimed exact knowledge of the date. The former believed that it might be about April 4th. The other was of the impression that it was just prior to April 4th. Their evidence leads to the only possible inference that it was on or about that date and probably just prior to it, Yamanouye's testimony corroborates the claims and the evidence of the prosecution. (tell why)

He states that on the night of April 1 he left Boroboro, which was the area of the Takahashi unit (XIII 798. That early in the morning of April 4th he reached the Takahashi defense area and saw Nanjo there.

Whether Nanjo got there an hour or a day ahead of the Japanese is of no importance whatever.

Takahashi stated that Nanjo arrived in the mountains at the end of March or beginning of April. (1007 - XVII)

Prepared by Thomas D. Aitken and used  
in Case of USA vs Masao NANJO

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## II Pamphlets & Books:

### Subject Matter

Military Government and Civil Affairs  
Staff Officers Field Manual - Traffic Circulation  
and Control  
Staff Officers Field Manual and Combat Orders  
Criminal Investigation  
Orders of Battle of the German Army  
Military Justice for the Filipino Soldier  
Outline on Procedure for Trials before Court Martial  
A Manual for Court Martial, U.S. Army  
National Defense Act  
Handbook on Japanese Military Forces  
The War - an Outline  
Facing Japan  
Articles of War - Philippine Army  
Treaties Governing Land Warfare  
Appeals and Post Judgment - Remedies in Japanese  
Criminal Law  
Judge Advocate - Conference  
Military Affairs  
Military Justice  
War Powers and Jurisdiction  
Law of Belligerent Occupation  
Government Contracts  
Civil Affairs Handbook - Japan  
Law of Land Warfare

Winthrop's Military Law and Precedence, 1920, Vol  
I and II, 2d Edition  
Military Laws of the U.S., 8th Edition, 1939  
Supplement #2 to the Military Laws of the U.S., 1942  
Digest of Opinions of the Judge Advocate General  
of the Army, 1912-1940  
Oppenheim's International Law Vol II, Disputes,  
War and Neutrality, 6th Edition  
International Law Chiefly as Interpreted and Ap-  
plied by the U.S. Vol I  
Vol II  
Vol III

Law of Land Warfare  
Military Justice  
Treaties Governing Land Warfare  
The Law of Martial Rule by Fairman, 2d Edition  
Prisoners of War by Flory  
Global War - An Atlas of World Strategy  
War Powers and Military Jurisdiction  
Instructions for the Navy of the U.S.  
U.S. Code - Titles 1-16  
- do - 17-33  
- do - 34-50  
U.S. Code - Tables - Index  
U.S. Code - Supplement I, 1941  
- do - II, 1942  
- do - III, 1941-43

Selected Opinions - Military Affairs  
Military Government and Civil Affairs  
Staff Officers Field Manual - The Staff and  
Combat Orders  
The War in Outline  
Handbook on Japanese Military Forces  
Military Justice Guide  
Outline - General Court Martial Procedure  
Military Laws of the U.S., 1939, 8th Edition  
Military Justice Procedure  
The Constitution of Japan  
Basic Field Manual - Rules of Land Warfare  
Army Instruction  
Outline of Procedure for Trials Before Courts  
Martial  
Operations  
Japanese Recruiting and Replacement System  
Staff Officers Field Manual Organization, Techni-  
cal, and Logistical Data  
Bulletin of the Judge Advocate General of the  
Army and other Pamphlets  
Specimen Reclassification, Procedure  
Record of Trial of Bark-Lenie  
Military Law and Court Martial Procedure - Officers  
Blue Book

R E S T R I C T E D

/bcr

APO 500

27 December 1946

AG 000.5 (27 Dec 46)LS-L

SUBJECT: Amendments to Regulations Governing the Trials of  
Accused War Criminals

TO : Commander-in-Chief, United States Army Forces, Pacific.

1. Reference is made to:

- a. Letter Order, AG 000.5 (5 Dec 45)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: "Regulations Governing Trials of Accused War Criminals." and,
- b. Letter, Headquarters, United States Army Forces, Western Pacific, GSJA 000.5, 4 October 1946, requesting authorization for civilians to administer oaths.

2. The following amendments are directed in Letter Order, subject: "Regulations Governing the Trials of Accused War Criminals," referred to in paragraph 1a above:

- a. In paragraph 1a, delete the words "units and organizations."
- b. In paragraph 3a, delete in the last sentence thereof, the words "in open court" and add immediately after said last sentence the following: "This fact will be announced by the president of the commission in open court."
- c. Delete paragraphs 5d(4) and 5d(5).
- d. Delete "(6)" from 5d(6) and substitute therefor "(4)".
- e. Delete paragraph 5d(7) and substitute therefor:  
"(5) All purported confessions or statements of the accused shall be admissible in evidence without any showing that they were voluntarily made. If it is shown that such confession or statement was procured by means which the commission believes to have been of such character that they may have caused the accused to make a false statement, the commission may strike out or disregard any such portion thereof as was so procured."
- f. In paragraph 5g, delete the first sentence and substitute therefor:  
"g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any

USA vs \_\_\_\_\_

Prosecution Exhibit \_\_\_\_\_

Received \_\_\_\_\_

- 1 -

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less term, forfeiture of real or personal property, fine, or such other punishment as the commission shall determine to be proper."

g. Add paragraph 7 as follows:

"7. OATHS.

a. Power to Administer Oaths.

Any person, military, naval, civilian, who, by competent authority, is assigned the duty of administering, investigating, prosecuting, or defending suspected war criminals subject to trial under these regulations, and, while acting under the assignment, may be empowered by the Supreme Commander for the Allied Powers or his designee, to administer oaths with respect to all matters in the execution of such duty."

3. These amendments shall not affect any case in which the accused has been duly arraigned, and, except as amended, all provisions of the subject regulations continue to remain in full force and effect.

BY COMMAND OF GENERAL MacARTHUR:

/s/ John B Cooley  
/t/ JOHN B COOLEY  
Colonel, AGD  
Adjutant General

AG 000.5 (27 Dec 46)LS-L 1st Ind.

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, PACIFIC, APO 500,  
27 December 1946.

TO: Commanding General, United States Army Forces, Western  
Pacific, APO 707.

The amendments directed in the basic communication are  
transmitted for your adoption and compliance.

BY COMMAND OF GENERAL MacARTHUR:

/s/ John B Cooley  
/t/ JOHN B COOLEY  
Colonel, AGD  
Adjutant General

GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS  
LEGAL SECTION, MANILA BRANCH

23 January, 1947.

MEMORANDUM FOR ALL PROSECUTORS:

SUBJECT: Consolidation of Standard Operating Procedures.

Following is a consolidation of various SOPs issued to members of the Prosecution Division for the past few months. This compilation has been prepared in order that you have an issue of this material in your personal records. From time to time distribution will be made. It is suggested that each prosecutor secure a folder or envelope to contain such distribution:

Interview of Convicted Prisoners of War at LuPOW

All members of the Prosecution Division desiring to interview convicted war criminals held at LuPOW will prepare a check sheet for Mr. Yard's signature addressed to Executive Officer, War Crimes Trials, requesting permission to make the interview, stating the subject of the interview and the persons who will take part in the interview.

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Access to Prosecution and Defense Witnesses

1. In a telephone conversation between Mr. Yard and Mr. Bonda on 28 September 1946 the following agreement was reached concerning access to prosecution and defense witnesses:

a. Civilian witnesses. -- Prosecution and Defense will have access to one another's witnesses only after clearance has been obtained from Chief, Prosecution Division, Legal Section, GHQ, SCAP, Manila Branch, or Chief Defense Counsel. Request for access to any witness already called will not be made unless it is believed that the witness can be used by the party requesting the interview. It is not expected or intended that the privilege herein accorded either side may be used simply for "fishing" purposes. It is intended that if the witness' name is obtained by prosecution or defense in the regular course of investigation after which it is discovered that the witness has been called already by the other party, then use of procedure outlined in this paragraph may be made.

b. Prisoners of war. -- If the prisoner of war is being held as a suspected war criminal and charges have not yet been served upon him, then he is accessible to either prosecution or defense without any clearance. If charges have been served upon any Japanese, or if draft copies of a charge have been made available to defense counsel, then the prosecution must obtain clearance from the Chief Defense Counsel to have access to such Japanese for any purpose whatsoever.

2. This agreement is being made known to all members of this Section for immediate compliance.  
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Analysis of Record

1. In view of the fact that in the Prosecutor's pre-trial investigation of many cases and even during trial, incidents not covered by the charge and specifications and names of Japanese not included in the charge and specifications are discovered, effective immediately the following is requested:

(a) In completing "Prosecutor's Report" and under the subsection entitled "Remarks", all incidents as above described, discovered by the Prosecutor before or during trial will be stated in brief form giving the general nature of the incident, the source of the information including the full name and address of the witness and reference to volume and page of record of trial if mentioned therein. If the incident does not appear in the record of trial but is included in a statement taken by the prosecutor or from interrogation not reduced to writing, then such statement or summary of interrogation should be attached to Prosecutor's Report and reference made thereto under "Remarks."

(b) There should be included also under "Remarks" the full names, if known, of all Japanese not named as accused in the particular case together with their internment serial numbers and present location if known. If such a name appears in the record, reference should be made to volume and page or if the name appears in a statement taken by the Prosecutor such statement should be attached.

2. There should be included under "Remarks" a listing of all unusual objections by Prosecution, Defense and Commission made during the trial with a brief description, the ruling made thereon and reference to volume and page of record. If the Prosecutor believes that the ruling was incorrect or if he has any other comment to make it should be included. Likewise all motions should be listed together with descriptions and rulings thereon and comment by Prosecutor. Also comment should be made on anything else that occurred during the trial which is unusual and in the opinion of the Prosecutor should come to the attention of the Chief, Prosecution Division.

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For Visiting Luzon Prisoner of War Camp Number One

1. The main detention center for all detained suspected war criminals is the Prisoner of War Camp designated as Luzon Prisoner of War Camp Number 1. In order to operate such a large compound in an efficient, orderly manner, very stringent rules and regulations have been inaugurated by the prison authorities. It is their desire that these rules and regulations be followed by all pertinent personnel and that no one attempt to obtain dispensation.

2. To avoid any possible misunderstanding, the governing regulations are set forth below for the guidance of all concerned:

a. A War Crimes Liaison Office is established at LUPOW Camp #1. Telephone: Long Distance, LUPOW 24. All contacts are to be made through this Liaison Office. Permits to enter compounds will also be obtained through this office.

b. All requests for movement or detention of prisoners of war will be handled through the Apprehension and Interrogation Division, Legal Section, Manila Branch. Telephone: City Hall 877 or 588.

c. Prior to seeing any CONVICTED (Sentenced or Condemned) Japanese, written permission from the Executive Officer, War Crimes Trials, is necessary. This permit should be in triplicate and should list the names of all convicted Japanese for interview and the names or functions of all persons who need to be present at the interview. Only persons connected with War Crimes Trials or Legal Section, Manila Branch, will be permitted to interview convicted Japanese.

d. Camp card index files will not be searched by anyone not assigned to War Crimes Liaison Office.

e. No Compound will be entered without a pass.

f. Report to the Compound Commander or Senior Non-Com upon entering any Compound. All prisoners for interview will be secured through them and will be returned to them after interview.

g. No sentenced person will be interviewed between the hours of 1100 and 1300, nor after 1600 hours. No detained prisoner of war will be interviewed between the hours of 1115 and 1300, nor after 1600 hours.

h. No weapons or cameras will be allowed in any of the Compounds. They will be checked with the guard at the Compound gate.

i. Military personnel will be in complete uniform, sleeves down, buttons buttoned, etc.

j. A speed limit of 10 miles per hour will be observed on the post.

k. Mess arrangements:

Officers and civilian employees of the Army may eat in the Officer's Mess. The Liaison Office at LUPOW Camp #1 will be notified at least three (3) hours in advance if it is desired to utilize this privilege. A service fee of 50 centavos will be paid by all civilians using the mess. Officers will not be required to pay this service charge. Enlisted men will mess in the Enlisted Mess Hall.

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Release of Documents to Members of Foreign Governments

1. There have been many instances recently where members of this branch have either given original documents or copies thereof, or have expressed supposedly official opinions to members of foreign governments and other outside U. S. Army agencies. This practice is to be discontinued immediately, and in the future permission to release any document whatsoever is to be obtained from the Executive Officer. This does not pertain to the previously established SOP of providing the defense counsel with copies of affidavits in advance of the date of trial when the witness will not be placed on the stand.



a. This subject is to be brought to the attention of all personnel by division chiefs as soon as possible.

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Translation of Charges and Specifications

All requests for information on translation of documents, etc., except to Research Division, must be cleared through Chief, Pros Div.

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Military Commission Data Sheet

1. In recent trials the records have failed to disclose that certain required procedures were accomplished. It is the duty of the Prosecutor to see that such omissions do not occur.

2. There has been prepared by the Theater Judge Advocate a Military Commission Data Sheet similar to the check sheet used in courts martial proceedings, a copy of this data sheet is attached hereto. Effective at once prosecutors will complete a data sheet for each case, as follows:

Above "Name" of the accused will be entered the names of all accused in the case preceded by the "P" number of the case. No entry will be made as to "Nationality" or "Military Status". Each numbered item will be properly checked in the column marked "Prosecutor". As indicated, questions 21 and 22 need not be answered. This check sheet will be signed by the Chief Prosecutor with the date when completed. It will be returned to the Chief Clerk along with Prosecutor's Summary of Trial and Report. Thereafter, it will be included in the "P" file as a permanent record.

Use should be made by the Prosecutor of this data sheet throughout the trial and reference should be made to it before and immediately after the announcement of the findings and sentence.

Prosecutors will secure a copy of this data sheet from Chief Clerk, Prosecution Division and will sign this check sheet as indicative of the fact that he has read the above and secured the data sheet.

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Annex "A" Japanese Affidavits

1. It has been the practice of some investigators and prosecutors in interrogating and obtaining affidavits from Japanese to ask questions thru the interpreter, receive the answer in Japanese, have the same interpreted, and then immediately reduced to English and in that form signed by the witness. As a consequence, at the time of trial, when confronted with the statement the witness denies knowledge of the contents or claims that he did not understand the contents when affidavits was read to him and before he signed it.

2. In order to eliminate the problem set forth above, the following procedure will be followed:

(a) If the Japanese is able to write, he will be asked

(b) If (a) above is accomplished, translation of the statement will be made in our Interpreter-Translator Section. It will not be necessary that the witness, in advance of trial, see the English translation or have it explained to him. Thereafter photostatic copies of the original Japanese statement will be made and prior to trial the original statement together with the translation will be submitted to the Chief Interpreter for War Crimes Trials who will make such certificate, as he deems proper, to the correctness of the translation.

(c) If the Japanese is unable to write or refuse to make his statement in his own hand writing then the interpreter should reduce the questions and answers in Japanese to Japanese characters in the presence of the witness and then request the witness' signature thereto after he has read his statement. If the witness refuses to sign the statement but states that it is correct, this fact should be noted by the interpreter and proper certificate made thereto by the Interpreter. Thereafter, the statement will be photostated, translated and submitted to the Chief Interpreter as above outlined.

3. Japanese statements secured in the above described manner should be submitted to the Chief Interpreter for War Crimes Trials sufficiently in advance of trial to allow verification of the translation and avoid delay after the trial has started.

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Cancellation of Witness Request

When Japanese witnesses are requested from Tokyo Apprehension Division, by check sheet or by radio, notifies Tokyo which office in turn notifies the Japanese government to secure said witnesses. Very often difficulties are encountered in locating a witness and a case goes to trial, such witness affidavit being used. Whenever such procedure is followed, the Executive Officer of Prosecution Division will be notified by the Prosecutor concerned, and the request for such witness will be cancelled with Apprehension Division. Apprehension Division will in turn, by the quickest method, arrange that the Tokyo office is notified of the cancellation. All Prosecutors are required to read the above and initial this page below.

*W. S. Yard*  
\_\_\_\_\_  
WILLIAM S. YARD  
Executive Officer