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

Yokohama, Japan
17 June 1949

UNITED STATES OF AMERICA

VS

KAJURO AIHARA, HIROSHI AKITA, KYUSAKU FUKUSHIMA, MASAZUMI INADA, TOKUJI ENATSU, SHOSHIN ITO, IICHIRO JIN, YOSHINAO SATO, KATSUYA YAKUMARU, MINORU NAKAMURA, TAKANOBU KAKU, ISAMU YOKOYAMA, HIDETO KUBOYAMA, MITSUSHIGE INOUE, YUSEI WAKO, KOSHI YUKINO, KANEYOSHI IKEDA, TATSUO ITEZONO, TOMENOSUKE KUSUMOTO, SADAYOSHI MURATA, HIROJI NAKAYAMA, MASAHIKO NARAZAKI, HIDEHIKO NODA, MINEHIRO OHNO, TAMOTSU ONISHI, TAKASHI OTSUKI, KENTARO TOJI, KIYOHARU TOMOMORI, HITOSHI YAMAUYE, FUKUICHI YAMAMOTO, KANJI YOSHIDA, TOKUZO TSUCHIYAMA, and ICHIRO MAIDA.

Review of the Staff Judge Advocate

1. The attached record of the joint and common trial of Kajuro Aihara, Hiroshi Akita, Kyusaku Fukushima, Masazumi Inada, Tokuji Enatsu, Shoshin Ito, Iichiro Jin, Yoshinao Sato, Katsuya Yakumaru, Minoru Nakamura, Takanobu Kaku, Isamu Yokoyama, Hideto Kuboyama, Mitsushige Inoue, Yusei Wako, Koshi Yukino, Kaneyoshi Ikeda, Tatsuo Itezono, Tomenosuke Kusumoto, Sadayoshi Murata, Hiroji Nakayama, Masahiko Narazaki, Hidehiko Noda, Minehiro Ohno, Tamotsu Onishi, Takashi Otsuki, Kentaro Toji, Kiyoharu Tomomori, Hitoshi Yamauye, Fukuichi Yamamoto, Kanji Yoshida, Tokuzo Tsuchiyama, and Ichiro Maida tried at Yokohama, Japan, from 11 October 1948 to 29 December 1948; by a Military Commission appointed by paragraph 1, Special Orders No. 226, Headquarters Eighth Army, United States Army, dated 6 October 1948, as amended by paragraph 3, Special Orders No. 237, Headquarters Eighth Army, United States Army, dated 19 October 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Kajuro Aihara
AGE: 51
RESIDENCE: Hyogo-Ken, Himeji-Shi,
Kanda-Cho, 4-Chome.
MARITAL STATUS: Married
RELATIVES: Wife, 4 children, mother
EDUCATION: Graduate of Kyoto Imperial
University
VOCATION: Employee of electric company
MILITARY CAREER: Appointed captain
August 15, 1943; attached to
Western Army May 1944; demobilized
September 1945.

DATE OF CONFINEMENT: 20 July 1946
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for five (5) years
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

NAME: Hiroshi Akita
AGE: 46
RESIDENCE: Fukuoka-Ken, Mii-Gun, Ogori-
Mura, Ohara
MARITAL STATUS: Married
RELATIVES: Wife, child, mother
EDUCATION: Graduate of Army War College
VOCATION: Army officer
MILITARY CAREER: War College instructor;
military attache in Germany; Staff
officer of 16th Area Army; demobilized
1945.

DATE OF CONFINEMENT: 30 August 1946
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF ACQUITTAL: 29 December 1948

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NAME: Kyusaku Fukushima
AGE: 52
RESIDENCE: Fukuoka-Shi, Furukogarasu,
178 Banchi
MARITAL STATUS: Married
RELATIVES: Wife, 5 children
EDUCATION: Graduate of Army War College
VOCATION: Army officer
MILITARY CAREER: Commissioned in 1920;
attached to Western Army April 1942;
became Assistant Chief of Staff,
Western Army, in March 1945;
demobilized in November 1945.

DATE OF CONFINEMENT: 30 August 1946
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

NAME: Masazumi Inada
AGE: 53
RESIDENCE: Tokyo-To, Suginami-Ku,
Shimotakaido, 1-Chome, 88 Banchi.
MARITAL STATUS: Married
RELATIVES: Wife, 4 children
EDUCATION: Graduate of War College
VOCATION: Army officer.
MILITARY CAREER: Commissioned in
December 1917; Commander of 6th Air
Division April 1944; Chief of Staff
of 16th Area Army May 1945; demobil-
ized in November 1945.

DATE OF CONFINEMENT: 30 August 1946
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF ACQUITTAL: 29 December 1948

NAME: Tokuji Enatsu
AGE: 39
RESIDENCE: Fukuoka-Shi, Shindaiku-
Machi, No. 7
MARITAL STATUS: Married
RELATIVES: Wife, 2 children, mother
EDUCATION: Graduate of Military Academy
VOCATION: Not shown
MILITARY CAREER: Commissioned 24 October
1930; attached to Western Army
January 10, 1945; demobilized in 1945.

DATE OF CONFINEMENT: 8 October 1948
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF ACQUITTAL: 29 December 1948

NAME: Shoshin Ito
AGE: 55
RESIDENCE: Aichi-Ken, Ama-Gun, Tatsuta-
Mura, Oaza Hayao #2218
MARITAL STATUS: Married
RELATIVES: Wife, 4 children, mother,
4 brothers
EDUCATION: Kyoto University Law School
VOCATION: Army officer
MILITARY CAREER: Commissioned legal
colonel April 1942; promoted 2
August 1943 to major general;
demobilized 31 November 1946.

DATE OF CONFINEMENT: 6 December 1946
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

NAME: Ichiro Jin
AGE: 51
RESIDENCE: Fukuoka-Ken, Mii-Gun,
Mikuni-Mura, Oho, 151 Banchi.
MARITAL STATUS: Married
RELATIVES: Wife, 3 children, mother,
brother and sister.

DATE OF CONFINEMENT: 2 September 1947
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF ACQUITTAL: 29 December 1948

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EDUCATION: Graduate of Military Academy
VOCATION: Army officer
MILITARY CAREER: Commissioned 25 October 1921; became Chief of Adjutant Section, Western Army, 25 April 1945; demobilized 15 August 1945.

NAME: Yoshinao Sato
AGE: 49
RESIDENCE: Yamagata-Ken, Awabe-Gun, Kanonji-Mura, Tsukabuchi
MARITAL STATUS: Married
RELATIVES: Wife, 4 children, father
EDUCATION: Graduate of War College
VOCATION: Army officer
MILITARY CAREER: Commissioned 24 October 1919; attached to Western Army Hqs, Staff Section, 1 July 1943; demobilized 30 November 1945.

DATE OF CONFINEMENT: 20 July 1946
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to 29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY COMMISSION: Yes, by one Commission member.

NAME: Katsuya Yakumaru
AGE: 43
RESIDENCE: Miyazaki-Ken, Nishimorogata-Gun, Masaki-Mura, Tsuru
MARITAL STATUS: Married
RELATIVES: Wife, 3 children
VOCATION: Army officer
MILITARY CAREER: Commissioned in 1927; became staff officer of Western Army July 1944; demobilized November 1945.
EDUCATION: Graduate of War College.

DATE OF CONFINEMENT: 20 July 1946
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to 29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for life
CLEMENCY RECOMMENDED BY COMMISSION: Yes, by one Commission member.

NAME: Minoru Nakamura
AGE: 33
RESIDENCE: Fukuoka-Ken, Tobata-Shi, Nakano, 1982-2
MARITAL STATUS: Married
RELATIVES: Wife, son
EDUCATION: Graduate of Tokyo Imperial University
VOCATION: Company employee
MILITARY CAREER: Inducted in February 1942; attached to Western Army June 1944; demobilized in September 1945.

DATE OF CONFINEMENT: 8 October 1948
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to 29 December 1948
DATE OF ACQUITTAL: 29 December 1948

NAME: Takanobu Kaku
AGE: 25
RESIDENCE: Fukuoka-Shi, Oaza, Imaizumi, 49 Banchi
MARITAL STATUS: Single
RELATIVES: Father, brother, sister
EDUCATION: Graduate of University of Takushoku
VOCATION: Company employee
MILITARY CAREER: Inducted August 1943; attached to staff section, Western Army, January 1945; demobilized on 15 August 1945.

DATE OF CONFINEMENT: 8 October 1948
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to 29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for twenty-five (25) years
CLEMENCY RECOMMENDED BY COMMISSION: Yes, by one Commission member.

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NAME: Isamu Yokoyama
AGE: 60
RESIDENCE: Fukuoka-Ken, Chikushi-Gun,
Futsukaichi, Aza, Muzoji, 609
MARITAL STATUS: Married
RELATIVES: Wife, 3 children
EDUCATION: Graduate of War College
VOCATION: Army officer; farmer after
demobilization.
MILITARY CAREER: 1st Division Commander;
became Commander of 11th Army in
China; Commander of Western Army and
16th Area Army December 1944; demo-
bilized 15 October 1945.

DATE OF CONFINEMENT: 30 August 1946
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

NAME: Hideto Kuboyama
AGE: 30
RESIDENCE: Fukuoka-Ken, Asakura-Gun,
Tateishi-Mura, Ichiki
MARITAL STATUS: Married
RELATIVES: Wife, father, mother,
7 sisters, 1 brother.
EDUCATION: Graduate of grammar school.
VOCATION: Farmer
MILITARY CAREER: Inducted 10 March 1941;
attached to staff section operations,
Western Army, April 1943; demobilized
December 1945.

DATE OF CONFINEMENT: 14 August 1948
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for twenty (20) years.
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

NAME: Mitsushige Inoue
AGE: Not shown.
RESIDENCE: Not shown.
MARITAL STATUS: Not shown.
RELATIVES: Not shown.
EDUCATION: Not shown.
VOCATION: Not shown.
MILITARY CAREER: Not shown.

DATE OF CONFINEMENT: 30 August 1948
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948
to 29 December 1948
DATE OF SEVERANCE: 13 December 1948

NAME: Yusei Wako
AGE: 40
RESIDENCE: Yamanashi-Ken, Kitatori-Gun,
Otsuki-Cho, Komaba-shi, 169
MARITAL STATUS: Married
RELATIVES: Wife, 3 children, father,
grandmother.
EDUCATION: Graduate of Law School of
University of Japan.
VOCATION: Army officer
MILITARY CAREER: Appointed Judicial
1st Lt in April 1943; attached to
13th Army in Shanghai May 1943;
attached to Western Army, Judicial
Section April 1944.

DATE OF CONFINEMENT: 21 September 1946
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

NAME: Koshi Yukino
AGE: 40
RESIDENCE: Kumamoto-Ken, Tamana-Gun,
Ishinuki-Mura, 2527
MARITAL STATUS: Married
RELATIVES: Wife, 3 children

DATE OF CONFINEMENT: 8 October 1948
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF ACQUITTAL: 29 December 1948

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EDUCATION: Graduate of Army Air Officers School.

VOCATION: Farmer

MILITARY CAREER: Inducted January 10, 1928.

NAME: Kaneyoshi Ikeda
AGE: 29
RESIDENCE: Kagoshima-Ken, Awara-Gun, Yokogawa-Machi, Nakano, 1043
MARITAL STATUS: Married
RELATIVES: Wife, 1 child, father, mother.
EDUCATION: Graduate of grammar school
VOCATION: Taxi driver
MILITARY CAREER: Inducted in January 1944, attached to Western Army October 1943.

DATE OF CONFINEMENT: 17 December 1947
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to 29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for twenty (20) years
CLEMENCY RECOMMENDED BY COMMISSION: Yes, by one Commission member.

NAME: Tatsuo Itezono
AGE: 31
RESIDENCE: Kagoshima-Ken, Kawabe-Gun, Kawabe-Cho, Miya, 4496
MARITAL STATUS: Married
RELATIVES: Wife, 2 children, mother, father.
EDUCATION: Graduate of Military Academy
VOCATION: Farmer
MILITARY CAREER: Attached to 23rd Regt in Manchuria September 1940; attached to Western Army Hqs June 1945.

DATE OF CONFINEMENT: 6 February 1947
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to 29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for life.
CLEMENCY RECOMMENDED BY COMMISSION: Yes, by one Commission member.

NAME: Tomenosuke Kusumoto
AGE: 49
RESIDENCE: Not shown.
MARITAL STATUS: Married
RELATIVES: Wife, child
EDUCATION: Graduate of Agriculture School
VOCATION: Owner of recreation hall
MILITARY CAREER: Commissioned in 1936; attached to Western Army 1 November 1943; demobilized 1945.

DATE OF CONFINEMENT: 30 August 1946
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to 29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for forty (40) years
CLEMENCY RECOMMENDED BY COMMISSION: Yes, by one Commission member.

NAME: Sadayoshi Murata
AGE: 48
RESIDENCE: Hyogo-Ken, Muko-Gun, Motoyama-Mura, Nakano, 483
MARITAL STATUS: Married
RELATIVES: Wife, 4 children
EDUCATION: Graduate of law school, Kyoto Imperial University.
VOCATION: Lawyer
MILITARY CAREER: Inducted December 1942; attached to Judicial Section, Western Army, September 1943; demobilized September 1945.

DATE OF CONFINEMENT: 6 February 1947
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to 29 December 1948
DATE OF ACQUITTAL: 29 December 1948

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NAME: Hiroji Nakayama
AGE: 34
RESIDENCE: Fukuoka-Shi, Miyakedonohara-Machi, 840
MARITAL STATUS: Married
RELATIVES: Wife, 2 children, mother
EDUCATION: Graduate of higher industrial school of Kobe
VOCATION: Employee of construction company
MILITARY CAREER: Inducted in 1939; attached to Western Army Hqs, April 1945; demobilized in September 1945.

DATE OF CONFINEMENT: 22 May 1947
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to 29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY COMMISSION: Yes, by one Commission member.

NAME: Masahiko Narazaki
AGE: 26
RESIDENCE: Kanagawa-Ken, Kawasaki-shi, Suwa-Cho, 390
MARITAL STATUS: Married
RELATIVES: Wife, mother
EDUCATION: College graduate
VOCATION: None
MILITARY CAREER: Inducted 1 December 1943; attached to staff section of Western Army 25 July 1945; demobilized in September 1945.

DATE OF CONFINEMENT: 29 September 1947
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to 29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY COMMISSION: Yes, by one Commission member.

NAME: Hidehiko Noda
AGE: 25
RESIDENCE: Fukuoka-Shi, Daigakudori, 3-Chome
MARITAL STATUS: Single
RELATIVES: Father, mother, brother, 2 sisters
EDUCATION: Graduate of University in Fukuoka.
VOCATION: Medicine manufacturer
MILITARY CAREER: Inducted 1 December 1943; attached to staff section Western Army 25 July 1945.

DATE OF CONFINEMENT: 22 May 1947
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to 29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for twenty five (25) years
CLEMENCY RECOMMENDED BY COMMISSION: Yes, by one Commission member.

NAME: Minehiro Ohno
AGE: 29
RESIDENCE: Osaka-Shi, Sumiyoshi-Ku, Bandai, Higashi, 4-Chome, No. 12
MARITAL STATUS: Married
RELATIVES: Wife, child, father, mother.
EDUCATION: Graduate of Law School, Kansai University
VOCATION: Lawyer
MILITARY CAREER: Inducted 1 June 1944; attached to Western Army Judicial Section 6 January 1945; demobilized 15 September 1945.

DATE OF CONFINEMENT: 21 May 1947
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to 29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for thirty (30) years
CLEMENCY RECOMMENDED BY COMMISSION: Yes, by one Commission member.

NAME: Tamotsu Onishi
AGE: 33
RESIDENCE: Shizuoka-Ken, Ito-Shi, Kamata-Ku, Kankoso
MARITAL STATUS: Married
RELATIVES: Wife, 2 children, mother
EDUCATION: Graduate of Chuo University

DATE OF CONFINEMENT: 16 May 1947
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to 29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for twenty (20) years

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VOCATION: None
MILITARY CAREER: Inducted 10 March 1944;
attached to Judicial Section, Western
Army Hqs 15 January 1945; demobilized
5 November 1945.

CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

NAME: Takahashi Otsuki
AGE: 27
RESIDENCE: Hyogo-ken, Hyogo-Gun,
Maeyama-Mura, Shimokosaka, 270-1
MARITAL STATUS: Single
RELATIVES: Mother
EDUCATION: Graduate of Ritsumeikan
University
VOCATION: Teacher
MILITARY CAREER: Inducted 1 December
1943; attached to staff section,
Western Army, in April 1945;
demobilized in August 1945.

DATE OF CONFINEMENT: 24 April 1947
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for thirty (30) years
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

NAME: Kentaro Toji
AGE: 35
RESIDENCE: Fukuoka-Shi, Shimo,
Shinkawabata-Cho, 43
MARITAL STATUS: Married
RELATIVES: Wife, 2 children, father
EDUCATION: Graduate of Tokyo Commercial
College
VOCATION: Owner of stationery store
MILITARY CAREER: Inducted in 1939;
attached to Air Intelligence
Section of Western Army in February
1943; demobilized in 1945.

DATE OF CONFINEMENT: 30 August 1946
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

NAME: Kiyoharu Tomomori
AGE: 48
RESIDENCE: Tokyo-To, Bunkyo-Ku, Non-
gonishiushi-Machi, 13
MARITAL STATUS: Married
RELATIVES: Wife, 2 children, mother
EDUCATION: Graduate of War College
VOCATION: Company employee
MILITARY CAREER: Commissioned 25
October 1922; became Assistant
Chief of Staff of Western Army
1 June 1945; demobilized 30
November 1945.

DATE OF CONFINEMENT: 24 April 1947
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

NAME: Hitoshi Yamauye
AGE: 27
RESIDENCE: Saga-Ken, Fujitsu-Gun,
Yoshida-Mura, Hei, 963
MARITAL STATUS: Single
RELATIVES: 3 brothers, sister
EDUCATION: Graduate of Takushoku
University
VOCATION: Farmer
MILITARY CAREER: Inducted on 1
December 1943; attached to Western
Army Hqs 25 July 1945; demobilized
25 August 1945.

DATE OF CONFINEMENT: 24 February 1948
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for twenty-five (25) years
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

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NAME: Fukuichi Yamamoto
AGE: 27
RESIDENCE: Shimane-Ken, Ayakawa-Gun,
Wanibuchi-Mura, Oaza, Iime, 211
MARITAL STATUS: Single
RELATIVES: Father, mother
EDUCATION: Graduate of normal school
VOCATION: Farmer
MILITARY CAREER: Inducted 5 April 1943;
attached to Western Army Hqs 1 De-
cember 1944; demobilized after end
of war.

DATE OF CONFINEMENT: 19 May 1947
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for thirty (30) years
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

NAME: Kanji Yoshida
AGE: 39
RESIDENCE: Hyogo-Ken, Akashi-Shi,
Okuratani, Higashiyama, 500-1
MARITAL STATUS: Married
RELATIVES: Wife, 3 children
EDUCATION: Graduate of Law School,
Kyoto Imperial University
VOCATION: Lawyer
MILITARY CAREER: Inducted October 1939;
appointed Judicial 1st Lt October
1944; attached to Western Army Hqs
Judicial Section December 1944;
demobilized January 1946.

DATE OF CONFINEMENT: 5 February 1948
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for thirty (30) years
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

NAME: Tokuzo Tsuchiyama
AGE: 30
RESIDENCE: Yamaguchi-Ken, Abu-Gun,
Sasanami-Mura, 235
MARITAL STATUS: Married
RELATIVES: Wife, son; mother
EDUCATION: Graduate of grammar school
VOCATION: Farmer
MILITARY CAREER: Inducted in January
1940; attached to Western Army Hqs
May 1943; demobilized September 1945.

DATE OF CONFINEMENT: 8 October 1948
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for twenty (20) years
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

NAME: Ichiro Maida
AGE: 29
RESIDENCE: Yamaguchi-Ken, Hagi-Shi,
Oaza, Tsubaki #937
MARITAL STATUS: Married
RELATIVES: Wife, son, father, 2 brothers
EDUCATION: Hagi Commercial High School;
six months Tenri Sect School
VOCATION: Priest of Tenri Sect
MILITARY CAREER: Entered Army as Pvt
1 December 1940; last rank attained
1st Lt, Inf.

DATE OF CONFINEMENT: 19 October 1948
DATE OF ARRAIGNMENT: 11 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 11 October 1948 to
29 December 1948
DATE OF SENTENCE: 29 December 1948
SENTENCE: CHL for life
CLEMENCY RECOMMENDED BY COMMISSION:
Yes, by one Commission member.

2. Synopsis of Charges, Pleas, Findings and Legal Sufficiency:

<u>Charge and Specifications</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
CHARGE: That the following members of the Imperial Japanese Army: Kajuro Aihara, Hiroshi Akita, Kyusaku Fukushima, Masazumi Inada, Tokuji Enatsu, Shoshin Ito, also known as Akinobu Ito,	NG	G, except the words, Hiroshi Akita, Tokuji Enatsu, Masazumi Inada,	Yes, in part

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Iichiro Jin, Yoshinao Sato, Katsuya Yakumaru, Minoru Nakamura, Takanobu Kaku, Isamu Yokoyama, Hideto Kuboyama, Mitsushige Inoue, Yusei Wako, Koshi Yukino, Kaneyoshi Ikeda, Tatsuo Iteazono, Tomenosuke Kusumoto, Sadayoshi Murata, Hiroji Nakayama, Masahiko Narazaki, Hidehiko Noda, Minehiro Ohno, Tamotsu Onishi, Takashi Otsuki, Kentaro Toji, Kiyoharu Tomomori, Hitoshi Yamaue, Fukuichi Yamamoto, Kanji Yoshida, Tokuzo Tsuchiyama, and Ichiro Maida, did, during a time of war between the United States of America, its Allies and Dependencies, and Japan, violate the Laws and Customs of War. (As Amended, R 206)

Iichiro Jin, Sadayoshi Murata, Minoru Nakamura and Koshi Yukino.

Sp 1: In that Isamu Yokoyama, Masazumi Inada, Kyusaku Fukushima, Shoshin Ito, also known as Akinobu Ito, Kiyoharu Tomomori, Hiroshi Akita, Yoshinao Sato, Iichiro Jin, Katsuya Yakumaru, Tomenosuke Kusumoto, Tatsuo Iteazono, Tokuji Enatsu, Kajuro Aihara, Yusei Wako, Koshi Yukino, Sadayoshi Murata, Minoru Nakamura, Hiroji Nakayama, Mitsushige Inoue, also known as Mitsushige Inouye, Hideto Kuboyama, Tokuzo Tsuchiyama, and Ichiro Maida, acting jointly and in pursuance of a common intent, did, on or about 15 August 1945, with malice aforethought, willfully, deliberately, feloniously, unlawfully, and with premeditation, kill approximately seventeen (17) American PW's, held captive, whose identities are not definitely known, by bayoneting, cutting, and beheading. (As Amended, R 25, 206, 207, 879).

NG

G,
except the words,
Masazumi Inada,
Kiyoharu Tomomori,
Hiroshi Akita,
Iichiro Jin, Tatsuo
Iteazono, Tokuji
Enatsu, Yusei Wako,
Koshi Yukino, Sada-
yoshi Murata, Minoru
Nakamura, and
Mitsushige Inoue.

Yes,
in part

Sp 2: In that Isamu Yokoyama, Masazumi Inada, Kyusaku Fukushima, Shoshin Ito, also known as Akinobu Ito, Kiyoharu Tomomori, Hiroshi Akita, Yoshinao Sato, Iichiro Jin, Katsuya Yakumaru, Tomenosuke Kusumoto, Tatsuo Iteazono, Tokuji Enatsu, Kajuro Aihara, Yusei Wako, Koshi Yukino, Sadayoshi Murata, Minoru Nakamura, Kentaro Toji, Kanji Yoshida, Tamotsu Onishi, Kaneyoshi Ikeda and Ichiro Maida, acting jointly and in pursuance of a common intent, did, on or about 20 June 1945, with malice aforethought, willfully, deliberately, feloniously, unlawfully, and with premeditation, kill approximately eight (8) American PW's, held captive, whose identities are not definitely known, by bayoneting, cutting, and beheading. (As Amended, R 206)

NG

G,
except the words,
Masazumi Inada,
Kiyoharu Tomomori,
Hiroshi Akita,
Iichiro Jin, Katsuya
Yakumaru, Tomenosuke
Kusumoto, Tatsuo
Iteazono, Tokuji
Enatsu, Kajuro
Aihara, Koshi Yukino,
Sadayoshi Murata,
Minoru Nakamura,
Kanji Yoshida, and
Ichiro Maida.

Yes,
in part

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<p>Sp 3: In that Isamu Yokoyama, Masazumi Inada, Kyusaku Fukushima, Shoshin Ito, also known as Akinobu Ito, Kiyoharu Tomomori, Hiroshi Akita, Yoshinao Sato, Iichiro Jin, Katsuya Yakumaru, Tomenosuke Kusumoto, Tatsuo Itezone; Tokuji Enatsu, Kajuro Aihara, Yusei Wako, Koshi Yukino, Sadayoshi Murata, Minoru Nakamura, Minehiro Ohno, Fukuichi Yamamoto, Masahiko Narazaki, Hidehiko Noda, Takashi Otsuki, Hitoshi Yamaue, Takanobu Kaku, Ichiro Maida, and Kanji Yoshida, acting jointly and in pursuance of a common intent, did, on or about 10 August 1945, with malice aforethought, willfully, deliberately feloniously, unlawfully and with premeditation, kill approximately eight (8) American PW's, held captive, whose identities are not definitely known, by bayoneting, cutting, and beheading. (As Amended, R. 25, 206).</p>	NG	G, except the words, Masazumi Inada, Hiroshi Akita, Iichiro Jin, Tomenosuke Kusumoto, Tokuji Enatsu, Kajuro Aihara, Koshi Yukino, Sadayoshi Murata, Minoru Nakamura, and Ichiro Maida.	Yes, in part
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<p>Sp 4: In that Isamu Yokoyama, Masazumi Inada, Kyusaku Fukushima, Shoshin Ito, also known as Akinobu Ito, Kiyoharu Tomomori, Hiroshi Akita, did, at divers times in or about June, July, and August, 1945, willfully, deliberately, wrongfully, feloniously, and unlawfully, kill approximately thirty-three (33) American PW's, held captive by their command, by ordering, causing, inciting, and permitting members of their command and persons under their supervision and control, to mistreat and decapitate with swords, said PW's whose identities are not definitely known.</p>	NG	G, except the words, Masazumi Inada and Hiroshi Akita. As to Tomomori, G except the words "at divers times", "or about June, July, and"; "thirty-three (33)"; substituting therefor the figures "eight (8)". Of the excepted words, NG and of the substituted words, G.	Yes, in part
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<p>Sp 5: In that Masazumi Inada did, in or about April 1944, willfully, deliberately, wrongfully, feloniously, and unlawfully, kill approximately two (2) American PW's held captive by his said command, by ordering, causing, inciting, and permitting members of his command and persons under his supervision and control to mistreat and decapitate with swords, said PW's whose identities are not definitely known.</p>	NG	NG
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<p>Sp 6: In that Isamu Yokoyama did, on or about April to May 1945, willfully, deliberately, wrongfully, feloniously, and unlawfully publish, order and declare that no quarter would be given personnel of the Allied Forces.</p>	NG	NG
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3. Summary of the Evidence:

a. For the Prosecution:

In General.

Prosecution introduced copies of missing air crew reports evidencing that the air crew personnel listed in the specifications herein crashed in missions

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over Kyushu (PX 1-12, incl.). Documentary data was introduced revealing that those named were not returned from Japan following the termination of hostilities (PX 16-27 incl.). Some of the personnel named were identified by witnesses as having been imprisoned at Western Army Headquarters during the period herein involved: -

Appleby: PX 112-11; 198-5; Aspinall: PX 114-2; 119-2; 145-19; 180-7; 186-4; 196-3; 198-5; Baumgarten: PX 114; 119; 145-19; 158-3,4; 180-7; 187-4; 196-3; 198-4; Brewer: PX 112-11; 201-5; Davidson: PX 145-19; Hewitt: PX 186-4; 189-4; 201-5, 9; Huck: PX 187-9; 201-5; McElfresh: PX 114; 119; 145-19; 196-3; Nelson: PX 129-8; 143-3; 199-3; 201-5, 9; Neal: PX 198-5; Romines: PX 114; 119; 196-3; 198-4; Roy: PX 185; 187-7; Thornton: PX 186-4; Whitely: PX 201-5, 9.

Personal belongings and further indicia of possible identification were destroyed by personnel of the Western Army Headquarters at the termination of hostilities (PX 122-7; 125-37; 145-28, 43; 267; 268).

The accused Yokoyama was Commanding General of both the Sixteenth Area Army and the Western District Army, the former being a tactical unit with the mission of defending Kyushu Island from invasion and the latter being administrative, having among its duties the training of soldiers and surveillance over air defense. Western Army, being administrative, received instructions from the War Ministry in Tokyo; the Sixteenth, being tactical, received orders from Imperial General Headquarters in Tokyo. It was under the Second General Army commanded by General Hata. Common headquarters were maintained in Fukuoka until about 24 June 1945, at which time, to lessen the dangers from air raids, the Sixteenth Area Army Headquarters was removed to Yamaie, about eight miles away from Fukuoka, Yokoyama and most of his staff moving there. (PX 98-1-2; 107-5; 112-38; 122-3; 224-4; 264; R 294, 306, 307, 337).

Until the beginning of 1945, captured fliers were temporarily imprisoned at the headquarters, were given a brief interrogation after which, pursuant to standing orders, they were dispatched to Tokyo. Subsequently, orders were issued by the Second General Army setting up military commissions to try captured fliers, said orders providing that enemy fliers suspected of indiscriminate bombing were to be investigated and if tried and convicted were to be sentenced to death. The members of the commission were to be staff officers, the procedure therefore to be similar to that used in courts martial. Pursuant thereto, Western Army Headquarters issued orders substantially to the same effect. Fliers who crashed in the area under the jurisdiction of the Western Army were brought to headquarters in Fukuoka where they were confined and questioned by the Intelligence Section for intelligence information. The Kempei Tai was then to conduct an investigation to determine if any military laws had been violated, the Legal Section receiving its reports. Under this procedure, four fliers were being held for trial about the middle of May 1945. Murata, who was acquitted, was appointed as prosecutor. The trial, however, was being held in abeyance pending a reply from Tokyo to a request from the Western Army made about the 20th of May as to whether these four fliers should be tried or the cases dismissed. In late April 1945, a telegram was received by the Intelligence Section of Western Army from the Intelligence Section of the General Staff Headquarters in Tokyo, said telegram being a general order to all armies that only fliers having valuable intelligence information should henceforth be forwarded to Tokyo, the rest to be disposed of locally.

The accused Sato, Chief of Air Intelligence and Air Defense at the headquarters, and in charge of captured fliers during this period, conferred with the accused Ito, Chief of the Legal Section, and the accused Wako, senior member of the Legal Section, and chief in the absence of Ito, to discuss the purport of of this telegram. Sato and Wako were of the opinion that a trial was not necessary, while Ito was of the contrary opinion. A representative of the Intelligence Section of Tokyo Headquarters, Major Kikkawa, who visited Western Army about April 1945 also was of the belief that execution should be had without trial.

In May, Wako came to Sato and asked permission to execute the fliers without trial. Sato went to Akita, senior staff officer, and informed him that in the past, enemy fliers had been sent to Tokyo and that an order had been received that such was no longer necessary and therefore the Army would have to

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dispose of them; that many of these fliers would, as a matter of course, be sentenced to death by a military tribunal for indiscriminate bombing and therefore he would like to execute them without referral to a trial; and requested Akita to secure Yokoyama's opinion. Akita went into Yokoyama's office and apprised him of Sato's view to which Yokoyama gave his approval; Akita so informed Sato, who in turn informed Wako. The foregoing did not refer to any specific fliers but was in the nature of approval as to future policy. Both Yokoyama and Akita knew of the Tokyo telegram. During the period involved it was the practice in the headquarters to release fliers from detention at the request of Sato, they being in his charge. None of the fliers herein were tried by a military tribunal. Other district armies killed Allied fliers without trial (PX 100-17, 30; 101-14; 103-17; 104; 112-4, 12; 31; 116; 121-2; 122-7; 129-3, 5, 12-14, 38; 130-4; 138-3-12; 145-13; 147-13; 157-3,4; 181-1; 195-7; 200-4; 201-6, 7; 202-2; 207-3; 224-2, 3; 225-4, 8; 226; 230-1; 231-9; 265-2; R 288, 295-6, 282-3, 409, 452-458).

Specification 1: The accused Yoshida was stricken from this specification and inserted in Specification 3 (R 25). The accused Maida was subsequently arraigned and his name inserted herein (R 206). Inoue was severed (R 879). Of those charged in this specification the following were found guilty: Yokoyama, Fukushima, Ito, Sato, Yakumaru, Kusumoto, Aihara, Nakayama, Kuboyama, Tsuchiyama and Maida.

This execution was performed mainly by members of the Air Defense Section headed by Colonel Sato. Personnel at the headquarters had been notified to listen to a radio broadcast by the Emperor at noon, 15 August, when he was to read an Imperial Rescript accepting the Potsdam Declaration. That morning Kusumoto, second in command of the Adjutant Section which cared for PW's, came to Sato's office and inquired as to what should be done with the remaining fliers. Kusumoto and Sato went to the office of Fukushima, assistant to Inada, Chief of Staff of Yokoyama, and the latter went in and inquired about the remaining prisoners of Fukushima who informed him to go ahead and execute, but to be careful. This information Sato passed on to Kusumoto leaving the planning thereof to him.

After the Rescript had been heard, Nakayama, Maida, and others remained in the room having been previously ordered so to do by Kusumoto, who related that an execution was to be performed; that they had been ordered to participate therein and that said execution was to be kept a secret. Maida selected additional persons to participate, among them being Tsuchiyama and Kuboyama. Kusumoto ordered Yukino, acquitted, to release the fliers and the executions took place that afternoon at Aburayama, the party together with seventeen fliers going up by truck with the exception of Sato and Nakayama who came out a little later by car, accompanied by Sachiko Ishimura, a female employee of the headquarters. Maida directed the execution dividing the participants into groups and allocating victims to each group. The beheadings were performed in four different spots in the area; there was no ceremony attendant thereon, nor were the bodies placed in graves. The following accused in this case performed beheadings: Nakayama, two beheadings; Kuboyama, Tsuchiyama, and Maida executed one prisoner each.

Yokoyama: PX 98-11, 12 (his own); 112-50, 61; Fukushima: PX 101-18, 21; 107-34, 37 (his own); 111-70; 112-43, 50; 112-60; 113-2; 116-4; 117-1; 118-3; 122-9; 127-17; 129-33; 130-11; 163-18; 172-9, 10; 231-8, 23; 251 (his own); Sato: PX 101-19; 107-8; 112-4 (his own); 113 (his own); 117-1, 118-3 (his own); 122-9; 140-5; 174-2; 214-1; 215-13; 251-35 (his own); 253-4; 254-5; 257-1; 263-3; 271-4; Yakumaru: PX 112-42; 113-2; 127-16 (his own); 231-16; R 763-766; Kusumoto: PX 100-5; 101-19; 109-4; 111-33; 112-42, 44; 113; 118-3; 122 (his own); 127-17; 129-36; 130-11; 140-1, 5; 143-2; 163-18; 172-5; 201-10; 207-2, 4, 5; 231-11, 26; 244-2; 251-13 (his own); 254-5; 263-3; 275-1, 2, 5, 6; Aihara: PX 107-5; 112-9, 31; 117-2; 122-7; 124-4; 125-16; 17; 127-11; 128-4; 134 (his own); 140-1, 5; 196-7; 215-15; R 424, 426; PX 224-4, 5; 225-9, 11; 226-8; 229-2; 249-2; 259-2; 267-2, 3; 268; Nakayama: PX 112-46, 63; 171 (his own); 172 (his own); 174; 175-2; 215-15, 20, 22; 253-4, 6; 254-5-7; 257-2; 263-4, 5; 275-4; R 430; Kuboyama: PX 112-48, 63; 174 (his own); 175-3; 236-2; 253-5, 6; 254 (his own); 257-3; 275-4; Tsuchiyama: PX 174; 175 (his own); 254-5, 7; 257 (his own); Maida: PX 112-46, 49; 134-11; 143-2; 172-5, 8; 174-2-5; 175-3, 4; 215-17, 22; 236-2; 248; 253-3; 254-5; 255 (his own); 257-1; 263-1, 3, 5.

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Specification 2: Of those charged in this specification, the following were found guilty: Yokoyama, Fukushima, Ito, Sato, Wako, Toji, Onishi, and Ikeda.

On the night of 19 June, Fukuoka City was severely bombed, a considerable portion of the city and Army headquarters being damaged. At the time of this occurrence, eight fliers were in custody, four in the custody of the Air Defense Section and four others in the custody of the Judicial Section; as to the latter, and as previously stated, a preliminary investigation had been made as to the feasibility of their being tried for indiscriminate bombing, a report of investigation having been sent to Tokyo. However, no reply pertaining thereto had been received at the time of this incident.

Past midnight of that night, while Fukushima, and Hamada, who was in charge of the radar detachment at the headquarters, were in the Intelligence Office of the Air Defense Building, Fukushima remarked that the fliers must be disposed of, picked up the phone and telephoned either the Chief of Staff or the Commanding General. After finishing, he stated, to the best of Hamada's recollection, that he had been either told "no" or "to wait".

On the 20th, Wako came to Sato and inquired whether they should execute the fliers and make it appear that they had died in the bombing attack, to which Sato replied that it would be all right, requesting Wako to notify him as he would like to attend the executions. Wako went to Yokoyama's office and secured his permission to execute the four fliers being held pending trial. Wako informed Ito of his permission and next informed Murata because he was the prosecutor in the case pending against the fliers. Murata also informed Ito. After leaving Murata, Wako went to the detention barracks and ordered some guards to dig a pit in a corner of the headquarters area. While preparations were going on, Sato sent word that the four fliers under his jurisdiction would also be sent down to be executed.

Ikeda and Onishi attended the executions at the behest of Wako, he being the director thereof. All the fliers were executed by beheading before numerous onlookers, the executions not being performed in a military manner. Wako executed two, Ikeda two, Onishi one, and Toji executed four. Toji's mother had been killed in the raid the night before, he finding her body about three hours prior to the execution. While building a coffin for her, he noticed that executions were to take place and volunteered his services.

Sato and Ito observed a portion of the beheadings and at the completion thereof Wako left the scene with Sato who informed him that an appropriate report would be sent to the Minister of War. Wako also informed Ito of the completion of the executions and Ito stated that he knew about it. That evening, Ito reported the executions to Yokoyama.

Yokoyama: PX 98-10 (his own); 100-25-29, 36; 101-15; 116-3; 122-8; 127-11; 138-13; 145-23, 24, 35; 231-21 (his own); 251-28 (his own); Fukushima: PX 100-26; 101-13; 101-21; 107-7, 26 (his own); 127-14; 242-2, 4; R 483-489; Ito: PX 98-10; 100-21-35 (his own); 101-14, 21; 112-32; 116-3; 118-3; 122-8; 129-4, 12, 13; 130-3; 134-12; 138-10, 12, 16; 145-21, 23, 29, 33; 147-3, 11; 154-2; 155-2; 180-10; 192-11; 231-32; 251-7; 271-4; R 318; Sato: PX 98-9; 100-22, 30; 101-13, 15; 103-17; 104-1; 107-5, 20; 112-32 (his own); 118 (his own); 134-10, 12; 138-13; 145-29, 35; 147-3; 154-2; 155-2; 159-2; 231-9, 24; 242-3; 251-7; 251-34 (his own); 271-4; Wako: PX 100-23-28, 36; 107-20; 112-32; 118-3; 127-11; 130-8; 138 (his own); 145-23; 147-2, 11; 154-3, 4; 157-6, 11; 158-1; 162-3; 186-5; 187-5; 189-2; 190-3; 192-9, 17; 240-5; 258 (his own); 271-4; R 309, 320, 382; Toji: PX 100-23, 25; 112-34, 63; 127-12-13; 129-23; 130-8; 134-11, 12; 145-33; 147-3; 154 (his own); 155 (his own); 158-3; 180-9; 186-5, 6; 187-7; 190-4; 192-11; 240-6; 242-2; 251-25 (his own); Onishi: PX 127-13; 138-15; 145-32; 157 (his own); 162-5; 192-11; R 314-315; Ikeda: PX 157-7; 158 (his own); 159 (his own); 188-1; 192-11; R 309-310.

Specification 3: The accused Kaku was subsequently arraigned and his name inserted herein (R 204). Of those charged in this specification, the following were found guilty: Yokoyama, Fukushima, Ito, Tomomori, Sato, Yakumaru,

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Itezono, Wako, Ohno, Yamamoto, Narazaki, Noda, Otsuki, Yamaue, Kaku and Yoshida.

The purpose of the guerrilla unit was to train the younger officers assigned for that purpose in guerrilla tactics at expected invasion points. Since it was anticipated that they might have a shortage of weapons, they were to receive training in the use of the bow and arrow, and karate, the latter being a form of fighting involving the use of feet and hands, foot blows being directed to the chin, diaphragm, stomach, kidneys, scrotum and groin. Blows of the hands are struck with the edge of the hand being directed towards the face, diaphragm and kidneys.

Itezono, assistant in charge of guerrilla warfare, had his desk in the same office as Sato. On about 9 August, Sato asked Itezono if his section would carry out the next execution. He also told Itezono that in his guerrilla warfare section there were many young officers and that he should take some of these officers to the execution. He further told Itezono that the prisoners could be executed in any way they liked, whereupon Itezono asked and procured permission from Sato to use karate and bows and arrows to kill the prisoners, it being Itezono's idea that such actions would be useful in illustrating guerrilla methods to these officers and they would gain experience thereby. Itezono told 1st Lt Ono that the next phase in the guerrilla training would be the execution of the American fliers and he also told Tomomori, Assistant Chief of Staff, in charge of forming units of the Civilian Defense Corps, that he had been ordered to perform the execution inviting him to attend and that bows and arrows would be used, together with karate. He also directed Otsuki, who was in charge of the bow and arrow training for the guerrilla unit, to the execution, and Otsuki brought with him a two-foot cross bow and about fifteen arrows, thirty inches long. Itezono also informed other officers from the guerrilla unit of the impending executions and that Sato had ordered all officers of the unit to participate.

There were thirty-two persons in the back of the truck the next morning; eight of them being the American PW's to be executed, all blindfolded with hands tied. The driver was Nakamura, acquitted, and standing by the truck to see the party off was Sato, but he did not go to the execution. There were about thirty or forty onlookers, including civilians, about the truck. When the party arrived at the execution site, Wako, Ohno, and 1st Lt Yoshida of the Legal Section, were already there, having previously arrived to witness the execution of a Japanese soldier which had been completed prior to the arrival of the party. Wako cautioned that those present should keep the affair a secret.

Shortly after the arrival of the foregoing, Tomomori and Enatsu arrived at the scene. Itezono next asked 1st Lieutenant Ono to request volunteers for executioners. Ono said there were many volunteers and four were selected therefrom. Tomomori showed Itezono where he wanted the bodies buried, whereupon three or four soldiers with shovels came forth and started to dig the hole. All of the officers from the unit were assembled in columns of two. Tomomori stood alone in front of the columns and received the salute and when Itezono stated that they would now start the executions, he indicated his approval. Itezono and Wako explained how an execution should be performed. The first beheading was performed by Eguchi, not here accused. The second American was executed by Yoshida. The third prisoner was executed by Satano, not here accused. Tomomori stated that he was very good with the sword, withdrawing a small bottle of whiskey from his pocket and giving Satano a drink, which he also offered to Eguchi. The next prisoner was executed by 2nd Lt Ohno. Kuroki executed the next flier, taking two strokes. At about this time, Narazaki, Yamaue and three others, all of the guerrilla unit, arrived at the scene since there had not been enough room for them in the truck and they had walked. As the next flier to be executed was being led forward to the pit, Itezono suggested that karate be tried on him. Yamamoto came out of the line and held the prisoner by the left arm and Noda stated that he would try karate. He stripped down to his undershirt, backed three or four steps, assumed a crouched position, ran towards the prisoner, stopped just before reaching him and, in a boxer's stance, struck the flier once in the diaphragm, the flier moaning and slumping forward, whereupon Yamamoto pulled him up straight. Noda repeated this two or three times and Enatsu then walked up, telling Noda that his karate was no good and illustrating the proper way to make the diaphragm punch. Noda again tried the punch two or three times but procured no results, the flier just moaning and doubling up but not falling to the ground as they intended.

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After continuing and still being ineffective, Itezo no told him to cease, whereupon either Yamamoto or another probationary officer took this prisoner to the edge of the pit and some other probationary officer executed him. The next prisoner also had karate performed upon him, Yamamoto holding him by his left arm and Noda striking him two or three times. Itezo no then ordered Yama uye to practice karate. His blows also were ineffective and Yamamoto then kicked the flier in the scrotum twice and the prisoner grunted and fell forward. Kaku and others then also struck the flier. Itezo no then ordered Yamamoto to stop and the prisoner was led to the pit. Itezo no ordered Narazaki to execute the next victim telling him to try "kesagiri", which is the cutting through the shoulder down through the lungs. After doing this, the prisoner was still breathing and Narazaki was told to thrust his sword into the prisoner's heart. He was also given a drink of whiskey by Tomomori. The next prisoner was the last one scheduled to be executed and Itezo no stated that on him they would try bow and arrow. The prisoner was made to sit by a corner of the pit, facing the crowd and Otsuki kneeled about ten feet away and fired an arrow which struck the prisoner just above his left eye, making a small wound. The second arrow missed. While he was placing the third arrow into the bow, Tomomori ordered a halt and Itezo no stopped Otsuki. The prisoner was then led to the pit and 2nd Lt Ohno again came forward and executed him.

After this last execution, four soldiers went to the grave, rearranged the bodies, covered them with a straw mat and the pit was then filled with dirt. Itezo no then arranged the men in formation, gave the command to salute Tomomori and informed him that the detail was finished. Tomomori gave the assemblage a brief talk to the effect that the men executed were not PW's but were enemies and then directed that the unit be dismissed. Itezo no returned to the headquarters and informed Sato that the executions had been completed, informing him that karate and bow and arrows had been tried and that they were ineffective. The next day Itezo no saw Tomomori, at which time Tomomori stated that Fukushima had ordered the guerrilla units to use bows and arrows in case of an invasion but Tomomori likewise felt that, based on the exhibition, they were ineffective.

Yokoyama: PX 98-11 (his own); 112-61; 116-4; 162-10; Fukushima:
PX 101-17, 21; 107-8, 37 (his own); 111-62; 63, 70; 162-11; 163-18; Tomomori:
PX 100-9, 26; 101-17; 107-8, 20; 111 (his own); 111-46; 112-45, 60; 116-4; 121-35;
122-9, 13; 124-5; 125-21, 32, 34, 38; 127-15; 129-24; 130-8, 9; 131-1, 2; 140-3;
145-10; 161-3; 162-9; 163-11, 17; 166-6; 167-17, 18, 35; 203-8; 206-3, 7, 8; 207-2;
R 386-388; PX 210-5; 245-1; 247-3; 251-15 (his own); R 404-405; PX 231-13, 20, 34;
245; R 507, 510-512, 514; PX 256-3; 259-3; 262-18; 265-5; 266-2, 4, 9; 271-4;
271-6 (his own); Sato: PX 101-17; 107-20; 112-38 (his own); 124-2, 4; 125-18;
127-15; 129-33; 172-5; 251-35 (his own); 259-2; 271-4; Yakumaru: PX 127-15 (his
own); 259-3; Itezo no: PX 101-17, 28, 31; 111-45, 74; 112-38; 118-3; 122-8, 9;
124 (his own); 125 (his own); 127-15; 129-33; 134-14; 140-5; 143-2; 161-3, 162-6;
163-9, 13; 165-5; 166-15; 167-5, 6, 11, 30; 206-3; R 391, 400; PX 210-3; 231-15,
34; 245-1, 2; R 510; PX 247; 251-21 (his own); 256-3; 259-5 (his own); 265-6;
266-2; 268-3; 271-4; Wako: PX 111-41, 47-55; 124-6; 125-32; 162-6; 163-12; 206-2;
256-3; 266-5; Ohno: PX 124-8; 125-32, 35; 145-38; 162 (his own); 163-13; 167-16, 34;
192-17; 206-4; 265-5; 266-5, 8; Yamamoto: PX 111-53; 124-25; 130-9; 162-9; 163 (his
own); 164-4; 167-40; 201-9; 209-2; R 400; PX 233-2; 247-3; R 513, 514; PX 266-4, 11;
Narazaki: PX 125-25, 34; 162-8; 163-9, 14; 165 (his own); 166-9; 167-28, 32; 168;
206-7; 210-4; 247-3; 256-5; 259-4; 266-5, 8; Noda: PX 125-25, 33; 129-31; 162-9;
163-15; 166 (his own); 167-30; 247-3; R 400; PX 256-3; Otsuki: PX 124; 125-25, 35;
129-27; 162-9; 163-9, 14; 166-7; 167 (his own); 190-6; 210-3; R 404, 422; PX 245;
247-3; PX 256-3; 265-6; 266-3; Yama uye: PX 125-25, 34; 163-15; 166-9; 167-31;
168 (his own); 169; 210-5; 245-1, R 404; PX 256-3; Kaku: PX 167-32; 176 (his own);
256 (his own); Yoshida: PX 145-38; 161 (his own); 162-8; 203-8; 206-4; 265-5.

Specification 4: Of those charged herein, the following were found guilty of this specification as stated: Yokoyama, Fukushima and Ito. Tomomori, on the other hand, was found guilty of having, about August 1945, willfully, deliberately, wrongfully, feloniously and unlawfully killed approximately eight American prisoners of war (R 966). See Summary of Evidence, Specifications 1, 2 and 3, supra.

Specification 5: Not Guilty.

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Specification 6: Not Guilty.

Concealment: Those of the accused who did not participate in the offenses charged, but only in the concealment thereof, were acquitted. Accordingly, it is not deemed necessary to summarize in detail the efforts made to conceal the offenses. Suffice it to say that although no captive American fliers were killed in the air raid on Fukuoka on the night of 19 June, shortly after the execution of 20 June a report was sent to the War Ministry that the fliers who had been executed on that date, together with others, had been killed in the air raid. This report was prepared by Sato's Staff Section and cleared through Ito's Legal Section. After the war, this report was withdrawn by Sato from the files of the War Ministry. Sato and Fukushima devised another plan whereby it was to be reported that fliers had been killed during the atomic bombing of Hiroshima. The plan was subsequently changed to provide that only a portion of the fliers had been killed at Hiroshima; the remainder having been sent to Tokyo by plane, which never reached there by reason of it's being driven into the sea by a suicide squadron. Ashes of bodies were brought to Hiroshima in furtherance of the foregoing. After the war, the bodies of those executed in the three series of executions herein involved were crudely cremated and disposed of in the sea, together with personal belongings. In addition, the detention barracks were torn down and burned to conceal English writings on the walls thereof. (PX 100-26, 31, 36; 103-23; 104-5; 107-9-37; 111-67; 112-8, 59; 117-2; 122-7, 10; 125-37; 127-13, 18; 128-4; 129-34; 130-11; 134-9, 14; 145-35-45; 147-4; 148; 151; 152; 187-9; 192-15; 195-9; 196-8; 197-8; 201-11; 108 and R 398; PX 211-3, 225-9, 219-6, 12; 224-5; 230-3; 239-3; 241-5; 246-4; 249; 264-7; 265-6).

b. For the Defense:

Prior to the introduction of defense portion of this case, the accused were informed of their rights (R 573).

Masazumi Inada, an accused, after being asked if he desired to make a sworn statement, an unsworn statement, or remain silent, elected to testify under oath and accordingly was duly sworn (R 575). Although he was acquitted, a portion of his testimony is pertinent. On the dates of the offenses alleged he was Chief of Staff of the 16th Area Army and of the Western District Army Headquarters. If an order to execute fliers without trial had been issued at the Imperial General Headquarters and had been received by General Yokoyama, Inada, as Chief of Staff, would have passed that order down to the proper persons within the command (R 580-1). As to the four fliers who were among those executed, on 20 June 1945 the Kempei Tai unit was investigating them and they were preparing for the trial. Staff officer Yakumaru handled all prisoners of war under the jurisdiction of the Western Army; but according to the Japanese Army regulations enemy fliers were not handled as PW's until there had been an investigation; until that time they were considered as war crimes suspects and Colonel Sato handled these personnel (R 583-4). The purpose of the Western Army Headquarters was to defend the homeland, its most important task being that of air defense. The establishment of the 16th Area Army was a sign that Japan had become a combat zone. As to the fliers being killed, Inada never received any orders or information concerning the incidents and therefore could not inform the Commanding General of their occurrences. The Commanding General and most of the subordinates were engaged in field work and defense, all of their efforts being spent on this type of work and the air defense work of the Western Army Headquarters became secondary (R 585-6).

Upon cross-examination; Inada did not know of any order from Imperial Staff Headquarters that was passed down to Western Army Headquarters to execute the fliers and if such had come down from Imperial Staff Headquarters when he was Chief of Staff, he would surely have seen them (R 598). It was Inada's opinion that Colonel Sato was the person who ordered and permitted the execution but he did not know under whose orders Sato acted (R 601). Western Army had authority to set up tribunals to try American fliers from May through August 1945 (R 607). It was Yakumaru who informed Inada that Colonel Sato, the senior staff officer, was handling the enemy fliers (R 609). The main persons concerned with the concealment plan were Fukushima and Sato (R 614). The probationary officers who were attached to the headquarters received guerrilla training and Major Itezono

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was the one who supervised the training. Tomomori was not the direct superior of Itezono and did not have any direct connection with the group receiving guerrilla training. Inada was the Chief of Staff. Tomomori was Assistant Chief of Staff and Itezono was a member of the Staff Section, his immediate superior being Inada. Civilian national defense was not concerned with the use of guerrilla officers trained to lead the civilians (R 622-3).

Upon redirect, the Chief of Staff is the person who supervises all staff officers' work and the senior staff officer acts as a sort of Assistant Chief of Staff. A senior staff officer, of course, also performs the functions of running the affairs of the staff section under his charge (R 627).

Upon examination by the commission; Inada had heard that a telegram had come from higher headquarters to Western Army containing the words "Tekigi Shochi", but he did not see the telegram, it arriving at the headquarters prior to the time he took command.

On further redirect examination, it was stated that when an order was issued by a person who had authority to give such an order, it was legal. After the publication of the Enemy Airmen Act in July 1942, it was required that a captured enemy flier be treated as a war crimes suspect and not as a PW. On August 15th the Commanding General, Yokoyama, was out at Hiroshima from early in the morning until that night. It was the personnel left in Fukuoka who were planning the concealment and at that time, due to the situation currently existing, persons in Yamaie were not notified (R 630-6).

Yasunobu Haba was duly sworn and Defense Exhibit C was introduced in lieu of direct examination (R 644). Haba, a Major, was assigned to the Western District Army Headquarters in April 1945 which at that time was together with the 16th Area Army Headquarters in Fukuoka. He was in charge of operations in 16th Army and in the staff section under Akita, who was his superior and the senior staff officer. Yokoyama was Commanding General of both of the headquarters. On about 24 June the 16th Area Army Headquarters was set up at Yamaie. Western District Headquarters was an administrative headquarters with the mission of mobilization and training new troops and other administrative duties. The 16th Area Army Headquarters was tactical with the mission of defending Kyushu island from the impending invasion, it being expected that an American invasion would occur any time from mid-October to mid-December, 1945. Yokoyama was supposed to have his defense plan for the defense of Kyushu island ready by August 1945, this being the date set by Tokyo Imperial Headquarters; and that is why there was terrific pressure on Yokoyama and his staff.

Western District Headquarters had administrative functions and received its instructions from the War Ministry. The 16th Area Headquarters had tactical functions and received its instructions from Imperial Headquarters in Tokyo. Both headquarters were on the same level; however, since tactics and operations in combat were more important than administration, as to this aspect the 16th Area Army would be considered the higher headquarters. Yokoyama was vested with the great responsibility of setting up, by August 1945, the defense of the island when the American forces landed. In addition to commanding the two armies set forth above, he also directed the Sasebo naval district. In April the total strength of the 16th Army was less than 50,000 men but in a period of three and one-half months, that is, up to August 15, 1945, the total strength was increased to between 550,000 and 600,000 men and from April 1945 weapons, ammunition and materiel were poured into Kyushu from Osaka, Tokyo and Manchuria by every available vehicle or train. During this period Yokoyama was absent from the headquarters about ten days in each month, for this was a period of frenzied activity and since there had to be constant inspections to insure that the island defenses would be ready by August 1945, it was absolutely necessary that Yokoyama spend much time in the field. The bombing attacks on Kyushu began in April 1945 resulting in the disruption of the communication and transportation systems. In April 1945 the Second General Army was established and the 16th Area Army came under its jurisdiction. Prior to that time it was under General Defense Headquarters.

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After the 16th Area Army Headquarters was set up at Yamaie, about 24 June 1945, the following officers remained at the Fukuoka headquarters: Isa, who acted in place of Yokoyama, First Assistant Chief of Staff Fukushima, Second Assistant Chief of Staff Tomomori, Ito, Sato, Yakumaru, Itezono and Kusumoto. Those who went to Yamaie headquarters were Yokoyama, Inada, Akita, Jin, Ohashi, the witness and other section chiefs who had posts with the 16th Area Army.

Isa was in charge of the headquarters at the Western District Headquarters at Fukuoka. Yokoyama stated that in the event of a decisive battle in southern Kyushu, he could not be bothered with the Western District Army and therefore would leave the operation thereof entirely up to Isa. Isa was given the authority to make decisions on minor matters. On important matters he was to contact the Yamaie headquarters. However, in case of urgent business he could make decisions on his own, but was required to make a report thereof to Yamaie.

Fukushima was First Assistant Chief of Staff of the Western Army Headquarters and acted in place of the Chief of Staff Inada who was at Yamaie. Fukushima had the duty to pass on the orders of Yokoyama and Inada to other staff officers at Western District and had the duty of directing the work of these officers according to the policy of the Commanding General.

Tomomori was the Second Assistant Chief of Staff at the Western District Headquarters; he was relatively new however and for this reason had very little authority. He was known as an authority on civilian volunteer corps and worked on such matters within his headquarters. Ito held the dual post as Chief of the Legal Section of both headquarters. Sato was Chief of Air Intelligence and was charged with the getting of air intelligence information from fliers. He was also in charge of army air defense. Yakumaru was head of civilian anti-air defense and also in charge of regular prisoners of war and received reports from the main camp commander in regards to regular prisoners of war. Civilian anti-air defense and army air defense were distinct and separate. Yakumaru and Sato were each heads of separate sections. Kusumoto was adjutant at Fukuoka headquarters. Although he worked under Jin he was given almost a free hand at Fukuoka in the Adjutant Section.

At Fukuoka the Adjutant Section had custody of enemy fliers as to housing, guarding and feeding. However, they were subject to the direct control and direct orders of Sato, the air intelligence officer in the Staff Section. Witness believed that Sato had absolute control of the fliers in custody of the Adjutant Section and that he could procure their release on his oral orders without prior consent of the Commanding General, Chief of the Legal Section, Chief of the Adjutant Section, or any other person, this being common knowledge and common practice at the headquarters. Witness did not believe that Yokoyama knew when the executions took place. Being the operation staff officer, he worked very closely with Yokoyama and there were few subjects which he did not discuss with him, and no executions were ever mentioned. If Ito was Chief of the Legal Section and happened to stumble on an execution of enemy fliers by his own subordinates and on inquiry discovered that this was the orders of the Commanding General, he did not have the authority or responsibility to stop the execution to verify whether the Commanding General had ordered it and if he were to discover that the Commanding General had decided to dispense with trials and execute fliers summarily, he did not have the responsibility to make a protest to the Commanding General in regards to this decision. If Tomomori was asked by Itezono to attend an execution of the fliers and informed that Itezono had been ordered by Sato to carry out this execution, Tomomori would have been justified in believing that what Sato ordered was proper and would have no responsibility to inquire as to propriety thereof of the Commanding General. Likewise, if the young officers of the headquarters were told to become executioners by their superior officer, they would not have the responsibility to inquire of the Commanding General whether the execution was proper and would be justified in believing their participation therein was legal.

On oral direct examination, the witness stated that when the headquarters of the 16th Area Army on or about 24 June was moved to Yamaie there were no major changes in the duties of Fukushima, the Assistant Chief of Staff (R 647).

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DX E was introduced in lieu of direct examination of Fumitoshi Yamanaka (R 651) who had previously testified as a prosecution witness (PX 180, 181; R 292). Yamanaka was a second lieutenant in the Intelligence Section engaged in monitoring and intercepting Allied broadcasts in both code and voice. About mid-April of 1945 a telegram was received from either the General Defense Headquarters or General Staff Headquarters in Tokyo under the name of either the Chief of Staff of the General Defense Headquarters or the Vice Chief of General Staff. The telegram was in code and was decoded by the telegram section of the headquarters. This document was shown to the witness by Captain Aihara, he stating that it related to their section and therefore he had better read it. Its contents were to the effect that in the future no enemy fliers other than fighter pilots, carrier based pilots, senior ranking pilots of B-29's and other important fliers, would be sent to Tokyo. Others would be suitably disposed of (Hoka wa tekigi ni shochi subeshi). After receiving this telegram and still in the month of April, Major Kikkawa of the 6th Section of the General Staff Headquarters came to this headquarters to explain the war situation and intelligence matters and the witness heard him say substantially that in other places B-29 fliers were being done away with and it would be appropriate for Western Army Headquarters to do likewise and in the event one flier was sent to Tokyo and others of the same group were killed, Tokyo was to be notified or else it would be bad. From this, witness received the impression that fliers held at the headquarters should be killed without a trial and, since a staff officer of the Central Headquarters had made this statement, that such was also the opinion of Tokyo. Witness was positive that Kikkawa's above statement was made around the latter part of April.

On cross-examination, the witness stated that since Kikkawa was a staff officer from the General Staff Headquarters; he thought that the opinion of the Central Headquarters was the same but Kikkawa did not definitely so state (R 652).

Exhibits D, E and G were admitted into evidence, they being extracts from prosecution exhibits from Case 328, U. S. v. Okido (R 654-655). These all relate to a letter from Colonel Yamamura, Chief of the Foreign Affairs Section at Kempei Tai Headquarters in Tokyo, addressed to the Central District Kempei Tai Headquarters at Osaka, said letter being top secret. The tenor thereof was that Kempei Tai should urge or suggest execution of air crew members upon army commanders. This letter came about the middle of June and subsequently airmen in the Osaka Area were executed without trial.

Yoshinao Sato, an accused, convicted under Specifications 1, 2 and 3, testified after being advised of his rights. About the first part of April Sato had a conversation with the abovementioned Major Kikkawa, the substance being the same as the above related testimony of Yamanaka. Kikkawa stated that from that time on the General Staff Headquarters did not want fliers sent to Tokyo because the B-29 fliers did not have any more important information and that only the pilot on a fighter plane should be sent. Yamanaka told Sato that Kikkawa stated that if Western Army Headquarters decided to execute crew members from the same plane, Tokyo should be notified so that they could carry out the execution also. Sato worked for Kikkawa and when, subsequent to this conversation with Kikkawa, that is, the latter part of April or the early part of May, a telegram was received from the Assistant Chief of Staff of the General Headquarters addressed to the Chief of Staff of the Western Army Headquarters which conveyed the same meaning, he was willing to act thereon. Sato then consulted with Captain Wako in Wako's office and Wako stated that the right way of handling this was by a military tribunal but that the official procedure as to military tribunal should be eliminated (R 656-658).

About one or two days later shortly after 10 May, another discussion was held in Ito's office, Sato, Ito, Wako and Ehatsu being present. Wako explained about the Doolittle case in Shanghai and that the circumstances made it difficult to conduct official trials and therefore it was Wako's opinion that action should be taken without a trial procedure. Ito did not agree with this stating that an official military tribunal should be created and requested that investigation of those fliers confined by the Western Army be conducted immediately by the Kempei

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Tai through Enatsu. Subsequently during the middle of May while Akita and Sato were on duty in the staff officers' room, Wako came in and stated that the procedure of having an official trial was too complicated, troublesome and time consuming, and since as a result of the investigation it was revealed that all B-29 fliers concerned had bombed indiscriminately and they would be given the death penalty, it was therefore Wako's opinion that trial should be dispensed with and the fliers executed. Wako wanted Sato's opinion; Sato stated that the subject was important and that he could not decide it himself but told Wako that he would obtain the opinion of the Commanding General. Sato then repeated the foregoing to Akita and Akita went out of the office and returned stating that the Chief of Staff was not in and he had therefore gone in to see the Commanding General directly who had said it was all right; that it was not necessary to conduct an official military tribunal, which information Sato gave to Wako who was waiting there and Wako left (R 660-1). Subsequent to the above, around the 15th of June Major Yanase of the Fukuoka Kempei Tai Headquarters brought in an official document signed by Colonel Yamamura of Kempei Tai Headquarters (hereinafter referred to as DX D, F & G), the contents thereof stating that the treatment of captured airmen must be accelerated and that proper action should be taken toward the fliers but with the consent of GHQ. This document as a whole gave the impression that formal trial should be done away with and fliers executed. Sato construed the Tokyo telegram and the Kempei Tai letter to mean the same thing and at the time Yanase added that although not clearly stated in the document, its meaning was to execute. This letter was brought to Sato by Yanase. According to Sato's recollection the Japanese words used were "Tekito ni shochi seyo" or it might have been "Gunju shochi" and that these were the same words that were used in the earlier Tokyo telegram (R 660-2).

Upon cross-examination, witness stated that Aihara was not directly under him but was directly under Yakumaru and his acts had to have the approval of Yakumaru. Before 20 June 1945 General Ito insisted that it would be legally necessary to have an investigation and trial of the fliers before they could be executed; he being of this opinion before the 10th of May and even after the telegram from Tokyo had been received, that proper disposition must be made of fliers. The investigation report concerning the four fliers being investigated was prepared by the Kempei Tai and not by Murata but was brought to Sato by Murata after Ito had gone over it and Sato's han was upon it and also Murata's; he thought Ito's han was on it. However, hans or seals are put on documents just to denote that they had been gone over and such does not necessarily mean that the contents of the document met with the sealer's approval. Sato read the report and gave it to Akita but did not tell him that it was written in such a way that the only sentence could be death (R 662-4). On the 20th of June, about one hour before the execution, Ito came to Sato and told him that the prisoners would be executed and the explanation given that they had been killed in the air raid; and that afternoon the fliers were executed. The report relating that the fliers had been killed in the air raid was prepared by the Legal Section and was sent to the Legal Bureau of the War Ministry. After the above conversation with Ito, Murata came to Sato and said that the preparation for the execution was finished. Sato saw Toji execute, with Murata instructing, wherefore Sato believed that Murata was commanding officer at the execution. Sato observed the executions with Wako and Ito, he going there as a duty because the fliers for which he was responsible were being executed (R 664-6).

As to the execution on 12 August (Specification 3) Itezono said that he would show the men the art of killing of prisoners but he did not mention such names as karate it being said that the purpose was to educate the guerrilla units, the young people who had no actual combat experience and the actual combat experience would be given to these young people at that time.

The first suggestion that the American fliers be killed on the 15th was made by Kusumoto but this was not after the end of the war, Sato stating that the end of the war was on the 17th of August. Kusumoto made the suggestion that the prisoners be killed because he didn't want those prisoners to return to America knowing what they did; another reason was because during those days at Fukuoka people in general were too excited, and when Sato went to see Fukushima who told him to go ahead but be careful, Sato understood that to mean that the execution should be done secretly and he so informed Kusumoto and subsequently that day Fukushima scolded Sato for having the execution performed in daylight (R 666-8).

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Yakumaru did not originate and execute the plan of concealment immediately after the end of the war by having all units destroy their records and make it impossible to ascertain disposition of fliers. On 15 August an order was received from the War Ministry to destroy all documents and shortly thereafter a telegram was received from the headquarters of the Second Central Army to conceal the actions performed against the prisoners of war. Sato heard Fukushima tell Nakayama that those who performed the executions acted under his orders and that there was nothing for them to worry about and Nakayama was told by Fukushima to tell the others about it (R 670).

Two reports were sent to Tokyo stating that the sixteen fliers had died in the air raid on 19 June. One was a telegram which was a condensed version of a written report prepared by Yakumaru and approved by Fukushima. Yakumaru's han appeared on the telegram. However, he was not the officer in charge of the prisoners. Sato was in charge but by virtue of a verbal agreement made in April 1945, Yakumaru's han was used on documents. Only Fukushima's han was on the telegram that went to Tokyo (R 680-2).

Upon examination by the commission, Sato stated that the staff officers at the Western Army Headquarters who read the telegram from General Staff Headquarters regarding the disposition of crew members were Yokoyama, Akita, Yakumaru, and also he thought, Fukushima, but he wasn't sure as to the latter and he told the following members of the Legal Section about the telegram: Ito, Wako and Murata (R 685).

DX H was introduced in lieu of direct examination of Riukichi Tanaka. He was advisor to Prime Minister Suzuki beginning in April 1945. B-29 fliers raided Tokyo on 18 May, the Imperial Palace being bombed, and the Army seriously felt their responsibility in failing to prevent the disaster, namely the bombing of the palace. Soon after this incident, Colonel Ogoshi of the Tokyo Kempei Tai Headquarters informed him that the Kempei Tai commander, Okido, after a conference of the chiefs of bureaus of the War Ministry held in the latter part of May, issued an order to Ishida and to Ogoshi to lay down a policy of stern punishment (death) upon captured B-29 fliers without putting them to trial and that Okido ordered Yamamura, Chief of the Foreign Affairs Section, to dispatch a letter to all commanders of the District Armies, Kempei Tai Headquarters laying down this policy. Lieutenant General Tanaka, who was commander of the Eastern District Army, also told the witness that the attitude of the central authorities in regard to the disposition of B-29 fliers was reckless, they having issued a policy of stern punishment to captured fliers which was contrary to International Law. The fact that illegal executions of fliers were carried out simultaneously after the early part of June, 1945 in the Tokai Army, Central Army and Western Army illustrates that this had become the policy. During the period of hostilities there was a tendency for higher headquarters to convey matters which might affect Japanese international relations by means of verbal messages. This was also done when the Doolittle fliers were executed in Shanghai, a directive being conveyed orally that the Doolittle fliers be meted out stern punishment (death).

On further direct examination, witness stated that the Enemy Airmen Act of 1942 was enacted as a result of the bombing in April 1942 by eighteen airplanes from the Carrier "Hornet". As a result of this raid, the Act was enacted, the purpose being to prevent further raids by giving stern disposition to enemy airmen, thereby inculcating fear in American mothers and possibly resulting in an anti-war movement in the United States. This was a political policy (R 692).

On cross examination, it was elicited that the witness had no connection with the Kempei Tai (R 693).

DX I was introduced in lieu of direct examination of Naofumi Yasuda (R 694). Between April and August of 1945, he was communications staff officer of the 13th Area Army under Okada. This army was subordinate to the First General Army having jurisdiction over central Honshu. He was a Major and the unit above the First General Army was the Grand Imperial Headquarters. About late April 1945, their headquarters received a telegram sent in the name of the Assistant Chief of Staff of the General Staff Headquarters which was classified secret and stated generally that thereafter no B-29 fliers other than high ranking officers or squadron commanders would be sent to Tokyo. The others would be

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disposed of appropriately (Tekito ni Shochi) by the local army. The above underlined words are ambiguous on the surface. They do not mean to kill but during the war those words were interpreted to mean to kill and such was the interpretation placed upon the words by his headquarters, thirty-eight fliers being executed by the Tokai Army after receipt of the telegram.

Cross-examination elicited that this witness was a convicted war criminal (R 694).

Kiyoharu Tomomori, an accused, convicted under Specifications 3 and 4, was informed of his rights and elected to testify under oath (R 695). He was Assistant Chief of Staff of the Western District Army. About August 1945 his duties were to organize a civilian national defense. He had no control whatsoever over the accused Itezono, who was, as far as he knew, the instructor of the students learning guerrilla tactics. His duties as organizer of the civilian national defense did not require that he have any contact or be familiar with the status of captured fliers. On 9 August when Itezono spoke to him about an execution of captured fliers to occur on the next day, he had no reason to doubt that the execution was not authorized. He thought that it was an authorized execution. Itezono did not have any authority to execute the captured fliers without any orders from superior authority and Tomomori did not have anything to do with the arrangements, in general or in detail, of the execution. Tomomori arrived at the executions when they had just started and did not order or direct the executions thereafter. He was accompanied there by Enatsu. Itezono did not tell Tomomori who had ordered the executions of the captured fliers on the 9th of August stating only that it was to be carried out and asked him if he would go and visit. Itezono did not report to him after the executions were completed. He attended a meeting on the night of 15 August which was addressed by General Yokoyana but at that meeting no alleged executions were discussed nor any concealment thereof, nor at any time after the war ended did he order anybody to dispose of the personal effects and ashes of the captured fliers (R 695-7).

Upon cross-examination, Tomomori stated that at the execution he expected higher officers than himself to be there, namely Ito and also Fukushima, since he believed that the execution was proper, that the fliers were tried by military tribunal and that this execution was to be carried out by the Legal Section. He did not see any orders concerning the execution of the fliers, nor had he heard of any trial that they had but he did hear that a military tribunal had been established by the Western District Army. He did not hear that those particular fliers had engaged in indiscriminate bombing but he did know that when a flier was to be executed, he had willfully participated in indiscriminate bombing. The foregoing is what he recalled from his experiences while assigned at the War Ministry. He did not state to the group of officers after the executions that these men were not prisoners of war but enemy fliers. He always carried a container of whiskey with him (R 698-9). He warned and scolded Yamamoto after he used karate on a flier and after that he did not commit karate again (R 700). If he had known that Itezono was performing this execution, he would have stopped it. Fukushima thought that Tomomori knew that this execution was being held without a trial and therefore mentioned that Tomomori should have stopped these executions but he later found out that Tomomori did not know that the executions were being carried out without a trial (R 701). He did not help Wako find a pit or position where the pit should be dug for at the time he arrived the pit was just about finished. So far as he knew, the troops were not placed in military formation nor did he give Wako permission after which Wako warned the troops to keep the execution secret. He gave some whiskey to a person witnessing the execution who did not feel well and while it was being passed around, one executioner asked for a drink which he gave and he did not give any whiskey after the third flier was executed. The reason why he passed the whiskey was that he personally did not feel good and therefore he drank some and thinking there may be others who felt badly, he accordingly passed it around. He denied speaking to the personnel before the execution nor did he tell them that the prisoners had bombed Japan and that they should execute without hesitation. He remembered the bow and arrow incident but he did not ask Enatsu whether or not it was effective enough to kill a man. He remembered an officer named Ohno but Ohno was not under his jurisdiction and he did not ask Ohno if he wanted to perform the last execution nor, at the termination of the karate did he remark to Itezono that such acts seemed useless on Americans. He observed Yamamoto jumping on a flier and striking and kicking him, but as soon as he observed this, he stopped him and scolded him. As to the other instance of

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karate which was alleged to have occurred, he learned about it at Sugamo. He did not think anyone was holding the flier when Yamamoto was striking him, he being about fifty or sixty meters from the actual atrocity. The flier was standing and it seemed as if Yamamoto kicked him in the thigh. It was not the karate that made him sick but the beheading of the first one or two fliers that did so. He did not see the bow and arrow incident nor did he see the kesagiri (R 702-5).

On re-direct examination, Tomomori stated that on the day of the execution, he firmly believed that everyone who participated therein did so pursuant to the order of the Commanding General and that everyone performed their duties in a solemn way; that some of the persons who witnessed the execution were at the bottom of the slope about fifteen meters away from the pit and therefore could not have observed it. He thought that the case had been referred to the Legal Section and that it was a proper execution and therefore he did not pay much attention to Itezo no or the others who participated (R 706-7).

Upon examination by the commission, witness stated that he was present from the beginning until the end of the execution on the 10th of August but that he did not observe the entire execution. The witness did not see or hear of any order that Yokoyama had issued for the execution of the 10th of August (R 707-8).

DX J was introduced in lieu of direct examination of Iwao Kishimoto (R 709). During June, July and August 1945 he served as a guerrilla warfare officer with the Western Army, as a Captain. His immediate superior was Itezo no and above him was Yakumaru. Sometime after mid-July 1945 a plan was undertaken to utilize guerrilla warfare in tactical operations and for this reason Itezo no was often at Yamaie headquarters working under staff officer Ohashi in organizing and planning guerrilla warfare. Ohno was senior officer among the young guerrilla warfare officers and acted in the capacity of relaying orders from Itezo no to other guerrilla officers. On the night before 9 August 1945 Itezo no told him that there was to be an execution of fliers the following day, not telling him, however, on whose order this was being done. Itezo no requested Kishimoto to take charge of the execution. Due to a severe case of athlete's foot, Kishimoto could not do so and so informed Itezo no. However, if it hadn't been for this defect, he would have taken charge of this execution since it was a request from the senior officer. He did not attend the execution on the following day. He had heard that the fliers had been given a trial and therefore when he heard about the execution, he presumed that there had been a trial and that an order had come through the necessary channels. The young guerrilla warfare officers did not have the responsibility to inquire as to the legality of the execution and would be justified in believing that it was legal. On the day of the execution, Yamamoto did not come to his office and state that he would like to try karate. Otsuki did not tell him that he had performed karate; Otsuki had admitted performing karate but he had been forced into admitting so while being interrogated by the Legal Section. This was told to him by the witness' wife who had visited Otsuki in prison.

Upon cross-examination (R 710), the witness denied telling Otsuki that it was his understanding that the higher ranking officers of the headquarters had gotten together and decided that the fliers would be killed without getting a trial. After the termination of the war, Major Itezo no, the senior officer on the expedition, the witness and Kondo went to Hakata Bay and dropped therein all the fliers' possessions which were not combustible but he did not know why such a step was taken. This occurred about 24 hours after the Emperor's Rescript.

Introduced in lieu of direct examination of Toshio Shinozuka was DX K. From 15 June until the end of hostilities, he was a Colonel with the Western Army Headquarters, a staff officer of both the 16th Area Army and the Western District Army, concerned with civil affairs and the production of munitions. After the staff of the 16th Area Army moved to Yamaie about the 25th of June, 1945, Lieutenant General Isa remained at Western District Army Headquarters in Fukuoka as Deputy Commander, the ranking officer there. Among Shinozuka's subordinates were Aihara and Ohno. Aihara worked under him solely in the electrical field, his previous duty concerning enemy fliers to be turned over to some other person and to his knowledge he did not have any connection with enemy fliers, although he recalled about two occasions wherein he permitted Aihara to do some work on a roster of enemy fliers who had come to the headquarters previously, doing this work on the request of Sato. Witness had also previously served with Colonel

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Tomomori in the War Ministry. At Western Army Headquarters Tomomori was designated as one of the Assistant Chiefs of Staff; however, he did very little work in this capacity, being in charge of matters concerning the civilian volunteer units, drawing up plans of organization, and education and liaison work connected with this duty. Tomomori did not have any connection with guerrilla warfare. There was just one instance where after Itezo drew up organizational plans regarding the formation of a guerrilla warfare training unit, Tomomori looked it over for him. He did this on orders of Inada for while he was at the War Ministry, Tomomori had specialized in organization of army units being familiar with regulations pertaining thereto. The functions of the civilian volunteer unit and guerrilla warfare unit differed, that of the former being to function when an enemy landing was made and was to be composed only of civilians who were to assist combat units by supplying and assisting in the transportation of arms and munitions and work in hospitals and other behind the line activities. The guerrilla unit was to be comprised of small groups of soldiers and select civilians, their function being to delay the enemy by operating behind the enemy's lines and performing espionage and sabotage work. Witness heard about the execution of 10 August about the 17th when at Hirao Caves Headquarters Tomomori informed him that what had been done the other day had been done in the dark, namely that the execution which he had attended had not gone through the formal procedure. It was witness' impression that Tomomori had thought that the execution he had witnessed was a lawful one. Witness heard the Emperor's Rescript at Fukuoka headquarters and after that went to the Hirao Caves Headquarters along with Isa, Fukushima, Tomomori and Yakumaru. There was no conversation while he was in the company of these men indicating that they knew an execution was going to take place that day.

On further direct examination, it was stated that Itezo was at Hirao Caves on the afternoon of the 15th of August. As to Sato's statement in one of the exhibits that when Kusumoto came to him with a suggestion to execute the fliers, the witness and Yakumaru were in the same room and Yakumaru agreed with Kusumoto, witness stated that he did not know of any such incident. At no time while the witness talked with Fukushima prior to and after the broadcast of the Emperor's Rescript did Sato enter the conversation (R 712).

Shoshin Ito, an accused, convicted under Specifications 1 to 4, inclusive, was informed of his rights and elected to testify under oath. As Chief of the Legal Section of Western Army Headquarters, he did not have the power to order the execution of any captured fliers and if the Commanding General had ordered such an execution, he could not interfere with such an order. In the early part of May, Sato came to his office and inquired whether fliers could be executed without a trial and at that time, Ito stated to him that unless a flier was tried by a military tribunal to ascertain whether he had participated in indiscriminate bombing, he could not be executed. Ito never changed this opinion that he gave to Sato (R 713-715).

As to the execution of 20 June, Ito was away from the headquarters until just before 3:00 p.m., went to the detention barracks where he found no one and while looking around and wondering where the Legal Section personnel were, Murata arrived and he learned of the execution from Murata. Murata stated that Wako had been ordered by Sato to execute the fliers, that the order had been passed down by the Commanding General and that he, Murata, thought it would be best to wait and consult the Chief of the Legal Section before this execution was carried out. Ito thought it was a little strange that the Commanding General should order the execution without consulting him. After receiving the above information from Murata, Ito thought he would go to the court-martial room and rest for a while, the Legal Section building having been burned down in the previous night's raid. While walking there he observed many civilian personnel who worked in the headquarters running towards what he guessed was the execution area and accordingly followed them. When he reached there the executions had already commenced. He observed the balance of the execution from a distance of about ten meters and after observing the execution of two or three fliers, he left. None of the fliers executed that day were in the custody of Ito. The four fliers out of the eight executed that day were under investigation by either the Kempel Tai or the Legal Section and at that time were under the custody of the Adjutant Section. After his return and discussing the matter with Murata and Wako, Ito decided to report to the Commanding General although at the time he had witnessed the execution nothing occurred that made him doubt that the executions had been ordered

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by the Commanding General. When he came to the Commanding General's quarters, Yokoyama was there talking with Isa. The two were talking in the hallway and Ito reported to the Commanding General as to the incident that occurred that day (R 715-16).

Ito did not know whether Yakumaru as Chief of the PW Section was required to report deaths of prisoners of war to Tokyo headquarters. At the time when Ito discussed the execution with Murata and Wako shortly after he returned from viewing a portion of it himself, Wako stated that on that day he had been called in by Sato who stated that the fliers who were confined in the headquarters were to be executed and Sato asked Wako what he would do with the four fliers who were presently being investigated to which Wako replied that since such fliers were to be tried by military tribunal, they could not be disposed of unless so ordered by the Commanding General and therefore the matter should be referred to him for his decision; whereupon Wako went to the Commanding General and received permission to execute these four, which information he furnished to Sato and thereafter all eight fliers were executed. It was not unusual for Wako to go to the Commanding General without Ito's permission in this instance because Ito, the Chief of the section, was absent and Wako would act in the capacity of Chief and carry out the work; nor was it unusual for Wako not to have gone to the Chief of Staff also, for at that particular time the Chief of Staff was absent from the headquarters. Since the four fliers who were being held for possible trial had already been executed, Ito then asked Wako what sort of a report could be made for the War Ministry since after a trial the results thereof were to be reported to the War Ministry. Wako replied that the Staff Section had already made out a report to the effect that on the air raid of the 19th of June all the fliers confined at the headquarters had been killed, including the four fliers awaiting trial, and that such a report would be sent to the War Ministry and the General Staff Section. Ito stated that he did not know of the executions of the 10th of August or the 15th of August before they occurred (R 717-19).

There was no cross-examination by the prosecution, or examination by the commission, and the witness then made a statement. Military tribunals are established by the Commanding General of an operational army and its procedure can be set up or simplified by the Commanding General. The Commanding General could also simplify the procedure and preparation for such a trial and he can further order after such trial that the flier be immediately executed, and such an order is not an illegal order. The witness also corrected his statement where he stated that the circumstances of the execution was like a "mob", that the word "dreadful" was meant and this word was misinterpreted by the investigator as a "mob"; that the execution was carried out in a proper manner. Further he stated that where Sato testified that on the 20th of June Ito went to the air defense operational room one hour before the execution in order to plan the execution, this was not so. The first time Ito saw Sato that day was at the place of execution (R 719-21).

Kyusaku Fukushima, an accused, convicted under Specifications 1 to 4, inclusive, elected to testify in his own behalf. He was at the headquarters in Fukuoka on 20 June making an inspection of the city in the morning and the afternoon but did not know of any executions that were going to occur that day. As to evidence indicating that a few days after 20 June he stamped a report of the deaths of the fliers addressed to the Prisoner of War Information Bureau in Tokyo, he did not order this report to be made. He did place his seal on a draft telegram which Colonel Yakumaru brought in his capacity as Assistant Chief of Staff for after the headquarters had been moved to Yamaie it became necessary that he place his seal on all outgoing telegrams at the Fukuoka headquarters, the purpose being to restrict the number of telegrams emanating from the headquarters. Ordinarily this work would be performed by the staff officer concerned with communications but the officer in charge thereof had gone to the Yamaie headquarters and there was no one left in Fukuoka to determine whether or not the telegram was authorized, and when this question came up Harazaki, staff officer in charge of this work, asked Fukushima to perform this duty, shortly after which Harazaki left for Yamaie. If a telegram appeared to be authorized, Fukushima stamped it as approved, it not being within the purview of his duty to assume the responsibility for the contents of telegrams. In his position as Assistant Chief of Staff, he did not act as Chief of Staff in the absence of Inada after removal of the headquarters of the 16th Area Army Headquarters to Yamaie, there being no change in his duties after the headquarters moved, other than such problems as telegrams,

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quarters and rations. This was merely a change of his work on the surface, his opinion being decisive because he was the senior officer among the staff officers.

Fukushima was at Fukuoka on the morning of 10 August but on that day did not know of the execution that took place. In his capacity as Assistant Chief of Staff, he was not connected with prisoners of war nor was it necessary to know the status of prisoners of war. Sato was not required to report to him in the performance of his duties nor, unless ordered especially by the Commanding General or the Chief of Staff, did he have any responsibilities in the transmittal of orders. The following were the duties he had to perform from June 1945 until the end of the war: Local administration, being liaison work between the army and the prefectural government and other government agencies; procurement of army supplies from local manufacturers; civilian air raid defense; and work concerning propaganda and news (R 721-4).

Tomomori, as Assistant Chief of Staff, Sato and Yakumaru reported directly to Chief of Staff Inada in the performance of their duties. This was not true in the case of Ito. He did not work under the direction of either the witness or Inada but was the immediate subordinate of the Commanding General (R 725).

As to Sato's testimony that he consulted with the witness concerning the execution on the 15th of August, namely that the witness approved it, this was not true. About noon on the 12th of August 1945, witness learned that Japan might surrender, he learning this at the office of the Kyushu Area Director General, and on the 14th of August American planes flew over Fukuoka City dropping pamphlets, the contents thereof dealing with the provisions of the Potsdam Declaration and the progress of negotiations between Japan and the Allied nations. On this date witness went to Futsukaichi and reported this fact to Inada who already knew about it through the short-wave radio. There was a discussion between Yokoyama and Inada regarding the action which the Army should take in the event of a surrender and Fukushima was instructed that in case of a surrender the Army should not take any rash action and should obey the Emperor. After receiving this order witness returned to Fukuoka on the 13th and told the staff officers remaining in Fukuoka of the possibility of surrender and that no rash action should be taken, but that they should act in accordance with the orders of the Emperor. On the 14th of August witness acquired more information concerning Japan's possible surrender by virtue of the dropping of pamphlets from American planes and from the Area Director General. He brought this information to the quarters of the Chief of Staff in Futsukaichi in the evening and was given instructions and as to what action the Army should take and also discussed with Inada the very important broadcast which was to occur on noon of the 15th. He returned to his quarters after midnight. This was the position witness was in on the 15th of August. At that time he did not know anything about the execution of the airmen on the 10th of August outside of what he had heard from Tomomori because it was outside of his duties. He did not know anything about when they were captured, how many were captured, where they were being sent or where they were being kept because there was no report from Sato, who was in charge. On the 15th of August he went to the cave headquarters in Hirao shortly before noon, Isa, Lieutenant General Nara, Colonel Shinozuka and Yakumaru going with him. The witness, Shinozuka and Yakumaru went into the reception room of the former office of the Commanding General and waited for the broadcast, Fukushima being seated on the left end of the desk and Shinozuka and Yakumaru on the right end of the table. While talking there and waiting for the broadcast to commence, Sato came in. Sato nodded to Fukushima in a way indicating he wanted to speak to him and Fukushima took one or two steps toward Sato. Shinozuka and Yakumaru were conversing together about two or three meters away. Sato walked towards him, stood directly in front of him about fifty centimeters and stated in a low voice that he wanted to finish all the remaining fliers. Fukushima inquired how many fliers were remaining and Sato replied about fifteen or sixteen. Fukushima recalled the Potsdam Declaration from the pamphlets dropped relative to treatment of prisoners and their mistreatment after the surrender; that they should be kept in a safe place and sent to a safe port and told Sato that the execution was out of the question, mentioning to him that Japan had ratified the Potsdam Declaration. Sato stated in a low tone of voice that the incident on 10 August also had some connection. As to the 10 August incident witness had received this information on the 11th from Tomomori and the impression he received at that time was that it was a lawful execution. However, when Sato made the above statement he began to doubt that the 10 August execution was lawful and therefore received the impression

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that when Sato suggested that the remaining prisoners be executed he was trying to cover up the execution of 10 August. It then occurred to Fukushima that perhaps the execution of 10 August could be covered up without any more executions and he told Sato to study the matter over. When asked by witness, Sato stated he did not know what connection there was between those fliers executed on 10 August and those remaining. Fukushima repeated that Sato should study the matter over and Sato left the room. Sato came to Fukushima to ask for his opinion, rather than for his permission. The witness did not suggest Sato see the Commanding General because he received the impression that Sato had accepted his opinion. Neither Sato nor the witness had the authority or power to execute these fliers without the order of the General and when Sato left, the witness felt that Sato had forgotten about killing the fliers and that he would engage in the study of other plans as to this matter. Witness learned about the 15 August execution around noon on 16 August. He learned about the execution from either someone in the Staff Section or someone in the Adjutant Section and when he saw Sato that day he reprimanded him. On 12 August the major portion of the Adjutant Section was moved to Hirao Caves. The broadcast was heard in Fukuoka. Fukushima went to Hirao Caves in the morning and left there a little before noon and arrived at Kaminohashi, the Fukuoka headquarters, to listen to the broadcast. The removal from Fukuoka to Hirao Caves was by order of Isa, the witness having suggested this move in view of the possibility that Fukuoka might be subjected to atomic bombing. After this order was given, Kusumoto did not consult the witness concerning the removal of the captured fliers (R 725-31).

Upon cross-examination (R 732), witness stated that he did not tell Itezono to dispose of the American fliers' items immediately after the Imperial Rescript was read nor did he on or about a day thereafter proclaim that he would take responsibility for the executions, Sato's statement being untrue in that regard. He knew why Aihara was sent to Hiroshima on the matter concerning concealment of deaths of the fliers and when Sato requested to him that Aihara be so sent he agreed. Witness devised a plan to report that thirty American fliers at the termination of the war were sent to Tokyo and that the plane was lost and agreed to Sato carrying out that plan and he went over Kusumoto's story in great detail and insisted that he know every detail on his part; and he also gave his opinion to Oki that since the case was well covered up and since the incidents could be concealed; it would be better not to investigate them. He also agreed to the suggestion of Captain Wakō that the detention barracks for the fliers be torn down since the walls thereof had writings made by the fliers. It is not absolutely necessary that the matter of an execution of a prisoner of war go normally and inevitably through the Chief of Staff. There was no reason for Sato to come to the witness relative to the 15 August execution since he did not have any connection with such problems and Sato did not come to him for his approval or for his orders. It was necessary to warn the personnel at Western Army Headquarters to commit no acts against the Emperor at the time of the surrender. This was a natural precaution since the surrender came so suddenly to the personnel. (R 732-39).

Upon re-direct examination; witness did not know of the executions of 20 June, 10 August, and 15 August and did not participate therein; did not know of them before they occurred and when around noon on 16 August the witness was informed that what Sato had spoken to him about previously had actually been carried out, he was very surprised. That evening when he was at the headquarters, he asked Sato if he had carried out such execution and upon his affirmation, he scolded Sato. The thought went through his mind as to what the effect thereof would be on Japan for carrying out an execution after the surrender; that the United States would think that Japan had openly surrendered but in the back were still going against the United States and that Japan would be severely penalized if such were to become known and since he learned that Sato was trying to conceal the matter, he felt that rather than interfere with the plan, it would be best to help them out and try to make the plan a success and in so doing, it was necessary for him to know the number of executions that had occurred; that all the executions would have to be concealed, not only one, in order to avoid a leak. He attended the meeting on the night of 15 August addressed by General Yokoyama, but Yokoyama did not say anything at that meeting concerning the concealment of executions of any captured fliers. In December of 1945, in a conversation with Lieutenant Nakayama, witness informed him that the higher ranking officers would assume the entire responsibility for the execution, that the junior officers acted on the orders of the higher officers and therefore there was nothing for them to worry about. The statement

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of Sato that Fukushima would assume the entire responsibility of the execution is erroneous, but he stated to Nakayama that the responsibility would fall upon the higher officers who ordered the execution (R 739-43).

Upon re-cross, it was stated that the young officers did not believe that he was going to assume responsibility. It was only Sato who, after hearing the conversation of the young officers, changed the meaning of his statement; that what he meant was that the ones who gave the orders were responsible (R 743-44).

Upon examination by the commission, witness stated that the telegrams he approved that were sent from the Western Army Headquarters were under the name of the Chief of Staff; that when Sato came and asked his opinion in regards to the killing of the fliers, he did not fail to prohibit him from committing the execution but at that time said it was not right and stopped him and when Sato proceeded to carry out the execution, he reprimanded him; but didn't do anything else. This disobedience was not reported to Inada until about November 1945 (R 745-46).

Upon further re-cross examination; the Western Army remained in force until the 30th of November and the majority of the high ranking officers remained and took similar positions under Western Demobilization, but he didn't know anything about the organization; he did not on the 16th of August reprimand Sato for not executing the captured fliers at nighttime instead of daytime, but reprimanded him because the fliers had been executed at all for at that time he did not know whether the fliers had been executed during the night or the day (R 746-47).

Exhibit L was introduced in lieu of direct examination of Takahashi Yanase. From February 1945 until the end of the war he was a Major at the Western District Kempei Tai Headquarters, his superior officer being Colonel Takada. About mid-June Colonel Takada received a letter which he showed to the witness stating that the document had come from Yamamura at the Kempei GHQ, and that the writing was vague. It was the Colonel's belief, however, that owing to the conditions existing at the time, he thought it meant that after contacting Western Army Headquarters the procedure was to execute as soon as possible captured fliers, and that the central authorities were also of the same opinion. The witness read the letter which contained Yamamura's signature as Chief of the Foreign Affairs Section and it was addressed to Colonel Takada as Commander of the Western District Kempei Tai Headquarters. It bore the words "very secret" and also directed that after the contents had been read, it should be burned. This letter stated that the Imperial Palace and Ise Shrine which were the most-respected and the most loftily held institutions of the Japanese people had recently been subjected to bombings; that thereafter the air raids would become more intense and therefore the number of captured fliers would probably increase. Each District Kempei Tai headquarters would contact as soon as possible the respective army headquarters in that area and would take proper disposition of the airmen as they saw fit (Tekito ni shochi subeshi.) and that this matter had been acknowledged by the Prisoner of War Information Bureau Chief; that the opinion of the War Ministry was the same. The underlined words in themselves did not mean to execute but from the meaning of the words used before and after the underlined words, it could be interpreted to mean to kill. Takada stated to the witness that there were several ways to interpret the meaning; (1) to dispose of the fliers after they had been passed through a military discipline conference, the word used being Shobun, (2) to forward the fliers to a Prisoner of War camp and (3) to execute the airmen without trial. He stated that the third view was probably the aim of the letter and that the central authorities probably had come to the same opinion, namely that the airmen should be executed without trial, as at the time of the receipt of this letter air raids were becoming more intense and greater damage occurring, resulting in the public becoming more uneasy and a stronger hostility by the public and military towards the airmen. It was also the witness' interpretation that in view of the conditions existing at the time, the army was to be contacted and that the enemy fliers were to be executed as soon as possible without trial. He based his conclusion by reason of the fact that since the palace and the shrine had been bombed, enemy airmen were to be given strict punishment; that since air raids would increase and therefore the number of captured airmen would increase also, disposition (shochi) should be speeded up; that since the document contained the words "very secret" and a direction to burn

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after reading, it indicated strict secrecy was desired and there was no mention of the military discipline conference or the sending of airmen to prisoner of war camps. If the two foregoing had been desired, there was no necessity to make the document secret or directed to be burned. "Tekigi ni shocho" was susceptible of two interpretations; (1) to legally dispose of the fliers and (2) to dispose of them in accordance with existing conditions to accomplish the aim of war. No request was made for a report of the results indicating a fear that the secret might leak out. In view of all of the foregoing, it was logical to conclude that the lower headquarters should execute the fliers without trial. Since the actual disposition of the fliers was not within the jurisdiction of the Kempei Tai, but in the Army, Takada directed the witness to take the letter to Sato at army headquarters, which he did, contacting Sato there, who read the letter.

Upon cross-examination (R 750), the witness stated that the letter was an official one written in the form of a personal letter. It was the witness' interpretation that higher headquarters meant that they would ignore unlawful acts and would not hold anyone responsible for it. When he showed the letter to Colonel Sato, he read it and returned the document to the witness who went back to Kempei Tai headquarters. Enatsu once asked the witness for an expert kendoist to execute the flier, doing this at the request of Sato, and Yanase stated that he could not provide a kendoist for such an unlawful act. At the time Enatsu came to him with this request, he refused and told him that instead of killing these fliers, if they were turned over to the Kempei Tai, they could be placed in an area and permitted to grow vegetables with which to sustain themselves (R 750-55).

Upon re-direct, it was elicited that in a previous case, Case 290, while testifying as a prosecution witness, the witness stated that the Kempei Tai letter above referred to could bear three interpretations, one of them being to kill without trial (R 755-56).

The accused, Yakumaru, who was convicted under Specifications 1 and 3, elected to testify under oath (R 757). He did not observe any of the executions nor did he know that they were impending. He learned about the execution of 10 August the day after it was held and of the 15 August execution on the morning of the 16th and when he did so hear, he believed that they had been ordered by proper authority. During the period involved, his duties related to defense and matters regarding prisoners of war generally. As to the former, he worked directly under Tomomori and as to prisoners of war he worked directly under the Chief of Staff. At that time Yokoyama had about 10,100 prisoners of war under his custody, none of them being executed at the conclusion of hostilities. Witness was aware that the Enemy Airmen Act distinguished between the status of captured fliers and prisoners of war and therefore these personnel were handled differently. He had custody and control of captured fliers until early April but after that time, and until the termination of the war Colonel Sato was the responsible person. At the time of the alleged executions he was under the control of Tomomori and not Sato, although when Sato was absent he acted for him. As to an alleged meeting concerning the concealment of fliers in September, it was not a meeting. After finishing their noon meal, Fukushima, Sato and the witness went to the parlor and rested for a time during which he merely heard from Fukushima as to this concealment plan. It was not a conference. After the reading of the Rescript on August 15th he returned to Hirao Caves with Isa and Fukushima and he recalled seeing Aihara at the cave at that time (R 757-60).

Upon cross-examination (R 761), the witness stated that Aihara had three superior officers pertaining to his duties, namely Sato, Shinozuka and himself. Under the witness Aihara performed his duties as to civilian defense and general prisoner of war problems. Under Sato he handled the administrative work concerning the captured fliers and under Shinozuka he handled the electrical phase of munitions production. Itezono was assigned under the witness about the middle of June but was transferred to Ohashi in the Operational Section about the middle of July. The witness' direct superior was the Chief of Staff; however, as to the Civilian National Defense Corps Tomomori was his superior.

After the execution of 20 June, Wako and Sato consulted relative to the telegram saying the fliers had been killed in the air raid and ordered Aihara to draft the telegrams. About the 27th of June Aihara brought the telegram to witness and after having it explained to him, witness brought it to Fukushima,

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who, after explanation, placed his han on it; witness then placed his han on it as the man in charge of PW's and sent it to the message center. The fliers' deaths were reported in the customary way for PW's (R 761-2). The witness did not discuss the 10 August execution with Itezono on the day before, nor on the morning of the execution did Itezono come to him before he went out to the execution. He did not know about the execution before it took place, nor did he make any statement that he was too busy to go but would like to. The day after the execution he met Itezono and heard the story from him and was surprised. Itezono told him that on the previous day Sato ordered the execution to be carried out and also permitted the use of karate and bow and arrows. Itezono also mentioned to him that he asked Tomomori whether he would like to witness this execution, whereupon Tomomori went to the execution. Tomomori was incorrect when he stated that the witness was in charge of the guerrilla unit. He was in charge but only just prior to the end of the war. As to the execution of 15th of August, Sato was mistaken when he stated that before noon of that day the witness and Kusumoto wanted to dispose of the remaining fliers, the witness mentioning the mistreatment of the fliers by Tomomori that would thereby be covered. He did not participate in that conversation and he did not know of the 15 August execution before it took place. As to Enatsu's statement to him that the American fliers be put in a camp where they could raise their food to which he replied that this could not be done and that the fliers would be killed as enemies, such a statement attributed to him is incorrect (R 761-65).

Upon re-direct examination (R 765); as to the conference prior to the broadcast on August 15, Sato stated that when Kusumoto came into Sato's office and made his statement that Yakumaru was present and agreed to such statement. However, the witness was not there in the room when this conversation took place. On the morning of 15 August he reported to Hirao Caves and after hearing that there would be a broadcast at noon, stayed until about twenty minutes before noon and left in a car together with Isa, Fukushima, and Shinozuka and when they arrived at Fukuoka headquarters, they all, except Isa, went to the former Commanding General's parlor which they reached about ten minutes before the broadcast. According to Sato's testimony he states that after this conversation between Sato and Kusumoto, the witness went directly into Fukushima's room. Fukushima's testimony mentions that Yakumaru and Shinozuka were present in the room. It would seem therefore that according to this testimony the witness would have been in two different places at the same time. The witness was definite that he was with Fukushima when he went into the parlor and Sato is mistaken. There was a time after the termination of the war when he went to Sato's room and therefore Sato may have made a mistake as to the time. It is likewise not true wherein Hashiyama stated that on the 15th of August prior to the execution, he reported such execution to the witness. He did come, however, to the witness on the 16th and reported the execution and he also erred as to the time. As to the execution on 10 August he did not hear of such incident until 20 August 1947 when he was confined in Sugamo. As to Enatsu's statement that after the broadcast was over, Kusumoto conversed with an officer and Fukushima and witness was present, the witness did not remember such conversation, for as soon as the broadcast was over he left and went into the dining room and therefore Enatsu must have confused him with someone else (R 765-67).

Upon questioning by the commission, witness stated that he was in charge of guerrilla affairs until 15 July. Thereafter Major Ohashi was in charge and under him Itezono was engaged in planning guerrilla warfare and in charge of training officers and probationary officers for leadership of such units (R 768).

Upon further re-direct, witness stated that an order was issued to all armies by Imperial General Headquarters on 15 August 1945 that all important documents should be burned, but expressly excluded PW records; however, another telegram from the Second General Army ordered that everything of evidential value should be destroyed. At that time the Second General Army was in command of General Hata. The telegram was sent on August 15 and stated that immediate steps should be taken to dispose of such fliers who had not yet been taken care of and further that nothing of evidential value should remain (R 768-72).

The accused, Itezono, who was convicted under Specification 3, elected to testify in his own behalf (R 773). About 9 August he was at Fukuoka headquarters working under Yakumaru planning guerrilla warfare not being in command of a unit at the time. On that day he received an order to execute some fliers, which order he believed to be authorized. Karate and bow and arrow were authorized by the

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same authority who directed him to perform the execution. Karate and bow and arrow are customary weapons of guerrilla warfare along with pistols, swords, hand grenades and combustible materials. It is not true that Ohashi of the 16th Area Army staff was his superior officer. Even if he knew that the policy of the Imperial General Headquarters at Tokyo was to execute captured fliers without a trial he would still not have had the authority to execute the fliers without the orders of his immediate superior. An order from higher authority for him was a lawful order and it is correct that in the Japanese Army complete obedience is required of every subordinate to the orders of his superior and under Japanese military law a subordinate obeys the orders of his superior, the responsibility and blame being always placed on the superior officer (R 774-76).

Upon cross-examination (R 776); he made a report to Tomomori before the execution of 10 August and may have reported to Colonel Yakumaru but he was not definite as to that and he believed he did say at the time of the Oki investigation that he had gotten permission from Tomomori before the execution. It was his suggestion to use karate, bow and arrow and kesagiri on the prisoners, but merely as one way of carrying out the execution and not to further the training of his guerrilla men. Karate was not effective and none of the fliers died therefrom. There are two methods of karate; one is to clench the fist and strike the solar plexus and another method is to aim in the area of the testicles and kick with the feet, and both were performed on the fliers. Colonel Sato gave the orders for the execution, but at the execution grounds the witness gave the orders and instructed Otsuki as to shooting arrows at the one flier and then ordered Otsuki to burn the bow and arrows after the war. Three arrows were fired and one hit. He selected Otsuki to be the marksman. He waited until Colonel Tomomori arrived before the executions began and lined up the personnel and saluted Tomomori. There was no execution order read. On 1 February 1946, Tomomori came to him and asked him to change his story concerning Tomomori's participation, as to his reporting to Tomomori on the day before the execution and as to Tomomori's action at the execution site. He ordered Narazaki to use kesagiri. After Narazaki's act it was necessary for him to pierce the heart after the stroke had been completed. It was not done for the purpose of demonstration (R 776-85).

Upon re-direct; witness was an officer attached to the Western District Army Headquarters and, as Fukushima and Sato testified, an attached officer did not have any authority to order anything and he did not attend any important conferences that they held. He acted under Colonel Sato's orders and took the young officers and probationary officers to Aburayama and carried out the order and at the execution he was under the supervision of Tomomori. The execution was properly carried out in a short period of time.

Upon examination by the commission, witness stated that the participants in the 10 August execution were not volunteers. First of all, he called out Lieutenant Ohno who was the senior officer among the young officers and Ohno in turn selected the others from the group. However, the number not being sufficient, he ordered others to perform executions.

Upon further re-direct; when Sato ordered him to perform the executions, he did not indicate which fliers were to be executed. After June of 1945 a superior's orders were regarded as sacred (R 786-87).

Sadayoshi Murata, who was acquitted, testified (R 788). In the hallway of the headquarters on 20 June around two p.m., Wako came up to Murata and informed him that he had just received an order for an execution and he would have to prepare for it, stating that Colonel Sato had called him in and told him that all the fliers were to be executed. However, Wako, knowing that there were four fliers who were being investigated relative to a trial, had gone to the Commanding General and the Commanding General gave permission and therefore he was preparing for the execution. Wako was Murata's superior, being the senior officer in the Legal Section, and acted as the Chief of the Legal Section in the absence of the Chief. After hearing Wako's story the witness asked if such an order had been reported to the Chief of the Legal Section and the answer Wako gave was either that he was looking for the Chief or that he had already reported the matter to him. However, since Murata was handling the investigation of the four fliers, he thought he should report the matter to Ito and so informed Wako. Murata looked

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for Ito for more than thirty or forty minutes and finally found him in the detention barracks and related to him what Wako had told him, namely that all the fliers confined in the headquarters were to be executed by order of the Commanding General; that the execution was to be supervised by Colonel Sato and the direct supervision of the execution was in Wako and further stated that this would have been reported to Ito earlier but that they could not locate him and since it was late they had already left for the execution ground; to which Ito replied that if there was an order from the Commanding General, that order had to be carried out. Murata witnessed the execution of 20 June and it was carried out very properly and no one raised their voice during its performance; he chased two or three women away. As to the four fliers that were being investigated, Ito had requested the Tokyo headquarters for its opinion (R 788-90).

Upon cross, as to Toji, he received permission from Captain Wako to execute a flier after so requesting; however, from then on Toji was ordered by Wako to execute the others. Toji made a request only as to the first flier (R 792-98).

Upon re-direct; when witness heard on the 20th of June that the General had ordered the executions, he believed it was a legal order since it was the Commanding General who gave it. The General had the authority and power to dispense with the trial of captured fliers. Around the termination of the war, in the Japanese Army a superior officer's order was absolute; such an order should be carried out immediately without question as to whether it was right or wrong. This was clearly written in the military law. Tomomori directed him to dispose of the ashes of the fliers around the 18th to 20th of August telling him to take the ashes which were kept in the headquarters and to throw them into Hakata Bay. It was not unusual at the time to ask him, an officer of the Legal Section, to perform such a duty for most of the headquarters had already moved to Hirao and there was only a skeleton crew left at Fukuoka. Ito was not present in the headquarters at the time and therefore he did not talk to him about it. Witness did not believe that Wako was of the opinion that the fliers should be executed without a trial. He and Wako worked side by side preparing the case of the four fliers under investigation and if that had been Wako's belief he would not have worked on the case.

Upon examination by the commission; the execution was done under the order of the Commanding General and once an order was given it must be obeyed without any question whether it is lawful or unlawful; the person issuing the order determines its legality before issuance (R 799-805).

Upon further re-direct; after the execution on 20 June, the witness told Ito of it in the military tribunal room, they discussing the four fliers still under investigation who had been killed, for a report had to be made as to what happened to the four fliers who had been under investigation. Wako had not yet returned from the place of execution but he came in as they were discussing the matter and he informed them that it seemed that the Staff Section was going to submit a report to the War Ministry, Wako telling Ito that the report would state that all fliers had been killed in the air raid. When Ito heard of this he stated that if the Staff Section was to make a report to that effect and if the Legal Section was to make a different report it would make a liar out of the Commanding General and therefore the report of the Legal Section should be similar to that submitted by the Staff Section and that the Legal Section would wait until the Staff Section report was submitted. About two to five days later Ito asked Murata to inquire whether a report had been submitted as yet by the Staff Section. Murata inquired of Sato who stated that the report had not been submitted but if one was made, a copy thereof would be sent to the Legal Section. The following day a copy of the report submitted by the Staff Section came to the Legal Section wherein it was stated that sixteen fliers had been killed during the air raid. This occasioned some surprise in the Legal Section since up to that time they were aware of only eight being executed. However, since the duty of the Legal Section would be fulfilled so long as the names of the four scheduled to be tried were included in the report, it was so ascertained and Murata took the report to Ito telling him that he did not know why the number was sixteen but in any event the four who were being held pending possible trial were included (R 806-8).

The accused, Wako, convicted of Specifications 2 and 3, testified in his own behalf. About the first part of May, Sato came into Ito's room when Wako was there. Sato stated that a telegram had come from Tokyo in which it was

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stated to take proper action. He did not recall that the interpretation of the contents of the telegram was discussed at that time. During the conversation Ito and Sato had at that time Ito did not advise that captured fliers could be executed without trial or rather the subject was not discussed during the conversation. As to his, Wako's, stating that the flier should be executed without trial, this was repeated to him several times while he was being interrogated by Investigator Tate to which he finally made the reply that it must be about those four fliers who were accepted by the military tribunal. Sato did not discuss with Wako the disposition of the captured fliers without trial about this time. Wako felt that he was present at the conversation between Ito and Sato and the story was that the Legal Section would try the fliers after they were investigated by the Kempei Tai and sent over to the Legal Section. Wako had never been confined to a hospital as a mental patient but was sent to a brain hospital for twenty days by Ito (R 808-11).

Upon being asked by the president of the commission whether he had anything further to say in his own defense, Wako stated that it had not transpired that Sato came into the room of the Legal Section Chief with the telegram and showed it to Wako, nor is it true what Sato said in his statement that Wako suggested that prisoners of war be executed without a trial. As to Wako's statement that Ikeda had volunteered to take part in the execution of 20 June, he was mistaken in this regard. Wako knew that Ikeda was good at kendo so he went to his room and ordered him to execute. He also sent Ikeda to Sato to inform him that the preparations for the execution had been completed and regarding Onishi it is true that the order was given him through Sato. In other respects there are no errors in his affidavit. It is likewise true that he went to the office of the Commanding General about 1:30 p.m. on the 20th of June and received the order of execution from the Commanding General (R 812-14).

The accused, Kusumoto, convicted of Specification 1, testified in his own behalf. On 15 August he ordered the execution of the fliers, relaying the order of Sato. He did not believe that Sato had the authority to order the execution; nor that Sato initiated the order, but believed that Sato was merely relaying an order. Although he was an officer in the Adjutant Section, he was asked to relay the order by Sato as he happened to go to Sato's room at that time and it was his duty to relay this order. At that time the captured fliers were in the custody of the Adjutant Section. An order from Sato to him was a legal one and he could not have prevented the execution of the fliers on 15 August. It was a custom in the headquarters to release captured fliers on the oral request of Sato or anyone in the Staff Section. Nothing occurred which was suspicious as to the right of Sato to direct him to release the fliers on 15 August (R 814-15). As to Sato's statement that the witness was in Sato's room with Yakumaru on the 15th of August when the discussion of the disposition of the captured fliers occurred, such is erroneous; Yakumaru was not there. Sato's statement wherein it is recited that the witness went into his room and asked him whether the remaining prisoners of war should be killed is not so. He went to see Sato for another reason for on the 14th he had been asked by Fukushima to instruct the Adjutant Section to prepare for the transfer of the headquarters from Hirao to Yamaie and also related the message regarding the surrender broadcast. He told this to Yukino of the Adjutant Section. On the 15th he left Hirao with Yukino to listen to the surrender broadcast and on the way Yukino inquired as to what would happen as to the remaining prisoners of war, whether they would be transferred to Yamaie headquarters or sent to higher authorities, and he went into Sato's room in order to obtain this information (R 816).

Upon cross-examination; he did not make up the story wherein it was to be said that he had taken some thirty fliers to the airport from whence Tokyo airplanes took off and unfortunately crashed into the sea. He did not make up that story, his function being to say that he transported those fliers to the airport prior to taking off. He was the one who had Nakamura burn the corpses of the fliers at Aburayama. He received the order regarding the executions and at the same time was given the duty of preparing the coffins and cremating the bodies at Aburayama. It was to be done continuously from the execution. The order did not state that the cremation was to be done at night. He had no idea that this might mean an attempt to conceal the matter from higher Japanese or occupation authorities for from the viewpoint of Buddhism it is the highest honor to cremate bodies after death. In June, July and August of 1945 the Adjutant Section was responsible for the housing, quartering and the guarding of American fliers held

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in custody (R 816-20). After 15 August 1945 he was informed of the tearing down of the buildings in which American fliers previously incarcerated in headquarters had been kept, but did not know the reason why the buildings were destroyed. On 14 August he knew that the surrender would be announced but all he discussed with Yukino was the establishment of a place to detain the fliers in Yamaie (R 823). In December 1945 he protested that he did not agree to the concealment plan; that he had been put to a difficult job and he did say that the Staff Section was attempting to evade responsibility by shifting it to the Adjutant Section. It was his opinion that the leader of the concealment plan was Fukushima (R 825).

As to the 15 August incident, when the broadcast ended and the men were ready to scatter, Sato came to him and told him to keep the men in the operations room and tell them that the execution would be conducted secretly insofar as the people are concerned. Hnatu or Nakayama's statements were incorrect wherein it is stated that Fukushima, Yakumaru and other higher officers were there, for at that time they were already gone and only Sato and himself were there. After he went to Sato prior to the broadcast, Sato went into Fukushima's room alone, he remaining in the other room with the staff officers preparing to listen to the broadcast. Fukushima's room was across the hall. Sato did not tell him that he would have to see Fukushima as to the execution and gave him no decision before he went to Fukushima's room, but when he came out he said that Fukushima approved the execution of the fliers. He was not fulfilling any proper function or responsibility as a member of the Adjutant Section on 15 August insofar as his acts related to the killing of the American fliers. He did not have any specific duties but merely acted under orders. There was nothing improper in what he was involved because they considered the orders of a staff officer as the orders of the Chief of Staff and the Commanding General and performed their duties accordingly. About 9 September 1945 he gave a subordinate specific orders to demobilize first of all the soldiers who were at the actual scene of the killing of the fliers (R 826-28).

Upon re-direct; it was the duty of the Adjutant Section to keep captured fliers temporarily until their status had been determined. While, when fliers were sent to Tokyo, a record thereof was made, the release of a flier to another department of the headquarters was done verbally and no records were kept. As to all documents that did not originate in the Adjutant Section, the Adjutant Section was not responsible for the truth thereof but only for their circulation and proper forwarding (R 823-31).

Upon examination by the commission, the witness corrected his previous statements during the questioning of him wherein he stated that he had asked the officers of the operations room to remain, correcting it to read that today's executioners would remain and wherein he previously stated that the soldiers who took part in the execution were demobilized under his orders, that is not so since witness did not have the authority and they were processed for demobilization under the order of Sato (R 832).

Upon further re-direct, witness stated that Sato gave the foregoing direction for demobilization in September 1945 at which time he was staff officer in charge of air intelligence working under the command of Yokoyama (R 832).

The accused, Akita, who was acquitted, testified (R 833). In May 1945, he was a staff officer in the 16th Area Army and at the same time a staff officer in the Western District Army. He was sometimes called senior staff officer which means that he was the senior member of the staff.

Around the 20th of May 1945, Sato came to him and stated that until then B-29 fliers had been sent to Tokyo; however, Tokyo was no longer interested in B-29 fliers and that they had told the army to take proper disposition of such fliers and so they had to make the disposition of the fliers now. The witness believed that Sato merely came to obtain whatever ideas the Commanding General had regarding the matter. Akita did not refer him directly to the Chief of Staff for this reason, namely wanting to get the General's views and not to receive any official orders regarding the matter. Sato also stated that among these fliers there were many who had participated in several indiscriminate bombings and if they were to be tried by military tribunal they would undoubtedly be sentenced to death; therefore, he would like to know what the Chief of Staff

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and the Commanding General would think about executing these fliers who had so obviously violated military law without giving them a trial. There was no one with Sato when he stated the foregoing to Akita although Akita thought Haba was in the room. Sato did not at that time state that General Ito had advised that the fliers could not be executed without a trial. Sato did not show him the telegram from Tokyo on that subject but he had seen the telegram previously and he interpreted the telegram to say that it was not necessary to send the fliers to Tokyo and the army could take proper action towards them. Sato did not ask Akita to obtain from the Commanding General the interpretation of the telegram but asked him to obtain the opinion of the Commanding General and the Chief of Staff requesting their opinions as to the execution of the captured fliers without proper trial procedure wherein the evidence obviously shows that they had participated in indiscriminate bombings and that if they were tried by military tribunal they would definitely be given death sentences. In the Japanese Army the opinion of the Commanding General is not necessarily equivalent to a direction; that depends on the situation and the time. Akita did not directly refer Sato to the Commanding General for it had nothing to do with obtaining approval or having something decided by the Commanding General for if such had been the case, he would have so sent Sato. At that time, the matter was an act in preparation to such an approval or decision and if the Commanding General was not in favor of such an action it would never materialize. Akita felt that Sato had come to him merely for the opinion of the Commanding General, Akita being in a better position to talk to the Commanding General because of his duties and he had the position and opportunity to talk to him, Akita being more accessible to the Commanding General because he was engaged in the planning of operations together with Haba and Ohashi. It was Akita's understanding when Sato made his request that if the General's reply was negative, the matter would then be dropped and that if the Commanding General agreed, the matter would then be discussed more thoroughly by the Chief of Staff and Legal Section and then officially taken to the Commanding General. Akita did not go to the Chief of Staff for he was not in the headquarters and therefore he took the matter up to the Commanding General directly. There was nothing unusual about such procedure since it often happened in operational matters. The Commanding General was alone when Akita entered and Akita repeated to him Sato's remarks and Yokoyama replied that his opinion was that it was all right to give death penalties without trial to those B-29 fliers who had participated in several indiscriminate bombings and who if they were tried by the military tribunal would obviously be given death penalties, that they could go ahead and proceed to study the matter over. This was the impression received by Akita. The foregoing was the interpretation placed upon the General's answer by Akita. However, all the words that Akita thought he said was "All right" and he could not remember whether or not the General added anything. Akita saw the telegram during the early part of May and had the above conversation with the Commanding General about the 20th of May. Akita left the General and told Sato that the General said "All right". (R 833-39). The headquarters of the 16th Area Army moved to Yamale about the 25th of June and Akita also moved. The headquarters remained there until after the termination of the war (R 841).

Upon cross-examination, and referring to the diary introduced herein as DX M which contained entries by the witness up to and including 9 August; Akita did not insert therein a resume of his interview of the Commanding General as to the matter of the fliers because he did not think that it was a determination of an important policy, that it was merely a conversation and it was not important enough to be written in the diary. It was Akita's understanding that in spite of Yokoyama's giving his opinion at this time as to any specific act pertaining to the fliers, an order would be necessary either in written form or verbally (R 843-44).

Upon conclusion of his testimony (R 849), the witness stated that in his written statement to the prosecution referring to the Commanding General as having said it was all right, a policy had been established; however, at that time the policy was not decided (R 850-51). Akita was sure that Sato himself understood the answer as simply an opinion for the following reasons: As to the military tribunal matter, that was the responsibility of the Legal Section and even if the staff officers were to temporarily handle this matter, Sato knew that Ito had a contrary opinion and even after asking the Commanding General's opinion, Sato did not relate this to Ito. However, if the decision had been official, Sato would have reported this fact to Ito and to the Chief of Staff. Sato, however, did not relate about this matter to anybody. He alone knew the answer of the Commanding General. If this was an official decision, it would have been discussed at the

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meeting between Fukushima and Sato on the 15th of August. In addition it is thereby noted that Sato has not stated in his affidavit or in his testimony that these three executions occurred because of the Commanding General's decision. In Sato's affidavit exhibit, Exhibit 117, relative to the 20 June incident, he stated that these eight fliers were supposed to be tried by military tribunal but because of the bombings there was a feeling against the Americans so therefore they were executed without a trial. In addition Sato did not tell Akita that Wako had come to Sato asking for an opinion. By reason of the foregoing, it was Akita's belief that Sato understood "All right" to be simply an opinion of the Commanding General (R 849-852).

Defense Exhibit N was introduced in lieu of the direct testimony of Gunji Shimomitsu, who served with the Western Army from September 1944 to September 1945 with the rank of probationary officer. He was a member of the Legal Section, being a probationary prosecutor in court martial cases. The Chief of the Legal Section was Ito; the executive officer was Wako who had the additional duty as chief of the detention cell, in this duty he being directly under the Commanding General. Other members of the Legal Section were Murata, Yoshida, Ohno, Saito, Sota, Onishi and the witness. With reference to captured enemy fliers, those who were suspected of participating in indiscriminate bombings were referred to the Legal Section for trial by either the Kempei Tai or the Staff Section, it thereby becoming the duty of the Legal Section to conduct an independent legal investigation which was done by a prosecutor assigned by the Commanding General, upon recommendation of the Chief of the Legal Section. After an investigation by the prosecutor, an opinion is submitted to the Commanding General who has the authority to decide if the fliers investigated should be tried or not. The responsibility of the Legal Section with respect to captured enemy fliers began only when they were referred for trial. On the morning of 20 June about 3:00 a.m. he reported to the headquarters and saw about five or six enemy fliers assembled near the front gate of the headquarters under an armed guard. Until about 9:00 a.m. he was out combating fires that had occurred as a result of the air raid. When he returned to the headquarters, the same fliers were at the same place being fed rice balls and he overheard the remarks of the squad of men of whom he was in charge questioning the necessity of going to this extent to save these fliers. After breakfast, because he was exhausted from fire fighting, he, together with Onishi and Saito, took a straw mat and went to the embankment which overlooked the lower part of the headquarters grounds and slept there. When he awoke he saw the fliers being led one by one from the detention cell to a spot a short distance from where he was. Onishi and Saito were no longer sleeping beside him and being curious he walked down and saw an unknown officer whom he later learned was Toji behead two fliers in succession. While Captain Wako was actually directing the execution, he felt that Sato was in command because Colonel Sato was the staff officer in charge of enemy fliers and this was an execution of those fliers that were held under his custody and command. Besides this, Sato was also an influential officer in the headquarters. After the executions he returned to the headquarters building with Onishi and Saito, by whom he was told that Saito was instructed by Wako to tell Onishi to be an executioner since Onishi excelled in kendo. He also heard that a sergeant major was ordered to kill a flier and that a lieutenant whose name he later learned was Toji had asked to be allowed to act as an executioner and after executing the first flier, because there were no others who had been delegated as executioners, had then been told to cut the remaining fliers. Since a Colonel of the Staff Section, members of the Legal Section and other officers were present, the witness felt that the execution was being performed on orders. In that spot no officer upon being ordered to execute could refuse in the Japanese Army at that time for an order from a superior officer was always taken as a lawful order and no one would think of disobeying and if he had been ordered to execute a flier he would have done so.

The witness also saw the execution at Aburayama on 10 August. On the day previously an order had come from Captain Wako for Legal Section officers not occupied with special duties to attend the execution of a Japanese soldier by the name of Corporal Yamamoto. Those that went were Yoshida, Ohno, Sota, Wako and the witness. They were there as a group when the subsequent executions of the fliers commenced. After the second or third flier was executed, a Major walked up to Yoshida and told him to cut the next flier and when Yoshida finished, he told Ohno to execute a flier. He saw Otsuki use a bow and arrow. Before Otsuki took the bow and arrow in hand, this Major told him that he was to use the bow and arrow.

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Otsuki hesitated and acted as if he did not want to do this; however, this was an order and Otsuki took up the bow and arrow. This Major measured off a distance for Otsuki and Otsuki took a prone position but was told to take a sitting position. He shot two or three arrows and one of the arrows grazed the flier's head, the arrow glancing off the side of the flier's head causing an abrasive wound. After Tomomori ordered this stopped, the flier was led to his feet and walked about five meters to the side of the hole where he was executed.

The witness also saw karate performed. When the flier was brought forward, an order was issued to administer karate, however, he did not know the name of the young probationary officer that performed it. After the various forms of karate were performed Tomomori ordered it stopped and the flier was led to the hole and executed by a sword, by one whom the witness did not know. This flier was able to walk to the hole under his own power. Otsuki did not perform karate on this flier. The witness believed that this execution was ordered by some higher ranking officer and since it was ordered, felt that it was authorized and if he had been ordered on this day to act as executioner, he would have done so.

About May or June of 1945 he heard from someone that the policy in regard to fliers had been to escort them to Tokyo but thereafter they would be disposed of appropriately at the local headquarters. Although he did not see the directive he interpreted the above to mean that since it was understood that fliers would be tried by a military tribunal regulation and since a directive had come down that fliers would be disposed of appropriately, this meant that trials either could be held or did not have to be held according to how the headquarters felt about the trials. He believed that the central authorities gave the local army the power to do whatever they wished in regard to captured fliers.

Upon further direct examination, the witness stated that Wako did evidence insanity. He sometimes went around giving away his watch, clothing and blankets for nothing and within three days would go around again asking for the return of the articles to him and on the same day would give two or three orders which were contradictory. When a Japanese battleship came into Hakata Bay he became excited saying it was a British battleship (R 856).

Upon cross-examination, witness stated that Ito was also present at the 20 June execution but he did not know what duty he had there; that the executions were performed respectfully and he heard no cheers. At the execution of 10 August, three or four men took turns using karate; Tomomori was standing there while it was going on (R 859-64).

Defense Exhibit O was introduced in lieu of direct examination of Yoshio Nasu. He was a Major General and from March of 1943 until the end of the war, was Chief of the Military Service Bureau of the War Ministry, which dealt inter alia, with military discipline. The Bureau worked on the revising of army discipline regulations and the issuing of new regulations. After a recruit joins the Japanese Army superior orders are stressed. The Imperial Rescript for the Soldier which he carries most of the time states that the order of the direct superior would be taken as an order from the Emperor, to be carried out without delay. The interior duty regulations stressed that the orders of the direct superior would be carried out immediately and would be strictly obeyed without asking the reasons for the order. The training regulation states that superior orders will be complied with in order to maintain the discipline of the army. The infantry drill manual states that obedience is the basis of discipline and will be strictly observed and the field service regulation stressed the same thing. The above was stressed throughout the career of a Japanese soldier. Even if there is a doubt on the part of the receiver of the order as to its legality, if it came from a person who had authority to issue such order, the receiver could not refuse to obey even if he didn't know definitely about its legality. If he does refuse, he runs the risk of being punished for disobeying a legal order. All orders coming from superior officers were assumed to be legal orders and no soldier would even think that a superior officer would issue an illegal order. Generally a junior grade officer or a NCO does not have the duty to inquire as to the legality of an order and such person would be justified in believing that an order was a legal order and carry it out. Where an officer or NCO carried out an execution believing it was lawful and it later turned out to be unlawful, if this was done on orders of a superior officer, he would have no responsibility. A guerrilla officer of

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the rank of probationary, having been taught guerrilla warfare tactics as part of his training and who was ordered to use such methods at an execution which he believed legal, will not be acting unlawfully if he carried this out at the order of someone who had the authority to give such an order; and if a lieutenant of a Legal Section who was appointed as a prosecutor to prosecute B-29 fliers learned from his executive officer that on the orders of the Commanding General the execution would be carried out without a trial, he would not have the responsibility to stop this execution. If this officer stood and just observed this execution, he would not be criminally negligent and as a soldier a legal officer cannot refuse to perform an execution if he believed or was led to believe that an execution was taking place on orders of the Commanding General. Even if he knew that the person to be executed had not received a trial, he would not be acting unlawfully if he carried out such an order and if an executive officer of the Legal Section received permission from the Commanding General to execute fliers without a trial, he would not be acting unlawfully if he carried out the execution. Where a Colonel of the headquarters who had no connection in regards to captured enemy fliers was told by another officer that an execution of captured fliers was going to take place and he was invited to attend the execution, such Colonel would be justified in believing that it was a lawful execution.

After the Emperor's broadcast announcing the acceptance of the Potsdam Declaration and the Japanese surrender, the Imperial General Headquarters issued an order to the subordinate units to lay down their arms. There was also an order for demobilization around the 20th of August. However, even after this was done the customs and regulations in the Japanese Army still existed, including the same regulations and customs as to superior orders. Just as prior to the end of hostilities, Japanese soldiers thereafter still remained subject to superior orders up to and including the day they were demobilized from the armed forces.

On further direct examination, the witness stated that he was connected with the drafting of the regulations regarding the Civilian Volunteer Corps and at that time, Tomomori was connected therewith at the War Ministry. In view of the imminence of the invasion it was necessary to organize Kyushu first and the organizing included the majority of the adult population in entire Kyushu and if Tomomori was performing that duty, it was a very important duty and he would be very busy. There was no direct connection between the Civilian Volunteer Corps and the guerrilla unit (R 865-86).

Upon cross; there was no connection between the operations of the young officers selected as guerrillas and the Civilian National Defense Program, for the latter dealt with rear echelon matters. There is no method of execution in the Japanese Army other than by firing squad (R 866).

The accused, Yokoyama, convicted of Specifications 1 to 4, inclusive, elected to testify in his own behalf (R 880). About 20 May 1945 Akita came to him and informed him that a telegram had been received from staff headquarters in Tokyo stating that it was no longer necessary to send B-29 fliers to Tokyo unless it was thought he had some worthwhile information and that the army should conduct simple and speedy trials of these fliers. Akita stated that Sato wanted to know what Yokoyama's ideas were. Yokoyama stated it was "all right" meaning thereby that there should be simple and speedy trials, not that there should be elimination of trials. After that he heard that the telegram stated to take proper disposition rather than to conduct the trials with more speed and more simplicity. It was his understanding that trials were to be done simply and with more speed and not as Akita states that it was no longer necessary to have trials and therefore he said, "All right". In the middle of April he had established military tribunal and prosecutors therefor and he was of the opinion that military tribunals would try the fliers (R 880-81).

Because of the air raid he was up all night on the 19th in the air raid defense operation room and left Fukuoka headquarters on 20 June before breakfast. He was gone from the headquarters all day working on plans and inspecting the city. Up through the 20th of June he did not receive any orders openly from Tokyo concerning the execution of captured fliers without trial. However, he received an unofficial notification around the 16th or 17th of June. Sato came to him and stated that Yanase of Western Kempei Tai had come to see Sato regarding a document received by the Western Kempei Tai from Tokyo Kempei Tai

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headquarters. Sato stated that the document did not openly state that B-29 fliers who had bombed indiscriminately can be executed without trial but it was the intention of the War Ministry to execute the fliers without trial. Yanase had also told Sato that the document was to be burned after it was read and Yanase took the document back with him. Sato also added that around the first of June, Major Kikkawa of the staff headquarters had come and told him that the opinion of the staff headquarters was to execute without trial fliers who had bombed indiscriminately. Previously it had been said that the army should take proper action toward these fliers but the real meaning of this was to execute the fliers without a trial. Yokoyama thought that he should follow the order; however, the Chief of Staff was away that time on a trip and he thought that he would consult him when he returned (R 881-883). Kempei Tai's jurisdiction is directly under the War Ministry and not under the army. Yokoyama did not know whether Kikkawa spoke with the authority of the General Staff Headquarters at Tokyo or as a member of the Information Bureau. Yokoyama felt that this was an order for him to follow, particularly after hearing the explanation as to the real meaning in the document that was received by the Kempei Tai. The General Staff Headquarters had to avoid issuing such an order officially for various reasons; the Americans had protested regarding the trials of captured fliers and the Japanese Government did not know what to do about it and after the Doolittle case they did not have any trials for a long time for this reason and it was generally thought that those that tried captured fliers would face future difficulties and they feared to assume such responsibilities and attempted to avoid the problem; this was true in the case of the War Ministry and General Staff Headquarters. In April of 1945 it was decided to establish military tribunals by the armies, the fliers to be tried by the armies but there was interference with this procedure by the Legal Bureau of the War Ministry. There was a report from the Assistant War Ministry that it would be necessary to obtain practical approval from the War Ministry for the trial of those fliers who would be executed if tried by a military tribunal. However, during the latter part of May indiscriminate bombing became more intense and public opinion was rising and it was decided, as provided in the War Ministry regulation issued in July 1942, that those who performed such bombing would be subjected to stern disposition, by giving them a trial by military tribunal. However, everyone feared the responsibility for taking such a step and accordingly nothing was done about it and they did not proceed with the program. In such a situation rapid disposition was necessary but it was impossible for the War Ministry and General Staff Headquarters to assume that responsibility for various reasons. Yokoyama felt that the above were forcing the army commanding generals to do the job (R 883-85).

Since the problem would involve international complications, the War Ministry and the General Staff Headquarters wanted to avoid the responsibility and this was the emergency procedure they devised to get the order understood. It was to let the army commanding generals do what the War Ministry and the General Staff Headquarters intended to do without issuing an official order concerning it; to let the army commander assume the responsibility and they themselves avoid it. This oral means of communicating an order was very rare and had happened only once in Yokoyama's experience, namely during the Sino-Japanese Incident (R 886-87).

On June 20 he did not observe any captured fliers executed but he did order their execution, arriving at his decision by the following reasoning: Through the document received by the Kempei Tai, he was able to perceive the real intention of the Central Government. It was obvious that international complications would arise in regards to the punishment of fliers and if America did protest to the Japanese Government, the Government could say that no order or regulations to execute fliers without trial had been issued. They could say that this was done by the commanding generals of the armies voluntarily and they could state that the regulation issued by the War Ministry still provided for a trial. However, for the purpose of national defense, it was necessary to prevent further incendiary bombings of cities, which were becoming very intense, by executing the fliers. For this reason they were compelling the commanding generals in this indirect manner to execute. Yokoyama thought they should obey the intentions of the Central Government immediately and wrote an order on paper to Ito and Sato stating (1) that the Allied Forces will probably burn all the cities in Japan by incendiary bombs, (2) we must defend Kyushu, (3) I have decided to go along with the new policy of the Central Government, that is, to omit the trial provided for in the Enemy Airmen Act of July 1942, (4) Ito and Sato are to conduct executions in accordance with the policy of the Central Government and (5) conduct investigatic

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as to the guilt of the fliers accurately and at the conclusion of his note, Yokoyama stated, "I have decided to concern myself only with the decisive battle and hereafter do not bother me with the problem of fliers." Yokoyama did not discuss his decision with either Inada or Ito since he did not think that they would agree with him. The paper upon which the foregoing was written, he sent to Ito and Sato by a soldier and after that did not receive any reports as to executions of fliers until after the termination of the war. At the meeting of 15th of August that he attended, he spoke to the officers of the headquarters concerning the Emperor's feeling relative to the termination of the war. He did not even think of captured fliers and did not talk about them (R 887-91).

Upon cross-examination, Yokoyama stated that in his affidavit given the prosecution, there were instances therein where he did not speak honestly since he could not mention about the Central Government; that he stated to the investigator, Captain Tracy, that he would speak the truth in court and that Tracy should investigate the matter closely. Up until the summer of 1947 his explanation and Akita's explanation were the same, namely that the fliers were to be tried simply and rapidly and then in the summer of 1947 Akita suddenly changed his answer to "without trial". Yokoyama was surprised. Although there has been a lapse of three and one-half years from the time of his conversation with Akita, his recollection at this time is that their conversation resulted in the statement that Akita stated that the tenor of the telegram was to conduct trials simply and rapidly and that his answer was "All right" (R 893-95). There were no fliers killed at Western Army Headquarters without trial before the Kempei Tai communication (R 896). His idea was not to involve the War Ministry, General Staff Headquarters and the Central Government; their belief was to assume responsibility themselves and not to involve the Central or the Imperial Headquarters. The Kempei Tai merely related the opinion of the Central Government secretly (R 896-97). Sato came to his farm after he had retired from the army and asked him to tell Fukushima to assume responsibility. He told Sato that he was no longer a Commanding General but a farmer and he should speak to General Nishihara about that. He never told him that anyone should assume responsibility. No open order regarding executing without trial was received from the War Ministry. The letter from the Kempei Tai urged that that was what the War Ministry desired to do. If an official order to execute captured fliers was issued by either the War Ministry or General Staff Headquarters, a problem of international complications would have arisen. He felt that they wanted the army commanding generals to assume that responsibility. Since the Doolittle incident, fliers were considered a problem of an international nature. If the bombings had continued, all the cities in Japan would have been burned out; about 800,000 people had died or had been injured because of these bombings and public opinion was aroused and, for this reason, the Government had to take rapid disposition against those who participated in indiscriminate bombing. No B-29 fliers were returned from Western Army Headquarters at the end of the war. He did not know anything about State Department protests concerning the execution of B-29 fliers in Kyushu. He did not know whether Inada saw the five-point document he wrote to Ito and Sato on the 20th of June. He had told Inada to devote his time to operations and did not want Inada to worry about captured fliers. In the headquarters the work was divided according to their duties. They were facing a decisive battle and they could not be concerned with those things. On 20 June he wrote the directive to execute on paper and gave it to someone in the air raid operational room to give to Ito. He believed that Ito received it but he did not know definitely. Ito never discussed it with him. The investigation called for by his directive was to be performed by both Ito and Sato. Sato investigated and obtained intelligence information from the fliers which details were then sent to the Legal Section. Ito would then study the information obtained from Sato from the legal point of view to determine whether or not the fliers were guilty of indiscriminate bombing by an accurate investigation (R 899-904). After Yanase came to Sato, who then came to him concerning the Kempei Tai opinion, he did not discuss this opinion with Second Army and Tokyo Headquarters. He knew nothing of the false report from Western Army Headquarters sent out in June or July concerning the fliers wherein it was stated that they had died in the air raid. While he has stated in his statement that even he did not have the authority to order the execution of the fliers held at Western Army Headquarters in June, this statement was made because he realized the intentions of the Central Government, and he did not want to involve the Central Government. At that time he did not mention the Central Government because the Class A trials were in progress. However, this concealment was no longer necessary because in various other cases in different

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places the matter of the Central Government had already been brought forth and in addition he was determined to relate the truth when he stood trial and now was the time to tell the truth (R 910-12). At the dinner meeting with he, Akita and Sato about February 1946, they did not discuss the concealment or responsibility for the killing of American fliers. About 31 January 1946 he did have a conference which included Inada, Fukushima, Akita, Ito and Oki, but this was merely a get-together and the offenses and concealment thereof were not discussed (R 913-14).

Upon re-direct examination, Yokoyama stated the following in his behalf: In March of 1946 Lieutenant General Suzuki came to him and informed him that he was a prosecutor of the higher court-martial, and that he wanted to discuss the incidents of 20 June, 10 August and 15 August. He told the witness that since he was the Commanding General at Kyushu at the time, regardless as to whether he did or did not order the executions, the American Army had decided to execute him because of these three incidents since they were thought to be murder incidents. He told Suzuki that it was not murder because the fliers were punished in accordance with the Enemy Airmen Act and in accordance with the regulations concerning the Enemy Airmen issued by the Defense Headquarters and that the intentions of the Central Government had been relayed through the Kempei Tai on the 20th of June. Suzuki stated that the army headquarters must assume the responsibility for these incidents and the best way was to make it look as if an operational order had been issued by the Commanding General. Yokoyama told him that since no official order had been issued by the Central Staff Headquarters and War Ministry, the incidents could not be connected with an operational order. Yokoyama realized that it was Suzuki's opinion that since no official order was issued by the War Ministry or by the General Headquarters, he was trying to make it look as if the army ordered the executions of its own will thereby fixing guilt of murder upon Yokoyama and his associates and in this manner apologize to the United States. Yokoyama told Suzuki that on June 20 he had anticipated that he would be placed in this predicament. Since Japan had accepted the Potsdam Declaration, he was determined not to involve the War Ministry and the General Headquarters in these incidents and told Suzuki that he would commit suicide and that Suzuki should not in his investigation involve his former subordinates. The next day Suzuki brought a statement for Yokoyama to sign. There were discrepancies therein but since Yokoyama had determined to commit suicide, he did not request any corrections to be made. His statements differed because he was going to commit suicide and also because he did not want to involve the Central Government. He had no idea of mistreating the airmen. He did not know that bows and arrows and karate were being used (R 915-917).

Received in evidence was Defense Exhibit Q, being an extract from the judgment of the International Military Tribunal (R 921). Pertinent portions thereof state: The Commandant of Military Police for Japan considered that the procedure of giving captured fliers a trial imposed an unnecessary delay in killing them. Accordingly in June 1945, he sent a letter to each of the military police commandants of the several military districts in Japan complaining of the delay in the disposition of captured Allied airmen stating that it was impossible to dispose of them immediately by courts-martial, and recommending that the military districts dispense with courts-martial after securing the approval of the commander of the military district. In the Tokai Military District, twenty seven Allied fliers were killed without trial after this letter was received. In the Central Military District over which Hata exercised administrative command, forty three Allied airmen were killed without having been tried by courts-martial or otherwise. At Fukuoka eight Allied airmen were killed without trial on 20 June 1945, eight more in the same manner on 12 August 1945 and three days later on the 15th of August the third group of eight, making a total of twenty four Allied airmen killed at Fukuoka without being given a trial after the abovementioned letter recommending this procedure was sent out from Tokyo by the Commandant of Military Police.

In rebuttal, prosecution introduced PX 277, being the statement of Sanji Okido, purporting to reveal that the Kempei Tai letter was written in such a manner as to leave its adoption or rejection to the sole discretion of the unit commander. Also introduced in rebuttal was PX 278, being the statement of Yoshio Yamamura, which was to the same effect and so for PX 279, statement of Otogoro Ishida.

In lieu of the direct examination of Soji Shakudo, prosecution introduced PX 280 (R 927). He was a Major General and Commanding Officer of the

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Northern Kempei Tai Unit based in Sapporo City in Hokkaido from August 1944 until the end of the war. About the middle of June 1945 he received a letter from Colonel Yamamura, Chief of the Foreign National Section of the Kempei Tai Headquarters in Tokyo, which letter stated that the shortage of rations, facilities and guard personnel had made the internment of a large number of prisoners of war by the Kempei Tai an unbearable burden, that therefore the army headquarters should be contacted immediately to have the trials by military court expedited and in addition to confer with Army Chiefs of Staff and make arrangements to transfer prisoners of war held under the custody of Kempei Tai to the army. The opinion expressed in the letter was not the opinion of higher authorities but that of Yamamura. The term "Tekigi no shochi" was used in the letter and the witness interpreted it to mean to transfer the prisoners of war held under the custody of the Kempei Tai to the Army at an appropriate time and lighten the burden of the Kempei Tai. At that time he did not believe it to mean to execute the prisoners of war. The same message was also sent out to other Kempei Tai units throughout Japan. The above quoted words did not mean to execute the prisoners of war at the appropriate time.

Upon cross-examination, the witness stated that he had four captured fliers in his custody who he held until the end of the war. If he had possessed a large number of captured fliers, he did not know how he would have construed the above quoted words. The above words could be interpreted in any manner depending upon the situation and that is why he answered that he did not know. At the time he received the letter he did not interpret it to mean to execute. He could not say what construction of the letter he would have placed upon those words if an officer from the Tokyo headquarters of the Kempei Tai had visited him and advised that the correct interpretation to be placed thereon was "to execute" (R 927-28).

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4. Opinion:

The commission was established by proper authority and had jurisdiction over the accused and of the offenses alleged. The sanity of any of the accused was not made an issue. They were informed of their rights, had a fair trial and were aggressively and ably defended by both American advisory counsel and Japanese counsel. The following accused elected to testify in their own behalf: Inada, Sato, Tomomori, Ito, Fukushima, Yakumaru, Itezo, Murata, Wako, Kusumoto, Akita and Yokoyama. All of the accused were given the opportunity to cross-examine those of their co-accused who testified.

The prosecution presented its case by the introduction of 273 exhibits and the testimony of 70 witnesses; the defense by the introduction of 14 exhibits and the testimony of 25 witnesses. Except as hereinafter discussed, the record is legally sufficient to support the findings of the commission.

The briefs filed by the defense on behalf of the accused have been carefully considered, together with the points raised in the trial; also read and considered, as requested by defense in one of its briefs (by J. C. Featherstone), was a brief relative to double jeopardy, filed in U.S. v Ebi, Case #314. Considered also were prosecution reply briefs.

Objection was made to the admission into evidence of PX 98, being a statement of the accused Yokoyama, on the ground that the affiant had not been advised of his rights against self-incrimination at the time the statement was taken, and further, if admissible against the accused, then against him solely and not against his co-accused (R 165-176). The same objections were voiced to the admission of statements by the others accused. It is considered that the commission correctly overruled these objections. In *Wilson v United States*, 162 U.S. 613, 623, Mr. Chief Justice Fuller stated:

"And it is laid down that it is not essential to the admissibility of a confession that it should appear that the person was warned that what he said would be used against him, but on the contrary, if the confession was voluntary, it is sufficient though it appear that he was not warned. Joy on Confessions, *45, *48, and cases cited."

and see also SCAP Rules, Par 5d, as amended; U.S. v Namba, Case #149, p 12; U.S. v Inoue, Case #258, p 107; U.S. v Yoshida, Case #342, p 5; U.S. v Ichinoe, Case #265, p 13; U.S. v Taniguchi, Case #318, p 6.

It is also argued that the findings as to six of the accused should be disapproved for the reason that they have already been once placed in jeopardy (in Case #290, Aihara et al) for the same crime as herein charged, these six being Aihara, Fukushima, Ito, Sato, Yakumaru and Yokoyama.

As the evidence reveals, the above named participated in the offenses herein charged to a greater extent than as alleged by the defense in this motion. It can be further remarked that, if adherence were to be given to common law practice, this contention could be summarily dismissed, for it is well settled that the right of immunity against being placed twice in jeopardy for the same offense is a personal right and is waived where an accused pleads not guilty and proceeds to trial, verdict and judgment (*Blair v White*, CCA8, 24 F 2d 323; *Levin v U.S.*, CCA9, 5 F 2d 598; *Brady v U.S.*, CCA8, 24 F 2d 399). However, it is the policy of the reviewing

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authority to search the record for any possibility of failure of justice and in the process to cut through all over-legalistic rules which might impede full protection of the rights of the accused (U.S. v Hashimoto, Case #168, p 17).

The basic offense of the above-named accused in this case and in Case #290 was not, as the defense claims, their meeting or conspiring together, resulting in the adoption of a policy to kill, and which policy was approved by Yokoyama. Rather, the offenses charged and sought to be proved were the killing of different persons, at different times, in different places and by different means. The phrase, "acting jointly and in pursuance of a common intent did kill" charged the overt acts as being the offense and not the conspiracy or common plan to do the acts. A conspiracy to commit a crime is a different offense from the crime that is the object of the conspiracy; where the offense is the result of a conspiracy, a conviction can be had for the consummated offense. Overt acts are something apart from the conspiracy, being acts to effect the object thereof; a conspiracy to commit an offense and the substantive offense itself are two wholly different and separate crimes (12 CJ, Sec. 2, p 542; Manning v U.S., CCA8, 275 F 29; U.S. v Halbrook, DC Mo, 36 F Supp. 345; Westfall v U.S., CCA6, 70 F 2d 604; Rivera v U.S., CCA1, 57 F 2d 816; Asgill v U.S., CCA4, 60 F 2d 780). Where several substantive crimes are committed, although resulting from a single conspiracy, a prosecution for one will not bar a prosecution for another (22 CJS, Sec. 298, p 455; 15 Am Jur, Sec 367). Because the entire story is related upon the trial, frequently facts not essential to the crime charged are received in evidence (Murphy v U.S. CCA7, 285 F 801, 814). In U.S. v Ryan, DC Mo, 23 F Supp. 510, 512-13, the court said:

"... The constitutional guaranty is against double jeopardy for the same offense. There is no constitutional guaranty against a repetition of evidence in trials for different offenses. There is no constitutional guaranty against a second incidental proving of the same offense if that offense be an offense which has not heretofore been charged and prosecuted."

".... The Circuit Court of Appeals would not have held that because A was charged with, tried for, and convicted of stealing a mail truck belonging to X, he could not thereafter be charged with, tried for, and convicted of stealing a mail truck belonging to Y, even though on the first trial there was evidence indicating that A was a party to a conspiracy to steal Y's truck as well as that of X, or was a party to a conspiracy to steal all of the trucks in the neighborhood in which he lived. The charge that A was a party to a conspiracy to steal the truck of X is a charge different from a charge of a conspiracy to steal the truck of Y. If X and Y are different persons there is no possibility whatever that A could be put in double jeopardy by separate trials of the two indictments." (Underscoring supplied)

In view of the foregoing, it is not considered that the plea of double jeopardy should prevail in this case; and upon review of the whole record, it is concluded that no ruling of the commission

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adversely affected the rights of any of the accused.

In arriving at the recommendations hereinafter made, the following familiar principles of law were borne in mind:

".... Those who advise, encourage, aid, or abet the killing of another are as guilty as though they took his life with their own hands. A principal in the crime of murder need not be specifically a party to the killing, if he is present and consents to the assemblage by which it is perpetrated in pursuance of the common design,"

".... It is, of course, competent, under an indictment charging several persons as principals in murder, to convict one of such principals of one degree of felonious homicide and another of some other degree of felonious homicide, according to the intent with which such principals may have performed the particular act attributed to, and proved against, them."

".... To constitute a person a principal in a crime, he must be present aiding by acts, words, or gestures and consenting to the commission of the crime. It is not necessary, however, that he do some act at the time in order to constitute him a principal, but he must encourage its commission by acts or gestures, either before or at the time of the commission of the offense, with full knowledge of the intent of the persons who commit the offense: The mere concurrence of the minds of persons in pursuance of a previously formed design to commit a crime does not alone constitute them principals. To constitute a principal in crime, there must be participancy of the doing of some act at the time of the commission of the crime which is in furtherance of the common design."

".... Acts tending to conceal a crime after it has been committed do not constitute the aiding and abetting of the crime." (Underscoring supplied)

".... The person charged as a principal in the second degree must be present aiding and abetting the crime or in such contiguity as to enable him actually to render aid. But while the law requires the presence of the aider or abettor in order to render him a principal, it does not require a strict, actual, immediate presence, such a presence as would make him an eye or ear witness of what occurs, for if the abettor, at the time of the commission of the crime, was assenting to it and in a situation where he might render some aid to the perpetrator, ready to give it if necessary, according to an appointment or agreement with him for that purpose, he would, in the judgment of the law, be present and aiding in the commission of the crime."

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".... Moreover, it is clear that the fact that a person is present aiding and consenting to a felony alone is sufficient to charge him as a principal in the crime. The presence by construction or judgment of the law is in this respect equivalent to actual presence. The questions to be determined in ascertaining whether a person is in a position to aid and abet in the commission of an offense is not so much where he may happen to be, as whether he is in a position to render aid and encouragement to the actual perpetrator, with a view of insuring the success of the common purpose."

".... It is obvious that the mere presence of a person at the commission of a criminal act does not render him liable as a participator therein. If he is only a spectator and does not act to countenance or approve those who are actors, he is not criminally responsible because he happens to be a looker-on and does not use active endeavors to prevent the commission of the unlawful acts. To make him an aider and abettor, he must do or say something showing his consent to the felonious purpose and contributory to its execution."
(Underscoring supplied)

".... The advice or encouragement that will make one a principal in a felony may be given by words, acts, or signs. Therefore, one who inflames the minds of others and induces them by violent means to do an illegal act is guilty of such act, although he takes no other part therein. If he contemplates the result, he is answerable, although it is produced in a manner different from that contemplated by him. If he awakes into action an indiscriminate power, he is responsible."
(14 Am. Jur.; Sections 84-90, pp 825-830).

"Those present assisting one who personally commits a felony are 'aiders and abettors,' and are guilty as principals, while those who are absent, but who counseled the commission of the crime, 'are accessories before the fact.'" Vogel v State, 138 Wis., 315, 119 N.W. 190, 191. It is not necessary that there should be any direct communication between an accessory before the fact and the principal felon; it is enough if the accessory direct an intermediate agent to procure another to commit the felony, without naming or knowing of the person to be procured. A person is not an accessory before the fact, unless there is some sort of active proceeding on his part; he must incite, or procure, or encourage the criminal act, or assist or enable it to be done, or engage or counsel, or command the principal to do it. Halsbury, supra, 531. Strictly speaking, in order to constitute one an accessory before the fact, there must exist a community of unlawful intention between him and the perpetrator of the crime. The concept of an accessory before the fact presupposes a prearrangement to do the act (see West v State, 25 Ala. App. 492, 149 So. 354); and to constitute

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one an aider and abettor, he must not only be on the ground, and by his presence aid, encourage, or incite the principal to commit the crime, but he must share the criminal intent or purpose of the principal. (Morel v United States, CCA6, 127 F (2) 827, 830-1). (Underscoring supplied)

The execution by sword, rather than by the legal method of firearms, is a signpost of illegality (U.S. v Okada, Case #289, p 91). Action pursuant to order of the accused' superior or of his Government shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires (SCAP Rules, Par. 5d4, 5 Dec. 1945, as amended 27 Dec. 1946).

Also appropriate is comment by Mr. Justice Jackson which, while made in a conspiracy case, is deemed to be appropriate in this case.

"A co-defendant in a conspiracy trial occupies an uneasy seat. There generally will be evidence of wrongdoing by somebody; it is difficult for the individual to make his own case stand on its merits in the minds of jurors who are ready to believe that birds of a feather are flocked together. If he is silent, he is taken to admit it and if, as often happens, co-defendants can be prodded into accusing or contradicting each other, they convict each other." (Krulwich v U.S., 69 S. Ct. (Adv. Sh.), p. 716, 723).

Recommendations:

Scores of petitions for clemency were filed on behalf of several of the accused by friends, relatives and wellwishers. In addition, one commission member, Edward A. Parker, Capt., TC, filed a petition requesting that all of the death sentences be commuted and the prison sentences be reduced, with specific attention being invited to the sentences imposed upon the accused Ito, Toji, Narazaki and Nakayama. All of these petitions have been carefully considered and evaluated.

Yokoyama was found guilty of Specifications 1 to 4, inclusive, and sentenced to death.

The accused expressly authorized the executions of 20 June, and the other two executions were carried out pursuant to his previously-made policy decision. It is not believed, however, that, under the circumstances present in this case, the death penalty should be approved. It is considered that the accused followed the behest of Tokyo Headquarters in ordering executions without trial; obviously a Government could not make a decision of a nature such as this and communicate it in the usual military manner, hence, the use of the devious procedure of vague phraseology in written communications followed by oral interpretations to make its wishes known. The evidence amply reveals that other headquarters, albeit not all, likewise executed without trial following the receipt of the aforementioned communications. It has been ascertained that the Hata, sentenced to life in the International Military Tribunal trial and the Hata, who exercised command control over this accused are one and the same person (Mr. Von Bergen, prosecutor). See D X Q wherein it is revealed that the findings against Hata not only included the executions charged against this accused, but many more. While it is undoubtedly true that the ruling of this international tribunal is not binding upon these commissions, it is considered

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that in arriving at an apportioning of responsibility for illegal actions and the relative punishment to be accorded thereto, the finding of this august tribunal is entitled to great weight.

It is recommended that the sentence of death be commuted to forty years.

It is also considered that the pleadings will comply more adequately with the proof if accused be found not guilty of Specifications 1 and 3, guilty of Specification 2, as stated, and guilty of Specification 4 with the words, "June," "July," deleted and "33" changed to "25".

Ito was found guilty of Specifications 1 to 4, inclusive, and sentenced to death by hanging.

The evidence reveals that Ito did not approve of the plan to execute fliers without trial when discussed, differing with Sato and Wako in this regard even after the Tokyo telegram was received (PX 129-12-15; 112-13-14; 130-3; R 659-663). Sato and Wako made the decision to execute without trial and procured Yokoyama's approval; and the record is barren of any evidence that Ito, as chief legal advisor, was consulted in this regard by Yokoyama. He appears to have been bypassed by Wako (PX 147-2,3). True, the execution of 20 June was performed by members of the legal section and others, but under the charge of Captain Wako -- Ito's assistant and chief in his absence -- and planned by Wako and Sato. The executions were in progress when he came upon the scene, and it is established that he had been told prior thereto that Yokoyama had ordered the executions. It is considered that the testimony of the accused Murata and Enatsu, both acquitted, is the mere credible (R 788-790; 806-808; PX 129-12-15; 130-3-4,6; PX 145-21, 23-29; 147-2-3). It is further considered that it is expecting more than can be required of an officer, even though a Major General, that he stop an execution, in progress when he arrives upon the scene, when he knows it has been previously approved by his superior officer; nor, for the same reason should he be found guilty under the command responsibility doctrine (Specification 4). It is not considered that there was any "aiding" or "abetting" on the part of Ito.

As to the other specifications, there is no evidence of participation therein. It is believed that this accused was found guilty merely by association, and it is recommended that his conviction be disapproved and that he be acquitted.

Fukushima was found guilty of Specifications 1 to 4 inclusive, and sentenced to death by hanging. There is a scintilla of evidence that on the night of 19 June, during an air raid, this accused made inquiry of someone as to the disposition of the fliers (PX 242-2,4; but see R 483-489). It is clearly established, however, that the "setting in motion" of the execution on the 20th of June (Specification 2) was occasioned by Wako and Sato and that the specific consent of Yokoyama was obtained; nor does it appear that the accused had any part of the deliberations resulting in Yokoyama's previously-made policy approval. Accordingly, it is not considered that guilt under Specification 2 has been proved.

As to the 10 August execution (Specification 3), it does not appear that Sato procured the approval thereof from Fukushima, nor did Itezono (PX 101-17; 112-38, 41). It is not contradicted that Fukushima was first informed of this execution on 15 August, when Sato approached him relative to that day's execution (PX 107-8). It is considered that here too there has been a failure of proof.

As to the 15 August execution (Specification 1), the evidence is ample to sustain the finding of guilty. It was for

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the commission to determine who to believe; whether in this conversation with Sato, the accused approved the execution or forbade it. In affirming these executions, however, the accused merely implemented the policy. It is not considered that this acquiescence in a heretofore established policy warrants the imposition of the death sentence, and particularly since guilt has not been established as to Specifications 2 and 3; nor should his attempts at concealment operate to increase the punishment. Concealment is not charged in this case. It is recommended that this sentence be commuted to 30 years. Accused should also be found not guilty of Specification 4.

Tomomori was found guilty of Specifications 3 and 4 and sentenced to death by hanging.

This accused was senior officer present at the bestial exhibition on 10 August. However, he did not order the executions or plan the means used to effectuate them. Nonetheless, he knew, if for no other reason than by the manner in which they were conducted, that they were illegal; that they were so ordered is no defense, needless to state, and if the manner of execution had been of his volition, the death sentence would be amply justified; nor was he a mere spectator or bystander in this scene as the evidence amply reveals. However, it is considered that since the executions, and the manner thereof, were not of his own doing, the death sentence is not warranted and it is accordingly recommended that the sentence of death be commuted to 30 years. It is likewise believed that Specification 4 overlaps and he should be found not guilty thereof.

Sato was found guilty of Specifications 1 to 3 inclusive and sentenced to death by hanging. The evidence is ample to sustain his conviction on all three counts. The sentence is legal and should be approved, if for no other reason than by his prior acquiescence in the use of such brutal means as were utilized in the executions of 10 August; such amply warrants the death penalty.

Yakumaru was found guilty of Specifications 1 and 3 and was sentenced to confinement at hard labor for life. Accused was staff officer in charge of supervising all PW camps under the jurisdiction of the Western District Army. This, however, did not place him in charge of the captured fliers who were not considered as PW's, they being the responsibility of Colonel Sato (PX 100-5; 107-5, 19; 129-2; 130-3). He also worked on national defense under Tomomori (PX 111-26) and Itezono worked under him as his assistant in guerilla warfare. Itezono told this accused that Sato had ordered him to execute the fliers the next morning; that Sato had told him to use karate and this accused merely said all right or "is that so good." (PX 124-5; 125-19, 21; 259-3). However, on his oral examination, Itezono states that he was not certain that he had reported the intended execution to this accused (R 778). It is not considered that it has been proved beyond a reasonable doubt that this accused "aided and abetted" in the execution of 10 August (Specification 3). He was not present there and even if Itezono's statement is to be believed, it is disclosed thereby that Yakumaru was told that Sato, a superior officer and the person in charge of the fliers had approved the execution.

As to the execution of 15 August (Specification 1), there is a paucity of evidence linking the accused with that event. True, Sato states that this accused was present in the room when Kusumoto came to see him. Kusumoto states that this accused was not there (R 816), and his presence was likewise denied by the accused (R 763, 766); but even if true, and that he assented (PX 113-2), it is not considered that a mere acquiescence by one in his position is

(p 49 of 59, Tomomori, Case No. 288)

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sufficient to convict. It is accordingly recommended that this conviction be disapproved and the accused acquitted.

Kusumoto was found guilty of Specification 1 and sentenced to 40 years. The sentence is legal but is deemed to be excessive.

Participation is clearly proven but it is believed that the commission was unduly swayed by the fact that the execution occurred after the Imperial Rescript had been read. Military discipline did not cease at noon on 15 August when the Rescript was promulgated. The evidence is conflicting as to whether this accused acted of his own volition by suggesting the execution; but even if so, any suggestion on his part would have been meaningless without the orders he received. In view of the foregoing, it is recommended that this sentence be lowered to 10 years.

Itezono was convicted under Specification 3 and was sentenced to confinement at hard labor for life. The sentence is legal and should be approved. By his own admission (R 778), it was his suggestion that karate, bow and arrows and kesagiri be used on these fliers. The record reveals no mitigatory circumstances as to this accused. As a matter of fact, his eager participation in this affair would have amply warranted the imposition of the death penalty.

Aihara was charged under Specifications 1 to 3, inclusive, found guilty under Specification 1 and sentenced to confinement at hard labor for five (5) years.

By referral to the record references on this accused in the Summary of Evidence, Specification 1, it will be revealed that his activities related mainly to the incidents charged in Specifications 2 and 3, and concealment in general. Relative to captured fliers, it was his function to register the incoming fliers and then they were turned over to Yukino, acquitted, whose duty was to furnish them with clothing, food and housing. As to the incident of which this accused was found guilty, it was Yukino who released the victims upon being ordered to do so by Kusumoto; both Yukino and Kusumoto attest to this (PX 122-10, 140-5). One witness, Ishimura, states in her affidavit that the accused came into Sato's office shortly prior to this execution and informed him that everything was ready (PX 215-15). However, on her oral examination, she stated that she desired to correct her statement and that the accused was not at the headquarters that day (see R 424, 426). In addition, Sato himself stated that he believed it was Kusumoto who informed him of the foregoing (PX 117-1). It is accordingly recommended that this accused be acquitted.

Wako was convicted under Specifications 2 and 3 and sentenced to death by hanging. Participation in the offenses alleged is clearly proven and the degree thereof amply warrants the death penalty; however, it is recommended that he be given a sanity hearing (PX 192-17; R 808-813; 855-6; Petition of Yonefusa Wako, No. 254, p 7).

Nakayama was found guilty under Specification 1. He was found not guilty under Specifications 2 and 3 but not having been charged thereunder (R 41), the action of the commission in this regard was superfluous.

The sentence of death by hanging is legal but should not be approved. It is considered that as to this accused, and to the others who acted as executioners in this specification, the fact that the incident occurred shortly after the reading of the Imperial

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Rescript should have been of no moment to the commission. The necessity of obeying superior orders did not cease upon the happening of that event. Although there is meagre evidence to the contrary (PX 175-2; PX 257-3), it is considered that this accused was ordered to attend the execution (PX 112-46, 48; 172-6; 250-15) and demonstrated the "art" of executing under orders (PX 172-7, 8; 174-4; 215-20, 22; 253-5; 254-5). Accordingly, it is recommended that the sentence of death be commuted to 20 years.

Toji was found guilty under Specification 2 and sentenced to death by hanging. The sentence is legal but should not be approved. It is clear that as to this incident, and to the incidents set forth in the other specifications, the victims were "dead men". If A had not performed an execution, B would have done so; none of these executions would have been prevented. The acts of Toji were performed against a background of an extremely severe air raid the night before, resulting in the death of his mother therein, which loss was ascertained by him about three hours before the execution. It is considered that as to this accused, a man not possessing a military background, not a professional soldier, and undoubtedly suffering from emotional shock, the foregoing is a mitigating circumstance and it is recommended that the sentence of death be commuted to confinement at hard labor for 40 years.

Maida was convicted under Specification 1 and sentenced to confinement at hard labor for life. The sentence is legal. This accused was a junior officer and was in charge of the detail that performed the executions but it is clearly established that his participation therein was by superior orders and, as previously stated, discipline did not cease with the reading of the Rescript; it is accordingly recommended that the sentence be decreased to 20 years.

Yoshida, Ohno, Yamamoto, Kaku, Noda, Otsuki and Yamauye were all found guilty under Specification 3. It is considered that there is nothing in the record warranting mitigation. The revolting manner in which this affair was conducted was a signpost of illegality. They were all officers or probationary officers.

Narazaki was likewise convicted under Specification 3 and was sentenced to death by hanging. The sentence is legal but should not be approved.

Both the accused Yamauye and this accused boarded the truck on the day of this execution but, it being too crowded thereon, got off and walked, catching a lift on the way (PX 125-33; 168-4-5). The evidence is overwhelming that this accused was told to execute, to use kesagiri and to then pierce the body of the victim (PX 162-8, 163-14, 165-6, 166-9-10, 167-28, 206-7, 210-5, 247-3, 266-8-9). Even Itezono states that someone told the accused to try his hand and that he, Itezono, told him to use kesagiri and after this was done and the flier was still alive, told him to end his life (PX 125-34; R 784). It is difficult to see how the commission could have imposed the supreme penalty on this accused while imposing a lesser penalty upon co-accused discussed in the foregoing paragraph; certainly, not for hiking and hitching out to the execution site thereby perhaps manifesting eagerness, for Yamauye, his companion, received a sentence of 25 years. The whole guerilla group was ordered to attend; nor should the fact that this execution was performed by kesagiri, rather than by the more conventional means, have impelled the commission to mete out the death penalty for, as above indicated, he was told to use this method; one which has been subject to

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scrutiny by at least one other commission (see U.S. v Taira, Case No. 357). Revolting as it was, it is not considered to have been as bestial as the karate and bow and arrow used by others accused, even though not directly resulting in deaths. It is true that one affiant states that he heard that accused had double-timed from headquarters. This is refuted by the other testimony. A statement such as this by one affiant is not considered to be evidence having any probative value (see U.S. v Araki, Board of Review, 19 Oct. 48, p 13).

It is considered that the degree of participation of this accused was no greater than the others accused with him as executioners and to approve this death sentence would be a gross miscarriage of justice. It is accordingly recommended that his sentence be commuted to confinement at hard labor for 30 years.

Kuboyama and Tsuchiyama were convicted under Specification 1 and sentenced to confinement at hard labor for twenty years.

Reference is made to Case No. 362, Akamine et 1, where Inoue, sergeant major, was sentenced to ten years; to No. 368, Nagaoka, corporal, likewise sentenced to ten years. These two were involved in the same incident and to the same degree as the two accused under discussion. Inoue was a co-accused in this case until he was severed therefrom after about 8 weeks of trial (R 877-879); a fortunate circumstance insofar as he was concerned for, if he had not been severed, he likewise would undoubtedly have been sentenced to 20 years.

Kuboyama and Tsuchiyama were sergeant majors in the Air Defense Unit headed by the accused Sato, their immediate superior being the accused Maida. Shortly after the reading of the Rescript, Maida came into the room where they and the other NCO's were, stated that there was to be an execution and read off the list of names of the NCO's to be there present, including the two foregoing. They were ordered to assemble and were trucked out to the execution site, where Maida directed the operation, dividing them into four groups, Kuboyama being assigned to a group headed by Lieutenant Hashiyama, not here accused (see Case No. 365) and Tsuchiyama to a group headed by Lieutenant Akamine, not here accused (see Case No. 362). Neither made any protest but were directed to carry out the order of a superior officer and had to obey whether they liked it or not. It is considered that these sentences are excessively severe. It surely cannot be forcefully contended that these enlisted men were legally bound to question an order of execution merely because they were aware that the Rescript had been read. As above stated, military discipline did not cease with the reading thereof. The first duty of the soldier is obedience. This is simply a case of executions performed under orders without objection by enlisted men. It is recommended that the sentences be reduced to 2 years and that the unexecuted portions thereof be remitted.

Onishi and Ikeda were convicted under Specification 2 and sentenced to confinement at hard labor for twenty years.

The evidence reveals that while Ikeda was not directly under Wako, he was an enlisted man and could reasonably and rightfully feel that Wako's request was tantamount to an order (R 813); nonetheless, his first statement, (PX 158) rather than his second, is to be believed (PX 159); his motive in acquiescing, namely, to ascertain whether his kendo training would aid him in beheading a prisoner, he holding a rank in kendo, is certainly not to be condoned. It is considered that the ends of justice will be served if his sentence is approved as to 10 years confinement at hard labor, and it is so recommended.

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As to Onishi, a probationary officer in Wako's section, it is revealed that Wako ordered him to execute (PX 138-15). Onishi was reluctant but was told by Shimozaki, also of the Legal Section, that the executions to be performed were "correct" (PX 157-7). Saito testified that he was told by Wako to go and get Onishi and that Onishi was hesitant (R 314-315). As to this accused, it is recommended that the sentence be reduced to 2 years and the unexpired portion thereof be remitted.

Hereinbelow set forth for each accused are the commission sentence, recommended sentence, date of confinement and, where applicable, the period to be remitted due to the length of time each accused has been in confinement prior to the date of sentence, 29 December 1948.

<u>NAME</u>	<u>COMMISSION SENTENCE</u>	<u>SENTENCE RECOMMENDED</u>	<u>DATE OF CONFINEMENT</u>	<u>PERIOD TO BE REMITTED</u>
Yokoyama	Death	40 years	30 Aug 46	25 months
Ito	Death	Acquittal	6 Dec 46	--
Fukushima	Death	30 years	30 Aug 46	25 "
Tomomori	Death	30 years	24 Apr 47	17 "
Sato	Death	Death	20 Jul 46	--
Yakumaru	Life	Acquittal	20 Jul 46	--
Kusunoto	40 years	10 years	30 Aug 46	25 "
Itezono	Life	Life	6 Feb 47	--
Aihara	5 years	Acquittal	20 Jul 46	--
Wako	Death	Death	21 Sep 46	--
Nakayama	Death	20 years	22 May 47	16 "
Toji	Death	40 years	30 Aug 46	25 "
Maida	Life	20 years	19 Oct 48	--
Yoshida	30 years	30 years	5 Feb 48	8 "
Ohno	30 years	30 years	21 May 47	16 $\frac{1}{2}$ "
Yamamoto	30 years	30 years	19 May 47	16 $\frac{1}{2}$ "
Kaku	25 years	25 years	8 Oct 48	--
Noda	25 years	25 years	22 May 47	16 "
Otsuki	30 years	30 years	24 Apr 47	17 "
Yamaue	25 years	25 years	24 Feb 48	7 "
Narazaki	Death	30 years	29 Sep 47	12 "
Kuboyama	20 years	2 years	8 Oct 48	Unexpired portion remitted

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Tsuchiyama	20 years	2 years	8 Oct 48	Unexpired portion remitted
Onishi	20 years	2 years	16 May 47	Unexpired portion remitted
Ikeda	20 years	10 years	17 Dec 47	9½ months

6. Actions:

Attached are forms of actions designed to effect the foregoing recommendations.

GEORGE GUROW
Reviewer
Judge Advocate Section

1. The recommendations in the foregoing review are concurred in generally except as hereafter noted.

2. Although unnecessary questioning on voir dire both by prosecution and defense needlessly lengthened the case, it is not discovered how this in any way may have worked to the prejudice of the accused. The use of offensive personalities by counsel for the prosecution and by one of defense counsel (R 244, 245, 247, 248, 315, etc.) who was cautioned in another case against this lack of proper courtroom decorum approached the obnoxious until administrative action reduced the incorrect conduct. It is noted that from the time when Mr. Seydel appeared as the principal advisory defense counsel and the conduct of another of defense counsel was thereby channeled into canals of proper and accepted courtroom behaviour, the tone of the whole proceeding was altered and the high standards of courtroom decorum employed in Yokohama War Crimes trials were thenceforth observed. It is true that the rights and interests of all parties concerned were observed and preserved throughout. However, even when this is so, as in the instant case, a trial with dignity unimpaired by needless and useless legal bickerings and by personalities is desired in order to measure up to the ideals for these cases. The Japanese counsel were persons of skill and experience who properly fought for and protected the accused whom they were selected to represent.

3. There were many signs which told these experienced army officer and top NCO accused that the killings were illegal; there was but one lawful method of execution in the Japanese Army, shooting by a firing squad (R 866); karate, bows and arrows and kesagiri as employed on 10 August were warnings that a deadly carnival was in progress, not a proper execution; the slaughter by sword on 15 August after the Emperor had announced the war's end was patently a last frantic act of vengeance and concealment. No legal advice was required to determine that each of the three homicidal occasions was illegitimately inspired and enacted.

4. In such a tragedy each actor, who is conscious of the facts involved when he acts becomes an accomplice or accessory, hence a principal where his act proximately contributed to the result alleged. Likewise, one who after the crime first enters the action and aids in concealment of the crime by an overt act under a sound rule (not by mere failure to disclose knowledge of the concealment) is an accomplice, aider, abettor and accessory, and is to be held as a principal, although the punishment required may be considered to be of less severity (Wharton's Criminal Law Vol. I, 12th Ed. Sec. 2812, p 368; 14 American Jurisprudence, Sec. 108, 109, pp 839, 840 Criminal Law).

5. Nakayama asserts in a clemency petition that he did not testify in order

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to help expedite the trial. While it is much more likely, in view of the evidence against him in the record, that he chose to follow the sage advice of his counsel in the well-considered knowledge that an alert cross-examination would incriminate him even more deeply, and now is merely trying another tangent, the liberal policy of the reviewing authority suggests that his statement in his petition (#235) be considered as his testimony insofar as it aids him. It is so treated in the recommendations in these addenda.

6. Similar complaints by Tomomori (#123) and Toji (#213) and any others so complaining have been similarly handled.

7. In considering the above and the other petitions for clemency (many quite clearly signed by persons who had no personal acquaintance either with the accused or the facts) one is struck by the amazing absence of the smallest expression of remorse or regret, or of sympathy for the deceased or their families. Chiefly, the petitions are founded in self-pity and in efforts to shift blame from one accused to another. Nevertheless, they have been carefully considered and weighed in making recommendations.

8. Acquittals and short sentences in other cases are cited by defense in briefs as precedent for reducing certain sentences here considered. While actions of other commissions in similar types of incidents certainly are to be taken into account, yet each case must stand on its own facts. In no event should a miscarriage of justice in one case be permitted to produce a like result in another by the operation of comparative sentences.

9. The following is remarked as to specific accused:

Aihara. Approval of 3 years of his 5 year sentence is recommended. This is a case of an accessory after the crime who became a participant by reason of his affirmative overt act in aid of the effort to conceal. He made a trip to Hiroshima with this in view (R 732 et seq) and was knowingly concerned in the sending of the wire giving a false report as to the deaths (R 761,2). His role was minor, however, and 3 years confinement is considered adequate punishment. In view of his unavoidable 26 months of pre-trial confinement, it is recommended that the unexecuted portion of his sentence be remitted.

Fukushima. Specification 4 is overlapped by others and the finding of guilty as to this specification should be disapproved. The other findings and the death sentence should be approved. When the Commanding General, Yokoyama, and his Chief of Staff, Inada, moved to Yamate, this accused remained at Fukuoka and was the ranking officer there. He telephoned in an effort to have the fliers killed before the 20 June episode (cf. review, supra, p 13; Ex 271, p 8), and he reprimanded Sato for killing by day instead of in the dark of the night, and afterwards evidenced his mens rea by aiding in the futile effort to conceal the crime by tearing down the building on whose walls the prisoner-of-war's names had been written. He was seated in a high place and was in the thick of the unlawful homicides as an active and willing participant. The thread of his agreement to and encouragement of the 20 June killings ran through the other two occasions on a policy level and binds him to the responsibility for the results.

Ito. Specification 4 should be disapproved as a duplication. The other findings and the sentence of death should be approved. It is clear that Ito, the chief legal authority, knew the killings were unlawful and he so expressed himself (R 713-715). However, we then see the astounding spectacle of the very person who is charged with preserving the legalities abandoning his own opinion and joining with the forces of evil to accomplish a deed of expediency not legality!

First, on the 20 June occasion, he permits the four fliers who were in his charge (R 850-851) (supposedly for trial) to be taken to the slaughter grounds for decapitation; he himself appears (cf. review, p 13) and never so much as records a mutter at the illegal tragedy he sees enacted. He had previously informed Sato that the prisoners would be killed and the deaths blamed on an air raid (R 664-6). His assistant, Wako, supervised the killings. Later, he revealed

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his guilty mind by aiding in the effort at concealment (R 286). Had he stood to his guns and held out for a trial, the authorities would not have dared to proceed with the nefarious business. There were good Japanese as there are good people in every nation's army and such a crime could not have been perpetrated if strongly and staunchly condemned by such a high legal authority. But instead, by his acquiescence in public he indicated to others that he favored discarding the law of civilized society in favor of that of the jungle. This knuckling under gave free rein to the malignant forces so that on 10 August and 15 August they were able to operate unhampered by any fear of objection by the authority designated to cry out for obedience to law. For these crimes, also, he must therefor be held.

Yakumaru. Approval of the life sentence is recommended. His subordinate, Itezono, actively conducted the 10 August killings in which karate, bows and arrows and swords were used. Yakumaru was told of the plan by Itezono beforehand and his reply was merely "all right" or "is that so good" (PX 124-5; PX 125-19, 21; PX 259-3). His actions indicate such conscious and reckless indifference to the consequences of illegal actions by his subordinate as to establish wilful participation. In fact, it may well be drawn from this evidence that he concurred in the proposed action. He was in charge of guerrilla training (R 773,4) and this was a test on live models.

As to the 15 August slaughters, he was with Sato when Kusumoto suggested disposing of the remaining fliers and Yakumaru agreed to the suggestion and further told Enatsu that they would be killed as enemies (Ex 113, p 2). Thereafter he demonstrated his feeling of guilt by joining in the effort to conceal (R 680-2; 757-760).

Yokoyama. The finding under Specification 4 should be disapproved as a duplication. It is recommended that the other findings and the sentence of death be approved. A heavy onus belongs on his shoulders and he himself places it there (R 888, 889). His efforts at heroics fall flat when he cravenly deserts his vaunted patriotism and honor, rushing for the cover of a false confession claim with the speediest when he discovers to his great surprise that he is held along with his equally guilty associates. His assertion that he authorized the killings because, in effect, he deined that this would please and not embarrass the central government offers no mitigating elements. Murder to satisfy the imagined whim of another has never been considered of low degree. These were homicides of convenience and concealment and were without mitigating circumstances.

Kuboyama. It is recommended that the 20-year sentence as to this accused be reduced to 10 years. He was an enlisted man who performed a patently illegal homicide without objection but under military orders. His situation was similar to that of Inoue, a co-accused originally, who received a 10 year sentence at the hands of another commission.

Wako. The death sentence for this accused is appropriate under the evidence and approval is recommended. The suggestion of insanity, as made by accused's father, like accused a lawyer, has been thoroughly explored. Even the father urges it weakly, if at all, describing it as "quasi-mental" trouble. The defense thought so little of it that the subject was not even broached in Wako's brief (pp 12, 13). He was briefly sent to a brain hospital but made it clear that mental difficulty was not involved. His testimony at the trial was lucid and as logical as the facts he was reciting permitted. His recollection was detailed and his thoughts well expressed (R 808-813). The Japanese Army utilized him as Ito's executive in a highly responsible position with direct access on certain matters to the Commanding General. The only difficulty that the interpreter had with his testimony was with one word. It is apparent from the euphonics that the word was "Armageddon" and the reference was to the biblical recitation of that struggle between the forces of good and evil when an occurrence like the atomic bomb is mentioned and the destruction of islands (possibly Japan in Wako's philosophy) (cf. Revelations, Chapter 16, Verse 14 et seq.) His statement as to President Roosevelt is a mere effort at the grandiose.

During his stay in Sugano no proof of insanity was noted. Mental evaluation at the 361st Station Hospital initiated for the information of the reviewing

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authority gives no support to the suggestion of mental unbalance. It is clear that the father's remark is an afterthought.

The evidence reveals Wako as a prime mover both in suggesting the killings and in the concealment. He demonstrated methods and personally took two lives. His vicious spirit was fatally urging him on to mischief and he allowed it free play.

Ikeda. Approval of the 20 year sentence is recommended. Although the actions of this accused have certain points of resemblance to those of Kuboyama, they differ in that he displayed a feeling of eager cooperation, desiring to test his kendo skill on a human being. He thus removed himself from the category of those merely accepting an illegal order without objection to those engaged in voluntary participation.

Kusumoto. The 40 year sentence of this accused should be approved. He was in charge of the Adjutant General's Section at Fukuoka which had custody of the prisoners in question. Among others, he suggested to Sato the 15 August killings so that no prisoners would be left to tell the tale of the other homicides (R 666-8). He stirred up others to participate, released the prisoners for their destruction and enjoined and aided the concealment afterwards (R 816-20).

Nakayama. In this instance, it is believed that the facts indicate that the slight element of compulsion present (Sato's underling) calls for commutation of the death sentence to life imprisonment. No less is appropriate because here occurs another instance of a kendo expert instructing others by a demonstration of his fatal art upon two live victims. His assumed reluctance and offer of the job to another smacks more of a polite desire not to deprive the latter, who ranked him, of the opportunity than of a true repugnance or objection.

Narazaki. Here again, the evidence of compulsion to a small degree, drawn from the influence of his superior Itezono's direction of his efforts impels a recommendation for commutation from the extreme penalty to life imprisonment. His superior received that sentence. Less than life would be inadequate in view of his eagerness to get to the scene and his voluntary concurrence in the proceedings as evidenced by his demonstration, without objection, of the "trick stroke" of kōsagiri or slanting blow, an experimental slicing cut which did not alone result in death in the instance in question. For his voluntary contribution to the carnival features of the saturnalia a life sentence is not excessive.

Onishi. This sentence of 20 years should be reduced to 10 years. Although he is in the position of acting under orders and objecting (normally justifying less than 10 years), yet he was a lawyer in the Legal Section, knew for certain that the punitive consequences of refusal to obey an illegal order were negative, but did not elect to make his objection more than a token. Under such circumstances, his objection meant nothing more than reluctance and he falls into the category of those who acted under orders but without eagerness or objection.

Toji. Here the death sentence is justified and should be approved. Granted that the accused was emotionally disturbed by the death of his mother, yet it is not shown or claimed that his reason was dethroned or that any of the true indicia of insanity or even uncontrollable passion were present. A cooling period had intervened and his actions were cold and calculating like those of any person, whether Japanese, American or other, who has vengeance in his heart and a malignant and vicious spirit to guide him. He volunteered to kill and the wrongful deaths of four humans lie at his door.

Tomomori. As in other instances mentioned, Specification 4 should be disapproved as a duplication. It is recommended that the death sentence be approved. He attended the 10 August slayings, was senior officer present and supervised Itezono (R 786-7), encouraged good strokes with drinks from his private whiskey flask, permitted bow and arrow practice on live targets for a period (stopping it when bad results were obtained), accepted the salutes of his subordinates and like a conquering hero addressed his minions at the close of the tragedy with words of hate for the slain and encouragement for the slayers.

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Later, in frantic fear of discovery he asked Itezone to conceal his part and Murata to throw the remains of fliers in the bay (R 799-805). He informed a witness that the killings had not gone through formal procedure (D Ex K).

Tsuchiyama. It is recommended that the 20 year sentence be reduced to 10 years for the same reasons advanced as to Kuboyama, supra.

Maida. The life sentence for this accused should be approved. While elements of compulsion (Sato's subordinate) justified less than a death sentence, it is established by the evidence that he was one of the voluntary principals at the 15 August scene, in charge of a detail, selecting certain participants, even trying his own skill on one victim. This priest and officer made not even a slight objection and eagerly implemented the forces of human destruction which unlawfully cost the lives of seventeen helpless humans.

In summary, it must be admitted that it is an onerous, highly unpleasant and disagreeable task to recommend and to approve the extreme penalty as well as long terms of confinement. Yet the duty of public officials to nations and persons of good will and clean conscience everywhere demands that the requirements of complete justice be satisfied.

In making the foregoing recommendations, the accused have been gauged and measured by standards which contain no element of nationalism, prejudice or vindictiveness but are based upon that basic morality which is common to and the property of decent, right thinking people throughout the world.

Alternate proposed actions to implement these recommendations are attached.

The following excerpts from clemency communications are gratifying to those charged with the conduct of war crimes trials:

Letter from Wako's father:

"The punishment of war criminals is the judgment by the highest civilization."

Letter from fellow officer to Commanding General, Eighth Army:

"Receiving your kind and generous attitude toward our defeated nation instead of the manners of the victor toward the defeated, all of us look upon you as our merciful mother and put our faith in you:

"And we deeply appreciate the strictness as well as carefulness shown by your military commission in trying the Aburayama case."

Letter from representative of Nippon Times:

"I know America is sincere for the prosecution of justice and humanity and at the same time fair and kind."

Letter from Yokoyama:

"To: Counsel Mr. Seidel,

We, who had been looking to you for help for the review of our case, were disappointed very much when we heard you had returned to America. But to our joy you have come back again to Japan and would join in the review of our case after taking the place of Mr. Eisenstein, I place deep confidence in you who have set a high value upon the truth. Then submit this statement before you, wishing you would be kind enough to give your final help to me."

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Letter from friends of Tomomori:

"There is no room for holding doubt in the verdict as we firmly believe the sanctity of your military tribunal and its trial, yet we cannot help considering the case as very unexpected one and supposing it must be the result of his taking other's crime on himself."

Letter from former co-employees of Tomomori to Lt. Gen. Walker:

"We Japanese are deeply appreciative of the guidance to the reconstruction of Japan given by you who have a broad vision and generous nature."

ALLAN R. BROWNE
Lt. Col. JAGC
Army Judge Advocate
AB

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