

Restricted

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

Yokohama, Japan
January 7, 1949

UNITED STATES OF AMERICA VS TOSHIO TASHIRO
UNITED STATES OF AMERICA VS HATSUAKI KAMBE
UNITED STATES OF AMERICA VS YATAISHI OKUBO
UNITED STATES OF AMERICA VS KEIJI KANIMOTO
UNITED STATES OF AMERICA VS MASAO KOSHIKAWA

Review of the Staff Judge Advocate

1. The attached record of trial of the case of Toshio Tashiro, Hatsuaki Kambe, Yataishi Okubo, Keiji Kanimoto and Masao Koshikawa tried at Yokohama, Japan, from 24 March 1948 to 8 July 1948, by a Military Commission appointed by paragraph 11, Special Orders No. 66, this Headquarters, dated 22 March 1948, as amended by paragraph 2, Special Orders No. 81, this headquarters, dated 9 April 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Toshio Tashiro
AGE: 60
RESIDENCE: Michi prefecture,
Machina Gun, Yanata Mura
Mashio Aza Co 103-1
MARRITAL STATUS: Married
RELATIVES: wife, son,
daughter, sister.
EDUCATION: Graduated ele-
mentary school, 2 years
of high school
VOCATION: Chief of prison
MILITARY CAREER: Served in
Army 1 Dec 1909 to 30 Nov
1910, discharged as superior
private. Civilian guard at
Tokyo Military prison from
12 June 1943 to 1 June 1945.
Returned to Army as Captain
warden of Tokyo Military
prison 1 June 1945.

DATE OF CONFINEMENT: 16 April
1946
DATE OF ARRANGEMENT: 24 March
1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 March to
8 July 1948
DATE OF SENTENCE: 8 July 1948
SENTENCE: Death by hanging.
CLEMENCY RECOMMENDED BY
COMMISSION: No

NAME: Hatsuaki Kambe
AGE: 30
RESIDENCE: Tokyo-to, Daito-
ku, Shitayakaniyoshi-nachi,
16.
MARRITAL STATUS: Married
RELATIVES: wife, father,
mother, 4 brothers, 2
sisters
EDUCATION: 8 Years
VOCATION: Truck driver
MILITARY CAREER: Entered ser-
vice March 1939, discharged
in Nov 1942 due to wounds.

DATE OF CONFINEMENT: 30 March
1946
DATE OF ARRANGEMENT: 24 March
1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 March to
1948
DATE OF SENTENCE: 8 July 1948
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY
COMMISSION: No

Restricted

Restricted

Served at Tokyo Military Prison as a civilian guard from June 1944 to 1 June 1945, and as a corporal from 1 June 1945 until end of war.

NAME: Mataishi Okubo
AGE: 33
RESIDENCE: Tokyo-to, Ota-ku, Magone-cho, Higashi 2 Chome 954 Banchi
MARRITAL STATUS: Married
RELATIVES: Wife, daughter, sister and brother.
EDUCATION: 9 years
VOCATION: Office clerk
MILITARY CAREER: Entered active service in April 1935, discharged March 1937. Civilian guard at Tokyo Military Prison from 5 May 1945 to 1 June 1945, from 1 June 1945 to end of war as Sgt Major at same prison.

DATE OF CONFINEMENT: 13 March 1947
DATE OF ARRIVAL: 24 March 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 March to 8 July 1948
DATE OF SENTENCE: 8 July 1948
SENTENCE: Death by hanging.
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Keiji Kaminoto
AGE: 30
RESIDENCE: Tokyo-to, Shibuya-ku, Yoyogi Torigawa-cho 1383
MARRITAL STATUS: Married
RELATIVES: Wife, 2 sons, mother, 3 brothers, and 2 sisters.
EDUCATION: 8 years
VOCATION: Clerk for mining company
MILITARY CAREER: Served as private for one month, then discharged. Served at Tokyo military prison as civilian guard from September 1944 to 1 June 1945 and as corporal from 1 June 1945 until end of war.

DATE OF CONFINEMENT: 30 October 1947
DATE OF ARRIVAL: 24 March 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 March to 8 July 1948
DATE OF SENTENCE: 8 July 1948
SENTENCE: Death by hanging.
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Masao Koshikawa
AGE: 53
RESIDENCE: Tokyo-to Shibuya-ku, Yoyogi Tomiwaya Machi 1425
MARRITAL STATUS: Married
RELATIVES: Father, step-mother, wife, 3 sons, 1 daughter, a brother.
EDUCATION: 8 years of primary school
VOCATION: Military prison guard
MILITARY CAREER: Drafted into Army 1 Dec 1916, discharged 30 Nov 1918

DATE OF CONFINEMENT: 15 April 1945
DATE OF ARRIVAL: 24 March 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 24 March to 8 July 1948
DATE OF SENTENCE: 8 July 1948
SENTENCE: Death by hanging.
CLEMENCY RECOMMENDED BY COMMISSION: No.

Restricted

Restricted

as superior private. Employed as civilian guard, Tokyo Military Prison from 8 May 1920 to 1 June 1945. From 1 June 1945 to Sept 1945 as 2d Lt at Tokyo Military Prison.

(2) Synopsis of Charges, Pleas, Findings and Legal Sufficiency:

<u>Charges and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
------------------------------------	--------------	-----------------	--------------------------

TASHIRO

Ch: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.	NG	G	Yes
--	----	---	-----

Sp 1: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully order and direct Mataishi Okubo, Hatsuaki Kembe, Keiji Kaminoto and other subordinates to kill any American Prisoners of War, who, during an air raid, and while their cells were burning, might escape from said cells, thereby causing the deaths of seventeen (17) unidentified American Prisoners of War, who were killed pursuant to said order.	NG	G	No
---	----	---	----

Sp 2: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully disregard and fail to discharge his duty to control and restrain Mataishi Okubo, Hatsuaki Kembe, Keiji Kaminoto and other members of his command and persons under his supervision and control, by permitting them to kill seventeen (17) unidentified American Prisoners of War During an air raid.	NG	G	No
--	----	---	----

Sp 3: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully disregard and fail to discharge his duty by failing to provide for the safety of sixty-two (62) American Prisoners of War, seventeen of whom are unidentified and forty-five (45) of whom are identified and forty-five (45) of whom are identified as follows, "sub-	NG	G	Yes in part
---	----	---	-------------

Restricted

Restricted

whom are identified as follows:
 2d Lt Clifford Manning; Sgt
 John W. Welsh; Sgt Robert K
 Sedon; Pfc Edwin P Lund; Sgt
 Archer S Kronick; 2d Lt Justice
 J Buttala; S/Sgt Anthony F
 Scolaro; Sgt William W Suther-
 land; Major Ralph H Chapel;
 2d Lt Harvey M Glick; 2d Lt
 Harold J Nelson, Jr; 2d Lt
 James A Reinhart, Jr; 2d Lt
 Edward Sullivan; Flight Officer
 John T Hostey; T/Sgt Frederick
 E Hulse; Sgt John W. Meagher;
 Lt Col Doyle L Turner; Capt
 Elmer G Hahn; 2d Lt Eugene J
 Rodinger; 2d Lt John T Price;
 2d Lt David H Gerhardt; Sgt
 Donald W MacNiven; 2d Lt
 Andrew J. Iitz; Cpl Walter
 C Grubb; 2d Lt Eugene A Homyak;
 2d Lt John R Jennings; S/Sgt
 Allen K Hill; Sgt Otto J Marek;
 S/Sgt Alfred J McNamara; Cpl
 Darwin J Muller; 2d Lt William
 F Muhlenberg; 2d Lt Theodore C
 Reynolds; Sgt Donald I Schubert;
 T/Sgt Jim W Verhines; Sgt T I
 Klingensmith; Sgt Gilbert C
 Stockinger; S/Sgt Chester A
 Johnson, Jr; Cpl Allen L
 Wersch; 2d Lt Donald I Bartholomew;
 1st Lt Alpheus G Carlo; S/Sgt
 Lawrence T Duff; 2d Lt Ray E
 Herry; Sgt Henry I Maunge; Sgt
 Douglas Pannon and Cpl Calvin R
 Raymond; by failing to protect
 said prisoners from the hazards
 of war; by failing to authorize
 the release of said Prisoners of
 War from their cells in said
 Prison in case of air raid and
 fire; by failing to furnish his
 subordinates with a plan for
 release of said Prisoners of War
 in the event of air raid and fire
 at said Prison and by specif-
 ically ordering his subordinates
 not to release said Prisoners of
 War during an air raid and fire
 on said dates, thereby causing
 the deaths of forty-five (45)
 unidentified American Prisoners
 of War, by burning.

stituting therefor the
 words, "sixty-five (65)
 American prisoners of
 war, five (5) of whom
 are unidentified and
 sixty (60) of whom are
 identified as follows:"
 except the names:
 Sergeant Archer S Kronick
 Corporal Walter C Grubb
 Second Lieutenant Donald
 L Bartholomew.
 Adding the names:
 "Second Lieutenant Herbert
 Edman
 Sergeant Noel E Beck
 Second Lieutenant
 Gerould I. Giddings
 Corporal Glenn H Fodek
 Sergeant Harry E McMillen
 Sergeant Leonard McNeill
 Sergeant Maurice Myers
 Sergeant Robert H Nead
 Sergeant Thaddeus J
 Pasternak
 Sergeant Kenneth
 Petterson
 Corporal James W Pettit
 Sergeant David M Powell
 Technical Sergeant Raymond
 C Richmond
 Corporal Jean J Schwartz
 Second Lieutenant Donald
 J Van Dever
 Sergeant Portram Ware
 Second Lieutenant James C
 Warren, Jr.
 Corporal Ieverne J Zehler;"
 and except the words, "forty-
 five (45) unidentified American
 prisoners of war by burning,"
 substituting therefor the
 words, "forty-eight (48)
 unidentified American pris-
 oners of war," (Of the ex-
 cepted words and names, Not
 Guilty and of the substituted
 words and added names, Guilty.

NOTE

Ch: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the laws and Customs of War. NC G Yes

Restricted

Restricted

Sp: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully kill eight (8) unidentified American Prisoners of War. NC G Yes, in part

OKUBO

Ch: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War. NG G Yes

Sp: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully kill three (3) unidentified American Prisoners of War. NG G Yes, in part

KAWANO

Ch: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War. NG G Yes

Sp: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully kill six (6) unidentified American Prisoners of War. NG G Yes, in part

KOSHIKAWA

Ch: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War. NG G No

Sp 1: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully disregard and fail to discharge his duty by failing to release, or cause the release of sixty-two (62) American Prisoners of War from their burning cells in said Prison, seventeen (17) of said Prisoners of War being unidentified and forty-five (45) of said Prisoners of War being identified as follows: 2d Lt Clifford Mannin; Sgt John Welsh; Sgt Robert K Sedon; Pfc Edwin P Lund; Sgt Archer S Kronick; 2d Lt Justice J Tutala; S/Sgt Anthony F Scolaro; Sgt William ... NG G No except the words "sixty-two (62) American prisoners of war from their burning cells in said prison, seventeen (17) of said prisoners of war being unidentified and forty-five (45) of said prisoners of war being identified as follows," substituting therefor the words, "sixty-five (65) American prisoners of war from their burning cells in said prison, five (5) of said prisoners of war being uniden-

Restricted

Restricted

Sutherland; Major Ralph H Chapel; 2d Lt. Harvey M Glick; 2d Lt Harold J Nelson, Jr; 2d Lt James A Reinhart, Jr; 2d Lt Edward Sullivan; Flight Officer John T Hostey; T/Sgt Frederick E Hulse; Sgt John W Meagher; Lt Col Doyle L Turner; Capt Elmer G Hahn; 2d Lt Eugene J Redinger; 2d Lt John T Price; 2d Lt David E Gerhardt; Sgt Donald W MacNiven; 2d Lt Andrew J Litz; Cpl Walter E Grubb; 2d Lt Eugene I Konyak; 2d Lt John R Jennings; S/Sgt Allen K Hill; Sgt Otto J Marek; S/Sgt Alfred J McNamara; Cpl Darwin J Muller; 2d Lt William F Mühlenberg; 2d Lt Theodore C Reynolds; Sgt Donald L Schubert; T/Sgt Jim W Verhines; Sgt T L Klingensmith; Sgt Gilbert C Stockinger; S/Sgt Chester A Johnson, Jr; Cpl Allen L Morsch; 2d Lt Donald L Bartholomew; 1st Lt Alpheus G Carle; S/Sgt Lawrence T Duffy; 2d Lt Roy E Harry; Sgt Henry I Younge; Sgt Douglas Bannon and Cpl Calvin R Raymond; thereby causing the deaths of forty-five (45) of said American Prisoners of War, by burning.

tified and sixty (60) of said prisoners of war being identified as follows;" except the names: Sergeant Archer S Kronick Corporal Walter C. Grubb Second Lieutenant Donald L Bartholomew. Adding the names: "Second Lieutenant Herbert Edman Sergeant Noel E Beck Second Lieutenant Gerould L Giddings Corporal Glenn H Hodak Sergeant Harry E McMillen Sergeant Leonard McNeill Sergeant Maurice Myers Sergeant Robert H Wood Sergeant Thaddeus J Pasternak Sergeant Kenneth A Petterson Corporal James M Pettot Sergeant David H Powell Technical Sergeant Raymond C Richmond Corporal Jean J Schwartz Second Lieutenant Donald J Van Dever Sergeant Bertram Ware Second Lieutenant James C Warren, Jr. Corporal Laverne J Zuhler;" and except the words "Thereby causing the deaths of forty-five (45) of said American prisoners of war by burning" substituting therefor the words, "thereby causing the deaths of forty-eight (48) of said American prisoners of war;" of the excepted words and names Not Guilty and of the substituted words and added names, Guilty.

Sp 2: On or about 1 April 1945 and 26 May 1945, accused, together with Toshio Tashiro and others, participated as a leader, organizer, instigator and accomplice in the formulation and execution of a common plan or conspiracy to fail to release, or cause the release of, sixty-two (62) American Prisoners of War from their cells in said Prison in the event of a fire, air-raid or other common disaster, and in furtherance of said conspiracy did fail during an air-raid and consequent fire to release, or cause release of, said sixty-

NG

G

No

except the words "sixty-two (62) American prisoners of war," substituting therefor the words, "sixty-five (65) American prisoners of war;" except the words, "said sixty-two American prisoners of war, forty-five (45) of whom have been identified as shown in Specification 1 herein, and seventeen (17) of whom are unidentified, "substituting therefor the words, "said sixty-five (65) American prisoners of war, sixty (60)

Restricted

Restricted

two (62) American Prisoners of War, forty-five (45) of whom have been identified as shown in Specification 1 herein, and seventeen (17) of whom are unidentified, thereby causing the deaths of forty-five (45) of said American Prisoners of War by burning in their cells on 25 and 26 May 1945.

of whom have been identified as shown in Specification 1 as amended herein, and five (5) of whom are unidentified." And except the words, "thereby causing the deaths of forty-five (45) of said American prisoners of war by burning in their cells," substituting therefor the words, "Thereby causing the deaths of forty-eight (48) of said American prisoners of war;" of the excepted words Not Guilty and of the substituted words, Guilty.

Sp 3: From and after 26 May 1945, accused, acting together with Toshio Tashiro and others, in pursuance of a common intent and design did conspire to prevent the Government of the United States of America from obtaining true and correct information as to the capture, status, conditions of confinement; death and place of burial of sixty-two (62) American Prisoners of War, forty-five (45) of whom have been identified as shown in specification 1 herein and seventeen (17) of whom are unidentified, and in furtherance thereof did at divers times and places withhold, conceal and suppress such information from the Japanese Government and from the Government of the United States of America and did fabricate and cause to be fabricated, and transmit to the Japanese Government and to the American Occupation authorities false and misleading information concerning the aforesaid matters.

NG	G	No
	except the words	
	"sixty-two (62)	
	American prisoners of	
	war, forty-five (45)	
	of whom have been identified	
	as shown in Specification	
	1 herein	
	and seventeen (17) of	
	whom are unidentified,"	
	substituting therefor	
	the words "sixty-five	
	(65) American prisoners	
	of war, sixty (60) of	
	whom have been identified	
	as shown in Specification	
	1 as amended herein and	
	five (5) of whom are	
	unidentified;" of the	
	excepted words, Not	
	Guilty and of the substituted	
	words, Guilty.	

3. Summary of Evidence

(1) Undisputed General Facts:

The accused were members of the personnel of Tokyo Military Prison also known as Shibuya Military Prison, holding the following positions: Toshio TASHIRO, Warden, or Prison Head (Tx 7, p 1, 3 1270, Masao

Restricted

Restricted

KOSHIKAWA, Chief Jailer, or Guard (Ex 7, p 1, R 1144), Matsuki KATSE, Jailer, or Guard, (Ex 7, p 4, R 961), Mataishi OTSUGI, Jailer, or Guard (Ex 7, p 4, R 833), Keiichi MATSUOTO, Jailer, or Guard, (Ex 7, p 5, R 1025).

On the night of 25-26 May 1945, Tokyo Military Prison caught fire from incendiary bombs dropped by American bombers, and the following American prisoners, confined in cell block 4 of said prison, perished during the fire: 1. BANNON, Douglas, 39344169, Sergeant; 2. BENTON, Justice J., O-2063716, 2nd Lieutenant; 3. CARLE, Alpheus G., O-690044, 1st Lieutenant; 4. CHAFFIN, Ralph H., O-401367, Major; 5. DUFFY, Lawrence T., 11056539, S/Sergeant; 6. FERRAROT, David P., O-707826, 2nd Lieutenant; 7. GLICK, Harvey M., O-2072443, 2nd Lieutenant; 8. HARM, Elmer G., O-478847, Captain; 9. HARRY, Ray, O-825626, 2nd Lieutenant; 10. HILL, Allen W., 19190662, S/Sergeant; 11. HOWE, Eugene L., O-2065769, 2nd Lieutenant; 12. HESTON, John T., T-5261, F/O; 13. HUNST, Frederick, 6919449, T/Sergeant; 14. JENNINGS, John R., O-302847, 2nd Lieutenant; 15. JOHNSON, Chester A., 38415508, S/Sergeant; 16. KLEINSMITH, T. I., 33704320, Sergeant; 17. LITZ, Andrew J., O-2058700, 2nd Lieutenant; 18. LUND, Edwin F., 39472403, PFC; 19. MACIVY, Donald W., 31455503, Sergeant; 20. MANNING, Clifford, O-2060552, 2nd Lieutenant; 21. MARY, Otto J., 36691346, Sergeant; 22. McNEERA, Alfred J., 17131456, S/Sergeant; 23. MEACHER, John W., 33671406, Sergeant; 24. MORROW, Allen L., 17051668, Corporal; 25. MURPHY, William F., O-1635147, 2nd Lieutenant; 26. NATHAN, Darwin J., 37427206, Corporal; 27. NELSON, Harold J. Jr., O-2068724, 2nd Lieutenant; 28. PRICE, John T., O-830919, 2nd Lieutenant; 29. RAMOND, Calvin P., 42070670, Corporal; 30. REINER, Eugene J., O-683059, 2nd Lieutenant; 31. REINHART, James A. Jr., O-772730, 2nd Lieutenant; 32. THOMAS, Theodore G., O-223530, 2nd Lieutenant; 33. SCHUBERT, Donald 11138661, Sergeant; 34. SCOFIELD, Anthony T., 16078362, S/Sergeant; 35. SEDON, Robert P., 33683142, Sergeant; 36. STONINGER, G. C., 33803057, Sergeant; 37. SULLIVAN, Edward, O-802362, 2nd Lieutenant; 38. SWANBERG, William W., 17190973, Sergeant; 39. THOMAS, Doyle I., O-393552, Lieut. Colonel; 40. VERINTS, Jim W., 19003409, T/Sergeant; 41. WILSON, John W., 36877951, Sergeant; 42. YOUNG, Henry I., 42031151, Sergeant; 43. ZIMM, Herbert, O-978105, 2nd Lieutenant; 44. BUCK, Noel E., 33723035, Sergeant; 45. GIDDINGS, Percival J., O-767523, 2nd Lieutenant; 46. HODGE, Glen W., 33297053, Corporal; 47. McTILLY, Harry E., 33715004, Sergeant; 48. McTILLY, Leonard, 34726533, Sergeant; 49. WATSON, Maurice, 13200699, Sergeant; 50. WATSON, Robert W. 17112447, Sergeant; 51. EASTBAY, Thaddeus J., 34141720, Sergeant; 52. WATSON, Kenneth J., 42044727, Sergeant; 53. WATSON, James W., 33203255, Corporal; 54. BOWEN, David W., 31403102, Sergeant; 55. RICHMOND, Raymond C., 35376077, T/Sergeant; 56. SCHWARTZ, Jean J., 42069407, Corporal; 57. VAN DYKE, Donald J., O-2058526, 2nd Lieutenant; 58. WATSON, Bertran, 33828131, Sergeant; 59. WATSON, James C. Jr., O-2065260, 2nd Lieutenant; 60. WATSON, Leverne, J., 12139226, Corporal (Ex 1, 2, 3, 4, 69, R 1655, 1656).

There is a question in the record, as to whether there were two or five additional unidentified American prisoners who perished during the fire. (Ex 69, R 1656) (This will be hereinafter mentioned in the disputed facts.)

The Tokyo Military Prison was described as follows:

"The site of the Army Prison forms a rectangle, which spreads from south to north, and is surrounded by brick walls of 12 shaku in height. Towards the southern end lies the parade ground, and to the west of the northern end stands the medical dispensary. To the east of the northern end stands the kitchen. **** The central part is

(p. 8 of, 92 Toshio Tashiro et al Case #73)

Restricted

Restricted

divided in two zones: the east of which is the cell zone, and the western side is the workshop zone. Between the two zones, an observation post is established. There are six ward houses facing the south, standing in order from north to south as detention house Nos. 1, 2, 3, 4 and 5." (Ex 4, p.12, Ex 8, p.5, 12)

The situation of the area surrounding the prison was as follows:

"The northern side is adjacent to the Moyogi parade ground, across a road. The northern, southern and eastern sides, with the exception of the southwestern corner, face a crowded area of private houses." (Ex 8, p.5).

All of the American prisoners were confined in cell block 4, which is described as follows:

"No. 4 ward house is constructed of wood, with tile roofing, similar to the other wards. There are 17 cells in the ward, and each cell has an area of 2 tsubos, being 1 ken wide and 2 ken long (T.M.: about 6 feet by 12 feet). The front and rear of the cell are constructed with lattice made from timber of $3\frac{1}{2}$ sun square, with intervals of 3 sun. To both sides of the cell, there are pillars at intervals of 3 shaku, and pine wood boards of over 1 sun thickness are affixed. At the corner of the north side, a toilet with a portable chamber pot, and washing facilities, are provided. The floor is made of boards, and its height is about 2 shaku. The door of the cell is attached to the south side. The lock is made strongly of iron, and is placed so that it cannot be touched from the inside. Iron bars are put in at two points between the lattice, on both sides of the door, as shown in appended sketch No. 2, and drawing No. 3, illustrating the building and cell." (Ex 8, p.5)

The prison personnel was composed of:

"1 commandant, 8 chief jailers, and 70 jailers. However, due to absences at that time, the existing number of the personnel consisted of 1 commandant, 5 chief jailers, and 53 jailers. However, among these were 13 jailers who were still under training, and not yet appointed to their duties. Furthermore, 10 jailers were taking vacations, due to sicknesses, or suffering from calamities caused by the air raid of 23 May, and 1 chief jailer and 2 jailers were dispatched to Yokura for the purpose of guarding convicts who were being transported." (Ex 8, p.5).

The circumstances of the burning of the prison were as follows:

"At 2230 hours on 25 May there was a precautionary warning, and at about 2250 hours air raid alarms were sounded. Chief jailer 'HITACHI' was on night duty that night. At about a little after 2300 hours the first Allied plane penetrated the sky over the Imperial Capitol, and opened an incendiary bomb assault. However, since the prison was surrounded by high walls, it was estimated that if incendiary bombs dropped within the prison were successfully extinguished, it would be easy to defend against the fire spreading from the outside, and all the men were encouraged to extinguish all the incendiary bombs dropped." (Ex 8, p.7).

Either late at night on the 25th, or early in the morning of the 26th,

"a flight of Allied planes came from the east, and incendiary bombs finally dropped on the medical dispensary, and successively 7 or 8 bombs dropped on the No. 3 workshop, the observation post, and on several other points. At first, since the attacks by the Allied planes on the prison were comparatively light, all the bombs were successfully extinguished by the activities of the fire fighting squad. However, at that time, private houses located in the west and south were already burning.

Restricted

Restricted

Subsequent attacks by a flight of the Allied planes from the west were extremely severe, and continued persistently, and many bombs were dropped. The fire of the private houses surrounding the prison, was intensified by a violent wind at that time. As the danger of fire spreading from the outside increased, we endeavored to combat the fire from outside as well as the incendiary bombs dropped within the prison. However, because several parts of the prison were ignited by incendiary bombs, and by fire from outside, it finally became impossible to extinguish the flames," and fire fighting activities ceased, and the prison was finally reduced to ashes. (Ex 8, p 7, 8)

The next morning after the fire, two American dead bodies were found in the inner compound, just south of the inner gate, a number between the east wall and the cell blocks, thirty odd in the remains of cell block 4, and one north of the inner gate and near the guard house. (R 275, 354, 411, 412, 419, 425, 447, 448, 631, 676, 968, 1000, 1005, 1016, 1017, 1021-1022, 1103-1112, 1115, 1119, 1120, 1157-1159, 1174, 1240, 1259, 1280, 1281, 1339, 1340, 1366, 1368, 1374, 1386, 1387, Ex 34, 37, 38, 39, 40, 48, 54).

Most of the American bodies were buried in the air raid shelter between cell blocks 2 and 3, in a common grave, and when they were exhumed by the Occupation Forces, after the war, a large number of bodies had broken leg bones, but it could not be determined whether the bones had been broken before or after death. (Ex 4, 23, 37, R 220, 813, 1493-1494).

By radio and newspapers, the American airmen had been repeatedly charged with "indiscriminate incendiary bombing" of civilian homes and other non-military objectives; and they were charged with, first, bombing and causing fires to the perimeters of cities, thereby cutting off the means of escape of the populace, and, second, bombing and setting fire to the interiors of the cities; and, in that manner, entrapped and killed thousands of civilians. In this radio and newspaper campaign, the airmen were called "ogres" and "murderers", and there had been a "serious" and "ferocious" feeling of resentment and hostility engendered in the public, towards the airmen. (R 1284, 1628, 1646-1647).

(2) The Protocol or Japanese Report of the Fire:

In October 1945 the accused, Toshio TASHIRO, made a report to the Japanese Army, of the deaths of the American Prisoners, in part as follows:

"As it became impossible to extinguish the fire, the fire fighting activity was stopped; and at the same time a measure to evacuate the prisoners to the outside, was taken. However, the enemy's attacks with incendiary bombs was extremely severe, and the violent wind increased the intensity of the fire, and the dangers were acute. Thereupon, the commandant recognized that there was no time to evacuate, and ordered the immediate release of prisoners, temporarily stopping the fire fighting activity. It is thought that it was about 0130 hours of the 26th when the commandant ordered the release of prisoners." "As the majority of the prisoners in No. 2 ward were patients or weak persons, the release of these men required some time. Although only ten odd minutes passed after the release was launched, the wooden structures which became heated after the stoppage of fire fighting, ignited with unexpected speed. The workshops, located at the windward side, were already engulfed in frightful flames, and the premises of the prison were swept by a violent wind, mingled with sparks, and it was impossible to move forward with the eyes open. Two emergency gates were located to the east, on the windward side, and it was impossible to open them, due to the violent blaze from the private houses. Meanwhile, exit was also impossible through the small gate, located to the north, on account of a strong, burning wind. In the end, only one prison gate remained available for escape." (Ex 2, p 8).

Restricted

Restricted

"Under such circumstances, attacks by the Allied planes continued, and, due to the close proximity of danger, there was utter confusion in the prison, and orders and instructions could not be thoroughly carried out. During this time, jailer KAMIMOTO, who undertook the opening of No. 4 ward, in the face of violent flames, opened four cell blocks located in the central part of the ward, and the jailer KAMBE succeeded in opening three cells on the east side of the same ward. Thus, seven cells were opened. Jailer KAMBE indicated the direction of the gate to the prisoners. At this time the attacks by the Allied planes became more severe, and the flames were very intense, and the men were about to fall. Just at this time an incendiary bomb fell on No. 4 ward and its vicinity, making it impossible for them to open the remaining cells. By the time these two jailers tried to escape from the impending danger to their lives, the areas of No. 2 and No. 3 wards was already a sea of flames. Since it was impossible to get out from the prison gate, the jailers resigned themselves to death by burning. However, having remembered the existence of an unfinished cave type air raid shelter at the parade ground in the premises, they barely took refuge there." (Ex 8, p 8).

According to said protocol, the Japanese prisoners were evacuated first, because:

"It was considered that if the suspected violators of military regulations were released to the outside alone, there was great chance that they might be injured by the people who lost their parents and children, and who were burned out of their homes by the indiscriminate bombing by Allied planes, and who were in an extremely excited state. The necessity for protecting the prisoners, was recognized. However, because of the shortage of guards, at first the army prisoners were released. It was planned that these men would act as guards for the suspected violators of military regulations, believing that there was enough margin of time to carry it out." (Ex 8, p 10).

"Believing that if we succeeded in extinguishing the incendiary bombs dropped in the prison, we would be able to escape the conflagration, we exerted all of our efforts to combat the fire. Due to these circumstances, we were delayed in commanding the prisoners to evacuate to the outside." (Ex 8, p 10).

The Prosecution does not admit the statements and conclusions contained in the protocol, but, on the contrary, the oral proof in the case is an attempt to disprove and overcome such statements and conclusions.

3. The Prosecution's Proof on the Disputed Facts:

a. Prefatory explanation:

The purpose of the Prosecution's proof is to show that the American prisoners met their deaths during the fire designedly, and in accordance with a preconceived plan; or, at least, as a result of the gross negligence of TASHIRO and KOSHIKAWA, in not earlier releasing them.

The Prosecution's evidence on the material disputed facts comes almost entirely from Japanese Nationals. The Defense has impeached the testimony of a number of these witnesses, by practically every means known to the law; and they have built their case, to a large extent, on the claim that the determinative evidence of the Prosecution is not credible, nor worthy of belief. In order, therefore, to be fair to the Defense in this review, reference to the testimony of each of the Prosecution's witnesses must be made, instead of presenting the evidence as a continuous, integrated narrative.

Restricted

Restricted

b. Toshio TASHIRO

Accused, Toshio TASHIRO, prison head, was convicted of ordering his subordinates to kill seventeen prisoners, (Spec 1, R 1656) of unlawfully failing to restrain certain of his subordinates from killing the same seventeen prisoners, (Spec 2, R 1656) and causing the deaths of sixty-five American prisoners, including the same seventeen American prisoners, by gross negligence (Spec 3, R 1656). Thus, the evidence tending to prove Spec 1, may be relevant in tending to disprove Spec 2, and part of Spec 3, and vice versa. It will be necessary, therefore, to present the evidence against TASHIRO, as a whole without segregating specific parts to the several specifications.

(1a) Charles H. WILSON, connected with the Investigation Division, Legal Section, GHQ, SCAP, mainly investigating war crimes, under Lieutenant KREVOLIN, was introduced, and through him the Prosecution introduced Exhibit 23, consisting of a report by Lieutenant KREVOLIN, maps and plate of the Tokyo Military Prison, and statements of the accused, KIMMOTO, KOSHIKAWA and other data. (Ex 23, 23a-23j, R 37, 40).

(b) Witness helped Lieutenant Churchill in identifying the sixty-two Americans perishing at the fire on 25-26 May 1945, and, in doing so, ran across leads they thought indicated criminality. (R 44) KIMMOTO and KOSHIKAWA voluntarily gave the statements attached to Exhibit 23. (R 33) He was present when the bodies were disinterred. Thirty-two "dog tags" were found, some duplicates. Some were found in a pile of rubbish, by sifting ashes. Most were found between the kitchen and the wall. Some were found by digging with a stick. (R 34-35).

(c) In trying to identify the Americans, TASHIRO failed to give him any prison records, saying they had been burned. (R 38, 39, 41, 42, 43) The accused made no effort to conceal "dog tags", but they did not tell where they were, saying they did not know. (R 43-44) He identified photographs. (Ex 9-22, R 43).

(2) Binzaburo KUROKI testified that he was a doctor, attached to Tokyo Military Prison before and during May 1945. (Ex 25, R 51) He was at the prison, possibly on the 27th or 28th of May 1945, although he does not remember the date, to get his books, etc., and found some of his property had been burned. KOSHIKAWA and TASHIRO came separately to see him, in January and March 1946. KOSHIKAWA told him to say he had made out death certificates for the Americans perishing the night of the fire, and he agreed to do so. TASHIRO said he was resigned to the fact that he would be punished for the deaths of the Americans, since he was the commandant. He does not remember TASHIRO saying anything of prisoner of war death certificates. KOSHIKAWA turned over to him a typewritten report of the fire. Both KOSHIKAWA and TASHIRO said they had to make the report. (Ex 25, p 2, R 53, 58-60) It was his duty to make out death certificates, (R 65) but the bodies had been disposed of, he thinks, when he visited the prison. (R 54, 56-58) On that day he does not think he discussed death certificates for the Americans, with KOSHIKAWA. (R 55) If death certificates had been necessary, he would have requested to see the bodies but the unit commander "can confirm the deaths". (R 57) He does not think KOSHIKAWA knew whether or not he made out death certificates. (R 65) When his affidavit says KOSHIKAWA took advantage of his ignorance, the words are too strong. (R 60) He never heard any Americans were "cut down", and cannot believe such a thing occurred. (R 68) He thinks the report turned over to him by KOSHIKAWA is the same as the "protocol", and the words "death certificates" do not appear in it. (R 69) "TASHIRO is a man of character, and a very amiable person." (R 62).

Restricted

Restricted

(3) Shiro INOUE testified he was formerly a member of the Legal Section of the Eastern Army of Japan, court martial trials, as prosecutor and professor, and he visited Tokyo Military Prison about twice a month from 1941 until 1945. (R 70, 86, 100, Ex 26) There were about twenty-five allied prisoners "interned" in cell block 4, in May 1945. He visited there the last time about two weeks before the fire, to interrogate a Japanese political prisoner. (Ex 26) He saw TASHIRO when he came to the Legal Section office on 26 May 1945 to report the fire. TASHIRO stated the prison was destroyed and some prisoners perished, and valuable documents were burned. (Ex 26) According to Japanese Army prison law, all persons, in case of an emergency, are requested to evacuate the prisoners. (Ex 26) TASHIRO should have prepared to evacuate all prisoners, under the circumstances. (Ex 26) If TASHIRO deliberately failed to evacuate the prisoners, in an emergency, intending for them to lose their lives, and, because thereof, they were killed, TASHIRO would be guilty of murder. If a guard killed a prisoner because he was trying to escape from a burning cell block, he also would be guilty of murder. (Ex 26, R 91-93) If the prison chief led the guard to believe that he, the chief, wanted the prisoner killed, and that the guard would be justified in killing the prisoner, the chief would be responsible. (Ex 26, R 74) Since fire drills were not required, under prison regulations, he does not think TASHIRO had any legal duty to hold fire drills. (Ex 26, R 76-78, 81-84) TASHIRO was given ten days confinement for his conduct at the time of the fire. As he does not know the facts, he cannot express an opinion as to whether ten days was adequate punishment. (R 91) TASHIRO could have been punished for his acts, under Japanese law, without the acts being criminal, and he does not believe a crime was committed by TASHIRO. (R 84-86, 95, 96) The last inspection he made of the prison, was in October 1944, and the prison was equipped with fire fighting equipment to every two cells, and he found nothing wrong with the prison. (R 86-89) TASHIRO was sympathetic and kind to the prisoners. (R 89-90) He knew TASHIRO had a plan to fight fires in case they occurred. (R 88-90, 100) It was the duty of SHIMIZU's department to pass on the plans, and, if there were any defects therein, to point them out to TASHIRO, for correction. (R 105-109) If preference were shown Japanese prisoners in the evacuation, over Americans, by TASHIRO, he would be guilty of a crime. (R 103) General SHIMIZU committed suicide. (R 104).

(4) Genzaburo OKI was a lawyer in the Legal Section, and worked as an assistant to the legal chief. The Legal Section had jurisdiction over Tokyo Military Prison, of which TASHIRO was chief warden. (R 114) There were sixty-two American prisoners in Tokyo Military Prison on 25 May 1945, being placed there for detention while they were being investigated by the Legal Section. (R 115-116) In oral report was made to the Legal Section, of the fire at the prison, on or about 27 May, either by TASHIRO or the Eastern Army, which stated the prison had been burned, all allied prisoners burned to death, all Japanese prisoners saved, and six prisoners escaped. (R 117, 118) Later, he talked to TASHIRO about the fire, but he does not remember of learning from him that all Americans had died, and no Japanese prisoners perished. (R 117-118) In an inspection of the prison, by General Fujii and witness, TASHIRO stated in the event of an air raid, he would not release the prisoners when an air raid warning occurred, but they would be released or evacuated when there was danger. TASHIRO was referring to all prisoners. (R 119, 132, 142) No detailed investigation of the fire was made until after the termination of the war, at which time the War Ministry ordered it investigated, and it was TASHIRO'S duty to get up the report. (R 121-122, 140, 142) Later, witness heard General SHIMIZU say that a report was going to be made, that TASHIRO and his subordinates "had done their best" the night of the fire, and since he had heard that all the Americans perished, and no Japanese prisoners died, he had his doubts about their doing their best. However, he, a Colonel, in uniform, "advised" KOSHIKAWA, in uniform, to make a report showing "they did their best", and he does not know that

Restricted

Restricted

they did not do their best. (R 122-125, 135, 138 141-142) He inspected Cell Block 4, and, according to his memory, there were seven or eight cells in it. (R 127) "TASHIRO was very earnest person, and he diligently carried out his duty, and I firmly believe that he was a very sympathetic person." (R 134).

(5) Shigeru MORIOKI, an ordinary jailer, was guard at the inner gate on the night of 25-26 May 1945, and the big gate was not opened as late as 1:45 A.M., when he went to Yoyogi parade ground with evacuated Japanese prisoners. (Ex 27, R 167, 174, 223) About 1:30 A.M. he heard KIKUCHI suggest to TASHIRO that the prisoners be evacuated, and TASHIRO said; "We will wait and see what the situation will be"; and about that time, while TASHIRO, KIKUCHI and two or three others were standing near the inner gate, south of the guard shack, he saw someone run from the cell block area, between the east wall and the cell blocks, and report to TASHIRO that the prisoners in Cell Block 4 were creating a commotion, and that TASHIRO said not to let those prisoners out of the cells, and he "vaguely" remembered TASHIRO said, if they escaped "it would be permissible to kill them", but the witness expressed a doubt that he heard TASHIRO make this statement and because of so much confusion and noise, he could not hear. (Ex 27, p 7, R 149, 150, 180-181, 185-187, 210) Immediately thereafter he saw them all run south, along the east wall, into the cell block area. (Ex 27, p 7, R 220-221) While, in his affidavit he stated OKUBO was the person reporting to TASHIRO, or was one of the other persons present, on cross examination he stated he had a "vague" recollection that OKUBO was present, and that he was told by the Prosecution that OKUBO admitted he was the one running up the wall. (Ex 27, R 159, 215, 217) At the time he saw TASHIRO and KIKUCHI talking, he was positive none of the cell blocks were afire. (R 189-190) The next morning he saw two dead bodies near the inner gate, with a piece of tin about 5 feet long and 3 feet wide covering them. (R 190) Accused, KIMBE, told him, a day or two after the fire, at Meguro school, that he (KIMBE) had cut a prisoner or prisoners. (R 199, 202, Ex 29) While KIMBE was a boastful sort of person, he did not believe he was boasting on this occasion. (R 202-203) He does not remember whether some guards told him that KIMOTO had cut some American prisoners, but he "assumed" that KIMOTO "did the cutting". (R 196-197, 199) He attended a meeting at the Eastern Army Headquarters, in the autumn of 1945, in answer to a telegram signed by KOSHIKAWA, and he was not instructed what to say, but a paper, about the fire, was read to him. (R 151, 155, 157, 203-204) He heard Japanese were burned during the fire, (Ex 27, p 8, R 158) and he stated to the Defense he heard six or seven perished. (R 207) he thought it was impossible to evacuate all of the prisoners on the night of the fire, because of the intense heat and wind. (R 208).

(6) Eiichi KBE: He was a prisoner in Cell Block 5 and that he, with others, was first evacuated to the air raid shelter south of Cell Block 5, and later to a shelter at the inner parade ground. While in the last shelter, a guard, whom he identified as KIMOTO, came to the shelter alone, and while in the shelter, stated that the prisoners in Cell Block 4 had caused a commotion and he drew his sword and waved it to quiet them, and he "kicked and stabbed those trying to break out." (Ex 31, p 2, Ex 32, p 2) On cross examination he said KIMOTO stated he "kicked American prisoners," but did not say he cut or stabbed any American prisoners, (R 232, 243) while on redirect examination he reaffirmed the statement as contained in his affidavit. (R 235-239) He was afraid of Mr. Maddix, Defense Counsel, Mr. Dety, Prosecution Investigator, and everyone in the Court was staring at him. (R 240, 241, 242).

(7) Hisayoshi ARIMOTO: On the 25-26 May 1945 He was a prisoner in the detention ward, having been court martialled for theft; that about thirty minutes after the "siren", he and other prisoners in their ward were evacuated to an air raid shelter, and one or two hours later they were escorted to Yoyogi parade ground. (Ex 33, p 1, R 254) A few days after the fire, at Meguro School, he heard KIMBE say he had "cut" a prisoner; or prisoners attempting to escape. He thought KIMBE was boasting. (Ex 33, p 1 2, R 252, 254, 255, 256, 257).

Restricted

Restricted

(81) Masao TAWUCHI, a civilian guard was on duty the night of 25-26 May 1945 and about 10 p.m. that night, there was an air raid warning and he reported to the watch room and was assigned by Chief Guard TAWUCHI to guard Cell Block 3, replacing accused OKUBO. (Ex 34, p 1-2) About ten minutes later, he, with guard MURAHASHI, evacuated the prisoners from Cell Block 3 to air raid shelter between Cell Blocks 3 and 4. While in the shelter guarding the prisoners, without any weapon, about 11 o'clock p.m., he saw the accused KIMBE and KIMOTO, with swords in their hands come around the southeast corner of Cell Block 3 and enter Cell Block 4, through the northeast door, and heard KIMBE say to KIMOTO, "Let's go and give it to them." The words KIMBE used at the time were "Ito yaro", "give". (Ex 34, R 264, 265, 277-282) The accused KIMBE and KIMOTO were about 15 feet away from him at the time. About 50 prisoners were in the cell with him. He drew a diagram of the location of the shelter with reference to Cell Blocks 3 and 4 (R 268). The distance between Cell Block 3 and Cell Block 4 was about 30 feet, (R 265, 266) and the distance between the northeast entrance of Cell Block 3 and the east entrance of the air raid shelter was about 8 to 10 feet. (R 267) The easterly opening of the air raid shelter was about 5 feet 4 inches and there were about 7 steps (R 269). Witness was 5 feet tall (R 270) and was standing on the steps about half way down (R 278). At that time, the prisoner in Cell Block 4 were "yelling, screaming and pounding on the sides of the cells" (Ex 34), but there was no difference in the noise after they entered. (R 286). He does not believe Cell Block 4 was on fire when he heard the Americans "bragging" in their cells. (R 276).

(b) In the meantime, one of the workshops had caught fire and the fire was spreading (Ex 34, p 2). About that time, he saw 5 prisoners with blankets over their heads going north and he then evacuated the prisoners from the air raid shelter going along the west side of the cell blocks, leaving the inner compound through the small gate north of the big gate to Toyogi parade ground. (Ex 34, R 286).

(c) When he evacuated the prisoners about 12 p.m., he did not see MORIOK at the gate, OKUBO was at the gate at the time. (R 272, 273, 286, Ex 34).

(d) About 8 a.m., 26 May 1945, he went into the inner compound with the prisoners going through the big gate and at that time or during the day, he saw some of the dead bodies. (Ex 34, p 5, R 275).

(e) There was a guard in Cell Block 4 all the time, day and night. (R 272).

(f) He did not think it possible for the American prisoners to break out of their cells. (R 275).

(g) About 4 or 5 days thereafter, he heard KIMBE say he stabbed some prisoners of war in a fire in a bragging voice. (Ex 34, p 5, R 260).

(h) The next morning, TASHIRO said, it was fortunate that there was no injury. (R 287).

(9a) Juichi S'SKI, an inmate of Cell Block 5, who was a deserter, testified that about thirty minutes after the alarm the prisoners in that cell were evacuated to an air raid shelter south of Cell Block 5 and, after remaining there about thirty minutes, a bomb struck the shelter and they all left the shelter. Some went south, and he, with some others, went north, between the cell blocks and the east wall. When they arrived at cell block 4, sparks and flames were coming over the wall, and the heat was intense; and, while some persons went on north, through the flames and sparks, he, with other prisoners, entered cell block 4. (He made a chart, (Exhibit "1") to his

Restricted

testimony, but it does not appear to be in the record,) (Ex 35, p 2) (and for that reason the details of his testimony are not clear.) In the corridor of cell block 4, he saw KIMBE, with his sword out, forcing an American prisoner into his cell, through a half-opened door, and then thrust his sword into the cell, through the bars. (Ex 35, R 294, 297-298) The American prisoner was never really in the corridor, but was attempting to get out of the cell. (R 301-302) There were some Japanese prisoners also in the corridor, (R 294-296) but there were no other guards there. (R 297).

(b) As he came out of the northeast entrance of Cell Block 4, while the sparks and heat were intense, he saw TASHIRO standing between Cell Block 4 and the east wall, ordering persons to evacuate the inner compound, (Ex 35, R 298, 303, 305) but TASHIRO had not been in Cell Block 4. (R 304).

(c) Sometime during the night, at Yoyogi parade ground, in answer to a question from a prisoner, KIMBE said "something to the effect that he had stabbed a prisoner or prisoners". (R 298, Ex 35).

(10a) Masao HASUJI, a guard or jailer, testified he was not at the prison on 25-26 May 1945, and on 27 May 1945 he went to Meguro school, where the prisoners had been taken; and, when inquiring about what happened to the American prisoners on the night of the fire, he was told "the cell doors had not been opened during the air raid", and that "the American prisoners had burned to death". (R 305, 309, 310, 312) Witness heard, from a guard, that OKUBO, KIMBE and KIMOTO were "involved" in the murders, later saying "cutting". (R 311-314) On cross examination he stated he did not hear the statement about American prisoners burning to death and being murdered, "directly", but he heard some guards talking, and he just overheard their conversation. Only one guard made the statement. (R 312, 313) When he was questioned by Prosecution, prior to trial, he could not remember who the guard named, as having killed American prisoners, and Prosecution suggested it was OKUBO, KIMBE and KIMOTO, (R 317) but later he said he did not understand the question eliciting the above information. (R 317).

(b) During previous air raids the Americans were not evacuated from their cells. (R 306-308).

(11a) Hikosaburo TOIDA, a civilian guard, said he was on leave 25 May 1945, and came to the prison on the morning of 26 May 1945. He was surprised to see the prison "all burned down", on his arrival. He heard that the raid was so bad the doors to Cell Blocks 1, 2, 3 and 5 were opened, but the fire spread so rapidly there was no time to open the doors to Cell Block 4. He heard some American prisoners did break out, and they all perished in the fire. (Ex 36, p 1, R 331).

(b) There were about ten bodies piled up, lying at the easterly end of cell block 4. (Ex 36, p 1-3) He heard a "rumor", from a guard, whom he does not remember, that some of the ten or twelve bodies along the east wall had been bayoneted. (Ex 36, p 3, R 324, 327) He did not know whether the guard telling him this was one helping to bury those bodies, and the guard did not say there were any signs of cutting or stabbing of the bodies. (R 327-334) He was the guard in charge of the burial detail of bodies in Cell Block 4. (Ex 36, p 3). The bodies were blackened, and he did not know whether any of the bodies in Cell Block 4 had been cut or stabbed. (R 327, 333-334).

(c) He heard a guard, whom he thinks was KIMBE, had killed "an unknown" number of American prisoners, while they were trying to escape. (Ex 36, p 1, R 331) He told Miss Thielfield, a Defense lawyer, that he had never heard KIMBE, KIMOTO or OKUBO had killed any American prisoners. According to the stories heard by him, KIMBE had not killed any American prisoners, on orders from superiors. (Ex 36, p 2, R 329-331).

Restricted

(d) In the event of air raids, the American prisoners in Cell Block 4 could be evacuated to the air raid shelter to the rear of the guard room, which hold about thirty-five. (Ex 36, p 2, R 321, 334) During previous air raids, American prisoners were not put in shelters, for the reason, as claimed by the officials, it was not good policy to put American prisoners with Japanese. (Ex 36, p 2, R 331).

(e) In Cell Block 4, he thinks the guard made rounds about once every hour. (R 321).

(f) The American prisoners wore masks, with slits for the eyes, and wore hats when they were taken outside their cells. (R 334) Some of the American prisoners wore no clothing. (R 335-337).

(g) TASHIRO was kind to the American prisoners, and treated them better than he treated the Japanese prisoners. TASHIRO told the guards to be kind to the Americans, (R 331-334, 336) and he managed the prisoners splendidly. (R 323).

(12a) Tokusaburo YAMAZAKI, a civilian guard, testified he counted the American prisoners in Cell Block 4 and there were sixty-two confined there. There were about five hundred Japanese prisoners. (Ex 37, p 2-3).

(b) When the alarm sounded, he was on duty at Cell Block 2; and he was ordered by YITUCHI to leave Cell Block 2 and help at the pump, between Cell Blocks 2 and 3. (Ex 37, p 2) He remained at the pump until about 2:00 o'clock A.M., 26 May. While there, probably during the middle of the second air raid, he heard TERASHI say to TASHIRO, "What are you going to do about the prisoners in Cell Block 4?", and TASHIRO replied, "Let things remain as they are." (Ex 37, p 8, R 347) At this time there were no buildings on fire in the prison compound, but buildings outside were on fire, and the wind was high, and sparks were flying over the wall, into the compound. (R 344-346) The second raid occurred about two hours after the first. (R 347).

(c) Sick prisoners were in Cell Block 2, and when it caught fire KOSHIKAWA yelled, in a loud voice, in the presence of TASHIRO, he thinks, that all prisoners were to be evacuated to Yoyogi parade ground, and witness assisted in evacuating Japanese prisoners from Cell Block 2. While none of the cell blocks, other than Cell Block 2, were on fire at the time he went through the inner gate, Cell Blocks 1, 3 and 5 had been evacuated. (Ex 37, p 4) He thinks he saw OKUBO, with a sword, on duty as guard at the gate, at that time. (Ex 37, p 5, R 361).

(d) He heard one of the guards say that KOSHIKAWA had said, before 25 May 1945, "Until there is imminent danger, and until an order is given," they (the American prisoners) "will not be let out of their cells." (R 378).

(e) In a sworn statement for Prosecution, given in September 1947, the witness said that TASHIRO, the warden, had given an order to cut the American prisoners. (R 353) That statement was not true. (R 371, 374) That statement was given to Captain Martin because, "when I was interrogated by the Prosecution, on the 2nd of February 1947, I was asked by him that I must have been given some order by TASHIRO, on the night of the air raid, I replied, 'No'. But the Prosecution kept insisting that I must have heard TASHIRO giving an order, and kept repeating the same question. He finally stated that if I could not remember, it would be best for me to go to Sugamo and think about it, at the same time grabbing me by the neck and shaking me back and forth. By this time I was tired from prolonged interrogation, very much upset, and afraid, and when he asked me, "Was it not true that TASHIRO told us, when he was watching us, that in case any of the prisoners of war escaped from No. 4 cell block, we were to

Restricted

Handwritten

kill him?", I felt I had better say yes, although I did not know such a thing, and signed the statement." (R 353-354).

(f) About 5:00 A.M., 26 May witness saw two bodies, one lying face up, and one lying face down, near the inner gate, as he passed within about five feet of them, walking fairly fast. One body had an injury "on his head" which "could have been incurred from either a rock or a sword." (R 354 and 358, Ex 37, p 7) The body had been burned black, and he saw something dry and black on the face, which he took to be blood, and he saw a stained spot near the bodies, that looked like "inkstain that had dried, or similar to oil. It was not red." The clothes had not been burned off. (Ex 37, p 6, R 358-359, 362-362).

(g) About four or five days after the prisoners had been removed to Teguro school, he heard KIMOTO say he had "cut" one or more American prisoners, while they were trying to escape. (Ex 37, p 7, R 361-363).

(h) He also heard KIMBE say he had "cut" some American prisoners, during the fire. (Ex 37, p 7) He admitted he told the Defense that KIMBE boastfully made that statement while he was drunk. (R 360).

(i) KIMBE and KIMOTO were at Cell Block 4, 25 May, but he did not know that fact. He assumed it to be true. (Ex 37, p 9, R 348-349).

(j) He attended a meeting held in December 1945, at Toyatama Prison, but TASHIRO was not present. KOSHIKAWA told him to tell that eight Japanese prisoners had died, instead of two, as it would look "peculiar" if all Americans and no Japanese died. KOSHIKAWA also told him to say that KIMBE and KIMOTO came on guard at Cell Block 4. He stated, however, that everyone knew two Japanese prisoners had burned, and there were some missing, and he did not know how many Japanese prisoners had burned or died. (Ex 37, p 8-9, R 341-342).

(k) He thinks KOSHIKAWA, even when TASHIRO was present, had authority to give orders to evacuate the prisoners, since he was in charge of security. (R 380).

(13a) Junji NARAHASHI, a civilian guard, testified he was on duty at Cell Block 3 on the night of 25 May 1945, when the air raid alarm was sounded. About thirty minutes later he received orders, purportedly coming from TASHIRO, to evacuate the prisoners to air raid shelters, and the prisoners were evacuated to the shelter between Cell Blocks 3 and 4. At that time the prison was not on fire. About 12:00 that night, on orders from guards, the prisoners were evacuated to Yoyogi parade ground, he accompanying them north along the east wall, to the inner gate, there being no bodies along the wall at that time, and as they passed Cell Block 4 he heard American prisoners "crying out", but Cell Block 4 was not on fire then. (Ex 38, p 1-2) He thinks, although he did not see, all the prisoners except the Americans were evacuated to shelters. (Ex 38, p 2-3, R 385) The shelter for the American prisoners, between Cell Blocks 4 and 5, was not complete; but there were shelters at the inner parade ground and workshop area, to which the Americans could have been evacuated. (Ex 38, p 2-3).

(b) The next day, about 5:00 A.M., when he returned to the inner parade ground, he saw the dead bodies, but he noticed no signs of any cuts or wounds. (Ex 38, p 3).

(c) Although he stated he heard TASHIRO had ordered that if any American prisoners broke out of their cells it would be permissible to kill them, he retracted that statement, and stated that the Prosecution threatened him, when taking the statement of April 1947, since the Prosecution claimed he was not telling the truth. (Ex 38, p 3, R 385, 390, 393-395).

Restricted

(d) He heard KIMBE bragging about cutting down American prisoners with his sword. (Ex 38, p 3) He stated, "I had 'vaguely' heard KIMBE and KIMOTO had done the cutting," (R 392) and on another occasion he stated, "I think that KIMBE and KIMOTO told us they cut prisoners of war." (R 392).

(e) In answer to a telegram from TAKAHASHI, a meeting was held, at the First Demobilization Bureau, attended by a number of the camp personnel, when KOSHIKAWA stated the fire of 25-26 May was being investigated and they would undoubtedly be questioned. He instructed them to state that the fire was so fierce, after other cell blocks were evacuated, that it was impossible to release the American prisoners, and also, that six or seven Japanese prisoners had perished in the fire. (Ex 38, p 5, R 388-389). He understood one or two Japanese prisoners died during the fire, but he saw no bodies, and he did not know how many were missing. (Ex 38, p 4, R 387-388).

(f) Kinji TAKAHASHI, a civilian guard, was on duty after the alarm was sounded. He took orders from the chief jailer on duty at the time. (R 400-403). KOSHIKAWA was the chief guard in charge of security and protection of the prisoners. (R 401) There were about six hundred Japanese prisoners, and about sixty-two Allied prisoners confined at Tokyo Military Prison. (R 401).

(g) When the alert was sounded, about 10:30 P.M., on 25 May 1945, he went to the guard room and remained about thirty or forty minutes, and then a fire broke out in the workshop area, and he went there and helped extinguish it. (R 403-404). He returned to the guard room, and an incendiary bomb fell, and the guard room and Cell Block 4 were on fire, and he was on top of Cell Block 4, but they were both extinguished. (R 403, 405, 410) At that time American prisoners were in Cell Block 4, and he did not know whether the Japanese prisoners were in the other Cell Blocks. (R 405-406). He continued to fight fires, but, finally, because of the wind and blazes, on order of ONO, he went to Yoyogi parade ground. (R 406-407, 414) In leaving the inner compound, he went north, past Cell Blocks 1 and 2 and the detention ward, and east through the inner gate. At that time, he did not think any of the cell blocks were on fire. (R 407). He saw about four hundred of the Japanese prisoners, but no American prisoners, at Yoyogi parade ground. (R 406, 408).

(h) OKUBO, wearing a sword, was guarding at the inner gate when he left the compound. (R 408) At that time, witness was running, and had a coat over his head. (R 409, 414-415, 420).

(i) About 9:30 P.M., 26 May, as he was returning to the inner compound, he saw two burned, American bodies, just inside and to the left of the inner gate. (R 411, 419) They had no clothes on, and he saw other dead bodies. (R 411-412, 422).

(j) Some guard asked him, the next day, if he knew "OKUBO had cut any Allied prisoners", and he heard the same thing at Kofu, about OKUBO, but he heard nothing about anyone else. (R 411-412, 417-418, 421-422).

(k) TASHIRO was kind to, and thoughtful of, American prisoners, and gave them as good food as the guards got. (R 419-420).

(14a) Keikichi FUJII, a chief jailer, was not on duty on 25 May 1945, and did not arrive at the prison until about 10:30 A.M., 26 May; and on arrival he was told, by TASHIRO, that they had attempted to reach the American prisoners, but "it was too late". (Ex 39; p 2).

(b) It was FUJII'S duty to count the dead bodies, and, on counting them, he found sixty-two dead, all of whom he thought were American

Restricted

Continued

prisoners. Just left of the inner gate he saw three bodies; and along the east wall he saw twenty-five or twenty-six bodies, and about thirty-four bodies inside the remains of Cell Block 4. After counting them, he heard, from some of the guards, that some of them might have been stabbed, and he rechecked the bodies, and discovered the body near the gate had a wound on its head, and "something that appeared to look like blood was congealed around the wound". (Ex 39, p 1-3, R 425).

(c) About twenty Japanese prisoners were missing. (Ex 39, p 3).

(d) He never heard about anyone cutting or stabbing American prisoners. (Ex 39, p 3) While he testified, on direct examination, he was told by someone in the crowd of about ten guards, including KAMBE and KIMOTO, that KAMBE and KIMOTO were sent to Cell Block 4 to release the American prisoners, but the prisoners were threatening towards them, so they shoved them back in their cells and locked the door, (Ex 39, p 3, R 426, 430) but, on cross examination, he stated he was told by the Nisei interpreter for the Prosecution, that "others knew I knew something about the case, so he wanted me to present the whole story, and if I could not, then they would send me to Sugamo". (R 436-437) When asked if he heard the conversation about KAMBE and KIMOTO, he stated, "I am sixty percent positive that I did hear it, and fifty percent positive that I did not hear it," referring to everything he had testified to, concerning KAMBE and KIMOTO. (R 437-438, 440-441) He stated, however, that his direct testimony, with reference to this matter, was correct. (R 441-442).

(e) The chief jailer on duty that day had the authority to order prisoners evacuated, if he and TASHIRO were separated so that the chief jailer could not get instructions from TASHIRO. (Ex 39, p 6, R 425, 432).

(f) He sent telegrams to prison personnel, at KOSHIKAWA'S request, and in KOSHIKAWA'S name, for them to appear at Toyama prison for a meeting in September 1945, but the witness did not attend the meeting. (Ex 39, p 3-4). However, he heard TASHIRO and KOSHIKAWA talking, at Sugamo, on one or more occasions, and he heard TASHIRO say that there might be an investigation of the fire at the prison, by the Occupation Forces, and all of the prison personnel should tell similar stories; but TASHIRO stated to him that he was not present at the fire, and for him to state what he saw the next morning. (Ex 39, p 3-4, R 435). TASHIRO was late at the meeting. Prior to the meeting, he heard KOSHIKAWA say, to some of the prison personnel, that "the air raid was so fierce that there had been no time to evacuate" the American prisoners, (R 432) that "they did their very best, but it was unavailing," (R 433) and he stated if the question was asked, to state that there were twenty Japanese prisoners missing, and he did not know whether they were burned, or missing. (Ex 39, p 4).

(g) TASHIRO told the prison personnel to treat the prisoners kindly, in spite of the bad war situation. "TASHIRO is a man of character, and I believe that he had done his best". (R 435).

(15a) Ginzo ONO, a civilian guard, said he got to the prison about thirty minutes after the alarm, and went to the office outside of the inner compound, and, with TERASHIMA, took the money and records to an air raid shelter, and then went to the guard house, across from the office, and helped put out a fire. At that time the kitchen area was on fire, and he rushed there to help in fire fighting, but it was under control. In the meantime, guards were evacuating the prison area, and "it seemed impossible to extinguish the fire," and he joined in the evacuation, and proceeded to Yoyogi parade ground. All Japanese prisoners were evacuated to those grounds; but none of the American prisoners were there. (Ex 40, p 1-2).

(p. 20 of, 92, Toshio Tashiro et al Case # 78)

Continued

Restricted

(b) He heard all the American prisoners had burned to death, and about 6:00 P.M., on 26 May he saw the dead bodies in the inner compound. On one of the bodies, near the gate, he noticed a protrusion about an inch long, from the abdomen, apparently in swelling. He stated that the following statement, which he gave the Defense, is true:

- Q Did you notice any marks on these bodies?
- A On one of these bodies, at the gate, it appeared there was a wound in the region of the abdomen. It was not exactly a wound, but it was swollen, the abdomen appeared to be swollen. It definitely was not a cut.
- Q In a previous interview at this office you told us that you had signed the statement by Prosecution, to the effect that the body you saw, had been bayoneted. Is that true?
- A I did not answer like that, but when I described the wound, the Prosecution said to me, "It must be a wound, by a bayonet." Before I gave him any definite answer, the Prosecution stated, "It would be a bayonet wound," and wrote it down; so I signed the statement.
- Q When the statement was translated back to you, did they use the word 'bayoneted', in reading back your statement?
- A Yes, they did.
- Q You knew that was wrong, when they read it back to you. Why did you sign the statement?
- A I was so upset at the time, that I signed it.
- Q Why were you upset?
- A It was the first time I had ever been interrogated like this. My long journey, coming to the Meiji Building, had made me tired, and the fact that the Prosecutor pushed me in the face, hollered at me, pounded on the desk, I thought it would be best that I sign the statement." (Ex 40, p 2-3, R 447-448).

(c) The witness stated he did not believe any Japanese prisoners burned during the fire, because it was his duty to deliver any valuables and distribute any money to the deceased prisoners' next of kin, and he had not done so, for any Japanese prisoners. However, he heard about eight Japanese prisoners were missing, and, as there were four hundred fifty Japanese prisoners, it was possible for none of the missing to have any money. (Ex 40, p 2-3, R 446).

(d) While he personally does not know anything about the matter, he heard some guards, at Meguro school, say KIMBE and KIMOTO cut and stabbed some Allied flyers, but he does not know the guards were referring to the night of the fire. He said, "Since KIMBE is rather talkative, a boastful and humorous man, I still doubt whether it is true, or not." (Ex 40, p 3, R 451).

(e) He attended the meeting at Toyama prison, in answer to a telegram from KOSHIKAWA. There was another meeting, at the Eastern Army Demobilization Bureau, Legal Section, about a month later. He does not remember whether KOSHIKAWA was present at the first meeting, but he was present at the second meeting. About the same things were said at both meetings. (Ex 40, p 3-4, R 452-453, 455) At one of the meetings, KOSHIKAWA told the four or five members of the prison personnel present that if they were questioned by the Occupation Authorities, to tell them that about half of the cell doors of the Allied prisoners were opened, but they were not

Restricted

Restricted

able to open the others, because of the intensity of the heat; that seven or eight Japanese prisoners perished in the fire, or their whereabouts were unknown and that they were to tell what they knew, not what they had heard. (Ex 40 p 3-4, R 452-453).

(16a) Higo JOKURA, a civilian guard, was at his home 23 to 31 May 1945. He reported to Neguro school on 31 May, and heard from two or three Japanese prisoners there, that KIMBE had killed five or six Americans trying to get out of their cells and away from the fire. The prisoners told him KIMBE had demonstrated to them how he killed them. He then went to KIMBE, and asked him if he had killed any American prisoners, and KIMBE replied, "Yes, I did." (Ex 41, p 1-2) However, he made an affidavit to the Defense, while he was "perplexed", in which he stated, in effect, that he was led into making those statements, by the Prosecution, and the statements about KIMBE were not true. (R 468-469) Still later, he swore the affidavit he made to the Defense was untrue. (R 474, 477-478).

(b) He stated he was not confused when he made the statement to the Defense that he had never heard any criticism of TASHIRO, and everyone knew the air raid was so intense and severe and there was so much confusion that no human being could have done a better job than TASHIRO did. TASHIRO always instructed his subordinates to treat the American prisoners kindly and respectfully. (R 472-473).

(c) The American prisoners were not removed from their cells during air raid of 23 May 1945, and he believes the same thing was true on 25 May. The Japanese prisoners were removed from their cells on 23 May. (Ex 41, p 2, R 466-467) On the night of 25 May, KIMUCHI was chief jailer on duty, and the command of the prison was the responsibility of TASHIRO. (Ex 41, p 2, R 467).

(17a) Fujiyoshi TERASAWA, was a chief jailer, in charge of the intencence department at Tokyo Military Prison, and KOSHIKAWA was next in chain of command, to TASHIRO. KOSHIKAWA was in command only in the absence of TASHIRO, and during air raids, when TASHIRO was present, TASHIRO was responsible for Americans not being released. (Ex 42, p 2, 7, Ex 8, p 18).

(b) On 25 May 1945 there were sixty-two American prisoners, and approximately four hundred fifty Japanese prisoners in Tokyo Military Prison. (Ex 42, p 2, R 500).

(c) He was at the prison on the night of 25-26 May 1945, but TASHIRO was not there when the alarm sounded. He met TASHIRO at the guard room, while No. 3 workshop was on fire, certain spots of the cell blocks were on fire, and civilian houses just outside the prison were on fire, and the wind was high and sparks were flying, and incendiary bombs were dropping, and he asked TASHIRO what about releasing all the prisoners, and TASHIRO asked him to go to the north gate of the prison and see about evacuating through that gate, and, after investigating, he reported to TASHIRO that it was impossible to evacuate through that gate, because of the fire. He again asked TASHIRO about releasing all prisoners, and TASHIRO said, "We will wait a little longer to see what the situation is," and, with TASHIRO'S permission, he went to protect the money and records. At this time the American prisoners were in their cells. (Ex 8, p 18-19, Ex 42, p 1, 3-5, R 436-490, 493, 496, 497). TASHIRO never gave an order not to release the American prisoners. However, it was thought bad policy for the Japanese prisoners to see and mingle with the American prisoners, and the American prisoners could not speak the Japanese language. (Ex 42, p 7, R 486). Before he left to protect the records, TASHIRO gave an order to stop fire fighting and to make preparations to evacuate the prisoners. To evacuate, the guards had to be told to unlock the cells, the cells unlocked, and the prisoners told they were being evacuated. There were six buildings of prisoners. (R 519-520).

Restricted

Restricted

(d) On the night of 25 May the first planes did not fly over the prison. They came from the southeast, and proceeded north. More planes came from the southwest, and brought incendiary bombs. He considered it "dangerous at that time." (R 523-524).

(e) It took him about an hour and a half to protect the records and valuables, and when that was finished he went to the inner gate and found it swarming with evacuating prisoners and guards. He remained at the gate, and directed the evacuation for about twenty minutes. The prison at that time seemed to be on fire, and he could not enter, and then he went to Yoyogi parade ground. (Ex 42, p 5, R 494, 496-497, 521-523) When he finally left, there were no prisoners leaving through the main gate. (R 523).

(f) All of the American prisoners perished that night, but he does not believe any Japanese prisoners perished, because he never heard that any perished, although there were some missing the next morning (R 502), and if any Japanese prisoners had perished, he would have had charge of delivering their money and valuables to their relatives; and none was delivered to the relatives of any Japanese prisoners. He stated, however, all Japanese prisoners did not have valuables. (Ex 42, p 2, R 500, 504-505, 513).

(g) On 26 May, at about 6:00 A.M., when he returned to the inner compound, he saw the dead bodies of the Americans. He did not see any cuts or stab wounds on any of these bodies. (Ex 42, p 2, R 486, 500, 502).

(h) At prior air raids the American prisoners had not been released from their cells, although, on some other occasions the Japanese prisoners were taken to air raid shelters. (Ex 42, p 6-7, R 523) By crowding, there was sufficient air raid shelter for all prisoners, including the Americans. (Ex 42, p 6).

(i) Guards wore swords, and it was up to them to take them off during air raids, if they cared to do so. If guards removed their swords, they could be secured when they desired them, in three minutes. (Ex 42, p 3).

(j) While he does not know whether the cells to Cell Block 4 were half unlocked on the night of 25 May, shortly after the alarm, the usual procedure and one of the rules was to half unlock the cells when there was an air raid alarm. (Ex 42, p 8, R 517-518, 520) The condition of the air raid was watched and the radio was listened to, and if the raid was considered serious, the prisoners were evacuated, and it was not customary for them to be evacuated at the sound of the alarm. (R 523).

(k) At Teguro school he "slightly" heard, by chance, that KINBE and KIMOTO had cut American prisoners, but from whom he heard it, he does not remember. At first, he did not believe it, and did not take it seriously. (Ex 42, p 8, R 499, 505, 506).

(l) A conference of some of the prison personnel was held in February 1946 at TAKETSUKI, Eastern Army Legal Section Headquarters, at which TASHIRO was present. Witness and other members of the prison personnel were told to say eight Japanese prisoners perished during the fire. (Ex 42, p 2, R 495, 504-505).

(m) He made an affidavit to the Defense, that when his first statement was taken by the Prosecution, the investigator kept insisting he was lying, kept pushing his jaw upward, pounding on the desk, and threatening to send him to Sugamo while the interpreter kept shouting at him. (R 507-511).

(18a) Ichizo ISHISHITA, a civilian guard, was on duty 25 May 1945 at Tokyo Military Prison. He got there about midnight. He reported to the chief jailer's office and put the records in the nearby shelter, the same taking about five minutes. All the records, however, were destroyed by fire. (Ex 43, p 1, R 536).

Restricted

Restricted

(b) At the time he arrived Workshop 3 and bathhouse were on fire. He discovered Workshop 2 was threatened with flames coming over the wall. He assisted in fighting the fires. About 2:00 A.M., the water failed and he went to see the reason therefor, and found no one at the pump. People were leaving the air raid shelters and evacuating to the Yoyogi parade ground. At this time Cell Block 5 and the easterly end of Cell Block 4 were on fire and he left the inner compound, with others, going through the smaller inner gate, and went to the Yoyogi parade ground (Ex 43, p 1-2, R 545), and he noticed MORIOKI was on guard at the gate. (Ex 43, p 3, R 538, 546, 556).

(c) About 5:00 A.M., with some prisoners, he returned to the inner compound through the large gate and saw two bodies, lying face up inside the gate. They had been burned to death. (Ex 43, p 2).

(d) The doors to the cells of the blocks occupied by the Japanese prisoners were half unlocked after the alarm, and he believes the cell doors to the cells in Cell Block 4 were also half unlocked at the same time. (R 538, 539, 546) It took a direct order from TASHIRO, or the chief jailer of the day, to unlock the American prisoners. He heard no order given, as he arrived there late. He heard, at Meguro school, that TASHIRO was late in giving the order to evacuate the prisoners. The persons specifically ordered to do so would evacuate the American prisoners. The Americans were not allowed to be with the Japanese. (R 538, 539, 546, 547, 558, 559).

(e) The shelter for the American prisoners was not complete, and they were never evacuated to a shelter during air raids. There was a guard on duty at Cell Block 4 at all times, the guards rotating there, and the chief jailer made rounds to Cell Block 4. (Ex 43, p 3-4, R 538-539).

(f) Two or three days after the 26th of May, at a meeting called on a telegram from KOSHIKAWA, attended by a number of guards, KOSHIKAWA told the guards to tell the Allied Forces that KIMBE and KAMIMOTO went to Cell Block 4 to rescue the American prisoners, and did everything in their power to release them, but that Cell Block 4 received direct hits and these men had to abandon their efforts and that seven or eight Japanese prisoners perished during the fire. (Ex 43, p 5, R 552-553).

(g) While he stated (in Ex 43) that he "heard OKUBO boasting of killing Americans", at Meguro school on cross examination he stated he heard OKUBO say the American prisoners were causing a commotion and he had to go there to quiet them and await a time to release them; and he did not hear OKUBO say anything about cutting or stabbing or killing any Americans. (Ex 43, p 4, R 548, 550, 551-552).

(h) In Exhibit 43, he stated that about four months after the fire, OKANIWA told him that KIMBE stabbed some prisoners but, on oral examination, he said, in substance, OKANIWA told him KIMBE was such a person as could kill American prisoners. (Ex 43, p 4, R 539-540, 544).

(i) He heard that KAMIMOTO went to Cell Block 4 and tried to rescue the American prisoners but never heard of him killing American prisoners. (Ex 43, p 4).

(j) He stated that it was his "supposition" that seven or eight American prisoners were killed by the guards. (R 544-545).

(k) About two days before the fire, he and the chief jailer of the day made a headcount of Americans at the prison and there were 62 Americans at that time, and none were thereafter brought to the prison. (Ex 43, p 3, R 537).

(19a) Masao OKUMI, at the time of the air raid 25-26 May 1945 had been an inmate of the prison for about two weeks, having been convicted

Restricted

Restricted

of desertion, and he was confined in the detention ward. At the time of the alarm, he was ordered to an air raid shelter, with others, and later was accompanied to the Yoyogi parade ground. (R 563, 565-567).

(b) The next morning, he was escorted to the inner parade ground, and later to an air raid shelter to the south of Cell Block 4. While he was sitting on a step he heard KIMBE, who was on the outside of the shelter say he "had done the cutting", and "killing" of American fliers, KIMBE was about 8 feet from him. KIMBE stated that since the sword, which he had with him had cut someone, it could not be used again. (R 563-572).

(20a) Yosohachi OKINAWA, a civilian guard, was off duty 25 May 1945 and arrived at Tokyo Military Prison about 12:30 or 1:00 A.M., on the 26th. At that time, all prisoners were in their cells. (Ex 44, p 1). He reported to the guard room and KOSHIKAWA and KIKUCHI were there, and he was sent to fight the fire at Workshop 1. In the meantime, Workshop 2 caught fire and he with others fought that fire. The water stopped running and a prisoner was sent to find out the reason and when the prisoner returned, he reported the "rest of the prison" was on fire and an order had been given to evacuate. He, with his group, headed for the inner gate and, as they went through the big inner gate, the other prisoners and guards were crowding and pushing through. (Ex 44, p 1, R 575, 583-584) The office building was on fire, and flames were coming all over the wall in the workshop area. There was a strong wind, and sparks were flying and the smoke was so bad he could hardly keep his eyes open. When he went through the gate, he had his head down sometimes and up sometimes. (R 584-585).

(b) As he went through the gate with the moving mass of people, he saw OKURO with a sword, west of the south side of the inner gate and, with people between them, he heard OKURO say, in a voice loud enough for everyone to hear, "The prisoners are escaping from Cell Block 4 so when they come out, let's cut them." People were pushing each other in going out. (R 575, 583-586).

(c) On his tour of duty, he took a roll call and there were 62 American prisoners and they all perished on the night of 25-26 May 1945. (Ex 44, p 2).

(d) During a previous air raid, he asked KOSHIKAWA about releasing prisoners in Cell Block 4 and the witness gave three different versions of KOSHIKAWA's reply: 1. "There is no need of opening Cell Block 4 at any time" (Ex 44, p 2); 2. "I don't care what happens to No. 4 cell block" (R 576, 592, 599); 3. "Leave No. 4 cell block as it is". (R 583, 592).

(e) The American and Japanese prisoners had always been kept separated. They were not allowed to mix. (R 583).

(f) When he returned to the inner prison compound the next morning, he saw two dead bodies lying south of the inner gate but he did not notice any cuts or scars on the bodies. (Ex 44, p 1-2, R 575).

(g) He was asked on two or three occasions at Meguro school if he knew that KIMBE and KIMOTO had cut and stabbed American prisoners on the night of 25-26 May. (Ex 44, p 2, 4, R 575-577, 580-581, 594-595).

(h) He heard once or twice that OKURO cut or stabbed American prisoners. (Ex 44, p 2-4, R 579-580, 595).

(i) In September 1945, at Sugamo Prison, KOSHIKAWA or FUJII stated that the deaths of the 62 American prisoners would undoubtedly be investigated by the Occupation Forces; and if they were questioned, to say Cell Block 4 was directly hit by an incendiary bomb and burned so

Restricted

furiouly no one could approach it to ~~release~~ the prisoners confined therein, and that six or seven Japanese prisoners perished in the fire. While some Japanese prisoners deserted, he did not believe they perished during the fire. The only thing said at the meeting that he believed was true, was that 62 American prisoners perished. (Ex 44, p 3, R 586-589).

(21a) Yazuo MORI was a prisoner at the Tokyo Military Prison at the time of the fire, for being AWOL; and at the time of giving his affidavit he was in Toyotama Prison for theft. (Ex 45, p 1).

(b) At the time of the fire he was in Cell Block 2. (Ex 45, p 1) About 10:00 P.M., on 25 of May, he was awakened by the air raid alarm. The prisoners (about 70 in that Cell Block) were alerted by a guard and told to prepare to evacuate, Cell Block 2 having caught on fire. He was told to join in fighting the fire. This was about 10:20 P.M. At that time, the roofs of Cell Blocks 4 and 5 and Workshop 3 were on fire. He joined in the fire fighting squad and operated a pump between Cell Blocks 2 and 3 until KIKUCHI ordered him and another prisoner to look in the cell blocks and if they saw anyone, to tell them to evacuate to the Yoyogi parade ground. (Ex 45, p 4, 5, R 610-611, 620) They went in Cell Block 4 through the northwest entrance and saw ASAKURO near the southwest entrance and on looking east from the southwest entrance, he saw KAMIMOTO standing with his back towards the witness, about 25 feet east of him, in the south corridor, with what appeared to be two Americans, standing further east, facing west. The two prisoners held latrine covers over their heads. He yelled to evacuate and KAMIMOTO turned and he saw KAMIMOTO held a sword horizontally to his body, in his two hands, pointing towards the American prisoners. He left Cell Block 4 and went to Cell Block 5. (Ex 45, p 6-7, R 608-610, 612, 615).

At that time, the eastern end of Cell Block 4 was on fire but he saw no flames. There was smoke in the corridors. He heard loud voices and pounding by the American prisoners. (R 613, 621).

(c) After he evacuated through the inner large gate, Sergeant Major INNAMI, who was guard there, closed that gate, leaving the small gate north of the large gate open. He told INNAMI that KIKUCHI, YAMAZAKI and others of the prison personnel were still in the compound. (Ex 45, p 6-7, R 609).

(d) A roll call was taken at Yoyogi parade ground and all prisoners in Cell Blocks 1, 2, 3, 5 and detention ward were there. (Ex 45, p 7, R 615) After the roll call, he with a number of other prisoners were marched into the inner compound to an air raid shelter, south of Cell Block 5. They lined up there for breakfast, and he heard KAMIMOTO, who was standing about six feet away say he had cut about six American prisoners; and the nicks in the blade of his sword were caused by that. (Ex 45, p 7, R 616-617) He saw something reddish brown on KAMIMOTO'S sword which he took to be blood. (Ex 45, p 7, R 617).

(e) Later at Neguro school, one of the prisoners asked KAMBE if it were true that KAMIMOTO had cut six persons. KAMBE did not give a definite reply to that question but stated, "I cut about eight persons during the fire". (R 618) In his affidavit, the witness said that KAMBE stated that he had killed about eight persons. (Ex 45, p 8).

(22a) Shoichi OKUFUR was a civilian guard on duty at Cell Block 5 at about 12:00 P.M., when the air raid alarm was given. (R 623) He remained there about thirty minutes when other guards came and assisted him in evacuating the prisoners to the air raid shelter located to the south. He was in and out of the shelter and remained there about an hour and a half. Part of the prisoners from Cell Block 5 assisted in fighting the fires. (R 623, 624). While there, he saw TASHIRO at the west of Cell Block 5 fighting the fire at Cell Block 4. This fire was extinguished. (R 628-629, 632).

Restricted

Restricted

(b) About 2:00 A.M., he received an order, through a prisoner, to evacuate. The prisoners and guard got separated and he went alone to the inner gate, going on a path from the northeast entrance of Cell Block 5 to the southeast entrance of Cell Block 4, through Cell Block 4 from the south to the north, and out the northeast entrance thereof, and then to the inner big gate, and through it, on to Yoyogi parade ground. (R 623, 626, 627) While enroute to the inner gate, he saw no Japanese prisoners or guards. (R 628, 629).

(c) After he passed through the gate, he saw Japanese prisoners and guards and at the same time, he saw TASHIRO, east of the big gate, supervising the evacuation of prisoners; but he does not know if the prisoners from Cell Blocks 1, 2, 3 and the detention ward had been evacuated. (R 628, 629) He remembered "slightly" and had a "vague" recollection that when he saw TASHIRO, he told TASHIRO that American prisoners had not been evacuated, and TASHIRO replied, "Is that so?" In a statement to Defense, he said he did not remember any such conversation, but mentioned it because the Prosecution suggested it. (R 629, 631, 633).

(d) After the fire, he did not remember when nor where, he heard KIMBE and KIMOTO state "in a manner as if they had achieved something, that they had cut someone". (R 631, 632) He later said he heard from KIMBE he cut someone but he did not hear such a thing from KIMOTO. (R 634).

(23a) Nihci DSHIN was a civilian guard at the Tokyo Military Prison when the air raid alarm sounded on 25-26 May 1945 at Cell Block 2. Some guards came to Cell Block 2 and half unlocked the cell doors so that to open the doors, a handle had to be turned from the outside of the cell. (Ex 46, p 2).

(b) Soon thereafter, Workshops 3 and 4 caught fire from incendiary bombs and while he was at the southwest of Cell Block 2, he saw TASHIRO, KOSHIKAWA, KIKUCHI and TERASAWA, standing by the guard room west of Cell Block 2 watching the situation. YAMAZAKI was directing some prisoners in pumping water, southwest of Cell Block 2. The roof of Cell Block 2 had caught fire and he and TERIKAWA threw buckets of water and temporarily put out the flame; but the inside of the cell block caught fire and after fighting it for thirty minutes, it got out of control and the fire at Workshops 3 and 4 also got out of control and KIFUCHI told everyone to evacuate to Yoyogi parade ground. He opened all the cell doors and helped evacuate the prisoners, some of whom were sick, while TASHIRO and some others watched, he being the last to leave. (Ex 46, p 2, R 639-640). The big inner gate was closed and he went through the small gate, MORIOKI being the guard there. (Ex 46, p 2).

(c) Roll call was held at Yoyogi parade ground the next morning and about fifteen prisoners were missing. About daylight they marched back to the inner compound and saw one dead body right by the inner gate and two more, a short distance south of the first. They were all facing up but he does not recall seeing any cuts or blood on the bodies. They were badly burned. (Ex 46, p 2-3).

(d) He heard rumors several times about KIMBE and KIMOTO stabbing American prisoners. (Ex 46, p 3, R 638, 640, 641, 643, 644, 650).

(e) Twice, once in November 1945 at Toyatama Prison and again in March 1946 at Eastern Army Headquarters, meetings were held of some of the prison personnel, on telegrams from KOSHIKAWA. KOSHIKAWA told the group the deaths of American prisoners were going to be investigated and it would not be good if their stories disagreed; and if they were interrogated, to say that Cell Block 4 received direct hits by incendiary bombs and due to

Restricted

Restricted

that fact, the prisoners therein could not be released; that five or six Japanese prisoners, who were sick perished in the fire; that for them to think before answering and that if they were asked anything else, to tell the interrogator they didn't know. (Ex 46, p 5, R 645-647) KOSHIKAWA did not tell them to make a false statement nor to conceal any fact, yet he also stated he knew some of the things said by KOSHIKAWA were false. (R 646-647) TASHIRO was not at these meetings. (Ex 46, p 5).

(j) The guards were told by KOSHIKAWA or SANO that Cell Block 4 would never be opened except for removing latrine bowls, without permission. (Ex 46, p 4, R 638).

(24a) Yasunobe INARI purposely cut his finger to keep him from going overseas and he was convicted thereof and on 25-26 May 1945 he was confined to Cell Block 5 of Tokyo Military Prison. (R 651, 658).

(b) Soon after the air raid alarm, Cell Block 5 received a direct incendiary bomb hit and the prisoners therein were ordered by the guards to enter the air raid shelter just south of Cell Block 5. A little later a bomb hit the shelter, causing smoke and commotion and the guards took them out of the shelter through the western entrance of the shelter. They remained in that vicinity a short time and then the guards lead them between Cell Block 5 and the air raid shelter, to the south, towards the east wall. They received no further instructions so they roamed about in that area. A little later, he heard a Japanese prisoner say some American prisoners had broken out of their cells. He heard shouting emanating from Cell Block 4. He went to a point west of the northeast entrance, to Cell Block 4, remained there a short time and proceeded to Yoyogi parade ground. (R 652-654).

(c) He saw no guards in the cell block area from the time he came out of the shelter to the time he went out the gate, going to Yoyogi parade ground. (R 654).

(d) Someone shouted the American prisoners had escaped, and he saw a guard of the general build and profile of KAMBE and whom he thinks was KAMBE, with sword unshoathed in his hand, enter the southwest entrance of Cell Block 4 and then heard shrieks from the cell block. (R 655, 656) The person so entering Cell Block 4 was running away from him and he saw him from the back, but saw the profile of his face. There was smoke in the area, but neither Cell Block 4 or 5 was on fire and it was not very light. He was standing at a point west of the northeast entrance of Cell Block 5 and he cannot state positively that KAMBE entered the southwest entrance of Cell Block 4. (R 652-653, 656, 658, 660, 661).

(e) When he returned to the inner compound the next morning, he saw one body southeast of the kitchen area. He saw the body as he passed by about one meter away. He saw no cuts on it but he saw what he thought was bloodstain about six inches long on the chest. He never saw the body but the one time. He believed the body was naked. The hair was burned, but the body was not burned black. (R 657-659).

(25a) Jiro H'V'SHI had been convicted of WOL and was a prisoner at Tokyo Military Prison on 25-26 May 1945 but he does not remember the cell he was in. (Ex 47, p 1, R 664).

(b) About midnight the prisoners in his cell block were evacuated to an air raid shelter. The prison was bombed and was ablaze, and they escaped to an open field. (Ex 47, p 1).

(c) The prisoners were moved to Meguro school and there, a few days after the fire, he heard KAMBE "brag" about he cut down American prisoners from the rear while they were escaping from the fire. At one

Restricted

Restricted

time, witness stated he did not hear KIMBE make the statement but heard same from others but later, he reaffirmed his original statement. (Ex 47, p 1, R 663-664).

(26a) Tomekichi NISHI was a prisoner in the detention ward of Tokyo Military Prison, being held pending trial for evading a suicide attack. (R 666).

(b) At Meguro school, he heard "either KIMBE or KIMMOTO say that during the fire at Tokyo Military Prison, the American prisoners were attempting to escape by breaking down the doors or the walls of their cell block, and the speaker had "slashed them". (R 666-667).

(27a) Seiji SHIPUI was a recruit guard at Tokyo Military Prison from 1 May 1945 until 26 May 1945 but he was not on duty that night. (Ex 48, p 1) After leaving there, he worked under KOSHIKAWA until after the end of war. (Ex 48, p 1).

(b) In prior air raids, sometimes the Japanese prisoners were escorted to air raid shelters and sometimes they were not; but American prisoners were never put in shelters during air raids. (Ex 48, p 2).

(c) He arrived at the prison about 10:00 A.M., 26 May and practically all buildings were destroyed. When he entered the inner compound, through the big gate, he saw a blackened, dead body, with what appeared to be coagulated blood on the inner thigh. He saw dead bodies between the east wall and the Cell Blocks 3 and 4 and in the remains of Cell Block 4. (Ex 48, p 2, R 676).

(d) He did not hear anyone say OKURO or KIMMOTO had cut, stabbed or killed any American prisoners. (Ex 48, p 2, R 683).

(e) He admitted he made a sworn statement to the Defense to the effect he never heard KIMBE had cut, stabbed or killed any American prisoners, in doing so, he made a mistake (R 673, 683) and, in fact, he heard KIMBE several times say he had stabbed American prisoners, as well as he had heard from other guards that KIMBE had done so. (Ex 48, p 2, R 683).

(f) At Toyatama Prison, in January 1946, KOSHIKAWA told him not to mention about KIMBE killing any prisoners and at a casual meeting between TASHIRO, KOSHIKAWA and some members of the prison personnel, on several occasions, KOSHIKAWA told them if there was an investigation of the fire; no one should say anything about KIMBE slashing any American prisoner; (the word "kill" was not used and he does not remember what word was used, R 684) and that there was no time to release the American prisoners. (Ex 48, p 3, R 677, 680, 684).

(g) He saw TAKUCHI, TASHIRO, KIMBE, SATO, ASANO, TANAKA, TAKIKAWA and SAKURA "individually" confer with KOSHIKAWA. (Ex 48, p 3).

(28a) Masao KIMINUMA was a civilian guard but he was not on duty on the night of 25-26 May 1945. He arrived at the prison about 8:00 A.M., on 27th of May and then went to Meguro school where the prisoners had been transferred. (Ex 49, p 1, 2).

(b) He heard from other guards that KIMBE, IMAI and KIMMOTO boasted of "cutting down" some four or five American prisoners but he did not hear whether they had died of wounds or burned to death, or the reason for the cutting. (Ex 49, p 2, R 687).

(29a) Masashi KOYAMA was a civilian guard at the Tokyo Military Prison but he did not arrive there on the night of 25-26 May 1945 until about 11:30 P.M. He entered an air raid shelter in front of

Restricted

the kitchen area and after remaining there about 15 minutes, an incendiary bomb fell in the dispensary area and he went there to fight the fire. He heard an order, "Evacuate! Evacuate!" and he proceeded to the gate with about fifty others and went to Yoyogi parade ground. (Ex 50, p 3, 4, R 694) When he left, he could not tell whether the cell blocks were on fire, on account of the smoke. (Ex 50, p 2, 4).

(b) There were oral instructions given which he did not remember by TASHIRO to the guards about evacuating Japanese prisoners to air raid shelters; but as to American prisoners, the guards were to follow the orders of the chief guard, in time of imminent danger as to when they would be evacuated. (Ex 50, p 2, 3, R 693-694) He does not think there was imminent danger on the night of 25-26 May. (R 694).

(c) He heard KAMBE say that American prisoners were causing a commotion so he stabbed them with his sword. (Ex 50, p 4, 5).

(d) At Nakano (Toyatama Prison) he was told by KOSHIKAWA to say that eight Japanese prisoners perished in the fire. (Ex 50, p 5).

(30a) Keinosuke NAKAGAWA was a convict in Tokyo Military Prison on 25-26 May 1945 for having struck a Japanese officer; and later, after he had served that sentence, he was convicted and served a sentence for larceny at another prison. (Ex 51, p 1, R 721).

(b) On the night of 25-26 May 1945 he was confined in Cell Block 3 and about forty minutes after the air raid warning which occurred about 9:00 P.M., the prisoners in that cell block were evacuated to an air raid shelter between Cell Blocks 2 and 3. He went with about eleven other prisoners to the workshop area to help put out the fire but it burned so fiercely that they were unable to extinguish it and TASHIRO, after about fifteen minutes, came and ordered them to flee to Yoyogi parade ground. When they got to the big inner gate, it was closed and one of the prisoners told the gate guard, TASHIRO had ordered them to evacuate and the big gate was opened. The big gate opened towards the outer compound and was opened flush against the wall. (Ex 51, R 722, 724, 725, 728, 729, 752).

(c) While they were passing through the gate, the guard asked him and several others to remain and fight the fire at the guard rest room. After about ten minutes, fighting the fire there was abandoned. (Ex 51, p 1-2, R 721, 724, 725, 728, 729, 752) At this time, he thought Cell Blocks 3 and 4 and Workshops 1, 3 and 4, the kitchen, dispensary and rest room were all on fire and there was smoke and sparks flying. He did not hear any noises or commotions, but he did hear the crackling of burning timber, and the noise of airplanes overhead. (R 627, 628, 740, 750).

(d) He stated that he saw TASHIRO standing inside the inner compound about the middle of the gate with KAMBE and OKUBO a few feet behind him and just before he went out the gate, he heard TASHIRO say, "Don't let them escape. Kill them." He thought TASHIRO was referring to his group of Japanese prisoners but he looked south and saw three large prisoners running along the east wall, towards the gate, one behind the other and he saw OKUBO advance and kill the first prisoner by stabbing him, and killed the second one with his sword by first cutting him on the shoulder and then stabbing him in the back. Then KAMBE advanced and killed the third by stabbing him with his sword. The prisoners fell where they were killed and as he left, OKUBO and KAMBE were standing by these bodies. At the time he saw these killings, he was about five or six meters away. (Ex 51, p 2, R 700, 731-750, 752-756, 766, 770) The next morning about 5:00 when he returned to the inner compound, he saw the three dead bodies still lying where they fell. (Ex 51, p 2, R 700, 770) The following day at Yeguro school, OKUBO and KAMBE came to him and OKUBO asked him not to mention anything he saw the night of the fire. (Ex 51, p 3, R 701, 758, 767).

Continued

(e) The witness admitted that in March 1948 at Kosuge Prison, when he was confined for theft, he voluntarily made a statement to Defense investigator MATSUI which he signed and swore to but which he claimed only the first part, the middle and the last part were read over to him (the statement being Def Ex "D"); (R 701, 703, 705, 707-708, 711-721) In his testimony, he in effect, said that MATSUI promised he would be released from prison if he made a favorable statement for the accused and appealed to his loyalty to his race, and suggested he denounce the statement he gave to the Prosecution. (R 705, 707, 708, 711, 718) Mr. Maddrix, Defense attorney, and Major Patterson, a Defense investigator, accompanied Mr. MATSUI to Kosuge Prison when the statement was made and they were in an adjoining room while it was being taken. (R 701, 703, 705, 719, 720) The whole of the Defense Exhibit "D" was read to him, paragraph by paragraph and he admitted that MATSUI read over to him the more or less formal and immaterial parts before he signed and swore to the statement but he either denied or said he did not remember stating to MATSUI the "real guts" of the statement. In the part denied, or which he stated he did not remember, he, in substance, stated his testimony that he heard TASHIRO give the order to OKUBO and KANEBE to kill the escaping Americans, and the killing of them by OKUBO and KANEBE was not true; and the same was made up by the Prosecution investigator and told by witness; on leading questions by the investigator, and signed and sworn to by him, after he had, in effect, been promised to be released from the prison term he was then serving. (R 713-719, 762, 763) He was released from prison on 27 April 1948. (R 768).

(f) The affidavit used as direct evidence was not the one taken by Lieutenant Martin, as Prosecution investigator, and referred to in Defense Exhibit "D", but the one used was an affidavit taken by Prosecution investigator Day after the Defense Exhibit "D" was given. (Ex 51, Def Ex "D", R 762)

(g) At the Yoyogi parade ground that night, there were many civilians as well as prisoners and prison personnel. (R 774):

(31a) Shosaburo TANAKA was a civilian guard at the Tokyo Military Prison but he was not on duty the night of 25-26 May 1945 and did not return to the prison until about 10:30 A.M., 26 May. Three or four days after the fire, in the hallway on the second floor of the Neguro school, KAMIMOTO told him and SHINANO that on the night of the fire, while he was on duty in Cell Block 4, three American prisoners broke out of their cells and he had stabbed the first prisoners and the others were frightened and retreated into their cell and it seems KAMIMOTO told the same story to the other guards. (Ex 52, R 781-784, 786).

(b) OKUBO told the witness at a time and place not remembered, he remained at the inner gate on the night of the fire after everyone else had evacuated, and had cut some American prisoners. (Ex 52, R 784, 785).

(c) KANEBE told him he had cut an American prisoner during the fire but the place and the time of the statement was not remembered. (Ex 52, R 786).

(d) On previous air raids, KOSHIKAWA told the guards not to open Cell Block 4 in case of air raids, as the Americans might escape and injure the civilians. (Ex 52, R 786, 787).

(32a) Keinosuke SHIRAI was a civilian guard at the prison, but he was not on duty on the night of 25-26 May 1945 and he returned about noon on 26 May. When he arrived there that day, he saw two dead bodies, one to the left and one to the right of the inner gate. One body was partly covered with a sheet of tin, and he thought the other one was also. (R 796, 797).

Restricted

(b) After the prison was removed to Moguro School, he made several trips to Tok o Prison and does not remember seeing the graves shown in the picture (Ex 18) until some time in October 1945. (R 796-798).

(c) In October or November 1945 at Nakano Prison, he was told (by TASHIRO, he believes, R 800) to tell the Occupation Forces that several Japanese prisoners perished in the fire and for him not to mention that any prison personnel "slashed" any of the American prisoners. (R 799-801, 802, 807).

(d) He stated that TASHIRO was a gentleman and had given the American the best clothing and treated them well and ordered the guards to do likewise. (R 802).

(e) He was sent to Tokyo Military Prison to search for American "dog tags", in December 1945, to be used in identifying the American dead and about two or three "dog tags" were found. (R 808, 809).

(33a) Koji TAKIKAWA was also a guard and was on duty the night of 25-26 May 1945. He was busy with various duties after the air raid alarm about 10:30 until about 1:30 when he left the inner compound. (R 810, 812).

(b) When he entered the inner compound the next morning, he saw three bodies near the inner gate and others scattered along the east wall. (R 812- 813).

(c) He thinks the bodies were buried in a shelter between Cell Blocks 1 and 2 on the 26th of May. (R 813-814).

(d) He heard KAMBE say while he was near the kitchen, that he had stabbed an American, or Americans, that night but he did not hear him say where same occurred. (R 814-815).

(e) He heard either TASHIRO or KOSHIKAWA at Takabashi, at a meeting held there, pursuant to a telegram, say a report of the fire would be submitted to the Americans stating that all the Americans were killed, and that eight Japanese prisoners perished and if they were interrogated, they were to so state. So far as he remembers, they were not further instructed. He does not remember whether both TASHIRO and KOSHIKAWA were there or only one of them and if only one, which one. (R 815, 816, 817).

(34a) Koichi SAGAMI was a guard and was at the prison on the night of 25-26 May 1945. (Ex 53, p 1) When the air raid warning sounded, he reported to the guard room and was assigned to the detention ward. When the second alarm sounded, the detention ward was evacuated to the air raid shelter in front of that ward. Later, the prisoners from that ward, on instructions received through the guards, left the inner compound for Voyogi parade ground, he accompanying them. (Ex 53, p 1).

(b) The next morning about 5:00, he and ONO walked through the inner compound to see the destruction and as they entered, he saw two American bodies lying face down on the left of the gate, and he saw the remains of bodies in Cell Block 4. He returned to Voyogi parade ground and re-entered the inner compound with the prisoners and guards. Later, he saw other dead Americans; as he passed within two or three feet of the two bodies at the gate, he noticed a cut in the back of one about two or three inches long with something "a dusky color", which he took to be blood on one side of the cut, about an inch therefrom. The bodies were "blackened a little" and were "smoke colored." Some part of the bodies were covered. (Ex 53, p 1, R 823-827).

(c) He heard from other guards that KAMBE, KAMIMOTO and OKUBO had cut and stabbed American prisoners with their swords when the Americans broke out of their cell and tried to escape. He admitted that

Retained

on one occasion, he told the Defense that he had heard KAMBE had cut or stabbed Americans and on another occasion, he told them that he had heard that KUNITOMO had done so, and he never told Defense that he had heard OKUBO had cut any Americans. He further stated that when Defense called his attention to these facts, he told the Defense he never heard that either KAMBE or KUNITOMO had cut or stabbed any prisoners. He stated he did not think the Defense had asked him about each one on the occasions mentioned. (Ex 53, p 1, 2, R 820-821, 828-833, 835).

(35a) Masaichi ASANO was a civilian guard at the prison on the night of 25-26 May 1945 but he did not arrive there until about 11:00 P.M. He immediately reported to the watch room and was assigned fire fighting duty and fought fires near the office and the dispensary area and Workshops 2 and 3. (Ex 54, p 1, 2).

(b) KIKUCHI was chief guard of the day and MORIOKO was the guard at the inner gate. (Ex 54, p 2) MORIOKO told him they were preparing to evacuate the inner prison. At that time, the prisoners were still in the detention ward and were not in the air raid shelter. (Ex 54, p 2, 3) A guard came running and yelled to evacuate the man and for MORIOKO to open the inner gate. He was told by KOSHIKAWA to and did help in evacuation of the prisoners from the detention ward.

(c) He had heard KOSHIKAWA first ask TASHIRO if it was all right to evacuate the Japanese prisoners and upon receiving an affirmative reply, he heard KOSHIKAWA say to TASHIRO these words: "Call Block 4" and he then went beyond hearing distance and did not hear the completed sentence. When the evacuation was in progress, it was about 1:00 or 2:00 A.M. (Ex 54, p 2, 3).

(d) About 5:00 the next morning, he returned to the inner compound with the prisoners and he saw two dead bodies south of the inner gate. (Ex 54, p 3). Later during the morning, he saw the other dead bodies. At KAMBE'S request, he accompanied him to see another body, in the rear of the kitchen. (Ex 54, p 3).

(e) He helped bury some of the bodies. He saw no cuts or wounds on the bodies. All the bodies he saw were burned beyond recognition, (Ex 54, p 3).

(f) TASHIRO told the prison personnel that the Americans were special prisoners of the Legal Section of the Eastern Army and they would be segregated and special precautions taken to keep them from being seen by and mixing with the other prisoners. There was a wooden fence between Cell Blocks 4 and 5, and the windows of Cell Block 4, next to Cell Block 3, were shaded and the Americans were never removed from their cells except one at a time while blindfolded, for interrogation by the legal department. (Ex 54, p 2, 3).

(g) During a conversation about the fire on 26 May, before transferring the prisoners to Neguro school, he heard KAMBE say he, KAMBE, stabbed American prisoners who attacked him after breaking out of their cells. He heard SHIMADA and KUNITOMO say they had stabbed some American prisoners, in the excitement of the fire. He likewise heard OKUBO say he had "cut" some American prisoners. All of these parties spoke in "bragging voices." He heard that KUNITOMO, at other times, stated he "cut" some American prisoners who had broken out of their cells. (Ex 54, p 4).

(h) Sometime in August 1945, at YAMASHI-YEN, TASHIRO, at a meeting told the guards not to worry about Americans perishing in the fire; that he took full responsibility for it. At the termination of the war, at a meeting held by the prison personnel at Toyotama Prison, at which KOSHIKAWA was present, TASHIRO stated that if any of those in attendance were questioned about the fire, to say that every effort was made to release the Americans but due to a direct hit of Cell Block 4 by an incendiary bomb, and the intense heat of the raging fire, it was impossible

Retained

Restricted

to do so. He further stated no one should implicate anyone else. TASHIRO stated SHINANO must have done something during the fire as he did not appear at the meeting. (Ex 54, p 5).

(i) No chief jailer can give orders to evacuate if TASHIRO is present. However, in an emergency, any chief jailer may give an order to save a prisoner whose life is in danger. (Ex 54, p 4).

(36a) Isamu ISHII, a civilian guard, was on duty on the night of 25-26 May 1945, and was assigned by chief guard KIKUCHI to guard the air raid shelter southeast of the detention ward. When the sirens sounded, he went to the rest room end, got the keys and on orders of KIKUCHI, opened the doors of that ward, and escorted the prisoners to the air raid shelter mentioned. He remained in that shelter for about an hour, and until TASHIRO gave an order that the prisoners in that shelter be taken to Yoyogi parade ground, and he does not know what occurred in the prison during the time that he was in the detention ward and in the air raid shelter. (Ex 55, p 1).

(b) On the morning of 26 May, about 5:00 or 6:00 A.M., he, with other guards escorted the prisoners to the inner parade ground; and he saw three dead bodies near the inner gate. One was naked, and all were burned. All of the bodies were lying face downward, and the brains of one was out, as if his head had been "bashed". (Ex 55, p 2).

(c) He heard at Meguro School and the Demobilization Center, from KAMBE and KATAMOTO that they "cut" American prisoners with their swords while they were in Cell Block 4. (Ex 55, p 2).

(d) There were six recruit guards detailed to guard Cell Block 4. They alternated in doing the guarding every thirty minutes. (Ex 55, p 2).

(e) Two "dog tags" were found by a group of which he was a member after the war in the remains of the watch room and he heard later other "dog tags" were found there. The watch room was where the "dog tags" were kept. (Ex 55, p 2).

(f) In June or July 1945 TASHIRO called a meeting attended by most of the prison personnel, including KOSHIKAWA, and at the meeting TASHIRO said he took all responsibility for the fire, and for the death of the fliers and, for the personnel to say they knew nothing about it. Another meeting was held at NIKINO for the personnel not attending the first meeting, and they were instructed by KOSHIKAWA or FUJII. (Ex 55, p 3).

The Prosecution introduced one or more statements of each of the Accused, as follows:

(37a) In a written statement of 26 January 1946 for the Prosecution, TASHIRO stated he arrived at the prison on the night of 25 May 1945 about 11:00, after an air raid alarm had been sounded about 10:30 and a short time thereafter bombs started falling. He had about one hundred fifty Japanese prisoners released to help fight the fire which had spread to the inside edge of the prison. (Ex 56, p 1) About 1:30 A.M., the fire became uncontrollable and he gave the order to KOSHIKAWA to release all prisoners and KOSHIKAWA could relay the order by hollering out in general. (Ex 56, p 1, 2).

(b) The buildings were all wooden and no air raid shelters had been completed for use during incendiary bombing. (Ex 56, p 1) There were about four hundred Japanese prisoners and sixty-two Americans. Five of the Americans arrived 29 April 1945 and fifty-seven on the 9th and 10th of May. The Americans were held as suspected war criminals until their status was determined by the government.

Restricted

Restricted

(c) He was responsible for setting up a system of emergency measures for use during air raids but no special guard had been designated to open the cell in an emergency for such duty rotated. (Ex 56, p 1) There were special guards placed at other cell blocks that night but on account of the shortage of guards, none were placed at Cell Block 4. (Ex 56, p 2).

(d) He was found guilty of negligence by the Army commander in causing the deaths of many prisoners and destruction of property and given a ten-day sentence. (Ex 56, p 2).

(38a) In a written statement of 4 May 1946 for the Prosecution, TASHIRO stated that Americans were brought to Tokyo Military Prison by the Kempei Tai and were treated as criminals, being suspected of indiscriminate bombings. General SHIMADA ordered them to be held until further orders. (Ex 57, p 1) He never personally inspected any of the prisoners but he supposes Lieutenant KURODA, the physician, did do so. (Ex 57, p 2).

(b) The Americans were confined at Cell Block 4 which was constructed of wood. He described the construction of the building. (Ex 57, p 2).

(c) The doors to the cells were always locked but the outside door to the cell blocks was not locked. The five keys were kept in the guard room and each key would unlock the cells of each and every cell block. (Ex 57, p 2, 3).

(d) There were air raid shelters for each cell block but the one for Cell Block 4 was incomplete. (Ex 57, p 2).

(e) Guards who were armed with swords were placed in each cell block except Cell Block 4. The guard at each cell block was supposed to open the doors of that cell block after order from TASHIRO and, as to Cell Block 4, he intended to order someone "nearby" to open that door after the orders were released from him. (Ex 57, p 3).

(f) There were sixty-two American prisoners in Cell Block 4 and 464 Japanese prisoners in the other cell blocks on the night of the fire. (Ex 57, p 4).

(g) On that night, the air raid alarm sounded and he went immediately to the prison arriving there about 11:00 P.M. He went to the guardhouse and KIKUCHI, the head guard of the day head guard TERASHIMA, in charge of fire fighting, were there and KIKUCHI reported the cell doors had been half unlocked. KOSHIKAWA was at the prison. Incendiary bombs were dropped but the fires were controlled for some time, but more planes came and bombed severely and he decided that the fires could no longer be controlled and ordered "to prepare to evacuate the prisoners" which meant that "the guards were to stop fighting the fires and go to the guard house where they would be given handcuffs." The prisoners would then be moved from their cells, handcuffed, lined up in front of the cells and counted. (Ex 57, p 4) The fire spread so fast that almost immediately after he gave the first order, he ordered "Release the prisoners." KOSHIKAWA was at his side at the time; then the bombs began falling fast and the detention ward caught fire and he and others ran out of the small gate north of the big inner gate which was closed, and went to Yoyogi parade ground where he remained until the next morning. (Ex 57, p 4).

(h) About sunrise the next morning, when he returned to the inner compound, he discovered all the buildings had been burned, and he saw the dead bodies of Americans. In all, sixty-two Americans were counted and the bodies of all were badly burned except the three near the gate. Eight Japanese prisoners perished. (Ex 57, p 5) He advised KOSHIKAWA to bury the dead and went to report about the matter to General SHIMADA but could not report any names as the records were destroyed in the fire.

Restricted

Restricted

(Ex 57, p 4) When he returned that day, the Americans had been temporarily buried in an air raid shelter between Cell Blocks 2 and 3. Lieutenant KURODA inspected the bodies and made out death certificates that they died by bombing, the death certificates having been burned at Fofu Prison. (Ex 57, p 6).

On the motion of the Defense, the Commission ruled that the extrajudicial statements of the several accused were inadmissible as evidence against any co-accused "except for matters pertaining to conspiracy charges". (R 845-849, 864-869) The statements of the other accused will therefore not be here included.

Thomas MASAKI testified orally that he was an interpreter employed by SCAP and on 13 March 1947, he interpreted an interrogation of OKUBO by Captain Martin at the Meiji Building in Tokyo, only the three of them being present. Captain Martin took down the interrogation on the typewriter himself. Captain Martin asked the questions and he interpreted the questions to OKUBO and then interpreted the answers to Captain Martin who wrote them on the typewriter. At 5:00 P.M., the interrogation was not complete and the three of them went to Captain Martin's home, arriving there about 5:30 or 6:00. OKUBO was escorted upstairs and he and Captain Martin ate supper downstairs, OKUBO'S supper being taken to him. He and Captain Martin drank "a jigger" of liquor before supper. (R 849, 850, 861-863, 873, 878).

After supper, the interrogation was resumed in the same manner. He identified Exhibit 65 as the result of the interrogation. (R 863, 864) At the interrogation, OKUBO, in witness' presence, drew the sketches attached to Exhibit 65, and he explained the sketch as follows:

"The figures 1, 2, 3 and 4 signify Cell Blocks 1, 2, 3 and 4; and on the right of the sketch you see a group of crosses. He said they signified dead bodies of Americans; and on top of that is also a round circle, and to the left of the round circle is a figure of a man, which he said signified another dead American. Above that, and to the right, is another round circle which he said was KOSHIKAWA who was standing there. Now, to the left of the cell blocks is another round circle and below that round circle is, in Japanese characters, what he said was TASHIRO. Below is the same as he said was TASHIRO. To the left of that was the work house and above the work house was the latrine. And he also stated that the x's which are in Cell Block 4 signified bodies. That is all I remember". (R 869) He further explained that the figure of the man with a circle beside it above the crosses on the sketch, represented the body of an American whom he had slashed from behind. (R 870).

During the interrogation, OKUBO denied he killed anyone and he was not responsive to the questions, and Captain Martin reprimanded and scolded him. Captain Martin lost his temper quite a few times but he did not strike him nor threaten him with physical violence but during the first interview, OKUBO was quite nervous. (R 871, 872, 875, 377) During the interview, Captain Martin told OKUBO there was no use hiding the facts; that he had other information available to him. (R 872).

Witness did not remember whether Captain Martin called OKUBO a liar several times, told him Prime Minister ASHIDA had stated he saw him kill an American, that he pointed to a stack of papers and said they showed he killed an American and that he told him he would send him to Sugamo if he did not admit killing an American and other material matters reflecting on the voluntariness of statement. (R 875-377) Neither before nor during the interrogation did the witness remember OKUBO being advised that he was talking to the Prosecution and any statement he made would be used against him. (R 870).

The Commission was asked to take judicial notice of the Geneva Convention (R 881-883) and of the paragraphs 7a and 7b, among others of the Operational Directive 29, Eighth Army, March 11, 1946, authorizing the Provost Courts to impose fines up to 75,000 yens or impose sentences up to five years on conviction of offenses by Japanese nationals. (R 883).

Restricted

Restricted

c. Keiji KAMIMOTO

Accused Kamimoto was charged with, and convicted of, wilfully killing six unidentified American prisoners. (Charge and Spec, R 1654).

Prior to the trial the accused made two sworn, and two unsworn, statements for the prosecution, as follows:

(1) In a written statement of 21 January 1946, Keiji KAMIMOTO stated he was a civilian guard at Tokyo Military Prison and arrived at the prison on the night of 25-26 May 1945 about 10:30, about twenty minutes after the alarm and was immediately put in charge of a fire fighting squad. About fifty prisoners from Cell Block 5 were released to help fight the fire. At first they used their efforts to keep the fires blazing outside from spreading into the prison compound but about 1:00 a.m., incendiary bombs began falling inside the prison area. The fires thus started were kept under control. (Ex 60, p 1-2).

KOSHIKAWA was watching the fire, and saw it was getting uncontrollable and so reported to Tashiro, and Tashiro ordered the sick from Cell Block 2 to be released and while witness and others were at Cell Block 2, KOSHIKAWA came to Cell Block 2 and ordered the release of prisoners from Cell Block 4. He and KAMIMOTO immediately went to Cell Block 4 and he was able to open four cells in the center, and KAMBE, three cells; but bombs had already hit Cell Block 4, and it was blazing and he had to run through where it was burning to escape. It was burning in every direction. (Ex 60, p 3) Remembering the air raid shelter which would hold about eighty, in the inner parade ground, he went there and remained the rest of the night with about thirty Japanese. (Ex 60, p 1, 2, 3).

There were special guards placed at all cell blocks that night except Cell Block 4. No one could open the doors to the cells unless orders were given by KOSHIKAWA or TASHIRO. There was no one especially designated to open the doors to Cell Block 4. If he had known no one else had gone sooner, he would have gone himself to Cell Block 4 and he thinks if someone had gone immediately after the order was hollered out, "the Americans might have been saved". (Ex 60, p 3).

(2) Keiji KAMIMOTO gave another statement in Japanese to the Prosecution. He stated TASHIRO telephoned KAMIMOTO to come to the First Demobilization Ministry and when he went there, TASHIRO showed him a statement and told him to testify that way in any statement made about the fire of 25-26 May 1945. In his former statement, KAMIMOTO testified falsely; not because he felt guilty but because he was ordered to do so by his superior. (Ex 61, p 1) The material difference between the two statements was: in Exhibit 60, he said he and KAMIMOTO were ordered to, and actually did, go into Cell Block 4 and that they opened seven doors to cells; while in this statement, he said the fire at Cell Block 4 was so bad he could not enter; and instead, he went to the safety of an air raid shelter. He intimates that neither did KAMBE enter Cell Block 4 at that time. (Ex 61, p 1, 2).

(3) In another written statement to the Prosecution, 6 November 1945, Keiji KAMIMOTO stated when he reported to the prison, he was assigned to fire fighting duty by KIKUCHI and he fought fires at the various buildings. They could not put out the fires at 3 and 4 Workshops, and they abandoned the fire fighting and went to the guard house, where, in response to KOSHIKAWA's orders, he made several trips to the gate assisting in evacuating the sick from Cell Block 2. He heard someone say Cell Blocks 3, 4, and 5 were burning. He went to Cell Block 4 and when he arrived, it was a fire and partially burned in the southwest and southeast section and when he pushed the door open from the outside, flames came out and drove him back. SHIMANO came along at that moment and at SHIMANO's

Restricted

Restricted

suggestion, they put wet blankets over their heads and proceeded to a small air raid shelter by the watchtower, and later went to the unfinished air raid shelter at the inner parade ground, where they spent the rest of the night, with about twenty Japanese prisoners and two guards. (Ex 62, p 1).

The next morning about 6:00, he and SHINANO went up the road between the workshop and cell blocks and out of the compound through the inner gate; and at the inner gate he saw two large, bloated and burned bodies which he thought were Americans. Then they went on to the parade ground where they reported to TASHIRO and KOSHIKAWA. (Ex 62, p 1, 2) The guards and Japanese prisoners were assembled there. He then went home and reported back to work at about 7:30 or 8:00 a.m.. He heard from another guard that there were two Japanese prisoners missing. He helped escort some of the other Japanese prisoners to the inner parade ground. (Ex 62, p 1, 2) He learned there that all of the Americans were burned to death. (Ex 62, p 2).

During the day, about noon, while the guards were discussing what they each did during the fire, someone said that Cell Block 4 was not opened, and KAMBE stated he and OKUBO had "cut down" several Americans who had attempted to escape, but OKUBO was not present. Later, at Meguro school in the presence of OKUBO, KAMBE made the same statement and OKUBO became very angry, and called KAMBE a liar and stated he was not with KAMBE that night. KAMBE stared at OKUBO and laughed, and then left the group. KAMBE was known to be "a bluff and a liar," and he does not believe KAMBE had the "guts" to cut down the Americans. (Ex 62, p 4, 5, 6).

The only explanation he can give as to how the bodies of the Americans were found along the east wall was they got out of their cells and were overcome by smoke and fire and fell in the pathway. (Ex 62, p 2, 3).

He was ordered by KOSHIKAWA to count the dead and KAMBE was ordered to bury them. He counted at least twenty-three bodies along the wall. He did not examine the bodies but while he was helping KAMBE bury them, KAMBE told him some of the bodies were charred. (Ex 62, p 3).

In February 1946, a meeting was held at the First Demobilization Center attended by TASHIRO, KOSHIKAWA, KIKUCHI, KAMBE, TAKIKAWA and KAMIMOTO, and Colonel MAKATA from the Legal Section of the First Demobilization Center; and in order to lighten TASHIRO's responsibility for not ordering the cells in Cell Block 4 opened on the night of the fire, it was agreed that KAMBE and witness would state they had received orders to open them. Witness first protested against assuming responsibility with KAMBE, but wanted to assume it with SHINANO. As SHINANO's address was not known, he finally consented to assume the responsibility with KAMBE. (Ex 62, p 3) During the discussion at the meeting, KAMBE was asked why he had stated he had "cut down" and "stabbed" Americans, and KAMBE implied the stories were false; and TASHIRO told him if his talk kept up he would be punished for something he did not do. (Ex 62, p 3) The next meeting was in March 1946 at Tobu Fukuin Kambu Honbu which was attended by the same group (except MAKATA) and some others. At this meeting, he again requested that he and SHINANO state they received orders from TASHIRO to open the cells in Cell Block 4 since they had each opened the door to the cell block and could not enter because of the fire, but his request was denied and it was still agreed that he and KAMBE received orders to open Cell Block 4 from TASHIRO. (Ex 62, p 4).

TASHIRO reminded the guards that the Americans were not to be let out under any circumstances. (Ex 62, p 5).

For ten days beginning 27 May 1945, he was at home on a rest leave because he was suffering from tuberculosis. (Ex 62, p 6).

(p. 38 of, 92, Toshio Tashiro et al Case # 78)

Restricted

Restricted

(4) On 20 February 1948, Keiji KAMINOTO made an unsigned statement to James Fujiyama, interpreter, Legal Section of SCAP, in which he stated he did not write or sign the statement, 3 October 1945, for TASHIRO but that statement was handed him by TASHIRO already written out, and he is hazy on the fact of attending a meeting on that date. He had a vague recollection that he attended two meetings; one at the First Demobilization Depot in March 1946. (Ex 68).

(5) There is proof (some of which is not clear or entirely satisfactory) tending to show the accused admitted to the witnesses that he had cut and stabbed (not killed) American prisoners the night of the fire. (Ex 37, p 7; 46, p 3; 52; 55, p 2; R 361-363, 631, 632, 666-667, 786, 787).

(6) There is proof (some of which is vague and uncertain) that witnesses "heard" from others that accused had admitted cutting, stabbing, and/or killing American prisoners that night. (R 196-197, 199; 232; 243; 235-239, 311-315, 317, 392, 426, 430, 436-438, 440-441, 451, 499, 505-506, 539-540, 544, 687, 820-821, 828-833, 835; Ex 31, p 2; 32, p 2; 33, p 2; 39, p 3; 40, p 3; 42, p 8; 43, p 4; 49, p 2; 53, p 1-2; 54, p 4).

(7) There is likewise proof that he mistreated, threatened, or said he was going to kill or injure American prisoners and that he was apparently on his way to do so. (Ex 34, 45, p 6-7; R 264, 265-266, 277-282, 608-610, 612, 615).

(8) While there is proof that one or more of the dead bodies found at the inner gate showed evidence of wounds, and one witness, on rumor, stated some of the bodies found along the east wall had been bayoneted, there is proof contradictory thereof. (R 190, 324, 327-334, 358-359, 362-363, 425, 447-448, 486, 500, 502, 575, 657-659, 676, 823-827; Ex 36, p 3; 37, p 6; 38, p 3; 39, p 1-3, 40, p 2-3; 42, p 2; 43, p 2; 44, p 1-2; 46, p 2-3, 48, p 2; 53, p 1; 54, p 3; 55, p 2).

(9) All of the proof showed the bodies in the remains of Cell Block 4 had been so badly charred that it was impossible to tell whether or not they had been wounded. (R 327, 333-334; Ex 54, p 3).

(10) If the accused killed an American prisoner because the prisoner was trying to escape from this burning building, under Japanese law, accused would be guilty of murder. (Ex 26, R 91-93).

d. Hatsuaki KATBE

The accused KATBE was charged with, and convicted of willfully killing, eight unidentified American prisoners of war. (Charge and Spec, R 1653).

He made two sworn extra-judicial statements to the Prosecution prior to the trial, which are as follows:

(1) In statement of 23 January 1946 he stated he was a civilian guard at Tokyo Military Prison doing guard duty on the night of 25-26 May 1945. The alert was given about 10:30 p.m. He was assigned to Cell Block 2. After the inmates of Cell Block 2 were evacuated, he went to release the Americans in Cell Block 4 and it was full of smoke. He unlocked three cell doors and the wooden structure burst into flames and he told the Americans, in Japanese, to go in a northerly direction towards the gate and he ran in that direction. However, the fire was too fierce and he doubled back and went to an incomplete air raid shelter behind the "interior wall" of which he was not conscious until he noticed it. The Americans continued on north towards the gate. They did not know of this shelter. (Ex 63, p 1, 2) At the time Cell Block 2 was evacuated,

(p. 39 of, 92, Toshio Tashiro et al Case # 7E)

Restricted

Restricted

all the workshop area, about fifteen meters from Cell Block 4, were burning and outside the compound the area was burning fiercely. (Ex 63, p 2) The order to open cell blocks had to originate with TASHIRO. There were sentries at all cell blocks except Cell Block 4 where the Americans were incarcerated. (Ex 63, p 2, 3).

(2) On 21 March 1947, in another statement he said he was given a life sentence for mistreatment of POW's at Yokohama Camp No. 1. He was a guard at Tokyo Military Prison from July 1944 to the end of the war. There were sixty-two American prisoners there who were all killed in the fire which burned the prison on 25-26 May 1945. (Ex 64, p 1).

The statement previously given by him is false where it stated he had gone to Cell Block 4 and unlocked some of the cells. He made this false statement at the request of TASHIRO. TASHIRO called a meeting about a month before he was called to the Meiji Building for questioning, attended by TASHIRO and KAMIMOTO and the witness, at the First Demobilization Board where witness was working at the time. TASHIRO then suggested that witness make the false statement that he had gone to Cell Block 4 and unlocked the American prisoners. (Ex 64, p 1).

While he was evacuating prisoners through the gate, he overheard someone say, "If the Americans escaped from their cells, to go after them and 'sochi se'," which means to kill; but he does not know who gave that order. Whoever gave the order, it must have originated with TASHIRO. He believes he heard his name in the order, but he stated positively he did not kill any Americans. (Ex 64, p 1, 2) He stated, however, that had TASHIRO given the order to him, he would have to obey it although he would not like to do so. (Ex 64, p 1) He never heard of anyone killing any Americans that night. He heard later some of the Americans broke out of their cells and started a rumpus but he does not know what happened to them. (Ex 64, p 2).

He helped in the burial of the Americans. KAMIMOTO and 'SAKUR' also helped in the burial and he was told by them that there were sixty-two Americans buried and two or three Japanese prisoners, all in one grave. (Ex 64, p 2)

(3) Keinosuke NAKAGAWA claimed to have seen accused kill an American prisoner, with a sword, at TASHIRO's order, near the inner gate; and later with OKUBO ask him to keep it secret. (Ex 51, p 2; R 700, 701, 731-750, 752-756, 758, 766-767, 770).

(4) There was testimony (some of which was vague and uncertain) that the accused mistreated, attacked, or threatened American prisoners with a sword, or witnesses heard him say that he was going to kill American prisoners while he was apparently on his way to do so. (Ex 34, 35, p 2; R 264-265, 266, 268, 269, 277-282, 294, 296, 297-298, 301-302, 652-653, 655, 656, 660, 661).

(5) There was evidence (some of which was not satisfactory) that the accused admitted he had killed one or more American prisoners. (one saying five or six) the night of the fire. (Ex 41, p 1, 2; 45, p 8; R 468, 469, 474, 477-478, 563-572, 618).

(6) There was likewise testimony tending to show that the accused admitted he had cut or stabbed one or more American prisoners (one saying about eight) the night of the fire. (R 196, 197, 199, 252, 254, 255, 256, 257, 297-298, 260, 342-349, 392, 618, 631, 632, 634, 663-664, 666-667, 673, 683, 687, 786, 814-815; Ex 33, p 1, 2; 35, p 3, 4, 5; 37, p 7, 9; 38, p 3; 45, p 8; 47, p 1; 48, p 2; 49, p 2; 50, p 4, 5; 52; 54, p 4; 55, p 2).

Restricted

Restricted

(7) There was evidence (some being vague and uncertain) that the witnesses "heard" from others that the accused had cut, stabbed, or killed one or more American prisoners the night of the fire. (R 311-315, 331; 426, 430, 436-437, 438, 440-441, 451, 468-469, 474, 477-478, 499, 505, 506, 539-540, 544, 631, 632, 634, 638, 640, 641, 643, 644, 650, 687, 820-821, 828-833, 835; Ex 36, p 1; 39, p 3; 41, p 1-2; 42, p 8; 43, p 4; 46, p 3; 49, p 2; 53, p 1, 2).

(8) Paragraphs 8, 9 and 10 of Kamimoto are equally applicable to this accused and are here referred to.

e. Mataishi OKUBO

The accused OKUBO was charged with, and convicted of, unlawfully killing three unidentified American prisoners. (Charge and Spec, R 1653).

He gave Prosecution two extra-judicial statements, one unsigned and one signed and sworn to, as follows:

(1) In an unsigned statement dated 13 March 1947, Mataishi OKUBO stated he was a civilian guard at Tokyo Military Prison and he was present on 25-26 May 1945 at the time of the fire. At about 10:00 p.m., there was an air raid alarm. KOSHIKAWA was in charge at the time and witness was working under TERASAWA who was in charge of fire fighting. Shortly after the fire fighters took their positions and incendiary bombs began to fall, and the fire fighters fought the fires for about three hours until the fires became uncontrollable. About 10:30 p.m., on orders of TERASAWA, he and SUTO took the prisoners from Cell Block 5 to a shelter south of that cell block. The doors to the cell block had already been unlocked. He remained in the shelter for about an hour, and then he began fighting fire again. The cell blocks caught fire, and he saw some men from the north end evacuating, and about that time he heard a loud voice yell for them to get out, and he went to the shelter and escorted the Japanese prisoners through the road between the workshops and the cell block area. On account of the wall, he could not see which cell blocks were burning but at that time, he did not hear the American prisoners screaming, and he does not believe Cell Block 4 was on fire. (Ex 65, p 1, 2).

There was a rule at the prison that escaping prisoners were to be stopped. He went to TASHIRO, just outside in the inner compound, during the fire and reported to him that some Americans had broken out of their cells and TASHIRO ordered the witness and TERASAWA to go after them and kill them. He believes KIMBE was there also. TERASAWA did not go after the Americans and kill them and he was not punished for failing to do so. (Ex 65, p 1, 2) (This statement was identified and put in evidence through the testimony of Thomas IWASAKI, R 849-880).

(2) In a written statement given the Prosecution 17 March 1947, Mataishi OKUBO stated that he had personally written a statement telling all he knew about the deaths of the Americans at Tokyo Military Prison (but that statement was not presented in evidence). (Ex 66, p 1).

He stated he received an order from TASHIRO in the presence of TERASAWA, SANJO, KOSHIKAWA, TAKUCHI and KIMBE and, he believes, KAMIMOTO and SUGI, to kill American prisoners if they tried to escape. (Ex 66, p 1) After all prisoners had been released from Cell Block 5, on hearing a lot of commotion in Cell Block 4, he went in Cell Block 4 and saw KIMBE and KAMIMOTO and three American prisoners and about seventeen Japanese prisoners in the corridor. This was about 11:30 p.m. He went to the guard house and reported the facts to KOSHIKAWA and KIKUCHI. They did not know the whereabouts of TASHIRO and he went to the cell block

Restricted

Restricted

where Shigero KOSHIDA (later Prime Minister of Japan) was confined and found TASHIRO behind that cell block. He reported the fact to TASHIRO and TASHIRO told the witness that if any Americans tried to escape, to catch them and kill them. He realized then that TASHIRO intended all Americans to die in the fire. This occurred after all the Japanese prisoners had been evacuated. (Ex 66, p 1, 2).

At this point in his statement, witness stated he wished to "withdraw" the statement he made to Captain Martin on 13 March 1947, that he ran after an American prisoner and stabbed him. (Ex 66, p 2).

KOSHIKAWA was the last man at the inner gate. So far as he knows, or ever heard, neither KAMBE nor KAMIMOTO killed any Americans. (Ex 66, p 3) If TASHIRO had ordered him to kill an escaped American prisoner, he would have been required to do so but TASHIRO never gave any such order but when he reported to TASHIRO that the Americans were escaping, TASHIRO said, "Is that so?"

There were sixty-two Americans who perished in the fire and he heard that four or five Japanese prisoners were burned at that time. (Ex 66, p 2, 3).

He stated he wished to "retract" what he had said in his statement of 13 March 1947 because he was "confused and did not know what he was saying when he made this statement". (Ex 66, p 2, 3).

(3) Witness NAKAGAWA testified he saw accused kill two unidentified prisoners with his sword on orders of TASHIRO on the night of the fire. (Ex 51, p 2, 3; R 700, 701, 731-750, 752-756, 758, 766, 767, 770).

(4) There is evidence that OKUBO admitted that he had killed one or more American prisoners on that night. (Ex 43, p 4; R 548, 550, 551-552).

(5) There is likewise evidence (some of which is rather unsatisfactory) that OKUBO admitted to others that he cut or stabbed one or more American prisoners on that night. (Ex 52, 54, p 4; R 786-787).

(6) A number of witnesses said they heard of others that OKUBO admitted killing, cutting and stabbing one or more American prisoners on that occasion. (R 311-315, 411-412, 417-418, 421-422, 579-580, 595, 820-821, 828-833, 835; Ex 44, p 2-4; 53, p 1-2).

(7) Witnesses testified to facts tending to show accused was at or near the place where wounded bodies were found, with his sword, at or near the time they perished, and he had threatened to "cut them". (Ex 27; 34; 37, p 5; R 159, 189-190, 215, 217, 272, 273, 286, 361, 408, 575, 583-586).

(8) Paragraphs 8, 9 and 10 of KAMIMOTO are also applicable to this accused, and they are here referred to.

(9) Iwasaki, the interpreter for Captain Martin, said Captain Martin lost his temper several times while taking Exhibits 65 and 66 and scolded OKUBO, reprimanded him; and said he did not remember whether the other reprehensible acts charged against Captain (OKUBO, Def Ex E) were true. (R 871, 872, 875-878).

f. Masao KOSHIKAWA

KOSHIKAWA made two sworn statements to the prosecution prior to the trial, in substance as follows:

(p. 42 of, 92, Toshio Tashiro et al Case # 78)

Restricted

Restricted

(1) He was formerly a liason officer between TASHIRO, the warden, and the members of the prison force but KIKUCHI was performing that duty on 25-26 May 1945 and KOSHIKAWA fought the fires. He did not arrive at the prison on that night until about 11:00, about thirty minutes after the alert. (Ex 58) Bombs did not fall in the prison area until about midnight, the first fire breaking out at the dispensary in the north-west corner and then another fire broke out in the southwest corner, about twenty-five meters from Cell Block 4. These fires were put out. The guard house caught fire, but that was extinguished. The guard house was about twenty meters from Cell Block 4. He fought a small fire on the roof of Cell Block 4 which was extinguished. Then they went to fight a fire on the roof of Cell Block 2 and then the whole place seemed to ignite and it could be seen the prison was going to be destroyed. (Ex 58, p 2) He then went to the guard house and TASHIRO immediately ordered the fire fighting to cease and release the prisoners. He then "hollered" the orders in general, giving a special order for Cell Block 2 because sick prisoners were confined there. In about five minutes, he gave a special order for the prisoners in Cell Block 4 to be released and KAMBE and KAMIMOTO were to release the Americans. There were guards at Cell Blocks 1, 2 and 3 to release the prisoners confined therein. In Cell Block 5 were trustics who had been released to help fight the fire. All of the Americans perished and eight Japanese perished. There was utter destruction at the prison and its vicinity. (Ex 57, p 2, 3).

(2) Another statement given to Prosecution 2 May 1946, he stated his principal job was to see that prisoners did not escape. The Tokyo Military Prison was a military installation for soldiers and civilians who violated military laws. (Ex 59, p 1) The Americans were brought to the prison by the Kempei Tai as suspected war criminals, for indiscriminate bombing, and Americans alone were confined in Cell Block 4. (Ex 59, p 1).

There was an air raid shelter for the five other cell blocks but the one for Cell Block 4 was uncompleted. There were sixty-two American prisoners and about 425 Japanese prisoners. (Ex 59, p 2).

On 25 May 1945, there was a guard at every cell block except Cell Block 4. The five keys fit the cells to every cell block and they were kept in the guard house. (Ex 59, p 2).

When the alarm sounded, it was the duty of the duty officer, who that day was KIKUCHI, to see that the cell doors were half unlocked so they could be opened from the outside without a key. The prisoners were not to be released until TASHIRO ordered it. (Ex 59, p 2, 3).

On that night, the alarm sounded about 10:30 and he arrived at the prison about 11:00 and reported to TASHIRO, then went to the air raid shelter with the records and valuables. Then at TASHIRO's orders, he watched for incendiary bombs. They started to fall on the dispensary and workshop area. He assisted in putting them out. Great fires were raging on the outside of the prison, and, realizing the danger to the prison, he looked for TASHIRO and found him near the guard house. TASHIRO gave orders to stop fighting the fire and prepare to evacuate the prisoners. This was about 1:00 A.M. He remained with TASHIRO and sent two guards to inform other guards of TASHIRO's order. The detention ward caught fire and TASHIRO gave orders to release the prisoners. He went to Cell Block 2 to assist three or four guards to release the sick prisoners confined there. In fifteen or twenty minutes, he sent KAMBE and KAMIMOTO to release the prisoners in Cell Block 4, then started there himself but it was too late. The building was on fire and he left the inner compound for Yôyogi parade ground, through the small door at the side of the main gate. (Ex 59, p 2, 3, 4).

(p. 43 of, 92, Toshio Tashiro et al Case # 78)

Restricted

Restricted

When he entered the inner prison about 5:00 or 6:00 the next morning, through the main gate, he saw the bodies of two Americans to the left, and one to the right thereof. He walked around the prison area and saw other American bodies. (Ex 59, p 4).

TASHIRO told him to have the medical man examine the bodies and then to bury them. Doctor KURODA arrived about 1:00 P. M., and examined the dead bodies and he assigned KAMBE and KAMIMOTO and some other guards to bury the bodies and they were buried in an air raid shelter between Cell Blocks 2 and 3. The bodies were covered with dirt, and the grave marked with a rock. The sixty-two bodies of the Americans were not identified by "dog tags" and the bodies were not mutilated. The bodies of the Japanese prisoners were cremated, and the ashes sent to their Army units. (Ex 59, p 4, 5).

(3) KOSHIKAWA was admittedly second in command of the prison to TASHIRO. (R 1144).

(4) There is proof that KOSHIKAWA had authority to release American prisoners even when TASHIRO was present, but the preponderance of the evidence seems to be he could only give an order in an emergency when TASHIRO was not present. (R 380, 425, 432, 467; 538-539, 546-547, 558-559, 638, 693-694, Ex 8 p 18, 39 p 6, 41 p 2, 42 p 2, 46 p 4, 50 p 2, 3, 54 p 4).

(5) There is proof that during the fire TASHIRO said "Let things remain as they are." (Ex 37 p 8; R 347) And "We will wait and see what the situation is." (Ex 42, p 4, 5, R 488).

(6) The Japanese populace were admittedly inflamed against the American prisoners. (R 1284, 1357, 1364, 1365).

(7) There is proof that KOSHIKAWA, prior to the night of the fire, said concerning the American prisoners the following:

(a) "Until there is imminent danger, and until an order is given, they will not be let out of their cells." (R 578).

(b) The following different versions of one witness, of the same statement made by KOSHIKAWA; "There is no need of opening cell block No. 4 at any time." (Ex 44, p 2) "I don't care what happens to No. 4 cell block." (R 576, 592, 595) "Leave No 4 Cell Block as it is." (R 583, 592).

(c) "Don't open cell block No. 4 in case of air raids, as Americans might escape and injure civilians." (Ex 52, R 786-787).

(d) After accused had asked for and received TASHIRO's permission to release the Japanese prisoners, on the night of the fire, the witness heard only " - - - cell block No. 4 - - -" of the next question of the accused KOSHIKAWA. (Ex 54, p 2-3).

(8) The Americans were never evacuated to air raid shelters when the prison was bombed on prior occasions, but there is proof, both pro and con, that there was shelter space available for them. (R 306-308, 331; 334, 466-467, 523, 538-539, Ex 36 p 2, Ex 38 p 2-3, Ex 41 p 2, Ex 42 p 6-7, Ex 43 p 3-4, Ex 48 p 2).

(9) There was proof that the American and Japanese prisoners were kept separate and never allowed to mix. (Ex 36 p 2, Ex 42 p 7, Ex 50 p 2-3, Ex 54 p 2-3, R 331, 486, 583, 693-694).

(10) TASHIRO and KOSHIKAWA had planned in case of danger to first evacuate the Japanese prisoners and then to evacuate the American prisoners. (Ex 8 p 16, Ex 50 p 2-3).

Restricted

Restricted

(11) KOSHIKAWA and TASHIRO held several meetings of some of the members of the prison personnel during and/or after the war at which KOSHIKAWA told the prison personnel that eight Japanese were missing or perished during the fire, that the prison personnel did their best to save the American prisoners and that for none of them to tell about any of the personnel "slashing" the American prisoners; but this proof is not all consistent: (R 151, 155, 157, 203-204, 341-342, 387-389, 432, 433, 435, 452-453, 455, 552-553, 586-589, 645, 647, 677, 680, 684, 799-801, 802, 807, 815, 816, 817, Ex 37 p 8-9, Ex 38 p 4-5, Ex 39 p 3-4, Ex 40 p 3-4, Ex 43 p 5, Ex 44 p 3, Ex 46 p 5, Ex 48 p 3, Ex 50 p 5, Ex 54 p 5, Ex 55 p 3).

4. For the Defense:

(1a) The accused, Mataishi OKUBO, was sworn and testified in his own behalf, and stated he was first employed in Tokyo Military Prison in 1938 and was transferred to Nanking in 1939 and returned to Tokyo Military Prison 5 May 1945. He took a week's leave and worked regularly thereafter, from 12 May 1945 to the end of war. (R 887-888, 932-934, 940-941).

(b) He identified a statement made by him, and after he stated, on oath, the contents were true, it was admitted in evidence as Defense Exhibit E, and read in the record as part of his direct examination. (It will be hereinafter referred to.) (R 888-889).

(c) He was shown page 3 of exhibit 65 (a rough plat), which witness IWASAKI testified was drawn by OKUBO, at Captain MARTIN's home, on 13 March 1947, and he stated he did not draw the heavy line running from a point south of Cell Block 4, then west and then north to the Chinese characters; he did not draw the two heavy "X" marks east of Cell Blocks 2 and 3, nor did he draw a picture of a man near the circle southwest of and near the big gate, but they were drawn, he thinks, by Captain MARTIN, to represent the location of dead bodies witness saw. (R 896-898).

(d) He was taking a nap in the rest room at about 10:15 P.M., on 25 May 1945 when the air raid alarm sounded. The office and rest room were in the outer compound. After putting his sword in the air raid shelter, he reported to the chief jailer of the day, KIKUCHI, in front of the guard room; and he was instructed to go to Cell Block 5 and, if fires broke out, to use some of the inmates of that cell block to help fight fires, and he did use six of them. The prisoners there had already been moved to an air raid shelter, and were being guarded by guards ISHII and HIMORO. At this time, neither cell blocks nor workshops were on fire. (R 898-901, 931) Cell Block 5 caught fire about an hour after he went to the shelter for cell block 5, and during that hour he put out sparks and guarded the prisoners. Cell Block 5 caught fire, the west portion, near the roof, and the prisoners fought that fire and put it out within about thirty minutes. No. 3 workshop was hit and he, with six prisoners, went there and fought that fire for about ten minutes; and, with the assistance of others, that fire was also extinguished, and they also put out a fire at No. 4 workshop, after working about ten minutes. He next fought a fire at the small isolation building. Before he fought this fire, he sent some prisoners to get blankets, which they wet and used in fighting the fire there. While there, he heard the order "to release prisoners and to evacuate". This was about 1:30 A.M. He took the six prisoners and he evacuated to Yoyogi parade ground, through the small gate; the large gate, which opened towards the inner compound, not being opened at the time. There were not many people going out and there was a great deal of smoke and the sparks were flying. He did not stop at the gate but just passed through. (R 901-907, 910, 931, 941) He did not notice any guard at the gate. (R 907).

(e) He did not return to the inner compound until he came with the entire unit, the next morning, about 6:00 A.M. He saw about twenty bodies between the east wall and Cell Blocks 2 and 3 and two bodies in the

Restricted

Restricted

vicinity of the inner gate. He was close to the two bodies near the inner gate. They were lying face up and he noticed no cuts or wounds on them. They appeared to be in a "smoked" condition and were not as dark as the other bodies, which were "charred black". (R 907-908).

(f) At Yoyogi parade ground there was a growth of small timber. There was a strong wind and sparks were flying while he was there. Due to the smoke, it was dark and objects could be distinguished, such as a man's face, only within about two or three feet. (R 910-911, 952) He was present there during roll call and he heard there were about twenty Japanese prisoners missing. (R 934).

(g) Neither at Meguro school nor any other place did he state that he had cut or stabbed any prisoners, excluding the statement made to Captain MARTIN, explained in Defense Exhibit "E". (R 908-909, 932) He never killed any American prisoners, as testified to by NAKAGAWA. In fact, he did not know NAKAGAWA at the time, and he never cut, stabbed or killed any American prisoners; nor has he heard of any of the prison personnel doing so. (R 910, 932, 943).

(h) He never attended any meetings or conferences of the camp personnel where the fire was discussed and he never heard of any such meetings prior to the trial. (R 939-940, 953).

(i) All guards on fire-fighting duties were required to remove their swords and, when he placed his sword in the air raid shelter, there were more than ten swords there. (R 910, 931-932).

(j) In Defense Exhibit "E", OKUBO stated that, during his first examination, in February 1946, when he stated he passed Cell Block 4 in going to Cell Block 5, he was asked if he heard any voices and he said he did not. Prosecution became very mad and said "Would you rather go home or go to Sugamo? You are lying, anyway." He thought if he still told the truth he would get in trouble so he answered, "Yes, I heard the voices." (Defense Ex. "E", p 1; R 950). Thereafter, the interrogator frequently called him a liar and threatened to send him to Sugamo if his answers did not please him and he finally answered the questions to please the interrogator although what he said was untrue. He did not know the interrogator. (Def. Ex. "E", p 1-4).

(k) In his second interrogation he was interviewed by Captain MARTIN, with IWASAKI as interpreter, on 13 March 1947 at the Meiji Building, and at Captain MARTIN's home in Tokyo, from about 1:00 to 7:00 P.M., and from 7:30 to 10:30 P.M. He was questioned and he told the story of the fire at the prison and what he said was substantially as he told it in his direct examination (although several times Captain got mad), until he told about the evacuation of the prisoners with him. Then Captain MARTIN stated, "You must have gone to Cell Block 4 because you must have heard some loud voices from Cell Block 4." When he denied he went in Cell Block 4, "Prosecution became very angry, pushing his face to mine, raised his voice and said, 'You are a liar. You said, the last time you were interrogated, that you went into Cell Block 4. If you insist on answering like that, I will put you in Sugamo.'" Witness was the only Japanese present and he was afraid and he thought he had to answer as he had on his other interrogation and he said, "Yes, I did." (Def. Ex "E", p 5-6) During the balance of the interrogation, when the answer was not satisfactory to the Prosecution, the witness was frequently called a liar and, at least on one occasion, Captain MARTIN apparently threatened to hit him and threatened to put him in Sugamo. He was asked leading and suggestive questions and witness would finally give answers satisfactory to the Prosecution, after the Prosecution would not accept answers not satisfactory to him. Prosecution told witness that they had many statements saying he had killed American prisoners, and that Premier Yoshida stated he saw the witness kill an American prisoner; and finally Prosecution said, "You cannot deny the words of Yoshida. Of course,

Restricted

Restricted

there are so many statements that said you killed 'merican prisoners of war." Captain MARTIN was, by this time, very angry and witness was "excited and confused" and became "bewildered" after many denials that he had killed any Americans and he finally said, "What's the use? I cannot help but say yes." Later during the interview, he told Captain MARTIN he did not kill any American prisoners but Captain MARTIN refused to listen to him. (Ex "E", p 6-10, R 924, 929-930, 954). When Captain MARTIN asked the witness to sign the statement, he refused, saying, "I cannot sign because I lied and did not kill American prisoners of war." Captain MARTIN said, "You said this with your own mouth and admitted killing American prisoners of war and you must sign." Witness knew of no way to refuse to sign and, without the statement being translated, he finally signed it. (Ex. "E", p 11).

(l) On 18 March 1947, he said to Captain MARTIN what he had previously told him was untrue and, after some questioning about the map, Captain MARTIN stated, "All right, I shall withdraw your statement" and he typed a statement to the effect that what the witness had previously said was false; and witness signed it. (Ex "E", p 10-13).

(m) He heard no voices in Cell Block 4 during the night of the fire. Neither Captain MARTIN, the interrogator, nor IWASAKI, the interpreter, who interviewed him on 13, 17, 18 March 1947, ever identified themselves to him and he did not learn their names until he was interviewed by Major PATTERSON for the Defense. (R 912-913).

(n) He never went in Cell Block 4 on the night of the fire and he personally does not know whether KIMBE, KANIMOTO or any of the Japanese prisoners were in the corridor; and the reason he thought of telling Captain MARTIN he saw KIMBE and KANIMOTO in the corridor was because KIMBE told him they went there to release the prisoners, but they did not have time to release all of them before they had to leave, on account of the fire; and he told KIMBE he was going to report that fact. (R 915-918).

(o) He thought it impossible for the prisoners to escape from their cells because the cells faced on corridors and the timber of the lattice was about two and one-half inches square, and there were walls between the individual cells. (R 918-921, 937-938, 944).

(p) He admitted that he killed Americans to Captain MARTIN because he was threatened with being sent to Sugamo; and he was scolded several times; and the investigator came close to him and, in talking, raised his voice; and he thought if the matter was investigated, it would be discovered he did not kill any Americans and he was excited and did not think ahead. (R 921-922, 951). He drew most of plat. (Ex 65) The thin line on plat exhibit 65 represents the route he said he took in evacuating to the Yoyogi parade ground because he had said he reported to TASHIRO at the guard house. (R 924-925) The circle just below and to the left of the gate, represents the point where he saw two dead bodies the next morning, and where Captain MARTIN had suggested and persuaded him to say he had cut an American, by telling him it was useless for him to deny it because YOSHIDA had testified that he had seen him do the actual killing. After the investigation, he wrote Premier YOSHIDA and YOSHIDA wrote him he had never testified he saw witness kill any American and he had never seen the witness. (R 924-928, 929, 943).

(q) He was also told by Captain MARTIN, TERASAKI said he saw him cut an American prisoner. (R 930).

(r) At the time he evacuated from the inner compound, Cell Blocks 3 and 5 were on fire. Smoke was coming out of Cell Block 2 but he did not see any flames in Cell Block 4. He passed the air raid shelter where he had placed his sword, but he did not get it because he was exhausted from fighting the fires and did not have time to do so. (R 931-932).

Restricted

Restricted

(s) He did not make a report to TASHIRO that night and the reason he stated he saw TERASAWA and TASHIRO at the guard house was because he knew TERASAWA was there that night and he knew TASHIRO would have most likely been there; and, in addition, he had theretofore told Captain MARTIN he had seen TASHIRO there. (R 922-924).

(t) He did not see KAMBE, KIMMOTO or KOSHIKAWA at the fire but he did see YAMAZAKI and TERASAWA the night of the fire at the guard room. He, however, heard that KOSHIKAWA was at the prison that night. R 924, 930, 943, 949).

(u) He did not hear TASHIRO say no Japanese prisoners suffered any harm, at the Yoyogi parade ground, on the morning of 26 May 1945, but he did hear him, in substance, compliment the prison personnel for their cooperation in fighting the fire and expressed sorrow for there being so many victims, referring to the American and Japanese prisoners. (R 934) On the morning of 26 May, he heard seven or eight Japanese prisoners perished in the fire, and later, that two or three perished, but he does not remember from whom he heard this thing. (R 932-945).

(v) Prior to 25 May 1945, he had suffered loss from bombing by Americans and he knew Americans were in Cell Block 4, but his personal feeling did not influence his official conduct. (R 936, 948).

(w) He did not tell TANAKA he had cut some American prisoners at the inner gate and he was not standing by the inner gate with TASHIRO and KAMBE, and he never approached NIKAGAWA and asked him not to tell what he saw the witness and KAMBE do the night of the fire. (R 945) He does not remember seeing OKAMURA that night, nor conversing with ISHISHITA with reference to the American prisoners who died that night. (R 945-946) He never heard any talk at Meguro school of Kofu that he, KAMBE and KIMMOTO had cut down American prisoners. (R 946).

(x) He thinks, on the night of the fire, too much attention was paid to fighting the fire and the order to evacuate came a little too late; and he believes that if the order to evacuate had been given thirty minutes earlier, "it would have been more appropriate"; (R 946-947) but to say that he would have given an order to evacuate sooner than the order was given, is a difficult question to answer. The attack was so sudden and severe. (R 946-947) There were an insufficient number of guards at the prison that night, not occupied in fighting the fire, to be assigned to releasing the prisoners in all the cell blocks. If the Americans had been released at the same time Japanese prisoners were released, he thinks they would have been saved from death by burning; but, he believes, on account of the feeling of the Japanese civilians and prisoners, there would have been acts of violence towards them because of a lack of available guards to protect them; (R 947-948) but, so far as he knows, there was no order not to open the cell doors of Cell Block 4. (R 947).

(2a) The accused, Hatsueki KAMBE, was sworn and testified in his own behalf that he was employed as a guard at Tokyo Military Prison from June 1944 to the time of the fire and he was present there the night of the 25-26 May 1945. (R 961, 982, Ex 8, p 24).

(b) The first alarm sounded about 10:30 that night, while he was on duty making his rounds. He heard the first fire started about 11:30 P.M., at the dispensary. At the time he heard the first alarm, it was time for him to relieve a guard at No. 2 Cell Block, so he went there. Within a few minutes the second alarm sounded and within two or three minutes a guard came and half unlocked the cell doors. The inmates of that cell block became very noisy. While he was not positive, he thinks it was about an hour or an hour and a half, incendiary bombs fell on the

(p. 48 of, 92, Toshio Tashiro et al Case # 78)

Restricted

Restricted

workshop area, which fires were extinguished, but that area started burning again and he thinks Cell Block 3 caught fire and burning oil from an incendiary bomb fell in Cell Block 2. He went to the roof to put out the fire and guards NEMII and KAKIKAWA relayed buckets of water to him to put it out. The prisoners began calling his name and he climbed down without extinguishing the fire. Considerable time had elapsed between the alarm and the time he climbed down from the roof. Two or three guards came running into Cell Block 2, saying, "Evacuate to Yoyogi," and began opening cell doors. He thinks this was about 1:00 or 1:30 A.M. The prisoners in that block were sick so had some difficulty in walking and he made about three trips from Cell Block 2 to the vicinity of the inner gate, helping ailing prisoners evacuate. When the evacuation was nearly completed, he heard a loud voice say, "Release No. 4 Cell Block". So he went there to release them. (R 961-964, 985, 990, 1011, 1012, 1013, Ex. 8, p 24, 25).

(c) He left Cell Block 2 through the southeast entrance and went into Cell Block 4, through its southeast entrance because smoke was coming out its northeast entrance. The cells were half unlocked and he opened Cells Nos. 17, 16 and 15, by turning a handle. This took only a few seconds. At the end of that time he was suffering and he thought he would suffocate; so, he "unconsciously" ran out into an air raid shelter in the inner parade ground. (R 963-966, 990-991, 993, 997, 998, 1006, 1013-1015, 1019, Ex 8, p 25) The ceiling of Cell Block 4 was then on fire and he was in such a "frenzy" he did not know whether American prisoners came out when he opened the cell doors. While he was in the cell block, he heard noises similar to noises of a street car passing, which he thought was incendiary bombs. He had his sword with him but it was in his scabbard. He did not cut, stab nor kill any Americans that night, nor did he see any Japanese guards or prisoners in the corridor. (R 966-967, 990-993, 1000, 1002, 1013, 1015, 1018, 1020) He left this block through the southeast entrance, then south along the east wall and then went into the air raid shelter in the inner parade ground where he remained until about 5:00 A.M., the next morning. When he entered the shelter, guards HIMURO and about twenty Japanese prisoners were there and KAMIMOTO and SHINNO came later. (R 967-968, 977, 1014, Ex 8, p 25) When he was in Cell Block 4, he does not remember seeing any Americans but he felt they were in the cells. He did not notice any commotion in the cells. He opened the cells to release the Americans and while he said nothing to them, he thought they would know they were released. There was considerable smoke in the corridor at the time. (R 994-996, 1000, 1006, 1017) He has learned since the fire that KAMIMOTO went to Cell Block 4 also to release American prisoners and had opened cells in the middle of the block and then KAMIMOTO met SHINNO. They came to the shelter about thirty minutes after he arrived. (R 998-999, 1009, 1014).

(d) There were three prisoners in some cells and four in some cells; he does not know how many prisoners were in Cells 17, 16 and 15. (R 968-969, 1008) When he was in Cell Block 4, the smoke was very bad and he is not positive the Americans were still conscious but they would have remained conscious if they had put wet towels to their noses. (R 1006-1008).

(e) The next day he saw large dead bodies near the inner gate and another body near the northeast corner of the latrine and kitchen area. He was close to the bodies and did not notice any cuts or wounds on them. While he supervised burying about forty of the dead from Cell Block 4, he did not supervise burying the two bodies near the gate. Those two bodies were "chocolate colored". (R 968, 1000, 1016-1017) One of the bodies he saw was Japanese. (R 1000, Ex 8, p 25) He saw about twenty-five or twenty-six bodies along the east wall. (R 1005, 1021-1022) He thinks the American prisoners whose bodies were found along the east wall had come from the cells opened by him and KAMIMOTO. (R 1003-1009, 1014).

Restricted

Retrieved

(f) About three days after the fire, in the rest room at Meguro school, when he was drinking, he "boastfully" told seven or eight guards that he had cut some American prisoners, to make himself appear a hero when, as a fact, he had not done so. (R 970-971, 1002) On 29 May 1945, after an air raid alarm and an air raid over Yokohama, while he was on guard duty with some Japanese prisoners, he again "boastfully" told the prisoners that he had cut an American prisoner, to make the prisoners fear him and to show them his "dignity". He never, however displayed his sword. (R 971-972).

(g) The interpreter, who was used in taking his statement by the prosecution, was not very "fluent" and made some mistakes. He did not say he told the Americans to run north after being released. He did say he did not think it possible to escape north to the inner gate. (R-972-973) The statement said he did not open the doors of the cells in Cell Block 4 when, in fact, he did so. (R 975) At first, he told the truth, then the Captain interrogating him told him he was lying. The Captain said KAMIMOTO and seven or eight others had told him no one went to release the prisoners in Cell Block 4. The captain became very angry and stood up and said, "don't lie." Witness was "perplexed" and kept quiet for a while. Finally he decided it was useless for him to alone say they had been released and he then stated he did not go there to release them. (R 976-977) The statement made by him, that TASHIRO had suggested for him and KAMIMOTO to make a false statement, is untrue, as is the statement that he overheard someone say "if any of the American prisoners escape, to go after them and 'sochi se', meaning 'kill'." (R 976-978, 1002, 1004) The Prosecution suggested to him that he received an order that no American prisoners were to be released. (R 977-978) Prosecution told him the Americans had succeeded in breaking out from their cells and started a rumpus, and he did not want to be scolded again so he agreed with the statement, although it was false. (R 979, 1002).

(h) The discrepancies between his testimony and the statement he signed for TASHIRO arose from the fact that TASHIRO wrote the statement so it would be "vivid". (R 946-988).

(i) He was convicted in November 1946 of mistreatment of American prisoners at Yokohama Prison Camp and given life imprisonment, which was reduced to forty (40) years. (R 980, 1005).

(j) He can hardly hear with the right ear, and during his whole service at Tokyo Military Prison he has been totally blind in his left eye. (R 981).

(k) He has made three statements about the fire at the Tokyo Military Prison: The first was 3 October 1945, signed by TASHIRO after TASHIRO had reduced the oral statement to writing. That statement is somewhat similar to his testimony on direct examination. The second was given at the Meiji Building before he was confined at Sugamo Prison; and the third, in 1947 at Sugamo. During this interrogation he was accused of participating in the crimes at the Tokyo Military Prison on the night of the fire. (R 982-984).

(l) While he, TASHIRO, KOSHIKAWA, KAMIMOTO and TERASAKI were called to the Demobilization Bureau and questioned by a Japanese Colonel or Lieutenant Colonel about the fire, he was not told what to say if he was interrogated by the Allied Forces. (R 989-990, 1006).

(m) He went to his home on the morning of 26 May and returned while the morning roll call was being taken. (R 1000-1001) He was off duty and went to the vicinity of the kitchen and rested, but did not there say he had killed Americans. (R 1001) He did not see TASHIRO or OKUBO the night of the fire. (R 1002) His home in Kyobashi had been burned by being bombed. (R 1003) He did not know MAKIGAWA and he, in company with OKUBO, never asked MAKIGAWA not to mention what MAKIGAWA claimed he saw occur on the night of the fire. (R 1005).

Retrieved

Restricted

(n) He believed it impossible for any of the prisoners to break out of their cells. (R 1006, 1008, 1009).

(o) He remembered jailer KOMIYAMA but he did not tell him the Americans were causing any commotion and he stabbed them. He did tell KOMIYAMA he cut Americans but did not go into details. (R 1010) KAMIMOTO and ASAKURA supervised burying the bodies along the wall. (R 1017) The bodies buried under his supervision and the supervision of KAMIMOTO totalled sixty-two. (R 1017).

(p) He thinks his present recollection of the fire is much better now than formerly because he has been indicted and has given his "whole-hearted effort" trying to recall the facts of the incident. At the time he gave his statements, he did not consider it seriously. (R 1019-1020) The statement of SASAKI that he saw the witness thrust his sword through the bars is untrue. (R 1022).

(3a) The accused, Keiji KAMIMOTO, was sworn and testified in his own behalf that he was an ordinary guard at Tokyo Military Prison on 25-26 May 1945, having been so employed since September, 1944, but he was not on duty that night. When he heard the air raid alarm sounded about 10:30 P.M., he was at home. He left his home about 11:00 P.M. and went to the prison, reporting to KIKUCHI at the guard house, who ordered him to a fire-fighting squad, between Cell Blocks 2 and 3. He carried his and KOSHIKAWA's swords and placed them in an air raid shelter, east of the guard room. (R 1026-1027, 1056, 1060, 1109, 1133) He joined ONO on his squad, between Cell Blocks 2 and 3 and very soon they went to fight a fire which broke out in the dispensary. After extinguishing that fire, they went to the area of Cell Blocks 1 and 2, where fire from civilian houses dropped, to fight the fires there. While there, an incendiary bomb fell near workshops Nos. 1 and 2 "and sparks flew in that area" but they put out that fire also. They went to Nos. 3 and 4 workshop area, where an incendiary bomb fell, but the hose would not reach that fire and they could not put it out and those buildings burned fiercely. When he was running towards the guard room to report the fire uncontrollable, he heard someone say, "Release the prisoners." He went to the guard room and saw KOSHIKAWA and told him the fire was uncontrollable. Witness was told by KOSHIKAWA to go to Cell Block 2 and help evacuate the sick prisoners there. He went at once. When he arrived he saw KATRE and several other guards and he told them to release the prisoners and he helped some of the sick to evacuate, making several trips to the inner gate, sometimes assisting the prisoners to walk. (R 1027, 1028, 1056, 1061-1068, Ex 8, p 22, Ex 23c, p 2) Smoke was coming from Cell Block 2 and the ceiling was afire. (R 1027-1028, 1056, 1061-1068) When the evacuation of Cell Block 2 was almost complete, he heard KOSHIKAWA's voice order the release of the prisoners in Cell Block 4 and he immediately ran to Cell Block 4. This was about twenty or thirty minutes after the first order. As he approached, he noticed a great deal of smoke was coming out the northeast entrance, and he went to the southeast entrance, where smoke was also coming out, and entered there. He went from the southeast entrance of Cell Block 2, southerly between the east wall and Cell Blocks 3 and 4. There was considerable smoke in the corridor of Cell Block 4 and the southwest section of the cell block was burning; so, in order to open as many cells as possible, he began in the center, to work east. He could not go further west. The prisoners came forward to the front of the cells and he opened Cell Blocks 6, 7, 8, 9 and 10; the Americans came out and ran east in the corridor, but he did not see them after that. He thought they could have escaped. When he went to the cells, he found the doors half unlocked and it took only two or three seconds to open the cells. When he entered Cell Block 4, he heard pounding and yelling. He saw no Japanese prisoners when he entered Cell Block 4. (R 1028-1034, 1060, 1062-1065, 1067, 1069, 1071, 1073, 1081-1083, 1085-1087, 1134, 1138, Ex 8, p 27, Ex 23c, p 2) His back was to the west and he was having difficulty breathing. While he was opening Cell Block 10, there was a severe

Restricted

Restricted

incendiary bomb attack to the west and he instinctively ran. The bomb apparently hit the roof of that cell block. (R 1031, 1034-1035, 1082, Ex 8, p 27, Ex 23c, p 2) When he came from Cell Block 4, through the southeast exit, the east part of Cell Block 5 was on fire and he could not see towards the inner gate on account of the dense smoke. It seemed that escape in both directions was cut off and he went to sit down by the east wall, to be killed; but just then SHIMANO came by, grabbed his hand, covered his head with SHIMANO's blanket and they ran towards the south inner parade grounds. They ran into a shelter under the watchtower. They remained there about thirty minutes, and then went to an incompleated shelter that was located at the bottom of the embankment and he found SHIMANO, SATO, KIMBE and about twenty or thirty prisoners there. (R 1034, 1038, 1057, 1088, 1104, 1106, 1114, 1138-1140, Ex 8, p 27, Ex 23c, p 2) He, with KIMBE, remained in the shelter until 5:30 or 6:00 A.M., and then he went to the Yoyogi parade ground to report to TASHIRO his activities during the night. He then went home but returned to the prison at roll call. (R 1036-1039) KIMBE has told him since the fire that he also went to Cell Block 4 to release the prisoners but believes KIMBE went there after witness went. (R 1068) KIMBE said he did go to Cell Block 4 and opened two or three doors but "due to the considerable amount of smoke, he could not open other cells." (R 1069) He did not have his sword with him when he went to Cell Block 4 but he never had a thought about the Americans attacking him, Cell Block 3 was on fire when he passed it, going to Cell Block 4. (R 1070) The visibility was not good on account of the smoke. (R 1070-1072).

(b) He saw twenty-three dead bodies between Cell Blocks 2 and 3 and two by the gate, one behind the guards rest room near the inner gate, one by the latrine near the kitchen, three in the southeast corridor of Cell Block 2. When he counted the dead bodies in Cell Block 4, he found thirty-four. (R 1028-1030, 1108-1112, 1115, 1119, 1120) That afternoon he supervised the burial of the bodies between Cell Blocks 2 and 3, those at the gate, the one by the guards' rest room and those in the southeast corridor of Cell Block 2. From the size of the bones, he thought those from Cell Block 2 were Japanese. He looked at the bodies at the inner gate and he did not notice any cuts, blood or wounds on them. (R 1039-1040, 1117-1118, 1120, 1123, 1136-1137).

(c) He went to Meguro school with the prisoners that afternoon and on 27 May, at about 9:00 A.M., he was relieved from duty by FUJII and went home and remained there about ten days. (R 1040) However, he was at Meguro school about 29 May with his brother-in-law for about twenty minutes in an effort to resign his position on account of the fact that he had a form of tuberculosis (pleurisy), but he was unsuccessful in doing so. (R 1040-1041, 1056, 1123).

(d) He never cut, stabbed or killed any American prisoners on the night of the fire and never told anyone he did so. (R 1041, 1056).

(e) In Exhibit 60, when he said the keys to the cell blocks could be used only on direct order from TASHIRO, he meant the keys to Cell Block 4. (R 1044) As to the other cell blocks, the chief guards could also give orders to open the cells. (R 1042) "There is a regulation that prisoners in Cell Block 5 are to be used in fighting fires," and he told the Prosecution this fact. He then tried to give the facts as he remembered them. (R 1088) The statement of March 1947 was written by him at Captain MARTIN's home and it is false in many particulars, especially in stating he did not go to Cell Block 4 on the night of the fire. The reason he signed the false statement in March 1947 was because he was "severely threatened" by Captain MARTIN, the prosecution investigator. Captain MARTIN said, "If you insist that you had released No. 4 Cell Block, then you had better enter Sugamo." (R 1042-1043, 1053, 1077-1078, 1081, 1090-1092, 1103, 1127-1128, 1130) Captain MARTIN told witness that if the other members of the Prosecution examined him, he

Restricted

Restricted

should say that he did not release the prisoners in Cell Block 4 and if he gave a different answer, he would immediately be put in Sugamo. Captain MARTIN also told him that he would make him a prosecution witness and he would not go to Sugamo. So, when he was "investigated" by Prosecution on 6 March 1947, he gave the same answers. (R 1048, 1075, 1077-1078, 1129-1130, 1135) At the completion of the first day's interrogation, in March 1947, he told the interpreter and Captain MARTIN to go to Tokyo Military Prison with him and see the severity of the fire and the three of them went there. (R 1094) He went to the Meiji Building again the next day and, using his first day's statement as a basis, Captain MARTIN again questioned him. Captain MARTIN told witness to get SPINANO's address and bring it to his home and he went to Captain MARTIN to report he did not find the address. (R 1094-1096) The 6 November statement to the effect that it was planned for him and KIMBE to falsely testify that he had gone to the Cell Blocks to release the American prisoners, for the purpose of lightening TASHIRO's responsibility, was false. He does not even know Lieutenant Colonel MAKITA, referred to in that answer as being present and he learned of him in the Meiji Building from Captain MARTIN. The officer interrogating him on 6 November was gentlemanly and had the statement translated before witness signed it. (R 1049-1050, 1075-1076, 1125-1128) He told Prosecution he heard KIMBE and OKUBO "cut down" Americans during the night of the fire but the statement was untrue. (R 1050, 1052, 1136) That he meant when he told Prosecution TASHIRO had given orders the Americans were not to be let out of their cells was they should not be let out without orders. (R 1052) He told Prosecution he heard KIMBE, while he was drunk, say he had "cut" an American prisoner or prisoners and then he heard OKUBO say to him, "You are bragging" and scold him but the same is not true. (R 1054, 1138-1139) Witness prepared another statement, which has not been introduced in evidence. This statement was turned over to Captain MARTIN and when Captain MARTIN read it, he was told the statement was not true and Captain MARTIN pounded on the table and became very angry and said witness was the only one who said he released the prisoners from Cell Block 4 that night. Captain MARTIN told him to write another statement and he then wrote two statements at that time, one constituting Exhibit 61, and turned them over to Captain MARTIN, who seemed pleased. (R 1079, 1081, 1097, 1107) His sword was destroyed in the fire, (R 1140-1141) and he borrowed one at Teguro school. (R 1057).

(f) The meeting which was held at the First Demobilization Bureau, the only one at which he was present, was not called by TASHIRO or KOSHIKAWA, but witness was summoned by a higher officer of the Bureau. (R 1025-1026) TASHIRO, KOSHIKAWA, KIKUCHI, TAKIKAWA, KIMBE and KIMOTO were present but witness received no instructions as to what he should testify to, at that meeting. (R 1126-1130).

(4a) The accused, Masao KOSHIKAWA, was sworn and testified in his own behalf that he was a chief guard at Tokyo Military Prison, next in command to TASHIRO, for some time prior to 25 May 1945. When the air raid alert sounded on that night, he was at home, in bed, and in about twenty minutes the alarm was sounded and he dressed and went immediately to the prison. He found that TASHIRO had already arrived and he reported to TASHIRO at the guard room. (R 1143-1145, 1175, 1180, 1223-1254, Ex 23d, p 1) After TASHIRO had told him if fires broke out in the camp to do his utmost to put them out, he made an inspection tour around the prison to see the location of the fire-fighting equipment. Then, while he was near the guard room, incendiary fires started, first in civilian homes outside of and southwest of the prison. Then the dispensary and isolation ward were hit and "the dispensary became a blazing sea of fire" but, by pumping water, this fire was extinguished and they were able to put the fire out also at the isolation ward. He was present and helped put out these fires. (R 1145-1146) He returned to the guard room and other fire-fighters, including the prisoners, returned to their stations. Then

Restricted

Restricted

Workshop No. 3 caught fire and was blazing fiercely and everyone went there. They succeeded in putting out that fire and he, with others, returned to the guard room, and quickly put out a fire which had started there. Cell Block 5, in which about one hundred thirty Japanese prisoners were confined, caught fire. They let out the prisoners and part were used in fighting that fire and part put in air raid shelters. That fire was put out. Water and sand were used to put out all the fires. The wooden fence between Cell Blocks 4 and 5 caught fire and was put out. (R 1146-1150, 1227-1229, Ex 23d; p 1) While the fire-fighting guards rested and waited, an attack by planes from the west became more and more severe and the southwest wind became stronger. Civilian homes to the west of the prison "were burning fiercely", the warehouse, located near the western emergency gate, caught fire and fire broke out in the mess hall area and broke out again in the workshop area. TASHIRO came to the scenes of the fire fighting to encourage them. Witness realized the fires were getting beyond control and he went to the guard room, hunting for TASHIRO. He located TASHIRO, coming from the latrine area and TASHIRO said, "It is hopeless. We will escape through the north emergency gate. I have sent TERASAWA to inspect the north emergency gate. However, we can't be absolutely sure about it until TERASAWA returns. In any event, we will prepare to evacuate." (R 1150-1151, 1231, 1247-1267) At that time, witness did not see any fire in the cell block area. The guards were used to evacuate the prisoners so he went to the pump and notified the guard there to stop pumping. TASHIRO realized that there was not much time and he issued an order to release every cell block and he stated the east gate was the only means of escape and to go to Yoyogi parade ground through that gate... (R 1151-1153, 1232-1234, 1247-1248) He shouted the order over a megaphone and sent guards to transmit the order to Cell Blocks 1, 3 and 5. As he was about to begin evacuating Cell Block 2, some fire-fighting guards came up, including KAMOTO, and he sent them to assist in evacuating the sick prisoners in Cell Block 2. There were about seventy prisoners in that cell block. Within less than five minutes he went to Cell Block 2 himself to help evacuate. The American prisoners had to be escorted and there were an insufficient number of guards to escort them, there being only about thirty guards, of which about eighteen were fighting fires, and no one was, at that time, sent to that cell block. There was fear that if the Americans were not protected by guards they might be injured by civilians or the other prisoners. When he got to Cell Block 2, KIMBE was there. Before the evacuation of Cell Block 2 was fully completed, he saw the western section of Cell Block 5 was on fire. The wind was fanning the flames and he could hear the noises of falling incendiaries. He then realized that Cell Block 4, where the Americans were confined, was in a "dangerous situation". He knew no one was on continuous duty there and he knew it was TASHIRO's policy to have the Americans released to a safe area, after the Japanese prisoners were released. He thought TASHIRO would be late in releasing them so he shouted two or three times in a loud voice to the guards in Cell Block 2 to go to Cell Block 4 and do their best to release the prisoners. He later learned that KAMOTO and KIMBE responded to the order. (R 1152-1154, 1157, 1193, 1229-1230, 1232, 1236, 1238, 1246, 1248, 1253-1255, 1267, Ex 23d, p 1, 2) After giving the order, he was going himself but the middle of Cell Block 2 began burning "fiercely". He ran along the south end of No. 2 Cell Block, to the area just west of the pump, and he saw the west section of Cell Block 4 was on fire. The dressing room and west section of Cell Block 3 were on fire and bombs had fallen on the guard room. He was unable to go to Cell Block 4 and he "gave up the idea" of himself personally being able to release the American prisoners. He ran along the west end of Cell Block 2 and entered Cell Block 1, then ran out the central entrance of the northern corridor of Cell Block 1, then along the wall located between the detention ward and Cell Block 1, then to and out the small gate, to Yoyogi parade ground. During this time the wind was blowing, sparks were flying and bombs were falling, buildings were burning fiercely, and he realized it was beyond man's power to do anything further. (R 1153-1155, 1224, Ex 23d, p 1).

(p. 54 of, 92, Toshio Tashiro et al Case # 78)

Restricted

Restricted

(b) When he arrived at Miyogi parade ground, most of the prisoners were assembled there. They were facing north and had their hands covered with blankets; in some instances, one blanket being used to cover several prisoners. At dawn, FUJII and witness arranged the prisoners according to their cell blocks and about 5:30 or 6:00 A.M., they returned to the inner prison grounds. There were about one thousand civilians at Miyogi parade ground. He saw TASHIRO there but doesn't know when he arrived. (R 1155-1156, 1224).

(c) Roll call was taken after the return to the inner parade grounds, and there were twenty-five or twenty-six missing from the roll call. Six or eight of these returned before they moved the prisoners to Inaguro school. (R 1156-1157, 1126, 1250-1251, Ex 23d, p 1, 2) He saw two bodies, lying face up, to the left of and near the inner gate, another body near the rest room, lying face up. None of them had on any clothes. He did not notice that any of these bodies had any cuts or stab wounds; although he was very close to them and observed them closely. (R 1157, 1259) He saw three bodies in the east corridor of Cell Block 2, one northeast of the latrines, thirty-four within the remains of Cell Block 4 and twenty-four scattered along the east wall, between Cell Blocks 2 and 3. The bodies between Cell Blocks 2 and 3 were burned and those near the inner gate were a light brown in color, "but retained their original form". (R 1158-1159, 1174, 1240, 1259).

(d) It was the warden's policy to confine the Americans separately from any Japanese prisoners. Japanese prisoners were prohibited from entering Cell Block 4. (R 1144).

(e) After the war ended, an order came from the Eastern Army Headquarters to investigate the fire and make a report. The former employees of the prison were summoned to Toyotama by telegram, sent by FUJII (witness did not know they were sent in his name) (R 1181) on order of TASHIRO and again about March 1946. At the later meeting, witness gave a summary of the report TASHIRO had sent to the Allied Forces through the Japanese Government. In this summary he told first, of the different groups fighting the fire; second, the air attacks (the direction from which they came and their severity); third, he told about the casualties: sixty-two Americans from Cell Block 4 and ten missing Japanese, three of whom burned to death and it was considered that as some of the missing had been good prisoners and their terms were nearly out and they had no reason to escape, five of these were mentioned as burned to death. In other words, eight Japanese prisoners were mentioned as burned to death; and, fourth, the reason why the prisoners in Cell Block 4 were not rescued during the incendiary bomb attack. (R 1160-1161, 1165-1167, 1180-1187, 1242-1245, 1253, 1263) He further told the guards that there were more than five hundred prisoners confined there and only about thirty members of the prison personnel were present, an insufficient number to handle the prisoners; the prison personnel concentrated on fighting fires, that being considered the best measure to follow at the time. That fact, however, delayed the guards in escorting the prisoners. "The air attack on Cell Block 4 was severe; and it was impossible to control the prison personnel and order them to release the prisoners in Cell Block 4." (R 1160, 1242-1245, 1253).

(f) The meeting at Toyotama was held before the report for the Allied authorities was made and the guards were summoned for the purpose of securing any information they had about the fire. They especially sought to get any information that anybody might have that might help identify the sixty-two Americans perishing in the fire. (R 1164-54, 1265) He never told the guards what to tell the Allied Authorities if they were questioned about the fire; and he did not plan or conspire with anyone to keep the American authorities from obtaining correct information about the capture, status, condition of confinement, or from knowing about

Restricted

Restricted

the deaths of any of the Americans or to conceal any such information from them. (R 1165-1167, 1180-1187) He did not tell any guards not to tell that some Americans were stabbed, cut or killed or not to disclose any facts; and he did not conspire with TASHIRO or anyone else that in case of air raid or other disaster at the Tokyo Military Prison, the cells to Cell Block 4 would not be opened. (R 1169).

(g) Along 1 January 1946, after he had made a statement in the Meiji Building, he was shown a "dog tag" by a first Lieutenant, which the Lieutenant said he had found between the kitchen and inner gate and asked if the witness knew about them. Up to this time, he knew nothing about American "dog tags". He asked the witness to escort him to the prison and the next day he went with the Lieutenant and an interpreter to the prison area. He had learned from TAKIKAWA that the valuables of all prisoners had been stored in a storage room constructed of iron, in the guard room. He took several guards from Toyotama Prison with him and they "searched through the remains and found twenty or thirty 'dog tags'". (R 1168, 1198-1202).

(h) Referring to Exhibits 53 and 59, where he is quoted as saying, "No air raid shelters had been completed", the thought he intended to convey was that none had been completed for Cell Block 4. (R 1169-1170) He did not intend to say in his statement that both Cell Blocks 4 and 5 caught fire before Cell Block 2. What he intended to say in his statement was that Cell Block 5 and the fence between Cell Blocks 4 and 5 caught fire before Cell Block 2. They had, however, succeeded in putting out those fires. (R 1170).

(i) While he did not see Dr. KURODI examine or look at the dead bodies, he is convinced Dr. KURODI did see them. KURODI came about 10:30 or 11:00 A.M., 26 May. Anyone who saw the bodies would conclude they burned to death and Dr. KURODI expressed an opinion, in his presence, that no death certificates were necessary and he thought it sufficient to have a certificate signed by TASHIRO. He never instructed Dr. KURODI to say he made out death certificates. (R 1171-1173, 1241, 1247, 1262-1263). He did not say to OKINAWA that "I don't care what happens in Cell Block 4" or "leave it as it is". (R 1173) He did not tell TAMAKI and other guards that if any Americans escaped they were likely to harm Japanese civilians. What he did say to him and to the other guards was to accord American prisoners special treatment and that the Americans should be kept separate from the other prisoners. (R 1173-1174).

(j) Three other Allied prisoners were brought to the prison but they were not there on 25-26 May. Of those present on the date of the fire, five arrived 25 April (R 1190), and fifty-seven on 9 or 10 May. (R 1194) They were confined there as war criminal suspects. (R 1191, 1196-1197) He believes their names were kept in the prison records and they were accessible to him, when necessary. (R 1192).

(k) The prison roll was, by a "miracle", brought to the parade ground and the roll was called from that list. (R 1193, 1256-1258, 1267).

(l) The American prisoners were kept blindfolded when not in cells. (R 1194-1195) As they never saw the prison premises, it would be hard for them to escape. (R 1195-1196) When he was on duty he inspected Cell Block 4 three times a day (R 1203) but as he didn't speak English, he did not converse with the prisoners. (R 1294) He never instructed American prisoners on the fire regulations and he had no authority to give such instruction, except on orders of TASHIRO, (R 1204-1205) and TASHIRO did not plan not to release the American prisoners during an air raid. (R 1205).

(n) During prior raids, the Americans had not been evacuated to a shelter because the shelter for that cell block had not been completed. The shelters had been allocated to the various cell blocks and "due to the

Restricted

Restricted

purpose for which they (the Americans) were confined in prison, the American prisoners in Cell Block 4 could not be dispersed in air raid shelters. At night there was great opportunity for prisoners to escape." (R 1209-1220) TASHIRO said the Americans were to be especially protected by the prison personnel and that the best method was to escort them to safety. (R 1206) He and TASHIRO never adopted a plan as to how Americans were to be released but he understood from TASHIRO that they were to be escorted to safety. (R 1245).

(n) He does not know, and has never heard, of any American being killed during that night. (R 1240) He did not hear of KIMBE boasting about killing Americans. (R 1249) He did not say, on 23 May, that there was never any need to open Cell Block 4. (R 1251-52) The next day after the fire, KIMOTO and witness made a search of the prison to find what Japanese prisoners had perished. (R 1256).

(o) It was his duty to have any orders of TASHIRO, in respect to security of prisoners, carried out; but as long as TASHIRO was present at the scene, he had no authority to give orders, except in emergency, he believes, he could use his own discretion. (R 1260-1262).

(5a) Toshio TASHIRO was Warden of the Tokyo Military Prison from 1943 until it burned on the night of 25-26 May 1945. Administratively, he, as Warden, was under General TANAKA, commanding the Eastern Army, but he received his instructions from General SHIMADA, Judge Advocate of the Eastern Army. (R 1268-1270).

(b) Five P-29 fliers were brought to the prison at the end of April 1945, and fifty-seven on the 9th-10th May, by the Kempei Tai, being sent there by the Prosecutor's Office of the Judge Advocate, for confinement, as suspected violators of the law prohibiting indiscriminate bombing. (R 1271-1272) The Americans were in Cell Block No. 4, and he treated them as well as he treated the Japanese prisoners. (R 1272).

(c) In case of an alert alarm he had blackout regulations; which were strictly enforced. All sleeping personnel would be awakened, then organize the Japanese prisoners with good behavior records into security, fire fighting and work squads, each under a chief jailer. Then, if air raid alarm was sounded, "fire watch would check their posts", cells half unlocked, and men stationed at predetermined positions to watch for bombs. If air raids came, the whole personnel would try to keep damage to a minimum. If no safe place was found in inner compound, then there would be an evacuation to the outside, and the guard would be assembled to prevent escape. The prison personnel were informed of the plan. (R 1273, 1323, 1325-1326, 1353-1354, 1363-1364).

(d) No guards were kept on continuous duty in Cell Block No. 4, because the American prisoners were not, as were the Japanese prisoners, subjected to strict rules and regulations, such as squatting in certain positions, not talking, etc. (R 1273, 1356) Guards, however, passed through No. 4 Cell Block once or twice every thirty minutes. (R 1273, 1328, 1377).

(e) He was at home when the alert was sounded about 10:30 P. M., and was still there at about 10:50 P. M., when the alarm was sounded. He arrived at the prison about 11:00 P. M. He went to the chief jailers' room, where he found on night duty chief jailer WIKUCHI, and chief defense jailer TERASAKI. He then went to all the cell blocks, found cell doors half unlocked, the prisoners in their cells. This took about twenty minutes. He then returned to the guard room, to watch and listen to the radio reports. Incendiaries first fell on the dispensary, then in succession they fell on workshop No. 3, the jailers' room and in the vicinity of Cell Block No. 5 and kitchen, and the warehouse outside of the inner prison, but they succeeded in putting out all of those fires. (R 1271,

Restricted

Restricted

1274, 1277, 1329-1332, 1375) He had confidence at the time, that they would be able to extinguish all fires. He increased the fire-fighting personnel, and encouraged everyone. However, the raid increased in severity, and the planes began coming in from the west, and the fires in the civilians' homes increased in violence, and the strong wind fanned the fires towards the workshop area, and extinguishing the fires became almost impossible, so he decided it would be best to evacuate, and made preparations to do so. But, as there were Americans as well as Japanese prisoners there, and if the evacuation was a moment too late, lives would be at stake, so he gave the order, which is usually the last resort, "for the release of the prisoners". At that time the cell block area was safe, and no Japanese prisoners had been evacuated to the parade ground, and about half of them were still in their cell blocks. He went to the dispensary, to evacuate to safety the documents as to treatment of patients. He then went to the office outside of the compound, and evacuated the documents covering the efficiency ratings of the personnel, "which were to be evacuated the first thing in case of emergency". This took about ten or fifteen minutes. These documents were burned immediately after the war. (R 1353) He then went back to the inner compound, and met prisoners going out. He found a great change. It "was full of fire and smoke". He ran to the jailers' room, and found no one there. He then ran towards Cell Block No. 4, thinking he would find guards there, but in front of him was a violent fire, "and incendiary bombs were falling nearby," and "without thinking," he "ran from that spot". He ran to the wide road near the detention ward, and looked back, and "the area around No. 3 and No. 4 cell blocks was burning violently". There was so much fire and smoke that he felt if he remained there longer he would suffocate, so he immediately ran out of the inner compound, through the small gate, to Toyogi parade ground, where it was dark, and persons could be identified only in two or three feet. There were trees on the edges of the parade ground. This was about 2:00 A.M. (R 1275, 1277, 1279, 1285, 1300, 1334, 1335-1338, 1353-1356, 1359-1368, 1374-1375, 1382-1384) Under his first order to evacuate the prisoners, that meant they would be handcuffed and evacuated under guard; while under his second order, that meant the prisoners would be released and that they would not be handcuffed or under guard. (R 1278) The two orders were given to KOSHIKAWA, about three or four minutes apart, at the time when none of the cell blocks were afire, and KOSHIKAWA shouted the order to release the prisoners, in a loud voice, from the jailers' room. (R 1278-1279, 1367) He denied NAKAGAWA's testimony, and said it was "unreasonable and inconsistent". (R 1280, 1341, 1345, 1372-1373).

(f) An air raid shelter had been begun for Cell Block No. 4, near the cell block, but it had been abandoned because there could have been no place for the inmates confined there, to exercise; and they discovered, by experience, that a shelter built so close to a cell block "would be ineffectual", and they started on another one elsewhere. (R 1277, 1360) The air raid shelters at the prison were primarily for explosive bombs, and were of very little benefit against incendiary bombs. There were more than ten shelters, and, with crowding, all prisoners and prison personnel could have been uncomfortably crowded therein for a short period of time. (R 1283, 1326, 1354, 1363, 1377).

(g) He returned to the inner parade ground about 6:00 A.M. on 26 May, coming through the burned inner gate. There were two bodies to the left of the inner gate, and about thirty in Cell Block No. 4, and about twenty between Cell Block No. 3 and the east wall, and one behind the kitchen, but he saw no body to the right of the gate, except the one behind the kitchen. Those bodies between Cell Block No. 3 and the east wall were scattered, and almost completely burned. The bodies to the south of the inner gate were lying face up, clothes and hair burned, flesh still on the bodies, and had a "black or brown color". He passed within two or three feet of the bodies, "stopped and looked at them," and he "saw no cuts or wounds on them". (R 1280-1281, 1339-1340, 1366, 1368, 1374, 1386-1387). There were about ten thousand Japanese Nationals

Restricted

Restricted

at Yoyogi parade ground on the night of the fire. (R 1298) He protested against sending the Americans to his prison, but he was promised additional guards and ordered to prepare for them. (R 1284).

(h) The roster of American prisoners was kept in the chief jailers' room, west of cell blocks Nos. 2 and 3, and was burned; and he could not report the names of the Americans perishing in the fire. (R 1231-1282, 1353) The Americans were temporarily buried in a common grave, in an air raid shelter, because, at the time, they could not give them a better burial. (R 1283).

(i) The radio and newspapers had worked up an intense feeling of hatred in the public, against the B-29 flyers (R 1284), and naturally a Japanese National, he and the prison staff did not have a kindly feeling for the Americans; but they were acting officially, and had a duty to protect them, and that duty overcame their personal feelings. Besides, the Americans were to be tried, and, if found guilty, were to be punished. (R 1357, 1364-1365).

(j) There were five chief jailers and fifty-eight jailers on the roster, but, including himself and chief jailers, there were approximately thirty prison personnel at the prison that night. (R 1285-1286) On the night of the fire, it was his intention to first release all of the Japanese prisoners and evacuate them to the parade ground, and then assemble all the guards and release the American prisoners, so the guards could protect the Americans from the other prisoners and the public; and, under the circumstances, he does not think his orders were given too late. (R 1359, 1364-1365, 1368, 1377, 1383).

(k) The next day he left the prison about 7:30 A.M., and made a report of the damage at the prison, and the deaths of the Americans, and reported that there were about twenty Japanese prisoners missing. He returned about 4:00 P.M., that day. He never tried to keep the Occupation Forces from learning of the American prisoners' deaths. (R 1286-1287, 1340, 1346-1347, 1370-1371, 1379).

(l) Sometime in late September 1945, after he had returned to his home, in answer to a telegram he reported to the Headquarters of the Eastern Army, and was told that the original report made by him had been burned, and for him to make a detailed report of the fire. (R 1228) He went to Sugamo Prison, where KOSHIKAWA and FUJII worked, and got information from them, and KOSHIKAWA got information from other employees there, who formerly worked at Tokyo Military Prison; and he then made a report, about the middle of October. Ten days later, he was ordered to make an even more detailed report, and he then made the report (Ex 8 to the Prosecution's case) in early November 1945. (R 1288-1289, 1293, 1349, 1368, 1375-1376, 1385) In making that report, he took statements from KOSHIKAWA, KIKUCHI, TERASAKI, KAMOTO and KAMITOTO, because they had most to do with the incident. KAMITO and KAMITOTO went to Cell Block No. 4 to release the prisoners. KIKUCHI was chief jailer of the day, TERASAKI was in charge of fire fighting, and KOSHIKAWA was his assistant. (R 1289, 1319, 1349-1350) Telegrams were sent to various guards, on his order, twice; once before and once after the above report was made. He told KOSHIKAWA the incident had "grown quite big", and the men were worried. Six guards were called to the Demobilization Bureau in December 1945, and he told them he had found the facts just as he had reported them, for them not to worry, the responsibility was entirely his. (R 1290) He told them he had reported eight Japanese had died in the fire, and that up until then the deaths of those eight men had been kept a secret, and that only a portion of the staff members knew about it. (R 1290) Three had actually died, and he assumed five had died because they were missing, and they had good behavior records, and only a short time to serve, and they had not reason to escape. He now believes eight died in the fire. (R 1290-1291, 1371-1372, 1374, 1379)

Restricted

Restricted

He never advised anyone to withhold any information from the Japanese Occupation Forces: and he did not instruct anyone, at any time, that if any Americans escaped from their cells, they could be killed, nor did he order OKUBO, KAMBE or KAMIMOTO to kill any Americans. He does not now know that any Americans were cut, stabbed or killed that night, and he did not want them to burn to death. (R 1292, 1294, 1349).

(m) He was called to Tokyo and asked about "dog tags", which he learned about at that meeting, for the first time; and, as a result of the meeting, he, with others, made two trips to the prison, to search for them; on one occasion with Lieutenant CHURCHILL, and about six or seven "dog tags" were found. They were needed to identify the American dead. The "dog tags" had been brought to the prison by the Kempei Tai, and turned over to TAKIKAWA, as keeper, with other of the American prisoners' valuables. (R 1292-1293).

(n) He did not order any subordinates not to release the Americans, or to let them remain as they were. (R 1294-1352) at the time of the fire, the Americans had not been convicted. (R 1295) At the time he made his statement to Prosecution (Ex 57) he thought Lieutenant KURODA had made out death certificates, but he was confused about death certificates for the Japanese prisoners burned at Kofu. (R 1299, 1352-1353, 1357, 1371, 1376) As some of the guards had lost their homes during air raids, he "was worried lest the guards be swayed by the personal feelings and treat the American prisoners brutally," so he instructed the guards that such a happening would not occur; and he "made frequent tours and received reports of guards, to see that his instructions were carried out": (R 1301, 1306, 1364-1365) He also told them the Americans' cells would be opened only on permission of himself or a chief guard. (R 1301) The guards were strictly forbidden from entering the Americans' cells. (R 1308).

(o) He does not recall clearly if he saw OKUBO, KAMBE or KAMIMOTO during the night of the fire, but he is sure he did not see all of the guards present that night. (R 1301).

(p) Under the interpretation of the Army prison ordinance, the ranks of American prisoners were not recognized. (R 1309-1310) The fence south of Cell Block No. 4 was built for the "purpose of strictly separating the Americans from the Japanese prisoners".

(q) If danger was imminent, then any guard had authority to open cells, on order of a chief guard, the chief guard to be present when opened (R 1316-1324), but, if the Americans were released, there would have been danger to their lives because there were an insufficient number of guards to afford them protection from civilians and Japanese prisoners. (R 1317, 1319, 1324-1334, 1354) The presence of American prisoners was kept secret from the Japanese prisoners, but there was fear the information would leak out. He does not know whether the prisoners learned the secret. (R 1322) The security squad, the night of the fire, was used to watch for falling incendiaries and fighting fires. (R 1322).

(r) He went with others, to Cell Block No. 4, and put out a fire sometime before the evacuation, and the American prisoners were still there, and there was some excitement among them, but they were not raising any commotion. In fact, he never heard any commotion among the American prisoners. (R 1332) The Japanese prisoners were evacuated to shelters, so they could fight fires; so actually it may be said that they were not removed to shelters. (R 1333-1334, 1339, 1369) He thinks about one hundred Japanese prisoners were used in fighting the fires. (R 1333, 1370).

(s) He thinks he left the inner compound before KOSHIKAWA, but he did not see KOSHIKAWA at Yoyogi parade ground, until about dawn (R 1337) If the American prisoners were out of their cells at the time he returned to the inner parade ground, that night, they may have been

Restricted

Restricted

saved if they knew their way out. (R 1333) He does not think the large inner gate was opened that night. (R 1339, 1354, 1372) He passed through the small gate, but he was not standing there, nor was he in the vicinity of the inner gate, with KAKUCHI. (R 1339).

(t) KAKUCHI and his assistant, TAKIKAWA, were in charge of keeping prisoners' valuables. (R 1319) TERASAWA and ONO had charge of the money of prisoners. (R 1319-1320) KAMEE, OKURO and KANIMOTO were ordinary guards (R 1320-1321), and when the prison personnel were changed from civilian to military status, KAMEE became a Captain, KOSHIKAWA a Lieutenant, OKURO Master Sergeant, KAMEE a Corporal or Sergeant, and KANIMOTO a Corporal. (R 1321).

(u) He did not count the American bodies, but from reports made to him, there were sixty-two American bodies, for the sixty-two Americans present. But the reports showed there were sixty-five bodies in all. (R 1340, 1343) He did not at first report the deaths of the three Japanese prisoners, because he could not identify them, and because adverse criticism would result. He reported them as deserters. (R 1347-1348, 1370-1371).

(v) From subsequent information, he thinks KAMEE and KANIMOTO went to Cell Block No. 4 to release the Americans, about the time he re-entered the inner compound. (R 1359, 1374) Under the circumstances, he does not think the order to evacuate was given too late. He was unable, at the time, to foresee the imminent danger. (R 1365); to the extent that his negligence, if any, may have resulted in the deaths of the Americans, he accepts responsibility. (R 1377-1378) He never heard, prior to January 1946, that any of the Americans were killed by any of the prison staff; and if OKURO, KAMEE or KANIMOTO killed any Americans, he does not know it. (R 1352).

(w) He received ten days of heavy confinement, at the hands of General TANAKA, because of so many deaths and destruction of valuable documents the night of the fire. (R 1357).

(x) The English translation of a "protocol", where it said three hundred fifty Japanese prisoners fought the fire, is incorrect. It should have been about one hundred thirty. (R 1370).

(y) The distance between the detention cell blocks and the east wall was about eleven feet. The distance between the fence near the detention ward and the east wall was about six or seven feet. (R 1386).

Colonel John R. BURNS, of Chemical Warfare, United States Army, identified an incendiary bombshell (Def. Ex "K"), and said he had made many tests with such a bomb; and "ball" was ejected out of the tail, with considerable force, and would travel thirty or forty feet. The "cluster contains a considerable number of bombs". The construction of Cell Block No. 4 was described to him, and he stated if the bomb functioned normally it would penetrate the tile roof and "function within the cell space". The open, flimsy type of construction "is favorable to the progress of a fire started by bombing, and if not controlled will become a conflagration in short order", and there would be a lot of smoke. (R 1440, Def. Ex "K").

Takashi MATSUI, defense investigator, went with Mr. MADRIX, defense attorney, and Major PATTERSON, defense investigator, to Kosuge Prison, to interview Keinosuke NAKAGAWA, on 15 March 1948. Prior to that time, he knew nothing about the facts of this particular case. (R 1391) Through him, as interpreter, Mr. MADRIX told NAKAGAWA that he and Major PATTERSON were from the Defense, in the TASHIRO case, and that they wanted to find out the true facts about that case. Mr. MADRIX told him to tell what he had told Prosecution, and what were the facts. (R 1392-1393).

Restricted

Restricted

Defense Exhibit "D", which witness identified, was the statement taken by him, from NAKAGAWA, on that occasion, in witness' handwriting. When the statement was completed, witness showed statement to Mr. MADDRIX, and Mr. MADDRIX told him to read the same to NAKAGAWA, and he did so. He read the statement, paragraph by paragraph, in Japanese and asked NAKAGAWA each time whether the particular paragraph was true, and kept on reading until the entire statement was read back to NAKAGAWA, and NAKAGAWA did not indicate any of it was untrue, but stated it was true, and signed it without protest. He thinks Mr. MADDRIX and Major PATTERSON were present when NAKAGAWA signed the statement. No threats or promises were made by Mr. MADDRIX, Major PATTERSON, or himself, to get NAKAGAWA to make the statement, but NAKAGAWA was told to tell the truth. (R 1392-1394) There was no suggestion to NAKAGAWA that it would be allright for him to say he did not see KAMBE and OKUBO kill an American, even if he did see that occur. (R 1393-1394) NAKAGAWA was sworn by the witness, before he made this statement. (R 1396-1397) The case was discussed with him, by Mr. MADDRIX and Major PATTERSON, on the way to Kōsuge Prison. (R 1398-1399) NAKAGAWA was interrogated for about two and one-half hours. It took about twenty-five minutes to translate this statement. (R 1400) The objective of the statement was to find out what NAKAGAWA had told the Prosecution, and what he actually knew about the case. (R 1401-1403) Witness did not tell NAKAGAWA he was a member of the Japanese race. (R 1408).

Major Burton R. PATTERSON, United States Army, assigned as investigator for the Defense in this case, went with Mr. MADDRIX and MATSUI to Kōsuge Prison, to interrogate NAKAGAWA, who was a prisoner there, (R 1409) When NAKAGAWA was brought in, Mr. MADDRIX, through MATSUI, as interpreter, told NAKAGAWA they were there from the Defense, in the TASHIRO case, and then asked if he had given the Prosecution a statement. In his reply, through the interpreter, NAKAGAWA said he had made a statement to the Prosecution, and, after a few questions, NAKAGAWA "said all was not true in his statement". Mr. MADDRIX then said, "I want you to tell Mr. MATSUI what you told the Prosecution, and we want the whole truth; the truth". At that time Mr. MADDRIX and the witness left and went into the next room, and left MATSUI interrogating the witness. (R 1409) Witness went into the Prosecution room on several occasions during the time the statement was being translated, and when translation was completed he swore witness, and had his fingerprint each page. It took about a half hour to translate it. (R 1410).

He was formerly investigator for the Prosecution, and saw NAKAGAWA in the Weiji Building, for the first time. (R 1410) While he was with the Prosecution Lieutenant McKILLEGOTT was interrogating NAKAGAWA, at an adjoining desk, and McKILLEGOTT said to witness that he did not know whether or not to believe NAKAGAWA, that he was more interested in being released from prison. (R 1410-1411, 1413-1414, 1418) He has no ill feeling towards the Prosecution. (R 1411) He suggested to MATSUI that he ask NAKAGAWA if his statement was not taken by Lieutenant MARTIN. (R 1415) He saw NAKAGAWA a day or two before 15 March 1948, with an interpreter, and interrogated him; but he took no statement because he wanted Mr. MADDRIX present when the statement was taken. (R 1415) Mr. MADDRIX left the prison before the witness, but the statement was signed before Mr. MADDRIX left. (R 1410-1416) He does not understand the Japanese language. Witness was in and out of the interrogation room while NAKAGAWA was being interpreted. (R 1416-1417; 1420) MATSUI read, then paused, and looked at NAKAGAWA for confirmation, and then proceeded. (R 1416-1417, 1420) Witness never worked on this case for Prosecution. (R 1417) MATSUI seemed to say to NAKAGAWA, "Tell your story"; and then wrote it down, without interrogating or directing NAKAGAWA (R 1417), and, at times, when witness went into the room, he looked at the statement and suggested MATSUI interrogate him about specific points, and this was done. (R 1418) No promises to assist NAKAGAWA to get out of prison were made to NAKAGAWA, through MATSUI or anyone else". (R 1419) MATSUI knew nothing of the facts of the TASHIRO case before 15 March 1948. (R 1420-1421).

Restricted

Restricted

Major PETERSON, being again called to the witness stand, testified that he went to Tokyo "Garrison Prison", and dug to find the location and limits of the air raid shelter between Cell Blocks Nos. 3 and 4. He dug the entire length, width and depth, and the outlines of the easterly steps were revealed, and they took measurements and pictures. The measurements, and the pictures, were made Exhibits H-1, H-2, H-3, H-4, H-5. (R 1223-1225) The exhibits, in substance, showed the air raid shelter was three feet from Cell Block No. 3, the steps at the easterly entrance of Cell Block No. 3, and on a diagonal line it was fifty-three feet five inches from the northeasterly entrance to Cell Block No. 4. (R 1425-1428) All of the measurements were made, and pictures were taken, to show the distance from the eastern edge of the shelter to the northeast corner of Cell Block No. 4. (R 1428) He saw no evidence of any other shelter east of the one mentioned. (R 1429).

Takeko KIMOTO was the wife of the accused, KIMOTO, and through Exhibit "I" she said that her husband came home about 6:30 A.M., 26 May 1945 and remained about ten minutes, and on the morning of the 27th he came home looking pale and complaining about his health. He had a fever of 103, and went to bed, and stayed continuously for two or three days. On the 28th or 29th of May 1945 he and his brother went to Meguro school, for him to "retire", but his resignation was refused. Ten days leave was given KIMOTO, starting 27 May. About 5 June 1945 he went back to work. (R 1437-1438).

Naozademon NAKAJIMA, a brother-in-law of OKUBO, testified (in Def. Ex "G") that OKUBO arrived at his home on or about 30 April 1945, from China, and left there the next day and returned that afternoon, started to work at Tokyo Military Prison on 5 May 1945. (R 1422, Def. Ex "G").

Masao KOSHIKAWA, being recalled, testified that there was only one air raid shelter between Cell Blocks Nos. 3 and 4. There was a partition in the shelter. The shelter was fifty or sixty feet long. (R 1430-1431) The maximum number of prisoners the shelter would hold, was about sixty. (R 1434-1435) When the air raid shelter was built there were some trees south of the shelter. Defense Exhibit "J" is a reproduction of an official Japanese plan or part of the Tokyo Military Prison, showing the construction of Cell Block No. 4, its cells and the doors thereto, with an addition showing the fence around Cell Block No. 4. (R 1440, Def. Ex "J") It shows the cells in Cell Block No. 4 were in the center of the building, with corridors on each side. The walls between the cells were eight inches thick, (Def. Ex "J").

PROSECUTION'S REBUTTAL PROOF

In rebuttal, Fujiyoshi TERASAKI testified that the Japanese were not permitted in Cell Block No. 4. (R 1444) The air raid shelter between Cell Blocks Nos. 3 and 4 and the easterly end was about three or four feet west of the easterly end of Cell Block No. 3. (R 1444-1445) There were about six or seven trees "scattered along the length of the air raid shelter (mentioned), to the south", and there were "a few trees growing parallel to the east corridor". These trees burned on the night of the fire. He never entered that shelter. There was only one shelter between Cell Blocks Nos. 3 and 4. (R 1450-1454) He believes tree foliage near the ground acted as an obstruction to the vision between the east end of the shelter and the northeast entrance to Cell Block No. 4, but he believes persons entering the northeast entrance of Cell Block No. 4 from the southeast entrance of Cell Block No. 3 could be seen from the easterly entrance of the shelter, during daylight, if the entrance was where he, TERASAKI, testified he thought it was (R 1450-1457, 1459-1460), but if the entrance was forty-three feet east of the east end of Cell Block No. 3 it would be much more difficult to see a person at the northeast entrance to Cell Block No. 4. (R 1460).

Restricted

Restricted

Nehoi EISHIN, being put on in rebuttal, testified he went to Tokyo Military Prison the day before he testified, with Mr. Adinolfi, Mr. Dady and TERASAWA, and he said he remembered the east entrance to shelter between Cell Blocks Nos. 3 and 4 was only about two or three meters west of the east end of Cell Block No. 3, and he was surprised to see, from an excavation, a stairway apparently at the east entrance of that shelter, much further than two or three meters. (R 1461-1464) There was only one air raid shelter there, but it was partitioned.. (R 1462) Although there were some trees south of the shelter, they did not obstruct the view of a person in the east entrance, of the shelter of the north entrance to Cell Block No. 4, but the concrete water container "somewhat obstructed the view". (R 1464-1466) He was on guard duty in Cell Block No. 2, from the beginning of the fire until all prisoners were evacuated therefrom, and saw KAMBE there, but did not see KAMIMOTO or KOSHIKAWA there that night. (R 1466-1467-1468) He looked in all cells before he left, and no prisoners remained in Cell Block No. 2. (R 1467-1468) The shelter caved in the night of the fire, and no building was later constructed over it. (R 1469).

The Commission called Henry L. DATY, a Prosecution investigator, as a witness, and he testified that at the time NAKAGAWA made a statement to him, he thinks NAKAGAWA had been either released or paroled from prison, but he does not know if he was released temporarily in the custody of Prosecution. (R 1475, 1479) He took the statement on the typewriter, in question and answer form, writing the questions and writing down everything NAKAGAWA said in reply, reading back the question and answer in Japanese, before he signed and swore to it. (R 1476-1477) He had read NAKAGAWA's statement, taken by Lieutenant Martin at Sapporo, before he took NAKAGAWA's affidavit, although he did not use it as a basis of the statement. In the main, the two statements are very similar. (R 1479-1480) He knew NAKAGAWA had given the Defense a statement before he took the affidavit, but the affidavit was taken by him, at Mr. Adinolfi's request, to be used as NAKAGAWA's direct examination in this case. (R 1476, 1480) After NAKAGAWA was sworn, he advised him if he did not tell the truth he would be subject to 70,000 Yen fine and up to five years in prison. (R 1477).

Captain Robert C. LAY, who was a member of the Memorial Division of the Quartermaster Section, Eighth Army, testified that he investigated and made reports on the identity of American dead, and had prepared a resume of the dead at Tokyo Military Prison, which he filed as Prosecution's Exhibit 69. (R 1488) (The names of the dead were identical with the names shown in the verdict of the Commission). (Ex 49, R 1646) Some of the information on which Exhibit 69 is based, was secured from Japanese sources, and some from "dog tags", as is indicated by the report. Sixty of the dead were identified from these sources (and their names are properly given in the findings of the Commission). (R 1489-1502, Ex 69) The report shows he found the remains of sixty-five bodies, and Exhibit 69 states, "Investigations conducted to date leads this office to believe that the sixty-five victims are all American Air Corps personnel". (Ex 69, p 1) It would not be possible to determine whether broken bones occurred before or after death. (R 1493-1494) The Japanese records indicate that these members of the American Air Corps were special war criminals. (R 1496).

Lieutenant George F. GERHARDSTEIN, a member of the Quartermaster Graves Registration, Eighth Army of the United States, testified he went to the former site of the Tokyo Military Prison on 25-26 June, 1948 and excavated between Cell Blocks Nos. 3 and 4, primarily to try and find American bodies, and, secondly, to find if the shelter extended any further east than the stairs, which was shown in an excavation already there. He extended the excavation already there, easterly, and he summarized his finding: "Based my opinion on the absence of any foreign

Restricted

Restricted

article such as loose brick, tile, wire, gravel or tin, such as was found in the excavation of the west end, that I saw piled alongside of the excavation, the fact that the ground was so firmly packed, I do not believe the air raid shelter was ever at the east end of the building". (R 1497-1502)

William R. GILL, in charge of the investigation section concerning captured airmen, testified he learned that Harno, Rodinger and Edman were held at Tokyo Military Police Headquarters until the last of March 1945. According to affidavit of Colonel Richard Carmichael, Colonel Carmichael saw and talked to these men shortly before he left there on the 3rd of April 1945, and affidavits of several others who saw those men, stated they were transferred "to an unknown location". (R 1502-1503).

Scott Murphy DOWNING, an employee of the Legal Section of SCAP, made two trips to Tokyo Military Prison in September 1947, at the request of Captain Martin, for the purpose of locating and excavating a grave there. On the first occasion he had with him a Japanese National, whose name he did not know, and the grave was then marked. About two weeks later he went there again. Two enlisted men were there when he arrived. The marked spot was excavated, and they found a human body. The excavation was located in the northeast corner of the inner compound, about twenty feet from the north wall and thirty feet from the east wall. (R 1512-1513, 1515).

Tokusaburo WAKI, being recalled, said that in September 1947 he went with an American officer to Tokyo Military Prison, an indicated where a human body had been buried on the 26 of May 1945. (R 1511-1512) On May 26 he saw a body buried at the spot pointed out by him, but he did not know whether it was an American or Japanese body. The body was holding a bucket. (R 1512-1513, 1515) There were trees along "the southern edges" of the shelter between Cell Blocks Nos. 3 and 4. (R 1515) He thought there were two air raid shelters there. (R 1514, 1517).

There has been attached to the record since the trial, an affidavit of witness Keinosuke NIKIYAMA, taken by Frank J. Thompson, Colonel, Cavalry, U.S. Army, and president of another Commission, on 8 November 1948, in which NIKIYAMA repudiated and declared false his testimony given on the trial.

The certificate of Colonel Thompson attached to this affidavit is as follows:

"I have questioned Keinosuke NIKIYAMA this 8th day of November 1948, for forty-five minutes, in regards to the foregoing statement and he has stated to me that it is true and correct and that no threats or promises were made to him by any member of the Defense Section.

"During my examination of Keinosuke NIKIYAMA he told me that his original statement given to Investigator Martin was untrue, that he made the untrue statements and repeated them in the trial of Toshio TASHIRO et al because, 'The interpreter told me that if I made this statement (which was untrue) that the Prosecution would secure my early release from prison and, secondly, that if I changed my story (to what was the truth) I would be tried and kept in jail. It was for this reason that during the trial I said that my statement of March 15th was untrue and because of the threats and promises made me by the Prosecution's Interpreters.'

"In order to preclude the possibility of personal interest or bias on the part of the interpreter, I utilized the services of a court interpreter now serving as court interpreter for my own Commission."

/s/ Frank J. Thompson
/t/ FRANK J. THOMPSON
Colonel, Cavalry

(ser-1)

Restricted

5. OPINION

General. Applicable to two or more accused.

(a) Excluding extrajudicial statements of accused as to co-accused.

The Commission held that the statements of one accused, made for the Prosecution, before trial, could not be considered as evidence against his co-accused, except on conspiracy charges. (R 845-849, 864-869) It will be noticed the Commission (not merely the Law Member) made the ruling. The Commission had a wide discretion in admitting and excluding evidence (HASHIMOTO, Case No. 168) At the time the Commission made the ruling, there were two or more extrajudicial statements of each, KIMBE, KIMIMOTO and OKURO, in evidence, the statements of each containing materially contradictory statements. (Ex 8, p 22-25, Ex 60, 61, 62, 63, 64, 65, 66, 67) The Commission thus had a reason for excluding the statements as to the co-accused, and we cannot say, as a matter of law, the Commission arbitrarily abused its discretion in so limiting such extrajudicial statements. Their subsequent testimony further weakened the "probative value" of their statements against their co-accused (R 887-942, 961-1006, 1025-1138), and further strengthens the ruling of the Commission.

As the extrajudicial statements of TASHIRO and KOSHIKAWA contained no statements materially incriminating their co-accused, the admissibility of their statements against the other accused becomes academic and need not be passed on.

(b) Testimony of Keinosuke NAKAGAWA.

NAKAGAWA was one of the main witnesses for the Prosecution. We are forced, however, to disregard his testimony. To begin, he was a convicted thief. Stealing is an offense affecting the moral character of the thief, under the moral codes of all civilized countries; and, in America, in most states, by statute, such offender is rendered, when convicted, infamous and prohibited from testifying, except in defense of himself, in a criminal case.

Secondly, he testified he saw OKURO and KIMBE murder three American prisoners, on the orders of TASHIRO; and both in his affidavit to MATSUI and in his affidavit to Colonel Thompson, who is thoroughly disinterested, he stated such testimony, on the witness stand, was wholly false. The "probative value" of his testimony and his credibility as a witness were thereby completely destroyed (Vol 2, Wigmore on Evidence, 3rd ed., sec 1017, Johnston vs Railroad, 146 Tenn, 135).

Thirdly, to credit the witness' testimony would not only reflect on the integrity of Mr. MATSUI, but also on Major Patterson and Mr. Maddrix (now Chief of the Defense Section). Parenthetically, we think the attack by the Prosecution, on Major Patterson and Mr. Maddrix, on such testimony (R 1566) was gratuitous and doubtlessly made without due consideration.

(c) Number of American prisoners who perished.

The Commission found that sixty-five American prisoners perished during the fire of 25-26 May 1945. (R 1655-1656) The preponderance of the evidence does not support this finding. YAMAZAKI said he counted the American prisoners a few days before the fire, and there were sixty-two Americans (Ex 37); OKUNO said he took a roll call and there were sixty-two Americans (Ex 44) and ISHISHITA stated two days before the fire he and the chief jailer made a head count of the Americans, and there were

(p. 66 of, 92 , Toshio Tshiro et al Case # 78)

Restricted

Restricted

sixty-two in the prison, and none were thereafter received. (Ex 43, R 537)
All of this testimony was brought out by the Prosecution, from its witnesses.

The only evidence to the contrary was that Exhibit 69, identified and placed in evidence by Captain Ley (R 1488) states the remains of sixty-five bodies were recovered from the prison, and the investigation "leads" American officials "to believe" all are bodies of Americans. Prosecution's investigator, Mr. Gill, said Colonel Carmichael and others, in unproduced affidavits, stated that three named American prisoners were in the prison prior to their transfer to "an unknown location", along the last of March or the early part of April 1945. The positive testimony, introduced by the Prosecution, of course is stronger and overcomes the speculative testimony introduced also by the Prosecution.

(d) Statements obtained by threats, etc.

We have been impressed by the number of witnesses who claimed that extrajudicial statements were obtained from them by threats of punishment, promises or reward, yelling, browbeating, threats of, or downright physical violence, or other reprehensible conduct. The fact that several witnesses so complained (R 353-354, 395, 436-437, 447-448, 507-511, 976-977, 1042-1048, 1053, 1075, 1077-1078, 1081, 1090-1092, 1108, 1127-1128, 1130; Def Ex D, Def Ex E. MURKIN Affidavit attached to Record plus the fact that there is some corroborative evidence in the record (R 875-878) gives credit to the claims of the witnesses. It would be better that a guilty war criminal go unpunished, than that the Review Authority should approve or condone such reprehensible conduct, by giving evidence obtained in that manner, full credit. We hold that evidence so obtained should be given very little, if any, probative value, unless same is more than colorably corroborated by other credible evidence. (SCAP Letter, par 5-d (7)).

(e) The Americans were Prisoners of War.

Even though the American prisoners were charged with war crimes, yet they were prisoners of war during their confinement in prison. They were members of the Armed Forces of the United States, and were captured and confined "because of the war." (Rules of Land Warfare, sec 70, 76).

(f) Circumstantial Evidence.

In order for a fact to be established by the Prosecution in a criminal case, by inferences from circumstances, the "inferences drawn must be consistent with the facts sought to be proved, and wholly inconsistent with any other reasonable inferences to the contrary." (23 CJS, sec 907, p 145 and cases there cited).

Masao KOSHIKAWA

Specification 1.

Under this specification the questions arise: Did KOSHIKAWA have the duty and authority to earlier release the American prisoners from their cells that night; and, did he unlawfully fail to do so?

Assuring, but not deciding, that he had the duty and authority to order the Americans released on account of the imminent danger, could it be successfully argued that he, second in command, could change or countermand the order of TASHIRO, his commander, who was present, supervising what was being done? While the fire was raging and bombs were falling, on TOSHIRO being specifically asked about releasing the American prisoners, he ordered; "Let things remain as they are" (Ex 37, p 8, R 347), and "We will wait and see what the situation is". (Ex 42, p 4-5) As this testimony was put in the record by the Prosecution, it seems obvious that the accused could not be guilty because he failed to order their release, which, had he done, would have countermanded his commander's orders.

Restricted

Restricted

But, TASHIRO did finally give KOSHIKAWA an order to have all prisoners released; and the Prosecution claimed the accused did not promptly and in good faith execute that order. (R 1559-1560) The proof shows the accused began immediately to have the Japanese prisoners released, and all 462 (except at most 8) were saved from death or even injury; while he waited 15 or 20 minutes (Ex 59, p 2-4) before he ordered the American prisoners released from their cells, or did anything towards freeing them and all of the American prisoners perished during the fire. It is fair, therefore, to conclude that the Americans would have been saved from a horrible death, had accused shown the same diligence in freeing them, as he did the Japanese prisoners.

To show the delay of 20 minutes in ordering the Americans freed, was in bad faith, so they would be exposed to the hazards of the claimed unlawful incendiary bombing by their fellow Americans, the Prosecution relied on the following facts: (R 1560-1561):

1. The intense resentment of the Japanese people against American airmen charged with incendiary bombing;

2. The following quotations, from statements made by the accused, concerning the American prisoners;

(a) "Until there is imminent danger, and until an order is given, they will not be let out of their cells." (R 576)

(b) The following different version of one witness, of the same statement made by KOSHIKAWA; "There is no need of opening Cell Block No. 4 at any time." (Ex 44, p 2) "I don't care what happens to No. 4 Cell Block." (R 576, 592, 595) "Leave No. 4 Cell Block as it is." (R 583, 592).

(c) "Don't open Cell Block No. 4 in case of air raids, as Americans might escape and injure the civilians." (Ex 52, R 786-787).

(d) After accused had asked for and received TASHIRO's permission to release the Japanese prisoners, on the night of the fire; the witness heard only " - - - cell block No. 4 - - -" of the next question, of the accused, KOSHIKAWA. (Ex 54, p 2-3).

Viewed in the light of the surrounding circumstances, we do not believe the inferences to be drawn from those facts, assuming them to be true, unerringly show a criminal intent, or even that accused was acting in utter disregard of the safety of the Americans. To believe, on the contrary, that such proof is at least equivocal - - - reasonable inferences as consistent with innocence as with guilt - - - may be drawn there from.

The fact that the Japanese were inflamed against the American prisoners hurts, rather than helps, the Prosecution's theory. We and the commander had planned not to release the American prisoners in an emergency until he could use the prison force to protect them from probable injury by the inflamed Japanese prisoners and civilians; and, in carrying out that plan, the accused elected to first evacuate the 462 Japanese prisoners, so that the prison force would then be free to guard the Americans; and the evacuation of the Japanese took some of the time of the guards. Accused had an equal duty to protect both the Japanese and American prisoners; and, to carry out their plan, he had to make an election to evacuate either the American prisoners or the Japanese prisoners first. Under the circumstances, the fact that he elected to first evacuate the 462 Japanese prisoners, rather than the 62 American prisoners, does not necessarily show criminality. The fact that accused later ordered the Americans' release, before the guards were free to protect them, does not militate against this conclusion. At the

Restricted

Restricted

time of such order, cell block No 4 was in a dangerous condition and an extreme emergency existed, and Tashiro was not present. Under the record, he had authority to give the order. Failing then to release them meant certain death to them; while releasing them meant probable death or injury. He elected to expose them to probable dangers, in order to save them from certain death.

Quotation 2 (a) is as consistent with the theory of the Defense as it is with the theory of the prosecution. The quotations contained in 2 (b), being three different versions by one witness, of the same conversation, we are at a loss to know which, if any one, to believe.

Quotation 2 (c) gives, as a reason for not opening cell block No 4, the fact that the American prisoners "might injure the civilians." This statement was made during lectures by the accused to the guards (R 786-787); and, in view of the admitted fact of what the Japanese believed about the American flyers, the belief that the Americans might injure the civilians, was logical. But, in view of the same circumstances, it was also logical to believe the Americans were also in danger of being attacked by the Japanese. So, this quotation, while consistent with guilt, is not inconsistent with innocence.

The fact that that night, immediately after accused asked and received permission, from Tashiro, to release the Japanese, a witness heard accused say, ". . . cell block No 4 . . .", and did not hear the balance of the sentence, corroborates the Defense. It tends to show the Japanese and American prisoners were handled separately, and not together; and, if we try to supply the missing part of the statement, the most reasonable conclusion would be, he asked about releasing the Americans also. At least, such words are not inconsistent with the Defense theory. We therefore hold that at least there is a reasonable doubt as to the guilt of the accused, of this specification.

Specifications 2 and 3.

These specifications contain words indicating the accused is charged with conspiracy to commit war crimes: Under Specification 2, a conspiracy with Tashiro not to release the American P.'s in the event of danger and the Americans were thereby killed; and under Specification 3 conspiring with Tashiro to prevent the American and Japanese Governments from learning the true facts in connection with the fire and death of the American P.'s. Is a conspiracy to commit a war crime itself a war crime?

"A conspiracy to commit a crime is a different offense from the crime that is the object of the conspiracy."
(12 CJ 542)

"The last count of conspiracy to violate these laws is a separate and distinct offense, punishable as such."
(Paramagin vs US, 42 Fed (2) 721, 725) (See also: Thompson vs Johnston Warden, 94 Fed. (2) 355, 15 CJS, 1072-1073)

The corpus delicti of the substantive offense is the doing of the act denounced, while the corpus delicti of conspiracy is the unlawful agreement or conspiracy to do the criminal act. (15 CJS 1072-1073)

We have been unable to find where, under International Law, the charge of "conspiracy to commit a war crime," except as hereafter indicated in SCAP rules, is an offense. On the other hand, Section 2 (b) (1) of SCAP Letter AGO 000.5 (5 Dec 45) IS clearly indicates that conspiracy, with the exception mentioned, is not a crime under International Law. Said Section is as follows:

Restricted

Restricted

"Over Offenses.

- (1) Military Commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:
 - (a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing. (Emphasis supplied)
 - (b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.
 - (c) Murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated."

The underscored portion of sub-section (1) (a), as quoted, shows that SCAP recognized and provided for the trial of conspiracy to commit the offenses mentioned in that sub-section. However, it does not recognize or provide for the punishment of conspiracy to commit the offenses mentioned in the other two sub-sections. The specifications charge a conspiracy to commit offenses set out in sub-section (1) (b), quoted above. Applying the well-known rule of construction, "expressio unius est exclusio alterius" shows that SCAP did not recognize nor provide for the punishment of "conspiracy to violate" the last two quoted sub-sections.

Obviously, SCAP recognized, under (1) (a) that war could not be waged without the participation and consent of multiple people, so the underscored portion was put in that section; while numbers were not necessarily required under the other two sections, and such provision was omitted from them.

Under International Law it was evidently considered that the doing of the prohibited act caused the harm; while the agreement to do the act did not necessarily cause injury.

Merely because the doing of an act is denounced as criminal, does not mean that the agreement to do the act thereby becomes criminal. Under United States Federal jurisdiction, where no common law crimes are recognized, in order to make a conspiracy to commit a crime, an offense, it was necessary to pass the Federal Conspiracy Statute. (Authority supra. Reilly vs US, 106 Fed Rep 896). We believe this rule is equally true under International Law.

We, therefore, conclude that a conspiracy to commit a war crime is not itself a war crime of which the commissions have jurisdiction.

However, since the specifications allege sufficient facts to constitute charges of the completed offenses, we will treat the conspiracy charges as surplusage, and construe them as charging the substantive offenses. By so doing, all questions of duplicity are removed.

Restricted

Restricted

Specification 2.

Broadly construed, the substance of the charge in this specification is that the deaths of the American P.W.'s were caused by the formulation and adoption of a plan for their evacuation or release in time of danger by the accused and Tashiro, the carrying out of which resulted in the failure of the American P.W.'s to be released during a fire, the gravamen being that the type and kind of plan formulated and adopted violated the duty to protect the P.W.'s. So construed this specification does not cover the same field as, but may be differentiated from, Specification 1.

The duty under International Law to protect the American P.W.'s from known or to be anticipated dangers required the exercise of foresight in the formulation and adoption of a plan reasonably calculated to protect them from such dangers; and the failure to carry out and perform that duty may be a war crime.

Ordinarily it would be necessary to decide that Koshikawa, as second in command, had a duty to protect the P.W.'s from known or reasonably anticipated dangers, because, obviously, if he had no such duty, his failure to perform it could not be a criminal offense. However, since under this specification and the proof, such plan was formulated and adopted jointly by accused and Tashiro, the commander, it is not necessary to decide that question. Tashiro as the commander undoubtedly had the duty to protect the P.W.'s. Under such state of facts, Koshikawa's participation in formulating and adopting a grossly negligent plan with Tashiro, the carrying out of which resulted in the death of the P.W.'s, would be a war crime on the part of this accused.

"One may be guilty as principal in the second degree or as an accessory before the fact, by aiding in, or procuring or instigating a crime, although he or she is incompetent to commit the crime in person." (16 CJ p 122-123; see also: US vs Bayer 24 F cases #14547, US vs Snyder 8th F 805 14 F 554, Bishop vs State 118 Ga. 799, 1 Wharton, Criminal Law, (12th edition) Section 259-260 p 345-347). (Emphasis added).

The plan formulated by the accused and Tashiro contemplated that in case of danger all four or five hundred Japanese prisoners would be evacuated before any American P.W.'s were evacuated. It provided that in case of imminent danger all prisoners would be released from the cell blocks only on the order of the commander, if he was present, and by any chief guard, in the absence of the commander. The only means contemplated under the plan of communicating the release order to the guards who would actually release the prisoners was by yelling the order over the megaphone, which may or may not be heard, or by messenger when specially sent. There were guards at all times in all cell blocks, except Cell Block 4, whose duty it was to immediately release the prisoners in those cell blocks when and if they heard the order or received the message for release. In Cell Block 4 there were no guards stationed and, yet, no guards were designated to go to that cell block and release the American P.W.'s when the release order was given. No provision was made for any particular person to assume the responsibility of sending guards to that cell block to release the American P.W.'s in time of danger. When the order to release was given, under the plan, it was merely hoped that some guard would, by chance, be near that cell block and that he would have the presence of mind and the courage to endanger himself, and the will, without special orders, to go to Cell Block 4 merely to release the P.W.'s who were hated by the Japanese. Such a plan was adopted when the accused and Tashiro knew that the cell blocks were made of inflammable wood and the American P.W.'s were locked in small cells therein, with no means of escape except through the doors, and that the prison area had been previously bombed by incendiaries, and, being in Tokyo, the capital of Japan, was likely to be bombed again. The mere statement of the plan shows no foresight for the protection of the American P.W.'s was exercised by the planners, and the planners were grossly negligent in formulating and adopting such a plan (Ex 8 p 16; 23 D p 1, 2; 58 p 2, 3; 59 p 2, 3, 4; R 1152-1154, 1157, 1158, 1193, 1229-1232, 1248, 1267, 1268).

Restricted

Restricted

When imminent danger arose and the plan was put in operation, here are the results: all (except at most eight) of the approximately 500 Japanese were saved from death or even injury and all of the American P.W.'s were killed.

We therefore hold that accused Koshikawa participated in formulating and adopting such a grossly negligent plan for the release of American P.W.'s that when same was put in operation, it resulted in keeping them confined during imminent danger and thereby proximately contributed to the death of at least a large majority of the American P.W.'s. In all other particulars, in our opinion, the findings of the commission are not sustained.

Specification 3.

In substance this specification charges that the accused and Tashiro unlawfully planned to, and did, furnish false and misleading information about the capture, status, condition of confinement, death and place of burial of the American P.W.'s to the Japanese government and the American Occupation Authorities.

The prosecution claimed that the specification charged a War Crime under Sections 76 and 77 of the Geneva Prisoner of War Convention of 1929 (R 112, 113). Under those sections the duty to make the required reports was on the commander or other person on whom the duty was expressly imposed, and not on the accused, there being no proof that such duty had been imposed on him. But since he is, in effect, charged with being an aider and abetter of Tashiro, who did have the duty, the accused may be guilty of the crime if the proof sustained the allegations. (16 CJ p 122, 123; see also: US vs Bayer 24 F cases #14547, US vs Snyder 8th F 805 14 F 554, Bishop vs State 118 Ga. 799, 1 Wharton, Criminal Law (12th edition) Section 259, 260 p 345-347).

The pertinent parts of such sections of the Geneva Convention are as follows:

"Bills of prisoners of war shall be received and drawn up in the same way as the soldiers for the national army. The same rules shall be observed regarding death certificates.

"Belligerents shall see that the prisoners of war dying in captivity are honorably buried and let the graves bear all necessary information, are respected and properly maintained." (GP. Article 76).

"The information bureau charged with replying to all inquiries of prisoners of war, shall receive from the various services concerned full information respecting internments and transfer releases on parole, repatriation, escapes, stays in hospital, deaths as well as other information necessary to enable it to make out and keep up to date an individual record of each prisoner of war." (Portion of GP. Article 77 PT).

There is no charge in the specifications that the American P.W.'s were not "honorably buried", or that their graves did not "bear all necessary information" or were not "properly respected and properly maintained" or that proper death certificates were not made out (Specification 3). Therefore, any proof tending to show any of those facts was incompetent and should not have been considered; and no conviction based on proof tending to show such violations of the Geneva Convention should be sustained.

"Courts can notice neither allegations of matters not proved nor proof of matters not alleged." (Gibson's Suits in Chancery (3rd edition) Section 141 p 148) (Emphasis added).

Restricted

Restricted

The American P.W.'s were not captured by Tashiro or the accused. They were confined in this prison after capture by another department of the Japanese Army merely for safekeeping pending their trials as war criminals for alleged indiscriminate bombing (R 115, 116, 1271, 1272, Ex 54 p 2, 3). Thus neither Tashiro nor the accused had any duty to report about their capture under the Geneva Convention and their failure to do so would not be a War Crime.

The information required to be furnished under Section 77 concerns only "every capture of prisoners effected by its (belligerent's) armies." Strictly construed, unless the proof shows the capture of the P.W.'s was "effected by its (Japanese) Armies" there could be no conviction under this specification. The proof shows the American P.W.'s were in the custody of a department of the army prior to their confinement in this prison, but it does not show by whom they were captured (Record Citations Supra). Since they were all airmen who were either forced, or shot, down over Japan, they may have been captured by civilians and turned over to the army.

But taking a broader view, and construing the phraseology to require the information concerning all prisoners in the custody of the army, what do the facts show? The day after the fire Tashiro made a report to his superiors about the fire, and there is no proof that Koshikawa collaborated with him before he did so (Ex 26, R 117-118). Between the fire on the night of 25-26 May 1945 and the surrender and occupation of Japan, a written report was made of the fire by Tashiro, presumably in compliance with the requirements of the Geneva Convention. In his reports Tashiro stated all the American P.W.'s were killed, all Japanese saved, valuable documents destroyed and six Japanese prisoners escaped (Ex 26; R 115-116). Viewed in its most favorable light for the prosecution everyone of those statements were true.

The written report made by Tashiro was destroyed by the Japanese and was never seen by any representative of the occupation authorities; and in September 1945 Tashiro was ordered by the Japanese government to make other reports for the information and use of the Occupation Forces (R 1288-1289, 1293, 1349, 1368, 1375, 1376, 1385).

There is no proof of what, if any, additional facts were stated in that report and that such facts were untrue. The fact that the report was destroyed may raise an inference that the report contained incriminating evidence against some Japanese, but, for the same reason, would it not also be inferred that such incriminating evidence was true? We do not see how the accused could be held guilty of making any false or misleading statements in the destroyed report.

The overwhelming proof shows that the meetings of the prison personnel where accused is charged with telling those present to make false statements about the fire and the death of the American P.W.'s, the later written reports made by Tashiro of the fire and deaths of the American P.W.'s for use of the Occupation Forces and the written statements made by the accused and the prison personnel; which it is claimed, contained false and misleading information about the death of the American P.W.'s, and on which this specification must be based, all occurred during occupation and while the investigation of the fire and deaths of the American P.W.'s by the American Occupation Authorities was in progress (Ex 37 p 8-9; 38 p 5; 39 p 3-4; 40 p 3; 42 p 2; 43 p 5; 44 p 3; 46 p 5; 48 p 3; 54 p 5; 62 p 3; R 341-343, 388-389, 435, 452-453, 455, 495, 504-505, 552-553, 586-589, 646-647, 677, 684, 688, 815, 816, 817).

When Tashiro made his original reports to his superiors on 26 May 1945, he performed his duty to "within the shortest possible period" (G.P. Article 77) furnish the information required of him by the Geneva Convention. The Geneva Convention did not require him to make two or more reports. It was the duty of his superiors under the Convention to further transmit the information furnished by him.

Restricted

Restricted

The reports made and other things occurring after the surrender and occupation were made on the orders of the Japanese Government, and not in compliance with any requirements of the Geneva Convention. At that time the fire had occurred several months previously, there was no fighting between the belligerents and there were no prisoners of war, and Tashiro was not even in the employ of the Japanese Government. Under the proof, if the accused were guilty of a criminal offense, it was an Occupation Crime and not a War Crime.

Toshio TASHIRO

Specification 1

TASHIRO was convicted of ordering KAMBE, OKUBO and KAMIMOTO to kill 17 American prisoners, whom they killed pursuant to such order (R 1656).

Other than KAMBE, OKUBO, KAMIMOTO and NAKAGAWA (none of whose testimony do we consider, for the reasons heretofore shown) the following witnesses were introduced by the Prosecution, to sustain this specification: MORIOMA, NARAHASHI, YAMAZAKI; each of whose testimony we will briefly consider.

MORIOMA "vaguely recalled," but did not "clearly" remember and could not "definitely" state (R 185-186) that TASHIRO said it would be "permissible" to kill the American prisoners if they escaped. Although later he apparently became more positive that he heard TASHIRO make the statement (R 210), yet, in view of his prior statements, we think his later testimony weakens, rather than strengthens, the "probative value" of his testimony as a whole.

NARAHASHI stated he heard that TASHIRO had said if any American prisoners broke out of their cells, "that it would be all right to cut them down." (Lx 38, p 3) He retracted that statement in his oral testimony, and said he just "assumed" TASHIRO gave that order. (R 393-394).

YAMAZAKI told the Prosecution that TASHIRO had given an order to "cut" the American prisoners if they escaped, but he later stated that statement was not true, and the same was made because of threats of the Prosecution to send him to Sugano, when he first denied it. (R 353-354, 371, 374).

TASHIRO denied he ever gave any of his subordinates any order or permission to kill any American prisoners; and none of the other proof introduced by the Defense tends to substantially corroborate this specification.

Doubtless the Commission based its decision largely on the testimony of NAKAGAWA. The Commission (unlike the Reviewer) did not have the benefit of the affidavit of NAKAGAWA, given to Colonel Thompson, since the trial, in which NAKAGAWA denounced as false the part of his testimony supporting this specification.

Restricted

Restricted

It was the duty of the Prosecution to prove the accused guilty of this specification beyond a reasonable doubt. (Manual of Courts-Martial, Sec 78) The evidence left in the record is so weak, uncertain, indefinite and self-contradictory, that we do not believe it is sufficient to carry the burden imposed by law upon the Prosecution to prove the offense. We therefore recommend that the accused be found not guilty of this specification.

Specification 2.

TASHIRO was convicted of this specification on the theory of command responsibility for failing to restrain KIMBE, KIMMOTO and OKUBO from killing seventeen American prisoners.

Assuming, for the present, that the guard named committed the killings, is there sufficient evidence in the record to invoke against him command responsibility therefor because he was the commander? The mere fact a sub-ordinate commits a war crime does not, standing alone, necessarily make the commander criminally liable therefor. The proof must show the commander has actual or constructive notice that his sub-ordinates would probably commit crimes of that character and he then failed to restrain them before he would be liable therefor as commander. (YAMASHITA vs Strver 66 Sup Ct Rep 340, Case 28 ISHIGE, Case 13 SAKI, case 91 TAKEHISHI, Case 129 OCT) If the alleged killings of the American prisoners occurred, as contended by the prosecution, they all occurred within a very short space of time, and the mere occurrence of those killings, without more, would not amount to constructive notice. The other proof does not show the mistreatment of prisoners prior thereto had been so wide spread and general as to charge the commander with notice thereof.

The direct proof admitted against accused showing that he ordered, or knew of, the alleged killings, has either been disregarded as not credible (MURIKI) or held insufficient (S-1) to show those facts. Then, is his knowledge thereof actual or constructive shown by circumstantial evidence? MURIKI said while TASHIRO and KIKUCHI were standing at the inner gate someone, whom he vaguely recollected as OKUBO, reported the American prisoners were escaping, and TASHIRO and the others ran into the cell block area (Ex 27, p 7; R 139, 150, 180-181, 185-187, 210, 215, 217, 221); but this incident occurred, according to the witness, before the Japanese were released from their cells (Ex 27, p 7), and people walked along the wall after that and apparently there were no dead or injured Americans there at that time (Ex 38, p 1, 2, 3; R 623, 626, 627). SAKI, a prisoner, testified that as he came out of the northeast exit of Cell Block 4, after seeing KIMBE jabbing his sword at American prisoners in their cells, he saw TASHIRO standing near that exit, directing the evacuation of the prisoners. At that time, the sparks were so thick and the heat so intense that he went into Cell Block 4 to escape therefrom and before he would have gone in that area again he poured water on himself. (Ex 35; R 298, 303, 305) We do not see how TASHIRO could stand in the sparks and heat if the witness could not even walk through it without wetting himself. We think the testimony is so unreasonable it cannot be relied upon.

The above appears to be the evidence placing TASHIRO closest to the alleged attacks on the American prisoners; and we do not think that evidence is sufficient to show either actual or constructive knowledge of mistreatment by his subordinates.

We have, on the other hand, the fact that TASHIRO himself had always treated the American prisoners well, had shown consideration for them, and had instructed his subordinates to do likewise. (R 134, 331-334, 336, 419-420, 435, 472-473, 802).

Restricted

We are, therefore, of the opinion that there is not sufficient proof to invoke the doctrine of command responsibility against T SHIRO for the alleged unlawful attacks (or killings) on the American prisoners by his subordinates, if any there were; and, as to him, deciding whether or not the subordinates actually attacked them is unnecessary.

Specification 3.

Under this specification the accused was convicted of causing the deaths of sixty-five American prisoners of war by gross and culpable omissions of duty. (Spec. 3, R 1656).

The proof does not show that there were any markings or signs showing the aggregation of buildings was a prison; but it does show there were work shops operated there. The proof further shows the prison was bombed on other occasions, particularly 23 May 1945. Thus the accused knew the Americans considered the prison a legitimate target for bombing; and he should have anticipated it would be bombed again. Accused therefore had the legal duty to take proper precautions, before and during the bombing, so as to protect the Americans, who were prisoners of war, from the dangers incident to such recurring bombings. (CPI Art. 2, 9, Case #144 MATSUURO).

An omission to perform a legal duty, resulting in the death of the party to whom the duty was owed, may be a homicide:

"A charge of manslaughter may be predicated upon a failure to act as well as upon an act. Willful failure of a person to perform a legal duty, whereby the death of another is caused, is murder, but if the omission was not willful, but was a result of gross or culpable negligence, it is involuntary manslaughter. The omission must have been due to gross or culpable negligence, and the death must have resulted from the neglect of a plain legal duty imposed by a law or contract upon the defendant personally." (29 CJ Sec 143 p 1158).

"The omission or neglect to perform a duty resulting in death may constitute murder where the omission was willful and there was deliberate intent to cause death, or where the omission must necessarily lead to the death, so willfully allowing one to be exposed to conditions which will probably result in death where there is a duty to protect a person constitutes a murder." (29 CJ Sec 62 p 1096-1097).

" when a lawful duty is imposed upon a party then an omission on his part in the discharge of such duty, which affects injuriously the party to whom the duty is owed is an indictable offense." (1 Wharton's Criminal Law Sec 455 p 690-691).

"The keeper of an asylum or prison, who undertakes to the exclusion of others to take care of a pauper or lunatic, or prisoner, is penally responsible for the death of such pauper, lunatic, or prisoner, naturally resulting from the defendant's reckless neglect." (1 Wharton's Criminal Law Sec 459, p 693-694).

We do not think under the circumstances of this case, the accused took reasonable and proper precautions to protect the Americans from dangers incident to the bombing either before or during same:

1. He had not assigned any air raid shelter to the American prisoners, nor in previous raids had he ever evacuated them from their cell block. However, the Japanese had been evacuated on those occasions. It may be he did not have sufficient air raid shelters for all the prisoners, but, even if that was true, if he wished to perform his duty impartially as between the American and Japanese prisoners, he would have failed to evacuate a different cell block during each previous air raid. We think the only reasonable inference to be drawn from these facts is that he was showing a preference to his countrymen.

Restricted

Retained

2. With the knowledge he had we feel the accused was guilty of gross and culpable negligence in failing to promulgate adequate and reasonable plans to protect and save the prisoners, especially the Americans, if and when there was danger from air bombing. He kept guards on continuous duty in the other cell blocks; and, in an emergency, the release of the Japanese prisoners was facilitated and speeded up; and, in this case, all four hundred and sixty-two of them (except at most eight) were saved. (a) Reasonable precautions required him, if he did not keep guards on continuous duty in cell block 4, to send some guards to cell block 4 when air raids started, or (b) at least, he should have designated some guards to immediately go to cell block 4 when and if the order of release was given, and not leave releasing them in an emergency to the chance that some guard may go there and release them, (as was done in this instance). If his plans had included either of these precautions, the sixty-two Americans would have been released at the same time the Japanese were released, and they too - or some of them - would have been saved.

3. We also are of the opinion that he was grossly and criminally negligent in waiting too long before he ordered, first, the evacuation, and, second, the release of the prisoners. He had promised his superiors to evacuate the prisoners when the situation became dangerous (R 130, 132, 142); and accused testified it was his plan in case of bombing of the prison "If there comes a time that there is some danger to the convicts, then they would be evacuated to a place of safety". (R 1273) The accused did not follow his own plan. Incendiary bombs were being dropped and the wooden cell blocks were more or less inflammable; and the moment incendiary bombs began to fall in the inner compound there was "some danger to the convicts" confined to their cells. To carry out his plan the evacuation should have begun at that time.

TERASAWA said he considered the situation dangerous when the planes came from the southwest (Ex 42, p5; R494, 496-497, 521-523); the roof of cell block 4 and the fence around it had been on fire (R 403, 405, 410, 610-611, 620; R 1146-1150, 1227-1229). Accused's attention was twice called to the dangerous situation (Ex 37, p 8; R 347; Ex 42, p 4-5; R 486-490), and yet he continued to "wait and see what the situation is".

After giving the order to release the prisoners, instead of remaining and supervising their release, he left the cell block area and went to the dispensary to save "documents for the treatment of the patients". (R 1275) He also showed more solicitude about saving the prison than he did about saving human life. (R 1274-1275) while we do not find the evidence shows the accused intended that the American prisoners be killed during the fire, we do think that his acts of omission and commission prior to and during the fire showed a disregard of human life. He was guilty of gross and culpable negligence in not adopting and promulgating adequate and proper plans for the evacuation and release of the prisoners when and if the prison was bombed, especially by incendiary bombs, and in failing to sooner order their evacuation and release. We believe also that as a result of such gross and culpable negligence of the accused sixty Americans lost their lives in the fire. In all other respects we do not believe the charges in Specification 3 have been sustained.

Keiji KAMIMOTO

KAMIMOTO, in the only specification against him, was charged with and convicted of wilfully killing six American prisoners. (Charge and Spec, R 1654).

When the proof against the accused is analyzed and boiled down, no witness testified, from personal knowledge, hearsay or admissions by the accused, that the accused "killed" any American prisoners; but the witnesses, while they themselves not seeing him do so, testified accused either admitted or they heard he had admitted that he had "cut" or "stabbed" American prisoners. (R 196, 197, 199, 232, 243, 264, 265, 277-282, 311-315, 329-331, 361-363, 392, 426, 430, 436-438, 440-441, 499, 505-506, 539-540, 544, 575-577, 580-581, 594-594, 608-610, 612, 615, 631-632, 638, 640, 641, 643, 644, 666-667, 687, 781-784, 786, 820-821, 828-833, 835; Exs 31, p 2, 32 p 23, 34, 36

Restricted

p 2, 37 p 7, 39 p 3, 43 p 4, 44 p 2, 4; 45 p 6-7, 46 p 3, 49 p 2, 53 p 1-2, 52 p 2, 54 p 4, 55 p 2).

The finding that he killed any American prisoners must therefore have been based on inferences drawn by the Commission, from these admissions. In most of the admissions he stated the attacks on the Americans occurred in Cell Block No. 4 were so badly burned and charred that it was impossible to tell whether or not any of them had been stabbed or cut. (R 327, 333-334, 486, 500, 502, 575; Exs 46, p 2-3, 48 p 2, 54 p 3).

Since no witness testified to seeing him kill, stab or cut any American prisoners, and the bodies in Cell Block No. 4 being so burned and charred that no stab or cut wounds showed thereon, the corpus delicti of the stabbing or cutting, as well as the killing, if any were killed, therefore as based on the uncorroborated admissions of the accused. Under such circumstances, can a conviction of killing, or even of the lesser and included offense of stabbing or cutting the American prisoners, be sustained?

"The general rule in this country (the United States) is that the corpus delicti cannot be established by the confession of the accused, unsupported by corroborative evidence or proof of guilt, and a conviction had upon such uncorroborative proof of the corpus delicti, cannot be sustained." (Wharton's Criminal Law, Vol 1, Sec 357, p 462-464).

"Regarding the question of the necessity for evidence corroborating the confession of the accused, in order that such confession may establish the corpus delicti, the authorities in this country (the United States) are not harmonious, but the great weight of authority - almost an unbroken line - is to the effect that the uncorroborated confession of the accused is insufficient to establish the corpus delicti. . . ." (Wharton's Criminal Law, Vol 1, Sec 361, p 470-471).

The physical facts are certainly consistent with, if they do not indicate, the Americans burned to death in the fire, and the proof of the corpus delicti of the alleged killings must be sufficient to overcome those indications, and, in addition, establish facts inconsistent therewith. "It must be clearly and satisfactorily proved that the deaths occurred from the criminal act of the defendant or another, and was not the result of an accident or natural cause." (Emphasis supplied). (30 CJ 287).

We therefore conclude the corpus delicti of the killings, cuttings or stabbings have not been proved.

TONOUCHI, a guard, said he saw KAME and KIMOTO enter Cell Block No. 4 during the fire, at the time the Americans were "yelling and screaming and pounding on the sides of the cells", (Ex 34, R 264-265, 272-282); and MORI, a prisoner, stated he went in Cell Block No. 4 and, in the south corridor, about twenty-five feet east of him, he saw KIMOTO, with his sword drawn, pointing it at two Americans just east of and facing him. (Ex 45, p 6-7, R 603-610, 612, 615) The testimony of these two witnesses, corroborating each other as they do, and "dove-tailing" with many of accused's admissions, are sufficient to prove the corpus delicti of an assault by the accused.

Hatsuaki KAME

KAME, in the single specification against him, was charged with and convicted of wilfully killing eight American prisoners. (Charge and Spec R 1653) There is no testimony in the record (except the discredited

Restricted

Restricted

Testimony of NAKAGAMI) of any witness who saw the accused kill, stab or wound any American prisoners; and the accused denied he had done so, in his extrajudicial statements to the Prosecution. (Ex 63, 64).

There is considerable testimony in the record (some of which is weak or self-contradictory), that accused admitted to others that he killed, cut or stabbed American prisoners, or witnesses heard he had done so. (R 199, 202-203, 252-257, 264-265, 277-282, 294, 297-298, 301-302, 311-315, 329-331, 343-349, 360, 392, 451, 499, 505-506, 539-540, 544, 575 - 577, 580-581, 594-595, 613, 631-632, 634, 638, 640-641, 643-644, 650, 655 - 656, 666-667, 673, 683, 687, 786, 814-815, 820-821, 828-833, 835; Exs 27, 33, 34, 35, 36, 37, 38, 40, 42, 43, 44, 45, 46, 48, 49, 50, 52, 53, 54, 55).

As there were no witnesses who testified they saw accused kill, stab or cut any American prisoners, presumably the hearsay testimony of witnesses so testifying was based on the discredited statements of NAKAGAMI or the admissions of the accused. If such testimony was based on any statements from NAKAGAMI, it too would not be worthy of belief. That that leaves only the admissions of accused, to establish the corpus delicti of the offenses of killing the American prisoners, as well as the lesser and included offenses of cutting or stabbing them. His admissions strongly indicate, if he killed, cut or stabbed any Americans, the same occurred in Cell Block No. 4. When Cell Block No. 4 burned, the bodies there were so badly charred that no wounds or stabs showed on them. (R 327, 333-334, 486, 500, 502, 575; Exs 46, 48, 54).

The American prisoners certainly could have perished in the burning of Cell Block No. 4; and, as there was no proof that they were killed, cut or stabbed before the cell block burned, their charred bodies, without proof of wounds, would not be corroborative of the admissions of the accused that he killed, stabbed or cut American prisoners. As a matter of law, the uncorroborated admissions of the accused are insufficient to establish the corpus delicti of such offenses. (Wharton's Criminal Law, Vol 1, Sec 357, 361, 462-464, 470-471, 30 CJ, Sec 360, p 150).

But was there other evidence corroborative of the corpus delicti of the offenses included within the specification? We do not think the mere fact that there were bodies of American prisoners showing wounds, at the gate and along the east wall, when no credible witness places the accused in those vicinities at or near the time the American prisoners probably perished, is sufficient to connect the accused with the killing or wounding of any of those bodies. Others of the prison personnel, especially those who admitted killing or wounding American prisoners, may have been guilty.

But there is corroboration of his admissions that he cut or stabbed American prisoners in Cell Block No. 4. IMURI, a prisoner, said after hearing shouting coming from Cell Block No. 4 he saw a person of the general profile and build of KATBE, and who he decided was KATBE, enter Cell Block No. 4 with his sword unsheathed and then he heard "shrieks" coming from the cell block. (R 652, 654-655, 656).

SASAKI, a prisoner, testified while he was in a corridor of Cell Block No. 4 he saw the accused thrusting his sword at the American prisoners, through the bars, into the cell. (R 294, 297-298, 301-302, Ex 27).

The testimony of these two witnesses very strongly corroborates the admissions of the accused. Other witnesses say accused stated that he stabbed or cut American prisoners in Cell Block No. 4 when they attempted to escape. However, the proof is not sufficient to corroborate the admission of the accused that he killed any American prisoners. (30 CJ, 287).

Restricted

Retrieved

The finding of the Commission should therefore be sustained only to the extent of finding the accused guilty of cutting or stabbing the prisoner who "shrieked" and assaulting the prisoner at whom he jabbed his sword through cell bars.

Mataishi OKUBO

OKUBO has only one specification against him which charges him with wilfully killing three American prisoners and he was convicted thereof. (Charge and Specification, R 1653).

We believe the statement of OKUBO (Ex 65), obtained from him by the prosecution prior to trial, was not voluntary and was obtained by the prosecution under such circumstances as to render it of little, if any, probative value. (Def Ex E, R 875-878) While under SCAP rules (5 d (5)) the Commission could have, in its discretion, excluded it, we do not think its failure to hear evidence on its voluntariness before its introduction, and then excluding it was a prejudicial error. In the review, we can give it such probative value as we think it is entitled to, taking into consideration its involuntary character.

Other than the discredited testimony of MAKIGAMI there were no eye witnesses who testified the accused killed, or even cut or stabbed, any American prisoners. In fact, ISHISMITI was the only witness who testified the accused admitted he killed any American prisoners (Ex 43, p 4); and even he, on cross examination, practically destroyed his former testimony by saying he did not hear OKUBO say he killed, cut or stabbed any American prisoners but he stated that OKUBO merely said he quieted them. (R 548, 550, 551-552).

There was proof (some of it rather unsatisfactory) that OKUBO admitted he did cut or stab American prisoners or other witnesses heard he had cut or stabbed some of them. (R 311-315, 579-580, 595, 784-785, Ex 44, 52, 54).

The hearsay testimony of the witnesses so testifying must have been based on statements of MAKIGAMI prior to trial or the admissions of the accused, as no other claimed eye witness appeared in the record, and presumably if there were any, the prosecution would have presented them. MAKIGAMI has been discredited and any hearsay evidence based on his extrajudicial statements would likewise be discredited. The evidence accused cut or stabbed any American prisoners must, therefore, have been based on his admissions to that effect. Under the law, his unsupported admissions are insufficient to establish the corpus delicti of the offenses charged against him. (Wharton's Criminal Law, Vol 1, 357, p 462-464, Vol 1, Sec 361, p 470-471; 30 CJ, Sec 360, p 150; 30 CJ p 287).

Is there sufficient corroboration of his admissions in the record to meet the requirements of the law to give effect to his admissions?

There is no corroboration of his admission that he cut or stabbed any American prisoners in Cell Block 4. No witness placed him in Cell Block 4 during the fire and the bodies of the Americans perishing in Cell Block 4 were so badly charred that it was impossible to determine whether they had been cut or stabbed prior to death.

TAMAKI, a guard, testified the accused told him that he had cut some American prisoners with his sword at the inner gate after the evacuation was about complete. (R 784-785, Ex 52) Several witnesses placed accused at the inner gate with a sword during the fire. (R 159, 215, 217, 272, 273, 286, 361, 400, 575, 583-586, Ex 27, 34, 37) As OKINAKA, a guard, was going out the inner gate he saw the accused there with his sword and heard him say in a loud voice: "The prisoners are escaping from Cell Block 4 so when they come out let's cut them down". (R 575, 583-586) Coupled

Retrieved

Restricted

with this testimony, we have the fact that there were three dead American bodies at the inner gate the next morning after the fire; and the witnesses testifying of such dead bodies saw the following wounds:

FUJI testified he saw small wounds on the head on one body and same "looking as if it could have been caused with a sword or the point of a bayonet" and "with something that appeared to be blood around it". (Ex 49, R 425).

In his affidavit for the prosecution, ONO stated one of the bodies had a protrusion about an inch long, apparently a swelling (Ex 40, p 23) while he swore in his affidavit to the defense "it definitely was not a cut". (R 447-448).

IN'RI said he saw blood stains on the chest of one of the dead bodies but he did not see any cuts. (R 657).

SHURUI said he saw "coagulated" blood on the inner thigh of one body. (Ex 48, p 2, R 676).

SUGIMI testified he saw a cut about two or three inches long in the back of one of the dead bodies with something "a dusky color" on one side of the cut. (Ex 53, p 1, R 823-827).

ISHII testified the brains of one of the bodies were out, looking as if it had been "bashed in". (Ex 55, p 2).

"We think this is sufficient corroboration of the admission of the accused that "he cut or stabbed" more than one American at or near the inner gate, and we say more than one for the reason that we do not believe that one dead body would have had all of the wounds mentioned by the various witnesses without each witness noticing more than one wound; but, is the evidence sufficient to show that he killed the Americans?

"It must be clearly and satisfactorily proved that the death occurred from the criminal act of the defendant or another and was not the result of an accident or natural cause." (30 CJ, p 287) (Emphasis supplied).

While the only injury to a dead body mentioned by witnesses that would necessarily cause death was the "bashed in" head with the brains out, and there is no proof that the accused bashed any American prisoners; yet, the accused "cut or stabbed" prisoners at or near the gate and their bodies were found near the gate the next morning. Since the bodies showed wounds and they were found the next morning at the place where the cutting occurred, the only reasonable inference to be drawn from the facts is that they were unable to save themselves from the fire. In either event, the accused would be guilty of unlawful homicide.

6. Findings and Recommendations:

The record shows that the commission was legally constituted and that it had jurisdiction of the offenses set out in the charges and specifications and of the person of each accused except as hereafter mentioned. There is no proof that any of the accused was mentally incompetent.

The record further discloses that each accused was well represented by competent counsel and that they had a fair trial under the law. There were not prejudicial errors committed against any of them except as have been mentioned in the foregoing opinion and hereinafter pointed out.

Each accused was convicted and each was given a legally valid sentence except as hereinafter shown. No recommendations for clemency were made by any member of the commission for any of the accused.

R. J. ...

Petitions and letters (including a letter from Shigo YOSHIDA, the present Premier of Japan, on behalf of TASHIRO) asking for clemency for each of the accused (except KAMBE for whom no letters or petitions have been filed), signed by relatives, friends and acquaintances of the accused, attached to the record, have been read and considered.

a. KOSHIKAWA

(1) In the opinion of the reviewer the evidence against KOSHIKAWA on Specification 1 is insufficient to support the conviction and it is recommended that he be found not guilty thereof.

(2) As to Specification 2, in the opinion of the reviewer, the accused was guilty of gross negligence in formulating and adopting a plan, jointly with Tashiro, for the release of the American PW's in time of imminent danger, which, when carried out, resulted in keeping them confined in their cells an unreasonably long time, thereby contributing to the deaths of sixty American PW's, and the findings of the Commission to that extent only should be sustained.

(3) Under Specification 3, as the alleged false and misleading information furnished by accused, jointly with Tashiro, by which it was claimed the true facts, about the deaths of the American PW's were concealed from the American Occupation Authorities, was given after Occupation of Japan, on order of the Japanese Government for use of the Occupation Authorities, and not in compliance with any duty under the Geneva Convention and not for the use of the United States Government, no War Crime was proved, and the conviction should not be sustained.

While we think KOSHIKAWA participated in the formulation and adoption of a grossly negligent plan for the release of the Americans, which proximately contributed to their deaths, his omissions were not the sole cause thereof. The primary duty to formulate and adopt a plan for protecting the American PW's in time of danger was on Tashiro and Tashiro was guilty of other omissions proximately contributing to the deaths of the American PW's. The reviewer does not believe the evidence shows KOSHIKAWA was guilty of any wilful misconduct contributing to the deaths of the American PW's. In view of these facts, it is recommended that he be punished by confinement at hard labor for ten years.

b. TASHIRO

The evidence against this accused was legally sufficient to support the findings of the Commission on the charge and specifications against him, except as follows:

(1) The credible evidence does not support the charge that the accused ordered his subordinates to kill seventeen, or any other number of American prisoners, as charged in Specification 1.

(2) The evidence was insufficient to charge the accused with command responsibility for any unlawful acts of his subordinates in the killing of American prisoners as charged in Specification 2.

(3) Under Specification 3 the accused was properly convicted of contributing to the death of sixty American prisoners by his gross and culpable negligence in failing to formulate and promulgate proper and adequate plans for the evacuation and release of American prisoners and by his gross and criminal negligence in waiting too long to order the evacuation and release of the American prisoners from their cells on the night of the fire, and in all other particulars the charges in this specification are not sustained by the proof.

It is recommended that the commission's finding of guilty of the charge and Specification 3 as set out above, be approved, and as to Specifications 1 and 2 and the excepted part of Specification 3, the guilty findings by the commission, be disapproved.

The commission found the accused guilty of the charge and of all of the specifications against him and sentenced him to death. The accused was in charge of the prison. As we believe the death of the

American prisoners resulted from the gross and culpable negligence of the accused as aforesaid, and he did not necessarily intend that they should be killed, under American law he would be guilty of involuntary manslaughter, and not murder, and we feel a sentence of sixty (60) years, instead of death, should be imposed.

The accused, TASHIRO, has been confined since 16 April 1946. The charge and specifications were filed 13 August 1946 and the trial held 24 March 1948 to 8 July 1948. He was thus confined 2 years, 3 months prior to trial. It is recommended that he be given credit for 2 years of his pre-trial confinement on his sixty years sentence herein recommended and that his sentence begin as of 8 July 1948, the date of his conviction.

c. KUNITOMO

The evidence against this accused is only sufficient to support the lesser and included offense of an assault on an American prisoner. It is recommended that the commission's findings be sustained only to the extent of holding the accused guilty of an assault with a sword and that in all other particulars the findings of the commission be disapproved.

The accused was found guilty of the charge and single specification against him and given the death sentence. As, in this review, it is recommended that he be found guilty only of an assault with a sword, his death sentence, of course, should be much lightened. A sentence of five (5) years is recommended.

The accused, KUNITOMO, has been confined since 30 October 1947. The charge and specifications were filed 20 November 1947 and the trial held 24 March 1948 to July 8, 1948. He was thus confined 3 months, 15 days prior to trial. It is recommended that he be given credit for 5 months, 15 days of the pre-trial confinement on his five years sentence herein recommended and that his sentence begin as of 8 July 1948, the date of his conviction.

d. KUBE

The evidence against this accused was legally sufficient to only support the conviction of the accused of the lesser and included offenses of cutting or stabbing one American prisoner and of assaulting another American prisoner with a sword. It is recommended that the commission's findings of guilty of the charge be approved but that the findings of the commission shall be approved as to the specification only to the extent of finding him guilty of cutting or stabbing one American prisoner and of assaulting another American prisoner.

The accused, KUBE, a common guard, was found guilty by the commission of the charge and single specification against him charging him with wilfully killing eight American prisoners. It is recommended that the findings of the commission be sustained only to the extent of finding him guilty of unlawfully stabbing or cutting one American prisoner and of assaulting another with a sword. The death sentence should not be sustained. In view of the fact that one witness suggested on hearsay, that accused acted in self-defense, that there was much confusion and excitement prevailing at the prison the night of the fire, and that Japanese propaganda had doubtlessly had its effect on the accused, we think that the sentence of twenty years for the stabbing or cutting and five years for the assault, twenty-five years in all, would be proper.

The accused, KUBE, has been confined since 30 March 1946. The charge and specifications were filed 20 November 1946, and the trial held 24 March to 8 July 1948. He was thus confined 2 years, 3 months and 15 days prior to trial. It is recommended that he be given credit for 2 years, 15 days of his pre-trial confinement on his twenty-five years sentence herein recommended and that his sentence begin as of July 8, 1946, the date of his conviction.

Approved

The evidence is legally sufficient to support the findings of the commission on the charge and single specification to the extent only of finding that he unlawfully killed two American prisoners of war. It is recommended that the commission's finding of guilty of the charge and of the specification to the extent mentioned, be approved.

Accused, was given the death sentence. There is no credible proof that accused committed the homicides on order of a superior, and there is no proof that accused knew the Americans had been ordered released at the time he killed them. He a common guard, believed the Americans had broken out of and were escaping from their cells; and, if the Japanese propaganda and KOSHIKAWA's lectures, made an impression on him, he believed for them to be at large was dangerous to the Japanese civilians. Then there was great confusion and excitement prevailing at the time resulting from the prison then being on fire. While none of these facts are a defense to the unlawful homicides, they should be looked to in mitigation of his punishment. We feel that the extreme penalty is too severe and recommend life imprisonment for the accused.

7. Action:

Forms of action designed to carry these recommendations into effect are attached hereto.

JAMES G. LUCKEY
Reviewer
Judge Advocate Section

SUPPLEMENTAL REVIEW

Since the original review was written the prosecution has filed a brief, a new affidavit from witness Nakagawa and certain documents hereafter considered, in opposition to the original motion and brief of the defense; and the defense has filed a reply thereto and another recent affidavit of witness Nakagawa, making it proper for a supplemental review to be written on the material points discussed in the briefs.

1. The defense insists that some parts of the summation of one of the prosecutors was so unfair and inflammatory as to constitute prejudicial and reversible error even when not objected to at the time. The American decisions cited for this insistence are not only not binding precedents in war crimes trials; but, because of the difference in types and make up of tribunals and the scope of the jurisdiction on appeal or review, the cited cases are not even persuasive authority. The fact finders in such state-side cases are made up of a jury representing a cross section of the American public, who may be influenced or swayed by unfair and inflammatory arguments; while these commissions are made up of experienced, educated and trained army officers on whom such remarks presumably have no effect. These trials are more comparable to trials before a judge or judges alone. We know of no case under Anglo-Saxon jurisprudence where a case tried before a judge or judges alone was reversed on appeal for improper or inflammatory arguments. Then, in America, the appellate courts are more or less limited in their review of the facts: while in these trials the evidence is weighed and reviewed to determine if the accused has been proved guilty beyond a reasonable doubt with the right and power on the reviewing authority to reduce sentences. The argument referred to, while improper, did not affect the substantial rights of the accused.

Restricted

2. The backbone of the argument of the prosecution in its brief is that passing on the credibility of witnesses and the weight and sufficiency of evidence is the exclusive province of the commission; and, on review, if there is any evidence to support the findings of the commission, then it is contended by the prosecution the findings of the commission must be affirmed. On page 2 of the prosecution brief, its view of law is tersely stated as follows:

"It is only where there is a total lack of evidence as to the crime or any essential element of the crime in question that the reviewer should make a recommendation contrary to the findings of the trial commission."

This contention of the prosecution has been recently considered and overruled by the comments of the Staff Judge Advocate on the review in Case No. 253, United States of America vs Kitamura, page 51, in the following language:

"The prosecution in a brief for the reviewing authority relates that a Congressional committee has expressed the views that appellate authorities in war crimes cases should not weight the evidence or judge the credibility of witnesses. A majority of Congress expressed a contrary view as to courts-martial when it enacted the Articles of War which are now in effect (MCM 1949, AW 50 (g)). Nor did the President share this view when he prescribed the Manual mentioned above and by executive order justified the weighing of evidence and the judging of credibility by appellate authorities in courts-martial. The Supreme Commander has confirmed many war crimes sentences after the Commanding General, Lighth Army, has weighed the evidence and judged the credibility of witnesses, so evidencing in the reviews of his Judge Advocate. In no instance has this policy been criticized by the Supreme Commander. It is believed that the present policy is sound." (Emphasis added)

In this jurisdiction the reviewing authority not only passes on the credibility of witnesses but weighs the evidence to determine whether or not there is sufficient evidence to prove the accused guilty of the offense charged beyond a reasonable doubt.

3. The prosecution has filed another affidavit of Nakagawa sworn to on 24 February 1949, and the defense has likewise filed another affidavit of Nakagawa sworn to on 3 March 1949. Such affidavit filed by the prosecution cannot be considered as additional evidence of guilt of the accused on review. In his comments on the recent review in Case No. 258, United States of America vs Onoue, at page 147, the Staff Judge Advocate said:

"Briefs of both sides have been fully considered but the affidavit of Yamada attached to prosecution brief has not been considered in favor of prosecution since it is not in evidence." (Emphasis added)

The prosecution contends that neither may the Nakagawa affidavit given to Colonel Thompson be considered on review. But in this jurisdiction, on review, the reviewing authority will consider any new or additional matter submitted to it by the defense in determining the innocence of the accused as well as on the question of clemency. In the review of Case No. 91, United States of America vs Takahashi, the Staff Judge Advocate in his comments (page 30) said:

"This accused alleged in a letter addressed to the Commanding General, following his conviction, that he had been persuaded not to take the stand because of advice by his counsel. He indicated that his testimony would have assisted his defense to the extent that his rights were prejudiced by his failure to testify. . . . In war Crimes trials, however, under the

Restricted

Restricted

egis of the Commanding General, Eighth Army, it has been customary to look beyond ordinary technicalities, where it affects the accused adversely, and to go to the real merits of the issue in such a case. This accused, therefore, was given full opportunity to offer anything additional which he cared to present. . . ." (Emphasis added)

Thus it was proper, on the original review, to consider the affidavit of Nakagawa taken by Colonel Thompson.

The failure to consider the recent affidavit of Nakagawa filed by the prosecution on the question of guilt or innocence of the accused will not affect the result. That affidavit and the recent affidavit filed by the defense add little, if anything, of importance to the record. The prosecution affidavit is another affirmation of Nakagawa's testimony on the witness stand while the defense affidavit is another negation thereof and they are merely cumulative in their vital parts.

4. The other pertinent questions of law relied upon by the prosecution in its brief are sufficiently covered in the original review.

5. The crucial question in these cases is: What probative value, if any, should be given the testimony of Nakagawa on trial in this case? In the original review his testimony was wholly disregarded. The reviewer still feels that Nakagawa's credibility as a witness has been destroyed.

Eliminating from consideration Nakagawa's two very recent affidavits, he has sworn three times, including his oral testimony, that he saw Kambe and Okubo under orders from Tashiro stab and kill three American prisoners of war, while he has sworn twice, including the affidavit taken by Colonel Thompson, just as positively exactly to the contrary.

"He who under one oath knowingly affirms a proposition, and under another oath knowingly negates the same proposition, is not to be credited in either instance. The one statement neutralizes the other, and in a court of justice his evidence is entitled to no weight unless corroborated." (Johnston v. Sochurek, 104 Ill. App. 350, 352) (Emphasis added)

"If two witnesses contradict each other, there is proof on both sides, and it is for the jury to say where the truth lies; but if the proof of a fact lies wholly with one witness, and he both affirms and denies it, and there is no explanation, it cannot stand otherwise than unproven. For his testimony to prove it is no stronger than his testimony to disprove it, and it would be mere caprice in a jury upon such evidence to decide it either way." (Johnston v. Railroad, 146 Tenn. 135). (Emphasis added)

The witness was not telling the truth when he affirmed, or he was not telling the truth when he denied, knowledge of the killings. In either event he has willfully and knowingly sworn falsely about a material fact.

"Under the maxim, 'Falsus in uno, falsus in omnibus', as strictly interpreted, if a witness testified falsely as to any one material part of his testimony, his testimony should be discarded as a whole and cannot be relied on for any purpose whatever, unless strongly corroborated; but this rule is not inflexible, to be applied in all cases, and by the weight of authority the maxim is not a mandatory rule of evidence, but is rather a permissible inference that the jury may or may not draw. . . ." (70 C.J. 783)

6. It was the duty of the prosecution to prove the accused guilty of offenses charged beyond a reasonable doubt. As Nakagawa was the only witness in the record who claimed he saw any of the accused murder any American prisoners of war, his affirmative testimony is very important to the prosecution. We are therefore primarily interested in the probative value to be given that testimony, for if his affirmative statements are disbelieved and disregarded, then the effect is the same without considering the probative value of his denunciatory statements: in so far as the facts testified to by him are based alone upon his testimony, the same stand unproved in the record.

Are there any facts or circumstances in the record that might cast doubt on his affirmative testimony other than his sworn repudiation thereof? We think there are, and will mention some of the most obvious:

a. As stated in the original review, he was a convicted thief; and that fact, at the very threshold, casts a suspicion on his testimony.

b. His original prosecution affidavit was secured by a prosecution investigator whom the witness accused of having used unethical and questionable methods in obtaining it. The fact that a number of other prosecution and defense witnesses claim the same prosecution investigator secured affidavits from them containing untrue statements by practically the same tactics, and that the prosecution did not produce, during the trial, the affidavits of this and some other prosecution witnesses secured by this investigator, but used subsequent affidavits of those witnesses obtained by another prosecution investigator, throws some doubt on this witness' original affidavit. After once swearing to the facts set out in his original affidavit, we do not believe that merely subsequently repeating the statements in the original affidavit under oath, when to change them would render him subject to prosecution for perjury, wholly removes that doubt.

c. The oral testimony of the witness was not wholly reasonable and consistent with other testimony in the case. Since the record shows, at least by inference, that all of the five or six hundred prisoners and prison personnel who were present that night were available for interrogation by the prosecution, it seems almost incredible that this witness should be the only witness who saw Tashiro, Okubo and Kambe standing at the gate, then heard Tashiro issue an order to the other two accused to kill the American prisoners, and then saw the other accused kill them in compliance with that order.

In addition that testimony is inconsistent with the following testimony: Okinawa testified that as he was going out of the gate, Okubo was there, with his sword, and he heard Okubo say:

"The prisoners are escaping from Cell Block Four, so when they come out let's cut them down." (R 575, 583-586)

Okinawa, being a guard, knew Tashiro and Kambe; and if they had been there at the time, he doubtlessly would have so stated. Apparently, from Okinawa's testimony, Okubo acted on his own initiative in killing the Americans instead of on orders of Tashiro as testified by Nakagawa.

Terasawa testified that after having protected the records and valuables he returned to the prison gate, and the fire was raging so fiercely therein that he did not return but remained at the gate for about twenty minutes, directing the evacuation, and when he left the gate to go to the Yoyogi Parade Ground there were no prisoners leaving through the gate (Lx 42, p 5; R 494, 496-497, 521-523). He does not mention seeing Tashiro, Kambe or Okubo at the gate. He was a chief jailer and, of course, knew them all. Nor does he testify that any prisoners of war were killed at the gate during that last twenty minutes. According to Nakagawa, the three American prisoners of war were killed at the gate right at the end of the evacuation.

Restricted

d. The vital part of Nakagawa's testimony was uncontradicted. There is corroboration of his testimony that Okubo was at the gate at or about the time claimed by him; and the fact that three wounded, dead American bodies were found at the gate the next morning is corroborative of his testimony. However, the wounds on the bodies found at the gate did not wholly coincide with the manner in which he said the Americans were killed. There was no other evidence considered by the commission tending to show that Tashiro, Okubo and Kambe were standing at the gate together, or that at that time Tashiro and Kambe were there at all, or that Tashiro ordered the Americans killed, or that Kambe killed any American prisoners at the gate.

e. One of the disaffirming statements of Nakagawa was taken since the trial by Colonel Thompson, a colonel in the United States Army, the president of a commission and wholly disinterested. While the documents filed by the prosecution with its brief show that Nakagawa was escorted to Yokohama by two Japanese policemen when the affidavit taken by Colonel Thompson was made, yet we do not think that fact overcomes the certificate of Colonel Thompson, and the reviewer has given this affidavit and certificate considerable weight.

The reviewer is of the opinion that there is at least a reasonable doubt as to the truth of the affirming oral testimony and affidavits of witness Nakagawa, and it is considered that such doubt should be resolved in favor of accused; and, as stated in the original review, the testimony of Nakagawa should be wholly disregarded.

In view of what has been said,² the reviewer sees no reason for changing the recommendations in the original review, and he recommends that same be adopted.

JAMES G. LACKEY
Reviewer
Judge Advocate Section

When the mass of evidence in this case is carefully studied and sifted the following facts are compellingly established: In an American fireraid, planes dropped incendiaries increasingly close to the prison in which about 400 Japanese prisoners and 65 American prisoners of war were incarcerated. Flares began to land in the prison compound and the cell blocks commenced to catch on fire. American prisoners shouted and pounded on their cells for release. Guards released the Japanese prisoners who were all escorted to safety in an adjacent parade ground outside the compound. Guards were dispatched to the American cell building (separated by a high fence from the others) to implement the warden's and chief jailer's instructions to prevent the Americans escaping from their cells even to avoid the fire. Several got out of their cells (bodies found outside and a guard seen forcing one back into his cell at sword point). All the Americans died, some being killed and others burned. Some were killed at the inner-gate of the compound. Either the warden or the chief jailer could have released the Americans but did not do so. The warden falsely reported to the Japanese authorities that several Japanese were killed, in addition to the Americans. After the end of hostilities both the warden Tashiro and the chief jailer Koshikawa concealed the crime by persuading witnesses to give incorrect statements.

Restricted

Restricted

The following general comments are apropos: An outstanding fact is that all of the prisoners of war died, while all (disputed but proved) of the Japanese prisoners survived (cf. review pages 13, 21, 23, 25, 26, 38, 56 and 64). It is asserted that certain statements given by witnesses and used for the prosecution were improperly secured and the same charge is made as to one secured by the defense. The burden of establishing such a charge is on the party asserting the impropriety. Making due allowances for the elusiveness of some Oriental responses to interrogation, the difficulties of interpretation and translation and other factors involved, it is not considered that the burden of proving such improper procedures has been carried by either party. Nevertheless, any statements against which such a charge is leveled should be, and in this case have been, carefully scrutinized and compared with other proof in the case and cynically and skeptically weighed to determine their probative value.

The rules of the Supreme Commander for the Allied Powers provide:

"All purported confessions or statements of the accused shall be admissible in evidence without any showing that they are voluntarily made. If it is shown that such confession or statement was procured by means which the commission believes to have been of such character that they may have caused the accused to make a false statement, the commission may strike out or disregard any such portion thereof as was so procured". (Emphasis supplied).

The commission may disregard such statement; it is not required to do so. The burden of proving the impropriety in securing the statement or confession is upon the accused. Wigmore on Evidence, Vol III, page 342, supports this rule as follows:

"This is the practical and natural rule; for if there is any reason to object to the confession no one can know it better than the defendant -- x x x".

As to corpus delicti, the rule most properly applied to international courts is similar to that stated in the Manual for Courts-Martial, U.S. Army, 1949, page 159:

"This evidence of the corpus delicti need not be sufficient of itself to convince beyond a reasonable doubt that the offense charged has been committed, or to cover every element of the charge, or to connect the accused with the offense. If unlawful homicide is charged, evidence of the death of the person alleged to have been killed, coupled with evidence of circumstances indicating the probability that he was unlawfully killed, will satisfy the rule and authorize consideration of the confession if otherwise admissible."

It should be emphasized that it is not the rule that an accused's statement is inadmissible against a co-accused. The statement by the reviewer as to the value of a convicted person's testimony as discussed, where his crime is one of moral turpitude, is not concurred in if it is meant that such testimony must without fail be discarded unless in defense of himself. Such testimony is, of course, suspect, but if consistent with other substantial evidence it may be of great value in determining the true facts. Such a conviction is merely one test of credibility; it should not in and of itself preclude acceptance of the facts stated. Many sound cases historically have rested on the testimony of persons convicted of crimes involving moral turpitude. In any event the proof is gathered from the four corners of the case and from the entire pattern of the evidence.

Comments as to the individual accused follow:

TASHIRO: It is observed that this accused, the warden in charge of the jail, provided air raid shelters for all but the American prisoners, provided guards whose duty in case of fire was to release the prisoners in

Restricted

Restricted

every cell block but No. 4 (American), and affirmatively stated that the Americans would not be released and that their escape would be prevented. It is plain to be seen that even if he was not actuated by personal hatred of enemy soldiers who were wreaking such havoc on his people (by no means a violent presumption), he followed the course stated above to avoid the natural criticism he might receive if the Americans escaped Japanese custody. The easy plan and he thought the safe course, was to take no chance of escape from custody and assert, if fire engulfed the cell building, that the emergency allowed no time for the prisoners' release. At least 15 or 20 minutes time intervened between the release of the Japanese and the holocaust of fire on cell No. 4. Before that there was a long period during which he could have at least marshalled the prisoners from the fire trap into their part of the compound (separated by a fence from danger of attack by the Japanese prisoners).

Specification 1. Page references in the record as to the ample testimony supporting this specification are found in the foregoing review at pages 12, 13, 14, 18, 22 to 23, incl., 35, 57, 58, 59, 61, 68, 71 and 73. From his plain statements not to release the prisoners and from his actions both before, during and after (concomitant of the crime) the occurrence, malice conclusively appears. The crime is the equivalent of murder.

Specification 2. The allegations herein are not inconsistent with those of Specification 1. In Specification 1 it is charged that he ordered; in Specification 2 it is pleaded that he permitted. The proof was that he ordered the killing if the prisoners attempted escape and in the face of the order when he saw that the conflagration would make such escapes likely and that it was apparent that his orders would be carried out, he then failed to take any action to rescind his order or order the prisoners released, etc., and thus permitted the accomplishment of their death. He had ample notice of the abuses because he himself initiated them and the imminent destruction of the building housing his victims was advance notice to him of the probability that the prisoners would attempt to escape to avoid the fire. He then knew that his guards would carry out his orders and kill those attempting to escape.

Specification 3. The discussion as to Specification 1 and 2 applies to this one also. The offense is more than involuntary manslaughter because willful action appears. The facts set out above indicate that no release was intended and that if some prisoners were about to break out (as happened) they were to be slaughtered if they could not be driven back.

Clemency requests for a person with this malignant spirit should not be warmly received. One from Prime Minister Yoshida (himself a prisoner during the raid) is noted, but it is observed that he mentions no kindness by the warden to any one other than to himself and states that he seeks to repay this debt. Such kindness is commendable but cannot be said to overbalance willful actions which were designed to result in the illegal killing of many Americans. It is recommended that the sentence of death be approved.

KAMBE. Highlights of evidence affecting this accused establish that he was seen forcing a prisoner into his cell in the midst of the conflagration at sword point and then thrusting his sword into the cell through the bars. He was thus implementing the expressed desires of the warden to prevent the escape of the Americans from their cells. Prisoners' bodies were found near the inner-gate with stab marks, "bashed" brains, and blood. These facts, together with the announced policy of the warden that the guards should not allow the Americans to leave their cells are sufficient proof of the corpus delicti to corroborate the boasting confessions and admissions of this accused that he killed the prisoners as charged. Page references in the record may be found in the foregoing review at pages 16, 22, 25, 26, 28, 30, 31, 32, 34, 39, 40 and 76. Accused made no objection

Restricted

Restricted

to furthering this illegal policy of the warden and thus his actions partook of those of a volunteer. He is therefore guilty of willful and unlawful killings as charged. However, it cannot be gainsaid that there were elements of compulsion derived from the expressed wishes of the warden, his superior. This is not a defense, but under the liberal and enlightened rules under which these trials are conducted, it is considered in mitigation. It is certain that the accused was not an unwilling participant nor loath to accomplish the malicious and fatal objectives of his superior. After considering all of these matters, it is believed that commutation of the death sentence is indicated but that imposition of a life sentence is required.

OKUBO. This guard was seen in the inner-gate with his sword, calling out in a loud voice: "The prisoners are escaping from cell block 4 so when they come out let's cut them down" (res gestae). Two or three prisoners' bodies bearing wounds were found near that spot. This evidence together with that set out under the Kambe discussion, supra, and the plentiful evidence of self-incrimination, places this accused in the same category as Kambe. Page references in the record are found in the foregoing review at pages 16, 24, 25, 30 to 34, incl., 41, 42, 77 and 78. For the same reasons advanced as to Kambe it is recommended that his sentence of death be commuted to life imprisonment at hard labor.

KAMIMOTO. The evidence was that this accused was seen pointing his sword at two prisoners of war during the height of the excitement. He was in cell block # 4 where the Allied personnel were at the time (p. 6, Ex 45). When these facts are taken with the other elements referred to in the discussion under Kambe, it seems plain that the corpus delicti is well established. The ample evidence of self-implication in the killings supplies the requisite proof to stamp this accused also as a volunteer, willful murderer. The same remarks as to mitigation which were applied to Kambe relate also to this accused. Page references in the record of trial may be found in the foregoing review at pages 16, 26, 37, 39, 74 and 75. Commutation to life imprisonment is recommended.

KOSHIKAWA. Compelling evidence established that this accused, as chief jailer, could have lawfully released the prisoners of war during such an emergency as was apparent during the comparatively long period after it appeared certain that the fires could not be successfully battled; yet he not only did not do so but affirmatively prevented his subordinates from taking this action. His activities, therefore, were not only unlawful but they were willful as charged. He further participated as a willing accessory hence principal, in Tashiro's wrongful actions and in concealment of the crime afterwards. The same remarks that were applied to Tashiro relate to this accused, with appropriate modifications to the effect that he was Tashiro's subordinate. However, in this emergency, the evidence establishes that he was entitled to act "on his own". He did so act, but in an illegal and malignant way, so as to further the fatal objectives of Tashiro. It is clear from the evidence that he, like Tashiro, intended that the prisoners not be released and so directed, with deadly results. Specification 1 is therefore sustained.

Specifications 2 and 3 both contain defective pleading. They plead a conspiracy and then they plead positive, willful, and illegal acts of a nature which accomplished the objectives of the conspiracy. Therefore, each specification should properly have been broken into two parts if strict rules of pleading were followed. However, under SCAP rules great liberality in construction of pleading is enjoined. The test is whether or not the accused understands the offense or offenses with which he is charged, or whether he is misled and whether the charges would prevent future prosecution in another case for the same offense. There can be no doubt in this instance from the plain statements (although inartificial)

Restricted

Restricted

in the specifications that the accused and his counsel were fully informed of the offenses pleaded and were not misled and otherwise that the allegations met appropriate tests. Since there was evidence as to every part of each specification, the question as to whether one part (conspiracy) is a war crime actually becomes moot. It may be said in passing that the pleading employs terms which are equally applicable to a conspirator and to an accessory. An accessory stands in the same shoes as a principal and upon that basis the accused may be held to answer the charges herein leveled (cf. MCM, U.S. Army, 1949, p. 21, "Anyone who x x x aids, abets x x x is a principal"). It is not conceded herein that a conspiracy as here pleaded is not a war crime (cf. U.S vs Ichioka et al, Case Docket # 339).

It is considered that the allegations of Specification 2 in some respects overlap those of Specification 1. However, in view of the sentence appropriate for conviction of either one, no harm to the accused could result from such duplication. Page references of the record supplying evidence supporting proof of the guilt of this accused of all three specifications are found in the foregoing review at pages 12, 18, 19, 22, 24, 25, 27 to 31 incl., 34, 42, 44, 45, 57, 58, 59, 67, 68 and 69.

The conviction of this accused of malicious and deliberate actions designed to result in the probable death of the prisoners of war is firmly sustained by competent evidence from persons who were in a position to know the facts and who testified or gave other evidence thereof. Koshikawa was an eager volunteer implementing Tashiro's malignant design to protect them from any possible adverse Japanese criticism which might arise from an unexpected escape of the prisoners of war from their custody. He took the easy way even though he knew it meant the sure death of scores of human beings. When this expected result materialized and ensuing justice seemed close he frantically led the scramble to attempt concealment and avoid the punishment which his actions indicated he knew to be his due. Approval of the death sentence in his case is an action which good conscience and justice dictate.

It is gratifying to those charged with the fair conduct of war crimes trials to note the following comments in the record, page 1657:

"ACCUSED: (Tashiro) I would like to thank you for your troubles and also I would like to thank the Defense lawyers for their efforts.

PRESIDENT: The Commission for the record commends the counsels for the Prosecution and the Defense on the manner in which this trial was conducted. The conscientious effort expended by both sides was in keeping with the precepts of justice and the desires of SCAP. The courtroom procedure, the complete lack of unnecessary argument or bickering and the gentlemanly deportment of both sides demonstrated the highest standards of the legal profession."

Also it is observed that on the floor of the American Congress further testimony to the fairness of these War Crimes trials appeared as follows:

WASHINGTON, March 17 (AP) -- Sen. Joseph McCarthy (R., Wis.) said today the * * * war crime trials "should have been conducted in the same spirit of justice as prevailed under General MacArthur in the Pacific."

"But we want to be sure that the judicial system used is as good as in this country or as was used in the Pacific."

"There was nothing improper in the conduct of the trials of Japanese war criminals although many there were convicted and executed."

Proposed alternate actions to implement these recommendations are attached.

ALLAN R. BROOME
Lt Col JAGC
Army Judge Advocate