

VOL. 1

YEAR 1945

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VOL. 10

YEAR 1945

TABLE OF RECORD

	<u>Volume</u>	<u>Pages</u>
PLEADINGS	Unnumbered	
ARRAIGNMENT	I	1-61
PLEA	I	58
FINDING	XXXIV.	4063
SENTENCE	XXXIV	4063
EXHIBITS:		
Prosecution, 1 to 100	Exhibits Volume I	
Prosecution, 101 to 200	Exhibits Volume II	
Prosecution, 201 to 300	Exhibits Volume III	
Prosecution, 301 to 406	Exhibits Volume IV	
Commission, "A" and "B"	Exhibits Volume IV	
Defense, "A" to "FF"	Exhibits Volume V	
Exhibit 315	Under separate cover	
Exhibit 318	Under separate cover	
Exhibit 326A	Under separate cover	
Exhibit 382	Under separate cover	
Exhibit 389	Under separate cover	
Exhibit 391	Under separate cover	
Exhibit 404	Under separate cover	
RECOMMENDATION OF DEFENSE COUNSEL FOR CLEMENCY	XXXIV	

18
781
2
2
Yamashita, Tomoyuki, 1885-1946, defendant

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA)

-vs-)

TOMOYUKI YAMASHITA)

ARRAIGNMENT

High Commissioner's Residence
Manila, P. I.
8 October 1945

Met, pursuant to notice, at 1400 hours.

MEMBERS OF MILITARY COMMISSION:

MAJOR GENERAL RUSSEL B. REYNOLDS, Presiding Officer
MAJOR GENERAL CLARENCE L. STURDEVANT, Law Member
MAJOR GENERAL JAMES A. LESTER
BRIGADIER GENERAL WILLIAM G. WALKER
BRIGADIER GENERAL EGBERT F. BULLENE

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ROBERT M. KERR, INFANTRY, Prosecutor
MAJOR GLICERIO OPINION, JAGS, Philippine Army,
Special Assistant Prosecutor
CAPTAIN M. D. WEBSTER, JAGD, Assistant Prosecutor
CAPTAIN WILLIAM N. CALYER, JAGD, Assistant
Prosecutor
CAPTAIN D. C. HILL, JAGD, Assistant Prosecutor
CAPTAIN JACK M. PACE, INFANTRY, Assistant
Prosecutor.
LIEUTENANT GEORGE E. MOUNTZ, USNR, Trial
Assistant
LIEUTENANT WILLIAM S. YARD, JAGD, Trial
Assistant

200 11 July 1968

(3)

FOR THE DEFENSE:

COLONEL HARRY E. CLARKE, JAGD
LIEUTENANT COLONEL WALTER C. HENDRIX, JAGD
LIEUTENANT COLONEL JAMES G. FELDHAUS, JAGD
MAJOR GEORGE F. GUY, CAVALRY
CAPTAIN ADOLF F. REEL, JAGD
CAPTAIN MILTON SANDBERG, JAGD

INTERPRETERS FOR THE COMMISSION:

MAJOR HARRY D. PRATT, USMC
MAJOR EUGENE P. BOARDMAN, USMCR

OFFICIAL REPORTERS FOR THE COMMISSION:

WARRANT OFFICER ELMER SHAMBERG, AUS
SERGEANT MADOLIN CERVANTES-AYALA
CORPORAL MACK MICHAEL RACKLIN

REPORTED BY:

WARRANT OFFICER ELMER SHAMBERG, AUS
CORPORAL MACK MICHAEL RACKLIN

4

DOCUMENTARY EVIDENCE

<u>DOCUMENT</u>	<u>PAGE</u>
Letter file AG 000.5 (24 September 45) JA	6
Letter Order file AG 000.5 (24 September 45) DC S	19
Paragraph 24 of Special Order No. 112, dated 1 October 1945	20
Paragraph 22 of Special Order No. 117, dated 6 October 1945	22
CHARGE, dated 25 September 1945	31
BILL OF PARTICULARS, dated 8 October 1945	38

GENERAL

Plea of the Accused	58
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P R O C E E D I N G S

GENERAL REYNOLDS: This Military Commission has been appointed by Lieutenant General W. D. Styer, Commanding General, United States Army Forces in the Western Pacific, by direction of General Douglas MacArthur, Commander-in-Chief, to conduct the trial of General Tomoyuki Yamashita, Imperial Japanese Army. Its duties are to hear the evidence of the Prosecution and the Defense, to arrive at a finding as to the guilt or innocence of the Accused, and if he is found guilty, to determine an appropriate sentence.

The proceedings will be conducted in a fair and impartial manner, which is traditional American justice. Sessions of the Commission shall be public except when otherwise directed by the Commission. The Commission will convene and hear any matters to be brought before it.

(Translated by Interpreter Pratt to the Accused.)

MAJOR KERR: If the Commission please, inasmuch as these proceedings will involve a Japanese it is respectfully requested that the proceedings be translated from English to Japanese.

GENERAL REYNOLDS: The proceedings will be so translated.

(Translated by Interpreter Pratt to the Accused.)

MAJOR KERR: Sir, there has been referred to this Commission for trial the case of the United States of America against Tomoyuki Yamashita, General of the Japanese Imperial Army. All of the members of the Commission are present. The Prosecutor and all assistant prosecutors

appointed by the convening authority are present. The Accused, together with the duly appointed Defense counsel, are present. The reporters and the interpreters are present. The Prosecution, sir, is ready to proceed.

GENERAL REYNOLDS: You may proceed.

INTERPRETER PRATT: Do you wish that translated?

GENERAL REYNOLDS: Yes.

(Translated by Interpreter Pratt to the Accused.)

COLONEL CLARKE: If the Court please, General Yamashita cannot understand the Interpreter. With the permission of the Court we'll have Mr. Hammamoto re-translate to General Yamashita.

MAJOR KERR: There is no objection, sir, provided it is a purely personal translation. The Interpreter provided by the Accused is not a competent interpreter for the Commission, if the Commission please. We have no objection.

GENERAL REYNOLDS: Subject to objection by any member of the Commission, the request of counsel for the Defense is agreed to.

(Translated by Interpreter Pratt to the Accused.)

THE ACCUSED (Through Interpreter Pratt): I agree to the translation by my interpreter.

MAJOR KERR: Sir, the Prosecution submits for introduction and incorporation into the record at this proceeding, the following orders which establish the basis for the Commission and for this proceeding.

(Translated by Interpreter Pratt to the Accused.)

MAJOR KERR: Letter, File AG 000.5 (24 Sep 45) JA,

General Headquarters, United States Army Forces, Pacific,
dated 24 September 1945. Subject: Regulations Governing
the Trial of War Criminals.

Letter Order, File AG 000.5 (24 Sep 45) DC S

General Headquarters, United States Army Forces, Pacific,
dated 24 September 1945. Subject: Trial of War Criminals.

Paragraph 24 of Special Order 112, Headquarters
United States Army Forces Western Pacific, dated 1
October 1945, entitled: "Appointment of a Military
Commission."

Paragraphs 22 and 23, Special Orders No. 117,
Headquarters United States Army Forces Western Pacific,
dated 6 October 1945, whereby Major Opinion is appointed
by the convening authority as one of the assistant
prosecutors in this proceeding.

(Translated by Interpreter Pratt to the Accused.)

GENERAL REYNOLDS: There being no objection the
orders are received in evidence.

"R E S T R I C T E D

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

AG 000.5 (24 Sep 45) JA

APO 500

24 September 1945

SUBJECT: Regulations Governing the Trial of War Criminals.

TO : Commanding General, AFWESPAC
Commanding General, Sixth Army
Commanding General, Eighth Army

The following rules and regulations will govern the trials of persons, units, and organizations accused as War Criminals in this theater:

ESTABLISHMENT OF MILITARY COMMISSIONS

1. GENERAL. Trial of persons, units, and organizations accused as war criminals will be by military commissions to be convened by or under the authority of the Commander-in-Chief, United States Army Forces, Pacific.

2. NUMBER AND TYPES. The number and types of commissions to be established will depend upon the number and nature of the offenses involved and of the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against two (2) or more nations, or any other offenses; and commissions consisting of members of any one branch or of several branches of the armed services of one or more nations, to try cases involving offenses against any one or more of such service branches, or any other offenses.

" JURISDICTION

3. OVER TERRITORY. The military commissions established hereunder shall have jurisdiction over all of Japan and other areas occupied by the armed forces commanded by the Commander-in-Chief, United States Army Forces, Pacific.

4. OVER PERSONS. - a. The military commissions established hereunder shall have jurisdiction over all persons, units or organizations within Japan and other areas occupied by the armed forces, commanded by the Commander-in-Chief, United States Army Forces, Pacific.

b. Any military or naval unit or any official or unofficial group or organization, whether or not still in existence, may be charged with criminal acts or complicity therein and tried by a military commission.

c. The convening authority may specify particular offenders to be tried before any commission appointed by him.

5. OVER OFFENSES. - a. The military commissions established hereunder shall have jurisdiction over the following offenses: murder, torture or ill-treatment of prisoners of war or persons on the seas; killing or ill-treatment of hostages; murder, torture or ill-treatment, or deportation to slave labor or for any other illegal purpose, of civilians of, or in, occupied territory; plunder of public or private property; wanton destruction of cities, towns or villages; devastation, destruction or damage of public or private property not justified by military necessity; planning, prepara-

"tion, initiation or waging of a war of aggression, or an invasion or war in violation of international law, treaties, agreements or assurances; murder, extermination, enslavement, deportation or other inhumane acts committed against any civilian population, or persecution on political, racial, national or religious grounds, in execution of or connection with any offense within the jurisdiction of the commission, whether or not in violation of the domestic law of the country where perpetrated; and all other offenses against the laws or customs of war; participation in a common plan or conspiracy to accomplish any of the foregoing. Leaders, organizers, instigators, accessories and accomplices participating in the formulation or execution of any such common plan or conspiracy will be held responsible for all acts performed by any person in execution of that plan or conspiracy.

b. Persons whose offenses have a particular geographical location outside Japan may be returned to the scene of their crimes for trial by competent military or civil tribunals of local jurisdiction. In the event a person is requested for trial in two (2) or more countries, the Commander-in-Chief, United States Army Forces, Pacific, will determine the place of trial on the basis of the relative gravity of the respective charges and other relevant circumstances.

MEMBERSHIP OF COMMISSION

6. APPOINTMENT. The members of each military Commission will be appointed by the Commander-in-Chief,

"United States Army Forces, Pacific, or under authority delegated by him. The appointment may be made in the order convening the commission or in a separate order. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission and in case of illness or other incapacity of any principal member an alternate shall take the place of that member. Any vacancy among the members or alternates occurring after a trial has begun may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

7. NUMBER OF MEMBERS. Each commission shall consist of not less than three (3) members.

8. QUALIFICATIONS. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice; provided, that no person shall be appointed to hear a case which he personally investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy and other service personnel, or of both service personnel and civilians. If feasible, one or more members of a commission should have had legal training.

9. QUORUM AND VOTING. A quorum shall consist of two-thirds (2/3) of the members of the commission, or alternates (if any) acting as members, but in no

"United States Army Forces, Pacific, or under authority delegated by him. The appointment may be made in the order convening the commission or in a separate order. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission and in case of illness or other incapacity of any principal member an alternate shall take the place of that member. Any vacancy among the members or alternates occurring after a trial has begun may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

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9. QUORUM AND VOTING. A quorum shall consist of two-thirds (2/3) of the members of the commission, or alternates (if any) acting as members, but in no

"event less than three (3) members. All decisions of the commission shall be by majority vote of the members present when the vote is taken, which shall be a quorum, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members of the quorum. In case of a tie vote, the vote of the presiding member will determine.

10. PRESIDING MEMBERS. In the event the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

PROSECUTORS

11. APPOINTMENT. The convening authority shall designate one or more persons to conduct the prosecution before each commission. In prosecutions for offenses involving more than one nation, each nation concerned may be represented among the prosecutors.

12. DUTIES. The duties of the prosecutors are:

a. To determine the offenses and the offenders to be tried before the commission in addition to those specifically ordered by the convening authority.

b. To prepare and present to the commission charges and specifications.

c. To prepare cases for trial and to conduct the prosecution of each case before the commission.

"

POWERS AND PROCEDURE OF COMMISSIONS

13. CONDUCT OF THE TRIAL. A Commission shall:

a. Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

b. Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

c. Sessions of a commission shall be public except when otherwise directed by the commission.

d. A commission shall hold each session at such time and place as it shall determine or as may be directed by the convening authority.

14. RIGHTS OF THE ACCUSED. The accused shall be entitled:

a. To have in advance of trial a copy of the charges and specifications, so worded as clearly to apprise the accused of each offense charged.

b. To be represented prior to and during trial by counsel of his own choice, or to conduct his own defense. If the accused fails to designate his counsel, the commission shall appoint competent counsel to represent or advise the accused.

c. To have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

d. To have the charges and specifications,

"the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

15. WITNESSES. The commission shall have power:

a. To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons, and to question witnesses.

b. To require the production of documents and other evidentiary material.

c. To have evidence taken by a special commissioner appointed by the commission.

16. EVIDENCE. - a. The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

- (1) Any document which appears to the commission to have been signed or issued officially by any officer, department, agency, or member of the armed forces of any government, without proof of the signature or of the issuance of the document.
- (2) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by

"

a medical doctor or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission finds to have been acting in the course of his duty when making the report.

- (3) Affidavits, depositions, or other statements taken by an officer detailed for that purpose by military authority.
- (4) Any diary, letter or other document appearing to the commission to contain information relating to the charge.
- (5) A copy of any document or other secondary evidence of its contents, if the commission believes that the original is not available or cannot be produced without undue delay.

b. The Commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

c. A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the

"admissibility of such evidence.

d. If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima facie evidence that the accused likewise is guilty of that offense.

e. The findings and judgment of a commission in any trial of a unit, group or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial by that or any other commission of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in such unit, group or organization convicted by a commission, the burden of proof shall shift to the accused to establish any mitigating circumstances relating to his membership or participation therein.

f. The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

17. TRIAL PROCEDURE. The proceedings at each

"trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances ;

a. Each charge and specification will be read, or its substance stated, in open court.

b. The presiding member shall ask each accused whether he pleads 'Guilty' or 'Not Guilty.'

c. The prosecution shall make its opening statement.

d. The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

e. The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

f. The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

" g. The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

h. The defense, and thereafter the prosecution, shall address the commission.

i. The commission shall consider the case in closed session and thereafter in open court deliver its judgment, and in the event of a conviction shall pronounce sentence.

18. RECORD OF PROCEEDINGS. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

JUDGMENT AND SENTENCE

19. JUDGMENT. The judgment of a commission as to guilt or acquittal shall be delivered in open court. It may state the reasons on which based.

20. SENTENCE. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine, or such other punishment as the commission shall de-

"termine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property, or order its delivery to the Commander-in-Chief, United States Army Forces, Pacific, for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

21. APPROVAL OF SENTENCE. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into effect until confirmed by the Commander-in-Chief, United States Army Forces, Pacific. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

RULE MAKING POWER

22. SUPPLEMENTARY RULES AND FORMS. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof or such rules and forms as may be prescribed by the convening authority or by the Commander-in-Chief, United States Army Forces, Pacific.

By command of General MacARTHUR:

" /s/ B. M. Fitch
/t/ B. M. FITCH
Brigadier General, U. S. Army,
Adjutant General.

DISTRIBUTION:

Chief of Staff

Deputy Chief of Staff

AG

JA Section, War Crimes Branch"

"CONFIDENTIAL"

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

AG 000.5 (24 Sep 45) DC S

APO 500
24 September 1945

SUBJECT: Trial of War Criminals.

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

1. By virtue of the authority vested in the Commander-in-Chief, United States Army Forces, Pacific, and in accordance with the provisions of radio WX 62612, Joint Chiefs of Staff, 12 September 1945, the Commanding General, United States Army Forces, Western Pacific, is hereby empowered to appoint military commissions for the trial of such persons accused of war crimes as may hereafter be designated by this headquarters.

2. All records of trial including judgment or sentence and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of judgment or sentence in all cases will be withheld pending the action of the Commander-in-Chief.

By command of General MacARTHUR:

/s/ B. M. Fitch
/t/ B. M. FITCH,
Brigadier General, U. S. Army,
Adjutant General.

CERTIFIED TRUE COPY:

/s/ Kenneth C. Schwartz
KENNETH C. SCHWARTZ, Lt Col, JAGD
Actg Ex O, War Crimes Branch

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"CONFIDENTIAL

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC

Special Orders) APO 707
No..... 112) 1 October 1945
Extract

24. Appointment of a military commission. Pursuant to authority contained in Letter, General Headquarters, United States Army Forces, Pacific, File AG 000.5 (24 Sep 45) DCS, 24 September 1945, subject: Trial of General Tomoyuki Yamashita, the following officers are hereby appointed as a Military Commission for the trial of General Tomoyuki Yamashita:

Major General Russel B. Reynolds, President
Major General Clarence L. Sturdevant,
Law Member
Major General James A. Lester
Brigadier General William G. Walker
Brigadier General Egbert F. Bullene

The prosecution shall be conducted by Major Robert M. Kerr, Inf, as Prosecutor, and Captain M. D. Webster, JAGD, Captain William N. Calyer, JAGD, Captain D. C. Hill, JAGD, Captain Jack M. Pace, Inf, as Assistant Prosecutors. The defense counsel shall be Colonel Harry E. Clarke, JAGD, Lieutenant Colonel Leigh M. Clark, JAGD, Lieutenant Colonel Walter C. Hendrix, JAGD, Lieutenant Colonel James G. Feldhaus, JAGD, Major George F. Guy, Cav, and Captain Adolf F. Reel, JAGD.

The commission shall meet in the city of Manila, Philippine Islands, at the call of the President thereof.

The commission is authorized to employ

"or appoint such interpreters, stenographic reporters, and other assistants, as it shall deem advisable.

The commission shall follow the provisions of Letter, General Headquarters, United States Army Forces, Pacific, File AG 000.5 (24 Sep 45) DCS, 24 September 1945, subject: Trial of General Tomoyuki Yamashita, and have power to and shall, as occasion requires, make such rules for the conduct of the proceedings as it shall deem necessary for a full and fair trial of the person before it. Such evidence shall be admitted as would, in the opinion of the President of the Commission, have probative value to a reasonable man and is relevant and material to the charges before the Commission. The concurrence of at least two-thirds of the members of the Commission present shall be necessary for a conviction or sentence. The record of trial, including any judgment or sentence, shall be transmitted directly to this headquarters for action by the appointing authority.

BY COMMAND OF LIEUTENANT GENERAL STYER:

EDMOND H LEAVEY
Major General, USA
Deputy Commander, and
Chief of Staff

OFFICIAL:

Benito Morales
BENITO MORALES
Col, A.G.D.
Asst Adj Gen.

CONFIDENTIAL"

"CONFIDENTIAL

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HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC

Special Orders) APO 707
6 October 1945
Number117) Extract

22. Pursuant to authority contained in Letter, General Headquarters, United States Army Forces, Pacific, File AG 000.5 (24 Sept 45) DCS, 1 Oct 45
Subject: Trial of General Tomoyuki Yamashita, Major Glicerio Opinion, JAGS, Philippine Army, is detailed as assistant prosecutor of the military commission appointed by par. 24, SO 112, this hq, 1 Oct 45.

23. Capt Milton Sandberg, JAGD, is detailed defense counsel of the military commission appointed by par 24, SO 112, this hq, 1 Oct 45, vice Lt Col Leigh M Clark, JAGD, relieved.

BY COMMAND OF LIEUTENANT GENERAL STYER:

EDMOND H LEAVEY
Major General, USA
Deputy Commander,
and Chief of Staff.

OFFICIAL:

Benito Morales
BENITO MORALES
Col., A.G.D.
Asst Adj Gen.

CONFIDENTIAL"

MAJOR KERR: The Prosecution is now ready to proceed with the arraignment, sir.

GENERAL REYNOLDS: The reporters will be sworn.

(Whereupon Reporters Elmer Shamberg, Mack M. Racklin and Madolin Cervantes-Ayala were sworn.)

GENERAL REYNOLDS: The Interpreters will be sworn.

(Whereupon Major Harry D. Pratt and Major Eugene P. Boardman were sworn as interpreters.)

GENERAL REYNOLDS: The Commission will be sworn.

(Whereupon the Commission was sworn.)

GENERAL REYNOLDS: The Prosecution will be sworn.

(Whereupon the Prosecutor and Assistant Prosecutors were sworn.)

MAJOR KERR: A certified copy of the charge in this proceeding was served upon the Accused by Captain D. C. Hill, Judge Advocate General's Department, on 2 October 1945, at New Bilibid Prison, Muntinlupa, Rizal Province, Philippines.

GENERAL REYNOLDS: The rights of the Accused as set forth in paragraph 14 of letter dated 24 September 1945, General Headquarters, United States Forces, Pacific, entitled "Regulations Governing the Trial of War Criminals" heretofore introduced into the record will be read and explained.

INTERPRETER PRATT: Sir, may we stop here and translate that?

GENERAL REYNOLDS: Yes.

(Translated by Interpreter Pratt to the Accused.)

GENERAL REYNOLDS: The Accused, Defense counsel,

and the Prosecutor will rise and face the Commission.

"14. Right of the Accused. The Accused shall be entitled:

"a. To have in advance of trial a copy of the charges and specifications, so worded as clearly to apprise the Accused of each offense charged.

"b. To be represented prior to and during trial by counsel of his own choice, or to conduct his own defense. If the Accused fails to designate his counsel, the Commission shall appoint competent counsel to represent or advise the Accused.

"c. To have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the Commission.

"d. To have the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them."

(Translated by Interpreter Boardman to the Accused.)

GENERAL REYNOLDS: The provisions of subsection "a" have been complied with, it appearing that a certified copy of the Charge and specifications, together with a true and complete translation thereof, were served upon the Accused 2 October 1945.

(Translated by Interpreter Boardman to the Accused.)

THE ACCUSED (through Interpreter Boardman): I have not received a copy of the specifications or a translation.

MAJOR KERR: If the Commission please, the Charge which was served upon the Accused included both what is

ordinarily known as a Charge and also specifications. Customarily in court-martial procedure, which this is not, by the way, the so-called Charge Sheet which contains the charge includes the charge proper; for instance, violation of the 86th Article of War. Under that, in a separate or sub-paragraph would be what is known as a specification, in that the Accused, on a certain time, at a certain place, did certain things. If the Commission will examine the Charge which has been served upon the Accused in this proceeding it will note that it does include both of those elements of a court-martial Charge and, therefore, since court-martial procedure is much more strict and not as liberal with respect to pleadings or procedure as a Military Commission's procedure, certainly this Charge does include the elements of both the Charge and specifications as those terms are used in the applicable order.

(Translated by Interpreter Boardman to the Accused.)

THE ACCUSED: (Through Interpreter Boardman) There is no specification; there is only a charge.

MAJOR KERR: If the Commission please, I ask the Commission to rule that the Charge and specifications have been served upon the Accused within the meaning of those terms used in this order.

COLONEL CLARKE: We are agreeable, sir.

GENERAL REYNOLDS: On that basis the Commission rules that the Charge and specifications have been properly served upon the Accused.

MAJOR KERR: If the Commission please, if I

understand correctly, the Accused stated he had not received a translation of the Charge and specifications. If by that he means to say he did not receive the translation from English into Japanese, the body of the Charge as set forth in the document known as the Charge, if that is his position, then it will be necessary and we will desire to put on the stand the officer who served the translation upon the Accused, under oath.

INTERPRETER BOARDMAN: The General said that he received the translated copy of the Charge, as he understood it to mean the Charge, but he had not received a translated copy of the specifications as he understood it. Since the Court has ruled that the two are in the same document, therefore he has received a translation.

GENERAL REYNOLDS: That is agreeable to the Defense?

COLONEL CLARKE: Yes, sir.

GENERAL REYNOLDS: We will proceed. Whom does the Accused desire to introduce as Defense counsel?

(Translated by Interpreter Boardman to the Accused.)

THE ACCUSED (through Interpreter Boardman): I am happy to accept the choice of the Commission as to my counsel. I am highly honored to have been given such distinguished persons to represent me.

GENERAL REYNOLDS: Such being the will of the Accused, the Commission will accept counsel as appointed and the case will proceed.

THE ACCUSED (through Interpreter Boardman): I have this additional request to make. I should like to have my Chief-of-Staff, Lieutenant General Muto, and my Assistant

Chief or Deputy Chief-of-Staff, Major General Utsunomiya as additional counsel. There are a number of records and facts with which they alone are conversant. I need their advice and assistance.

MAJOR KERR: If the Commission please, may I inquire of Defense counsel whether or not he proposes to call either one of the men named as a Defense witness?

COLONEL CLARKE: We do.

MAJOR KERR: You do?

COLONEL CLARKE: Yes.

MAJOR KERR: If the Commission please, that rules them out definitely. In a criminal proceeding it would be entirely irregular if a witness for the Defense should also represent the Accused as counsel; even in professional circles it would be most irregular. Even if the intent is not to serve as counsel, it is just as bad to have the witnesses for a person accused as a criminal to sit through the proceedings. If and when counsel proposes to call them as witnesses, then they may properly enter the courtroom and not before.

COLONEL CLARKE: If the Court please, these officers have information which the General does not have and which we will need in order to conduct this trial and properly cross-examine certain witnesses. They will not be in the courtroom except during the prosecution of the case. They will leave the courtroom prior to the Defense. If the Commission please, we believe it is only fair and just that General Yamashita should be given the privilege of having those men present, who have an

intimate knowledge of certain things that he in his position has not knowledge of.

MAJOR KERR: If the Commission please, the damage is done when the witnesses are in the courtroom during the Prosecution's case and not during the Defense. I assume, sir, that the Commission wants the witnesses to state personal facts and not forensic arguments based upon their study and analysis and hearing of the opposing side.

GENERAL REYNOLDS: The Accused has stated his belief that he needs Lieutenant General Muto, his Chief-of-Staff, and Major General Utsunomiya, Assistant Chief-of-Staff, in his Defense. He has asked that they be appointed associate Defense counsel. It is the desire of this Commission to conduct a fair trial; accordingly, subject to objection by any member of the Commission, the request of the Defense is granted.

(Translated by Interpreter Boardman to the Accused.)

THE ACCUSED (through Interpreter Boardman): Thank you.

MAJOR KERR: If the Commission please, without in any way attempting to argue the point, I believe it is my duty to inform the Commission that it is the present intention of General MacArthur's War Crimes Officer to prefer charges as war criminals against the two men named by the Accused to be present during the prosecution of General Yamashita. Furthermore, the Prosecution, for the benefit of the record, does not and will not recognize the men named as Chief-of-Staff or as Deputy or

Assistant Chief of Staff. We maintain, sir, that the day when Yamashita had his Chief-of-Staff or Assistant Chief-of-Staff is over.

GENERAL REYNOLDS: Proceed.

(Translated by Interpreter Boardman to the Accused.)

COLONEL CLARKE: General Yamashita did not understand that and neither did Hammamoto. I think we can clear it up if I give him the gist of it here.

(Translated by Interpreter Boardman to the Accused.)

THE ACCUSED (Through Interpreter Boardman): The officers mentioned, Lieutenant General Muto and Major General Utsunomiya, were my staff officers, but now they are no more. I understand the point that the Prosecution made, and those officers are no longer my Chief-of-Staff and Assistant Chief-of-Staff. I have not available myself certain records and information and these records can be recalled or remembered by my Chief-of-Staff and his assistant. Therefore, they are absolutely necessary as assistant counsel to me.

GENERAL REYNOLDS: The Commission has accepted the officers named as associate Defense counsel. The objection of the Prosecution was ruled upon in the negative. The matter will be considered as closed and the case will proceed.

(Translated by Interpreter Boardman to the Accused.)

INTERPRETER BOARDMAN: He thanks the Court for the admittance of the aforementioned generals.

GENERAL REYNOLDS: Does the Accused wish to have the Charge and specifications, the proceedings, and documentary

evidence translated to him?

(Translated by Interpreter Boardman to the Accused.)

THE ACCUSED (through Interpreter Boardman): If it is not necessary, English will be all right. In cases where it is not necessary, English would be all right.

COLONEL CLARKE: He said it was not necessary, sir. It will not be necessary; he can have somebody translate them for him. We do not desire the reading of them.

GENERAL REYNOLDS: The Commission does not clearly understand what is meant by the Accused.

COLONEL CLARKE: The Defense does not desire a reading of the Charge; that is what he means.

GENERAL REYNOLDS: The Commission directs the Prosecutor to have one of the Commission interpreters to translate to the Accused and to allow time after each remark by the Commission or the Prosecutor or before the receipt into evidence of any document, to have the same translated to the Accused provided it is so desired by counsel for the Defense.

(Translated by Interpreter Boardman to the Accused.)

INTERPRETER BOARDMAN: In order to save time, the General will have his interpreter translate to him as we go along.

GENERAL REYNOLDS: The Commission is unable to hear you.

THE ACCUSED (through Interpreter Boardman): In order to save time, my interpreter will translate for me as we go along.

GENERAL REYNOLDS: The Charge will be read to the Accused.

"belief.

/s/ Kenneth C. Schwartz
KENNETH C. SCHWARTZ

Lt. Colonel, JAGD
Rank and Branch

GENERAL HEADQUARTERS, UNITED STATES' ARMY FORCES, WESTERN
PACIFIC, APO 707

2 October 1945

Referred for trial to Major Robert M. Kerr, Infantry,
Chief Prosecutor of the Military Commission appointed by
paragraph 24, Special Orders No. 112 this Headquarters, 2
October 1945.

By command of Lieutenant General STYER:

/s/ C. H. Danielson
C. H. DANIELSON
Major General, USA
Adjutant General

I hereby certify that I have served a copy hereof,
together with a true and complete translation thereof into
Japanese, on the above-named accused this 2 day of October,
1945.

/s/ D. C. Hill
D. C. HILL

Capt., JAGD
Rank and Branch "

~~(Translated by Interpreter Boardman to the Accused.)~~

GENERAL REYNOLDS: There being no objection, the Charge is accepted by the Commission. Is the Accused now ready to enter his plea?

COLONEL CLARKE: Prior to a plea of the general issue, sir, we have a motion to make. The Accused respectfully moves that the Charge now in hearing be stricken on the ground that it fails to state a violation, in so far as General Yamashita is concerned, of the laws of war.

MAJOR KERR: If the Commission please, aside from the question of law which perhaps the Defense counsel is attempting to raise at this time, the fact remains that this Commission has been ordered to try General Yamashita. If the Defense seeks to raise the point which I believe he refers to, the appropriate time, I submit, is at the conclusion of the Prosecution's case, at which time he may move for a judgment of acquittal. But there is no provision in the Commission's procedure for a motion such as Defense counsel now interposes.

COLONEL CLARKE: If the Commission please, we are not now making a motion based on the evidence or the insufficiency of evidence to sustain the charge. Our motion is that the Charge and specifications alleged therein do not state an offense under the laws of war as to General Yamashita.

GENERAL REYNOLDS: Subject to objection by any member of the Commission, the objection of counsel for the Defense is not sustained.

COLONEL CLARKE: I have a further motion to make,

sir. The language in which the charge and specifications have been alleged is uncertain and indefinite and it does not fairly apprise the Accused of that with which he stands charged. We therefore move the Court that the Charge and cause now in hearing be made more definite and certain by particularizing as to the time, place and dates wherein the Accused disregarded and failed to discharge his duty as Commander to control the operations of the members of his command as alleged. And by particularizing, as to the times and places and dates, the persons who were permitted to commit brutal atrocities and other high crimes against the People of the United States and its allies and dependencies, as alleged. And particularizing as to time, place, dates and details of the alleged atrocities and other high crimes.

GENERAL REYNOLDS: Does the Prosecution oppose this motion?

MAJOR KERR: Very definitely, sir. There is no provision in the regulations governing this Commission, for a motion such as the Defense now interposes. Such a motion would be appropriate in a court of law, perhaps, but certainly not in this proceeding.

Now, if the Accused desires a Bill of Particulars, the Prosecution has no objection to supplying such a bill; but we certainly do object to an attempt to apply in the proceedings of this Commission, the technical objections and rules of evidence, pleadings and procedure which might apply in a court of law.

COLONEL CLARKE: If the Commission please, we

~~understand that this Commission is not bound by the rules~~
of a court of law, but the Defense does believe that the
Commission, in all justice and fairness to the Accused,
should make a ruling that he should be fairly apprised of
that with which he is charged.

GENERAL REYNOLDS: Does counsel for Defense wish to
move for a Bill of Particulars?

COLONEL CLARKE: That is included in the motion,
sir. Does the Prosecution stand prepared to furnish a
Bill of Particulars?

MAJOR KERR: Sir, the Prosecution does have a formal
Bill of Particulars which has been shown to Defense
counsel. We should like the indulgence of the Commission
and counsel so we may formally serve it and file it with
the Commission tomorrow rather than today. But we are
prepared, in fact, we are glad to supply Defense counsel
with such a Bill of Particulars.

COLONEL CLARKE: Until we receive the Bill of
Particulars, we do not know that with which we are charged
and cannot in fairness plead to the general issue.

MAJOR KERR: May I ask Defense counsel, if I
present to Defense counsel at this time the Bill of
Particulars which will be served and on file tomorrow,
will the Accused be now ready, willing and able to enter
his plea?

COLONEL CLARKE: If we are given recess for a
sufficient length of time to look it over.

MAJOR KERR: What would be that period of time?

COLONEL CLARKE: About fifteen minutes.

MAJOR KERR: Sir, it is satisfactory to the Prosecution, provided and on one condition, that the Prosecution at a later date has the privilege of serving and filing a supplemental Bill of Particulars.

We have certain documentary evidence which has not been received as yet from the States. We have certain new information just recently received which we have not had an opportunity so far to incorporate in the Bill of Particulars. If we may have assurance that later we may file a supplemental Bill of Particulars, we are willing to proceed on the basis which I have suggested; otherwise not.

GENERAL REYNOLDS: Is the Commission to understand that the counsel for the Defense has made a motion for a Bill of Particulars?

COLONEL CLARKE: Yes, sir.

GENERAL REYNOLDS: The motion for a Bill of Particulars is granted; the bill to be served and filed immediately. A supplemental Bill of Particulars may be filed later subject to such conditions as the Commission may then specify.

COLONEL CLARKE: May it please the Commission, we ask for an exception to that ruling where the supplemental Bill of Particulars may be filed.

MAJOR KERR: If the Commission please, in order that we may not unduly extend the record, I desire to point out that there is no provision in the proceedings, or rather, the regulations governing the proceedings of this Commission, for exceptions. So far as the

Prosecution is concerned, the Commission, if it so desires, may apply a rule which many courts follow, namely, for whatever it may be worth, an exception is noted automatically and without the request of counsel in the event a motion is overruled.

GENERAL REYNOLDS: The objection of Defense counsel is not sustained. However, the Commission will decide each of these additional charges on their merits when the Prosecution presents them.

COLONEL CLARKE: Sir, may we have a fifteen-minute recess?

GENERAL REYNOLDS: Does the Prosecution wish formally to introduce the Bill of Particulars into the record at this time?

MAJOR KERR: Sir, the Prosecution has served upon Defense counsel, at this time, a duly certified copy of a Bill of Particulars, and the Prosecution at this time files the original of that Bill of Particulars with the Commission.

GENERAL REYNOLDS: The Bill of Particulars is received into evidence.

"civilian internees there confined, with consequent starvation and malnutrition, and death, of such internees; brutal mistreatment, beating, and torture of H. F. Wilkins and other civilian internees; torture, beating and summary execution of more than six (6) internees for minor infractions of rules; cruel mistreatment, torture and brutal execution, without cause or trial, during the period from 23 December 1944 to 2 February 1945, of Carol C. Grinnell, Alfred F. Duggleby, Clifford Larson and B. B. Johnson, all civilian internees.

3. During the months of October, November and December 1944, brutally mistreating and torturing numerous unarmed noncombatant civilians at the Japanese Military Police Headquarters located at Cortabitarte and Mabini Streets, Manila.

4. On about 30 October 1944, at Carigara, Leyte, cruelly mistreating, torturing, mutilating and subsequently executing and, without cause or trial, killing Private Wade E. Gensemer, a member of the Armed Forces of the United States of America, then in captivity of the Armed Forces of Japan as a prisoner of war.

5. During November 1944, in northern Cebu Province, massacre, without cause or trial, of more than 1000 unarmed noncombatant civilians.

6. During November and December 1944, at Cabanatuan, Nueva Vizcaya Province, brutal mistreatment, torture, maiming, execution and killing, without cause or trial, of members of the Armed Forces of the United States of America, then held captive as prisoners of war by Armed

"Forces of Japan; wilfull failure and refusal to provide for such prisoners of war adequate food, living quarters and facilities, clothing, medical treatment or supplies, and other necessities; looting and stealing the contents of, and wilfully failing to deliver or make available Red Cross packages and supplies intended for such prisoners of war.

7. On about 20 October 1944, at Batan Island, Batanes Province, the brutal mistreatment, torture, execution and killing, without cause or trial, of Captain William Burgh, Phillip Maurice Martin, and one other person whose name is unknown, all members of the Armed Forces of the United States of America and then in captivity of Armed Forces of Japan as prisoners of war.

8. During the month of November, 1944, in the Town of Lipa, Batangas Province, brutally mistreating, torturing, and killing, without cause or trial, eleven (11) members of the Armed Forces of the United States of America, then held captive as prisoners of war by Armed Forces of Japan.

9. On about 14 December 1944, at or near Puerta Princesa, Palawan Island, brutally mistreating, assassinating and killing, by burning, bayoneting or shooting, without cause or trial, T/Sgt Jewett F. Adams, Corporal Robert A. Adkins, 1st Lieutenant Carl C. Mango, and 138 other members of the Armed Forces of the United States of America, then prisoners of war held in captivity by Armed Forces of Japan, and brutally mistreating, wounding and attempting to kill, without cause or trial, Corporal

"William J. Balchus, Pfc Ernest J. Koblos, and seven (7) other members of the Armed Forces of the United States of America, all then prisoners of war held in captivity by Armed Forces of Japan.

10. During the period from 18 December 1944 to 31 December 1944, both dates inclusive, in Manila, brutally mistreating, torturing and killing, without cause or trial, Dr. Jose Enriquez, J. Allen Enriquez, and Julia Seibert Enriquez, all unarmed noncombatant civilians.

11. On about 29 December 1944, at the Barrio of Dapdap, Ponson Island, Camotes Islands, brutally mistreating and then killing, without cause or trial, more than 300 unarmed noncombatant civilians, and brutally mistreating, wounding, maiming and attempting to kill, without cause or trial, more than 50 unarmed noncombatant civilians, being the entire population of that Barrio.

12. During the period from 1 January 1945 to 17 February 1945, both dates inclusive, fortification of and installation of military objectives on the premises of the Philippine General Hospital, Ermita, Manila, then in use as a civilian hospital, with consequent killing of patients and civilian refugees by shellfire.

13. On about 28 January 1945, at Los Banos Internment Camp, Laguna Province, brutally mistreating and then summarily executing, and, without cause or trial, killing George James Louis, an unarmed noncombatant civilian subject of the United States of America, then interned and held captive by Armed Forces of Japan.

14. On about 10 February 1945, at the Nurses Home

"of the Philippine General Hospital, Ermita, Manila, rape of civilian women.

15. During the period from 1 January 1945 to 1 March 1945, both dates inclusive, deliberately, wantonly and without justification or military necessity, devastating, destroying, and pillaging and looting of large areas of the City of Manila, including public, private and religious buildings and other property, and committing widespread theft of money, valuables, food and other private property in that city.

16. On about 4 February 1945, at the Dy-Pac Lumber Yard in Manila, brutally mistreating and killing two unarmed noncombatant male civilians.

17. During the period from 7 February 1945 to 14 February 1945, both dates inclusive, at and in the vicinity of De La Salle College, 1501 Taft Avenue, Manila, brutally killing, without cause or trial, Judge Jose R. Carlos and Brother Xavier, Rector of that College, both of whom were unarmed noncombatant civilians; brutally killing, without cause or trial, Antonio Carlos, Ricardo Bartolome, Dr. Antonio Cojuangco, and 38 other men, women and children, all unarmed noncombatant civilians; brutally mistreating, wounding, maiming and attempting to kill, without cause or trial, Father Francis J. Cosgrave, Dionisia Carlos, Servillano Aquino, and fourteen (14) other unarmed noncombatant civilians; rape of two female civilians; attempted rape of one female civilian; and attempt to have carnal intercourse with the body of one dead female civilian.

" 18. On about 7 February 1945, at Malate, Manila, killing, without cause or trial, Arsenio Escudero, Jr., and Jose Herman, Jr., and brutally mistreating and attempting to kill, without cause or trial, Jose Herman, Sr., all unarmed noncombatant civilians.

19. During the period from about 6 February 1945 to about 8 February 1945, both dates inclusive, at and in the vicinity of the National Psychopathic Hospital, Mandaluyong, Rizal Province, brutally mistreating and then killing, without cause or trial, Tomas Aguinaldo, Tomas Corpus, Father Lafarrier, Isidro Laguelles, and 17 other persons, all unarmed noncombatant civilians; and the rape and subsequent brutal killing, without cause or trial, of one (1) civilian female doctor.

20. On about 10 February 1945, at Malate, Manila, killing, without cause or trial, Angel Gajo; and brutally mistreating, wounding and attempting to kill, without cause or trial, Eutiquio Antipolo, Dimas Antipolo and Feliciano Lamactud, all unarmed noncombatant civilians.

21. On about 11 February 1945, at Pasay, Rizal Province, brutally mistreating and thereafter killing, without cause or trial, Henry Daland and Tony Daland, citizens of the United States of America, Caferino Alayso and Romula Daro, Filipinos, and Jacinto de la Vara and Gregorio Mendez, citizens of Spain, all unarmed noncombatant civilians; and wantonly and deliberately and without military necessity burning and destroying private property, the houses and homes of civilians.

22. On about 11 February 1945, near Singalong

"Church, Manila, brutally killing, without cause or trial, Lazar Braun, an Austrian citizen, Robert Markus, a German citizen, and Alexander Farmakowski, a Russian, all unarmed and noncombatant civilians.

23. On about 7 February 1945, at Singalong, Manila, brutally mistreating and torturing and thereafter executing and killing, without cause or trial, Lt. Col. Alejo Valdes and Lt. Col. Jose Guido, disarmed and demobilized former members of the Philippine Army, and Raymond Valdes, Ernesto Mirillo, Justo Guido, Jose Guido, Jr., Raymond Guido, and thirteen (13) other persons whose names are unknown, all unarmed and noncombatant civilians.

24. On about 7 February 1945, at Paco, Manila, brutally mistreating and thereafter killing, without cause or trial, Bartolome Pons, Rosario Garcia Pons, Eva V. Pons, Edward King, Pacita King, Delfin Marquez, and two (2) other persons whose names are unknown, all unarmed and noncombatant civilians.

25. During the period from 1 January 1945 to 1 March 1945, deliberately planning and undertaking, without cause or trial, the extermination, massacre and wanton, indiscriminate killing of large numbers of unarmed non-combatant civilian men, women and children, inhabitants of the City of Manila and its environs, brutally mistreating, wounding, mutilating, killing and attempting to kill, without cause or trial, large numbers of such inhabitants, and raping or attempting to rape large numbers of civilian women and female children in that city.

26. On about 12 February 1945, at 914 Indiana

"Street, Malate, Manila, brutally mistreating and killing, without cause or trial, Alexander Bachrach, Antonio Irlanda, Vanancio Quintero, Eduardo de los Reyes, Jose Valle, and five other persons whose names are unknown, all unarmed noncombatant civilians.

27. On about 9 and 10 February 1945, in and in the vicinity of the San Marcelino Church and the Saint Vincent de Paul House, Ermita, Manila, brutally mistreating and killing, without cause or trial, Father Jose Aguirreche, Father Luis Egeda, Father Jose Fernandez, Father Julio Ruiz, Father Adolfo Soto, Father Jose Tejada, all Spanish Vincentian Catholic priests, and 21 other persons, all unarmed noncombatant civilians; and brutally mistreating, wounding and maiming and attempting to kill, without cause or trial, Co Ching, an unarmed noncombatant Chinese civilian.

28. On about 10 February 1945, at the corner of Taft Avenue and Padre Faura Street, Ermita, Manila, killing, without cause or trial, Supreme Court Justice Anacleto Diaz and his two sons, Felino Angeles, Jose Angeles, Roman Ardena, and 33 other persons, and wounding and attempting to kill Juanito De Los Reyes, Delfin De Los Paz, Antonio De Mayo, and six (6) other persons, and attacking and attempting to kill, Paul J. Akot, Ah See Chua, and 11 other persons, all unarmed noncombatant civilians, and all without cause or trial.

29. On about 10 February 1945, at Paco, Manila, massacring and killing 12 unarmed noncombatant civilians and wounding, maiming and attempting to kill 3 unarmed

"noncombatant civilians, all without cause, or trial; and unnecessarily and wantonly burning and destroying private property, the houses and homes of civilians.

30. On about 10 February 1945, at and in the vicinity of the Philippine Red Cross Building, Isaac Peral and General Luna Streets, Manila, massacring and killing, without cause or trial, more than 53 men, women, and children, and wounding, maiming and attempting to kill four persons, all unarmed and noncombatant civilians; and unnecessarily and wantonly burning and destroying the said building and its furniture, fixtures and contents.

31. On about 7 February 1945 at and in the vicinity of 1462 Taft Avenue in Pasay, Rizal Province, cruelly and brutally mistreating and thereafter massacring and killing more than 100 Filipino and French civilians, without cause or trial, all being unarmed noncombatant civilians; wounding, maiming and attempting to kill, without cause or trial, seventeen unarmed noncombatant Filipino civilians; raping and thereafter killing unarmed noncombatant civilian women; unnecessarily and wantonly burning and destroying private property of civilians, the house and home of Mrs. Dona Conception Soblador Campos; and seizing, confiscating and stealing money, jewels, watches and other private property of civilians.

32. On about 9 February 1945, at and in the vicinity of St. Paul's College, Malate, Manila, cruelly and brutally mistreating Marcelino Punzalon, Meneleo Carlos Sr., Estelita Benito, and approximately 600 other persons, including men, women and children, all unarmed

noncombatant civilians; brutally massacring and killing without cause or trial, Bruno Acuna, Celia Aguas, Jose Aquino, and 370 additional persons, including men, women and children, all unarmed noncombatant civilians; wounding, maiming and attempting to kill, without cause or trial, Celestina Antipolo, Zeila Antipolo, Cornelia Ayson, and 24 other persons including men, women and children, all unarmed noncombatant civilians; unnecessarily, deliberately and wantonly burning and destroying buildings, together with fixtures, furniture and other contents thereof, and dedicated to religion, art and science and not used for military purposes, of the aforesaid St. Paul's College; and seizing, confiscating and stealing money, jewels and other private property of civilians.

33. On about 9 February 1945, in the vicinity of Dana Perfume Factory, Pasay, Rizal Province, cruelly beating, torturing and thereafter killing, without cause or trial, Eugene Andrewitz Kremleff, Russian, Julian Jawai and Alfredo Gana, Filipino, all unarmed noncombatant civilians.

34. During the period from 9 February 1945 to 17 February 1945, both dates inclusive, at and in the vicinity of Bay View Hotel, Alhambra Apartment Hotel, Miramar Apartment Hotel and Manila Hotel, all in Ermita, Manila, cruelly mistreating and abusing approximately 400 women, all unarmed and noncombatant civilians; cruelly mistreating, abusing and repeatedly raping more than 40 women and female children, and cruelly mistreating, abusing and attempting to rape more than 36 other women and female

"children; unnecessarily and wantonly burning, damaging or destroying the said buildings, private property, their furniture, fixtures and contents.

35. On about 8 and 9 February 1945, in Malate, Manila, killing, without cause or trial, Africa Canillas, Amparo Canillas, Charles Canillas, Elvira Canillas, and five (5) other members of the Felipe Canillas family, and Zoilo Llave, all unarmed noncombatant civilians; pillaging and unnecessarily and wantonly burning and destroying private property, the house and home of Felipe Canillas.

36. On about 13 February 1945, in the vicinity of No. 1609 Taft Avenue, Malate, Manila, cruelly mistreating and subsequently killing, without cause or trial, Albert P. Delfino, Venezuelan Consul in Manila, then known by the perpetrators to be such, Francis A. Delfino, Maria Dolores Delfino, and John Doe Ching, all unarmed noncombatant civilians; cruelly mistreating, wounding, and attempting to kill, without cause or trial, Igmidio Ramos, and a woman whose name is unknown; unnecessarily and wantonly burning and destroying private property, including the house at 1609 Taft Avenue and numerous other buildings in that area, together with the furniture, fixtures and contents thereof.

37. On about 11 February 1945, at 1580 Taft Avenue, Malate, Manila, killing, without cause or trial, Vassanmal Popardes and three (3) other British Indians, and Emilio Tubayano and three (3) other Filipinos, all unarmed noncombatants; unnecessarily and wantonly burning and destroying private property, the house and home of Hashmatrai

"Hatchand, together with the furniture, fixtures and contents thereof.

38. On about 7 February 1945, near the Syquia Apartments in Malate, Manila, killing, without cause or trial, Father Peter Fallon, Father John Hehaghan, Father Patrick Kelly and Father Joseph Monaghan, Priests of the Malate Catholic Church and Convent, and Jose Chico, Gerardo Rictra, Jack Sullivan, Conrado Vallenas, Victor Velasco, Bertito Zamora, Marcial Zamora, and Cristi Malaban, all unarmed noncombatant civilians.

39. On about 9 February 1945, at 515 Dakota Street, Malate, Manila, killing, without cause or trial, Kishinchand Mirchandani, Devjimal Changomal Lalivani, Thelma Parrish and Carl Parrish, Jr. (infant child), all unarmed noncombatant civilians.

40. On about 20 February 1945, in the Iloguis District approximately 2½ kilometers east of Pasig, Rizal Province, brutally mistreating and robbing, and subsequent killing, without cause or trial, of Candido Jabson, and the brutal mistreatment, robbery, wounding and attempt to kill, of Raymunda Jabson and Defina Jabson, all unarmed noncombatant civilians; attempt to rape Raymunda Jabson; robbery, seizing, confiscating and stealing watches, clothes and other private personal property; and pillage of private property.

41. On about 12 February 1945 at 150 Vito Cruz Street, Singalong, Manila, brutal mistreatment, torture, burning alive or otherwise killing Carlos Perez Rubio, Sr., Lopita Perez Rubio, Javier Perez Rubio, Herbert Fox, Mrs.

"Herbert Fox, Marina Padua, Alphonso Pahodpod, and more than twenty-two other persons including men, women and children, and brutally mistreating, attempting to burn alive and wounding Jose Balboa, Ignacio Bustamante and other persons; all unarmed and noncombatant civilians; unnecessarily, deliberately and wantonly burning and destroying private property, the house and home of Carlos Perez Rubio, Sr.

42. On about 28 February 1945, at the Town of Bauan, Batangas Province, brutally mistreating and subsequently massacring and killing without cause or trial, Enrique Martinez, Maximino Brual, and more than 400 other persons, including men, women and children, all unarmed noncombatant civilians; brutally mistreating, wounding and attempting to kill, Dr. Francisco Manigbas, Gemiliano M. Brual, and more than 100 other persons, all unarmed noncombatant civilians; and pillaging, unnecessarily and wantonly devastating and destroying public, religious and private property.

43. During the period from 16 February 1945 to 18 February 1945, both dates inclusive, at the Town of Taal, Batangas Province, brutally mistreating, massacring and killing, without cause or trial, Benjamin Moreno, an infant 1 year of age, Andres Briones, Alberto Martel, Pablo Marasigon, Dalmacio Luna, Concordia Barrion, Alicia Barrion, together with more than 2000 other men, women and children, all unarmed noncombatant civilians; in the Barrios of San Nicolas and Sinturisan, pillaging and unnecessarily, deliberately and wantonly devastating, burning

"and destroying all houses and other buildings.

44. On about 19 February 1945, in the Town of Cuenca, Batangas Province, brutally mistreating, massacring and killing Jose M. Laguo, Esteban Magsomdol, Jose Lunbo, Felisa Apuntar, Elfidio Lunar, Victoriona Remo, and 978 other persons, all unarmed noncombatant civilians; pillaging and unnecessarily, deliberately and wantonly devastating, burning and destroying large areas of that town.

45. On about 20 February 1945, at the Town of San Jose, Batangas Province, brutally mistreating, massacring and killing, without cause or trial, Vinancia Remo, Vincente Frank, Jose Talog, Roman Umali, and more than 500 other persons, all unarmed noncombatant civilians; pillaging and unnecessarily, deliberately and wantonly devastating, burning and destroying large areas of that town.

46. On about 19 February 1945, at the Town of Mataonakahoy, Batangas Province, brutally mistreating, massacring and killing approximately 200 men, women and children, the names of whom are not yet determined, all being unarmed noncombatant civilians; pillaging and unnecessarily, deliberately and wantonly devastating, burning and destroying large areas of that town.

47. During the period from 16 February 1945 to 19 March 1945, both dates inclusive, at the Town of Santo Tomas, Batangas Province, brutally mistreating, massacring and killing Paz Austria, Adeleida Castro, Caladia Cabrera, Rodolfo Talad, and more than 1,500 other men, women and

"children, all unarmed and noncombatant civilians; pillaging and unnecessarily, deliberately and wantonly burning, damaging and destroying all public buildings and private homes.

48. On about 10 February 1945, in the Paco District of Manila, brutally mistreating, torturing, mutilating and killing, without cause or trial, Regina Alcid, Bonifacio Bogamesbod, Ricardo Baja, Eugeni Balleta, and more than 300 other persons; brutally mistreating, torturing, mutilating, wounding and attempting to kill without cause or trial, Vicente Alcid, Eustaquio Batoctoy, Eugene Boyot and more than 100 other persons; all unarmed noncombatant civilians; deliberately and wantonly burning and destroying, without military necessity, private property, a house at 1195 Singalong Street, Manila.

49. During the period from 16 February 1945 to 19 March 1945, both dates inclusive, in the Town of Lipa, Batangas Province, brutally mistreating, wounding and killing, without cause or trial, Ricardo Caringal, Francisco La Torre, Pedro La Torre, Severo Lubrica, Santiago Limatok, and more than 12,000 other men, women and children, all unarmed noncombatant civilians; and pillaging, deliberately, and wantonly and without military necessity devastating, burning, damaging and destroying public and private buildings and property, including property devoted to religious purposes.

50. On about 8 February 1945, at Santa Rosa College, Intramuros, Manila, the abduction and subsequent brutal mistreatment and killing of Aida Aplin, Leo Gump, Kenneth

"Huebch, Edgar Christiansen, Father Cornelius Van Russell, William Mitchell, Valeriano Cueva, and other persons, all unarmed noncombatant civilians.

51. On about 10 February 1945, at or near the Santa Rosa College, and at Manila Armory, Manila, the abduction and subsequent brutal mistreatment and killing, without cause or trial, of Bartolome Pinilio, Evencio Piquero, Adriano Ramos, Leon Ulit, Anastacio Montano, Juanito Tabal, Armanda Ebanes, and 54 other men, women and children, all unarmed noncombatant civilians; brutal mistreatment, wounding and attempt to kill, without cause or trial, of Conrado Tauro, Mama Moro, and Wong Ling, all unarmed noncombatant civilians.

52. During the period from 10 February 1945 to 23 February 1945, at Fort Santiago, Intramuros, Manila, brutal mistreatment, starvation, torture, wounding, maiming, burning alive, massacre and killing, without cause or trial, of more than 4000 unarmed noncombatant civilians.

53. On about 17 February 1945, at Santo Domingo Church, Intramuros, Manila, brutally mistreating and killing, without cause or trial, Dr. Cecilio Noriega, Dr. Manuel Lahoz, Conrado Pili, Lazero Cordero, Dado Pili, and other persons, all unarmed noncombatant civilians.

54. On about 10 February 1945, in the town of Tanauan, Batangas Province, brutally mistreating and killing, without cause or trial, 500 unarmed noncombatant civilians, and deliberately and wantonly and without military necessity devastating and destroying public and

"private property.

55. On about 12 February 1945, at Calamba, Laguna Province, massacre, without cause or trial, of more than 7000 unarmed noncombatant civilians, and rape of 37 civilian women.

56. On about 9 April 1945, at the Town of Pingus, Laguna Province, massacre, without cause or trial, of 41 unarmed noncombatant civilians.

57. On about 13 March 1945, at the Town of Rosario, Batangas Province, massacre and killing, without cause or trial, of Lorenzo Masilungan, Sakeo Tolentino, Marcela Tolentina, Ilias Garcia, Saturnina Barcelos, and more than 45 other persons, including men, women and children, all unarmed noncombatant civilians; and pillaging and unnecessarily and wantonly devastating and destroying public, religious and private property.

58. On about 6 March 1945, at Los Banos, Laguna Province, massacring and killing, without cause or trial, Ang Kai, and 26 other Chinese, and brutally mistreating, wounding, maiming and attempting to kill, without cause or trial, Elisa Ang and Kim Ling Ang, unarmed and non-combatant civilians; and brutally mistreating and attempting to kill, without cause or trial, all of the unarmed and noncombatant Chinese civilians of that town.

59. On about 12 February 1945, at Pax Court, Pasay, Rizal Province, Brutally mistreating, torturing and killing, without cause or trial, Antonio Villa-Real, a retired Justice of the Philippine Supreme Court, Melchora Caliwan, Maria Doronila, and twelve (12) other persons,

"and brutally mistreating, torturing, wounding and attempting to kill, without cause or trial, Dr. Walter K. Frankel, Hans Albrecht Lührse, Alice Stahl, and other persons, and deliberately, wantonly and without military necessity burning and destroying private property, the house at 168-B Balagtas Street, Manila, and the furniture, fixtures and contents thereof.

60. On about the night of 19-20 February 1945, at and in air raid shelters near Plaza McKinley, Intramuros, Manila, brutally mistreating and killing, without cause or trial, Gaudencio Castrillo, Victor Gonzales, Benigno Cano, and more than 100 other Catholic priests, citizens of Spain, and other persons, and brutally mistreating, wounding and attempting to kill, without cause or trial, Laurentino de Pablo, Jose Manajabacas, Jose M. Barrulo, Father Belarmino de Celis, Julio Rocamura, and other persons, all unarmed noncombatant civilians.

61. During the period from 6 February 1945 to 22 February 1945, both dates inclusive, brutally mistreating, and imprisoning in St. Augustine Church, Intramuros, Manila, without food, medical supplies or other necessities, and unnecessarily and deliberately exposing to shell fire in and in the vicinity of that Church, approximately 6000 men, women and children, all unarmed noncombatant civilians, by reason whereof a large number of such civilians died of starvation, disease and mistreatment.

62. During the period from 6 February 1945 to 22 February 1945, both dates inclusive, at the St. Augustine Church in Intramuros, Manila, brutally mistreating and

"killing, without cause or trial, Sister Felisa Anza and more than 50 other persons, all unarmed noncombatant civilians.

63. On about 23 February 1945, in the vicinity of St. Augustine Church, Intramuros, Manila, killing, without cause or trial, Dr. Seguenza and other persons, and wounding and attempting to kill, without cause or trial, Ester Aenelle, and other persons, all unarmed noncombatant civilians.

64. During the period from 6 February 1945 to 23 February 1945, both dates inclusive, in and in the vicinity of St. Augustine Church and Convent, Intramuros, Manila, brutally abusing, raping and attempting to rape numerous women and female children; wounding, killing and attempting to kill, without cause or trial, unarmed noncombatant civilians; pilfering, stealing and looting personal property of civilians confined therein, including watches, money, clothing, food, medical supplies, jewelry, and other personal belongings; installing, maintaining and operating, in and on the premises of the Church and Convent, military weapons and other military objectives, despite the exclusively religious purpose and nonmilitary use of those buildings; and deliberately and wantonly, without military necessity, devastating, burning and destroying the Convent and damaging the Church, together with the furniture, fixtures, religious library and other properties therein.

8 October 1945

Respectfully submitted,

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

"Receipt is acknowledged of a certified copy of the
foregoing Bill of Particulars.

/s/ Harry E. Clarke
HARRY E. CLARKE
Colonel, JAGD
CHIEF, DEFENSE COUNSEL "

GENERAL REYNOLDS: Is there any other matter to come before the Commission before the Accused enters his plea?

(Translated by Interpreter Boardman to the Accused.)

COLONEL CLARKE: Except, sir, we would like to discuss this Bill of Particulars and see if there is any other motion we have to make.

GENERAL REYNOLDS: For how long would you wish to recess?

(No response.)

GENERAL REYNOLDS: For how long?

COLONEL CLARKE: For fifteen minutes.

GENERAL REYNOLDS: The Commission will recess for fifteen minutes and reconvene at 1525 hours.

(Whereupon, at 1510 hours, a recess was taken until 1525 hours.)

GENERAL REYNOLDS: The Commission will come to order.

COLONEL CLARKE: If the Court please, the Accused is ready to plead to the general issue.

(Translated by Interpreter Boardman to the Accused.)

GENERAL REYNOLDS: General Tomoyuki Yamashita, at this time the Commission will hear your plea to the Charge and specifications which have been read to you. You may plead either guilty or not guilty.

(Translated by Interpreter Boardman to the Accused.)

THE ACCUSED (through Interpreter Boardman): My plea is not guilty.

GENERAL REYNOLDS: Does the Prosecution have any recommendation to make as to the time for trial?

MAJOR KERR: Sir, the Prosecution defers to the desires of Defense counsel in that particular. We are agreeable to the Defense having a reasonable time in which to prepare their case.

COLONEL CLARKE: Sir, we believe that two weeks will be sufficient time.

MAJOR KERR: How long?

COLONEL CLARKE: Two weeks.

MAJOR KERR: If the Commission please, I would like to suggest three weeks. We do have some witnesses coming in from the States and I am not sure that we can be ready in two weeks. Frankly, I am surprised that the Defense believes they can properly prepare a defense in this case in two weeks. The prosecution would request three weeks.

COLONEL CLARKE: Sir, we are satisfied.

GENERAL REYNOLDS: Are there any additional matters to be brought before the Commission at this time?

MAJOR KERR: Sir, the Prosecution has none.

COLONEL CLARKE: The Defense has none, sir.

GENERAL REYNOLDS: There being none, the Commission will now recess and will be reconvened on 29 October 1945, at 0800 hours at the High Commissioner's Residence, Dewey Boulevard, Manila, or on such other date or at such other place as the Presiding Officer may hereafter determine for the purpose of proceeding with the trial of General Tomoyuki Yamashita.

(Whereupon, at 1630 hours, 8 October 1945, the trial was adjourned until 0800 hours, 29 October 1945.)

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA)

-vs-)

TOMOYUKI YAMASHITA)

PUBLIC TRIAL)

High Commissioner's Residence,
Manila, P. I.
29 October 1945

Met, pursuant to adjournment, at 0800 hours.

MEMBERS OF MILITARY COMMISSION:

MAJOR GENERAL RUSSELL B. REYNOLDS, Presiding Officer
and Law Member

MAJOR GENERAL LEO DONOVAN

MAJOR GENERAL JAMES A. LESTER

BRIGADIER GENERAL MORRIS C. HANDWERK

BRIGADIER GENERAL EGBERT F. BULLENE

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ROBERT M. KERR, INFANTRY, Prosecutor

MAJOR GLICERIO OPINION, JAGS, Philippine Army,
Special Assistant Prosecutor

CAPTAIN M. D. WEBSTER, JAGD, Assistant Prosecutor

CAPTAIN WILLIAM N. CALYER, JAGD, Assistant
Prosecutor

CAPTAIN D. C. HILL, JAGD, Assistant Prosecutor

CAPTAIN JACK M. PACE, INFANTRY, Assistant
Prosecutor

LIEUTENANT GEORGE E. MOUNTZ, USNR, Trial
Assistant

LIEUTENANT WILLIAM S. YARD, JAGD, Trial
Assistant

FOR THE DEFENSE:

COLONEL HARRY E. CLARKE, JAGD

LIEUTENANT COLONEL WALTER C. HENDRIX, JAGD

LIEUTENANT COLONEL JAMES G. FELDHAUS, JAGD

MAJOR GEORGE F. GUY, CAVALRY

CAPTAIN ADOLF F. REEL, JAGD

CAPTAIN MILTON SANDBERG, JAGD

LIEUTENANT GENERAL MUTO

MAJOR GENERAL UTSUNOMIYA

INTERPRETERS FOR THE COMMISSION:

Major Harry D. Pratt, USMC
Major Eugene P. Boardman, USMCR

OFFICIAL REPORTERS FOR THE COMMISSION:

E. D. Conklin
Lorenz H. Winter

I N D E X

WITNESSES

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Captain Norman James Sparman	106	127		
Patrocin Abad	132	142		
Gliceria Andaya	144	153		
Florita Loveriza	155	160		
John K. Lewy	161			
Juan P. Juan	168	183		
Flora Reyes Mabagós	189			
Ricardo Mendoza	193	195		

EXHIBITS

<u>PROSECUTION EXHIBIT NO.</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1	107	110
2		111
3	112	117
4	117	118
5	119	119
6	120	122
7	122	127
8	136	137
9	138	139
10	139	140
11	140	140
12 (omitted in numbering)		
13	148	149
14	164	165
15	180	180

I N D E X (Continued)

EXHIBITS

<u>PROSECUTION EXHIBIT NO.</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
16	181	181
17	181	182

PROCEEDINGS

GENERAL REYNOLDS: The Commission will now reconvene pursuant to direction of the Presiding Officer given on 8 October 1945 and will proceed with the trial of the United States v. General Tomoyuki Yamashita.

MAJOR KERR: If the Commission please, the Prosecution submits for incorporation into the record of the proceedings the following:

"CONFIDENTIAL

**"HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC**

**"APO 707
26 October 1945**

**"Special Orders)
No.....134)**

"EXTRACT

"22. MAJOR GENERAL LEO DONOVAN, GSC, and BRIGADIER GENERAL MORRIS C. HANDWERK, USA, are detailed members of the military commission appointed by par. 24, Special Orders 112, this headquarters, 1 October 1945, vice MAJOR GENERAL CLARENCE L. STURDEVANT, USA, and BRIGADIER GENERAL WILLIAM C. WALKER, GSC, relieved.

"23. MAJOR GENERAL RUSSEL B. REYNOLDS, GSC, is designated law member of the military commission appointed by par. 24, Special Orders 112, this headquarters, 1 October 1945, vice MAJOR GENERAL CLARENCE L. STURDEVANT, USA, relieved.

"BY COMMAND OF LIEUTENANT GENERAL STYER:

**"EDMOND H LEAVEY
Major General, USA,
Deputy Commander and
Chief of Staff**

"OFFICIAL:

**/s/ BENITO MORALES
BENITO MORALES
Colonel, AGD,
Asst Adjutant General "**

GENERAL REYNOLDS: There being no objection, the extract of Special Orders No. 134 is incorporated into the record.

MAJOR KERR: If the Commission please, I also desire that there be incorporated into the record of this proceeding the following letter, which reads:

"CONFIDENTIAL

"GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

"APO 500
24 September 1945

"AG 000.5 (24 Sep 45) DC s

"SUBJECT: Trial of General Tomoyuki Yamashita.

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

"1. It is desired that you proceed immediately with the trial of General Tomoyuki Yamashita, now in your custody, for the crimes indicated in the attached charge.

"2. The following named officers, assigned to the War Crimes Investigating Detachment, this headquarters, are made available to your command for service as prosecution personnel on the Military Commission to be convened by you for this purpose:

Major Robert W. Kerr, Inf
Captain M. D. Webster, JAGD
Captain William N. Calyer, JAGD
Captain D. C. Hill, JAGD
Captain Jack M. Pace, Inf

"By command of General MacARTHUR:

"(signed) B. M. FITCH,
Brigadier General,
U. S. Army,
Adjutant General.

1 Incl:
Charge, as indicated.

A TRUE COPY:
Richard Dahl (signed)
RICHARD DAHL
WOJG, U.S.A. "

Attached to that letter, sir, is a copy of the Charge, which is now a part of the record of this proceeding.

I desire that these documents likewise be incorporated in the record.

GENERAL REYNOLDS: There being no objection the documents are incorporated into the record.

The Reporters who were not present at the arraignment will be sworn.

(Whereupon Reporters E. D. Conklin and Lorenz H. Winter were sworn.)

GENERAL REYNOLDS: The Interpreters who were not present at the arraignment will be sworn.

(Whereupon Interpreters Sgt. Joshi Yorioka, Sgt. Goro Oishi, Sgt. Tad Yajima, Sgt. Suco Ito, Miss UY, Mr. Zamora, Mr. Gojunco, Miss Reyes, Miss Rodas, Mr. Lavengco were sworn.)

GENERAL REYNOLDS: The new members of the Commission will be sworn.

(Whereupon Major General Leo Donovan, GSC, and Brigadier General Morris C. Handwerk, USA, were sworn.)

GENERAL REYNOLDS: For the benefit of the new members of the Commission the substance of the transcript of the proceedings of 8 October 1945 will be read.

MAJOR KERR: If the Commission please, the regulations governing the procedure of this Commission require that in the event any member is relieved during the course of proceedings the substance of the proceedings up to that time shall be read to the new member or members.

This Military Commission convened on 8 October 1945 at the High Commissioner's Residence at Manila for the purpose

of trying the Accused in this case, Tomoyuki Yamashita. All of the present members of the Commission except for the two new members and the two members whom they are relieving were then present, together with all the members of the Prosecution staff and the members of the Defense staff. The Accused was also present.

There were incorporated into the record of the proceeding at that time five documents, being a letter prescribing the regulations governing Military Commissions for the Trial of War Criminals in this theater; a Letter Order authorizing the Commanding General, Army Forces, Western Pacific, to appoint a military commission for the purpose of trying Tomoyuki Yamashita; a Letter Order appointing this Commission, together with Prosecution and Defense counsel; an Order amending the original Order establishing the Commission; the Charge which is now before the Commission in this proceeding, and a Bill of Particulars dated 8 October 1945.

At the time the Bill of Particulars was offered for the record Defense counsel objected thereto and an exception to the Commission's ruling against the objection was noted.

Defense counsel interposed a motion to dismiss the charge on the ground that it did not state facts sufficient to constitute a violation of the laws of war. After argument of counsel the Commission denied that motion. Defense counsel thereupon presented what amounted to a motion to make more definite and certain, contending that the charge as filed was not sufficiently specific to acquaint the Accused with the nature of the charges against him. Thereupon a Bill of Particulars was served upon Defense counsel

and incorporated in the record of this proceeding. Thereafter the Accused was arraigned and entered a plea of not guilty.

It was agreed by counsel for the Defense and the Prosecution and approved by the Commission that only such portions of the proceedings before the Commission would be interpreted to the Accused as the Accused through his Defense Counsel from time to time might request, and that in the absence of such a request it would be assumed that the Accused would be served adequately by his own personal Interpreter.

The Accused requested that he be represented by counsel in addition to the regular Defense Counsel whom he accepted, namely, two officers, Lieutenant General Muto and Major General Utsunomiya. That request was granted, it being specified by the Commission that their services would be made available to the Accused in the Commission room as Associate Defense Counsel.

Thereafter the Commission recessed and the Presiding Member designated this time, this date and this place as the time, place and date for the reconvening of the Commission for the purpose of proceeding with the trial.

GENERAL REYNOLDS: Are you finished with the gist of what transpired?

MAJOR KERR: Yes, sir.

GENERAL REYNOLDS: Does counsel for the Defense accept the gist of the proceedings as presented?

COLONEL CLARKE: Yes, sir.

MAJOR KERR: At this time, sir, I offer and request that there be incorporated in the record of this proceeding

the Prosecution's Supplemental Bill of Particulars which shows receipt of service of a certified copy thereof upon Defense Counsel on the 26th day of October, 1945.

GENERAL REYNOLDS: Prior to considering that point the Commission desires that the record show that the Accused and his Counsel were present at the opening of this session of the Commission.

Defense may proceed.

CAPTAIN REEL: Sir, the Defense wishes to object to the filing of the Supplemental Bill of Particulars which has just been placed before the Court. We have two grounds for our objection. We should like to state them, if we may.

GENERAL REYNOLDS: You may proceed.

CAPTAIN REEL: In the first place, let me begin simply by reminding the Commission of a bit of the history of the arraignment as read by the Prosecution.

On the 8th day of October at the time of the arraignment we made a motion to make more definite and certain the charges filed against the Accused on the ground that they did not properly apprise him of his rights. At that time, apparently, the Commission agreed and ordered the filing of the original Bill of Particulars. At that time the Prosecution stated that they wished the right to file a Supplementary Bill of Particulars. The Defense objected and the Defense objection was overruled.

Our objection was based, sir, on the grounds that it is unprecedented and against ordinary principles of law and justice to allow the prosecution after a case has begun to continue to file additional specifications. However, as I

say, the objection was overruled.

We assume, sir, and we submit that any normal, intelligent person would assume that when the Prosecution, after filing sixty-four separate specifications, stated that they wished to file a Supplemental Bill of Particulars, that Supplemental Bill would probably contain one, two, three, four or perhaps even half a dozen additional particulars. But as late as last Friday at 4:00 P. M. we were served with a copy of the so-called Supplemental Bill of Particulars, which contains fifty-nine new, separate and distinct alleged offenses. These fifty-nine offenses are new in so far as the persons involved are concerned, in so far as the times are concerned, and for the most part in so far as the places are concerned. It is all new and it is new in addition to that, sir, in presenting an entirely different theory of the prosecution of this case. As I say, on Friday at 4:00 P. M. the Defense was served with a copy of this so-called Supplemental Bill of Particulars.

Our first objection, sir, is based upon the fact that we believe that it is unconscionable in a case of this type to practically double in the last minute the list of offenses charged. There is no end to this sort of thing. We do not even have an assurance, sir, that there will not be further particulars filed again and again and again as this trial progresses. We on the defense side, as I say, are unanimous in the belief that it is an unconscionable proceeding.

The second ground goes to the Bill itself. It is not a bill of particulars. It is called that, but it is entirely different from the original bill that was filed.

The original bill did particularize.

May I call your attention to the language of the two Bills. They are both preceded by a blanket sentence that covers all the specific allegations in each Bill. The original Bill filed 8 October 1945 says as follows:

"Between 9 October 1944 and 2 September 1945, at Manila and other places in the Philippine Islands, members of Armed Forces of Japan under the command of the Accused committed the following: . . ."

Then it proceeds to list sixty-four acts which were committed allegedly by members of the armed forces under the command of the Accused.

The new Bill is quite different. The new Bill begins with a different sentence. It says that ". . . members of the Armed Forces of Japan, under the command of the Accused, were permitted to commit" certain acts which then follow and numbering fifty-nine.

I think the Commission sees the difference. In one case there is the allegation of the "commission" of certain acts. It is true that in the original Bill those acts were particularized.

We do not agree with that theory, as we pointed out in our motion to dismiss, but nevertheless it was a bill of particulars. But this new Bill alleges "permission" of 59 acts and in no single case does it allege any details, any particulars as to that "permission". We do not know who permitted any one of the 59 acts; we do not know to whom the permission was given; we do not know when it was given; we do not know where it was given; we do not know the circum-

stances; we do not know how. And it goes, sir, to the very essence of this case.

. The new theory, the different theory is not that acts were "committed" by members of the command, but that somebody -- we do not know who and somebody presumably connected with the Accused or the Accused himself -- permitted these acts. As I say, sir, there is no particularization of any of that "permission".

For those two reasons we strenuously object to the filing of this Supplemental Bill of Particulars.

MAJOR KERR: If the Commission please, I call the Commission's attention to the proceedings at the time of the arraignment with relation to the offer and filing of the original Bill of Particulars. At that time, as I said before, Defense Counsel moved that the charge be made more definite and certain. The Prosecutor then offered to submit a so-called Bill of Particulars and the Presiding Officer stated that the motion for a Bill of Particulars would be granted.

The Bill of Particulars was thereupon served and filed.

I now read from page 37 of the record:

"Prosecutor: Sir, it is satisfactory to the Prosecution, provided and on one condition, that the Prosecution at a later date has the privilege of serving and filing a supplemental bill of particulars.

"We have certain documentary evidence which has not been received as yet from the States. We have certain new information just recently received which we have not had an opportunity so far to incorporate in the Bill of Particulars.

If we may have assurance that later we may file a supplemental bill of particulars, we are willing to proceed on the basis which I have suggested; otherwise not.

"Presiding Officer: Is the Commission to understand that the counsel for the defense has made a motion for a Bill of Particulars?

"Defense Counsel: Yes, sir.

"Presiding Officer: The motion for a Bill of Particulars is granted; the Bill to be served and filed immediately. A Supplemental Bill of Particulars may be filed later subject to such conditions as the Commission may then specify.

"Defense Counsel: May it please the Commission, we ask for an exception to that ruling where the Supplemental Bill of Particulars may be filed."

I therefore submit, sir, that the Prosecution does have the permission of the Commission to file a Supplemental Bill of Particulars.

So far as the point made by Defense Counsel as to the difference in wording of the prefatory portion of the Supplemental Bill of Particulars and that portion of the original Bill of Particulars, that really has no significance one way or the other. The purpose of this so-called Bill of Particulars is simply to specify the instances which are generally referred to in the Charge, and whether the Bill of Particulars says "permitted" or that these acts were "committed" by members of the command of the Accused is immaterial. Naturally the Bill of Particulars is construed and is to be read in the light of and in connection with the Charge.

Incidentally, there is no provision in the regulations

governing the procedure of this Commission and such commissions as are prescribed by General MacArthur for a bill of particulars or for a motion to make more definite and certain. It is purely a matter of discretion with the Commission as to whether or not it will require a specification of that type: a Bill of Particulars. Although we have termed it a "Bill of Particulars" for lack of any more appropriate term, it is not in fact a bill of particulars as that term is used in the courts of law at home or in the States. It is not intended as such. Its sole purpose is to specify the instances where the members of the command of the Accused were permitted to do acts contrary to the laws of war. In other words, it refers back to and must be construed in connection with the charge itself.

I therefore submit, sir, that the contention of Defense Counsel with respect to the wording of the Bill of Particulars is not well taken.

I can assure the Commission that, so far as I know now, we shall have no occasion to file any further supplemental bills of particulars.

GENERAL REYNOLDS: Does the Defense have anything further?

CAPTAIN REEL: Yes, sir.

First, in so far as the statement made by the Prosecution relative to their position taken on 8 October at the time of the arraignment, as I stated in my statement to the Court we agree that the Prosecution did say at that time that they wished to file a bill of particulars only on one condition, namely, that they could file a supplemental bill. I believe

it was clearly understood by the Defense and, I think, as I said before, by other persons and the most natural understanding is that when you have filed 64 particulars and you talk about a "supplement", you are not going to double that number, which is practically what happened here: an additional 59; a total of 123.

It is to be recognized, sir, that although the Prosecution set up its conditions and said "On one condition we will file this" -- by what authority I do not know -- nevertheless, this Commission was careful to state in allowing the Bill of Particulars to be filed that it may be filed later "subject to such conditions as the Commission may then specify". And all that we ask in our objection here is that the normal, natural condition that you would specify in the filing of any supplemental bill of particulars is that it stay within the bounds and grounds of reason and that this sort of thing at the last minute is unconscionable and, as I said before, there is no assurance that this is even the end. This can go on and on.

As to the proposition that there seems to be no difference between the meaning of the first sentence of these Bills of Particulars, I beg to differ with counsel. The first sentence is to be read apparently intentionally as though it appeared in every single one of the particulars. If it is not in itself a charge, I do not know what is a charge. The words again read that "members of the Armed Forces of Japan, under the command of the Accused, were permitted to commit", and so forth. In each one of these cases there is a brand new allegation, namely, the "commission".

When my brother says there is absolutely no difference between somebody "committing" an act and that act being "permitted" by superior authority, it seems to me that he is going beyond the bound of reason. The very essence of this case, as will develop during the course of the hearing and as already has been shown by the motion to dismiss, is whether or not an offense against the laws of war is stated (1) simply by saying that somebody did an act who was under the command of a certain General or (2) -- and now we take another step -- whether somebody permitted those acts. Then we can go further steps and say (3) whether somebody authorized those acts or (4) whether somebody ordered them. But those are fundamental distinctions here.

Of course the thing is to be read in light of the charge. The charge was not sufficiently definite and so this Commission requested and allowed the filing of an original Bill of Particulars correctly. But there is certainly all the difference in the world. There is an entirely new case being presented in this new Bill of Particulars.

GENERAL REYNOLDS: Subject to objection by any member of the Commission, the motion of Counsel for the Defense is not sustained.

CAPTAIN REEL: May we have an exception to that ruling, sir. At this time I wish, then, to file two motions. I shall take them up one at a time.

This first motion, sir, I shall not spend time in arguing because we have already covered the point, but we are in a rather paradoxical situation.

Inasmuch as the Supplemental Bill of Particulars has been allowed to be filed over our objection, we now wish to have that bill amplified. In other words, inasmuch as there is now before this Commission for purpose of hearing evidence a Supplemental Bill of Particulars containing 59 new offenses, we wish to have amplified the meaning of the Bill of Particulars in so far as those 59 new offenses are concerned. In other words, we are asking for particulars on each case as to who granted the alleged permission to commit the alleged offenses, to whom such permission was granted, the form of expression of the permission, and the times, places and dates of the permission.

MAJOR KERR: If the Commission please, the charge answers the first point. It was the Accused who permitted these acts to be committed. The charge so states. We are not required, or would not be required even under the technical procedure of a court of law in the United States to disclose our evidence through the medium of a bill of particulars. I cite the legal case of Commonwealth v. Jordan, 27 Massachusetts Reports 259.

"The office of a bill of particulars is not to compel the Commonwealth to disclose its evidence, to give the defendant such general information in addition to that contained in the complaint or indictment regarding the crime charged, as law and justice require that he should have in order to safeguard his constitu-

tional rights and to enable him to fully understand the crime and prepare his defense."

In the first place, sir, the Accused has no rights under the Constitution of the United States. He is an enemy alien. The Constitution does not apply to him. So that so far as this decision refers to the Constitution of the United States it is not applicable to this particular proceeding. But even under the Constitution an accused in a court of law in a criminal proceeding is not entitled to a revelation of the details of evidence upon which the prosecution bases its case.

Now, sir, if the Prosecution were to be required to specify all of the items suggested by Defense Counsel, and if he is sound in that contention then he may go further and demand that we also specify who were killed, who were wounded, who were raped, who were mistreated and so on. And that would be beyond all bounds of reasonableness. We would have a bill of particulars running into thousands of pages. We have the names of thousands of people who were killed, other thousands who were wounded, hundreds who were raped, and it would serve no good purpose to set forth in a so-called bill of particulars all of that matter of evidence.

I submit, sir, that for the purpose of acquainting the Accused with the nature of the offenses committed by his troops which he is charged with having permitted, the original and supplemental Bills of Particulars meet all of the requirements of justice and fair trial.

CAPTAIN REEL: Sir, we are not asking for any particulars as to the names of the alleged victims and that sort of thing. That is already in this bill sufficiently to satisfy us. We do not ask for that. We say that the gravamen of this charge is that

there was a permission, now we find out, on the part of the Accused. That is the gravamen of the charge. That is what is really important. And all we ask is that the details of that permission be given in the form of a bill of particulars.

My brother has stated at one time that this Commission was not bound by known or prescribed rules. He then refers to the case of Commonwealth v. Jordan. As a member of the Bar of Massachusetts, I am flattered by the fact that he picked that particular State, but I cannot see the consistency in telling this Commission that the rules of the court in Massachusetts apply and not the Federal rules of a Federal District Court, and, to top it off, not the Constitution of the United States. The Fifth Amendment of the Constitution of the United States says "Any person", not "any citizen". And my brother knows that.

However, this whole matter would not have come up and there would be no question of particulars had this charge been drawn in the form that any normal charge before any military commission should be drawn, namely, a charge, a specification, another specification; a charge, a specification in the normal and usual way. That was not done here. It is not the Defense's fault. That was not done. My brother did file a Bill of Particulars. He says he does not have to. Well, what is it worth, what is it for? Why was it filed at all? It is filed because this Commission ruled that that inartistic charge that was filed was not sufficiently definite and certain. Now we get 59 new instances. We are not asking for further particulars as to the secondary details. What we want only are the particulars as to the primary proposition: When was this permission given?

It says the Accused gave permission to do these things? When? To whom? That we cannot find out unless we have the meaning of the Bill of Particulars in so far as the 59 items are concerned.

GENERAL REYNOLDS: Subject to the objection of the members of the Commission, the motion of counsel for the Defense is not sustained.

CAPTAIN REEL: We have one further motion, if the Court please.

GENERAL REYNOLDS: Subject to objection by any member of the Commission, the motion of counsel for Defense is not sustained.

CAPTAIN REEL: We have one further motion, if the Commission please, sir, which is a motion for a continuance. We regret the necessity of making this motion, but we are asking for two weeks in which to prepare our case based on this last-minute change in these 59 new alleged offenses. We are not asking for delay. We do not want to ask for delay in the sense of delay as such. I think our good faith in that respect was shown to this Commission on the day of the arraignment. At that time we stated that all we want in the way of time to prepare our case on which the four specifications which were then given us was two weeks. The Prosecutor said at page 60 of the transcript of record:

"If the Commission please, I would like to suggest three weeks. We do have some witnesses coming in from the States, and I am not sure that we can be ready in two weeks. Frankly," said the Prosecutor, "I am surprised that the Defense believes that they can properly prepare a defense in this case in two weeks. The Prosecution would request three weeks."

Well now, if the Prosecution was surprised that we could

prepare a defense on 64 specifications in two weeks, I do not think that they can now object to two weeks to prepare a defense for a similar number of specifications based on new facts, new places, new names and a new theory of the case.

We are not, as I said, attempting to delay. I want to point out, too, the letter of the Commander-in-Chief of Army Forces of the Pacific that is the basis for this Commission's authority is in the record. It is the letter of 24 September 1945. Paragraph 14 is repeated on page 12 of the record. Paragraph 14 details the rights of the Accused. It reads:

"The Accused shall be entitled . . . to have in advance of trial a copy of the charges and specifications, so worded as clearly to apprise the Accused of each offense charged."

This Commission has ruled that in order to so word this original charge as to apprise the Accused of each offense charged there would be not one now, but two Bills of Particulars. We are entitled to have that "in advance of trial".

A copy of this bill which has just been filed was given to Defense at 4 o'clock in the afternoon of Friday, 26 October 1945. It was the first intimation that there would be anything like 59 new specifications. We assumed there might be one or two or three, as I said before, but 59 new ones about entirely different persons and times were put on our desks last Friday. We have worked earnestly seven days a week in order to prepare the defense on 64 specifications. And when I say "prepare the defense", sir, I do not mean merely an affirmative defense, but to acquaint ourselves with the facts so that we could properly cross examine the Prosecution's witnesses.

"In advance of trial", I suppose technically could mean 30 seconds in advance of trial, but that is not what is intended. This phrase obviously means sufficiently in advance of trial to allow the Defense to prepare itself. That is what "in advance, of

trial means": Sufficient time to allow the Defense a chance to prepare its defense.

We earnestly state that we must have this time in order to adequately prepare a defense. I might add, sir, we think that this is important to the Accused, but far more important than any rights of this Accused, we believe, is the proposition that this Commission should not deviate from a fundamental American concept of fairness, decency and justice, which dictate that an accused has a right to defend himself. And that means a right to have time in which to prepare himself.

GENERAL REYNOLDS: Does the Prosecution have anything further to submit?

MAJOR KERR: If the Commission please, of course Defense Counsel is much better prepared to judge the difficulties of preparing the defense than am I. I can only say that the Prosecution is ready and anxious to go to trial.

With respect to counsel's reference to specifications, I must remind counsel again that the specifications are incorporated in the charge. We discussed that at the time of the arraignment when the Accused insisted that he had not been served with specifications.

GENERAL REYNOLDS: The Commission interrupts the Prosecution to say that this point has been adequately discussed.

MAJOR KERR: Thank you.

GENERAL REYNOLDS: The Commission will withdraw to its chambers for deliberation.

(Whereupon the members of the Commission withdrew in executive session.)

GENERAL REYNOLDS: The motion of Defense Counsel for a continuance is not sustained.

If, however, at the end of the presentation by the Prosecution of evidence concerning the Bill of Particulars, dated 1 October 1945, as presented during the arraignment, the Commission will consider such a motion.

The case will proceed.

CAPTAIN REEL: May I simply say, sir, that although we don't wish to commit ourselves now as to procedure at the end of the Prosecution's case, that in so far as the requested time is concerned, that time is requested as much, if not more, for the purpose of being able to meet the Prosecution's case; in other words, to cross-examine the witnesses, to understand what is going on as the Prosecution's case goes in.

GENERAL REYNOLDS: The case will proceed.

MAJOR KERR: If the Commission please, there is now pending before the Commission a motion to dismiss.

GENERAL REYNOLDS: The Defense will now be heard in regard to this motion.

COLONEL CLARKE: If the Commission please, on October 8, 1945, the Defense moved to dismiss the charge in the cause presently before the Commission, for the reason that it failed to state a violation of the Laws of War by the Accused. The motion was denied. Thereafter a Bill of Particulars was filed, amplifying the allegations of the charge.

This morning the Court admitted a Supplemental Bill of Particulars. The present motion is addressed to the charge as supplemented by the original Bill of Particulars and the

Supplemental Bill of Particulars, on the grounds that it fails to set forth a violation of the Laws of War by the Accused and that the Commission does not have jurisdiction to try this cause.

It is the contention of Defense that the Bill of Particulars does not cure the defects of the charge. On the contrary, it narrows the gravamen of the charge and supports further reasons for the allowance of the motion.

The Bill of Particulars details sixty-four instances in which members of the Accused's command are alleged to have committed war crimes. In no instance is it alleged that the Accused committed or aided in the Commission of a crime or crimes. In no instance is it alleged that the Accused issued an order, expressly or impliedly, for the commission of the crime or crimes. Nor is it alleged that the Accused authorized the crimes prior to their commission or condoned them thereafter.

The charge alleges that the Accused failed in his duty to control his troops, permitting them to commit certain alleged crimes. The Bill of Particulars, however, sets forth no instance of neglect of duty by the Accused. Nor does it set forth any acts of commission or omission by the Accused as amounting to a "permitting" of the crimes in question.

What, then, is the substance of the charge against the Accused? It is submitted that on the three documents now before the Commission, the charge and the two Bills of Particulars, the Accused is not charged with having done something or having failed to do something, but solely with having been something. For the gravamen of the charge that the Accused

was the commander of the Japanese forces, and, by virtue of that fact alone, is guilty of every crime committed by every soldier assigned to his command.

American jurisprudence recognizes no such principle so far as its own military personnel is concerned. The Articles of War denounce and punish improper conduct by military personnel, but they do not hold a commanding officer responsible for the crimes committed by his subordinates. No one would even suggest that the Commanding General of an American occupational force becomes a criminal every time an American soldier violates the law. It is respectfully submitted that neither the laws of War nor the conscience of the world upon which they are founded will countenance the support of any such charge. It is the basic premise of all civilized criminal justice that it punishes not according to status but according to fault, and that one man is not held to answer for the crime of another.

It is an incontrovertible fact that the branding of military personnel as war criminals is not predicated upon the mere fact of command of any troops, but rather of the improper exercise of that command. This point is recognized officially by the War Department in its publication "The Rules of Land Warfare," (FM 27-10, Section 345.1) which provides as follows: "Liability of Offending Individuals.- Individuals and organizations who violate the accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defense or in mitigation of punish-

ment. The person giving such orders may also be punished".

There is nothing said about the Commanding General of a force being responsible, under the Laws of War, for any offenses committed by members of his command which were committed without his sanction. Under this Section, liability for war crimes is imposed on the persons who commit the crimes and on the officers who order the commission thereof. The war crime of a subordinate, committed without the order, authority, or knowledge, of his superior, is not the war crime of the superior. The pleadings now before the Commission do not allege that the Accused ordered, authorized, or had knowledge of the commission of any of the alleged atrocities or war crimes. Without such allegation, it is respectfully submitted that the cause must be dismissed as not stating an offense under the Laws of War.

Inasmuch as our contention is that they do not state an offense, the Court therefore has no jurisdiction. If a violation of the Laws of War is not alleged, the Military Commission has no jurisdiction to hear the cause.

In *Exparte Quirin*, decided in 1942, in the case of the saboteurs "Congress . . . has exercised its authority to define and punish offenses against the law of nations by sanctioning, within constitutional limitations, the jurisdiction of military commissions to try persons and offenses which, according to the rules and precepts of the law of nations, and more particularly the Law of War, are cognizable by such tribunals".

They further stated that "We are concerned only with the question of whether it is within the constitutional power of the national government to place petitioners on trial before

a military commission for the offenses with which they are charged. We must therefore first inquire whether any of the acts charged is an offense against the Law of War cognizable before a military tribunal, and if so, whether the Constitution prohibits the trial".

The court found that the allegations contained in the charges against Quirin and his associates were offenses within the Laws of War. Had they found those offenses not to be -- or those allegations not to be an offense against the Laws of War, the court would have ruled that the military commission had no jurisdiction.

In addition to the reasons stated in the Memorandum in support of motion to dismiss, dated 19 October 1945, there are two other independent grounds for the proposition that the Commission has no jurisdiction to try this cause. This Commission was appointed by the Commanding General of Army Forces, Western Pacific, pursuant to authority delegated to him by the Commander-in-Chief, Army Forces, Pacific. The record does not show any grant of authority from the President of the United States to the Commander-in-Chief, Army Forces, Pacific. Neither the Commander-in-Chief, Army Forces, Pacific, nor the Commanding General, Army Forces, Western Pacific, have authority to take the above described action. In the absence of express statutory authority, a military commander has power to appoint a military commission only, and to exercise a martial law, exercise a military government in occupied territory or at an instant of military operations during a period of hostilities. This principle is stated in Winthrop, on page 936.

There is neither martial law nor military government in the Philippines. Hostilities ceased on or about 2 September 1945. There is today no justification in law for the exercise of the Commander-in-Chief of the Army Forces, Pacific, of this extraordinary power. This fundamental principle was apparently within the contemplation of the Commander-in-Chief, Army Forces, Pacific, when he issued the letter of 24 September 1945, upon which this Commission bases its authority.

It will be noted that paragraph 3 of this letter reads as follows: "The Military Commissions established hereunder shall have jurisdiction over all Japan and all other areas occupied by the armed forces commanded by the Commander-in-Chief, Army Forces, Pacific."

The Philippine Islands are not areas occupied by the armed forces. The above letter, consequently, does not grant authority to set up military commissions in the Philippine Islands; and Special Orders No. 112, Headquarters, United States Army Forces, Western Pacific, dated 1 October 1945, is therefore without authority.

Paragraph 271, War Department Basic Field Manual, "Rules of Land Warfare", defines "occupied territory" in its reprint, Article 42 of the Annex of the Hague Convention, October 18, 1907: "A territory is considered occupied when it is actually placed under the authority of the hostile army". The United States is not and never has been a hostile army with respect to the Philippine Islands. The re-entry into the Philippine Islands in 1944 and 1945 constituted a recovery of territory, rather than an occupation. From the date of re-entry on Philippine soil, General MacArthur consistently affirmed and

recognized the full governmental responsibility of the Philippine Commonwealth. This is evidenced by publications in the Official Gazette, April 1945, page 86; May 1945, pages 145 to 148; in September 1945, page 494.

On 22 August 1945, General MacArthur issued the following proclamation: "Effective on September 1, 1945, United States Army Forces in the Pacific shall cease from further participation in the self-administration of the Philippines, as such is no longer necessary".

This motion goes to the root of the entire question before the Commission. If the projected trial should result in the conviction and sentence of the Accused, the Defense believes that such action will be subject to reversal. As officers of the United States Army, and as lawyers appointed to defend the Accused, Defense counsel are charged with a duty to the Accused, to the Army, and to the people of the United States to pursue all proper legal remedies open to the Defense, including, if warranted, recourse to the Federal courts, and more particularly, the Supreme Court of the United States -- citing again the Quirin case.

The motion is made at this time, rather than after completion of the Prosecution's case, so that the Commission may decide this question now and thus prevent what may be a needless and embarrassing expenditure of time, personnel and money.

It is accordingly urged, for the foregoing reasons, in addition to those stated in the Memorandum, that this cause be dismissed on the grounds that the Commission is without jurisdiction.

GENERAL REYNOLDS: The Prosecution will now be heard

with regard to the motion to dismiss.

MAJOR KERR: If the Commission please, the same motion of Defense Counsel was presented to the Commission at the time of the arraignment; that is to say, a motion to dismiss. After due consideration of argument of counsel on that question, the Commission denied the motion. There is no reason, sir, why that decision of the Commission at that time should be changed now. The mere fact that a Bill of Particulars and a Supplemental Bill of Particulars have been presented to the Commission has no bearing whatever upon the issue.

The whole question is, "Does the charge allege a violation of the Laws of War?" That is the question raised by the Defense motion and that question was ruled upon by the Commission at its previous session. That should settle it.

However, beyond any question this Commission has no authority at this time to dismiss this proceeding. It is under direct orders of the Commanding General, Army Forces, Western Pacific, to proceed with the trial of Tomoyuki Yamashita. I refer in the first place to the Letter Order of General MacArthur, as Commander-in-Chief of the United States Army Forces, Pacific, which is now a part of the record of this proceeding. Quoting from that letter, dated 24 September 1945, and addressed to the Commanding General, United States Army Forces, Western Pacific: "It is desired that you proceed immediately with the trial of General Tomoyuki Yamashita, now in your custody, for the crimes indicated in the attached charge." And that attached charge is precisely the same charge which is now before the Commission in this Proceeding. So much for the directive, the order of the Commander-in-Chief, Army Forces

of the Pacific, to the Commanding General, Army Forces, Western Pacific.

Now let us see what the orders to this Commission are with respect to that subject, and I now quote from Special Orders No. 112, dated 1 October 1945, being the Order of the Commanding General, Army Forces, Western Pacific, establishing this Military Commission and directing its proceedings, and I now quote:

"The Commission shall follow the provisions of Letter, General Headquarters, United States Army Forces, Pacific, File AG 00.5, 24 September 1945, Deputy Chief-of-Staff, Subject 'Trial of General Tomoyuki Yamashita'." And what is that letter? It is the letter I previously referred to, wherein the Commanding General, Army Forces, Pacific, specified that Yamashita shall be tried upon this charge. The contentions of Defense Counsel might more appropriately be addressed to the Commanding General, Army Forces, Pacific; not this Commission.

I submit that this Commission has no authority to dismiss the case at this stage. It must try Tomoyuki Yamashita, and in order to accomplish that it must hear the Prosecution's case.

Now, if it desires further argument on the law, we are amply prepared to do so. We do submit, sir, that the question is decided with finality by the points which I made.

GENERAL REYNOLDS: Does the Defense have anything further to offer in rebuttal?

COLONEL CLARKE: If the Court please, there may be a direction to the Prosecution to try Tomoyuki Yamashita at this session, but if the officer who gave the direction had no jurisdiction to appoint a commission, he had no jurisdiction

to order the trial of General Yamashita. Our contention is that General MacArthur, by virtue of being the Commanding General of Forces in the field, after cessation of hostilities, in the absence of martial law, in the absence of hostile occupation, does not have the authority to appoint a Military Commission. The courts of the Commonwealth are open for any crimes which were committed by any member of the Japanese forces while they were in occupation of the Philippine Islands.

Insofar as the motion originally made was concerned, we made the motion on the charge and specifications as stated by the Prosecution, as presented; not upon the Bill of Particulars. It was our understanding that the Bill of Particulars may cure the defects in the charge, but the Bill of Particulars doesn't cure any defect in the charge. Therefore, this present motion is not based on the charge alone; it is based on the Bill of Particulars, Supplemental Bill of Particulars, which do not state an offense against the Laws of War.

Therefore, it is respectfully submitted to the Commission that this Commission has not been appointed under any legal authority, with no jurisdiction for the Commission to exist or try a case, and we ask that the charges be dismissed.

GENERAL REYNOLDS: The Commission will consider the motion in chambers.

(Whereupon the members of the Commission retired for executive session.)

GENERAL REYNOLDS: The motion to dismiss, submitted by Counsel for the Defense, is not sustained.

COLONEL CLARKE: May we have an exception noted, sir?

GENERAL REYNOLDS: The Prosecution will make its opening

statement.

COLONEL HENDRIX: Sir, at this time the Defense requests that the Prosecution states for the record what notice, if any, was given to the protecting power of the Japanese government, concerning the trial, in accordance with Article 60 of The Geneva Convention, and Paragraph 133 of Field Manual 27-10.

MAJOR KERR: If the Commission pleases, Counsel is basing his inquiry on the assumption that the Accused is a prisoner of war, to whom would apply the International Convention referred to. Now, clearly, sir, Tomoyuki Yashimata is not before this Commission as a prisoner of war. He is charged as a war criminal, which is an entirely different matter. As a matter of fact, he is a declared common criminal; he is so held, he is being so tried. Therefore, the provision adverted to by Counsel has absolutely no application.

COLONEL HENDRIX: If it please the Commission, we are shocked at the remarks of the Prosecution that the Accused is a "declared common criminal." This Accused is not declared a criminal until this Commission has decided on the evidence, has made a decision whether the Accused is guilty or not guilty. Up until that point the Accused is not guilty.

We take this position: That the accused is a prisoner of War, that the United States has, throughout this war, followed the Geneva Convention. In the Geneva Convention this notice must be given.

Furthermore, the Accused is not guilty until this Commission has so weighed the evidence and made its final decision.

GENERAL REYNOLDS: The Commission is at a loss to understand whether or not the counsel for Defense has introduced a motion.

LT. COL. HENDRIX: I now, at this time, move the Court, sir, that the Prosecution state for the record whether or not any notice has been given to the protecting power of the Japanese Government concerning the trial of this case now before the Commission, in accordance with Article 60 of the Geneva Convention and paragraph 133 of Field Manual 27-10.

GENERAL REYNOLDS: Has the Prosecution anything further to state?

MAJOR KERR: I have no objection, sir, to stating, for the benefit of the record, that so far as I know, the United States of America has not given any notification, official notification, to the Government of Japan, that Tomoyuki Yamashita is being tried as a prisoner of war, for the simple reason that he is not being so tried; he is being tried as a war criminal. And for the further reason that the Geneva Convention referred to by Defense counsel has absolutely no application in that particular.

LT. COL. HENDRIX: Sir, we understand that the protecting power of Japan is Spain. We would like for the prosecution to so state for the record if such notice was given to the Government of Spain.

MAJOR KERR: As far as I know, sir, such notice of the trial of Tomoyuki Yamashita as a prisoner of war has not been given to the Government of Spain, for the same reasons

I have stated heretofore.

GENERAL REYNOLDS: Subject to objection by any member of the Commission, it is the ruling of the Commission that the request of the Defense counsel has been adequately discussed by the Prosecution, within the limits of the information which they would ordinarily have available. In view of the direction of the Commander in Chief, Army Forces, Pacific, to proceed with this trial, the Prosecution will make its opening statement.

OPENING STATEMENT OF THE PROSECUTION

MAJOR KERR: If the Commission please, it is with a high degree of solemnity that I address the Commission at this time. Unquestionably, this is a most important proceeding. I daresay that history will be written, one way or another, by this Commission. We, the Prosecution, accept our burden with full realization of responsibility which we bear. We recognize our duty as officers of the Commission, to do all that we may to accomplish for the Accused a fair and a just trial.

We intend to support the charge and the specifications therein included with a clear, a convincing, and an adequate proof.

I am frank to say, sir, that this case will not be a pleasant one to hear, nor a pleasant one to try. We Americans are a Christian nation; we are reared in the tradition of fair play and decency; we are even a sentimental nation. It certainly shocks each one of us to confront the truly horrible acts of beings in the form and shape of man that we must

present to the Commission in this proceeding.

Our problem is one of elimination and selection. We make no effort, we do not presume to present to the Commission in this proceeding all, or even a substantial part of the evidence on the general subject of atrocities in the Philippine Islands, nor do we select the instances on the basis that they are the most horrible, the most nauseatingly horrible that might be presented to the Commission. If we bring before the Commission a witness in a stretcher, permanently mutilated, physically ruined for life, it is not because we are endeavoring to impress the Commission through the use of shocking evidence; it is simply because that witness on the stretcher has a story of factual information which the Commission should hear, and because that witness before the Commission is a competent and a desirable exhibit of the ruthlessness of those who conquered the Philippines. We will present what we consider the difficult cases of various types, located in various areas of the Philippine Islands. If the Commission finds the evidence unpleasant, as I am sure it will in many instances, it is simply because those are the facts. That is the type of case we are trying, gentlemen; it is not a pleasant proceeding.

Let us consider the charge. The charge, as it is set forth on page 32 of the Transcript of Record of the Previous Proceedings of this Commission, states that the Accused, during a certain period of time while he was Commander of Armed Forces of Japan, then at war with the United States of America and its Allies, unlawfully disregarded and failed to discharge his duty as such Commander -- unlawfully disregarded

and failed to discharge his duty as Commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people in the United States and its Allies and dependencies, particularly the Philippines; and thereby violated the laws of war. That is the charge, that is the case: Disregarded his duty to control the members of his command, and permitting them to commit violations of the laws of war. That is the charge.

I believe the Commission will find that the charge is amply supported by the time the Prosecution has completed its case.

We will open our case with proof that the Accused, Yamashita, was Commander of the Army Forces in the Philippines during the period stated in the charge -- that is to say, from 9 October 1944 to the time of surrender, September, 1945; that in addition he commanded, as a part of those forces, or attached thereto, the so-called "Kimpei Tai," or military police. We will show also that he had overall command of the prisoner of war camps and civilian internment camps, labor camps, and other installations containing prisoners of war and other internees in all the Philippine Islands.

We will show that his area or territory of command included all of the Philippine Islands, the entire area so known. We will show that at times he also commanded Navy forces and air forces, particularly when engaged as ground troops.

We will then show that various elements, individuals, units, organizations, officers, being a part of those forces under the command of the Accused, did commit a wide pattern

of widespread, notorious, repeated, constant atrocities of the most violent character; that those atrocities were spread from the northern portion of the Philippine Islands to the southern portion; that they continued, as I say, repeatedly throughout the period of Yamashita's command; that they were so notorious and so flagrant and so enormous, both as to the scope of their operation and as to the inhumanity, the bestiality involved, that they must have been known to the Accused if he were making any effort whatever to meet the responsibilities of his command or his position; and that if he did not know of those acts, notorious, widespread, repeated, constant as they were, it was simply because he took affirmative action not to know. That is our case.

With respect to the Commission itself, I should like to say that there is no question whatever of the basis of the law, or the power and authority of the commanding officer, Commander in Chief, to appoint, constitute, and cause to function, this Commission. I refer to that only in passing, because there is no point to arguing that matter now. The Commission is governed by the rules of procedure which are set forth in the Letter Order, General MacArthur, dated 24 September 1945, subject, "Regulation covering the trial of war criminals." Those regulations govern the proceedings and the procedure of this Commission.

The Commission, no doubt, is aware of the fact that these regulations establish extremely broad discretionary powers of the Commission, as to the receipt of evidence, as to the form of the evidence which it will admit, and generally as to its procedural policies.

With respect to the evidence, the general rule specified in this Letter Order is that the Commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the Commission's opinion would have probative value in the mind of a reasonable man. Now, that is the general rule. It simply means this: that if the Commission believes that a particular item of evidence, of whatever form or type -- hearsay or otherwise -- would be of value to the Commission in determining the issues of this case, the Commission will admit it; and presumably, the Commission will refuse to receive only evidence which it is sure under no circumstance could have any value to it in ruling upon the issues. That is a very broad scope.

Furthermore, sir, the Articles of War do not apply to this Commission in any particular. It is so ruled by the Judge Advocate General, and if the Commission or Defense so desires I will be glad to supply a copy of that recent ruling. The Articles of War are not binding upon, do not apply to this Commission.

This Commission, sir, is not a judicial body; it is an executive tribunal set up by the Commander in Chief -- more specifically, the Commanding General, AFWESPAC -- for the purpose of hearing the evidence on this charge, and of advising him, along with the Commander in Chief of the Army Forces of the Pacific, as to the punishment, in the event that the Commission finds the charge to be sustained. It is an executive body, and not a judicial body.

With respect to oral evidence, we will present, first, incidents which occurred within the City of Manila. Thereafter

we will take up instances of violations of the laws of war, or so-called atrocities, which were committed outside the City of Manila, in various provinces, at various locations, at various times. One of the assistant prosecutors will present the case with respect to each of the several incidents or atrocities. As the case comes before the Commission, the Prosecutor will note, for the Commission's convenience, the number of the bill of particulars, or supplemental bill of particulars, which applies to this particular incident, so that the Commission may advert to that for whatever it may deem proper.

Now, it would serve no particular purpose for me at this time to attempt to outline the evidence which we will present with respect to each of these several hundred incidents. Some of those incidents, to reassure the Commission, will be handled purely from documentary evidence, and it will not be necessary with respect to them to call oral witnesses. As to other incidents, however, we will call oral witnesses, in order that the Commission may get a clear, a complete, and an adequate understanding of the facts involved.

Therefore, the prosecutor, in opening each one of what might be called separate cases -- because, after all, this proceeding involves a large number of separate cases, you might say -- in opening each of these separate cases he will, with the Commission's indulgence, make a short opening statement, explaining that the case which we will now take up, for instance, the Red Cross case, referred to in Item So-and-So of the bill of particulars, and "It will be noted from the bill of particulars that this case involves" so-and-so. In

that way the Commission will have before it at once a short review of the nature of that particular case.

We would like, sir, in connection with the presentation of our evidence, to use some sketches and maps, whereon we may point out to the Commission and mark, designate, the particular locality or site of the atrocities that we are considering. That is not a matter of evidence; that is purely a matter of convenience for the Commission, because with so large a number of atrocities involved I am very much afraid the Commission would have difficulty in following the pattern which we will establish. If there is no objection by the Commission, we will follow that procedure: First, with respect to the City of Manila, and thereafter, with respect to the Philippine Islands, it being understood that when our assistant pegs a certain portion of the map, that that is not intended as a ruling by the Commission that that particular atrocity has been established. It is merely the location upon the sketch or the map of the site of that particular alleged atrocity.

We are cognizant of the Commission's desire that this proceeding be expedited as much as possible. That, likewise, is our desire. Military justice, we realize, is expeditious; it brooks of no unreasonable delays. It does not tolerate the tortuous technicalities which characterize criminal procedure in the law courts of the States. We are proceeding upon that basis. I assure the Commission that we will make every effort to complete our case as quickly as possible. But we do have a burden to bear: We must support the charge, and we intend to support that with adequate, clear, convincing

proof.

If the Commission at any time, sir, is of the opinion that it has heard enough evidence from the Prosecution with respect to a particular matter, we will very much appreciate if the Commission will so indicate. We will be glad at that time to proceed, then, to another aspect of the case. Or, on the other hand, if the Commission, as is its right and its duty, believes that the Prosecution has not presented sufficient evidence upon a particular matter, the Commission will so indicate. We will simply draw upon the vast wealth of information and evidence which is available and proceed to meet the Commission's request.

As I have said before, we seek to establish as quickly as possible, with as many uses of labor or time-saving procedures as possible, the establishment of a clear and a convincing and a complete case.

We are ready to call our first witness.

GENERAL REYNOLDS: Does the Defense desire to make an opening statement at this time?

COLONEL CLARK: The Defense does not, sir, except to state that we do not agree with certain statements made by the learned Prosecution's counsel, and we will develop those at the proper time throughout the trial.

GENERAL REYNOLDS: The Prosecution may proceed.

MAJOR KERR: At this time, sir, the Prosecution presents for incorporation into the record of this proceeding the following stipulation, and I read:

"GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

"Before the)
MILITARY COMMISSION)
convened by the)
COMMANDING GENERAL,)
United States Army Forces,)
Western Pacific)
1 October 1945.)
"UNITED STATES OF AMERICA
vs
TOMOYUKI YAMASHITA

"STIPULATION

"It is stipulated by the UNITED STATES OF AMERICA and Tomoyuki Yamashita, during the period from 9 October 1944 to 3 September 1945, both inclusive, was Commanding General of the Japanese 14th Army Group.

"2. During that time, the Kempei Tai, or Military Police, in the Philippine Islands were elements of the accused's command.

"29 October 1945

UNITED STATES OF AMERICA
BY

ROBERT M. KERR
Major, Infantry
Prosecutor

TOMOYUKI YAMASHITA
Accused

HARRY E. CLARKE
Colonel, JAGD
Chief Defense Counsel

"I certify that before the accused signed the above stipulation it was translated to him in Japanese.

HARRY E. CLARKE
Colonel, JAGD
Chief Defense Counsel "

I ask, sir, that this be incorporated in the record.

GENERAL REYNOLDS: Any objection on the part of the Defense to the acceptance of this document?

COLONEL CLARKE: We agree, sir, to the entering of the stipulation into the record.

GENERAL REYNOLDS: The document will be accepted into evidence and marked appropriately for identification as a Prosecution exhibit.

MAJOR KERR: At this time, sir, I call as the first Prosecution witness Captain Norman James Sparman.

CAPTAIN NORMAN JAMES SPARMAN

called as a witness on behalf of the Prosecution, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Major Kerr) Will you state your name, your rank, and your organization?

A My name is Norman James Sparman; Captain; my organization is the Allied Translator Interpreter Section.

Q What is your address?

A ATIS, GHQ, AFPAC, APO 500.

Q What do you mean by "ATIS"?

A "ATIS" is the GHQ G-2 organization set up to handle the translation and interrogation of Japanese prisoners of war.

Q What relationship does it bear to Army Forces of the Pacific?

A It is the official language organization for the Army forces of the Pacific.

Q And translations are made by it, are they, for AFPAC; is that correct?

A Yes, sir.

Q How long have you been with that organization?

A Since September, 1942.

Q And in what capacity or capacities?

A I have been chief of the translating subsection and OIC of the translation section.

MAJOR KERR: Can the General hear the witness?

GENERAL HANDWERK: Yes.

Q (By Major Kerr) Generally what have been your duties in those capacities?

A The translation of captured Japanese documents from Japanese into English and the supervising of such translations.

Q Are you familiar with the publications of the Allied Translator and Interpreter Section?

A Yes, sir.

MAJOR KERR: I ask that this document be marked for identification as Exhibit No. 1.

(The document referred to was marked Prosecution Exhibit No. 1 for identification.)

Q (By Major Kerr) I hand you what has been marked for identification as Exhibit No. 1 and ask you to state whether or not you know what that is.

A Yes. It is an official publication of the translation from Japanese into English of captured Japanese documents.

Q And that is an official publication of the Allied Translator and Interpreter Section?

A Yes, sir.

Q I call your attention to that portion of the document

referred to for identification as Exhibit No. 1 which bears the notation 605437, dated 13 June 45, being page 1 of that portion of this document, and ask you whether or not you know what that is.

A Yes, sir. It is a full translation of a bound mimeographed booklet entitled "Officer Roster of 14 Area Army Headquarters", published 1 November 44, corrected to 30 December 44. Captured east of Irisan, Mountain Province, Luzon, 27 April 45.

Q Is that an official translation by the agency which you have described?

A It is, sir.

Q I ask you whether or not this document referred to for identification as Exhibit No. 1 is a part of the official publications taken from the official records of ATIS.

A Yes, sir.

MAJOR KERR: If the Commission please, I offer in evidence the document referred to for identification as Exhibit No. 1 and ask that it be admitted in evidence as Exhibit No. 1.

GENERAL REYNOLDS: Is there objection?

CAPTAIN SANDBERG: The Defense asks whether it is the intention of the Prosecution to introduce the entire document.

MAJOR KERR: We shall ask that in due course only that portion of the document referred to by the witness as a translation of a specific document be retained in evidence and that we be permitted later to substitute for this entire document such an excerpt certified to as a true excerpt by

this witness, merely for the purpose of cutting down the record.

CAPTAIN SANDBERG: The Defense first saw this document five minutes ago when it was handed to it by the Prosecution, although it was our understanding that the Prosecution would supply to the Defense in advance of trial all documents which it intended to introduce so that the Defense might study them for the purpose of determining whether or not in its opinion the documents were objectionable. The Defense has had no opportunity to examine this document and to ascertain whether it is in its opinion properly admissible and for that reason objects to the admission of the document at this time.

MAJOR KERR: If the Commission please, it was the hope and expectation of the Prosecution that the Defense and the Prosecution would be able to stipulate on a number of matters which we are now required to prove in this matter. That hope and expectation did not bear fruit and therefore it was found only as late as yesterday that we would be required to proceed in this manner. It is true that we have endeavored so far as possible to supply the Defense in advance with the documents which we intend to offer in evidence as documentary exhibits, together with a proper translation thereof from English into Japanese. It has not been possible for us to do so in this case. If the Defense so desires, we will be glad as soon as it is possible to provide the Defense with a translation into Japanese of this portion of this document. We cannot do so now.

CAPTAIN SANDBERG: Sir, it was the understanding

between the Defense and the Prosecution that the Prosecution would furnish to the Defense documents in English so that they might be examined by the Defense Counsel, who have a knowledge of English. It was also understood that at some subsequent time, when feasible, the prosecution would submit to the Defense translations so that such documents might be examined by the Accused. But the important and essential point was that the documents should be submitted so that counsel might examine them and so that objections of this sort would not be necessary.

CAPTAIN SANDBERG: We might add also, sir, that this document is mimeographed and undoubtedly available in many copies and could very easily have been submitted to the Defense.

MAJOR KERR: Sir, the Defense is unduly optimistic as to the facility with which documents, even mimeographed documents, of this character may be obtained.

GENERAL REYNOLDS: Subject to objection by any member of the Commission, the document is accepted in evidence. If after studying the document counsel for the Defense wishes to reopen the matter, the Commission will listen to it.

CAPTAIN SANDBERG: That is agreeable, sir.

(Prosecution Exhibit No. 1 for identification was received in evidence.)

MAJOR KERR: I call the Commission's attention to the specific portion of this document which was identified by the witness, being page 1 following the first three sections; that is to say, relating to Document No. 605437.

The Commission will note that that is a translation of

a captured Japanese document which sets forth the roster of the headquarters of the 14th Area Army and shows Tomoyuki Yamashita as the commanding general of the 14th Area Army as of 24 September 1944.

Q (By Major Kerr) Captain, I hand to you what has been marked for identification as Exhibit No. 2 and ask that you state what that is.

A An extract from ATIS Bulletin No. 132, dated 8 January 1945, pages 1 and 3, "Bound carbon-copy and mimeographed file containing SHO Group (SHUDAN), SHOBU and 1 WATARI Operation Orders, issued 22 July - 3 October 44. Classified: 'Military Ultra Secret'."

Q State whether or not to the best of your knowledge and belief that is a correct translation.

A Yes, sir.

MAJOR KERR: If the Commission please, I offer in evidence the document identified by this witness and marked for identification as Exhibit No. 2 and ask that it be admitted in evidence as Exhibit No. 2.

GENERAL REYNOLDS: There being no objection, the document is accepted into evidence.

(Extract from ATIS Bulletin No. 132, dated 8 January 1945, pages 1 and 3, was received in evidence and marked Prosecution Exhibit No. 2.)

MAJOR KERR: The Commission will note, sir, that that is a translation of a Japanese document which constitutes an order signed by Tomoyuki Yamashita as Commanding General, 14th Area Army.

Q (By Major Kerr) Captain, I hand to you a document which

is marked for identification as Exhibit No. 3 and ask you to state what that document is.

A This, sir, is an official publication of a translation from Japanese into English of captured Japanese documents.

(Copy of Allied Translator and Interpreter Section, Bulletin No. 1680, was marked Prosecution Exhibit No. 3 for identification.)

Q (By Major Kerr) I refer you particularly to Item 8, Document 16811, which appears on page 5 of the document and ask you to state what that represents.

A A file of mimeographed intelligence reports classified "Military-Most Secret". Cover period 11 January 44 - 15 February 44. Issued by WATARI Group (SHUDAN) (Translator's note 14 Army) Headquarters. Unit keeping file not stated.

Q I call your attention to Item 7 of Document 16810 of the same page, which also appears on page 4, and ask you what that represents.

A A file of mimeographed miscellaneous notices partially classified "Military - Most Secret". Dated 3 January 44 - 27 September 44, issuing authorities various, kept by KODAMA Unit.

Q I ask you whether or not the translations to which you have referred are official translations by ATIS.

A They are official translations.

MAJOR KERR: If the Commission please, I ask that the document marked for identification as Exhibit 3 now be admitted in evidence as Exhibit 3.

GENERAL REYNOLDS: The Prosecution referred to a certain part of this document by number. What was that number?

MAJOR KERR: Numbers items 7 and 8 which appear on page 5.

GENERAL REYNOLDS: Item 7 and Item 8 as shown in the margin?

MAJOR KERR: Yes, sir. The Item 7 begins on page 4 and Item 8 begins on page 5. The significance of this exhibit will be brought out in a moment.

I might say, sir, that Item 7 simply shows the code name of the 14th Area Army and the code name of the 14th Area Army Headquarters, which is important in connection with the translation of other documents which we will offer in evidence.

CAPTAIN SANDBERG: Where is that in Item 7?

MAJOR KERR: That is the portion of Item 7 which appears on page 5 under the XVIII.

CAPTAIN SANDBERG: If the Commission please, the Defense objects to the introduction of this document in evidence on the ground that it is not the best evidence of the Japanese documents in question. The Japanese documents are available and should be submitted as the best evidence so that they may be translated openly in court. There is a well-known and established rule that where the primary evidence is available secondary evidence is not admissible. In this case there is no reason either in law or in practicality for introducing secondary evidence.

MAJOR KERR: If the Commission please, the regulations governing the procedure of this Commission specify that the Commission may receive in evidence and in the form of exhibit that which it believes to be of probative value. It specifically and without in any way limited that general rule and

provides, quoting now from Clause 5, sub-paragraph (a) of Paragraph 16 of the regulation, that "A copy of any document or other secondary evidence of its contents, if the Commission believes that the original is not available or cannot be produced without undue delay".

If the Defense Counsel can point out to me any way whereby this particular Japanese document in the original may be made immediately available I should appreciate it very much. I assure the Commission that we have made an earnest effort to obtain this particular document and, in fact, the original of each of the documents which we are offering in evidence. They are not immediately available. They have been shipped to Washington by boat. In fact, they were so shipped among tens of thousands of other such documents to the Documents Center in Washington, D. C. before the end of the war for the most part. They are not immediately available.

GENERAL REYNOLDS: The Commission is mindful of the instructions of the convening authority which state in part as follows:

"Confine each trial strictly to a fair, expeditious hearing and on the issues raised by the charges, excluding irrelevant issues or evidence, preventing any unnecessary delay or interference."

The motion of the Defense Counsel is not sustained.

CAPTAIN SANDBERG: The Defense wishes to take an exception, sir, and to point out at this time that throughout this trial the question of translation of Japanese into English is going to be one of the most vital concerns of the Commission.

In fact, the Commission itself has evidenced great concern as to that situation by careful attention to the problem of interpretation. In view of the fact that Japanese does not have a literal translation but is susceptible of varying modes and methods of interpretation, the Defense feels that it is vital for the protection of the rights of the Accused that the documents be presented in their original Japanese form.

MAJOR KERR: If the Commission please, the Prosecution now has very busy at work some forty of the most qualified translators for the purpose of providing the translations which Defense Counsel requests. We are getting those out as rapidly as possible. The supply of competent translators from English into Japanese and vice versa is not unlimited in this theater. We are doing the best we can in that particular. I see no reason or possible way in which the substantive rights or the procedural privileges of the Defense could be interfered with or prejudiced in any way by some delay in supplying these particular translations. After all, the Accused has been granted by the Commission a rather extraordinary privilege of having his own thoroughly competent translator and interpreter at his side. But we shall continue to the utmost of our ability to supply translations of our proposed exhibits to the defense as far in advance of the introduction of them as we can or as soon thereafter as possible.

CAPTAIN SANDBERG: The Defense would like to point to one specific example or illustration of what it has in mind when it states that the question of translation is of vital

importance.

In this document submitted by the Prosecution the army of which General Yamashita was commander is referred to as the "14th Area Army". Yet the Prosecution itself in stipulation and by voluntary agreement has conceded that the name of the army was the "14th Army Group".

Whether that particular point is of essentiality in this particular case we do not know as yet. Nevertheless, it illustrates that questions of translation are important; that there are many variations and deviations in the types of translations, and that it is essential for the Defense to have a copy of the original.

The Defense also wishes to point out that it would have been just as easy for the prosecution to have gotten the original documents when they got this mimeographed translation, because presumably they came from the same source: Allied Translator and Interpreter Section.

MAJOR KEER: Counsel speaks from a wealth of lack of knowledge on this subject. The originals are not available where the mimeographed copies and the translations are available. Furthermore, we conceded nothing of the sort with respect to the command by Tomoyuki Yamashita of the 14th Army Group. We stipulate that he commanded the 14th Army Group, whatever that was. We are also introducing evidence that he commanded the 14th Area Army. Whether they are the same or separate organizations may or may not appear later. Furthermore the Accused has his day in court when his own affirmative defense may be offered. That is the time to question the documents in this particular as to the facts, not now.

GENERAL REYNOLDS: The Commission understands that the Prosecution introduced a certain document in evidence. It was objected to by the Defense and the objection was not sustained. The case will proceed.

(Prosecution's Exhibit No. 3 for Identification was received in evidence.)

MAJOR KERR: I ask that this document be marked for identification as Exhibit 4.

(Copy of Allied Translator and Interpreter Section No. 152 was marked Prosecution's Exhibit No. 4 for Identification.)

Q (By Major Kerr) I hand you, Captain, what has been marked for identification as Exhibit No. 4, and ask you to state what that is?

A This is an official publication of a translation from Japanese into English of captured Japanese documents.

Q I call your attention particularly to page 1 of that document and ask you to state what that represents.

A Full translation of bound mimeographed pamphlet titled "Philippines Operation Plan Summary", issued 11 October 1944 by SHOBU Group Headquarters. IPIL Area - 2 January 1945.

Q I ask you whether or not that is an official translation by ATIS?

A It is an official translation by ATIS.

MAJOR KERR: I offer in evidence the document marked for identification as Exhibit 4 and ask that it be received in evidence as Exhibit No. 4. At a later time the Prosecution would like to substitute for this entire document now referred to as Exhibit 4 that portion thereof which comes under the heading of Document 601285, appearing on pages 1, 2, 3, 4 and 5.

CAPTAIN SANDBERG: The Defense objects to the introduction of this document for the reasons already stated.

GENERAL REYNOLDS: Subject to objection by any member of the Commission, the motion of Counsel for the Defense is not sustained. The document is accepted in evidence.

(Prosecution's Exhibit No. 4 for Identification was received in evidence.)

MAJOR KERR: I call the Commission's attention particularly to Paragraph II under the heading "GUIDE".

Reading in part: "All of the Philippines will be divided into three sectors, namely (and then a diagram of two squares) Sector, OO Sector, and (diagram triangle) Sector. Instructions are as follows: ..."

Then follow instructions relative to each of those sectors. I also call the Commission's attention to the fact that the heading of that translation states: "Issued 11 October 44 by SHOBU Group" - "SHOBU Group". That ties in with the code

designation indicated by a previous exhibit.

I ask that this document be admitted for identification as Exhibit No. 5.

(Extract from ATIF Bulletin No. 1841, dated 7 March 1945 was marked Prosecution's Exhibit No. 5 for Identification.)

Q MAJOR Kerr) I hand you, Captain, what has been marked for identification Exhibit 5 and ask you to state what that is.

A Extract from ATIS Bulletin No. 1841, dated 7 March 1945. "Bound, handwritten and carbon-copied File of Organization Reports pertaining to organization of Prov Fld Arty Btrys and Anti-Tank Companies, dated 6-20 December 44. Kept by Miyoshi Unit. 21 pages. (Partly translated in XIVCAE Translation 0034, Batch 299, Item 6)."

Q I ask you whether or not that is a copy of a portion of the official records of ATIS.

A It is, sir.

MAJOR KERR: I offer in evidence, sir, the document which has been marked for identification as Exhibit 5 and ask that the same be admitted in evidence as Exhibit 5.

CAPTAIN SANDBERG: The defense objects to the admission of this document for the reasons stated previously.

GENERAL REYNOLDS: Subject to objection by any member of the Commission, the objection of Counsel for the Defense is not sustained. The document will be accepted into evidence.

(Prosecution's Exhibit No. 5 for Identification was received in evidence.)

MAJOR KERR: I call the Commission's attention to that portion of this exhibit which immediately follows the word

"extracts" on the first page and which reads as follows:

"SHOBU Staff Movement Order No. 22.

"SHOBU Group (SHUDAN) Order.

6 Dec 44
SAKURA Barracks

- "1. The organization of the Prov Fld Arty Btry and AT Co is as shown in the annex.
- "2. In accordance with regulations as shown in the annex, the KAWASHIMA Group (HEIDAN) and MANILA Defense CO will organize the Prov Fld Arty and AT Cos and hereafter will command them.

Commanding General of SHOBU Group
YAMASHITA, Tomoyuki."

In other words, General, there is an order signed by Yamashita directed to the commanding officer of the Manila Defense.

I ask that this document be marked for Identification as Exhibit No. 6.

(Extract of Headquarters Sixth Army, Sixth Army ATIS Advance Echelon, dated 15 March 45, was marked Prosecution's Exhibit No. 6 for Identification.)

Q (By Major Kerr) Captain, I hand you a document which has been marked for identification as Exhibit No. 6 and ask you to state what it is.

A It is a Sixth Army ATIS Advance Echelon translation, "Loose mimeographed instructions by Yamashita, Tomoyuki, Commanding General of SHOBU Army Group. Dated 15 February 45. Classified 'Top Secret'."

Q Is that a copy of an official translation?

A Yes, sir.

MAJOR KERR: I ask that this document which has been marked for identification as Exhibit No. 6 now be received in evidence as Exhibit No. 6.

CAPTAIN SANDBERG: The Defense objects to the introduction of this document on the grounds stated and suggests in the interest of facilitating the proceedings that the record show that the Defense will maintain a running line of objection to this type of document where a translation into English is introduced in evidence and the Japanese original is available.

MAJOR KERR: I do not know, sir, what counsel means by "this type of document". As far as we are concerned the record may note an objection by Defense to everything that the prosecution puts in, if that will suit the Defense.

CAPTAIN SANDBERG: Our point, sir, was simply this: that so long as the rights of the Accused to object are noted in the record, the proceedings would be better facilitated if the record simply showed a general objection, thus making it unnecessary for the Defense to object individually on each introduction of a document. That is a matter for the Commission to decide.

GENERAL REYNOLDS: The Commission feels that the acceptance of a general objection may involve the case and lead to confusion as to the extent to which the Defense objected in the introduction of documentary evidence. Therefore it advises the Counsel for the Defense that it is at liberty to offer objections to each document as it is presented.

CAPTAIN SANDBERG: Thank you.

GENERAL REYNOLDS: The objection of Defense Counsel to the introduction of Exhibit No. 6 which is now before the Commission is not sustained. It will be accepted into evidence.

(Prosecution Exhibit No. 6 for Identification was received in evidence.)

MAJOR KERR: I call the Commission's attention to that portion of the exhibit being the second paragraph under the Paragraph No. 1 which follows the word "Orders", and I quote:

"The Army expects to induce and annihilate the enemy on the plains of Central LUZON and in MANILA. The operation is proceeding satisfactorily."

"It is further noted that the date of this document in the original is 15 February 45.

If the Commission please, I will ask that there will be marked for identification this document as Exhibit No. 7.

CAPTAIN SANDBERG: Objection.

MAJOR KERR: Merely marked for identification, Counsel.

CAPTAIN SANDBERG: I am sorry.

(Copy of signed statement of Naokata Utsunomiya was marked Prosecution's Exhibit No. 7 for identification.)

MAJOR KERR: I ask that this document which has been marked for identification as No. 7 be received in evidence. This is a signed statement, sir, under oath, by Naokata Utsunomiya and is admissible under the express provision of the regulations governing the procedure of this Commission for the admission of affidavits and statements. This is a sworn statement.

GENERAL REYNOLDS: Does the Prosecution intend to read this document?

MAJOR KERR: No, sir. Unless the Commission so desires, it should not be necessary to read it into the record. I shall

advert to a certain short portion of it, however, which I will read into the record. It would constitute a part of the record as an exhibit.

GENERAL REYNOLDS: Is there objection on the part of Defense to the introduction of this statement?

CAPTAIN SANDBERG: There is, sir.

The Defense objects to the introduction of this statement on the ground that it is specifically barred by act of Congress of the United States. Article 25 of the Articles of War prohibit the introduction of depositions by the Prosecution in a capital case. The Article specifically sets forth that this prohibition applies not only in court-martial proceedings but also in proceedings before a military commission.

This is one of the few instances, incidentally, in which the Articles of War by their very terms refer to "military commissions," and it is in no wise extraordinary that it does so, for it is one of the most firmly founded principles of American justice that the Accused in a capital case, whatever his nationality, should have the opportunity to openly confront the witnesses against him and to cross-examine them on their testimony.

This proceeding is before a military commission. It is for an offense alleged to be capital. It is clear and uncontrovertible, therefore, that the admission of testimony by deposition would be in violation of the laws and statutes of the United States.

The prosecutor referred in his opening statement to an opinion of the Judge Advocate General, holding that military

commissions are not bound by the Articles of War. We have never seen this opinion, but we venture the guess that this opinion refers only to those Articles of War which do not mention military commissions specifically by name. However, since it is impossible to discuss an opinion which we have not seen, we should like to point this out: that whatever the Judge Advocate General has ruled, the United States Supreme Court has definitely and unequivocally ruled in the case of the seven saboteurs that military commissions do owe their existence to the Articles of War and that they are bound by such provisions in the Articles of War which do refer to that.

MAJOR KERR: Sir, I challenge that last statement. There is no ruling by the United States Supreme Court in the Quirin case that the Articles of War apply. In that particular case, which is not pertinent to this proceeding on that point, the President in his order or proclamation appointing the so-called saboteur Quirin Commission, specifically provides that certain provisions of the Articles of War would apply.

The Defense Counsel contended that the Articles of War generally apply, such as the requirement that there shall be an investigation before proceedings are commenced, before the trial is held, or that the death penalty can be invoked only by three-fourths' vote of the members of the commission. The Supreme Court expressly denied that position.

I hand to the Defense Counsel at this time a copy of the memorandum opinion of the Judge Advocate General to which I referred. This is a recent opinion, sir. It is signed by Major General Kramer, Judge Advocate General. It is in the

form of a memorandum to Brigadier General Weir, Assistant Judge Advocate General, War Crime Office. I read from the last portion thereof:

"6. For the reasons given, I am of the opinion that Congress did not intend the Articles of War to apply to military commissions to try enemy belligerents or civilians for war crimes."

Now, I submit, sir, that that opinion is conclusive on this question. The Commission will find that the opinion is well reasoned. It discusses various authorities bearing upon the point. It is a well-considered opinion which should be given great weight by this Commission.

If the Commission is not satisfied I am prepared to argue the point further, because I have ample authority for the proposition that the Articles of War do not apply to this Commission, were never intended to apply to a commission of this character.

GENERAL REYNOLDS: The Defense may proceed.

CAPTAIN SANDBERG: The Defense does not contend, as the Prosecution states, that the provisions of the Articles of War with respect to the vote required for a death sentence apply to military commissions. It does not contend, as the Prosecution states, that all the Articles of War apply to the provisions of the military commission. It does contend, however, that where the Articles of War specifically refer to military commissions there cannot be the scintilla of doubt but that the provision applies to the military commissions.

By its very term the provision of the Articles of War

with reference to the death sentence refers to court-martial. By its very terms the provision of the Article of War with respect to investigation before trial refers to court-martial. But by its very terms the provisions of the Article of War with respect to depositions apply to military commissions.

I read to the Commission: "A duly authenticated deposition taken upon reasonable notice to the opposite party may be read in evidence before any military court or commission in any case not capital."

And it is submitted that neither the Judge Advocate General of the United States, nor the Prosecution, nor this Commission can repeal an act of Congress.

MAJOR KERR: I believe, sir, that particular point is mentioned in the Judge Advocate General's opinion and ruled upon contrary to the Defense position.

There is further argument available on the point if the Commission desires to hear it.

GENERAL REYNOLDS: The Commission will retire to its chambers for deliberation.

(Whereupon the members of the Commission retired in executive session.)

GENERAL REYNOLDS: The motion of counsel for the defense is not sustained. The document will be accepted in evidence.

(Prosecution Exhibit No. 7 for identification was received in evidence.)

CAPTAIN SANDBERG: The Defense requests instructions from the Commission as to whether or not Articles of War 25 is deemed inapplicable to this entire proceeding.

GENERAL REYNOLDS: The answer to that is as follows: The Commission considered all matters that were presented, and other matters, and refuses to elaborate upon the reasons for its conclusions.

MAJOR KERR: You may cross examine this witness.

CROSS EXAMINATION

Q (By Captain Sandberg) Referring to Prosecution's Exhibit No. 2, will you state whether, in your knowledge, the translations of the Army Translator and Interpreter Service are considered to be literal translations?

A Yes, they are literal translations, grammatical translations.

Q And would you vouch for their accuracy in every respect?

A I would, sir.

Q Now, I show you Prosecution's Exhibit No. 2, referring to its Shobu Operations Order No. A-76, and ask what is the date on which the translation states that that order was issued?

A Operation orders issued the 22nd of July to the 3rd of October, 1944, meaning that orders were issued during that period.

Q Now, is the order signed by -- Who is the order signed

by?

A Yamashita, Tomoyuki; CG of 14th Army.

Q Now, would it change your opinion of the accuracy of that translation if I were to tell you that General Yamashita did not come to the Philippines before the 7th of October, two weeks after the date of that order?

A No. It states that the document is a bound carbon copy, a mimeographed file. If the order, this particular order, is mimeographed, then the name "Yamashita, Tomoyuki," would appear mimeographed; not a hand signature.

Q And therefore, what is the date on which that order was issued?

A Issued the 27th of September, 1944.

Q And it was issued by General Yamashita?

A Yes.

Q And he was not in the Philippines at that time?

MAJOR KERR: Just a moment. You are reaching a conclusion there.

CAPTAIN SANDBERG: We will withdraw the question.

Q (By Captain Sandberg) In other words, then, you will stand upon the accuracy of this translation?

A Yes, sir.

Q Issued on the 27th of September, 1944?

A That order was issued on the 27th of September, 1944.

Q That is correct. And signed by General Yamashita?

A Yes, sir.

Q Now, are you the officer who asked the questions of General Utsunomya, referred to in this deposition?

A No, sir.

Q Do you know who was?

A No, sir.

Q Do you know anything about this deposition?

A No, sir.

MAJOR KERR: This witness offered no testimony whatever with respect to that particular exhibit.

CAPTAIN SANDBERG: May I ask why he identified this?

MAJOR KERR: He did not identify it. It requires no identification. It bears the signature of an officer, stating he was detailed for the purpose of making that record, according to the regulations on that type of information; that type of certificate is satisfactory.

CAPTAIN SANDBERG: May I inquire as to the name of the officer asking questions covered in this deposition?

MAJOR KERR: The statement speaks for itself.

CAPTAIN SANDBERG: The defense requests at this time that Captain Jerome Richard, whose name is signed to this deposition, be produced in court by the Prosecution for the purpose of examination with respect to this deposition.

MAJOR KERR: If the Commission please, that exhibit has been introduced and accepted as an exhibit. There is absolutely no ground for Defense's request. We are not required in any way to produce the testimony of the officer who questioned the witness. That exhibit is complete in and of itself.

CAPTAIN SANDBERG: The defense has never identified this document by the statements of a witness under oath by this Commission. So far as we are concerned, this is simply a document which may have any origin at all, and the Defense consequently renews that request.

MAJOR KERR: Is the Defense reopening the question, sir, of the admissibility of this exhibit? It seems to me that it was ruled upon by the Commission.

I suggest we proceed with the trial.

CAPTAIN SANDBERG: The Defense wishes the record to show at this time that the Defense was afforded no opportunity to cross examine the witness questioned under the deposition; that the deposition was taken without notice to the Defense; that the Defense was given no opportunity to submit cross interrogatories. It wishes the record to show also that the Defense was never given the opportunity to cross examine the officer who conducted the interrogations for the Prosecution.

MAJOR KERR: Are you finished with the cross examination of this witness?

CAPTAIN SANDBERG: No further examination.

MAJOR KERR: The witness is excused.

Thank you very much, Captain.

(Witness excused.)

MAJOR KERR: Sir, Captain Hill will now take over for the purpose of trial of the Red Cross Building atrocity.

CAPTAIN HILL: May it please the Commission, before presenting the evidence as to the first atrocity in this case, with the Court's permission I would like to make a brief statement as to what the evidence will be.

First, this case is under the Bill of Particular No. 30, and is commonly referred to as "The Red Cross Case." The evidence on behalf of the Prosecution will show that on 10 February, 1945, and for several days prior thereto, the Red Cross Headquarters, the Philippine Red Cross Headquarters in

the City of Manila, was being used as a refuge and as an emergency hospital for non-combatant civilians in that locality.

The evidence will further show that on that day, somewhere between 50 and 100 non-combatant civilians, had gathered in that building. Included in that group were a doctor, a volunteer Red Cross doctor, two Red Cross nurses, and others aiding in the operation of the emergency hospital and caring for the refugees.

The evidence will show that late in the afternoon, between five and six o'clock of that day, four members of the Japanese Imperial Forces approached the building. As they approached they shot through the door, at that time killed a small child, then forced the door open, entered, and commenced to bayonet and shoot everyone within their sight.

The evidence will show that there were two people in the room who could speak Japanese; that these two persons explained to the Japanese that this was a Red Cross place. They pointed out the doctor. They had ample opportunity to see the Red Cross insignia on the arm of the nurse, and on all four sides of the building was the conventional Red Cross sign, but in spite of that, and without cause or reason, these Japanese killed, by bayonet or shot, at least 50, and possibly more, people in that building.

The evidence will further show that after the killing, after the expiration of several days, the building was burned. It is our contention that the Japanese burned the building in order to cover up the evidence of the murders.

The first witness will be Patrocinio Abad.

PATROCINIO ABAD

called as a witness on behalf of the Prosecution, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Captain Hill) State your name to the Commission, please.

A My name is Patrocinio Abad. My screen name is Corazon Noble.

Q Where do you reside, Miss Abad?

A 133 Blumentritt Street, San Juan.

GENERAL REYNOLDS: Just to interrupt for a moment --

Will you fix the loud speaker? The Commission is unable to hear the witness.

Q (By Captain Hill) How old are you, Miss Abad?

A Twenty-six years old.

Q What is your nationality?

A Filipino.

Q Are you married or single?

A I am single, but I had a baby daughter. My husband was killed by a trench mortar.

GENERAL REYNOLDS: The Commission interrupts again to say that we cannot hear the witness, and asks that the public address system be adjusted.

Q (By Captain Hill) During the first part of February, 1945, where were you residing?

A I was residing in Makati.

Q Did you have occasion, during the first part of February, 1945, more particularly on 10 February, to go to the headquarters building of the Philippine Red Cross?

A Yes, sir.

Q On what date was that?

A February 10, 1945.

Q At what time of the day did you go there?

A 10:00 in the morning.

Q Did anyone accompany you there?

A Yes, sir.

Q Who?

A The Juan family: my two brothers, my cousins, and others who were staying there.

Q Did you have your baby with you?

A Yes, sir.

Q How old was your baby?

A Ten months old.

Q Was it a boy or girl?

A Girl.

Q And what was its name?

A Maria Lourdes Vera.

Q When you arrived at the Red Cross Headquarters Building, what did you find there?

A I found that it was an emergency hospital.

Q Was any other use made of the building at that time?

A It was also used as a refugee center.

Q Were there refugees in the building on that day?

A Yes, sir.

Q Do you have an estimate of how many refugees had gathered there on that occasion?

A Only to around 100.

Q Do you know the names of the doctor and the nurses that

were operating the emergency hospital there?

A Yes, sir, some of them.

Q Can you give them?

A Doctor Venecia, Miss Andaya -- and the others, I couldn't tell you the names.

Q Do you know how many patients were confined there in the emergency hospital that day?

A I think there were around several patients.

Q Were there any other help around there, assisting the doctor and the nurses, besides those you have named?

A Yes, those who volunteered.

Q Are you able to give their names?

A No, sir.

Q On that day did you see any members of the Japanese armed forces come to that building?

A Yes, sir, there were four Japanese soldiers.

Q Do you know what branch of the Japanese Army or Navy that they belong to?

A I think that they were all Navy, but I don't know to what branch they belong.

Q Did you observe the uniforms they wore, or the insignia on their uniforms?

A Yes, sir.

Q Will you tell the Court what color their uniforms were?

A Their uniform was green color. Their caps were also green, with insignia of an anchor on it.

Q Were you familiar with the Japanese uniform?

A Yes, sir.

Q And you are positive that those uniforms were Japanese

uniforms?

A Yes, sir.

Q What time of the day did these four Japanese come there?

A They were there when I came to the building, but --

Q (Interrupting) What time was that?

A 10:00 in the morning, but then they left after lunch time, and then when they returned it was --

Q (Interrupting) Just a minute. While these four Japanese were in the building in the morning, what did they do, if you know?

A They started to give candies and cookies to the children in the building.

Q Did they do anything else?

A No, sir.

Q Did you see them question any of the people?

A Yes, I saw them question eight Germans who were in the building.

Q Do you know what they said to these Germans?

A No, sir.

Q Did any other Japanese come into the building, the Filipino Red Cross Headquarters, that day?

A No, sir.

Q That evening?

A That evening, yes.

Q About what time?

A Around 5:00 or 6:00 in the afternoon.

Q How many came on that occasion?

A Four.

Q And were they dressed in the same manner as the four

that you had seen in the morning?

A They were the same, I think.

Q You think they were the same four Japanese?

A Yes, sir.

Q What first attracted your attention to these four Japanese when they came in the evening?

A We heard shots. We thought it was the beginning of a street fight.

Q Where did you hear the shots come from?

A From the outside of the building.

Q All right, go ahead.

A Then I saw the little girl who was right in front of the door, she fell, and another older woman was hit; she started to go back to the doctor for aid, and then all of a sudden I saw the four Japanese officers --

Q (Interrupting) Just a minute. Let me interrupt you.

Where were you in the building at that time?

A At the corridor, in the entrance of the corridor.

Q Were you near the door where the Japanese entered?

A Yes, sir.

(Whereupon a document was handed to the reporter, which was marked Prosecution's Exhibit No. 8 for Identification.)

Q (By Captain Hill) I will hand you Prosecution's Exhibit No. 8 for Identification and ask you to state what it is, if you know?

A That is a sketch of the Philippine Red Cross Headquarters.

Q A floor plan of the headquarters?

A Yes, sir.

Q And I will ask you to indicate to the Commission -- I

think you had better stand up here so the Commission can see -- where you were standing?

A The four Japs came in by the door that faces there (indicating)..

Q And where were you standing at that time, with reference to that entrance?

A I was standing right here (indicating), in the entrance of the corridor.

CAPTAIN HILL: We will offer in evidence Prosecution's Exhibit No. 8, sir.

GENERAL REYNOLDS: Does the Defense object to the introduction of this exhibit?

CAPTAIN REEL: No objection.

(Whereupon the sketch above referred to was received in evidence and marked Prosecution's Exhibit No. 8.)

Q (By Captain Hill) Go ahead, Miss Abad, and tell us what happened after you saw the Japanese enter the building.

A After I saw the Japanese in the building I saw them aiming at me, so I hid behind a cabinet where they keep the medicines, but the cabinet was not enough to cover me, so that my elbow, my right arm was out, and the Japanese shot me through my right elbow.

Q Did you have your baby with you at that time?

A Yes, sir.

Q When you were hit by the bullet what did you do?

A I started to lie down -- I laid --

Q (Interrupting) On the floor?

A Yes, sir; and a Japanese came near me and stabbed me with his bayonet.

Q How many times did he stab you with his bayonet?

A Nine times.

Q And will you indicate in what parts of the body? Tell the Court what parts of the body you were bayoneted in.

A I was bayoneted right here (indicating), by the bust; here (indicating); here (indicating), in the ribs; and here (indicating), in the abdomen; and here, again (indicating), in the abdomen; and the leg (indicating); and the back (indicating).

Q Did you remain conscious after you were shot and bayoneted by the Japanese?

A Yes, sir.

Q Can you tell the members of the Commission what happened to your infant child at that time?

A I had her under me, and when these Japanese stabbed me I felt a pain in my arm, it was hurting me, so I didn't see how he bayoneted my baby, only I know that he was bayoneted through and through three times.

Q Three times?

A Yes, sir.

Q As a result of that bayoneting, what happened to your infant child?

A She died.

Q Did she die immediately?

A No, sir.

Q How long did she live?

A Four hours.

(Whereupon a photograph was handed to the reporter by Captain Hill and marked Prosecution's Exhibit No. 9 for

Identification.)

Q (By Captain Hill) I will hand you Prosecution's Exhibit No. 9 for Identification and ask you to state what it is, if you know?

A It is the picture of my right arm with a scar of the shattered --

Q (Interrupting) Do you recall about when that was taken?

A This one was taken around May.

CAPTAIN HILL: We offer in evidence Prosecution's Exhibit No. 9, sir.

GENERAL REYNOLDS: Is there any objection on the part of Defense?

COLONEL CLARKE: No objection, sir.

GENERAL REYNOLDS: The document is accepted in evidence.

(Whereupon the photograph referred to was received in evidence and marked Prosecution's Exhibit No. 9.)

CAPTAIN HILL: I would like to have this marked for identification.

(Whereupon the photograph referred to was marked Prosecution's Exhibit No. 10 for Identification.)

Q (By Captain Hill) I will hand you Prosecution's Exhibit No. 10 and ask you to state what it is, if you know?

A It is the picture of the bayonet stabs that I received here (indicating).

Q At the hands of the Japanese?

A Yes, sir.

COLONEL CLARKE: What was that?

CAPTAIN HILL: I asked, "At the hands of the Japanese?" And she said "Yes." She said this was a picture of the scars

of the bayonet wounds that she received.

We offer this in evidence, sir.

GENERAL REYNOLDS: Is there any objection on the part of the Defense to the introduction of this evidence?

COLONEL CLARKE: None, sir.

GENERAL REYNOLDS: It will be received.

(Whereupon the photograph referred to was received in evidence and marked Prosecution's Exhibit No. 10.)

CAPTAIN HILL: May I have this marked for identification?

(The photograph referred to was marked Prosecution's Exhibit No. 11 for Identification.)

Q (By Captain Hill) I hand you Prosecution's Exhibit No. 11 and ask you to state what it is, if you know?

A This is a picture of mine before I got the bayonet stabs.

CAPTAIN HILL: We offer in evidence the Prosecution's Exhibit No. 11.

Q (By Captain Hill) Can you tell whether any one of these four Japanese that you saw in the Red Cross Building that day -- or that evening, rather, were officers or enlisted men?

A No, sir, they were not officers.

Q Will you tell the Commission how they were armed?

A They were armed with their rifles and bayonets.

Q Did all four of them --

A (Interrupting) Yes, sir.

Q (Continuing) -- have the same arms?

A Yes, sir.

Q Did you see these Japanese shoot or bayonet any of the other people in the building at that time?

A Yes, sir. I saw one of the Japanese bayonet a Miss

Andaya.

Q Who was Miss Andaya?

A She was a Red Cross nurse.

Q Was she employed there at the Red Cross?

A Yes, sir.

Q Did you see them shoot or bayonet anyone else?

A Yes, sir.

Q Will you tell the Court about it?

A I saw them shoot Miss Marcelo -- she was a nurse, also -- and Mrs. Juan, who was with us, who was a refugee also, of the place, and some others, and the doctor.

Q Were they shot or bayoneted by the Japanese?

A They were shot and bayoneted.

Q Did you see any others shot or bayoneted there?

A Yes, sir.

Q Do you know their names?

A No, sir.

Q In the corridor and hall where you were located, can you tell the Commission about how many people were shot or bayoneted?

A In the corridor there were around 25 to 30 dead persons.

Q Were they men, women, or children?

A Mostly women and children.

Q How long did the Japanese remain there in the building at that time?

A Approximately an hour.

Q And while they were in the building and after you had been shot and bayoneted, what did you do?

A I waited for them to leave. When they left I started

to sit up, with the others who were only wounded, and then we decided to leave, because we were afraid the building might be blasted, because they had started to spread powders.

I don't know what sort of powders they were.

Q Did you leave the building?

A Yes, sir.

Q About what time that evening did you leave the building?

A It was around 7:00 or 7:30.

Q Before you left the building did you go to any of the other rooms in the building?

A No, sir, but my cousin did.

Q When you left the building was your baby still alive?

A Yes, sir.

Q Did you take the baby with you?

A Yes, sir.

Q Where did you take the baby?

A We bust the back door and we cross the wall. When I was on the other side of the wall I met my brother. I gave him the baby and told him to take her to a doctor who was residing very near that place, and I asked them to leave me because -- (pause) -- I couldn't stand it any more. I was feeling very weak. When they returned, I don't know; I was unconscious.

Q Did you see your baby alive again?

A No, sir.

Q Did you see its dead body?

A No, sir.

CAPTAIN HILL: Cross examine.

CROSS EXAMINATION

Q (By Colonel Clarke) Miss Abad, do I understand you to

say that there were four Japanese who came in in the morning?

A Yes, sir.

Q And four who came in in the evening?

A Yes, sir.

Q They were the same four?

A I think they were the same four, because I recognized the face of one of them. I don't know about the others.

Q I understand they were members of the Japanese Navy?

A Yes, sir.

COLONEL CLARKE: That is all.

CAPTAIN HILL: That is all.

(Witness excused.)

GENERAL REYNOLDS: At this time the Commission will recess until 1:30 this afternoon.

(Whereupon a recess was taken until 1330 o'clock, 29 October 1945.)

AFTERNOON SESSION

(The trial was resumed, pursuant to recess, at 1330 hours.)

GENERAL REYNOLDS: The Commission will come to order and resume the session.

MAJOR KERR: If the Commission please, I should like to swear at this time five additional interpreters who have not previously been sworn.

GENERAL REYNOLDS: Very well. I should like to have the record show that the Accused and his counsel are present.

MAJOR KERR: If the Commission please, the Commission members are present together with the Prosecution staff, the Accused and his counsel.

(Whereupon Interpreters Commander Bartlett, Hiroshi Ohira, Masao Ochi, Roy Tanonye, and Hiroshi Ito were sworn.)

CAPTAIN HILL: If the Commission please, the next witness will be Miss Glicera Andaya.

GLICERA ANDAYA

called as a witness on behalf of the Prosecution, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Captain Hill) Will you please state your name to the Commission?

A Glicera Andaya.

Q Where do you reside, Miss Andaya?

A I reside in Emergency No. 1.

Q How old are you?

A I am 32 years old.

Q What is your nationality?

A Filipino.

Q Are you married or single?

A I am single.

Q During the first ten days of February, 1945, where were you employed?

A During the first ten days I wasn't employed. I was a private nurse.

Q Will you speak into that microphone, please? What is your profession?

A Registered nurse.

Q And were you during those days employed as a nurse?

A On February 10th I was employed as a nurse in the Red Cross.

Q And were you on that date serving as a Filipino Red Cross nurse?

A Yes.

Q And at what place were you serving?

A We were serving at the Red Cross Building at the corner of General Luna and Isaac Peral.

Q Was that the headquarters of the Filipino Red Cross?

A That was.

Q And besides yourself what persons constituted the staff there at the hospital?

A We had Mr. Farolan, Acting Head of the Red Cross then. Then we had another nurse, Miss Loveriza, and then we had a boy by the name of Marcelino. I don't know his family name. Then there was another girl from the YWCA, and we had an emergency doctor.

Q Will you speak into that microphone, please? For what

purposes was this building used on the 10th of February, 1945?

A It was put up as a refugee home for refugees and emergency hospital.

Q Were there refugees in the building on that date?

A There were many refugees.

Q Will you tell the Commission how many refugees you think were in the building at that time?

A Before the time the Japanese came there we registered about 50 refugees.

Q What time of the day was that?

A It was before the afternoon.

Q Did any other refugees come during the afternoon to the building?

A They kept on coming in the afternoon and we did not keep track of them any more.

Q Besides the refugees how many patients were there in the building, if you know?

A There were about 7 patients in the building.

Q And in addition to the refugees and patients were the staff hospital names you have given us; is that correct?

A That is right.

Q On the 10th of February or at any time prior thereto was this building, the Philippine Red Cross Headquarters, used for military purposes?

A No.

Q And on February 10th were any of the refugees, patients, or the Red Cross personnel there in the building armed in any manner?

A Nobody, the refugees or any of the personnel or any of the patients, was armed.

Q On February 10th did you see any Japanese come to that headquarters building?

A Yes.

Q At what time?

A They came in the morning.

Q How many?

A About four of them.

Q Did you know to what branch of the Japanese service they belonged?

A I don't know exactly what branch, but they had an insignia on their caps.

Q What kind of an insignia?

A An "Anchor" insignia.

Q Did other Japanese come to the building during that day?

A Between 6 and 6:30 four Japanese came into the building.

Q Were they the same Japanese that had been there in the morning?

A I am not sure.

Q Tell the Commission just what happened and what first attracted your attention when these four Japanese came there about 6 o'clock in the evening.

A About between the time of 6 and 6:30 in the evening I heard a shot just outside the building, a gunshot, and then simultaneously a woman screamed and came in running with a dead child in her arms. She told us that the child was shot by the Japanese who were right behind her. The doctor told me

to get the instruments ready and we were going to see the wound of the child.

I was getting the instruments ready and then I asked one of the girls who knew how to speak Japanese to go and find out what the Japanese wanted, and I went behind her. After that, while the people were coming in rushing through the corridors, I told them to lie down flat and keep quiet until I found out what the Japanese wanted.

The girl was trying to talk with the Japanese - to the Japanese, I should say - and, well, the Japanese just shoved the point of a gun at her and then they faced me. I told the Japanese that was nearest to me that that was a Red Cross building and that I was a nurse and that nobody was inside except refugees. This Japanese who had a fixed bayonet and gun turned to his officer behind him, and before I knew it he turned back to me and stabbed me with the bayonet.

Q Where did he stab you with the bayonet?

A He stabbed me on the left chest above the heart region.

CAPTAIN HILL: I ask that this photograph be marked for identification, if the Commission please.

(Photograph of stab wound was marked Prosecution Exhibit No. 13 for identification.)

Q (By Captain Hill) I will hand you Prosecution's Exhibit 13 and ask you to state what it is, if you know.

A This is a picture of my stab wound taken sometime during the month of May.

Q Of this year?

A Yes. 1945.

CAPTAIN HILL: We offer in evidence Prosecution's Exhibit No. 13.

GENERAL REYNOLDS: Is there any objection by the Defense?

COLONEL CLARKE: None.

GENERAL REYNOLDS: It may be accepted in evidence.

(Prosecution Exhibit No. 13 for identification was received in evidence.)

Q (By Captain Hill) After you were bayoneted by this Japanese what did you do?

A I fell down and I must have - After a short time I heard the Japanese go into the other part of the building and then I heard shots.

Q What other part of the building?

A That was the dispensary part of the building near Isaac Peral.

Q What else did you hear, if anything?

A I heard one, it must be the voice of the doctor, who shouted "Aruy!", an expression of pain.

Q Did you see the Japanese shoot or bayonet any other persons in the hallway where you were?

A In the hallway I saw the Japanese shoot at a child who was trying to sit up, and the Japanese just shot the child three times in the mouth until the child fell dead.

Q How old was the child?

A About three years old.

Q Can you tell the Commission whether these four Japanese whom you saw in the building there were officers or enlisted men?

A Well, I cannot exactly tell whether they were officers, but one of them, the one nearest to me with whom I spoke and the man who stabbed me had a kind of handkerchief at the back of his neck; a khaki handkerchief.

Q Were they all four armed in the same manner?

A No.

Q Did any of them carry sabers?

A The second one, the one behind him, carried the saber and the revolver.

Q Did you retain your consciousness after you were bayoneted?

A For a short while.

Q How long?

A It must be about 20 to 30 minutes.

Q Have you told the Commission all that you remember seeing or hearing of what transpired there in the building immediately after you were bayoneted?

A After they came from the dispensary I then went to the other side of the building where the Jews were hiding and then I heard a Japanese say something to the Jews. They were saying "Americans! Americans!" And then I think - I don't remember what the Jews answered and all I heard was shots and the women were screaming and then no more.

Q How long did these Japanese stay in the building on that occasion?

A From the time they started shooting and bayoneting I think they must have stayed for about 20 minutes.

Q Did you see them leave the building?

A I heard them.

Q What did you do after they left the building, if anything?

A I didn't do anything. I was too weak to do anything.

Q How long did you remain in the building after you were bayoneted?

A I remained in the building for four nights and four days.

Q Did you receive any medical attention while you were there?

A No.

Q When did you leave the building then?

A I left the building on the morning of the fourth day.

Q Why did you leave the building?

A I suddenly woke up and I found out that the building was on fire. So I just took the pillow that was put under my head by a little girl, pressed it to my chest and went out the gate.

Q Where did you go from there?

A From there I climbed the high wall out of the building and went over to the other side where the rest of the people from the Red Cross were hiding.

Q Can you tell the Commission approximately how many people were killed by the Japanese in the Red Cross Headquarters Building on 10 February 1945?

A Approximately 40 people were killed in the building on February 10, 1945.

Q When you left the building on the fourth day after your

injury did you count the bodies or did you have occasion to observe the bodies throughout the building?

A No. I was in a hurry to leave the building.

Q Did you see dead bodies there in the building at that time?

A I saw the four dead bodies that were nearest to me for four days and four nights, and then the building was in such topsy-turvy condition that I couldn't - I had no time to look back.

Q At the time the Japanese first entered the building and as you approached them did you have any Red Cross insignia on your clothes?

A I was in a nurse's uniform with a Red Cross badge on my left arm and the Red Cross cap.

Q Do you know whether there were any Red Cross markings on the buildings on the outside or not?

A In all the windows of the building there was a Red Cross flag flying.

Q And how many windows were there in the building?

A Approximately 14.

CAPTAIN HILL: Cross-examine.

CROSS EXAMINATION

Q (By Captain Reel) Had this building been a Red Cross building for some long period of time?

A It has been a Red Cross building for quite a period of time.

Q And during the Japanese occupation it was a Red Cross building?

A It was still a Red Cross building.

Q And prior to the 10th of February, 1945, so far as you know, there had not been any shooting or killing inside that building?

A There was no shooting or killing inside the building before February 10th, 1945.

Q I think you told us that there were 40 persons killed on the 10th of February.

A Approximately 40.

Q How did you know that?

A Because in the corridors where we were there were about 20 who were shot and bayoneted before they bayoneted me.

Q And you saw this take place?

A Pardon?

Q Did you see this take place?

A Yes.

Q You saw the 20?

A Yes; approximately.

Q I think you told us that in the building four Japanese came in who had "anchors" on their caps; is that right?

A That's right.

Q And then four more came in the afternoon, and you are not sure whether they were the same four who were there this morning?

A That's right.

Q Did the four who came in the afternoon have "anchors" on their caps?

A The one nearest to me had an "anchor" on his cap.

Q Did you notice whether the others had "anchors" on their caps?

A No.

Q I think you said one of them carried a saber?

A Yes.

Q Was he the one nearest to you?

A No. He was the second.

Q Did you notice whether he had an "anchor" on his cap?

A I didn't notice.

Q But you noticed he carried a saber?

A I noticed he carried a saber and a gun.

Q Will you describe what he wore?

A Pardon?

Q Will you describe what he wore as near as you remember?

A The things I noticed was that he had a pair of leggings, a saber and a gun, and he was dressed in khaki like the rest of them.

Q And that is the only distinction that you noticed: his leggings, a saber and a gun?

A Yes.

CAPTAIN REEL: That's all.

CAPTAIN HILL: That's all.

(Witness excused)

CAPTAIN HILL: Miss Florita Loveriza.

GENERAL REYNOLDS: The Commission will recess briefly.

The people are invited to take the forward seats, saving the first row only on the left side of the building.

(Short recess.)

GENERAL REYNOLDS: The Commission will come to order.
The Prosecution may proceed.

FLORITA LOVERIZA

called as a witness on behalf of the Prosecution, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Captain Hill) Will you talk just as closely to the microphone as you can, please. Please state your name.

A Floritz Loveriza.

Q How old are you?

A 32 years old.

Q Where do you reside?

A At present I am residing at the National Psychiatric Hospital, Lambuanao, Iloilo.

Q What is your nationality?

A Filipino.

Q What is your business or profession?

A Red Cross nurse.

Q How long have you been a nurse?

A Since 1932.

Q During the first part of February, 1945, where were you employed?

A Philippine Red Cross.

Q And were you present at the Philippine Red Cross headquarters building on the 10th of February, 1945, when the Japanese soldiers came there?

A Yes, sir.

Q Will you describe to the Commission in your own words just what happened there on that occasion?

A On the afternoon of February 10th, when we were about to have our supper, we heard shooting outside. Miss Andaya, one of our Red Cross women, went out to investigate and brought in a child and a woman who had been shot. We brought the two cases into the dispensary for care.

GENERAL REYNOLDS: Will you ask the witness to speak more slowly, please. Will you repeat the answer to that question.

Q (By Captain Hill) Just start at the beginning again so that the Commission can hear. They could not understand.

A On the afternoon of February 10th around 6 o'clock, when we were about to start our supper, we heard shooting outside. Miss Andaya, one of our nurses, went out to find out what was going on. A woman and a child was taken in who had been shot by the Japanese. We brought the girl, the child and the woman in the dispensary for treatment. Miss Andaya went out then to investigate what was going on. Dr. De Venecia, our physician, and myself prepared to treat with oxygen. When we were about to start we heard some more shooting, howling and crying of children and women. Dr. De Venecia told me to stop, because we were suspecting that something was going on in the next room of the building. I covered the patient and then went out of the dispensary. When we were at the door more shooting and howling of children was heard. I then proceeded to the place where the noise was coming from, but Dr. De Venecia and myself went next door to the office, and Dr. De Venecia hid behind the

steel cabinet and I hid behind the table.

When we were in our hiding place two Japanese came in. I don't recognize whether they were officers or soldiers, but they came in the place where we were in. I saw the Japanese look at Dr. De Venecia and then the girl, Erlinda, who was kneeling beside Dr. De Venecia, told the Japanese that he was a doctor. The Japanese was ready to shoot the girl, but she pleaded that she was a nurse. The Japanese looked back to the companion that he had, and after talking he asked who was the man besides her. He said he was a doctor, a Red Cross doctor. The Japanese stood and shot Dr. De Venecia twice, and then the gun was no longer loaded. They loaded the gun, and while they were loading the girl, Erlinda, hid under the cot, and the Japanese bayoneted the girl. After that the Japanese proceeded around the other room. I heard that they were killing some of the patients and some people in there, because we heard howling of people as they passed.

COLONEL HENDRIX: We would like for the witness to repeat what she said when she stated "I heard" something.

GENERAL REYNOLDS: Will you repeat that, please.

A (Continuing) After bayoneting the girl who hid under the cot they proceeded around the room, and then I heard -- I could not see them, but I heard women and children moaning. So I presumed that they must be killing and bayoneting the rest of the people in that room.

COLONEL HENDRIX: If it please the Commission, I have an objection to make at this time as to the statement made by the witness with respect to what she presumes and what she heard as

to statements of other people. If she heard some sounds, of course she can testify about those sounds, but I believe the witness stated something about a presumption, and I do not believe that under the rules of evidence this witness should be allowed to testify as to a presumption on her part.

GENERAL REYNOLDS: Will you repeat that?

THE WITNESS: I heard shooting.

Q (By Captain Hill) What else did you hear besides the shooting?

A Moaning and crying.

Q Did you see the Japanese shoot or bayonet any of the other people in the room besides those you have told us about?

A I did not see, but I heard shooting and moaning only.

Q Can you tell the Commission approximately how many people in the office and dispensary part of the building where you were bayoneted or shot by the Japanese?

A The only ones I saw were Dr. De Venecia and then the girl under the cot.

Q Do you know whether there were others in the room shot or bayoneted?

CAPTAIN SANDBERG: Will the witness repeat the answer to the last question, please?

GENERAL REYNOLDS: Since we were interrupted, I would like to ask if the Defense withdraws the objection to the testimony in view of her subsequent statement?

COLONEL HENDRIX: For the present, sir, yes; we withdraw the objection.

Q (By Captain Hill) Do you know how many people were killed, either bayoneted or shot, in the room which you used as

the office and the dispensary?

A Around ten.

Q How long did the Japanese remain in that room?

A Around five minutes.

Q Do you know where they went from there?

A I heard footsteps upstairs. They must have gone probably up the building.

Q After they left that room did you hear any other noises in the building?

A After ten minutes --

Q Did you hear any other noises in the building after they left that room?

A After they left we heard two Japanese people speaking outside the building on the street.

Q How long did the Japanese remain in the building?

A After they counted the dead I think they left, because I did not hear any more until they went outside.

Q At the time the Japanese came into your room were any of the civilians in that room armed in any way?

A I don't think any was armed.

Q Do you know whether the civilians in that building or anyone else had on that day or at any time previously used that building for military purposes?

A No, sir.

Q How long did you remain in the building after the Japanese left?

A The next morning. We were in our hiding place until the next morning, but we removed the dead the next day. We stayed there until the next morning.

Q And then left the building?

A And left the building Monday morning. We went across the street because the building was burning.

Q As you left the building did you have occasion as you went through the corridor and hall to observe dead bodies there

A Yes. I went out from my hiding place. Passing the corridor I saw Miss Andaya. She asked me to give her a stimulant. So I went to the dispensary to get the medicine. I saw three people in the dispensary dead, and in the room where I was there were three or four more people dead. And passing the girls' toilet there were some, I don't know, around eight German Jews. I think they were also dead.

Q Where were these German Jews located? In what part of the building were they?

A They were hiding in the ladies' room.

Q From what you saw in the building while you were administering to Miss Andaya and leaving the building can you tell the Commission approximately how many dead bodies you saw there in the building?

A More than 20.

CAPTAIN HILL: Cross examine.

CROSS EXAMINATION

Q (By Colonel Hendrix) Did you observe the type of uniform the Japanese were wearing?

A The color was greenish.

Q Did you notice the type of insignia on any of the uniform

A No, sir.

Q Could you tell whether there were any "anchors" on the caps?

A I didn't notice those.

COLONEL HENDRIX: That is all.

CAPTAIN HILL: That is all, unless the Court has some questions.

GENERAL REYNOLDS: No questions.

(Witness excused)

CAPTAIN HILL: Mr. Lewy.

JOHN K. LEWY

called as a witness on behalf of the Prosecution, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Captain Hill) State your name, please.

A My name is John K. Lewy.

Q Where do you reside, Mr. Lewy?

A At 1312 General Liena.

Q How old are you?

A 28 years old.

Q What is your nationality?

A I am a German refugee.

Q How long have you resided in the Philippine Islands?

A Since October 6th, 1939.

Q On February 10th, 1945, did you have occasion to go to the Philippine Red Cross Headquarters Building in Manila?

A Yes, sir.

Q What time of the day did you go there?

A I left around lunch time, or, I would say, around lunch time.

Q Did anyone accompany you there?

A Yes. There was a group of German refugees with me.

Q Can You give the Commission the names of those persons who accompanied you to the headquarters building?

A Yes, sir. There was Mr. and Mrs. Kohnke and their daughter Irene. That was my fiancée. There was Mr. and Mrs. Boss. There was Mr. and Mrs. Graetz, Mrs. Karger, and the house girl of Mrs. Graetz.

Q Don't talk quite so fast, please.

A All right, sir.

Q Is that all?

A Yes, sir.

Q And how many?

A There were nine refugees and one housegirl. That makes ten in all.

Q When you got to the Red Cross Building what did you do?

A Well, we knocked at the door and, you see, our intention was to go down to Pasay.

Q Just tell us what you did when you got to the building.

A All right, sir. We knocked at the door and the nurses let us in and said "We will be safe here."

Q Why did you go to the Red Cross Building?

A We tried actually to go to Pasay, because Mr. Graetz had some friends down there, but the Japanese sentries on 10th Avenue didn't let us cross the street. One of the officers even drew his pistol. Well, I don't know if he wanted to shoot, but anyway he didn't let us cross the road, and he pointed with his finger over to the Red Cross Building. That is how it happened that we went over there.

Q Were you there in the building on the evening of that day when four Japanese came to the building?

A Yes, sir.

Q About what time was that?

A Well, it was on the 10th of February. It was about 5:30 in the afternoon.

Q And in what part of the building were you when these four Japanese came to the building?

A My friends and I were in the ladies' toilet. That was our living quarters.

Q Tell the Commission just what took place after the Japanese came to the building.

A The Japanese started shooting and bayoneting the people. That is what I saw.

Q How many Japanese came into the room where you were?

A Three of them.

Q Were they officers or enlisted men?

A There was one officer and two soldiers.

Q How could you tell that the one was an officer?

A He had an insignia on his left chest; he carried the pistol and the saber, and I think he was an officer.

Q In the room where you were how many people were there?

A There was a group of German Jewish refugees. That makes ten. And there was one small Filipino girl. I don't know how she came in there.

Q Tell the Commission what happened when these three Japanese came into your particular room.

A Yes, sir. I saw them coming in as I ran downstairs to the ladies' toilet to warn my friends to hide, but they were right after me, and as soon as I was inside the toilet they started shooting. They got first Mr. and Mrs. Kohnke, and as

Mr. Kohnke fell down I lay next to him. They shot at me, too, but they missed me. They got then Mrs. Graetz in the right forearm, and I think they shot Mr. Graetz in the right abdomen. He tried to get up again, but he was bayoneted. Mr. and Mrs. Boss were in the first toilet compartment, and they asked for mercy, but they were bayoneted. I went there in the second toilet compartment to hide myself. I put my chest and head between the toilet and the wall and I lay with my back and legs on the toilet and on the wooden cover. I saw a Japanese soldier coming in with a fixed bayonet, and he stabbed me once below my right hip and he got it out and stabbed me again, and it must have gone right through the skin and it hit the board that I was laying on, and he apparently couldn't get it out again, and he started moving on the left and right, and then he got it out, and he left and I fainted. That was all I saw.

CAPTAIN HILL: I ask that this be marked Prosecution's Exhibit No. 14.

(Photograph of bayonet wounds was marked Prosecution Exhibit No. 14 for identification.)

Q (By Captain Hill) I hand you Prosecution's Exhibit No. 14, and ask you to tell the Commission what it is, if you know.

A These are the bayonet wounds that I received at the hands of the Japanese sergeant that day at the Red Cross Building.

Q Do you know when that picture was taken of you? About when?

A That was about three months ago.

Q To refresh your recollection, was it taken on May 15th, 1945?

A It might have been May 15th, 1945. Yes, sir.

CAPTAIN HILL: We offer in evidence Prosecution's Exhibit No. 14.

GENERAL REYNOLDS: Is there objection by the Defense?

COLONEL CLARKE: No, sir.

GENERAL REYNOLDS: There being no objection, it will be received in evidence.

(Prosecution Exhibit No. 14 for Identification was received in evidence and so marked.)

Q (By Captain Hill) Could you tell which branch of the Japanese Imperial Forces the three Japanese that you saw belonged to?

A I believe that they did belong to the army because they had a brown steel helmet, brownish uniform and brownish legging and the officer, he had an insignia on his left chest, some silver; I don't know exactly. I was too excited to see distinctly.

Q How long did these three Japanese remain in this ladies' toilet room?

A Well, I don't think that the whole murder lasted longer than ten minutes. I was very excited. I couldn't tell exactly.

Q After they left the toilet room did you hear them leave the building?

A I did not hear them leave the building, no.

Q How long did you remain in the building after you were bayoneted?

A I stayed in that building that night. The next morning I left through a small door. It was an annex, a small warehouse. That was the 11th.

Q And how long did you remain there in that annex?

A I stayed in that annex another day and another night. That makes the 13th. I went out of there on the 13th in the morning because the building next to me was on fire.

Q Of the persons that you have told the Commission that you saw shot or bayoneted in that room, how many died as the result

A Well, all of them but me -- and the girl, of course.

Q When you left the main building to go to the bodega or warehouse, did you observe any dead bodies in the corridor or other parts of the building?

A When I left the building just behind that door was Mrs. Karger laying. She was shot.

Q I mean other than those in the room there about which you have already told us.

A But I did not see them when I left. I saw them in the night when they were sleeping there, and there were some kids laying there on the chairs who were dead.

Q You saw them that night?

A Yes, sir.

Q Can you give the Commission an estimate of about how many dead bodies you saw there in the building altogether, including those in the room where you were?

A I saw about 13 dead people in all.

Q 13 in all?

A Yes. I saw them.

Q Can you give the Commission an estimate of how many people you think were killed in the Red Cross Headquarters Building on the 10th of February, 1945, by the Japanese?

A Well, I think it must have been about 80 people, because that night when I was sleeping there nobody could have gotten

out, and there was a deadly silence in that building. There was no noise whatsoever.

Q How many did you say?

A About 80.

Q "80" or "18"?

A I said about 80.

Q 80?

A Yes, sir.

CAPTAIN HILL: Cross examine.

CAPTAIN REEL: No questions.

CAPTAIN HILL: That is all, Mr. Lewy.

(Witness excused)

CAPTAIN HILL: Mr. Juan.

JUAN P. JUAN

called as a witness on behalf of the Prosecution, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Captain Hill) Please state your name.

A My name is Juan P. Juan.

Q Where do you reside, Mr. Juan?

A I reside at 1312 General Luna Street.

Q Where is that with reference to the former Philippine Red Cross Headquarters Building?

A It is just next door, back of the former Philippine Red Cross Building.

Q The building that was used for that purpose on 10 February 1945?

A (No response.)

Q You are next door to the building that was used as the Philippine Red Cross Headquarters in early February of this year?

A Yes, sir.

Q How old are you?

A I am 47 years old.

Q What is your business or profession?

A I am not in any profession, but I have been engaged in business, in the Educational Alliance, since 1935.

Q On 10 February, 1945, did you have occasion to go to the Red Cross Building adjacent to your home?

A Yes. I was practically there the whole day on February 10th.

Q Tell the Commission the occasion for your going to that building that day.

A As my house was just beside the Red Cross Building, and the other house of mine was just 50 meters away from the place, on February 9th, in the evening, we had no other place to go than the house that belongs to me at the back of the Philippine Red Cross. So we slept there on the night of February 9th. On February 10th intense shelling was going on. Shells were dropping around my yard and my building was already hit. So we were in commotion, and my wife and I decided to go to the Philippine Red Cross Building, especially when we accepted an invitation from Mr. Farolan, then in charge of the Philippine Red Cross. So after breakfast on February 10th I brought my whole family inside the Philippine Red Cross, because it was being used as an emergency hospital. My daughter then needed the doctor's assistance, so I took the opportunity to bring the family inside the Red Cross Building, especially when my daughter had just delivered and needed doctor's assistance because she was weak due to hemorrhage and exhaustion while running away from the other building that I have which was burned the night before.

Q Now, just a minute. Let me interrupt you. Tell the Commission how many members of your family went to the Red Cross Building that day.

A Fifteen altogether.

Q Fifteen?

A Yes.

Q And did all of the 15 remain in the building throughout the day and evening?

A A few of us happened to step outside late in the evening of that day, when it was almost dinner time, before dark, because our food was prepared outside of the Red Cross, inside my yard.

Q And how many members of your family remained in the building when the few of you went back to your yard?

A Ten of them remained inside the Red Cross Building.

Q Give the Commission the names of those ten members of your family that remained there in the building.

A There were my wife, Lucia Santos de Juan; my daughter, Paulina Juan Zabala, who had the baby; my older daughter, Juanita Juan Marcelo, with four children; and my daughter-in-law, Nenita Recio de Santos, with two children.

Q After you returned to your yard to prepare the food did you hear any noise or anything unusual from the direction of the Red Cross Building?

A Yes. About almost less than an hour after I left the Red Cross Building I was standing at the back yard supervising the cooking. Suddenly I heard shots from inside the Red Cross and simultaneously with the screaming of women. Then more shots followed and more screaming was heard.

My reaction was that the Japanese were killing the German refugees -- German-Jew refugees -- whom I saw inside the building when I left. My reaction was that the German-Jews were being killed, because I remember a statement of one of the Japanese officers that the Orient should be for the Orientals, and that there should be no mixed blood.

Q Now, just a minute. Did you know the name of that Japanese who made that statement to you?

A The second name is Captain Watasaki.

Q And when did he make that statement to you?

A That was more or less two or three months before the massacre.

Q Did you know this Japanese captain personally?

A I happened to know him several months before that when he was introduced to me by a certain friend of mine in Paranaque.

Q Just what were the circumstances under which you had the conversation with this Japanese captain?

A As he used to visit me in the house time and again, we happened to mention about the last war, the war that was going on then, and in the course of our conversation he said that eventually the war will soon end; that the Japanese --

COLONEL HENDRIX: If it please the Commission, at this time we would like to interpose an objection to this particular answer, and any line of questioning, on the ground of hearsay, as to what this particular witness heard another witness state; and further, that it is violative, and not in accordance with Article of War 38 in the Manual for Courts Martial and the rules of evidence in criminal cases in the District Courts of the United States. This witness is attempting to state what a captain in the Japanese Army has told him. That is hearsay. The captain should be here before this commission to testify as to whatever he did say.

MAJOR KERR: If the Commission please, this is a very important question. During the course of this trial the Commission will receive, or at least we will offer to the Commission, a considerable quantity of hearsay evidence. I

advert once again to the regulations which provide that this Commission shall receive such evidence as it believes to have probative value.

The Commission is not a jury to be insulated mentally against every possible suggestion. You gentlemen are certainly in a position to evaluate hearsay, or any other type of evidence that may be of value to you. The closest analogy on this question to an executive body such as this, a military commission, is afforded by an administrative tribunal. I believe counsel will grant that under American practice the administrative tribunals have been held by our courts to have a very broad leeway as to the receipt of evidence of this sort, and that they may receive hearsay evidence if they believe it will help them in the determination of the issues before them.

If that is true as to an American administrative tribunal under the statutes applicable to those tribunals, certainly it is true as to this Commission. And I most earnestly submit, sir, that the Commission will deny itself some extremely illuminating, trustworthy, and helpful evidence, which certainly would have probative value, I am sure, in the mind of any reasonable man.

I certainly object to any effort by counsel to prevent the introduction of so-called hearsay evidence in this proceeding. Furthermore, there are about 57 different varieties of exceptions to the so-called hearsay rule, and if the Commission has to get into that maze of legal technicalities as to what is and what is not admissible as hearsay, we will be here for months.

COLONEL HENDRIX: If it please the Commission, it is not

the purpose of the Defense to delay the case or to drag it out, but we do want the case to be tried along the rules of evidence as have been approved by the District Courts of the United States. We base that on this:

Article of War 38 states: "The President may, by regulations which he may modify from time to time, prescribe the procedure, concluding modes of proof, in cases before courts martial, courts of inquiry, military commissions and other military tribunals, which regulation shall, in so far as he shall deem practicable, apply the rules of evidence generally recognized in the trial of criminal cases in the District Courts of the United States, provided that nothing contrary to or inconsistent with these Articles shall be so prescribed; provided, further, that all rules made in pursuance of this Article, shall be laid before the Congress annually."

I do not concur with the Prosecution as to his contentions of administrative practice and procedure in the United States. In one breath the Prosecutor states, "We do not have any rules and regulations." Then in another breath he attempts to write in the Massachusetts law, and certain rules and regulations of administrative procedure.

We take this position: Congress, by virtue of the Constitution of the United States, passed certain laws called the Articles of War. Article 38 is one of the statutes that is a part of the Articles of War. That particular Article of War gave the President of the United States the power to do two things: One was to describe rules of procedure and make rules of evidence for courts martial, and the other for

military commissions.

This Manual pertains largely to courts martial. The President of the United States has so acted, so far as courts martial are concerned, but from the record in this case, from what has been brought before this Military Commission, there is nothing on this subject as to the actions of the President of the United States for prescribing rules and regulations as to evidence.

In the absence of action from the President of the United States it surely was the intent of Congress that if the President did not do anything about prescribing such rules, the rules of evidence generally recognized in the trial of criminal cases in the District Courts of the United States must apply. Let us assume that the President did act on this subject. If he had, he would have to go by the rules in the Federal Court, so far as possible.

There has been presented to this Commission a letter that the Prosecution has mentioned on numerous instances and no doubt will, throughout this trial, which letter is dated the 24th of September, 1945, concerning the regulations governing the trial of war criminals, and so forth. We contend that this particular letter setting out the procedure such as evidence, bringing in hearsay, bringing in affidavits, bringing in what witnesses heard from other people, is absolutely null and void; that this entire letter is null and void; that General MacArthur, in preparing this letter, did not have authority from Congress to make any rules or procedures of a military commission. The only man in the world that has such power from Congress is the President, and he has not done

anything about prescribing any rules, as far as the record in this case shows.

We insist that any hearsay as to this witness, or any other witnesses, must be ruled out and should not be allowed in evidence. Furthermore, we contend that as far as the rules are concerned, they should not go by this letter issued by General MacArthur, but by the rules of procedure of the Congress of the United States.

It comes down to this: Congress has made Article 38. Apparently the Commission will have to decide whether we are going to decide the evidence on what Congress has passed, or whether we will go by a letter that has been prepared by General MacArthur and which has directed General Styer to carry on this trial. We contend that the hearsay should be stricken and not allowed.

GENERAL REYNOLDS: Subject to objection by any member of the Commission, the objection of counsel for the Defense is not sustained.

COLONEL HENDRIX: We except to that, sir.

GENERAL REYNOLDS: As to the stating of exceptions, the proceedings of this Commission, unlike that of civil courts, is automatically subject to review. All rulings and decisions and findings are subject to review of the appointing authority. Accordingly, the statement of exceptions from counsel is not in order and will not be recognized by this Commission.

COLONEL CLARKE: If the Court please, that is new to me. If that is the contention of the Prosecution, if he can show us the authority, we are willing to abide thereby.

GENERAL REYNOLDS: The Prosecution will continue.

Q (By Captain Hill) Mr. Juan, I believe my last question was that I asked you to tell the Commission the circumstances under which you had the conversation with the Japanese captain which you related to the Commission.

A On several occasions the Japanese captain which I mentioned used to visit my family. I don't remember exactly what particular visit was that when he mentioned to me that the Orient should be for the Orientals, and that there should be no mixed blood. But we happened to talk about what would be the outcome of the war, and he said that it is not far when the war will end and people in the Orient will live in peace without being disturbed.

Q And what position, if you know, did this Japanese captain hold in your particular neighborhood with the Japanese Imperial Army?

A The last time that I know of his outpost was in Santa ~~Isa~~, and I think he was connected with the construction of railroads.

Q Did he say anything to you about where he had gotten his authority for the making of such a statement?

A He didn't say anything about it.

Q Continue with your story of what happened there at the Red Cross Building and in your yard after you heard the shots and screams about which you have testified.

A As I heard more shots and more screaming of people I told the rest of my children who were outside the building with me to get inside the building and not to come out. A few of us men outside posted ourselves around the building so we could see whether the Japanese were coming or not. One by the name of Romano Abad, who is a brother to Patrocinio Abad, one

of the victims in the Red Cross, he stayed near the Red Cross Building, and when he saw a certain Japanese with fixed bayonet climb up the fence he ran to us and told us what he saw.

Q Did this Japanese come on over into your yard over the wall?

A He did not continue to get into my yard because he didn't see anything there. We were all hiding.

Q When did you first learn what had actually happened over in the Red Cross Building?

A At about dark time that evening one of our maids, Leticia by name, came into the air raid shelter, and she was pale and looked very much afraid and could hardly talk. And so we ask her, "What happen?"

Q Just let me interrupt you. Where had she come to the shelter from?

A From inside the Red Cross Building.

Q Go ahead.

A And then she burst, cried, and could hardly get her words, and told us that the Japanese killed everybody inside the Red Cross Building, including my wife and all my grandchildren. That was the first time I learned about the tragedy that happened to my family.

Q Did you go to the Red Cross Building later?

A I attempted to go that evening, February 10th, about midnight, but the rest of my children who were with me inside the air raid shelter prevented me from getting out of the air raid shelter, especially when one of the survivors told us that there were still Japanese soldiers in front of the Red

Cross Building. So I did not go any more and waited the following day.

Q Did you go there the following day?

A On the following day the shelling was very intense. We could hardly get out of the air raid shelter, and besides, the buildings all around us were on fire.

Q Did you go to the building later?

A On the following day, on the evening of the 12th, I, with my son-in-law, Jose Zabala, whose wife was killed, went inside the Red Cross Building then, after two days, after the massacre.

Q Was it light or dark when you went to the building?

A It was not exactly dark yet. There was still plenty of light. But it was getting dark.

Q When you went into the building did you see any dead bodies there?

A I saw plenty of dead bodies on the corridor as I proceeded to the room where I thought my wife and children were.

Q Can you give the Commission an estimate of how many dead bodies you think you saw in the corridor and in the room where you thought your wife's body would be?

A My approximate estimate is about 20 bodies.

Q In those two places?

A Yes.

Q Were you able to identify and recover the body of your wife or any other members of your family?

A On that evening of February 10th I only saw the bodies of my daughter, Paulina. I tried to look in the same room where my daughter was for the rest of my family, but I could not find them.

Q Were you able to recover any bodies there and take them out of the building?

A We were able to recover the 10-day baby of my daughter.

Q Any other bodies?

A I could not recover any more excepting the bones of the rest of the family.

Q Do you know whether any other bodies were identified and recovered from the building?

A The daughter, the 10-month daughter of Gracio Noble was also recovered and brought into my yard.

Q Mr. Juan, how long did you remain at your home adjacent to the Red Cross Building after the 10th?

A Four days, as we left the premises on the 14th -- February 14th.

Q Were you present in your home when the Red Cross Building was destroyed?

A Yes, I was.

Q Will you tell the Commission how that building was destroyed?

A On the early morning of February 14th, or when I was at the back yard of my building, I saw flickering lights inside the room where the manager, or Mr. Faralon, was, as I was actually in that room there. I had been observing what was going on, whether there was somebody inside the building, but I didn't notice anybody. And for several minutes, approximately less than half an hour, I noticed that very suddenly the flickering light burst into flames, and that part of the building where my daughter was was then enveloping in flames.

Q Were any members of the Japanese forces in your

neighborhood at the time the building burned?

A I did not notice any, but I noticed several soldiers on that street in front of the Red Cross Building.

Q On that day?

A On that day.

Q Do you know whether or not the Red Cross Building was hit by any shells prior to the time that you saw it burn?

A I didn't notice any.

CAPTAIN HILL: I will ask that this be marked Prosecution's Exhibit No. 15 for Identification.

(The photograph of the Philippine Red Cross Building was marked Prosecution's Exhibit No. 15 for Identification.)

Q (By Captain Hill) I will hand you Prosecution's Exhibit 15 and ask you to state to the Commission what it is, if you know?

A This is the former Philippine Red Cross Building as it stands now, after it had been burned.

CAPTAIN HILL: We offer Exhibit 15 in Evidence.

GENERAL REYNOLDS: Is there objection by the Defense?

COLONEL CLARKE: None, sir.

GENERAL REYNOLDS: There being no objection, it is accepted as evidence.

(Prosecution's Exhibit No. 15 for Identification was received in evidence and so marked.)

Q (By Captain Hill) On the 14th, the day that you saw the building burned, were those persons that you saw in front of the headquarters building Japanese soldiers?

A They were Japanese soldiers, because they had the uniform

of the Japanese, and no other civilians could roam around that building there.

Q They wore the uniform of a Japanese soldier?

A Soldier.

CAPTAIN HILL: I ask that this be marked Prosecution's Exhibit No. 16.

(The photograph of ruins inside Philippine Red Cross Building was marked Prosecution's Exhibit No. 16 for Identification.)

Q (By Captain Hill) I will hand you Prosecution's Exhibit No. 16 and ask you to state what it is, if you know?

A This is part of the ruins of the Philippine Red Cross inside the building. I think this must be a portion of the toilet.

CAPTAIN HILL: We offer in evidence Prosecution's Exhibit No. 16, sir.

GENERAL REYNOLDS: Is there objection by the Defense?

COLONEL CLARKE: None, sir.

GENERAL REYNOLDS: There being no objection, it is accepted in evidence.

(Prosecution's Exhibit No. 16 for Identification was received in evidence and so marked.)

CAPTAIN HILL: I ask that this be marked Prosecution Exhibit No. 17 for Identification.

(The photograph of grave of 10-day baby was marked Prosecution's Exhibit No. 17 for Identification.)

Q (By Captain Hill) I hand you Prosecution's Exhibit No. 17 for Identification and ask you to state what it is, if you know, Mr. Juan?

A This is the photograph of the grave of the 10-day baby of my daughter, including the 10-month baby of Corazon Noble, inside my yard at the back of my house.

CAPTAIN HILL: We offer in evidence, Prosecution's Exhibit No. 17, sir.

GENERAL REYNOLDS: Is there objection by the Defense?

COLONEL CLARKE: If the Court please, on these various exhibits, unless we state an objection, if the Court is satisfied, it will be admitted without any objection.

GENERAL REYNOLDS: I didn't clearly understand.

COLONEL CLARKE: On these exhibits that are now read, unless we state an objection, will the Court understand that we have no objection, without having to go through it each time?

GENERAL REYNOLDS: Very well.

(Prosecution's Exhibit No. 17 for Identification was received in evidence and so marked.)

Q (By Captain Hill) Mr. Juan, you were in your home adjacent to the Philippine Red Cross Headquarters Building from the time the fighting in Manila between the Americans and the Japanese began, until February 14th, is that correct?

A Yes, sir.

Q And during that time, and up until the 10th of February, the night of 10 February 1945, was the Red Cross Headquarters Building used for any military purpose by the the Filipinos or by the Americans?

A It was not used for military purpose because it was then used as an emergency hospital.

Q Did you observe, on the 10th of February, whether or not

the Red Cross insignia or conventional sign appeared upon the outside of the Red Cross Building there?

A Yes. I noticed that even at the back of the building there was the Red Cross sign.

Q Did that sign appear on other sides of the building?

A Yes, that appeared.

Q When you went into the Red Cross Building on the 10th were any of the people in the building that you saw armed in any way?

A No. There was no arm whatsoever.

Q Were all of the people in the building non-combatant civilians?

A Yes. They were all non-combatant; mostly children, refugees, and patients, who were then being treated by nurses and doctors.

Q From your knowledge and observation, after the murders had taken place, can you give the Commission an estimate of how many persons lost their lives there in the Red Cross Building at the hands of the Japanese on the 10th of February, 1945?

A I cannot exactly tell the number, because I didn't get inside the other rooms.

Q Can you make an estimate?

A I figure it to be approximately around 30 to 40.

CAPTAIN HILL: Cross examine.

CROSS EXAMINATION

Q (By Captain Reel) When did the fighting in Manila begin?

A Only in our place I can state when, because we couldn't go outside of our yard.

Q Well, you told us a moment ago that you were at home from the beginning of the fighting until the 14th of February. All I want to know is what you mean by "beginning of fighting." When did it begin?

A I only learned that the American forces were already on the north side of the River on the 3rd.

Q Yes. Did you see any American soldiers between February 3rd and February 10th?

A The first time I saw the American soldier was on February 13th, when they came around my yard.

Q Were there any Filipino soldiers in your neighborhood at that time?

A I didn't see any Filipino soldiers.

Q Was there aerial bombardment going on after the 3rd of February?

A I didn't notice. Mostly artillery shells.

Q Artillery shells. And when you say you went to the air raid shelter, that was for protection against artillery shells?

A Yes.

Q And when did this artillery shelling begin, approximately?

A In our neighborhood the shelling began on February 9th, in the morning.

Q In other words, the day before this incident at the Red Cross Building the shelling began?

A Yes.

Q And your home building, I believe you said, was hit by a shell that day?

A No. The first building where I used to live before was burned by the Japanese on that same night.

Q That was the 9th of February?

A That was the 9th of February.

Q Didn't you say that the building was hit by shells?

A The other building at the back of the Red Cross was hit by shells on February 10th.

Q February 10th. I see. At the time you saw the flames in the Red Cross Building -- I think you said a "flicker" -- did you see any persons in that room where the light was flickering?

A I didn't see any.

Q Did you see anyone in the Red Cross Building at all after the flames started coming out of it?

A I didn't see any.

Q You told us that you saw some Japanese soldiers in front of the building. Just when, with relation to the fire, did you see them in front of the building?

A I saw the Japanese soldiers before the fire took place.

Q How long before the fire took place?

A On February 12th, when I went inside the building, I looked at some soldiers in front of the building.

Q And what day did the fire occur?

A The fire occurred in the early morning of February 14th.

Q So that it was two days before the fire that you saw the Japanese soldiers in front of the building?

A Yes. But we notice continuous movement of Japanese soldiers on the street just in front of the building continuously after the fire.

Q Did you see Japanese soldiers in front of the building after the 12th of February?

A Not exactly in front of the building.

Q You mean they were active in the City?

A Yes.

Q They were active in the area?

A Yes.

Q All right. Will you describe for us the Japanese soldier's uniform?

A I only noticed that the soldiers were dressed in olive green.

Q Any insignia that you remember?

A I didn't notice any more.

Q Will you describe for us the uniform of the Japanese sailor?

A Japanese?

Q Sailor. One who is on a boat; a sailor.

A I didn't see any Japanese sailor.

Q Let me ask you this: Do you know what the uniform of a Japanese sailor looks like?

A I am not familiar with the uniform of the Japanese sailor.

Q If I told you that the Japanese sailors wore the same colored green as the Japanese soldiers, would you then express some doubt as to whether or not those persons you saw were soldiers or sailors?

A I could only identify they are sailors when they show their cap with the anchor sign on it.

Q Ah, fine! So that you do know that a Japanese sailor has an anchor on his cap?

A That is my identification.

Q And what does a Japanese soldier have on his cap?

A Star.

Q And did you see the caps of these men who were in front of the Red Cross Building on the 12th of February?

A I didn't notice any more the caps.

CAPTAIN REEL: That's all.

CAPTAIN HILL: That's all.

(Witness excused.)

CAPTAIN HILL: That is the last witness on this case.

GENERAL REYNOLDS: The Commission will recess for five minutes.

(Whereupon a short recess was taken.)

GENERAL REYNOLDS: The Commission will come to order.

The Prosecution will proceed.

CAPTAIN WEBSTER: Sir, the next case is commonly called the Dy-Pac Lumber Company case, the reason for which is that that is the place or location of the killings which we are to establish. This case covers paragraph 16 in the Bill of Particulars, paragraph 93 in the Supplemental Bill of Particulars, and paragraph 25 in the Bill of Particulars.

The evidence will show that on the 13th day of January of this year, the Japanese who were stationed in the navy billet of the Dy-Pac Lumber Company gathered civilians, took them to the lumber yard and executed them; that thereafter on the 2nd --

GENERAL REYNOLDS: (Interposing) I will interrupt the Prosecutor and say that the Court will not listen to testimony or discussion of Bill of Particulars number 93, which appears in the supplementary paper, at this time.

MAJOR KERR: Sir, does that mean that the Commission will not take up at this time any of the cases listed in the Supplementary Bill of Particulars?

GENERAL REYNOLDS: That was the ruling made this morning, to permit the Defense to have time to prepare itself on the supplementary bill of particulars.

MAJOR KERR: Well, sir, it will be necessary, then, to recall the same witnesses to testify to the balance of this particular incident.

GENERAL REYNOLDS: So be it.

MAJOR KERR: And I submit, sir, that the Defense, sir, has had full notice on that particular case, at least, because it was named in the original Bill of Particulars.

GENERAL REYNOLDS: The Commission has ruled. We will not hear evidence or statements on number 93 until the Defense has had time to prepare its case.

MAJOR KERR: How long will that be, sir? Because we have to make arrangements, if the Commission please, so that we may rearrange the presentation, or the order of the presentation of our cases; and if I may know how long that "armistice" is to apply, I may then arrange accordingly.

GENERAL REYNOLDS: Has the Defense any comment to make?

CAPTAIN REEL: If the Court please, we understood this morning that after the Prosecution's case was in on the 64 Particulars, that then we would be given some time to prepare on that.

GENERAL REYNOLDS: That is correct.

CAPTAIN REEL: Then I believe, based on our experience with the first 64 Particulars, that we will require two weeks to prepare ourselves on the 59 new ones.

GENERAL REYNOLDS: There is nothing further to say.

CAPTAIN WEBSTER: Call the first witness, Mrs. Mabagos.

FLORA REYES MABAGOS

called as a witness on behalf of the Prosecution, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Captain Webster) Will you state your name, please?

A Flora Mabagos.

Q And your age?

A 22.

Q Where do you live?

A 1247 Juan Luna Street, Manila.

Q Where did you reside on or about the 13th of January, 1945?

A 970 Juan Luna.

Q How far is your home from the property known as the Dy-Pac Lumber Company?

A About eight blocks.

Q Are you a married woman?

A Yes.

Q Is your husband now living?

A My husband was killed in the Dy-Pac area.

Q When was the last time you saw your husband alive?

A Last January 13th.

Q And where was he when you saw him?

A He told me that he will buy something; that is about 10 A. M.

Q Is that 10 A. M. on the morning of January 13th?

A Yes.

Q And where was he when you saw him at that time?

A He was crossing the street.

Q Where did you next see him?

A When he was at the Dy-Pac Lumber Yard.

Q How did you happen to see him at the Dy-Pac Lumber Yard?

A A neighbor told me that my husband has been tied up by the sentry, he was put in the Dy-Pac Lumber Yard, and when I went there I saw him.

Q How many other people were tied with your husband at the time you saw him there?

A Then I saw about ten persons.

Q In what manner were they tied?

A They were tied, their hands were tied behind them.

CAPTAIN SANDBERG: Sir, the Defense has not been able to hear the last several answers of the witness.

GENERAL REYNOLDS: I will ask the Prosecutor to exchange microphones with the witness, and see if that will help.

CAPTAIN WEBSTER: Would you speak into that, please?

(Handing microphone to witness.)

Will you read the last answer?

(Thereupon the question and answer referred to were read by the reporter.)

CAPTAIN SANDBERG: And what was the question and answer before that?

(The question and answer referred to read by the reporter as follows:)

"Q How many other people were tied with your husband at the time you saw him there?

"A Then I saw about ten persons."

Q (By Captain Webster:) Were all those persons tied?

A Yes, they were all tied.

Q Did you see any Japanese in and around the Dy-Pac Lumber Yard at that time?

A The Japanese sentry.

Q How many Japanese did you see?

A About two of them.

Q Can you state in what branch of the Japanese armed forces they were in? Were they army or navy?

A They were navy.

Q What led you to believe that they were in the navy?

A Because the person living across the Dy-Pac Lumber Yard told me that they were in the navy.

Q Did you notice or see any insignia of any kind on their uniforms?

A No, I did not notice.

Q When did you next see your husband?

A When he was at the Quiogue Funeral Parlor.

Q How did you know he was at the funeral parlor?

A Because my father found him in the river and brought him in to the funeral parlor.

Q Do you know where your husband's body was found?

A Ancarrage Street.

Q What was the condition of your husband's body when you saw it at the funeral parlor?

A There had been wounds, bayonet wounds, and he was shot at the heart.

Q Can you describe the wounds and where they were?

A The wounds in the arm had been shown, he had big bayonet wounds, and the lips had been slashed, also the throat (indicating) had been bayoneted.

Q Did you positively identify that body as being the body of your husband?

A Yes.

Q And when was it that you saw the body at the funeral parlor

A 15th of January.

CAPTAIN WEBSTER: Cross examine.

CAPTAIN SANDBERG: No examination.

CAPTAIN WEBSTER: Call the next witness.

(Witness excused)

CAPTAIN WEBSTER: Ricardo Mendoza.

Do you speak only Tagalog?

MR. RICARDO MENDOZA: Yes.

RICARDO MENDOZA

called as a witness on behalf of the Prosecution, being first duly sworn through Interpreter Pacifico Gojunco, was examined and testified as follows through the Interpreter:

DIRECT EXAMINATION

Q (By Captain Webster:) Please state your name.

A (Through the Interpreter) Ricardo Mendoza.

Q Your age?

A 18.

Q Where do you live?

A Misericordia.

Q Where did you live on and about the 3rd and 4th of February of this year?

A Zaragoza.

Q How far was your residence from the property of the Dy-Pac Lumber Company?

A I can't approximate.

Q Was it in the same neighborhood?

A Yes.

Q Were you taken to the Dy-Pac Lumber Company by the Japanese on or about February 3rd of this year, and remained there all night?

A Yes.

Q What did you see there the next morning?

A Bodies.

Q Did you observe any Japanese in or around the lumber yard at that time?

A Yes.

Q What branch of the Japanese armed forces did they belong to?

A Navy.

Q How do you know they belonged to the navy?

A Because they wore Marine uniforms.

Q Did you see any insignia of any kind on their clothing?

A Yes.

Q What insignia did you see?

A Anchor.

Q Well, at the time you saw those Japanese members of the armed forces at the Dy-Pac Lumber Company, did you see any civilians there?

A Yes.

Q How many civilians did you see?

A Only two.

Q What was their nationality?

A Filipino.

Q What were those two Filipino civilians doing?

A They were piling up the dead bodies.

Q Where were the Japanese at the time the two Filipino civilians were piling up the dead bodies?

A They were with them.

Q After the two Filipino civilians got through piling up the dead bodies, what happened?

A The two civilians were shot.

Q Who shot them?

A The Japanese.

Q Now, were those the Japanese you had previously described as belonging to the Japanese navy?

A Yes.

Q Will you state what date it was you saw those Japanese kill the two Filipino civilians?

A It was Sunday.

Q Do you know what date? In February?

THE INTERPRETER: He says, was Saturday night the 3rd of the month?

CAPTAIN WEBSTER: (After referring to calendar) Saturday was the 3rd.

A (Through the Interpreter) Then on the 4th.

CAPTAIN WEBSTER: Cross examine

CROSS EXAMINATION

Q (By Captain Sandberg) Now, what was the day on which this incident occurred?

A (Through the Interpreter) On the morning of Friday.

Q Of what month?

A February 2nd.

Q Now, were any artillery shells falling in that area at that time?

A None.

Q Had there been any air raids in that vicinity?

A There was.

Q Now, you didn't see this group of Filipinos who were being tied up; you didn't actually see them killed, did you?

A I saw only two, but the others I did not see.

Q You don't know how those others were killed, do you?

A I did not see because it was dark.

CAPTAIN SANDBERG: If the Commission please, we would like to ask the Prosecution whether the evidence of this witness and the previous witness are relative to the same

incident. Our notes of the testimony indicate that this witness testifies that the incident occurred on the 2nd of February and the previous witness testified that the incident occurred on the 13th of January.

CAPTAIN WEBSTER: They are not the same incident. The first incident was that which is contained, I believe -- that is the 13th of January, and was introduced under paragraph 25 of the Bill of Particulars, in order to show a plan for the extermination of the people in Manila, and it so happened that it occurred at the Dy-Pac Lumber Company.

The second incident was introduced under paragraph 16 of the Bill of Particulars, which is the killing of the two Filipinos which this witness has described.

CAPTAIN SANDBERG: If it please the Court, the Defense would like to state that it had no notice whatsoever of the incident testified to by the witness now on the stand; that paragraph 25 of the Bill of Particulars is a general allegation, simply referring to the period from the 1st of January, 1945, to the 1st of March, 1945, does not refer to the Dy-Pac Lumber Company, does not refer to any specific individuals. On the other hand, paragraph 16 of the very same Bill of Particulars does refer specifically to the Dy-Pac Lumber Yard, does refer specifically to the date of 4th of February, 1945, and it is submitted that under this Bill of Particulars, in view of the particularization of the incident on the date of 4th of February and the place of Dy-Pac Lumber Company, the Prosecution may not introduce evidence of any other incidents not covered by the Bill of Particulars.

CAPTAIN WEBSTER: Sir, this witness testified as to the

incident of the 4th of February. The previous witness testified as to the incident of the 13th of January, which the Prosecution maintained is covered by paragraph 25 of the Bill of Particulars.

CAPTAIN SANDBERG: To put it in the form of a motion, sir, the Defense moves that the testimony of the previous witness be stricken from the record; not of this witness.

MAJOR KERR: If the Commission please, we will have evidence from time to time which will, we believe, show to the Commission a deliberately formed and purposeful plan by the Japanese forces in this city to exterminate the civilians, and the Dy-Pac Lumber case, in so far as the witnesses that we will call this afternoon, will relate to that plan; it will show time and time again, at that particular place, that they brought them there, civilians, and massacred those civilians without any possible purpose except simply to exterminate them; and, as Captain Webster has stated, we would like to bring that in now under 25.

However, of course, we will be glad to abide by whatever the decision of the Commission may be.

CAPTAIN SANDBERG: Sir, in the 93 specification of the Supplemental Bill of Particulars, a specific and direct reference is made to an incident on the 3rd of February, 1945, in the vicinity of the Dy-Pac Lumber Yard, Juan Luna Street, Tondo, Manila. Apparently the Prosecution is attempting to evade the ruling of the Court that no evidence should be submitted on specifications contained in the Supplemental Bill of Particulars until the Defense has had an opportunity to prepare its case thereon.

MAJOR KERR: I am sure the Prosecution, at this time or in

the future, has no intent nor will make any effort to avoid or circumvent the rulings of the Commission, and that certainly is not our purpose or desire at this time.

GENERAL REYNOLDS: The Commission will recess for deliberation.

(Whereupon the members of the Commission retired in executive session.)

GENERAL REYNOLDS: The Commission directs the Prosecutor to discontinue the presentation of the sequence of events contained in items 16, 25 and 93 of the Bill of Particulars until the evidence can be presented in its full entirety.

CAPTAIN WEBSTER: Yes, sir.

MAJOR KERR: Then, sir, we must ask for a recess until tomorrow morning, because that so rearranges our schedule of arrangement of presentation of cases that the witnesses for the next case to come up are not here now. We will have to have them here tomorrow morning.

GENERAL REYNOLDS: In that case, the Commission will stand adjourned until 8:30 A. M. tomorrow morning in this building.

The Commission stands adjourned.

(Whereupon, at 1535 hours, 29 October 1945, the trial was adjourned until 0830 hours, 30 October 1945.)