

VOLUME I

RECORD OF TRIAL  
(5th Original Carbon)

in the case of

UNITED STATES

vs

K O J U T S U D A

Case Docket No. 65

MILITARY COMMISSION

Appointed by

Commanding General, Eighth Army

Tried at  
Yokohama Japan  
17 Sept. 1946 - 27 Nov. 1946

(1775)

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

30 January 1947

SUBJECT: Transmittal of Record of Trial

TO: Commanding General, 8th Army, APO 343

Transmitted herewith is the completed record of trial  
in the case of United States vs Koji Tsuda, tried by Military  
Commission.

*Clair F. Shumacher*  
CLAIR F. SHUMACHER  
Colonel Inf  
President

Incls.  
Vol I - Record of Trial  
Vol II - Exhibits, etc.



# MILITARY COMMISSION DATA SHEET

Name (including aliases) - Nationality - Military status at time of alleged offenses						
	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
1. Was the Commission ordered by proper authority?.....	✓					
2. Are all orders showing membership of the commission properly entered in record?.....	✓					
3. Are all official rules and regulations, or other directives, governing the proceedings of the court incorporated in the record?.....	✓					
4. Were there less than three members detailed or present at any meeting?.....		✓				
5. Was the law member designated by the convening authority?.....	✓					
6. Did the commission have jurisdiction of the person and the offense?.....	✓					
7. Does the record show the place, date and hour the commission convened?.....	✓					
8. a. Are all members of the commission and personnel of the prosecution and defense accounted for as present or absent?.....	✓					
b. If absent is reason for absence given?.....		<i>none absent</i>				
c. Was accused asked whom he desired as counsel?.....	✓					
d. In case of filling of vacancy among members of the commission or alternates after trial has begun, was the substance of all proceedings had and evidence taken made known to the member or alternate in open court before the trial proceeds?.....		<i>not applicable</i>				
9. Was accused given an opportunity to challenge for cause any member of the commission?.....	✓					
a. Was each member challenged for cause sworn for his examination on the challenge?.....		<i>not applicable</i>				
b. Was the action of the commission upon challenges regularly and properly taken?.....		<i>not applicable</i>				
10. Was the commission sworn?.....	✓					
11. Was any officer sitting as a member of the commission the accuser, a witness in the case, or did any such officer personally investigate the case?.....		✓				
12. Were the personnel for the prosecution sworn?.....	✓					
13. Were the reporters sworn?.....	✓					

## (Military Commission Data Sheet Cont'd)

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

(Military Commission Data Sheet Cont'd)

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

William A. Brady  
 Prosecutor  
 Major - Ord Dept

20 May 1947  
 Date

Staff Judge Advocate of Convening Authority

Legal Advisor of Confirming Authority



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

\*\*\*\*\*

BEFORE A MILITARY COMMISSION	)	UNITED STATES OF AMERICA
CONVENED BY AUTHORITY OF	)	
THE COMMANDING GENERAL	)	VS
UNITED STATES EIGHTH ARMY	)	
July 1946	)	KOJU TSUDA

\*\*\*\*\*

CHARGE

That during the period from about 15 May 1943 to about 31 August 1945, at Sendai Prisoner of War Camp, Branch No. 1, also referred to as Sendai Branch Camp 1-B, located near Yumoto and Onahama, Fukushima-Ken, Honshu, Japan, KOJU TSUDA, also known as the "Frog", then a civilian employed by, and serving with, the Armed Forces of Japan, a nation then at war with the United States of America and its Allies, did violate the Laws and Customs of War.

#### SPECIFICATIONS

1. That in or about February, 1945, the accused, Koju Tsuda, did willfully and unlawfully, mistreat, abuse and cause the death of one Corporal James L. Scott, a British Prisoner of War, by refusing him medical treatment, and by cruelly and brutally beating and kicking said Corporal Scott who was then sick.
2. That on an occasion, between 1 June 1945 and 31 July 1945, the accused, Koju Tsuda, did willfully and unlawfully abuse, mistreat and beat one Alexander Henderson, a Canadian Prisoner of War.
3. That on numerous occasions during the period from about 1 May 1945 to about 31 August 1945, the accused, Koju Tsuda, did willfully and unlawfully abuse, mistreat and beat one Gordon Joseph Conway, a Canadian Prisoner of War.
4. That in or about June, 1945, the accused, Koju Tsuda, did willfully and unlawfully abuse, mistreat and beat one Leo Johnson, a Canadian Prisoner of War.
5. That in or about June, 1945, the accused, Koju Tsuda, did willfully and unlawfully abuse, mistreat and beat one Thomas George Marsh, a Canadian Prisoner of War.
6. That in or about March, 1945, the accused, Koju Tsuda, did willfully and unlawfully abuse, mistreat and beat one Jules Provencher, a Canadian Prisoner of War.
7. That on numerous occasions during the period from about 1 May 1945 to about 31 August 1945, the accused, Koju Tsuda, did willfully and unlawfully abuse, mistreat and beat one Edward William Query, a Canadian Prisoner of War.
8. That on numerous occasions during the period from about 1 May 1945 to about 31 August 1945, the accused, Koju Tsuda, did willfully and unlawfully abuse, mistreat and beat one John B. Thomson, a Canadian Prisoner of War.
9. That in or about January, 1945, the accused, Koju Tsuda, did willfully and unlawfully mistreat, abuse and humiliate one Captain Donald C. Steward, a British Prisoner of War, by forcing him to clean drains containing filth, by kicking him, and by forcibly pushing said Captain Steward's head into said drain.
10. That in or about June, 1945, the accused, Koju Tsuda, did willfully and unlawfully abuse, mistreat and collectively punish a number of Allied Prisoners of War by beating some of them, and by making them stand at attention for an unreasonable length of time.
11. That during the period from about 15 May 1943 to about 31 August 1945, the accused, Koju Tsuda, did willfully and unlawfully mistreat and abuse one Captain A. L. Franken, a Dutch Prisoner of War, by forcing him to do work which was degrading and humiliating.



12. That during the period from about 15 May 1943 to about 31 August 1945, the accused, Koju Tsuda, did willfully and unlawfully mistreat and abuse numerous Allied Prisoners of War, other than as hereinabove specified; by beating them; by denying them adequate clothing for and during severely cold weather; by compelling unnecessarily their exposure to severely cold and inclement weather for unreasonable period of time while inadequately clothed; by misappropriating personal property and supplies belonging to said Allied Prisoners of War and Red Cross Supplies, intended for their use and benefit; by denying said Allied Prisoners of War medical treatment and forcing them to work while sick; and by forcing said Allied Prisoners of War who were officers to do work which was degrading and humiliating.

10 July 1946

/s/ Alva C Carpenter  
ALVA C. CARPENTER  
Chief, Legal Section  
General Headquarters  
Supreme Commander for the Allied Powers

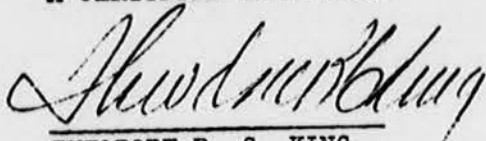
AFFIDAVIT

Before me personally appeared the above named accuser this 10<sup>th</sup> day of July, 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge and specifications and further that he has investigated the matters set forth in the charge and specifications and that the same are true in fact, to the best of his knowledge and belief.

/s/ John R Pritchard  
Name

Captain Infantry  
Summary Court

A CERTIFIED TRUE COPY:



THEODORE R. C. KING  
Major Infantry

GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (11 Jul 46) IS

APO 500  
11 July 1946

SUBJECT: Trial of Kofu Tsuda.

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

1. It is desired that a Military Commission be appointed for the trial of the following named person, member of or serving with the Imperial Japanese Forces; for the alleged offenses indicated on the attached charges:

Kofu TSUDA

2. The trial will be held in the city of Yokohama, Honshu, Japan. All trials held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, 8 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. All records of trial including judgment or sentence and the action of the appointing authority will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

1 Incl:  
Chgs vs Kofu Tsuda

Signed  
R. G. Hersey, Chief Prosecutor  
Lt. Col. Agd. Assistant Prosecutor  
Asst. Adj. Gen.

By command of General MacARTHUR:

1 Incl:  
Chgs vs Kofu Tsuda

Signed  
R. G. Hersey  
Lt. Col. Agd.  
Asst. Adj. Gen.

A TRUE COPY

*F. B. Boush*  
F. B. BOUSH  
Capt. WAC

BASIC: Ltr, GHQ SCAP, file AG 000.5 (11 July 46)LS, 11 July 1946,  
subject: "Trial of Koju Tsuda."

AG 000.5 (11 Jul 46) LS 1st Ind

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, PACIFIC,  
APO 500, 11 July 1946.

TO: Commanding General, Eighth Army, APO 343.

1. Pursuant to authority delegated the Commander-in-Chief, United States Army Forces, Pacific, contained in letter, file AG 000.5 (11 Jul 46)LS, General Headquarters, Supreme Commander for the Allied Powers, Subject: "Trial of Koju Tsuda", 11 July 1946, said power is redelegated to you and you are hereby directed to appoint a Military Commission for the trial of the following named person, member of or serving with the Japanese Imperial Forces:

Koju TSUDA

2. The trial will be held in the city of Yokohama, Honshu, Japan. The trial held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

4. The following named officers assigned to General Headquarters, Supreme Commander for the Allied Powers, have been made available to your command for service as prosecution personnel on the Military Commission to be convened by you for this purpose:

Capt. William R. Bready, CAC, O-495102, Chief Prosecutor  
Capt. John D. C. Boland, Canadian Army, Assistant Prosecutor

By command of General MacARTHUR:

1 Incl:  
Chgs vs Koju Tsuda

Signed  
R. G. HERSEY  
Lt. Col. AGD.  
Asst. Adj. Gen.

A TRUE COPY

*F. B. Boush*  
F. B. BOUSH  
Capt. WAG

BASIC: Ltr, GHQ, file, AG 000.5 (11 July 46)LD dated 11 July 1946,  
subject: "Trial of Koku Tsuda".

AG 000.5 (YR) 2d Ind 17 September 1946  
Headquarters Eighth Army, APO 343.

TO: Colonel Clair F. Schumacher, 0176631, Inf, President of  
the Military Commission appointed pursuant to Paragraph  
13, Special Orders Number 236, this Headquarters, 14  
September 1946, APO 343.

The attached charges against Koku Tsuda, are referred  
for trial to you as president of the Military Commission  
appointed by Paragraph 13, Special Orders Number 236, this  
Headquarters, 14 September 1946, APO 343. Copies of the  
charges have been furnished to the prosecution and to the de-  
fense as noted below:

For the Prosecution: CAPT WILLIAM R. BREADY  
CAPT JOHN D. C. BOLAND

For the Defense: MR. SOL E. BRINSFIELD  
MR. GEORGE M. KOSHI

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

Signed

1 Incl:  
Charges against K. Tsuda.

OTIS N. LUCKMAN  
Capt. A. G. D.  
Asst. Adjutant General

A TRUE COPY

*F. B. Boush*  
F. B. BOUSH  
Capt. WAC



AG 000.5 (13 Sep 46)LS

AFD 500  
13 September 1946

SUBJECT: War Crimes Trials.

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

1. Reference letter AG 000.5 (11 Jul 46)LS, 11 July 1946, subject: "Trial of Kaji TSUDA".

2. Captain Adelbert L. Franken, MNIA, will be a witness in this trial. It is imperative that he leave the theater not later than 19 September 1946. You are, therefore, directed to bring this case to trial at a sufficiently early date so that this witness' testimony will begin not later than 17 September 1946.

By command of General MacARTHUR:

15/ R. G. Hersey  
Lt. Col. AGD  
Asst. Adj. Gen.

AG 000.5 (13 Sep 46)LS

1st Ind.

COMMANDER-IN-CHIEF, UNITED STATES ARMY FORCES, PACIFIC, AFD 500, 13 September 1946.

TO: Commanding General, Eighth Army, AFD 343.

1. Reference letter AG 000.5 (11 Jul 46)LS, 11 July 1946, subject: "Trial of Kaji TSUDA", and first indorsement thereto.

2. Captain Adelbert L. Franken, MNIA, will be a witness in this trial. It is imperative that he leave the theater not later than 19 September 1946. You are, therefore, directed to bring this case to trial at a sufficiently early date so that this witness' testimony will begin not later than 17 September 1946.

By command of General MacARTHUR:

A CERTIFIED TRUE COPY:

William R. Brady  
Major, Ord. Dept.

15/ R. G. Hersey  
Lt. Col. AGD  
Asst. Adj. Gen.



HEADQUARTERS EIGHTH ARMY  
United States Army  
Office of the Commanding General  
APO 343

SPECIAL ORDER  
NUMBER 236

EXTRACT

14 September 1946

13. Appointment of a Military Commission.

Pursuant to authority contained in letter, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 6 December 1945, AG 000.5 (6 Dec 45)LS, Subject: "Detention, Interrogation and Trial of Suspected Japanese War Criminals", a Military Commission is hereby appointed to meet at the Yokohama District Court Building, Yokohama, Japan, on or about 17 September 1946, or as soon thereafter as practicable, at the call of the president, to try such persons as may be properly brought before it.

DETAIL FOR THE COMMISSION

COL CLAIR F. SHUMACHER, 0176631, Inf, Hq 2d Major Port  
LT COL HALBERT E. NELSON, 06774, Cav, Hq 32d MG Co  
LT COL ROBERT THOMSON, 0253717, Inf, Hq I Corps  
LT COL ALFRED D. YATES, 333048, Hq ALFSEA, Army Education Corps, LAW MEMBER

FOR THE PROSECUTION

CAPT WILLIAM R. BREADY, CHIEF PROSECUTOR  
CAPT JOHN D. C. BOLAND, ASSISTANT PROSECUTOR

FOR THE DEFENSE

Mr. Sol E. Brinsfield  
Mr. George M. Koshi

The proceedings of the Commission will be governed by letter, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945, AG 000.5 (5 Dec 45)LS, Subject: "Regulations Governing the Trials of Accused War Criminals", letter this Headquarters, 5 February 1946, AG 000.5 (YO), Subject: "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals", and such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers. The employment of an enlisted or civilian court reporter is authorized. (AG 334)

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

OFFICIAL:

J. M. GLASGOW  
Colonel, AGC  
Adjutant General

CLOVIS E. BYERS  
Major General, GSC  
Chief of Staff

(Tsuda, Case #65)

Extract SO 236, Hq Eighth Army, 14 Sep 46, contd.

DISTRIBUTION:

- 2 - Each indiv named par 13
- 2 - CG, PACUSA
- 5 - G-1 Sec
- 6 - CO, 2d Major Port
- 6 - CO, 32d MG Co
- 6 - CG, I Corps
- 6 - CG, BCOF
- 10 - JA Sec
- 20 - War Crimes Adm Sec
- 20 - War Crimes Def Sec
- 10 - Legal Sec, SCAP
- 7 - JA Sec, Court Reporters
- 1 - PRO
- 2 - Cinc, ASPAC
- 1 - SCAP
- 2 - CofS Sec
- 2 - PM Sec
- 5 - File

HEADQUARTERS EIGHTH ARMY  
United States Army  
Office of the Commanding General  
APO 343

SPECIAL ORDERS  
NUMBER 236

14 September 1946

EXTRACT

31. So much of par 13, Special Orders No. 236, Headquarters Eighth Army, 14 September 1946, as pertains to the appointment of a Military Commission as reads "par 13" is amended to read "par 32". (AG 334)

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

OFFICIAL

J. M. GLASCOCK  
Colonel, AGC  
Adjutant General

CLOVIS E. BYERS  
Major General, GSC  
Chief of Staff

DISTRIBUTION

- 2 - Each and all par 13, SO 236, cs, (apmt of Mil Commission)
- 2 - G-1 Sec
- 35 - JA Sec
- 1 - PRO
- 2 - CinC, AFPAC
- 2 - PM Sec
- 5 - File

HEADQUARTERS EIGHTH ARMY  
United States Army  
Office of the Commanding General  
APO 343

20 November 1946

SPECIAL ORDERS  
NUMBER 290

EXTRACT

19. Par 13 SO 236 this Hq cs announcing the appointment of the Military Commission to meet at the Yokohama District Court Building, Yokohama, Japan on or about 17 September 1946, is amended as follows:

LT COL OSCAR ORR, General List Canadian, Infantry Corps, BCOF, is hereby detailed as a member of the prosecution vice CAPT JOHN D. C. BOLAND, Canadian Army, BCOF. (AG 334).

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

OFFICIAL:

J. M. GLASCO  
Colonel, AGP  
Adjutant General

CLOVIS E. BYERS  
Major General, GSC  
Chief of Staff

DISTRIBUTION:

- 2 - Each/indiv. par 19
- 2 - CG, PACSA
- 5 - G-1 Sec
- 6 - CO, 2d Major Port
- 6 - CG, I Corps
- 6 - CG, BCOF
- 10 - JA Sec
- 20 - War Crimes Adm Sec
- 20 - War Crimes Defense
- 10 - Legal Sec, SCAP
- 7 - JA Sec, Court Reporters
- 1 - PRO Sec
- 2 - CinC, AFPAC
- 2 - CofS. Sec
- 2 - PM Sec
- 5 - File



R E S T R I C T E D

GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45)LS

APC 500  
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APC 500.  
Commanding General, Sixth Army, APC 442.  
Commanding General, Eighth Army, APC 343.  
Commanding General, XIV Corps, APC 235.

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and 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 one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

R E S T R I C T E D



R E S T R I C T E D

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to Cinc, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that 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.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

- (1) To prepare and present charges and specifications for reference to a commission.
- (2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

- (1) 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.
- (2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.
- (3) Hold public sessions except when otherwise decided by the commission.

R E S T R I C T E D

R E S T R I C T E D

GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45)LS

APC 500  
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APC 500.  
Commanding General, Sixth Army, APC 442.  
Commanding General, Eighth Army, APC 343.  
Commanding General, XXIV Corps, APC 235.

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

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a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and 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 one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

R E S T R I C T E D

R E S T R I C T E D

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to Cinc, USAFPAC; CG 6th Army, CG 8th Army and CG XXIV Corps.

- (b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.
- (c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.
- (2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION.

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. 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.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. 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

R E S T R I C T E D



R E S T R I C T E D

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to Cinc, USAFFAC; CG 6th Army, CG 8th Army and CG XXIV Corps.

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that 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.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

- (1) To prepare and present charges and specifications for reference to a commission.
- (2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

- (1) 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.
- (2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.
- (3) Hold public sessions except when otherwise decided by the commission.

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R E S T R I C T E D

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)IS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to Cinc, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

- (4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.
- b. Rights of the Accused. The accused shall be entitled:
  - (1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.
  - (2) To be represented, prior to and during trial, by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.
  - (3) To testify in his own behalf and 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.
  - (4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.
- c. Witnesses. The commission shall have power:
  - (1) 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.
  - (2) To require the production of documents and other evidentiary material.
  - (3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.
  - (4) To have evidence taken by a special commissioner appointed by the commission.
- d. Evidence.
  - (1) 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. The commission

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shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

- (a) Any document irrespective of its classification which appears to the commission to have been signed or issued 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.
  - (b) 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 doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.
  - (c) Affidavits, depositions or other signed statements.
  - (d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.
  - (e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.
- (2) 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.
  - (3) 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.
  - (4) 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 resulting in the

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conviction 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.

- (5) 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 that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.
- (6) 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.
- (7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

c. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

- (1) Each charge and specification shall be read, or its substance stated, in open court.
- (2) The presiding member shall ask each accused whether he pleads "guilty" or "not guilty".
- (3) The prosecution shall make its opening statement.
- (4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to

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BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CINC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

- (5) 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.
- (6) 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.
- (7) 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.
- (8) The defense, and thereafter the prosecution, shall address the commission.
- (9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. 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.

g. 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 determine to be proper. The commission may also order confiscation of any property of

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CINC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

a convicted accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. 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 in whole or in part, 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 execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

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 Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

*H. W. Allen*  
H. W. ALLEN,  
Colonel, A.G.D.,  
Asst Adjutant General.

R E S T R I C T E D



HEADQUARTERS EIGHTH ARMY  
United States Army  
Office of the Commanding General  
APO 343

AG 000.5 (YO)

5 February 1946

SUBJECT: Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals.

TO: Presidents of War Crimes Commissions.

SECTION I: RULES OF PROCEDURE

The following rules of procedure, in addition to and supplemental to regulations governing the trials of accused war criminals, as outlined in Letter, General Headquarters, Supreme Commander for the Allied Powers, AG 000.5 (5 Dec 45)LS, Subject: "Regulations Governing the Trials of Accused War Criminals," dated 5 December 1945, will govern the trial of persons, units and organizations accused as war criminals.

1. Affidavits, Statements, Documents, and Preliminary Motions.

a. Copies of all statements, affidavits and other documents which the prosecution proposes to introduce into evidence will be furnished to the defense at the time a case is referred for trial. At least 24 hours prior to arraignment, the defense will furnish to the prosecution copies of all statements affidavits and other documents then in its possession which the defense proposes to introduce into evidence. Subsequent to this time, any other statements, affidavits and documents proposed to be introduced into evidence by the defense will be furnished opposing counsel as soon as possible.

b. Either side will indicate to opposing counsel the portions of any statement, affidavit or other document it proposes to offer as evidence in the trial. Such indication will be made at the time copies thereof are furnished or made available to opposing counsel.

c. If, either before or during the trial, but after copies of the documents have been furnished to opposing counsel, as set out above, either side receives or is apprised of additional documents which will be used in the trial, it will notify opposing counsel thereof as promptly as possible, and thereafter furnish copies as soon as practicable. Opposing counsel will then promptly take such action as may be necessary with the view of avoiding any delay in the trial of the case.

d. The rules set out in a, b, and c above will not be construed to include statements of the accused or any other witness who is available to appear in person before the Commission.

e. Prior to trial, both prosecution and defense will furnish opposing counsel copies of any preliminary motions to be made to the Commission.

2. Affidavits.

In offering affidavits or other written statements of testimony the prosecution will preface the offer with a statement as to whether or not to the best of the prosecution's knowledge or information the affiant or the author of the statement is at the time of trial present in either the Philippine Islands, the Ryukyus, Japan or Korea.

3. Rights of the Accused as Witness.

a. The accused may take the stand as a witness or he may remain silent. If he takes the stand he may make a sworn or unsworn statement but in either case he will be subject to cross-examination on statement made, cross-examination is nowise to be limited to matters brought out on direct examination.

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b. If he remains silent, the Commission may draw such inference from his failure to testify as may seem fair and competent to a reasonable mind, after taking into consideration all the competent evidence in the case.

c. The prosecution may in argument comment to the Commission on an accused's failure to testify.

4. Identification of Accused.

The accused may be required to testify for the purpose of identification, respecting his name, age, rank, occupation, identifying marks or characteristics and his status and whereabouts during the period alleged in the charges and specifications, excepting therefrom all testimony relative to the issue of guilt or innocence.

5. In case in which the defense moves for a finding of not guilty after the conclusion of the prosecution's case, and upon the overruling of the motion rests its case without offering evidence in defense, and the court after submission of the case, finds the accused guilty, the court before imposing sentence may permit the defense to offer competent evidence in extenuation or mitigation of the offense alleged, subject to the right of the prosecution to rebut such evidence.

6. Interpreters and Interpretation

a. No criticism of an interpreter, direct or implied, will be made in open court by counsel of either side until the following steps have been taken:

- (1) The Chief Interpreter will be advised of a complaint during the next court recess.
- (2) The Chief Interpreter will investigate the matter and:
  - (a) Convince the complaining party that no substantial error exists; or
  - (b) Caution and advise the interpreter if necessary; or
  - (c) Prepare a correction of the record to be entered as a stipulation upon reconvening of the Commission; or
  - (d) Prepare an opinion to be given to the Commission if required.
- (3) If the Chief Interpreter cannot satisfy both the prosecution and the defense, the complaining party will send a message to the Commission requesting an off-record conference in the matter.

b. Counsel are reminded that:

- (1) Interpreting between oriental and occidental language is not comparable to coding and decoding cypher messages, but requires a distressing amount of circumlocution and rearrangement of thought.
- (2) Counsel is advised, when working through an interpreter:
  - (a) To use short, simple questions as free from artifice as if examining a small child.
  - (b) Whenever it is necessary to refer to previous testimony, to lay a foundation to insure that both the interpreter and the witness understand the reference to previous testimony.



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- (3) The following types of questions are particularly to be avoided as leading to misunderstanding and futile discussions:
- (a) Long questions. (Impossible for interpreter and witness to remember)
  - (b) Complicated questions. (Dependent clauses confuse both interpreter and witness)
  - (c) Conditional questions. (Usually beyond comprehension of an oriental witness)
  - (d) Sarcastic questions. (Usually depend on untranslatable emphasis or play on words; waste effort)
  - (e) Negative questions. ("You did not see them, did you?" Answer will be, "Yes, I did not see them" or "No -- I saw them")
  - (f) Questions hinging on the precise meaning of a single word. (The interpreter picks from several choices that English word which he believes will most closely express his understanding of the witness. To question the witness about the English word is futile)
- (4) The senior member of the staff of both prosecution and defense are charged with instructing their assistants in these rules and thereafter to apply prompt corrective action to stop at once any violation of the principles announced herein.

7. Authentication of Record of Trial.

- a. The record of trial will be prepared under the supervision of the prosecution for the signature of the President of the Commission and the senior member of the prosecution staff.
- b. The record will be submitted to the Defense Counsel for check by him before the record is authenticated by the prosecution and the President of the Commission. The Defense Counsel will note on the record the fact that the record has been submitted to him and checked by him prior to authentication.
- c. In the event the record cannot be authenticated by the President of the Commission and the senior member of the prosecution staff, by reason of the death, disability, or absence of either or both of them, it shall be signed by a member of the Commission in lieu of the president and by another member of the prosecution staff, if there be one, in lieu of the senior member of the prosecution staff, otherwise by another member of the commission.

SECTION II: OUTLINE OF PROCEDURE

The following outline of procedure will govern the conduct of trials before military commissions of persons, units and organizations accused as war criminals.

There will be present:

- Commission
- Accused
- Prosecution Staff
- Defense Staff
- Interpreters
- Commission Reporters
- Press Representatives
- Photographers
- Spectators

All persons in the courtroom will be seated prior to the time set for arraignment. The "Bailiff" for the Commission will announce the entrance

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of the Members of the Commission by calling "Attention". All present in the courtroom will stand and remain standing until the Members of the Commission are seated.

SEATING OF THE COMMISSION: The presiding Member (senior officer) will be seated in the center, with the Law Member on his left. Remaining Members will be seated alternately to the right and left of the Presiding Member in order of seniority.

When the Commission is ready, the trial proceeds substantially as follows:

PRESIDING OFFICER: "The Commission is in session and is ready to hear any matter to be brought before it."

PROSECUTOR: "The prosecution is ready to proceed with the trial of the United States of America against" (name of accused as read from the caption).

PROSECUTOR: "The accused is present, together with defense counsel appointed by the convening authority. The prosecution is ready to proceed."

PRESIDING OFFICER: "You may proceed."

PROSECUTOR: "The Reporters will be sworn."

(The Reporters rise. The Prosecutor facing the Reporters repeats the following oath:)

"You (names of Reporters) swear that you will faithfully perform the duties of reporters to this Commission. So Help you God."

REPORTERS: "I do."

(Reporters sit down and thereafter are not required to rise until oath is administered to the Commission and Prosecutors, after which they resume their seats and remain seated throughout the trial.)

PROSECUTORS: "The Interpreters will be sworn."

(Interpreters rise, and the Prosecutor facing them repeats the following oath:)

"You (names of Interpreters) swear that you will truly interpret in the case now in hearing. So Help you God."

INTERPRETERS: "I do."

(Interpreters are then seated.)

PROSECUTOR: "The following Members of the Commission appointed by Paragraph \_\_\_\_\_, Special Orders No. \_\_\_\_\_, Headquarters \_\_\_\_\_, dated \_\_\_\_\_ (as amended by Paragraph \_\_\_\_\_, Special Orders No. \_\_\_\_\_, dated \_\_\_\_\_ are present."

(The Prosecutor announces by name and rank the Members present.)

"There are no Members absent."

(Or: "Absent, Colonel Jones, sick in hospital.")

PROSECUTOR: "The Prosecution submits, for incorporation into the record of these proceedings, the following documents:

"Letter Order AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, with the subject being 'Regulations Governing the Trials of Accused War Criminals.'"



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"Letter Order AG 000.5 (10 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated \_\_\_\_\_, with the subject being "Trials of \_\_\_\_\_."

"Letter Order AG 000.5 (10 Dec 45), General Headquarters, United States Army Forces, Pacific, dated \_\_\_\_\_, with the subject 'Trials of \_\_\_\_\_'."

"Paragraph \_\_\_\_\_ of Special Orders \_\_\_\_\_, Headquarters Eighth Army, dated \_\_\_\_\_, (entitled 'Appointment of a Military Commission')."

(Any changes in Special Orders will be noted by the Prosecutor. Defense Counsel will have been given an opportunity to examine these documents prior to their being offered.)

PRESIDING OFFICER: "There being no objections, the orders will be received and incorporated into the record of these proceedings. Does the Prosecution desire to challenge any Member of the Commission for cause?"

PROSECUTOR: "The prosecution has no Challenges" (or as the case may be).

PRESIDING OFFICER: "Does the Defense desire to Challenge any Member of the Commission for cause?"

DEFENSE: "The Defense has no challenge for cause (or 'The Defense challenges Colonel \_\_\_\_\_ for cause.' The Defense then states reasons for challenge)."

PROSECUTOR: "The Prosecution is ready to proceed with the arraignment of \_\_\_\_\_ (name of accused)."

PRESIDING OFFICER: "The Commission will be sworn."

(All persons in the room will rise and stand until the swearing of the Commission and of the Prosecution is completed. Each Member of the Commission raises his hand as his name is called by the Prosecutor who administers the following oath:)

PROSECUTOR: "You Colonel \_\_\_\_\_, Colonel \_\_\_\_\_, etc., do swear that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor or affection, according to your conscience, the best of your understanding, and the Custom of War in like cases; and you do further swear that you will not divulge the findings or sentence of the Court until they shall be published by the proper authority or duly announced by the court, except to the Prosecutor and Assistant Prosecutor; neither will you disclose or discover the vote or opinion of any particular Member of the Commission upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So Help you God."

EACH MEMBER OF THE COMMISSION: "I do."

(Members of the Commission lower their hands but remain standing while the Presiding Officer administers the following oath to the Members of the Prosecution Staff.)

PRESIDING OFFICER: "The Prosecution will be sworn. You Major \_\_\_\_\_, Captain \_\_\_\_\_, do swear that you will faithfully and impartially perform the duties of Prosecutor in the case now brought before this Commission. So Help You God."

EACH MEMBER OF THE PROSECUTION: "I do."

(All now resume their seats except the Prosecutor.)

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DEFENSE: "The Charge and Specifications were received by the Defense Counsel and the accused has been duly apprised of each offense charged. The accused has also been advised of his rights as provided in paragraph 5 b of Letter AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, entitled 'Regulations Governing the Trials of Accused War Criminals', heretofore introduced into the record of these proceedings."

PRESIDING OFFICER: "Whom does the accused desire to introduce as Defense Counsel?"

(If the accused desires the regularly appointed Defense Counsel, the proceedings will continue. If accused desires Counsel of his own selection to the exclusion of regularly appointed Defense Counsel, and the desired Counsel is present, then the regularly appointed Defense Counsel will be excused and the proceedings will continue. If accused desires Counsel of his own selection and requests that the proceedings be continued until such Counsel be made available to him, the Commission will consider the availability of desired Counsel and if the request of the accused is granted will continue the case until such time as Counsel can be secured. If the request of the accused is denied, he will be given an opportunity to make another selection but the arraignment will continue with the regularly appointed Defense Counsel. If accused elects to conduct his own defense and fails to designate Special Counsel, the regularly appointed Defense Counsel will be present with the accused and available in the event he desires its advice.)

PRESIDING OFFICER: "The Charge and Specifications will be read to the accused."

(Prosecutor will read the complete Charge and Specifications, together with affidavit of accuser and reference for trial.)

PROSECUTOR: "With permission of Commission, the Prosecution introduces the Charge and Specifications which have been read to the accused for incorporation into the record of these proceedings."

(Prior to offer, Defense Counsel will be given an opportunity to examine Charge and Specifications.)

PRESIDING OFFICER: "There being no objection, the Charge and Specifications are received and will be incorporated into the Record. Are there any special pleas by the Defense?"

DEFENSE: "There are no special pleas (or as the case may be)."

PRESIDING OFFICER: "\_\_\_\_\_ (Naming accused) 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'."

(Accused and Defense Counsel will rise and accused will plead "Guilty" or "Not Guilty" to each specification and to the charge. If accused has not determined his plea and if he so requests, Commission will set a time for receipt of plea and continue the proceedings until that time. If accused refused to plead, the Presiding Officer will then state:)

PRESIDING OFFICER: "The accused having failed to plead to the Charge and Specifications, there will be entered in his behalf upon the record the plea of 'Not Guilty'."

PRESIDING OFFICER: "The Prosecution will make its opening statement."

(Prosecution makes opening statement.)



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PROSECUTOR: "The Prosecution calls as its first witness: \_\_\_\_\_."

(Witness presents himself in front of and faces the Presiding Officer. and if a member of the Military Services salutes the Presiding Officer. After which, the Prosecutor, standing, administers the following oath to the witness: NOTE: Witness will be sworn according to his particular belief)\*

"You swear (or affirm) that the evidence you shall give in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So Help you God."

\*NOTE: Japanese Witnesses will be sworn by the following oath:

"In accordance with my conscience I swear that I will tell the truth, I will hide nothing and I will conceal nothing."

PROSECUTOR: "Do you understand that if you fail to tell the truth as you have just sworn to do, you are liable to be punished by this Commission, or any other American Court or Commission?"

(Prosecution proceeds with direct examination. This is followed by Cross-Examination by the Defense, and Examination by the Commission in the case of each witness called by the Prosecutor).

(Documentary Evidence will be introduced as follows:)

PROSECUTOR: "The Prosecution offers in evidence (the original) (a certified copy) (a photostatic copy) of an affidavit (or other document) to be attached to the record and marked Exhibit \_\_\_\_\_, (to be withdrawn at the conclusion of the trial and an authenticated copy substituted therefor).

(After the Prosecution presents its evidence, the Prosecutor announces:)

"The Prosecution rests."

PRESIDING OFFICER: "The Defense will make its Opening Statement."

(The Defense makes its Opening Statement).

DEFENSE COUNSEL: "The Defense calls as its first witness \_\_\_\_\_."

(Defense presents its case in the same manner as outlined above for the prosecution. The Prosecutor administers the oath to the witnesses. Defense then proceeds with direct examination, followed by cross-examination by the Prosecution, re-direct examination by the Defense, and examination by the court, if desired. When the Defense has completed its case, the Defense Counsel announces:)

DEFENSE COUNSEL: "The Defense rests."

(The Prosecution now presents any rebuttal witnesses, followed by presentation of any rebuttal witnesses for the Defense.)

PRESIDING OFFICER: "The Commission will now hear the Arguments for the Prosecution and Defense." (Arguments to be conducted as directed by the Commission)

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PRESIDING OFFICER: "The Commission will be closed."

(When the Commission arrives at its judgement and sentence, the Commission will be opened. In the presence of the Accused, his Counsel, and the personnel of the Prosecution (all of whom remain standing), the Presiding Officer announces the judgement and sentence.)

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

/s/ Ward W. Conquest  
WARD W. CONQUEST  
Colonel, AGD  
Adjutant General



CIVILIAN REPORTERS CERTIFICATE

DATE Jan 30, 1947

Case No. 65 U.S. vs Kaji Tsuda

I, the undersigned hereby certify, that I reported the trial proceedings in the above case of which the attached record of trial is a true transcription, that I am a civilian court reporter, in the civil service of, and paid for my said services by, the United States.

W. B. Brown

JA War Crimes Div. Form #9 (Revised 3 Jan. 1947)

\* Pages 1 to 33

CIVILIAN REPORTERS CERTIFICATE

DATE Jan. 30, 1947

I, the undersigned hereby certify, that I reported  
and transcribed the <sup>\*</sup>attached record of trial, that I am  
a civilian court reporter, in the civil service of, and  
paid for my said services by, the United States.

Estimote Bond

\* pg 3<sup>d</sup> thru pg 17<sup>th</sup>

# RECORD OF TRIAL

of

KOJU TSUDA

by

MILITARY COMMISSION

APPOINTED BY THE COMMANDING GENERAL

HEADQUARTERS EIGHTH ARMY

Tried at

Yokohama, Japan

17 Sept. 1946 - 27 Nov. 1946

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PROSECUTOR: You may proceed.

PROSECUTOR: The reporter will be sworn.

WILLIAM F. SMITH, civilian court reporter, was then sworn.

PROSECUTOR: The interpreters will be sworn.

EDWARD KAMMURA and ARMANDO FERRI were then sworn as court interpreters.

PROSECUTOR: The following members of the Swedish Consulate are appointed by paragraph 15, Article 100 of the Swedish Consular Regulations, 1914, dated 11 September 1914 as provided by paragraph 31 of said regulations and are present:

**MEMBERS OF THE CONSULATE**

MR. CLAIR F. ANDERSSON, Consul, 1st. By Mr. Eversen read:  
MR. CARL ELMAR E. ANDERSSON, 2d. By Mr. Eversen read:  
MR. CARL ELMAR E. ANDERSSON, 3d. By Mr. Eversen read:  
MR. CARL ELMAR E. ANDERSSON, 4th. By Mr. Eversen read:  
MR. CARL ELMAR E. ANDERSSON, 5th. By Mr. Eversen read:

**MEMBERS OF THE CONSULATE**

MR. WILLIAM F. SMITH, Civilian Court Reporter,  
MR. WILLIAM F. SMITH, Civilian Court Reporter,

PROCEEDINGS OF A MILITARY COMMISSION

which convened at Yokohama, Japan, pursuant to Paragraph No. 13, Special Order Number 236, Headquarters Eighth Army, United States Army, Office of the Commanding General, APO 343, dated 14 September 1946 as amended by paragraph 31 of said Special Order Number 236.

The Commission met at the Yokohama District Courthouse at 0830 hours, 18 September 1946.

PRESIDENT: The Commission is in session and is ready to hear any matter to be brought before it.

PROSECUTION: The prosecution is ready to proceed with the trial of the United States of America vs. Koji Tada. The accused is present together with the defense counsel appointed by the convening authority. The prosecution is ready to proceed.

PRESIDENT: You may proceed.

PROSECUTION: The reporter will be sworn.

WILLIAM P. BOWEN, civilian court reporter, was then sworn.

PROSECUTION: The interpreters will be sworn.

HEIRO KAWAHARA and SHIGETAKE FUSE were then sworn as court interpreters.

PROSECUTION: The following members of the Commission appointed by Paragraph 13, Special Order 236, Headquarters Eighth Army, United States Army, Office of the Commanding General, APO 343, dated 14 September 1946 as amended by Paragraph 31 of same special order are present:

DETAIL FOR THE COMMISSION

COL. CLAIR F. SCHUMACHER, 0176631, Inf. Hq 2d Major Port  
LT. COL. HALBERT H. NEILSON, 06774, Cav, Hq 32d MG Co.  
LT. COL. ROBERT THOMSON, 0253717, Inf, Hq 1 Corps  
LT. COL. ALFRED D. YATES, 333048, Hq ALFSEA, Army Educational Corps, LAW MEMBER

FOR THE PROSECUTION

CAPT WILLIAM R. BREADY, CHIEF PROSECUTOR  
CAPT JOHN D. C. BOLAND, ASSISTANT PROSECUTOR

FOR THE DEFENSE

MR. SOL E. BRINSFIELD  
MR. GEORGE M. KOSHI

PROSECUTION: The prosecution submits for incorporation into the record of these proceedings, the following documents:

Letter Order AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, with the subject being "Regulations Governing the Trials of Accused War Criminals".

Letter Order AG 000.5 (Y0) Headquarters Eighth Army, dated 5 February 1946, with the subject being "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals".

Letter Order AG 000.5 (11 Jul 46) LS, General Headquarters, Supreme Commander for the Allied Powers, APO 500, dated July 11 1946, with the subject being "Trial of Kojima Tsuda".

Letter Order AG 000.5 (11 Jul 46) LS 1st Ind, General Headquarters, United States Army Forces, Pacific, APO 500, 11 July 1946, to Commanding General, Eighth Army, the subject being "Trial of Kojima Tsuda".

Letter Order AG 000.5 (YR) 2d Ind, Headquarters Eighth Army, APO 343, dated 17 September 1946, the subject being "Trial of Kojima Tsuda".

Paragraph 13, Special Order Number 236, Headquarters Eighth Army, dated 14 September 1946, entitled "Appointment of a Military Commission".

Paragraph 31 of Special Order Number 236, Headquarters Eighth Army, dated 14 September 1946, amending "par. 13" of said order to read "par. 32".

PRESIDENT: There being no objections, the orders will be received and incorporated into the record of these proceedings. Does the prosecution desire to challenge any member of the Commission for cause?

PROSECUTION: The prosecution has no challenges.

PRESIDENT: Does the defense desire to challenge any member of the Commission for cause?

DEFENSE: The defense does not, sir.

PRESIDENT: Proceed.

PROSECUTION: At this time, if it please the court, the prosecution would also like to call the attention of the Commission to a command letter to the Commander-in-Chief, United States Army Forces, Pacific, AG 000.5 (13 Sep 46) LS, dated September 13, 1946, with first indorsement attached thereto to the Commanding General Eighth Army, referring to the letter orders above set-out which states as follows:



"1. Reference letter AG 000.5 (11 Jul 46) LS 11 July 1946, subject "Trial of Koku Tsuda", and first endorsement thereto.

"2. Captain Adelbert L. Franken, RNIA, will be a witness in this trial. It is imperative that he leave the theater not later than 19 September 1946. You are, therefore, directed to bring this case to trial at a sufficiently early date so that this witness' testimony will begin not later than 17 September 1946.

"By Command of General MacARTHUR:"

I have not seen the original but we have been notified that this has been forwarded and is now en route to this court. With the Commission's permission, I will read the first endorsement. This is from Commander-in-Chief, United States Army Forces, Pacific; the same reference and paragraph two reads as follows:

"2. Captain Adelbert L. Franken, RNIA, will be a witness in this trial. It is imperative that he leave the theater not later than 19 September 1946. You are, therefore, directed to bring this case to trial at a sufficiently early date so that this witness' testimony will begin not later than 17 September 1946.

"By Command of General MacARTHUR:"

I will request that this be incorporated in the record and let the record show the prosecution has been informed the original has been forwarded by Commanding General Eighth Army but is not yet received.

PRESIDENT: It may be incorporated in the record and when the original has been received it can be substituted for the copy.

DEFENSE: We have no objection.

PROSECUTION: The prosecution is ready to proceed with the arraignment of Koku Tsuda.

PRESIDENT: The Commission will be sworn.

The members of the Commission and the prosecution were then sworn.

DEFENSE: May it please the Commission, at this time I would like to state for the benefit of the record that we have been informed that the accused in this case, Tsuda, has been served the charge and specifications and has been advised of his rights as set forth in SCAP rules pertaining



to the trial of accused war criminals but inasmuch as the defense counsel in this case has not had the opportunity of discussing this matter with the accused, at this time we cannot say that he has received a copy of the charge and specifications nor that his rights have been explained to him. As the Commission is well aware, this case was referred here for trial while the defense counsel here assigned was engaged in the trial of another case. Every effort has been made to prepare this case sufficiently well so that we can go into the trial in order to release Captain Franken so he can return to his home station. In so doing, it has been impossible for us to interview the accused and in order that we might intelligently give answer to this requirement of the rules of procedure, we would like about ten minutes to go over the charges and specifications with the accused. That was begun before the trial but we didn't complete it. We would like a few minutes to do that, sir.

PRESIDENT: Permission is granted and the Commission will recess for fifteen minutes.

The Commission then took a recess until 0910 hours at which time the personnel of the court, prosecution and defense, and the accused, the reporter and the interpreters resumed their seats.

PRESIDENT: The Commission is in session. Are you ready to proceed?

DEFENSE: May I complete my statement in regard to the accused. The defense has been advised by the accused that he has received a copy of the charge and specifications written in Japanese and that he fully understands the charge and specifications and, furthermore, that his rights as an accused have been explained to him and that he fully understands his rights as set forth in the appropriate SCAP letters and directives.

PRESIDENT: Whom does the accused desire to introduce as defense counsel?

DEFENSE: In addition to the regularly appointed counsel, the accused desires to introduce Mr. Tatsuo Inagawa, a member of the Japanese Bar in good standing.

PRESIDENT: The charge and specifications will be read to the accused.

The prosecution then read the Charge and Specifications against Koji Tsuda.

PROSECUTION: With the permission of the Commission, the prosecution introduces the Charge and Specification as read to the accused for incorporation into the record.

DEFENSE: The defense has no objection.

PRESIDENT: There being no objection, the Charge and Specifications will be incorporated in the record. Are there any special pleas or motions.

DEFENSE: At this time, as a result of the circumstances that resulted in the speedy trial of this case, we ask that the accused be permitted to enter any special plea or motions at a later date. We do not now know what special pleas or motions should be filed and would like to have the right to submit them at a later date should that be found necessary.

PRESIDENT: The request is reasonable under the circumstances and the defense may introduce such motions or special pleas at a later date. The Charge and Specifications will be incorporated in the record.

Tsuda, Koku, you have heard the Charge and Specifications read to you by the prosecution. You may plead either guilty or not guilty. How do you plead?

THE ACCUSED: I plead not guilty to all the charges and specifications.

PRESIDENT: The prosecution may make its opening statement.

PROSECUTION: May it please the Commission, the prosecution will show that the accused, Koku Tsuda, came to Sendai Prisoner of War Camp, Branch No. 1, sometimes referred to as Sendai Branch Camp 1B, which is located near the towns of Yumoto and Onahama on or about 15 May 1943 and remained there until about 31 August 1945. The prosecution will further show that this camp was in operation when he arrived, the Dutch having arrived some time in April of 1943 and that at the time he arrived only the Dutch were present. Now, a little later a contingent of British arrived and in May of 1945, the Canadians came. When Koku Tsuda first arrived in the camp, we will show he was not at first in direct contact with the prisoners. At first he was a guard and didn't come in direct contact with the prisoners but later on, due to the Army withdrawing from that type of duty, he undertook actually to contact the prisoners and handle them in their work and in the administration of the camp and from that period on we will find the happenings as alleged in the Charge and Specifications and we will prove by affidavits and the testimony of Captain Franken, a witness, the Charge and Specifications as alleged.

We want to further add that we will further prove that Koku Tsuda left the camp on or about August 18 by advice of the officers, the prisoner of war officers because they were afraid of what might happen to him. It is unfortunate

that the prosecution is compelled to put in evidence the testimony of Captain Franken at the very beginning. But, the command letter sets forth the reasons for this. At this time the prosecution digresses a bit and I am sure the defense will not object that in putting his testimony in at this time, it is distinctly understood that we will not in any way object to any additional time that the defense may require if the court feels that it is justified. We are only urging the immediate trial of this case and the production of this witness to get him home where his wife is ill and he is urgently needed. He has been here in Japan since July of 1946. In view of the fact that we are putting him on at the very beginning, the court will find that his testimony will relate to circumstances and happenings that should normally have been put in before he is put on the stand and we will have to ask the court's indulgence to wait until the end of the case to connect all the testimony. I have nothing further to add. In clarification, the case will be based, after the testimony of Captain Franken, entirely on affidavits with the possible exception of a medical witness.

PRESIDENT: YOU may call your first witness.

Captain Adelbert L. Franken, Royal Netherlands Indian Army, a witness for the prosecution, was sworn and testified as follows:

#### DIRECT EXAMINATION

##### Questions by prosecution:

- Q. State your name, rank, organization and present station.
- A. Adelbert L. Franken. I am a captain in the Royal Netherlands Indian Army and my home address is 9 Museumlaand, Batavia, Netherlands Indies.
- Q. And you are a national of Holland; is that correct?
- A. That is right.
- Q. When did you first join the Dutch Army?
- A. On the 1st of July, 1931.
- Q. And you have remained in the Army continuously?
- A. I remained in the Army continuously until today.
- Q. Were you ever captured by the Japanese Imperial Government?
- A. I was captured on the 6th of March 1942 until the 19th of September 1945.
- Q. During which time, you were continuously a prisoner of war; is that correct?
- A. That is right.



- Q. After you became a prisoner of war of the Japanese, state when you were transferred, if you were transferred, to Japan?
- A. I arrived in Japan on the 25th of April, 1943, and I have been to Tokyo Branch Camp 4D in Yumoto, Fukushima Prefecture.
- Q. Will you explain to the court the change in the designation of the camp to which you were assigned?
- A. In 1943 the Tokyo Camp 4D was transferred to Sendai Camp 1B.
- Q. And Sendai 1B and Tokyo 4D are the same camp?
- A. The same camp.
- Q. When you arrived at the camp, who was there?
- A. When I came there Lieutenant Honda was camp commandant.
- Q. What prisoners of war were there?
- A. I arrived with 145 prisoners of war and I was the highest in rank amongst them.
- Q. At the time you arrived there, there were no other prisoners of war there?
- A. No other prisoners of war.
- Q. Will you explain to the court when the other prisoners of war arrived or the other nationals?
- A. The English, British prisoners of war arrived in 1944 in about August and the Canadians in 1945 in May.
- Q. Now, then, what was your position in the camp after the British arrived?
- A. We agreed that because I was the senior officer, I was the camp commandant when it concerned matters of all the prisoners of war but in matters concerning a special group, let us say the British or either the Dutch, in that case the British Captain Thornton took care of the prisoners' affairs and I took care of the Dutch affairs.
- Q. Do you recall who took care of the Canadian affairs?
- A. Lieutenant (junior grade) Finn. He is an American.
- Q. When you were acting as senior officer, did you have an opportunity to come in contact with the prisoners of war of other nationalities while they were working or in contact with the Japanese during their working periods?
- A. No. We had to report the men for work to the Japanese guards. After that the Japanese guards took them over and then we lost sight of them.
- Q. Explain to the court when you were actually in contact with the prisoners of war.

- A. We lived in the same camp and if they had any gripes or complaints, they told us and we met them daily and that would be continuous contact in that way.
- Q. But, you only saw the prisoners of war up to the time they were turned over to the guards for labor purposes and after they were returned by the guards having performed their labor, is that correct?
- A. That is correct.
- Q. Now, with respect to the British prisoners of war, when did you come in contact with them if at all during your stay, generally speaking?
- A. About daily.
- Q. Daily, that is true, but at what time of the day, what periods?
- A. There were several shifts and I always saw the shifts which were not at work at the time and I talked with the men.
- Q. And, do you say the same with respect to the Canadians?
- A. Yes, sir.
- Q. Now, I will ask you if you recall a prisoner of war by the name of John L. Scott, a British prisoner of war?
- A. I know of a Corporal Scott in the English camp.
- Q. Will you tell the court when you first saw Corporal Scott?
- A. I saw him many times but I didn't know that his name was Scott. I remember that I knew his name after something that happened in the medical inspection room.
- Q. Will you tell the court when you first saw Corporal Scott in the medical inspection room?
- A. It was in the early part of February and I was in the medical inspection room sitting beside a stove and sitting on a bench. Dr. Bartlett, a British doctor had a sick parade. When I was sitting there, Corporal Scott stumbled in and he reported to the doctor. The doctor asked him several questions concerning his sickness which were answered by Scott in a clear way. I mean it made sense. Then Tsuda came in and stood in front of Scott and started to shout to Scott that he was lazy and didn't like to work and that he was acting and while he was making these reproaches, he kicked Scott with his right leg on Scott's legs. Then he told Scott that Scott had to go to work the next day and if he didn't go to work, he wouldn't get any food.

- Q. Just a moment. What was Tsuda's attitude when he was addressing Scott as you have just stated?
- A. He was furious and yelling and shouting to Scott.
- Q. Will you demonstrate to the court what you mean by "kicking him on the legs"? Take me for Corporal Scott for example. What was Tsuda doing to him?
- A. Kicking him on that part of the leg (indicating).
- Q. About how hard was he kicking? Will you demonstrate? (The witness demonstrated).
- Q. Describe to the court the condition of Scott at that time.
- A. The moment Scott was yelled at, I saw his eyes glaze. He was looking at the distance and he even wasn't aware that Tsuda was talking to him. Maybe that was the reason he didn't answer the questions Tsuda asked him. Moreover, Scott didn't understand Japanese. Neither of the British understood Japanese and because he didn't answer and because he didn't pay much attention, he was kicked all the time. Afterwards maybe Tsuda noticed Scott was real ill and he left the room and after that, I don't know what happened whether Scott was brought out of the room because I was very upset myself and nervous.
- Q. Did Scott collapse?
- A. I don't recollect that. What I remember was that a few minutes afterwards Scott was carried on the bench on which I was sitting and he was carried by Corporal Bennett and some other British. Dr. Bartlett was there. When Scott was lying on the bench, he was unconscious already. The doctor investigated him and afterwards Scott was brought out in a room besides the medical inspection room. One hour later I heard that Scott was dead.
- Q. I will ask you did you see Scott's body after it was dead?
- A. I saw Scott's body the next morning when he was put in a coffin.
- Q. What was the condition of his legs when Tsuda was kicking them?
- A. I could see Scott was suffering from beriberi because he was very thin and his legs were swollen. Moreover, on the place where he was kicked, he had big ulcers.
- Q. Now, I will ask you this. Can you point out in this courtroom Tsuda who you state kicked Scott in the way that you have described? Will you point out the Tsuda to which you referred.
- A. That is Tsuda.

PROSECUTION: Let the record show the witness indicated the accused.



- Q. What were Tsuda's duties in the camp at this time?
- A. In the first few months, he had guard duty so he was on guard at the gate of the camp with a few soldiers. After that he was in charge of the stores for clothing and after that he was attached to the gardens and had to supervise the gardens which were outside the camp.
- Q. Did you see Tsuda frequently during your stay at the camp?
- A. I saw him nearly daily.
- Q. What was Tsuda's nick name or what was he known as in the camp by the prisoners of war?
- A. He was nicknamed "The Frog" or by the Dutch "The Kicker" which means the same.
- Q. Was that nickname generally applied to him throughout the camp?
- A. Yes.
- Q. You know that of your own knowledge?
- A. Yes, sir.
- Q. I will ask you do you recall a prisoner of war by the name of Alexander Henderson, a Canadian prisoner of war?
- A. I know Canadian Henderson.
- Q. Did you know him very well?
- A. I know him very well.
- Q. Will you state to the court a particular occasion on which you had particular notice of him due to his condition?
- A. I knew Henderson very well because sometimes I gave him food and he was doing my laundry. One day I was standing near the guard and Scott came in and he had a bandage around his head.
- Q. Who came in?
- A. Henderson I mean. Henderson came in and he had a bandage around his head. It was a towel or something like that and because he returned during working hours, I asked him what was the matter. Moreover, blood was running over his face. He told me that he had worked in the garden and that Tsuda had beaten him with a hoe. I told him to go to the medical inspection room immediately to get some help. Later I saw Henderson in the hospital and he told me that he felt all right and that he had a wound on his head and that the doctor put three stitches in it. Afterwards I talked to Dr. Bartlett and Dr. Bartlett told me he had treated Henderson and put a few stitches in his head.
- Q. Will you state to the court when this occurred?

- A. This happened in the latter part of June or beginning of July 1945.
- Q. Do you recall a certain British prisoner of war by the name of Donald C. Stewart?
- A. He was a captain. I know him very well.
- Q. During what period was this Captain Stewart at the camp?
- A. Captain Stewart came with the British prisoners of war in August of 1944 and he was with us until the 9th of September, 1945.
- Q. Did you ever have any occasion to notice or any particular contact which you had with Captain Stewart which would be significant and stand out in your mind?
- A. There are two things which I recollect. One of them is that one morning in April, 1945, Captain Stewart was in charge of bringing human feces to the gardens and an argument arose between Tsuda and Captain Stewart and he was kicked about in the same way as I showed before. Another time (interrupted).
- Q. Who kicked him?
- A. Tsuda kicked Captain Stewart.
- Q. The accused?
- A. The accused. Another occasion was Captain Stewart told me (interrupted).
- Q. Never mind what he told you at this time. Explain to the court how the matter came first to your notice.
- A. You mean the kicking?
- Q. The second instance you are now referring to?
- A. The second instance happened when I was standing in front of the British dining hall and Tsuda was taking Captain Stewart out and pushing him on the shoulder and they went to the English barracks and later while he was pushing Captain Stewart, he talked in a scolding way and later I had occasion to ask Captain Stewart what it was all about and he told me his story.
- Q. When did this occur?
- A. This happened about June of 1945.
- Q. What did Captain Stewart tell you took place?

DEFENSE: May it please the Commission, I would like to object to that as calling for a hearsay answer because I believe there is other testimony by Captain Stewart himself which will be presented later and I think that is the best evidence in the case.

PROSECUTION: I agree with counsel with one exception, and due to the fact that we have put the testimony in the beginning, I want to make it as coherent as possible under SCAP rules which permits hearsay evidence.

DEFENSE: I have never seen that in SCAP rules. There is no mention of hearsay evidence in SCAP rules.

LAW MEMBER: Could you please explain what you are trying to show by this evidence?

PROSECUTION: The court is referred to Specification 9. That is what we are referring to and the only difficulty is without explaining what he was told, it doesn't make sense. I have Captain Stewart affidavit and if it weren't for having to put this witness on now, I would have put it in first.

DEFENSE: It is hearsay of the very worst kind. You have the statement of the victim himself and the only reason for admitting any hearsay that has probative value as hearsay is because there is no better evidence.

PROSECUTION: I can easily recall the question. I will withdraw the question.

Q. Now, Captain Franken, I will ask you if you have had any other relations with the accused which would be deemed by you to be contrary to your position as senior officer of that camp?

A. One day I was made to work in the gardens in the camp and I had to spade the garden and because my left shoulder was dislocated, I couldn't work very well and I went to the doctor and the doctor told me I couldn't do any work and so I reported to the office. After I had been to the Japanese office, I went to Tsuda and told him that I couldn't do that work and then he said, "All right then you have to throw human excrement over the gardens because that is not too heavy for you". I went up there to do it but the job was already done by other prisoners of war so it had no need for me to do it because the job was finished. Later I made a report and sent it in to the Japanese camp commandant that officers shouldn't be made to do such humiliating work as Tsuda had ordered us to do.

Q. Did Tsuda ever compel you to do any other work which you considered humiliating?

A. At least four times he had me wash his socks and underwear. Actually, when he was away one of the Dutch prisoners of war offered me to do the job for me so I didn't do it myself.

Q. But he ordered you to do it?

A. He ordered me to do it.



- Q. Well, Captain Franken, can you refer to any other events in your mind that this accused has committed for which you cannot fix the victim of the incident which you can recall?
- A. I saw him beating a Dutch prisoner of war Beekman. This happened in December 1944. I cannot remember what it was for but after that (interrupted).
- Q. Explain to the court the circumstances of that beating; how it was conducted.
- A. Beekman was standing at attention and he was slapped by Tsuda but Beekman is a small fellow. He was about five foot two inches and the accused is a quite strong fellow so that the slapping was quite severe and after this slapping Beekman had to stand at attention for about an hour. It was in the gangway besides my room and at that time of the year, it was pretty cold. Beekman had no overcoat. Afterwards, I took him to the office to ask him whether the punishment could be finished and after standing there another quarter of an hour, Beekman was dismissed.
- Q. Do you know any other instances at all?
- A. In 1945 in December Sergeant Sigmond, a Dutch prisoner of war was slapped several times by the accused and I remember that he was not guilty at all. Moreover, Sigmond was suffering from beriberi and a light case of pellagra so this slapping was quite severe.
- Q. Now, did you ever notice while you were camp commandant and Tsuda was acting as quartermaster any acts on his part which would cause serious discomfort and possible injury to prisoners of war in your charge in connection with the issuance of clothing and the like?
- A. In the winter of 1944 and 1945 which was a cold winter, he refused the prisoners of war to wear their overcoats and when I was duty officer, I had to order the men to bring their overcoats to their barracks and I asked him what was the reason because the camp commandant allowed the men to wear the overcoats. Then he said, "I don't care what the camp commandant says. It is my order". The next day I went to the camp commandant and explained to him that the men were not allowed to wear their overcoats and he told me, "Yes, they are allowed to wear their overcoats". So, a few days later the men paraded with the overcoats again and the accused sent them back again and he said, "No, you are not allowed to wear overcoats. Overcoats are stolen in the mines". And, two of the British overcoats were stolen in the mines at that time. That went on (interrupted).
- Q. About how long did it go on?
- A. About three or four weeks and because the amount of the sick increased, I went to the office again and I told the camp commandant that this could not go on in that

- Q. Well, Captain Franken, can you refer to any other events in your mind that this accused has committed for which you cannot fix the victim of the incident which you can recall?
- A. I saw him beating a Dutch prisoner of war Beekman. This happened in December 1944. I cannot remember what it was for but after that (interrupted).
- Q. Explain to the court the circumstances of that beating; how it was conducted.
- A. Beekman was standing at attention and he was slapped by Tsuda but Beekman is a small fellow. He was about five foot two inches and the accused is a quite strong fellow so that the slapping was quite severe and after this slapping Beekman had to stand at attention for about an hour. It was in the gangway besides my room and at that time of the year, it was pretty cold. Beekman had no overcoat. Afterwards, I took him to the office to ask him whether the punishment could be finished and after standing there another quarter of an hour, Beekman was dismissed.
- Q. Do you know any other instances at all?
- A. In 1945 in December Sergeant Sigmond, a Dutch prisoner of war was slapped several times by the accused and I remember that he was not guilty at all. Moreover, Sigmond was suffering from beriberi and a light case of pellagra so this slapping was quite severe.
- Q. Now, did you ever notice while you were camp commandant and Tsuda was acting as quartermaster any acts on his part which would cause serious discomfort and possible injury to prisoners of war in your charge in connection with the issuance of clothing and the like?
- A. In the winter of 1944 and 1945 which was a cold winter, he refused the prisoners of war to wear their overcoats and when I was duty officer, I had to order the men to bring their overcoats to their barracks and I asked him what was the reason because the camp commandant allowed the men to wear the overcoats. Then he said, "I don't care what the camp commandant says. It is my order". The next day I went to the camp commandant and explained to him that the men were not allowed to wear their overcoats and he told me, "Yes, they are allowed to wear their overcoats". So, a few days later the men paraded with the overcoats again and the accused sent them back again and he said, "No, you are not allowed to wear overcoats. Overcoats are stolen in the mines". And, two of the British overcoats were stolen in the mines at that time. That went on (interrupted).
- Q. About how long did it go on?
- A. About three or four weeks and because the amount of the sick increased, I went to the office again and I told the camp commandant that this could not go on in that

way. At that time, there was a Lieutenant Chisawa who was camp commandant and he allowed the prisoners of war to wear their overcoats and I told him, "Yes, but your order is contradicted by Tsuda because he tells me he couldn't allow it because overcoats are stolen in the mine". Then steps were taken that special guards consisting of prisoners of war who couldn't work were sent with the men to the mines and they had to guard the overcoats.

Q. Will you explain to the court how serious it was not to have overcoats at that time?

A. At that time the men going to the mine were poorly dressed. They had coats and trousers made of paper. They were quite thin and none of the men had any underwear except a gee string. The most serious thing is the people as they went out from the mine where it was quite hot, got in the cold weather again and that caused all kinds of diseases, pneumonia, and because at that time the health condition of the Dutch and British prisoners of war was not too good, they got such diseases.

Q. Was there much disease at that time in the camp?

A. Yes, there was.

Q. What was it principally?

A. Most of it was pneumonia.

Q. Was there any noticeable increase after the refusal to let them wear overcoats?

A. New increase you mean?

Q. How did the refusal to allow overcoats affect the pneumonia rate in the camp?

A. We figured it out that the pneumonia rate was more or less due to the refusal to allow overcoats and that is why I went to the camp commandant to ask for those coats.

Q. Did the accused perform any other acts which you would deem detrimental to the health of the prisoners of war referring to general instances?

A. As the camp commandant I was interested in the cases of the prisoners of war and I recollect concerning this case of Scott that the Dutch doctor, De Wolff who also took care of Scott before that time told me Scott was suffering from beriberi and beriberi heart and that a sudden shock (interrupted).

Q. Wait a minute. Did you ever notice Tsuda compelling prisoners to be unduly exposed to the weather?

A. I remember in June or the latter part of May 1945 the Canadian prisoners of war were lined up in the



court yard in front of their barracks and they had to stand there at attention for so far as I could see at least one hour because when I went to my hut, they were still standing there. It may have been longer and I asked the commander of the Canadians what it was for and he said the men were punished by Tsuda because they had not put on the papers in the right way on their sliding doors.

- Q. Did you ever, while you were camp commandant, have occasion to investigate the matter of stealing in the camp and find out who was guilty of stealing? Will you explain to the court something about that?
- A. I saw several occasions that Tsuda was stealing Red Cross parcels out of the store; also I saw him stealing fish which belonged to the cook house of the prisoners of war. There were two kitchens then, one for the Japanese and one for the prisoners of war. Moreover, it was reported by my men that he brought parcels of this Red Cross stuff to his house. He went out on a bicycle and they could see him with the parcels.
- Q. Can you describe the parcels that he had?
- A. The parcels were about this big (indicating).
- Q. About when did this occur, during what period?
- A. This happened since my stay in the camp and in 1944 and 1945.
- Q. On how many occasions did you notice this occurring? How many times did it come to your attention that Red Cross supplies would be taken? Do you recall?
- A. I remember that they reported to me several times.
- Q. Now, then, who decided and how was it decided what prisoners were sick and couldn't work and what ones were able to work? Explain to the court how that was handled?
- A. This was decided on sick parade. The prisoner doctor would investigate the patients and he would advise the Japanese medical orderly whether the prisoners would be sick; whether he would be in the line or would be attached to a special sort of work, a lighter job and so on. But this sick parade started at nine o'clock in the morning and the first shift had to leave the camp at six o'clock in the morning so sometimes it occurred that a fellow was sick and couldn't go to work. In that case we had to parade the man and then we reported to the Japanese civilian on duty and I know twice in the case of a British prisoner of war when I was duty officer I told Tsuda who was on duty that the man was not able to go to work because he had fever or something else and then Tsuda decided that the man should go to work.

- Q. In this particular instance was the man forced to go to work?
- A. He was forced to go to work. On other occasions (interrupted).
- Q. Was he very ill? Explain to the court how ill he was from your personal experience and knowledge.
- A. This was working in the mines that I referred to and I knew that he was ill. I am not a doctor but I felt that he was hot and that was sufficient to me. According to my opinion, he was not able to do hard work in the mine. On other occasions, if he needed people to work in the camp, he would run in the barracks and yell for so many men and then I explained to him that the people were just back from work in the mines and they were not able to work and he said, "Yes. Then you have to take people on light duty", and these men had to be sorted out according to roster but he always wanted them immediately and then I had to go into the barracks and even sick people who were lying on their mats were called out and had to work. I explained to him that a few men were sick and excused from work by the doctor and the medical orderly but he didn't care and made them work and this happened several times.
- Q. Do you speak Japanese?
- A. I speak a little bit of Japanese.
- Q. When did you learn it?
- A. I learned it when I was in Japan.
- Q. When?
- A. During my stay as a prisoner of war here.
- Q. Do you understand it as well as speak it?
- A. I cannot understand it very well nor do I speak it very well.
- Q. When you were a prisoner of war, were you able to understand it?
- A. So far as it concerned the daily routine and the things which we needed or talked about in our daily life, then I do understand it in that way. I am not able to bring up a discussion in Japanese.
- Q. Do you recall any other beatings at all that you can't remember the specific instance? Did you ever see beatings that you cannot recall the victim or date or circumstances but you do recall definitely seeing the beating?
- A. I know that several times Dutch prisoners of war reported to me that they were beaten by the accused but most of it happened in the garden not in the camp. It had no use for me to report him to the camp commander because, as a matter of fact, he ruled the camp and had no regard

for the commands of the camp commander or any other people. He just did what he pleased himself. Moreover, we reported several times what happened and never got any solution. If I reported it to the interpreter to report to the camp commander, the next morning I would hear, "Yes, he is a strange fellow", and he didn't like prisoners of war and things like that.

Q. During the working day, where did you spend most of your time?

A. In my hut.

Q. You didn't accompany the prisoners at all?

A. No, they went out and worked in the garden but concerning all these paper reports which were brought to the quarters of the Dutch, British and Canadian commanders in the camp, we made a general report which we delivered to the camp commandant in which we complained of the accused Tsuda in which we said the beatings had to be stopped and the second thing was he always treated officers in a humiliating way by beating them or scolding them in front of the men and we never got any answer from that report either. So afterwards if a beating, if the accused beat a prisoners of war and it was reported to us, we knew it was no use and let it go.

Q. This man known as "The Frog", I will ask you again if this term was generally used throughout the camp in describing the accused?

A. Yes.

Q. Did you personally hear it used by the other prisoners of war?

A. I invented the name myself in Dutch, "The Kicker" and when the British came into camp they called him the "Frog" which is the same and when the Canadians came in they took over the name from the British and called him "The Frog" themselves.

Q. Why did you call him "The Kicker"?

DEFENSE: If it please the Commission, we have been over this line before.

PROSECUTION: He has not been asked why he called him "The Kicker".

DEFENSE: I think the word itself is self-explanatory and I don't think it serves any useful purpose.

PROSECUTION: Throughout these affidavits, he is referred to as the "Frog" and I wish to have the court (interrupted).

LAW MEMBER: You have established that he was called "The



Frog" and I don't think there is any necessity for the reason why. The objection is sustained.

PROSECUTION: No further questions.

PRESIDENT: Is the direct examination completed?

PROSECUTION: Yes.

PRESIDENT: The Commission will recess for a short period.

The Commission then took a recess until 1040 hours at which time the personnel of the court, prosecution and defense, and the accused, the interpreters, and the reporter resumed their seats.

PRESIDENT: The Commission is in session. Proceed with the cross-examination.

DEFENSE: Will the record show that the witness is still under the oath that he took a few moments ago.

#### CROSS EXAMINATION

Questions by defense:

Q. Captain Franken, I direct your attention to this Scott incident. I wonder if you can recall the names of the individuals who were in the medical inspection room when Scott came in?

A. Corporal Bennett, Sergeant Franken, my cousin.

MEMBER: Sergeant who?

A. Sergeant Franken, a cousin of mine, Dr. Bartlett. Those are the ones I can remember.

MEMBER: Doctor who?

A. Captain Bartlett.

DEFENSE: Q. And yourself?

A. Yes.

Q. Do you recall whether or not there were other individuals standing in the door of the medical inspection room?

A. There were some British.

Q. Do you recall their names?

A. I do not recall their names.

Q. This Scott incident all took place within the medical inspection room?

- A. That is right.
- Q. Not on the outside?
- A. No.
- Q. Now, Captain Bartlett was the medical officer who attended Scott?
- A. That is right.
- Q. Was there any other officer there who attended him at the time?
- A. Dr. De Wolff, a Dutch doctor.
- Q. When this particular incident happened, was he in the sick room?
- A. I don't recollect it.
- Q. Now, you have mentioned the Henderson incident. Did you see that incident when it took place in the garden?
- A. No, because the officers were not allowed to go out of the camp except Captain Webb and Captain Stewart, and, therefore, the officers who stayed in the camp never saw the beatings that took place in the garden because this accused worked most of the time in the garden with the prisoners of war.
- Q. You don't know of your own knowledge the circumstances surrounding the Henderson incident except he came in to you and you sent him to the medical inspection room?
- A. That is right.
- Q. Did you ever have the opportunity of visiting work details working outside the camp compounds?
- A. No, I have never been in the gardens.
- Q. Have you ever been in the mine?
- A. I have been in the mine.
- Q. On how many occasions?
- A. Twice I can recollect.
- Q. Now, on any of these occasions when in the mine did you ever see Tsuda beat any prisoner in the mines?
- A. In the mines?
- Q. In the mines?
- A. He had nothing to do with the mines.
- Q. He had nothing to do with the mines?
- A. No.
- Q. Did he work around the topside of the mine?
- A. No, he was working in the gardens. The gardens had nothing to do with the mines.

- Q. How were the POW's carried from the POW camp to the mining company; who escorted them?
- A. In the beginning, they were escorted by civilians in the Army service like the accused but later they were handed over in the camp to Japanese foremen who got them in the camp. They were turned over by the prisoner duty officer to the civilians in the Army and the civilians in Army duty handed them over to the Japanese foremen of the mine.
- Q. You never did see Tsuda carrying the men from the camp out to the mine?
- A. I saw it several times.
- Q. I mean escorting the POW's from the camp to the mine?
- A. From about August, 1943, until about December, 1944.
- Q. And then Tsuda was taken off that detail and put on the garden detail?
- A. No, there were five or six civilians in Army service and every day there was another one on duty. The man who was on duty had to bring the prisoners to the mine and hand them over and after the shift, he got them from the mine personnel and brought them to the camp again.
- Q. Were they alternates (interrupted).
- A. Between the civilians in Army service.
- Q. I believe you stated, Captain Franken, that when Scott came into the medical inspection room, he appeared to be a very sick man and that in your opinion he understood what Captain Bartlett was saying to him; is that correct?
- A. Yes.
- Q. How long after he came into the room was it before Tsuda came into the medical inspection room?
- A. Just a few minutes.
- Q. What was Scott's physical condition at the time?
- A. He looked very thin and pale and afterwards when I saw his legs, I knew he was suffering from beriberi.
- Q. Before this incident took place, had you heard any of the medical officers say Scott was suffering from malnutrition, beriberi, or cardiac beriberi? Did any of the officers tell you of his condition?
- A. No, they did not.
- Q. Did you have the opportunity to observe Scott from after he came into this camp; that is, his physical condition at the first, say before this incident?
- A. I remember Scott's face when he came into the camp because he was an NCO and the British had not many



NCS's and he was normal then and looked quite healthy.

Q. Did you have an opportunity to observe him from time to time up until this incident?

A. I didn't pay much attention to him during that time.

Q. Do you know if during the internment he was suffering from malnutrition or beriberi during this time?

A. No.

Q. Directing your attention to the Stewart incident, what were his duties in camp?

A. Stewart was - For every nationality there was the senior officer who was responsible for the men, that stayed in the camp all of the time. Then the doctors stayed in the camp because they had to take care of the patients and there was one Dutch officer who had beriberi and he got a job in the camp and Stewart and Padre Webb had work in the gardens and as a special job, Captain Stewart was appointed to look after the excrements which had to be brought from the camp from the latrines to the gardens.

Q. Now, do you know whether or not there were other mining companies that employed POW's in this general vicinity of Yumoto?

A. I know there was Camp Number 2 in the neighborhood but never had an opportunity to contact them.

Q. Was there more than one Stewart, one man by the name of "Stewart" in your camp?

A. I don't know him.

Q. I believe you stated that you saw Tsuda kick Stewart on one occasion?

A. Yes.

Q. And, on another occasion you saw Tsuda push Stewart. Are those the only two things you saw?

A. Yes.

Q. All the information which you have concerning events which took place outside the camp are hearsay or they are instances which were reported to you directly by the men; is that correct? I mean you just heard these things took place outside the camp; you didn't see them?

A. No, not outside the camp and, as I told you before, there were instances which happened in the camp but I didn't see them.

Q. Now, the things that you have given here this morning, outside of the Stewart incident, the Scott incident and the fact you saw Henderson after he was injured in the garden and the Red Cross supply incidents, are those about the only things that you actually witnessed or were there other things you testified about you actually saw?

- A. Also the beatings of those two Dutch prisoners of war.
- Q. Oh, yes, those were slappings, were they not?
- A. That is right.
- Q. You mentioned that you made a report to the camp commandant because you had been ordered to do certain jobs such as spreading the fertilizer on the garden and also the fact that you had been ordered by Tsuda to launder his clothes. I understand this report was on the order to spread fertilizer on the garden?
- A. Yes.
- Q. You actually did not do that; it was already done when you got there?
- A. That is right.
- Q. And your complaint is because you were ordered to do it and because it was humiliating?
- A. That is right.
- Q. And that is the same with Tsuda's clothes? Did you ever do that?
- A. Someone else did it for me.
- Q. Directing your attention to the overcoat incident. Do you know whether or not overcoats had been stolen when they had been carried to the mine?
- A. I know that they had been stolen.
- Q. Do you know whether or not those individuals who lost their overcoats ever had them replaced or did they have to go the remainder of the winter without overcoats? Were they issued overcoats or did they go the rest of the winter without?
- A. I don't know. They were British and I don't know.
- Q. Now, after you reported the fact that this was done to the camp commander, I believe you said he was Lieutenant Chisawa, were POW's then given permission to wear their overcoats?
- A. Yes.
- Q. And you had no further trouble along that line?
- A. No, that is right.
- Q. And, your best recollection is a guard was appointed to watch those coats while they were at the mine?
- A. Yes, sir.
- Q. Now, on this sick call or sick parade which you have mentioned, do you know whether or not the camp commandant had received orders that as many men as were able must be sent out to work; whether he received that order from higher authority?
- A. I know that there was a general feeling, I mean a general opinion in the staff, the camp staff of the camp commandant and others that they had to send in

as many men as possible. That resulted in a report to high authority of the camp commandant accusing him of sending sick people to the mine and that health conditions didn't permit and they were only driving for top percentage to be sent to the mine and we didn't agree with it.

Q. That was your report?

A. That was my report.

Q. From what you were able to observe, did it seem the camp commandant had any control over the policy of the mining company in working these POW's or laying them off from work?

A. You mean did he have any responsibility over the mining company?

Q. Was he in control so he could tell the mining company, "You are not to work these men for this purpose", or "You will let them rest for two weeks"?

A. Yes, because the camp commandant and the camp staff decided whether the men could do the work or not. They were in charge of the prisoners of war. The mining company could only detail the prisoners after they had received them.

Q. You don't know what negotiations went on between the War Ministry and the mining company?

A. I don't know what went on between the War Ministry. I know what went on between the camp and the mines.

Q. I will ask you if you don't think a great deal of the friction between the Japanese and the British, Canadians and Dutch was due to the language barrier; that is, the POW's not being able to understand the Japanese and the Japanese not being able to understand the POW's?

A. I think that is so in many ways. The Japanese, if we didn't understand them, tried to speak slower and make gestures in order to make themselves understood.

Q. Now, what was the name of the interpreter you had at the camp to interpret between yourself and the Japanese?

A. We had a Mr. Okada who was quite good.

Q. Could he speak quite well?

A. Yes.

Q. Was he the individual to whom you turned in various reports and complaints?

A. Yes.

Q. And he translated them to the Japanese?

A. Yes.

Q. And, when you got an answer back, it came through Okada?

A. I never got an answer and I don't know if he wrote



it out or gave it verbally and I got my answer always verbally.

- Q. Do you know whether or not he passed the reports on up to the commander?
- A. A few times when I was called to the office by the camp commander in some cases when the report was strong and was scolded by the commander and I saw a sheet of paper attached to my original report and so I think Okada did read it.

DEFENSE: No further questions.

#### EXAMINATION BY THE COMMISSION

##### Questions by members:

- Q. Captain Franken, you saw Scott, observed him closely, as I understand, when he came in the sick room of the infirmary; is that correct?
- A. Yes, sir.
- Q. You said, from your observations, he was a very sick man; is that correct?
- A. Yes, sir.
- Q. Was he conscious or semidelirious when he came in?
- A. He was conscious.
- Q. Can you elaborate and describe so as to give us a fuller picture of what his condition was when he came in the room?
- A. He was stumbling which means he was very weak and sick but by answering the doctor without hesitating and in a way which made sense, I had the impression that the mental part of his body was all right at that moment.
- Q. What was the essence of his remarks, insofar as you can remember, his complaints, what he said when he came into the infirmary?
- A. The doctor said, "What is the matter with you, Scott?" and Scott said, "Well, I feel quite bad, sir", and technical questions. I don't recollect them what special questions were made but at that moment I remember they made sense.
- Q. Did the doctor have him sit down at that time?
- A. No, the doctor had him standing at attention because there were no chairs there.
- Q. You were sitting on a bench?
- A. That is right. The bench is the examination table. They took the bench for it.

- Q. Corporal Scott was standing conversing with the doctor?
- A. Yes, sir.
- Q. I am trying to get a complete picture. And giving the doctor intelligible answers when the accused, Tsuda, came in; is that true?
- A. Yes, sir.
- Q. Describe as accurately as you can what Tsuda's acts were. Did he shoulder the doctor away and lay his hands on Scott?
- A. The doctor was sitting at a table and was behind it and here was the bench and the stove and I was sitting beside the stove and Corporal Bennett and Sergeant Franken were standing there and I don't remember where the other man was but think he was with the medicaments in that part of the room and Scott was standing about the same place where I am sitting facing the doctor.
- Q. The doctor was sitting?
- A. Yes, sir. On the place where I sit now and he was standing there and I could see the expression on his face and Tsuda came in from the back and came through the sitting room and stood in front of Scott.
- Q. Between Scott and the doctor?
- A. Between Scott and the table and the doctor.
- Q. Continue please.
- A. And then he started yelling and shouting at Scott, most of it he couldn't understand.
- Q. Did he put his hands on Scott?
- A. No, not then, sir, but he started shouting and yelling but some sentences I could translate; for instance, that he was very lazy and only acting and that he told lies and that he wouldn't get any medical attention and if he didn't go to work the next morning, he wouldn't get any food. And, he put several questions like, "Do you agree that you are a liar?" and Scott didn't answer at that time.
- Q. He did answer?
- A. No, he did not answer because when Tsuda started yelling and shouting at him and kicking him, Scott was absolutely not conscious. He was standing there but not conscious.
- Q. What do you mean "not conscious"? Had he lost his sensibilities and passed into a state of unconsciousness?
- A. He was standing all right but he didn't notice anything. He was in the way of unconsciousness to a certain extent. That he was standing was the remarkable thing.
- Q. You mean he was standing and ignoring Tsuda's comments or do you mean he had passed into a physical state of unconsciousness?

- A. Yes, if the doctor had spoken to him at that time, he wouldn't have understood him.
- Q. What is before Tsuda started kicking him or after Tsuda started kicking him? Did Tsuda start to kick him immediately he began to speak to him in a loud voice?
- A. About half a minute to one minute later.
- Q. Could you say just exactly when Corporal Scott seemed to pass into the condition of insensibility?
- A. Not on the second. I may be wrong for a minute but I noticed after I was looking at Tsuda and then looking at Scott again and so he was in that state and when he became in that state, I cannot know it now.
- Q. How many times approximately did Tsuda kick Corporal Scott on the shins or legs?
- A. He made a talk about five minutes and all the time long he kept talking he accompanied his questions with kicking Scott on the legs.
- Q. Two or three or fifteen or twenty times?
- A. About eight times.
- Q. Was Corporal Scott still standing in that state when Tsuda left the room?
- A. I cannot recollect that because I was very upset myself. I was in a rage myself. I was trembling myself by seeing that.
- Q. Who assisted Corporal Scott from his standing position?
- A. Corporal Bennett was one of them that put him on the bench.
- Q. Did he seem unconscious all that time, rigid?
- A. He was unconscious.
- Q. Had he been standing unconscious all that time?
- A. I don't know what happened. Tsuda went out of the room and maybe I went out of the room. That is what I don't recollect. Any way, I remember I must have been out of the room because besides Corporal Bennett there were two other people who were not before in the room. That is what I recollect now.
- Q. Do you know anything about an incident in which the accused, Tsuda, is alleged to have forcibly pushed Captain Stewart's head into a drain?
- A. That is what Captain Stewart told me.
- Q. Did you see any evidences of it?
- A. No, I didn't see it. He told me it happened a few hours before. I saw he was brought out of the dining hall and that there were other soldiers, British soldiers, privates



and enlisted men in the dining hall and he was taken out for a certain job and I couldn't understand what it was because Stewart had no duties in the camp, never was duty officer in the camp.

- Q. Did Tsuda know you did not have to perform the tasks of spreading the fertilizer in the garden and washing his clothes which he had ordered you to do?
- A. I don't know but soldiers in my Army know that you wouldn't order officers for doing such jobs.

- Q. Were you present in the camp when Tsuda left or was transferred?

- A. He was not very liked in our camp and on the 18th or 17th of August, we went to the camp commandant with this Lieutenant Finn, Captain Thornton and I and we told the camp commandant Tsuda had to be taken out of the camp and put somewhere else because I said I cannot guarantee his life. I told him the fellows were in such a condition they might kill him. Nevertheless, he was back in the end of August, I saw him when he came back in the camp for one day.

- Q. Do you mean by that that he had aroused such a sense of hostility among the prisoners of war in the camp that they might have committed overt acts disregarding their own safety?

DEFENSE: May it please the Commission, we object to that. We don't think that is a proper question. It is asking the witness to testify as to the state of mind of five hundred other people and we don't think he is qualified to do that.

LAW MEMBER: The objection is sustained.

- Q. Will you elaborate on why you went to the camp commander and made your request?
- A. As senior officer I knew the feeling of the men towards Tsuda.

DEFENSE: We raise the same objection to this. It is the same question reworded. If it is something he has within his knowledge or that was reported to him, but he is still testifying as to the state of mind of the men.

LAW MEMBER: Will the reporter repeat the question.

The question was read by the reporter.

LAW MEMBER: THE Objection is overruled. The witness may answer the question.

PRESIDENT: He has already answered it.

Q. Did you ever see any evidence of beatings of prisoners of war alleged to you at the time you saw them were administered by Tsuda?

A. Will you repeat the question?

Q. Did you ever see any evidences of beatings whom the prisoners of war alleged to you Tsuda had administered those beatings?

A. I have not seen the marks but they reported to me they were beaten by Tsuda.

Q. Did they bear any evidence of the beating?

A. No, they reported to me.

Q. Did you see marks or contusions?

A. No, I didn't see any marks.

Q. You have stated that you nicknamed or applied or invented a nickname for Tsuda. What was that nickname based on?

A. On his bulging eyes, his voice and the way he walked.

PRESIDENT: Any further questions by the prosecution?

PROSECUTION: No, sir.

PRESIDENT: Any further questions by the defense?

DEFENSE: No, sir. Yes, I do have one question, sir.

#### RESCROSS EXAMINATION

Questions by defense:

Q. Captain Franken, I will ask you whether or not in your opinion these kicks administered by Tsuda on Scott, whether or not Scott felt them, whether or not he had any feeling at all?

A. At the time these kicks were administered, no.

Q. You don't feel he felt them?

A. I know he didn't feel them because he didn't even blink his eyes. He was looking in the distance all the time.

DEFENSE: That is all.

PRESIDENT: The witness is excused.

There being no further questions the witness was excused and withdrew.

DEFENSE: May it please the Commission, at this time we would like to ask a continuance of this case for one full week; that is that we resume deliberations a week

from in the morning by which time I think we can have all our investigation completed and be prepared to go right on through with it without further delay.

PRESIDENT: The Commission recognizes that there are some things which are next to impossible of accomplishment and one of them is adequate preparation at this time of the defense in the case, but we still wish to make every effort possible to continue with the case at the earliest possible moment and after a discussion with other members of the Commission, I ask the question if counsel doesn't feel the defense might be ready Monday morning.

DEFENSE: I will make every effort (interrupted).

PRESIDENT: This is Wednesday and there will be a short period of time tomorrow morning, of course, at which time the Nichizawa case will reconvene which will cost you a short period of time.

DEFENSE: May I point out why I ask. The witnesses all live in Sendai and I have to request them through the Liaison Office and it is not a very efficient organization and the trip takes about eight hours itself and we will put in a request for them. We have for some of them and as we study the affidavits and statements, we will put in a request for them. It might be we will be in position to go on with it on Monday. We certainly don't want to delay any more than is necessary but we don't want to be placed in the position of saying definitely Monday and having to come in Monday and ask for another continuance.

PRESIDENT: My attitude would be that it might be better to make the effort for Monday than to go on indefinitely for the additional period of one full week and it is entirely possible to the extent of working the case half a day and permitting the defense to continue with further examination during the afternoon. Today is Wednesday. That gives you Thursday, Friday and half of Saturday.

DEFENSE: If you can give us until Tuesday morning, I think we can do it. Tomorrow we can get out the summons for the witnesses. They can leave up there on Friday, get here Saturday and we can have the opportunity of interviewing them Sunday and Monday. I think we will be in position to go ahead then.

PRESIDENT: The Commission will grant a recess for an indefinite time with the understanding that if it is possible to reconvene the case on Monday morning that that will be done.

DEFENSE: I will notify you, sir.

PRESIDENT: INASMUCH as the prosecution on the Nichizawa case is present, is everything in order for convening that case tomorrow morning?



PROSECUTION IN THE NICHIZAWA CASE: The Nichizawa case, yes, sir. I would like to inform the Commission that Colonel Carpenter and Colonel Blackstock have asked me to tell the Commission that the Nichizawa case is a priority case. There has been only one witness in the Tsuda case and the Tsuda case was convened for that purpose only.

PRESIDENT: It was not. I am sorry but either the prosecution is misinformed or didn't convey the proper information. The defense was granted a continuance in the Nichizawa case and time to prepare an adequate defense against the American witness presented in that case and it has had no time, no time has been available to the defense to prepare a defense against the testimony of this witness as that time granted by the Commission was not available because the Tsuda case was thrown in his lap at this time.

PROSECUTION IN THE NICHIZAWA CASE: The prosecution understands that but the Nichizawa case has priority and should be presented as early as possible.

PRESIDENT: INsofar as this Commission is concerned, says nothing about any priority and says nothing about it being convened merely to take the testimony of one witness. There is nothing in the command letter to indicate any priority.

PROSECUTION (Nichizawa): I have just come from Colonel Carpenter and he told me to tell the Commission that. We have heard 137 witnesses or witnesses through affidavits and we have been about six weeks on the Nichizawa case and it (interrupted).

PRESIDENT: It would strike me the Legal Section of SCAP has fumbled the ball because the same defense is called for both cases and the defense cannot prepare for both of these cases at the same time. If they make a determination as to which case will go forward, time must be given the defense in which to prepare to go forward with it and, now, so far as I understand it, under the command letter, the defense was devoting his attention to the Tsuda case. We are perfectly willing to proceed with either case but defense certainly must be prepared to defend the testimony in the case.

PROSECUTION (Nichizawa): We have been instructed by Colonel Carpenter to say he wants the Nichizawa case to be tried ahead of any case before this Commission.

DEFENSE: May I be heard, sir? These cases, when they are set for trial, are referred to the Commanding

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General, Eighth Army, for trial. This Commission is subject to the orders of the Commanding General of the Eighth Army. They are not subject to the commands, with all due respect, of Colonel Carpenter or the Legal Section or anyone else. It wasn't our idea to be pulled off the Nichizawa case and put on the Tsuda case but there was a command letter originating in the office of the Supreme Commander for the Allied Powers. It was sent down here. Now, it certainly doesn't make for efficiency to say, "Yes, we want this case tried" and pull all the investigators off the case and put them on this case and then as soon as that is out of the fire to pull them off that and put them back on another. Now, if the Legal Section of SCAP wants the Nichizawa case tried, we are perfectly agreeable but we should know about it. When they sent the Tsuda case down, there should have been something in the command letter about it. However, this is in the discretion of the Commission to do what the Commission wants to do in the matter. If it wants to go forward with the Tsuda case, it is within its jurisdiction and the determination of that is not in the defense or the prosecution or in the Legal Section of SCAP. There should be another command letter to be attached to the first one to establish the priority as respects these two cases. I urge that proper intelligence be given to it so that defense does not go off and spend another couple of days on the Tsuda case and then have to go on with the Nichizawa case.

PROSECUTION (Nichizawa): All I can say is that it was my understanding and I believe the understanding of SCAP that this was for the purpose of hearing one witness and one witness only and not for the trial of the entire case. The Nichizawa case has been going on for six weeks and we have had 137 witnesses and we have had defense witnesses which makes it more than that (interrupted).

PRESIDENT: We understand all of that and I might add that we will carry on under the rules as we see them. There is nothing in the command letter as I recall it being read and I ask counsel to assist me in refreshing my mind, that the Tsuda case was to be opened only for the hearing of the testimony of the one witness.

PROSECUTION (Tsuda): So far as, by the language of the command letter, may counsel agree with the President.

PRESIDENT: It is not clear enough for us to determine exactly what to do and under the circumstances, we have nothing here to do but proceed with the Tsuda case until we receive instructions to the contrary by command letter. Will you see about that?



PROSECUTION (Nichizawa): I will go back to Tokyo and do that immediately.

PRESIDENT: We had granted a continuance on the Nichizawa case to permit counsel for the defense to prepare a defense against the testimony of Major Grady and that continuance, as I understand it, is to be asked for again tomorrow morning.

PROSECUTION (Nichizawa): I am well aware of that.

PRESIDENT: Would you be prepared at that time for a determination?

PROSECUTION (Nichizawa): I believe that can be done.

DEFENSE: May I be heard again?

PRESIDENT: Yes.

DEFENSE: This moving from one case to another places us in a most uncomfortable position. We don't know how to proceed. For the sake of clarity, may we ask that the Tsuda case be carried on to a conclusion and then return to the Nichizawa case?

PRESIDENT: That at present is the understanding unless prosecution brings us the letter to the contrary. It strikes me however that the Nichizawa case is the more important except for the admission of the evidence of Captain Franken and I see no reason why the Nichizawa case shouldn't proceed and if so instructed, we will do so but we should carry on to completion only one case at this time. I might add that the Commission finds it extremely difficult to carry on two cases at the same time.

DEFENSE: Shall I subpoena my witnesses to come down?

PRESIDENT: I would go ahead. We can't waste any time.

PROSECUTION (Nichizawa): All he will lose is twenty-four hours until tomorrow morning.

DEFENSE: That is true so far as time goes but the Military Government must provide transportation for these witnesses and the Japanese must provide quarters.

PRESIDENT: Just wait that action, see if that action can't be taken care of until tomorrow morning. The Nichizawa case will be tomorrow morning at which time we will have the information and we will try to have a positive and official determination.

PROSECUTION (Nichizawa): I promise it will be here tomorrow morning to enter and submit and then counsel for the defense will be able to move at that time at approximately nine o'clock in the morning and know whether or not to proceed with the Nichizawa case or the Tsuda case.

DEFENSE: Am I to understand this case is continued until Thursday morning?

PRESIDENT: We will continue this case indefinitely and we will meet tomorrow for such information as may come before the Commission at 0900.

PROSECUTION: (Tsuda) I notice that the reporter is taking all of this down.

PRESIDENT: That is all right. I want it down.

The court then at 1140 hours on 18 September 1946, adjourned to meet at the call of the President.

*Clair F. Schumacher*

*William R. Bready*  
WILLIAM R. BREADY,  
Captain, Major  
Chief Prosecutor.

HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse  
Yokohama, Japan  
Monday, 18 November 1946

The Commission met, pursuant to adjournment, at 0900 hours on 18 November 1946. The reporter present at the close of the previous session in this case was absent, and was replaced by Miss Gertrude Bloch, Reporter.

**PRESIDENT:** The Commission is in session.

**PROSECUTION:** The new reporter will be sworn.

Miss Gertrude Bloch, Court Reporter, was then sworn.

**PROSECUTION:** Let the record show that all members of the Commission are present, the chief prosecutor and the assistant prosecutor and the counsel for defense, as well as court interpreters are likewise present, but that the accused is absent. Let the record show that the accused, for some unknown reason is not present in court this morning, and apparently will not be produced by the Commanding Officer of Sugamo Prison until tomorrow morning at 0900 hours. The prosecution would like to point out to the court that through inadvertence of some party, either the Provost Marshal's Office apparently or the authorities at Sugamo, all the members of this Commission have been forced to lay over for twenty-four hours. I would request that some investigation be made into this matter as to the reason why the accused is not present. The court reporter and the interpreters are present.

**DEFENSE:** At this time, inasmuch as the accused is not present, I respectfully move that the Commission adjourn until such time as the responsible authorities produce the accused here in court at 0900 hours tomorrow morning.

**PRESIDENT:** It is understood that every notice was given to the proper authorities so that they could produce the accused in court, knowing that this Commission would be in session on this morning at 0900 hours. Therefore we have nothing else to do but to adjourn until tomorrow morning at 0900, and let everyone redouble his efforts in making certain that the accused is present tomorrow morning. These delays are costly. The Commission then will adjourn until tomorrow morning at 0900, unless there is something else anyone wishes to bring up at this time. If there is nothing else, the Commission will stand adjourned.

The Commission then, at 0920 hours, on 18 November 1946, adjourned to meet at 0900 hours on 19 November 1946.

*Oliver F. Schumacher*

*William H. Brady*  
WILLIAM H. BRADY  
Captain Major  
Chief Prosecutor



HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse  
Yokohama, Japan  
Tuesday, 19 November 1946

The Commission met, pursuant to adjournment, at 0900 hours on 19 November 1946, all the personnel of the Commission, prosecution and defense who were present at the close of the previous session in this case being present.

The accused, reporter and interpreters were also present.

PRESIDENT: The Commission is in session.

PROSECUTION: The prosecution, at this time, wishes to make an amendment to Specification 12.

DEFENSE: May I interrupt the proceedings at this moment to announce by order of VOCC that Mr. Keeshi, who appears on the orders as associate counsel in this case, for the defense, has been given another assignment and will not appear as counsel for the defense in this particular case.

PRESIDENT: There will be a substitute for him?

DEFENSE: No, sir.

PROSECUTION: As I was saying, prosecution wishes to amend Specification 12 by deleting everything after, "by beating them" in the fourth line. I believe the defense has no objection to that request of the amendment.

DEFENSE: No objection.

PRESIDENT: The point is raised here, Major, that the reference is, "other than as hereinabove specified, and that reference Colonel Neilson brings out, should be matters that would be included in Specification 12 and nothing in prior specifications. Therefore, if that is the case, then the specification will have to be reworded.

PROSECUTION: The point was, sir, in Specification 12, the beatings referred to are beatings other than those listed in the specific specifications, so if the Commission thinks it necessary, we can amend to be, "other than the beatings referred to in Specifications 1 to 8 inclusive.

LAW MEMBER: The Commission will take note that in Specification 12 the words from "hereinabove specified" to the end of the specification be struck out and the words included, after "other than as", "in Specifications 1 to 8 inclusive"; that in Specification 12, the words in the fourth line, "hereinabove specified" to the end of this specification be struck out; and after the words "other than as" there be inserted the words "in Specifications 1 to 8 inclusive."

PROSECUTION: Yes, sir; and the words, "by beating them" still be included in that.

LAW MEMBER: The words, "by beating"; you asked that that be removed.

PROSECUTION: No, sir. The specification would now read, "That during the period from about 15 May 1945 to about 31 August 1945, the accused, Koju Tsuda, did wilfully and unlawfully mistreat and abuse numerous Allied Prisoners of War other than those referred to in Specifications 1 to 8, inclusive, by beating them."

LAW MEMBER: Yes, I think that will clear it up, because 9, 10 and 11 are referring to "other than beating." I think if we make the specification to read like this: "That during the period from about 15 May 1943 to about 31 August 1945, the accused, Koju Tsuda, did wilfully and unlawfully mistreat and abuse numerous Allied Prisoners of War other than as above specified, Specifications 1 to 8, inclusive, by beating them," I think that will make it quite clear that there is no overlapping, because Specifications 1 to 8 refer to beating, and Specifications 9, 10 and 11 refer, in the main, to other offenses.

PROSECUTION: At this point the prosecution intends to proceed with the presentation of affidavit evidence in this case. In order to serve as a guide to the Commission, the prosecution has prepared a list of affidavits in the order in which we intend to present them, and the specifications to which the affidavits are relevant.

PRESIDENT: Proceed.

PROSECUTION: Prosecution produces as Exhibit 1 the affidavit of Sgt. Alexander Henderson.

DEFENSE: At this time, if it please the Commission, I would like to point out that this list of references which has been furnished to the Commission by the prosecution refers in a number of instances, to Specification No. 12. Now, as I understand it, that list of references was prepared prior to the time that it was decided to delete most of Specification 12, which has been deleted this morning, so that the list in that respect will not be accurate, is that correct?

PROSECUTION: That is correct. Of course, the Commission will pay no attention to any irrelevant matter contained in the affidavits.

DEFENSE: That will be pointed out as we go along.

LAW MEMBER: The parts will be stricken out that are irrelevant as we come to the affidavit.

DEFENSE: That is correct, and they will be pointed out as we go along, because I don't think prosecution has had an opportunity to strike them, and I know that we did not have an opportunity of getting together to strike those portions before coming to court, so they will be pointed out as we go along.

LAW MEMBER: We will deal with them as it comes up.

DEFENSE: Yes, sir. At this time I would like to enter general objections which I think will be applicable to all affidavits hereinafter introduced in evidence. One is that the affidavits or the affiants who made these affidavits were not presented in court, nor did the defense or the accused have an opportunity of cross-examining them to determine whether or not the information set forth in the affidavits was information within their own knowledge, or whether the information which they set out in these affidavits was supplied to them by other persons; furthermore, whether or not the information set forth in the affidavits was hearsay.



In addition, we object to this form of testimony, or evidence, so-called, inasmuch as the emergency is now ended in that the witnesses could be brought in person to appear before this Commission. In support of that statement, it will be observed by the Commission that numerous of the affiants have expressed a willingness to return here to Japan to testify in these cases. The affidavits themselves contain a considerable amount of hearsay evidence, which is admitted by the affiant in the affidavit as he makes it. We think that the introduction of evidence in this form is not in keeping with SCAP Rules, inasmuch as rules of SCAP as they apply to the procedures of these Commissions were designed to permit these trials to proceed when there is an emergency still in existence; that SCAP Rules as such were designed to define the limits to which the form of evidence might be presented before this Commission, and it is not in any manner of the meaning of the word intended or set forth that the SCAP Rules as such have minimum limits to which the Commission may go in excluding evidence. Now that objection will appear in the record as being directed to each and every one of the affidavits introduced, reserving to the defense a right from time to time to interpose special objections to the affidavits as they are read, and as they pertain to this particular case.

LAW MEMBER: These general objections are noted by the Commission, but under the rules of SCAP this Commission is charged with the duty of taking any evidence to assure the greatest expeditious procedure. Now the defense may, of course, bring specific objection to any affidavit, and the Commission will then decide on the merits of that affidavit.

DEFENSE: As I understand, sir, the objection is overruled?

LAW MEMBER: Yes.

DEFENSE: At this time, sir, purely as a time-saving element, the affidavits beginning with the first and continuing throughout the whole, some 70 affidavits, give the history of the affiant, that is, when he came into the army, where he was first captured, the various POW camps to which he was assigned. I can't see that that has any bearing or any relevancy to the case at bar. We are charging this accused with matters which took place at Sendai 1-B Camp. What took place in China or Kawasaki 3D is immaterial to the issues before this Commission. I don't see that it has any application.

LAW MEMBER: I agree with that in the main, unless there is any particular part of an affidavit at the beginning that the prosecution desires to particularly bring out. What does the prosecution have to say?

PROSECUTION: I may say, sir, that insofar as any incidents which took place at the previous camps, I agree; but I think it may be of interest to the Commission to hear in each case the chronological sequence of the affiant's stay in various prisoner of war camps. In other words, one thing it will do, it will identify the time at which various incidents took place. If we struck out the material beforehand, it may not be proved to the Commission's satisfaction that a certain incident took place at a certain time. The prosecution has looked over these affidavits quite carefully, and have in my mind, in all cases, or practically all cases, struck out extraneous material. While there are a considerable number of affidavits in this case, the affidavits are not long in most instances. In most cases a paragraph, or at most two paragraphs, refer to this accused, and it certainly will not take long to put all the affidavits in evidence before the Commission. I think that in most cases the chronological sequence of the affiant's statement in the prison camp may be of some help to the Commission.



DEFENSE: I should like to know what help that would be? Now take for example paragraphs 2 and 3 in this present affidavit. What possible use, or what probative value can it have towards determining the innocence or guilt of this particular individual.

LAW MEMBER: Yes. In that particular affidavit I would think there was no particular value in 2 and 3, but there is something in what prosecution says, that the reading of these affidavits generally takes in a very small part of the trial.

PROSECUTION: I may say for that, sir, that when you put a witness in the box, you ask him certain preliminary questions in order to identify him. Now I think that that is important in each case, and it is of some importance in these affidavits rather than starting in, after the affiant's name, starting down to paragraph 6, "and such and such took place." I think it breaks the sequence.

LAW MEMBER: That is true, and the reading of paragraphs 2 and 3 would not in any way prejudice the case of the accused.

DEFENSE: I withdraw the objection if the Commission wants to hear with it. We have some 70 affidavits, and we have anywhere from two to five paragraphs as to where these people have been. I withdraw the objection, and raise no objection to it; but the understanding is that the only camp he was in was Bendal 1-B, and I think that is understood and agreed upon between prosecution and defense. Am I correct in that?

PROSECUTION: That is correct. I may point out that the prosecution is just as anxious as the defense in this case, to save as much time as possible.

DEFENSE: I withdraw objection to the procedure.

LAW MEMBER: This affidavit will be accepted in evidence as Exhibit 1.

Affidavit, Alexander Henderson, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 1.

PROSECUTION: Prosecution at this time presents as Exhibit 2 the affidavit of Frederick George Gard.

DEFENSE: Objection to paragraph 7, which is irrelevant to the issue; no objections other than that.

LAW MEMBER: Paragraph 7 will be accepted for whatever value we can give it, and the objection is overruled. The affidavit of Private Gard will be accepted in evidence as Exhibit No. 2.

Affidavit, George Gard, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 2.

PRESIDENT: May I ask Mr. Brinefield, has the accused been presented with translations of all these affidavits?

DEFENSE: It was gone over with him, yes. If you mean, was it interpreted to him, Yes, sir. He has been informed, and he is being kept informed now.

PRESIDENT: If it is necessary to read the affidavit more slowly and be certain that he gets them, be sure to advise us so that we can do so.

DEFENSE: Yes, sir; I have so advised the interpreters.

PROSECUTION: The prosecution presents as Exhibit 3 the affidavit of Harold Simon Heath.

DEFENSE: No objection.

LAW MEMBER: The affidavit of Harold Simon Heath will be accepted in evidence as Exhibit No. 3.

Affidavit of Harold Simon Heath was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 3.

PROSECUTION: Prosecution presents as Exhibit 4 the affidavit of Donald Nelson.

DEFENSE: On page No. 3, paragraph 13, the second sentence beginning with, "He" and ending with "day". As I understand it, the accused is not being charged with any beatings that took place down in the mines. It is not the contention of the prosecution that the accused was ever working in the mine. Am I correct in that?

PROSECUTION: We are not contending that the accused worked in the mine.

DEFENSE: I think that that particular sentence should be stricken.

LAW MEMBER: This sentence will be stricken out, as it does not refer to the specifications. The objection is sustained, and without exception the affidavit of Donald Nelson will be accepted in evidence as Exhibit 4.

DEFENSE: I would like to point out one other thing to the Commission on page 4. I should like to point out paragraph 14 of this affidavit, which I think goes to the weight which should be given to the information set forth here. "I have carefully read over the foregoing affidavit, which is true in substance and in fact excepting where otherwise stated to be information and belief, and then to the best of knowledge, information and belief. I have covered every instance that I can remember which might possibly be termed as a War Crime."

LAW MEMBER: What is your particular objection?

DEFENSE: I just want to point that out; that the information in here, in this affidavit, is not necessarily all within the knowledge of the affiant himself; that the contents of it could be gleaned from hearsay from talking to somebody else, and he admits that in his final statement there.

LAW MEMBER: He says, "in fact excepting where otherwise stated to be information and belief." I have carefully read over the foregoing affidavit. He says, it "is true in substance and in fact, excepting where otherwise stated to be information and belief", so I think we might keep that in.

DEFENSE: No objection to it, sir, to being left in; just pointing out that it goes to the weight of the affidavit itself, the information contained there.

PROSECUTION: I don't like objecting to my learned friend's objections, but I would point out that he is talking about the weight of evidence. It is nothing in connection with admissibility of this affidavit, and if he would keep his argument about the weight of evidence to the end of his case when he is summing up, I think we could expedite this case.

DEFENSE: I think it is one of my duties to the accused to point out these things to the Commission as we go along and proceed with the case. That is merely what I am trying to discharge.

LAW MEMBER: Proceed.

The affidavit of Donald Nelson was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 4.

PROSECUTION: The prosecution presents as Exhibit 5 the affidavit of Francis John Morgan.

DEFENSE: No objection.

LAW MEMBER: The affidavit of Francis John Morgan will be accepted in evidence as Exhibit No. 5.

The affidavit of Francis John Morgan was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 5.

PROSECUTION: The prosecution presents as Exhibit No. 6 the affidavit of John Paul Clark.

DEFENSE: No objection.

LAW MEMBER: The affidavit of John Paul Clark will be accepted in evidence as Exhibit No. 6.

The affidavit of John Paul Clark was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 6.

PROSECUTION: The prosecution presents as Exhibit No. 7 the affidavit of Alfred John Cox.

DEFENSE: No objection.

LAW MEMBER: The affidavit of Alfred John Cox will be accepted in evidence as Exhibit No. 7.

The affidavit of Alfred John Cox was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 7.

PROSECUTION: The prosecution presents as Exhibit No. 8 the affidavit of Gerald Dupont.

DEFENSE: If it please the Commission, we would like to raise specific objections to paragraph 15 of that affidavit, in which the affiant Dupont states that he did not see the incident, but that he heard. He admits in that that he had heard Henderson speaking to somebody else when he left. Now that is going pretty far to admit that type of evidence. We have the statement of the victim himself. The only purpose of admitting hearsay is where there is no better evidence available to the Commission, and we submit in this case that this is not the best evidence. Now, I have raised no objection to where these people saw Henderson with a towel around his head, or where they saw him when he was admitted to the hospital, but where you have a statement of the victim himself, that is the best evidence. It certainly would not be admissible in a court of law anywhere in the States, and we do not think it has sufficient probative value to permit its admissibility here.



LAW MEMBER: I think it is admissible under the rules of SCAP, and I think we can admit this evidence in this case. The objection is overruled, and the affidavit will be accepted in evidence as Exhibit No. 8.

The affidavit of Gerald Dupont was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 8.

PROSECUTION: The prosecution presents as Exhibit No. 9 the affidavit of Bernard Haley.

DEFENSE: We respectfully object to paragraph 17. I do not think it has any application to the case before the Commission, the fact that these people worked in coal mines. Paragraph No. 20 has no application, since it deals with Red Cross supplies, and those have been stricken. The same is true of paragraph 21.

PROSECUTION: Yes, I have no objection to paragraphs 20 and 21 being stricken. The other may be of some benefit to the Commission in deciding.

LAW MEMBER: Paragraphs 20 and 21 will be stricken, and with that exception, this affidavit will be accepted in evidence as Exhibit No. 9.

The affidavit of Bernard Haley was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 9.

PROSECUTION: The prosecution presents as Exhibit No. 10 the affidavit of Frederick Clarence Lanyon.

DEFENSE: No objection.

LAW MEMBER: The affidavit of Frederick Clarence Lanyon will be received in evidence as Exhibit No. 10.

The affidavit of Frederick Clarence Lanyon was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 10.

DEFENSE: May it please the Commission, may I have just a few minutes. It seems to me that this affidavit has been read before; may I have just a few minutes to check. ... Yes, I would like respectfully to call the Commission's attention to Prosecution's Exhibit No. 8, the affidavit of John Paul Clark, and like to refer the Commission not only to page 4, but the affidavits in their entirety. Beginning on page 4, if the Commission will follow me on that, on prosecution's Exhibit No. 8, I will read from the exhibit just introduced as Exhibit No. 10 page 4, and I should like to start right at the top page: "It was also at Camp '3D' in February 1943 that I saw Pte. Cole beaten with a canvas shoe by a Japanese First Class Private called Kondo. This was done in front of the entire section. Living conditions and rations were slightly improved on what we had before. It was at this Camp that Cpl. Henderson told me that he had injured his hand in the mines and had been placed on light duty. The light duty given him was working in the garden. He found he could not do this work and because he could not work in the fields he was beaten over the head with a stick by a civilian guard called Tsuda, and who was known amongst the troops as the Frog. Cpl. Henderson had his head bandaged and was unable to work for several days." The affidavits are identical. Now the dates, the date on prosecution's Exhibit No. 10, the 24th day of November 1945, taken before F.J. Killeen; the date of the affidavit on Private John P. Clark is the 24th day of November 1945, it also being taken by Killeen. Now this is one of the

dangers of using affidavits as testimony. Here you have two different people giving statements against a man whose very life is at stake. The affidavits are identical, and I respectfully ask the Commission to examine the other portion of those two affidavits. Apparently what has happened here, is that these people have been called in and given a copy of an affidavit, and one is copied off the other. The only difference in them, if you will observe, is in the dates on which the individuals were captured, and the names and the serial numbers. All the details concerning all of the other matters in the affidavits which deal with the Chinese captivity and Z-D is identical. We submit that this is no evidence at all, and we move that both of these affidavits be stricken from the record and not be taken into consideration at all by the Commission, because they cannot have any probative value. They show on their very face that one is a copy of the other, and we do not know whether this was a copy given to them and both copied them, or whether one copied from the other, but certainly we know in the States if such a thing as this occurred, what would happen; the men would be brought in here for perjury. Now, the individual who took the affidavits, it was his duty to see that the statements made by these people were their own statements and not the statement of somebody else. This is one of the greatest dangers of the lack of cross-examination. We respectfully submit that both these affidavits be stricken from the records, and that the contents of them be not taken into consideration at all by the Commission.

**PROSECUTION:** May it please the members of the Commission, I do not think this deserves as much comment on my part, but I would like to point out that my learned friend is objecting because affidavits are similar. Possibly at the end of the case they will object because there may be slight discrepancies in affidavits. However I believe his whole argument is something which goes to the weight of evidence and not any objection as to the admissibility of the document, and therefore should be confined to his closing argument. I am going to object though if subsequently the defense on every objection goes into a long tirade on the disadvantages of affidavit evidence. I think he can cover that once, and then forget about it until the end of the case when he is given the opportunity of making a final argument on the weight of evidence.

**LAW MEMBER:** I am sure the Commission recognizes the argument of the defense counsel, but I think we can admit them, and the Commission will give full weight to the defense counsel's argument. The reason why I say that these may be admitted is this: That in a previous case there was an affidavit by Lt. Rexton, in which he said, "I have read some other affidavit, and I agree with everything that is written down there." Now, in principle, I do not see much difference between an affiant seeing somebody else's affidavit and copying it out and signing it, any difference between that and saying, "I agree with all that affiant of No. 6 has written down," so that the Commission will certainly give full weight to the remarks of the defense counsel in our deliberation.

**DEFENSE:** May I be heard for just a moment in answer to the statement just made by the Commission? I think, sir, that under that procedure, if the procedure which has been suggested by the Commission were followed, in none of these cases would it be necessary to get but one affidavit and get all the other men at the camp to say, "Yes, these things are so." I mean the similarity is not what I am arguing against in regard to these two affidavits; it is the fact that it is not similar; they are identical. That is the point that I am raising. Now in the question of Lt. Rexton, there it was a general statement made, "That I agree with the overall picture", but here we have an entirely different situation.



We have two affidavits that are identical. The very details. They were taken by the same man, they were taken on the same day; yet they appear before this Commission as the intelligence of two witnesses. That is the point that I am raising, sir, because under any other theory there would be no point in us being here at all, sir. We can get one statement from a man, and just get the other members at camp to say, "Yes, I agree to what he says", and that is all. The purpose of any evidence, the purpose of any trial, is to determine from the statements of witnesses the guilt or innocence of the accused; and in that situation or this type of situation you are determining on the opinion and conclusions of one man.

**PRESIDENT:** The Commission will take a short recess.

The Commission then took a recess until 1020 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

**PRESIDENT:** The Commission is in session.

**LAW MEMBER:** I should like to add to what I said previously in admitting affidavits 6 and 10 in evidence: I feel they are of such slight probative value as to be almost negligible.

**DEFENSE:** We have no objection to that.

**PRESIDENT:** The Commission wishes to call attention to the fact that it is apparent that the affidavits have not been properly scrutinized prior to their presentation here to this Commission, and it is because of that that such instances as this which bring practically extraneous material before us that so much time is lost; and the President is suggesting that prosecution spend some additional time perhaps in scrutinizing the affidavits prior to their presenting them, to avoid just such situations as this in the future. It isn't only that we read in Exhibit 6 and Exhibit 10, but there are others as well, and then we go on and take an additional half hour in trying to argue it before the Commission. Now there are very likely other affidavits which have not enough weight or value to be of any assistance to the Commission in arriving at a decision, and we urge that the prosecution make every effort to clean all irrelevant material from their files before they are presented to the Commission.

**PROSECUTION:** May I take this opportunity to point out to the President that prosecution has furnished the defense with copies of all affidavits in their possession relevant to this case. Now if the prosecution does not present affidavits such as this, we may be faced with what the Commission might say is a great waste of time by having the defense present these affidavits. If we presented one affidavit, the defense might very well present the other one and use the same argument; or if we did not present either, the defense could present both affidavits and say that all affidavits are of no value. That was noticed by the prosecution in this case, the similarity in connection with some affidavits, but we think it is a time-saving device in the long run for the prosecution to present these affidavits, unless they have no probative value at all, sir.

**PRESIDENT:** That brings it right back to the point then, the prosecution merely transferring the complete responsibility of the case to the Commission, and it is not the President's idea that we should have to do all of the leg work in connection with preparation of the case, that some of it should have been done prior to the time that it was brought before the Commission.



PROSECUTION: Yes, sir.

PRESIDENT: That is the point to which I refer specifically, secondary affidavits, perhaps in this case, perhaps they are relevant; I can't argue that point until they have been submitted, but certainly it strikes me that the case could have been presented on a great many less affidavits, exhibits.

PROSECUTION: Yes, sir.

PRESIDENT: You may proceed.

PROSECUTION: The presentation presents as Exhibit 11 the affidavit of John Thomas Ferrigan.

DEFENSE: On page 4, if I please the Commission, paragraph 22, beginning with, "I was started to work in a coal mine". I believe from that sentence all the way down to the bottom of the page is not applicable to the accused, not since the striking of Specification 12; purely a ruling procedure.

PROSECUTION: I believe paragraph 22 could be stricken out.

LAW MEMBER: Yes, paragraph 22 will be stricken and the affidavit accepted in evidence as Exhibit No. 11.

DEFENSE: Sir, also paragraph 23?

PROSECUTION: Yes, paragraph 23 could be taken out.

LAW MEMBER: Paragraphs 22 and 23 will be stricken.

DEFENSE: The remainder of 22 is being left in, is that correct?

LAW MEMBER: Twenty-two will be left in. Is paragraph 24 out?

PROSECUTION: I think paragraph 24 may be out.

LAW MEMBER: That may be stricken.

The affidavit of John Thomas Ferrigan was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit 11.

PROSECUTION: Presentation presents as Exhibit No. 12 the affidavit of Major John A. G. Reid. I think some further material can be stricken out of this affidavit in view of the amended Specification 12 deleting paragraph 14; 14 is in two parts.

DEFENSE: Now about paragraph 27 Ferula is mentioned in that paragraph.

PROSECUTION: I do not think there is anything that is going to be detrimental to him if it is left in. The reason that paragraph 27 was left in, he goes through the camp staff, and mentioned Ferula in the last line. Now, there isn't anything that is going to be detrimental to the accused if that is left in, and it was considered possibly a little picture of the camp.

LAW MEMBER: Paragraph 27 may be left in.

DEFENSE: Paragraph 13, also paragraph 15, down to the last sentence of paragraph 15.

PROSECUTION: The same remark I made for paragraph 5 also refers to the other paragraphs.

LAW MEMBER: I think those two paragraphs are pertinent to the case. The objections to paragraph 13 and 15 are not sustained.

DEFENSE: The second paragraph of No. 17, object to the last sentence beginning with the word "but" and ending with "termination".

PROSECUTION: It is submitted by prosecution that this refers to Taula, and may be considered by the Commission if they see fit with reference to Specification 12.

DEFENSE: May I ask whether or not the accused is being charged with the death of Henderson?

PROSECUTION: You may read the specification as well as the prosecution and see whether the accused is being charged with the death of Henderson.

DEFENSE: It seems to me that that sentence is nothing but prejudicial. ... Well, I will withdraw the objections. If it please the Commission let him read the whole thing.

LAW MEMBER: The affidavit will be accepted in evidence as Exhibit 12, with the exception of paragraph 14.

The affidavit of Major John Anthony Gibson Field was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit 12.

PROSECUTION: The prosecution presents the affidavit of Ernest Michael Thomas in evidence as Prosecution's Exhibit No. 13.

DEFENSE: I think in this affidavit paragraphs No. 18 and No. 20 could be omitted.

PROSECUTION: We agree with paragraph 20, but paragraph 18 comes under the category of those which are merely there to describe in what camp he is.

LAW MEMBER: I think we can admit those in evidence, and you have that when it comes to argument.

DEFENSE: No. 20, with regard to Red Cross supplies, sir, he is not charged with that any more.

PRESIDENT: This is the point that I bring up again. Now, all of those matters should have been taken care of prior to the time they are presented to the Commission. It is not up to the Commission to make a determination as to what should be presented and what should not. It is my understanding that the prosecution got together with the defense, and that there was supposed to be a meeting of the minds on this thing. We have got to eliminate all this wrangling as to what is relevant and what is not. The Commission will assume the responsibility by accepting all of it and giving such value as it should to each paragraph. In that way we can cut down at least some of the Commission's time.

PROSECUTION: I apologize to the Commission for this, but I would point out to the Commission that it was only yesterday afternoon that the prosecution, in view of the serious nature of the other charges, decided to omit part of Specification 12. We thought it would save the time of the Commission and save the defense's time. Now, there is still some material in these affidavits in which we refer to the last half of Specification 12, and we did not have time.

PRESIDENT: They should be stricken before the time of the Commission. Perhaps that can be done; if you want an extra half hour's time to do so, maybe you can do so and get them complete, work out some arrangement so that we do not continue to take this extra time.

DEFENSE: May I make a suggestion that possibly if the Commission sees fit, adjourn at this time, and we can have all of those stricken before the time of resuming the trial at 1:15 or 1:30.

PRESIDENT: There is also the matter of trying to keep down the voluminous work of the court reporter. If it can be completed I will recognize that and give the prosecution and defense an opportunity of reducing this, and having a meeting of the minds; decide whatever exhibit is presented will be accepted by the Commission for such value as it wishes to place upon it.

PROSECUTION: I should like to point out further to the Commission that it is not only the things which were originally referred to in Specification 12 to which the defense counsel is objecting; he is objecting to each affidavit, certain evidence in the affidavit, which he considers irrelevant; evidence such as the Camp Commandant at such and such a time is Lt. Chisum. Now if the prosecution thought that was relevant and left it in on that basis, now if we do adjourn for this thing, we will be met on each affidavit with the objection by the defense that such and such paragraph is irrelevant.

PRESIDENT: It seems then at the time it is presented to the Commission, it is up to the Commission to take the necessary action. Let us try to proceed with the case and leave the responsibility entirely up to the Commission for the elimination of extraneous material.

DEFENSE: May it please the Commission, this Commission is placing the defense in a rather awkward position, and I should like to point it out for the record. These records, once a case has been completed, are reviewed. The only thing that the reviewing authority has before it as to the competency or incompetency on the evidence is what appears in that record. Unless we raise objections to the testimony that is presented, the rights of this accused cannot be reviewed intelligently by the reviewing authority. Most of this information, this testimony here, the reason objections are being raised to it, is because we think that it is a type of evidence which has a tendency to prejudice the rights of the accused. Now, if we are to sit by and admit all of this information, so called evidence, let it go before the Commission and make no objection to it in the record, when the reviewing authority passes on that record, they are not going to have the whole picture before them; and in the second place they are going to be highly critical of the defense which has been presented in behalf of this accused. Now that is our only purpose. We are not toying with the idea of delaying here, but a man's life is at stake.

PRESIDENT: The Defense has already brought up the majority of the objections, and of course, so far as the President is concerned, it has no objection to the defense raising additional objections which it feels should be done; but the idea of the Commission considering the various paragraphs of the affidavits will be left to them.



DEFENSE: The only point I am raising there, sir, pointing out as far as it deals with the parts and specifications that have been stricken, we are merely pointing it out, and it is the law member's duty to rule on those as to whether or not he thinks they are in support of the case. I think if we have a little while that we can get together, that both the prosecution and the defense can eradicate all of the portions to the affidavits which deal with the portions of Specification 12 that have been stricken. Now as Major Boland pointed out, it was only last night about five o'clock that we knew these things were going to be stricken.

PROSECUTION: I may point out that the prosecution is perfectly agreeable to strike out anything in any of these affidavits which refer to the latter part of Specification 12, and nothing else. I think on most of them we can agree as we go along; we do not need an hour or so to do that. We cannot complete the job in an hour anyway, because it takes considerable time to rule off twelve copies of each affidavit, as we found out; and I have no objection, as I say, to omitting anything in these affidavits which refers to the latter part of that specification. I am apologizing to the Commission for presenting the affidavit in that form, but as I said, that would not clear everything, because there will be objections from the defense as to certain other material on which we won't agree to admitting.

LAW MEMBER: I take it you are willing then for paragraph 20 to be stricken?

PROSECUTION: Yes.

LAW MEMBER: With that exception, this affidavit will be admitted into evidence as Exhibit No. 13.

The affidavit of Ernest Michael Thomas was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 13.

PROSECUTION: The prosecution introduces the affidavit of Sgt. Paul Farace as Exhibit No. 14.

DEFENSE: The defense objects to the paragraph there beginning with "At SENDAI CAMP No. 1", concluding with "bad actor"; objects on the grounds that it is prejudicial in the first place, in the second place it indicates on its face that the affiant knew nothing of his own personal knowledge concerning the incident; and thirdly that the evidence, the best evidence, has been submitted previously, that is, the affidavit of the victim himself. This is hearsay, third and fourth times removed.

PROSECUTION: With regard to that objection, the prosecution states that SCAP rules state that the Commission shall view such evidence as in its opinion would be relevant. If the Commission considers that that evidence is relevant, then I submit that it is acceptable evidence by the Commission.

LAW MEMBER: The objection is overruled, and this part will be admitted; this affidavit will be admitted into evidence as Exhibit No. 14.

The affidavit of Paul Farace was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 14.

PROSECUTION: Prosecution presents the affidavit of Gordon Loewen as Prosecution's Exhibit No. 15.

DEFENSE: No objection other than those previously raised.

LAW MEMBER: This will be accepted in evidence as Prosecution's Exhibit No. 15.

Affidavit of Gordon Loewen was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 15.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Sgt. Major Clifford Kerrigan as Prosecution's Exhibit No. 16.

DEFENSE: I should like to raise objection to paragraph 8, as the affidavit itself shows on its face that the man was not in camp when the Scott incident took place, and that is the only incident of death with which we are charged. It indicates on its face that it is hearsay of the worst kind.

PROSECUTION: The prosecution will agree to the deletion of that paragraph.

DEFENSE: Paragraph No. 10 deals with the mines, which are not before this Commission; there will be nothing prejudicial to the interests of Tunde and request that be stricken.

PROSECUTION: I may point out at this time, when Mr. Brinsfield and I discussed the deletion of this affidavit, that I believe we were the one that requested that certain material be left in.

DEFENSE: Not this.

PROSECUTION: Prosecution will agree to the striking out of the second part of paragraph 10; the first part of paragraph 10 is applicable.

LAW MEMBER: This affidavit will be admitted into evidence with the exception of paragraph 8 and the second part of paragraph 10.

DEFENSE: Paragraph 10 all refers to the same thing.

LAW MEMBER: The first paragraph refers to the camp.

PROSECUTION: "Both in camp and on the job," is the way I read the fourth line of paragraph 10.

DEFENSE: As I understand it, the objection is overruled, is that correct?

LAW MEMBER: Regarding the first portion of paragraph 10; the second portion will be stricken.

MEMBER OF THE COMMISSION: For the purpose of the record, if these objections and continuation of modification of affidavits are going to be continued to be made in Court, it is requested, as a member of the Commission, that a record be taken for determination between the prosecution and the defense counsel of as much apparently extraneous matter as possible, with a view to further expedition of this case and the elimination of all of this apparently unnecessary matter for the record.

PROSECUTION: Can the matter be continued without a recess, or will more be accomplished if we have a recess?



PROSECUTION: All I can say to the Commission is this: This evidence was submitted to the defense in July of 1946, and due to reasons which I do not know, the defense had not looked at the evidence until a few days before Captain Franken was called to the stand as a live witness; and up to that time the prosecution had been waiting for a conference with the defense to straighten out this matter of evidence, but the defense has never had an opportunity to do that. I am not blaming the defense, that is not the intention of my remarks, but I want the Commission to know the facts, because they have more or less been critical of the fact that there has not been a meeting of the minds. Now then, I want to go on to say this much, that since that date the defense has been occupied with a case, and the prosecution left the matter with the defense that they would get in touch with them at a convenient time to settle this question of evidence, which has never been settled since July of 1946. The prosecution heard nothing more about this matter until this past Monday, Monday a week ago, when the defense called up and asked the prosecution to come down and talk to them on Friday, which the defense agreed to do. However, I myself was tied up on another matter, and Major Beland went down and had a conference with the defense counsel. Now then, that left us in the position where I had to work all weekend, and I have worked until 3:00 o'clock Sunday morning to get it ready, the matters that we have, except for the fact that we have taken out certain material and amended the last specification. All the other matters were supposed to have been agreed upon, and we have eliminated them as far as I know according to the agreement with defense. If there is any slight discrepancy, we will be glad to correct it at this time, but there should not be anything except with respect to the last amendment that we have made, and we did not agree upon that until yesterday, and we did it merely to simplify the trial. I may further state in that connection, on some of these mine beatings that are referred to in the affidavits, that Mr. Brinsfield asked me to leave that information in on the basis, I believe, that he was going to maintain in some cases there was confusion between beatings that took place in the mine where apparently Tsuda was, at least during the time that Canadians were in camp, and beatings which were attributed to Tsuda. Now apparently he wishes some of this evidence to be stricken out of the affidavit.

DEFENSE: I beg to differ with that statement.

PRESIDENT: We will proceed.

PROSECUTION: I want to say one thing more, if the Commission will permit me. I also asked the defense not to have this case on Monday morning, but to have it Tuesday or Wednesday so that I could get this question of affidavits all straightened out, and the defense pointed out the fact that the prosecution has been constantly pushing them on the matter of being ready for trial. Now then, we were ready for trial, except this accommodation that I was trying to give the defense, and the mistake I made was in not making the affidavits myself and just coming into the court with them and presenting the matter to the Commission and let them decide it, because if I had been given until Tuesday or Wednesday, I could have had it all ironed out. I am responsible for the preparation of this case, and I take full responsibility for it.

DEFENSE: May it please the Commission, there is one thing I should like to ask Captain Bready. Is Captain Bready stating that the defense here was the one that would not agree to it. I believe that Captain Bready will recall that this is a matter that was handled by Colonel Reichmann.

PROSECUTION: I don't know anything about the administration of the defense. I am not criticizing from that point of view; I just want the record to show that.



**PRESIDENT:** That point is perfectly clear, but going back to the original point in question, and that is the expeditious handling of the affidavits that we have here, it strikes me that much can be done to speed it up, and it is not by talking, so I will refrain from further comment myself and hope that we can continue here. The defense is certainly entitled to taking objection to certain of the paragraphs, but as it has been brought out by Col. Neilson in his recent objection, the point that the affidavits themselves have not been prepared on the fundamentals is the thing, I believe, on which there has been perhaps an oversight somewhere along the line, and it certainly is not the fault of the Commission. Now, if there is a recess, I bring up the point again that was brought up by Col. Neilson. If through a recess anything can be accomplished here which will eliminate all of this petty wrangling from the record, let us have the recess, a matter of several hours, and then proceed along the ideas of the recess, although I am hesitant to urge it at this time. It has been the SCAP influence which has forced us to go to trial at a time, perhaps, when the prosecution was not prepared; however it strikes me that SCAP should have inquired first as to whether the prosecution was ready to proceed with the trial, rather than to urge us to sit in trial here before even the prosecution was ready. That was the reason why we wished to sit on Monday morning, because of the fact that we have been forced into it by SCAP. Now, what is the desire; can anything be accomplished by a further recess?

**PROSECUTION:** I am in this dilemma, sir. I do not want to delay it, but I am in this dilemma; we had a conference with the defense on Friday. Major Boland spent the entire day with them, and he came back with what we thought was the agreement; and except for the fact that we have withdrawn the last part of Specification 12, except for that one fact, those affidavits are supposed to be in order. Now, if they are not in order, it is merely because there was a misunderstanding, between Major Boland and Mr. Brinsfield. That is something I cannot answer, but my dilemma is that except for the fact of Red Cross Supplies, and that is in the last part of 12, they are supposed to be in order, and I cannot account for what Mr. Brinsfield is going to do in court; but I should like to make this one suggestion, Colonel, if I may, and it might answer the problem. A short recess, even though it might not accomplish all the ironing out, because I can assure you, having done it myself, it is quite a job, even though it would not be possible to do all that, we might be able to get a better understanding with the defense so that we would know where the trouble was going to lie, and might make arrangements afterwards to straighten it out. Would that help the Commission?

**PRESIDENT:** The Commission will adjourn until as soon after 1300 as possible, and not later than 1315, which is the regular time. We will try to pick up some additional time this afternoon.

The Commission then took a recess until 1315 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

**PRESIDENT:** The Commission is in session.

**PROSECUTION:** If the Commission please, I will proceed with the reading of this affidavit.

**PRESIDENT:** You may proceed.

The affidavit of Clifford Kerrigan was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 16.

PROSECUTION: The prosecution introduces the affidavit of Private John Kitt into evidence as Prosecution's Exhibit No. 17.

DEFENSE: No objection.

LAW MEMBER: The affidavit will be accepted in evidence as Exhibit No. 17.

The affidavit of John Kitt was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 17.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Sgt. Thomas George Marsh as Prosecution's Exhibit No. 18.

DEFENSE: No objection.

LAW MEMBER: It will be admitted into evidence.

The affidavit of Thomas George Marsh was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 18.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Sergeant Gordon Joseph Genny as Prosecution's Exhibit No. 19.

DEFENSE: No objection.

LAW MEMBER: The affidavit of Gordon Joseph Genny will be accepted into evidence as Exhibit No. 19.

The affidavit of Gordon Joseph Genny was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 19.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Lee Johnson as Prosecution's Exhibit No. 20.

DEFENSE: No objection.

LAW MEMBER: This affidavit will be accepted into evidence as Exhibit No. 20.

The affidavit of Lee Johnson was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 20.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Jules Provender as Prosecution's Exhibit No. 21.

DEFENSE: No objection.

LAW MEMBER: This affidavit will be accepted in evidence as Exhibit No. 21.

The affidavit of Jules Provender was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 21.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Private Edward William Query as Prosecution's Exhibit No. 22.

DEFENSE: No objection.

LAW MEMBER: It will be received in evidence as Exhibit No. 23.

The affidavit of Private Edward William Query was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 23.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Sergeant-Major John B. Thomson as Prosecution's Exhibit No. 23.

DEFENSE: No objection at this time, sir, but at the conclusion of the reading of it, I will have a statement to make.

LAW MEMBER: The affidavit of Sergeant-Major John B. Thomson will be accepted in evidence as Prosecution's Exhibit No. 23.

The affidavit of Sergeant-Major John B. Thomson was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 23.

DEFENSE: May it please the Commission. I would respectfully refer you to Prosecution's Exhibit No. 19, page 2 thereof. Here again we have the same situation which I pointed out to the Commission this morning; here are two affidavits taken before the same Justice of the Peace on the same date covering the same details identical with one exception, a portion of one part which says Suzuki No. 2 in Exhibit No. 23. It says "Frog", and after that, "I was beaten by Suzuki No. 2", and that is omitted in Exhibit No. 19, but the rest of the affidavit in its entirety is identical. Here again we have the situation where you have two witnesses appearing before this Commission to testify against this man Tsuda, and it is obvious that their testimony is identical, is copied from the same affidavit, and is submitted to this Commission to pass on the guilt or innocence of this man, and we submit to the Commission respectfully that it has absolutely no probative value to the Commission for the simple reason that we do not know the source of that information; we do not know how they came into the possession of this. I respectfully ask and move that both of these affidavits be stricken.

LAW MEMBER: I think the same reply to that objection, counselor, can be given as this morning, that we will accept them in evidence, and the Commission will certainly bear in mind your argument on these points.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Donald Charles Steward as Prosecution's Exhibit No. 24.

DEFENSE: May it please the Commission, at this time my objection to this affidavit is that it shows on its face this man was at Sendai 1B Camp which is in Kawasaki and has no connection at all with Sendai 1B.

PROSECUTION: I should like to correct the defense counsel's statement in one respect, and that is that Sendai 1B is not in Kawasaki.

DEFENSE: No, the camp at Kawasaki is known as 3; Sendai is 1.

PROSECUTION: We have additional proof at this point that this officer was at Sendai 1B. He has already been referred to in Captain Franken's testimony. We have a letter from the Japanese Prisoner of War Bureau stating that he was at Sendai No. 1B.

LAW MEMBER: Yes, that is correct. He was referred to in Franken's testimony as being in that camp.



DEFENSE: I am pointing that out because two more exhibits will bear me out in my contention, so I would just like that to be a point in mind.

LAW MEMBER: This will be admitted in evidence as Exhibit No. 24.

The affidavit of Donald Charles Steward was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 24.

PROSECUTION: Prosecution desires to introduce into evidence additional affidavit of Donald Charles Steward as Prosecution's Exhibit No. 25.

DEFENSE: No objection to that, sir.

LAW MEMBER: This will be accepted in evidence as Exhibit No. 25.

The additional affidavit of Donald Charles Steward was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 25.

PROSECUTION: Prosecution desires to introduce into evidence the affidavit of Donald Charles Steward as Prosecution's Exhibit No. 26.

DEFENSE: No objection.

LAW MEMBER: This will be accepted in evidence as Exhibit No. 26.

The affidavit of Donald Charles Steward was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 26.

PROSECUTION: At this time the prosecution would like to offer into evidence the Certificate of Henry Onachi, Second Lieutenant Infantry, in charge of the A.G. Casualty Clearance Branch, Japanese Prisoner of War Information Bureau, as Prosecution's Exhibit No. 27. At this time I should like to point out to the Commission that we did not get this until late yesterday, and had no time to have copies made of it, but will furnish the necessary copies as soon as possible after the recess.

DEFENSE: No objection.

LAW MEMBER: This certificate will be admitted in evidence as Prosecution's Exhibit No. 27.

The certificate of Henry Onachi was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 27.

DEFENSE: At this time, if it please the Commission, we should like to move that the three affidavits of Captain Steward be stricken from the record on the face of his own testimony or denial that he was ever at the camp in question. The three affidavits made at different times, obviously there was a letter of transmittal accompanying each letter to him trying to find out when he was there; the first one took place in April. He made the affidavit write it, there was some communication with him back in June, 17th of June, and he says he was not there at all; in July there was another follow-up, and he again states he was near Yumoto; and I submit to the Commission that in that particular area up there, there was more than one POW Camp. If the man himself, if the affiant himself, does not know where he was, I fail to see how we can prove he was there.

**LAW MEMBER:** I think, in view of the evidence of Captain Franken where he refers to that incident, we will admit these affidavits into evidence, and the objection is overruled.

**DEFENSE:** I think, as I recall Captain Franken's testimony, he also stated that he did not know whether there were any other Stewards in the camp or not.

**PROSECUTION:** May I say one thing, Mr. President? I think this is an understandable error, that a lot of these prisoners of war never realized in a lot of cases, the numbers of prisoner of war camps in which they were, and in many occasions, as the Commission knows, the numbers of these Prisoner of War Camps changed. They changed from one area to another. I also further point out there is evidence before the Commission that Captain Steward was subjected to certain indignities at this camp and the treatment on the whole at this camp was quite bad. I may say it is quite understandable that a person, even Captain Steward, that his mind or his memory might be affected to such an extent by the treatment at this camp that he would confuse 3B and 1B. In addition to that we have him localizing the camp as near these two places to which most of the affidavits refer, and we have a letter from the Japanese Prisoner of War Information Bureau setting out Captain Steward's number as the same number that Captain Steward uses in his affidavit. Now surely there would be no question in mind on defense's part that this Captain Steward is one and the same person who made the affidavit.

**DEFENSE:** The point that I raise, may it please the Commission, is simply this; if we followed the logic that has just been expounded there by the prosecution to its conclusion, it would mean that we could prove any individual was at any camp by getting people who knew nothing about it. Certainly the best evidence to present is a man involved in it. Now, I would like, frankly, to see the letters of transmittal that went out with these requests for additional information. I do not know whether they are within the custody of the prosecution or not, but it is obvious where we have one affidavit and two other statements, that correspondence was carried on with him, and I think the Commission is entitled to know that, if the prosecution has it in its possession or can get ahold of it, because it certainly seems strange that a man, and this is the first time we have ever heard it challenged, that Captain Steward, maybe his mind was a little off. If that be the case, that is more reason than any of them that it should not be accepted before this Commission until we definitely establish whether this man was in his right mind at the time he made the affidavit, because that is one type of witness that is not admitted before any court; and the seriousness of these charges against the accused, every doubt, every reasonable doubt, should be resolved in the favor of the accused, and this type of evidence should not be admitted.

**PROSECUTION:** If the Commission please, Captain Steward knew his own serial number and he used it, and I think that is significant of the fact that this serial number appears on all records for Sendai 1. Now the statement the defense made with reference to letting in all this evidence because prisoners do not know where they are, I assure you I have been through hundreds of affidavits, and I have seen many cases where prisoners did not know where they were, it is just merely a matter of mistake in number. That man was in Yumoto, and Yumoto was Sendai Branch Camp No. 1 at the close of the war.



DEFENSE: You take a man's liberty away from him on evidence, good legal evidence that is presented before a Commission and not on conjecture.

PROSECUTION: There is nothing conjectural about this.

LAW MEMBER: I think we will admit these various affidavits and enter them into evidence.

DEFENSE: As I understand it, the objection is overruled?

LAW MEMBER: The objection is overruled.

PROSECUTION: Prosecution desires to introduce into evidence the affidavit of Charles R. Finn as Prosecution's Exhibit No. 28.

DEFENSE: At this time, sir, defense raises an objection to this affidavit, and I ask that the original be exhibited to the Law Member for checking as I point out certain portions of this particular exhibit. On page 1 the Law member will note that after paragraph No. 2 that the affiant first states that he knows with regard to the medical officer at this prison whose name "I do not recall". Subsequent to the execution of that affidavit that name has been inserted. Now true, there is an initial there, "C R F". I do not know when that was made. Furthermore, that paragraph on its face shows that this incident about which this man testified, took place by his own admission several months earlier, and that certainly touches on the realm of the rumor rather than the evidence that might have probative value before this Commission. We respectfully object to that paragraph, and ask that it be stricken in its entirety, and I will ask you, the Law Member, to pay special attention, in that there are several changes in that affidavit. "Instead, I was put in a camp in Yokohama," that is about three lines up from the bottom of the first paragraph on page 1, the POW numbers are changed. On page 2 the first paragraph, "I did not witness the incident"; then he goes on to say he was told of it; and then he adds, "a British Captain whose first" -- "first" was stricken out -- "name was Donald, but whose last name escapes me now." There has been inserted the middle initial and last name of Steward. That too, I will agree, is initialed. Now those two paragraphs certainly can have little if any, probative value to the Commission, because one of them happened six months earlier. We don't know from when he got this information. We have no way of finding it out, and we ask respectfully that that paragraph, the second paragraph, be stricken as being highly prejudicial to the accused, and as being hearsay of the worst sort; and the first paragraph on page 2 being stricken as hearsay. Here we have an affidavit that they have changed. When the affiant makes it out, he states he does not remember all of this, and then subsequently these enlightening details are added and his initials appear before it. We submit that that is very flimsy evidence to accept against an accused whose very existence is at stake.

PROSECUTION: May I be heard? Partly the defense counsel is not only questioning the bona fides of Charles R. Finn of the United States Navy, but also questioning the bona fides of Victor M. Trask, a Major in the Infantry, who took this affidavit. These changes are properly initialed. I submit, and it is quite understandable that a person might not recollect a name at the time they are drafting the affidavit, and five minutes later can think of that name. It happens so many times, I do not need to labor this point before the Commission, but I submit that those changes are properly initialed, and there is no reason for the Commission on a mere statement of the defense counsel to question the bona fides of that affidavit, nor is there any right to raise an inference that because the changes are initialed that they were made after the affidavit was executed.



DEFENSE: Our interest is purely where did this information come from through which he made these additions which identified the individual which he was not able to identify when he made the affidavit. Had he thought of it a few minutes earlier, on this type of affidavit, this type of affidavit would not have been submitted, it would have been re-typed.

LAW MEMBER: I think these objections of the defense counsel must be overruled, and this affidavit admitted into evidence.

The affidavit of Charles E. Finn was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 28.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Roger E. Cyr as Prosecution's Exhibit No. 29.

DEFENSE: No objection.

LAW MEMBER: This affidavit will be admitted into evidence as Exhibit No. 29.

The affidavit of Roger Napoleon Cyr was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 29.

PROSECUTION: Prosecution desires to introduce into evidence the affidavit of Wilmer Cyr, as Prosecution's Exhibit No. 30.

DEFENSE: No objection.

LAW MEMBER: This affidavit of Wilmer Cyr will be admitted into evidence as Prosecution's Exhibit No. 30.

The affidavit of Wilmer Cyr was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 30.

PRESIDENT: The Commission will take a short recess.

The Commission then took a recess until 1430 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

PRESIDENT: The Commission is in session.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Lyle Joseph Anthony Dempsey, as Prosecution's Exhibit No. 31.

DEFENSE: The defense respectfully objects to page 3, first paragraph, in which the conditions at Camp 3D ...

PRESIDENT: Just a moment please. My affidavit shows page 2 at the top and page 3 at the bottom. What do we do about that, and all of that page is stricken. Are you referring to paragraph 10?

DEFENSE: Yes, sir.

PRESIDENT: The same thing on the next one: page 3 and page 4. But if it is designated by paragraph, I can follow.

DEFENSE: Page 3, where a comparison is made with conditions at 33 Kawasaki. Now the conditions at 33 Kawasaki are not before the Commission, and I don't see how this type of paragraph could have such probative value to the Commission because the Commission has no knowledge of the conditions at Kawasaki. We respectfully move that that be stricken, unless we are going to be charged with conditions at 33 Kawasaki. I don't see where it will help this case any at all.

PROSECUTION: If the Commission please, the Commission can accept this for any probative value. He says, "we received beatings more frequently and more brutal than in 33." Certainly from that you can properly deduct that he received beatings, and the degree of beatings can be determined by the Commission.

DEFENSE: That is a matter for the province of the Commission to determine whether they can accept this in evidence or not.

LAW MEMBER: This will be accepted in evidence for what it is worth. Are there any objections?

DEFENSE: No, sir.

LAW MEMBER: This exhibit will be admitted into evidence as Exhibit No. 31.

The affidavit of Lyle Joseph Anthony Dempsey was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 31.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Private Frederick Gidilewich as Prosecution's Exhibit No. 32.

DEFENSE: No objection.

LAW MEMBER: It will be admitted in evidence as Exhibit No. 32.

The affidavit of Frederick Gidilewich was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 32.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Kenneth Ronald Inche as Prosecution's Exhibit No. 33.

DEFENSE: No objection.

LAW MEMBER: This will be admitted into evidence as Exhibit No. 33.

The affidavit of Kenneth Ronald Inche was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 33.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Fred Joseph Kelly as Prosecution's Exhibit No. 34.

DEFENSE: No objection.

LAW MEMBER: The affidavit of Fred Joseph Kelly will be admitted into evidence as Exhibit No. 34.

The affidavit of Fred Joseph Kelly was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 34.

PROSECUTION: The prosecution desires to introduce into evidence the signed statement of William Johnson as Prosecution's Exhibit No. 35.

DEFENSE: This is an unsworn statement.

PROSECUTION: The reason it is being put in is because you asked to have it put in.

DEFENSE: That's right, there is no objection.

LAW MEMBER: The signed statement of William Johnson is admitted into evidence as Prosecution's Exhibit No. 35.

The signed statement of William Johnson was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 35.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of William Johnson as Prosecution's Exhibit No. 36.

DEFENSE: No objection other than pointing out to the Commission paragraph 7 of this affidavit, and I believe this is the same Johnson who made out the statement just introduced as Exhibit No. 35.

LAW MEMBER: This affidavit will be admitted into evidence as Exhibit No. 36.

The affidavit of William Johnson was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 36.

PROSECUTION: The prosecution desires to introduce into evidence the statement of D. M. Thornton which was purported to be executed on the 23rd of December 1945, as Exhibit No. 37.

DEFENSE: On the original here, the name on that thing has been changed from "Norton" to "Thornton"; the name is W. D. Norton and it is signed W. D. Thornton.

PROSECUTION: I am showing the law member the original signature on the next exhibit which apparently looks like Norton also.

LAW MEMBER: I think this can be admitted into evidence.

DEFENSE: We further object to it being introduced on the ground that it is not shown on the face that it is not an official report; thirdly, on the bottom of the report page 1, dealing with the paragraph, "TSUDA (Civilian Guard)", the first line, the three words immediately following "driver" are highly prejudicial and should be stricken. In the paragraph on the next page there is no identification of the individual being discussed, and it is my impression that the prosecution has two other affidavits from this Captain Thornton. We respectfully request these portions be stricken from this so-called statement, and urge if it is admitted that it be admitted as an unsigned statement.



PROSECUTION: If the Commission please, the statement is offered in order that the Commission will have before it all the evidence by this man to form any conclusions as to the probative value it desires. Now, on the face of it, it is in fact not a signed statement. The statement with respect to "slave driver" is merely the man's description; the Commission can place any construction it wants on the word. This Commission does not sit as the ordinary jury; it is able to weigh the evidence to give it the proper evaluation, and therefore the strictest rules of evidence are prescribed by SCAP directives. That is the primary reason for it.

DEFENSE: May it please the Commission. I raise no objection at any time to the admission of evidence before this Commission when it is the best evidence available, but time and time again we hear before this Commission, "Well, SCAP rules admit it; so it can be admitted, it must be admitted." SCAP rules are the limitations to which the Commissions can go in order to get the evidence which might have probative value, and we respectfully submit that statements such as these can have little probative value in assisting the Commission in arriving at a determination other than the fact that there might be something unfavorable said about the accused, and we respectfully request that this statement not be admitted.

LAW MEMBER: I think the statement will be admitted for the following reason: That where there is more than one statement by a certain affiant or proponent, it is not really prejudicial to the defense, because the defense has a chance of comparing the two statements or three statements and finding any inconsistencies in them. This statement signed by Lt. Col. R. A. Hay will be admitted into evidence as Exhibit No. 37.

DEFENSE: Is it being admitted as a signed statement, sir, or an unsigned statement?

LAW MEMBER: The copy was signed, the letter is signed by Lt. Col. R. A. Hay forwarding Captain Thornton's statement. Exhibit 37 will be admitted as a signed statement.

The statement of D. M. Thornton was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 37.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Captain D. M. Thornton as Prosecution's Exhibit No. 38.

DEFENSE: We respectfully object to introduction of paragraphs 2, 3, 4 and 5 of page 3 as being highly prejudicial to the accused and as being hearsay of the worst sort. Other than that we have no objections to that affidavit on that particular motion.

LAW MEMBER: Where is the objected portion?

DEFENSE: On my copy beginning on page 3, beginning with, "I will now tell"; that paragraph and the three following that.

LAW MEMBER: Up to, "They did not want to live?"

DEFENSE: Yes, sir.

LAW MEMBER: Well, this is very general testimony. I think it will be admitted for what it is worth. Are there any other objections?

DEFENSE: That is the only objection.

LAW MEMBER: This affidavit will be admitted in evidence as Exhibit No. 38.

The affidavit of D. E. M. Thornton was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 38.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Donald Edward Martin Thornton, as Prosecution's Exhibit No. 39.

DEFENSE: The defense objects to paragraphs 4 and 5 page 1 as being prejudicial to the accused and as being irrelevant to this particular case. Outside of that we have no particular objection to it.

LAW MEMBER: Does prosecution have anything further to say to that objection.

PROSECUTION: If the Commission please, all the evidence we introduce is more or less supposed to be prejudicial to the accused. It is for the Commission to decide to what extent it might transgress the rules of justice in weighing the evidence. With respect to this matter, I think it has probative value; I think the Commission has a right to give some consideration to it. The attitude of the man, the surrounding circumstances are all part of the gist of this case. It is entirely up to the Commission to decide.

LAW MEMBER: Yes, the objection of the defense counsel will be overruled, and these two paragraphs will be included. This affidavit of Captain Donald Edward Martin Thornton will be admitted in evidence as Exhibit No. 39.

The affidavit of Donald Edward Martin Thornton was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 39.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of John David Davies as prosecution's Exhibit No. 40.

DEFENSE: No objection.

LAW MEMBER: This affidavit will be admitted in evidence as Exhibit No. 40.

The affidavit of John David Davies was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 40.

PROSECUTION: Prosecution desires to introduce the affidavit of Michael Forde as Prosecution's Exhibit No. 41.

DEFENSE: No objection.

LAW MEMBER: The affidavit of Michael Forde will be admitted in evidence as Exhibit No. 41.

The affidavit of Michael Forde was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 41.

**PROSECUTION:** The prosecution desires to introduce into evidence the affidavit of Albert Hughes as Prosecution's Exhibit No. 42.

**DEFENSE:** General objections in addition to one specific objection to all these short form affidavits, they have no probative value, they merely serve as a death certificate. That is about all you can say about them. They have no probative value to the Commission.

**LAW MEMBER:** The objection is overruled, and this affidavit will be admitted into evidence as Exhibit No. 42.

The affidavit of Albert Hughes was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 42.

**PROSECUTION:** Prosecution desires to introduce into evidence the affidavit of Archibald Jarvie as Prosecution's Exhibit No. 43.

**DEFENSE:** Same objection as heretofore mentioned.

**LAW MEMBER:** The objection is overruled, and this affidavit of Archibald Jarvie will be admitted into evidence as Exhibit No. 43.

The affidavit of Archibald Jarvie was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 43.

**PROSECUTION:** The prosecution desires to introduce into evidence the signed statement of V. G. Jeffrey as Prosecution's Exhibit No. 44.

**DEFENSE:** This is an unsworn statement, I believe. Is that correct?

**PROSECUTION:** Correct.

**DEFENSE:** Other than the objections mentioned, and in addition that this is merely repetitious of numerous other short form affidavits, there is no objection.

**LAW MEMBER:** The objection is overruled, and this will be admitted as a signed statement of V. G. Jeffrey as Exhibit No. 44.

The affidavit of V. G. Jeffrey was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 44.

**PROSECUTION:** The prosecution desires to introduce into evidence the affidavit of Dennis Fittington as Prosecution's Exhibit No. 45.

**DEFENSE:** Same objection as previously raised.

**LAW MEMBER:** The objection will be overruled and this will be admitted in evidence as Exhibit No. 45.

The affidavit of Dennis Fittington was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 45.

**PROSECUTION:** The prosecution desires to introduce into evidence the affidavit of John A. Mills as Prosecution's Exhibit No. 46.



DEFENSE: No objection.

LAW MEMBER: This affidavit of John A. Mills will be admitted into evidence as Exhibit No. 46.

The affidavit of John A. Mills was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 46.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Clive Muir as Prosecution's Exhibit No. 47.

DEFENSE: I believe that is a signed statement.

PROSECUTION: The prosecution will correct its opening statement by saying that it will introduce the signed statement of Clive Muir.

DEFENSE: The same objection as previously raised.

LAW MEMBER: Objection overruled, and this will be admitted as the signed statement of Clive Muir, Exhibit No. 47.

The signed statement of Clive Muir was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 47.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Alfred E. Fleasance as Prosecution's Exhibit No. 48.

DEFENSE: Same objection.

LAW MEMBER: Objection is overruled, and this affidavit of Alfred E. Fleasance will be admitted as Prosecution's Exhibit No. 48.

The affidavit of Alfred E. Fleasance was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 48.

PROSECUTION: The prosecution desires to introduce into evidence the unsigned statement of Alexander J. Kay as Prosecution's Exhibit No. 49.

LAW MEMBER: This is an unsigned statement and will not be admitted into evidence.

DEFENSE: If it please the Commission, do I understand you are going to admit it?

LAW MEMBER: No, I am not going to admit it as an unsigned statement.

DEFENSE: I respectfully point out that it is within the discretion of the Commission, and that any statement whether signed or unsigned, may be admitted before the Commission for its probative value, and we respectfully request that this exhibit be admitted and read into the record.

LAW MEMBER: I will reverse my position and admit this into evidence.

DEFENSE: Let the record omit the first remark and show that it has been admitted into evidence as Prosecution's Exhibit No. 49 at the request of the defense counsel.

The unsigned statement of Alexander J. Kay was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 49.

PROSECUTION: The prosecution desires to introduce into evidence the affidavit of Alexander Kay as Prosecution's Exhibit No. 50.

DEFENSE: No objection.

LAW MEMBER: This affidavit of Alexander Kay will be admitted into evidence as Prosecution's Exhibit No. 50.

DEFENSE: The defense is willing to waive the reading of paragraphs two and three to expedite it.

PRESIDENT: You may skip over that merely as a matter of formality.

The affidavit of Alexander Kay was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 50.

DEFENSE: If it please the Commission, the last paragraph on the first page should have been left in there.

PROSECUTION: If the defense wishes it in, we have no objection.

LAW MEMBER: The paragraph then may be restored. The seventh paragraph of this affidavit will be included.

PROSECUTION: The prosecution presents as Exhibit 51 the affidavit of Joseph Pringle.

DEFENSE: No objections other than those heretofore pointed out.

LAW MEMBER: This will be admitted in evidence as Exhibit No. 51.

The affidavit of Joseph Pringle was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 51.

DEFENSE: The last paragraph goes in there too.

PROSECUTION: Do you wish the paragraph previous to that?

DEFENSE: No; "The working party that I was in charge of."

PROSECUTION: All right, there is no objection to that.

PRESIDENT: The Commission will adjourn until tomorrow morning at 0900.

The Commission then, at 1600 hours, on 19 November 1945, adjourned to meet at 0900 hours on 20 November 1945.

*Clair F. Schumacher*

*William R. Bready*

WILLIAM R. BREADY  
Captain Major  
Chief Prosecutor

HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse  
Yokohama, Japan  
Wednesday, 20 November 1946

The Commission met, pursuant to adjournment, at 0900 hours on 20 November 1946, all the personnel of the Commission, prosecution and defense who were present at the close of the previous session in this case being present.

The accused, reporter and interpreters were also present.

PRESIDENT: The Commission is in session.

PROSECUTION: The prosecution offers as Exhibit No. 52 the affidavit of Leslie John Graver.

DEFENSE: No objection.

LAW MEMBER: This will be admitted in evidence.

The affidavit of Leslie John Graver was then received in evidence, read to the Commission, except those portions lined out, and is marked Prosecution's Exhibit No. 52.

PROSECUTION: The prosecution presents as its Exhibit No. 53 the affidavit of Alfred Hulme.

DEFENSE: No specific objection.

LAW MEMBER: This affidavit of Alfred Hulme will be admitted in evidence as Exhibit No. 53.

The affidavit of Alfred Hulme was then received in evidence, read to the Commission, except those portions lined out, and is marked Prosecution's Exhibit No. 53.

PROSECUTION: The prosecution presents as Exhibit No. 54 the affidavit of Eric Hardwell Jeffery.

DEFENSE: No specific objections.

LAW MEMBER: The affidavit of Eric Hardwell Jeffery will be received in evidence as Exhibit No. 54.

The affidavit of Eric Hardwell Jeffery was then received in evidence, read to the Commission, except those portions lined out, and is marked Prosecution's Exhibit No. 54.

PROSECUTION: The prosecution presents as Exhibit No. 55 the affidavit of Milford L. Bennett.

DEFENSE: In addition to the general objections on page 2 of this affidavit, the first paragraph you have a medical conclusion there made by a man not trained to draw such conclusion, a conclusion which is prejudicial, a conclusion which it is up to the Commission to determine from all the relevant and competent evidence given by the people or individuals qualified to make such an observation, with the exception of that one paragraph, other than the general objections, we have no objection to the affidavit.

PROSECUTION: With reference to that objection, I submit that this evidence is relevant, and as such should be accepted by the Commission for such weight as they may wish to give to it.



LAW MEMBER: The objection of the defense counsel will be overruled, and this affidavit will be accepted in evidence as Exhibit No. 55.

The affidavit of Wilford L. Bennett was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 56.

PROSECUTION: The prosecution presents as Exhibit No. 56 the Death Certificate of Corporal James Laidner Scott. On this exhibit we are putting in both the Japanese and the certified English translation of the Death Certificate.

DEFENSE: No objection.

The Death Certificate of James Laidner Scott was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 56.

PROSECUTION: The prosecution presents as Exhibit No. 57 the affidavit of James Eric Alexander Bartlett.

DEFENSE: No objection.

LAW MEMBER: The affidavit of James Eric Alexander Bartlett will be accepted in evidence as Exhibit No. 57.

The affidavit of James Eric Alexander Bartlett was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 57.

PROSECUTION: The prosecution rests their case.

PRESIDENT: Does the defense have an opening statement?

DEFENSE: Defense has a motion to make. I should like to have just a few minutes. If you do not mind at this time, to get my papers together, about five minutes, sir, about five or ten minutes at the most, perhaps not that long.

PROSECUTION: At this point we request that prosecution be able to draw the original affidavits and substitute the certified true copies in this case.

PRESIDENT: In other words you are asking that all of these copies be returned?

PROSECUTION: No, sir. I am asking that the originals be withdrawn and certified true copies substituted.

PRESIDENT: Permission will be granted. The Commission will take a short recess to enable the defense to prepare its motion.

The Commission then took a recess until 9:45 hours, at which hour all the personnel of the Commission, prosecution and defense, counsel, reporter and interpreters resumed their seats.

PRESIDENT: The Commission is in session.

DEFENSE: If it please the Commission, at this time the defense feels there are certain specifications in this case which have not been supported by sufficient proof to justify a finding of anything other than that of Not Guilty. Quite a few of these specifications, we feel, have not been sufficiently justified by the proof to result in prima facie case being made out by the prosecution, necessitating our going forward with the evidence in rebuttal. Specification No. 3 specifically is a charge against Tsuda that he mistreated a POW by the name of Conway. The only support which prosecution has presented is the affidavit of Thomson and Conway himself, Prosecution's Exhibit Nos. 19 and 23. If the Commission will read these affidavits or check them in their entirety, it is perfectly obvious that the identical information, not only insofar as it concerns Sendai 1B, but insofar as it concerned other POW camps to which these individuals were assigned is identical. There is, as I recall, one minor exception, as I pointed out when the affidavit was introduced. On the affidavit of Conway on page 2, that is 2 at the top of the page, about eight lines from the bottom of that paragraph, the statement, "and also I was beaten by Suzuki No. 3". I believe that has been omitted from the affidavit of Conway. The other information contained in these affidavits is identical. It is obvious that what has happened here is that an affidavit or a statement has been written out by either one or the other of these men and copied by the second; or the information contained in here was given them or supplied them by some source, and it does not represent a true recollection of their own experiences at this camp. This type of evidence is the reason, one of the reasons, that each Commission hears the defense getting up, objecting to affidavit form of evidence, because had these people been presented before a Commission and subject to cross-examination, this sort of thing would not have happened. We would have gotten a true picture of what went on or transpired at the camp. That is all of the evidence which the prosecution has introduced to support this specification. That is all of the information or rumors which the prosecution has introduced to support Specification No. 3, yet it is within the power of this Commission, on one specification, to take the very life of this man. Therein lies the danger of this type of evidence. Specifications 4, 5, 6 and 7 mention specific acts of the accused. Sometimes the information given in there, the affidavit itself, is of such a general nature that it cannot be determined whether or not this individual is the one being specifically charged with the act. Specification No. 8 is a companion case of Specification No. 3, that is, it is supported by the affidavit of Thomson himself, Prosecution's Exhibit No. 23. That is all of the evidence that there is, yet here you have two affidavits obviously one copied from the other supporting two specifications. Out of twelve, any one a finding of guilty could result if this Commission saw fit in a finding of Guilty and a sentence of death. That is placing a pretty small price on personal liberty or on the life of an individual. We submit that in Specification No. 8 the prosecution has utterly failed to make out a prima facie case, and we urge that a finding of Not Guilty be entered on that specification.

Next we have Specification No. 9. This specification and the evidence which has been presented, or so-called evidence which has been presented before this Commission, certainly places the Commission in a very awkward position, as well as the defense. Mention has been made, it is quite easy for a man to forget a POW camp or the number of the POW camp in which he served time. Now with that statement I cannot quarrel, but if you would take the three statements or affidavits made by Captain Steward, you will find that those statements were made on three different dates. Apparently some information, letter



or some inquiry was directed to Captain Steward to determine if he was at Sendai LB where this alleged act is supposed to have taken place. His affidavit itself shows on the face that he was at Kawaasaki. That is where all of those POWs were before they went to Sendai, or a great number of them. A letter was written to him apparently, and Captain Steward writes back that he was never at Sendai LB, that he was at another camp, clearly evidencing the fact that Captain Steward knew what he was talking about, yet he denies that he was there. Not being satisfied with that, another communication apparently went out to Captain Steward trying to get him to pin down to what camp he was assigned in Sendai. There again Captain Steward comes back and states that he was at a camp that was near Yumoto and two miles from Onahama, and he further states that whatever happened to him at this camp was not witnessed by anyone. Yet prosecution has the audacity to come before this Commission and state or infer that even though the victim himself has had three opportunities to admit that he was at this camp, he denies it, and in the face, and in spite of that denial they are going to prove by hearsay evidence that the man was in the camp. I think that it should be borne in mind by the Commission in evaluating these bits of information that these POW served in numerous POW Camps all the way from China to Sendai, and the human intellect being what it is, it is quite easy to remember an occasion that happened in one camp or one place where he was stationed and associate that incident with someone who was stationed at another POW Camp, and I think that that can be explained because in each of these instances you will find that the man who is remembered best is a man who has some physical deformity or some outstanding physical characteristic, that is, he is larger than the general run, he has one arm or one eye, or whatever is the case, and I think that that is what has happened here. We do not deny that possibly something like this happened to Captain Steward, but we do say that the very best evidence is before this Commission, the statement of Captain Steward himself. That brings us to a discussion of what Commander Finn, I believe it was in his affidavit in which in the affidavit itself, had been inserted, in the affidavit itself, the name of Donald C. Steward. That indicated that Commander Finn was not sure of who was at that camp, whether it was Captain Steward or just who it was, but from some source he got additional information. Now we submit here again that this is very flimsy evidence to deny a man his liberty or to find him guilty on such evidence as has been presented here.

Specification No. 10, the collective punishment specification, as I recall, that also is mentioned in Commander Finn's affidavit, and other affidants who were at the camp who came to the camp with Commander Finn state in their affidavits, in prosecution's own evidence, they knew of no collective punishment which had been administered at that camp. Captain Franken stated that he heard of some punishment being meted out. The men were required to stand, he would say, around forty minutes to an hour. It is so easy for a person in a camp or at any place to go by and see a group of men standing at attention or standing in ranks, and then presume just why they were standing there or who was in charge of them, or who required them to stand there. Examine Finn's affidavit. It is shot through with hearsay, not situations that had been observed personally, but things that were told him. Captain Franken mentions that many of the instances that he had heard about, he had not witnessed personally. These are the only two statements, as I recall, that you have in the affidavit to support Specification 10.



Specification No. 11, the charge that Captain Franken, a Dutch POW, was forced to do work which was degrading and humiliating. There has been no evidence presented before this Commission that Franken was required to do that work. By his own admission when he was on the stand, he stated that his complaint was the fact that somebody had told him to do that work, but that he did not do it, that some of the men did this work. Now, when did it become a war crime anywhere in the rules of land warfare, where is it stated that telling a man to do something is a war crime. It is the act itself. Now can we conscientiously say that Specification 11 constitutes a war crime? Specification No. 12, the catch-all specification, the only support for that specification are a few vague statements scattered throughout the affidavits in which it is stated that Japanese administered beatings, Japanese members of the Camp personnel, and the civilians at the mines administered beatings. Now is that sufficient evidence? Is that sufficient information that the Commission can definitely charge and attribute to this accused those acts, beatings? These POWs who worked at the mine were under civilian supervision down in the mine. This man worked in the camp. In the first part of 1943 or in 1943 he did some guard duty. Subsequent to that time he was in the clothing supply room in the camp itself. In 1943 he was placed in charge of the garden, yet if you read these affidavits through, and I respectfully ask the Commission to do this as I know they will, ask them to read the affidavits which have been notarized by J. Alfred Crowe, then read the affidavits or statements which have been notarized by F. J. Killeen, throughout these affidavits you will see the same pattern of evidence. You will see the same pattern of descriptions that are found in Prosecution's exhibit as far as Crowe is concerned, prosecutions exhibits 19 and 23, and as far as Killeen is concerned, in prosecution's exhibits 6 and 10, indicating that not all of this evidence which is here does represent the true recollection of the individuals concerned. Now these beatings which happened down in the mines by civilian workers of the mines, we are not charged with that. We are charged with the individual acts of this man, Tenda. Any evidence or information which is presented before this Commission which does not specifically tie this man in with it, certainly has no place in the deliberations of the Commission. Now there is one other thing that I should like to point out. There is no contention by the prosecution that this man Tenda was employed by the mining company or that he worked down in the mines himself. I raised that question to the prosecution yesterday, and as I recall, Major Boland said they were not contending that this man was working down in the inside of the mine. Now these specifications are the only way that we have of knowing just what instances are being charged against the accused, and we submit that in those specifications which have been pointed out to the Commission, that the prosecution has failed to make out a prima facie case, which would necessitate the defense in going forward with the proof, but the burden of proof is on the prosecution to prove beyond a reasonable doubt that these things did happen and that the accused was a party to these happenings. We respectfully submit they have failed to do that, and we ask for a finding of Not Guilty on those specifications to which I have referred.

PRESIDENT: May I ask just to clear it, defense refers to Specifications 3 to 12 inclusive, is that right?

DEFENSE: Yes, sir, that is correct.

PROSECUTION: If the Commission please, the prosecution wishes to point out that in presenting a motion for a finding of Not Guilty, the Commission is not called upon to pass upon the weight or the evaluation

of the evidence. It is merely to determine whether or not there is a scintilla of evidence present in the prosecution's case such as would sustain a finding of Guilty. The amount of the sentence is not concerned. Now, the prosecution respectfully points out to the Commission that Specifications 3, 4, 5, 6, 7 and 8 to which the defense has referred, are all supported by affidavits of the victims themselves, and as the defense has, on numerous occasions, referred to the fact that a person should know what happens to himself and where he is, we can also assume here they knew whether they were beaten or not, and they made that statement under oath. The defense attempts to place a great deal of stress upon the fact that certain affidavits were very similar. I should like to point out that in certain cases they are not exactly similar if they are studied carefully, but whether they are similar or not, the prosecution owes a duty to the defense to present them for what they are worth, and we submit that the Commission will probably desire to consider them for what they are worth. But the fact remains that they did say that the affiant was beaten. Now then, with respect to Steward, and as to Specification 9, the defense has pointed out that a man should know where he is and the number and the name of the camp. We pointed out to you that he did know he was near Yumoto, and we also point out to you that there was only one camp near Yumoto and that was Sendai No. 1. However there was a Sendai No. 2 which was probably twenty miles away from Sendai No. 1. With respect to Specification No. 10, Finn said that he saw this and he knew what it was all about. All these facts are pointed out respectfully to the Commission for the reason that it seems to the prosecution that while the affidavits must be considered as to their weight, they specifically do make such a bona fide charge as to merit the Commission's decision in this matter and not to be thrown out on the plea of Not Guilty. Now then, in conclusion, I just wish to say one more thing, and that is that the defense counsel has referred to beatings in the mine, and I should like to point out that the prosecution has offered to withdraw any statements concerning beatings in the mine, and that the defense counsel himself requests that these statements be left in the affidavit, that these statements be left in the affidavit. Prosecution respectfully submits that it has presented a prima facie case to every specification here charged.

**PRESIDENT:** Subject to the objection on the part of any other member of the Commission, the motion for a finding of Not Guilty on Specifications 3 through 12, is overruled.

**DEFENSE:** Do I understand that this is made without a meeting or conference being taken?

**PRESIDENT:** You may inquire, but it has been accomplished. The Commission has been extremely active since this case started. Many things have been accomplished in the chambers.

**DEFENSE:** That is prior to the time the motion has been made, sir.

**PRESIDENT:** It is not necessary to discuss it. The President feels qualified in making the statement, subject to the objection of the other members of the Commission. There being no objection, why the statement stands.

DEFENSE: May I proceed, sir?

PRESIDENT: Proceed.

PROSECUTION (Maj. Boland): Mr. President, I should like to point out to the Commission that I shall be withdrawing from this case owing to duties in connection with another case, a witness arriving from Hong Kong, but I did agree to stay on until the completion of the prosecution's case. Lt. Col. Orr of the Canadian Commission here will replace me as Associate Prosecutor in this case.

PRESIDENT: It would have been more convenient, would it not, to have accomplished that at noon?

PROSECUTION: I thought perhaps it would be better at this particular juncture owing to the fact that defense was proceeding with the case, sir.

PRESIDENT: All right. Col. Orr will have to be sworn then.

PROSECUTION: I understand that this matter has been taken up through the prosecution division and that proper papers were issued making the substitution.

PRESIDENT: Under the circumstances we will permit the Colonel to be seated here in the Commission, but tomorrow morning arrange to bring in a statement to the effect that it is satisfactory with prosecution's staff for him to be accepted.

PROSECUTION: Col. Orr states that it was taken up with Col. Blackstock.

PRESIDENT: Any verbal record of that nature is not operative here. We are operating under orders of the Commanding General Eighth Army, and it will have to clear both your name and Major Boland's name appearing on the order with us, and if there is to be a change, why it will have to be amended.

PROSECUTION: Yes sir. I want to ask one more question. Shall I swear him in?

PRESIDENT: No, under the circumstances we won't. We will continue now.

At this point Major Boland withdrew and Lt. Col. Oscar Orr took his place.

PRESIDENT: You may proceed.

DEFENSE: At this time the defense respectfully addresses the Commission in regard to the testimony of the defense which will be presented in behalf of this accused. We intend to show by the evidence which has been submitted by the prosecution themselves that certain of the specifications charged against the accused are defeated by their own evidence. We intend to show by witnesses who were assigned to this camp in various capacities that the Scott incident was never recorded. There was never any rumor even to the effect that this accused administered a beating to Scott shortly before his death. We intend to show from the prosecution's own evidence that this victim, Scott, was suffering



from malnutrition, dysentery and cardiac beriberi for a long period of time before this incident took place. We intend to show that this man, Tsuda, is not guilty of murder, and that is what this amounts to as charged in this specification. We intend to show that this man, Scott, this is by prosecution's own evidence, had been suffering from illness several months prior to the time this incident took place, that he was required to work while ill by some member of the Japanese mining company who employed POWs, and that Tsuda had nothing to do with that, that he had no control or no connection with the mining company insofar as it pertained to the working of POWs. We intend to show that on the day or at the period of time in which this incident took place, that Tsuda was working within the camp itself, the POW Camp, and that the company guards, stick guards, came from the mining company to the POW camp, took charge of the POWs and escorted them, that is, the mining company officials and guards, escorted them back to the mine where they worked; that at the conclusion of the day's work, the POWs were assembled at the mining place, were escorted by mining company employees and state guards, civilian guards, back to the POW camp and at the gate of the POW camp were turned over to members of camp personnel. We intend to show by the prosecution's own evidence that this Scott incident took place in its entirety within the confines of a medical inspection room, that Scott walked into the medical inspection room under his own power, he was not carried there, and that he was being interrogated by the medical officer, this by the prosecution's own witness at the time this alleged incident was supposed to have taken place. We shall show by witnesses assigned to the medical inspection room that they never witnessed such an incident as the Scott incident, nor did they ever hear that such a thing took place. We shall show that by witnesses, Japanese who were working at the camp at the medical inspection room at the time, the date this alleged incident was supposed to have taken place, with regard to the Henderson incident, how this incident took place, and how the accused was involved in that incident. We shall show with regard to these various individually administered punishments the evidence there was never any report of such an incident and that the accused never committed the acts alleged.

Does the Commission wish that we call our first witness in view of the hour here?

PRESIDENT: You may proceed.

PRESIDENT: The Commission wishes to inject at this time, with reference to remarks made by counsel in his opening statement, that with the view of expediting the trial and with holding to the highest degree of fairness, we will recognize only such testimony as is relevant to the case as set forth in the specifications themselves, that matters which refer to activity in the mines, etc. are not deemed relevant, and except for the identification of witnesses, references to any time prior to those mentioned in the charge and specifications will be deemed to be irrelevant. In other words, we urge specifically that defense counsel watch very closely in the questioning to bring out any evidence whatsoever which is not directly relevant to the case. I believe that the prosecution can stipulate things which occurred in the mines to eliminate any of that questioning.

PROSECUTION: Yes sir. We will state that none of these offenses we are charging occurred in the mine. We are not concerned with the mine at all. When I say the mine, I mean the mine face inward. Now, up to the mine face, something might come out there.

PRESIDENT: In other words then, you do make mention of the fact that company guards take charge of the prisoners at the gate and conduct them to the face of the mine. Then under the circumstances that evidence will be admitted. It is my understanding it would not be applicable from the gate of the camp itself on.

PROSECUTION: Certain references were left in the statements of the prosecution which have now been entered into the evidence referring to the mine, only because the defense counsel wished to have them in there. We wished to have them taken out.

DEFENSE: One thing I should like to point out, sir, these affidavits, the way they are written, refer to beatings both by civilians of the mines, employees of the mines and also the others; and this all uses evidence against this man, and our whole point is to show that this man had no connection with these POWs from the time they left the gate of the camp until the time they returned to the camp.

PRESIDENT: He is not charged with it.

DEFENSE: No, sir, but a lot of evidence here covers that period. They were beaten along the way. One of the affidavits says this man was beaten to death down in the mine, and the other says he was beaten in the coal face by Tsuda on the surface of the mine. Now, if all of that is being stricken out, then it certainly will shorten materially what we have to offer.

PRESIDENT: We urge that that be recognized in the questioning of the witness by both the defense and the prosecution when these witnesses take the stand. You may call your first witness.

DEFENSE: What is the status now so that I can have it clearly?

PRESIDENT: My statement was that it would be restricted to the material as presented in the charge and specification, and I thought that it was restricted to the camp, but now there is this space in there from the gate of the camp to the face of the mine, and it will be up to the prosecution to make itself clear.

PROSECUTION: If the Commission please, I believe that it all is concerned with the camp, but I cannot restrict the prosecution to that because we are not quite positive just up to the face of the mine whether the camp guards went that far or not. I believe there is conflicting testimony on that part, so prosecution will stipulate that none of these acts were done in the mine or by civilian workers of the mine, they were concerned only with the camp staff, I mean Tsuda of course, is charged, but I mean we are only concerned with acts outside of the mine itself.

PRESIDENT: Now then that brings up just the one point, as to whether or not Tsuda was ever engaged in any activity between the gate of the camp to the face of the mine.

INTERVIEW: In 1945, I think, for a period of time he went back and forth.  
Defense calls as its first witness Hiroji Honda.

Hiroji Honda, witness for the defense, was then sworn and testified  
through the court interpreter as follows:

DIRECT EXAMINATION

Questions by the defense:  
(Answers through court interpreter)

Q. Will you state your name?  
A. Hiroji Honda.

Q. Your present address?  
A. Sugamo Prison.

Q. Your age, and whether or not you are married or single?  
A. Thirty seven. I am married.

Q. Were you ever in the Japanese army?  
A. Yes.

Q. Were you connected with POW Camp 13 at Sendai?  
A. Yes.

Q. In what capacity?  
A. I was serving there as a dispatch camp commander.

Q. Between what dates?  
A. From April 15, 1945, to February 26, 1946.

Q. You have been tried as a war criminal?  
A. Yes.

Q. When were you tried, approximately.  
A. From January 10 until February 2, 1946.

Q. Were you charged with the death of a POW by the name of Scott?  
A. Yes.

Q. What sentence did you receive?  
A. I received a sentence of twenty years.

Q. Now I will ask you whether or not during your term as camp commander  
if you had a man by the name of Tsuchida under your command?  
A. Yes.

Q. What dates did he serve under your command, the approximate dates?  
A. From May 15, 1945, through the whole period I was serving there.

Q. What type of work did Tsuchida do while he was assigned to your camp?  
A. At first he was the leader of a guard, but later he was given the  
job of handling clothing supplies and also handling farming.

Q. Now what period of time was he assigned to duty of being in charge  
of the guards, approximate dates? All of these are approximate dates.  
A. I do not remember the exact period of time, but as I recall it, he was  
performing that duty up to about January of 1946.



- Q. Now during this time that Paula was working as a guard, that is, up to January of 1944, how were the POWs escorted from the camp to the mining place?
- A. The company guards and officers came down to the camp to receive the prisoners of war, and the company personnel escorted the prisoners of war.
- Q. How the company personnel and supervisors were they under the command of yourself as camp commander?
- A. No.
- Q. After the POWs had completed their day's work at the company mine, who escorted them from the mining place to the POW camp?
- A. The same people who came to receive the prisoners of war in the morning brought them back to the camp and handed the prisoners of war back to us.
- Q. Were these people who handled the POWs, were they civilian guards employed by the mining company?
- A. Yes.
- Q. I will ask you whether or not the mining company civilian guards carried rifles or sticks?
- A. The guards carried sticks.
- Q. How I will ask you whether or not Paula had any control over these company guards who carried the sticks?
- A. He did not have any direct control over them.
- Q. Now I will ask you beginning in January 1944, what were Paula's duties in the camp?
- A. His duties were connected with clothing supplies and farming.
- Q. That was from January 1944 until the time you left the camp.
- A. Yes.
- Q. Now at any time during this period did Paula have anything to do with the guarding of POWs, that is, between the camp and the mine?
- A. He did not have anything to do with that.
- Q. How how long did Paula continue in charge of the clothing supply?
- A. It was about one year because it was during the period of time I was serving there.
- Q. How when did Paula first go to work or when was he placed in charge of the garden or farming?
- A. It was about the same time that he was given duties to handle clothing because he was doing both simultaneously.
- Q. And who preceded him in handling the farming in the camp?
- A. Before him there was no one who was definitely assigned to that job.
- Q. How I will ask you whether or not you knew a POW by the name of Captain Franken.
- A. Yes.
- Q. Did Captain Franken ever make any written complaint to you about Paula's treatment of the POWs?
- A. No.

- Q. Did Captain Thornton ever make any complaint to you as a camp commandant as to treatment being meted out by Tsuda to POWs?
- A. No.
- Q. I will ask you how complaints, or how reports were made by various POW commanding officers, the mechanical procedure?
- A. The written matter is given to the interpreter who translates it and presents it to the non-commissioned officer and the non-commissioned officer then delivers it to me.
- Q. Who was the interpreter at this camp?
- A. I should like to have the period specified.
- Q. The names of the ones who were there during this period; I think there were but two.
- A. At first there was an interpreter from the company named Hasegawa who was helping us out. Later on another interpreter named Okada was assigned to the camp.
- Q. Then as I understand it, any reports to be made to you, they were first turned over to Okada, the interpreter, for translation into Japanese and then you received it. Is that correct?
- A. Yes.
- Q. Now I will ask you whether or not during the time that you were the camp commandant you ever received a complaint from Captain Franken that he had been ordered to spread human fertilizer in the garden?
- A. No.
- Q. I will ask you if you either received a report or heard about an incident involving a corporal, James L. Scott?
- A. I never did receive any reports.
- Q. When did you first hear about a man by the name of Corporal Scott?
- A. That was when the death certificate was written.
- Q. Do you remember approximately what date that was?
- A. February of 1945.
- Q. Now I will ask you whether or not at the time you saw this death certificate, whether it was reported to you that Tsuda had struck or kicked this POW shortly before his death?
- A. No.
- Q. Did you ever hear from any of the Japanese personnel that Corporal Scott had been kicked by Tsuda shortly prior to his death?
- A. No.
- Q. Was it ever reported to you by Captain Franken or the POW medical doctor that Tsuda had kicked or struck Scott just prior to his death?
- A. No.
- Q. As camp commandant of LB Sendai were you kept informed of what went on within the camp, that is, the treatment being administered by the camp personnel to the POWs?
- A. I was kept informed.
- Q. I will ask you whether or not if an incident took place in camp, even though you were not officially advised of their happenings, would you have heard of those things through rumor among the Japanese?
- A. I could have heard about it.

- Q. In your opinion, if a POW had been struck or kicked by a member of the Japanese camp personnel and as a result of that kick or beating had died, would you have heard about it?
- A. Inasmuch as such an incident is a serious one, there is no reason why I should not hear about it immediately.
- Q. Do you state to this Commission that you never heard of such an incident taking place within the camp?
- A. I can state that such a thing did not happen.
- Q. Now I will ask you whether or not during your term as camp commander army guards were used at your camp?
- A. There were certain periods when army guards were used at the camp.
- Q. What periods were those, and how often were these guards changed, that is, these army guards, approximate dates?
- A. I do not recall the exact period of time, but it was around the summer of 1944 that the army guards were used, and as I recall, they alternated at two week intervals.
- Q. Now I will ask you whether or not you ever received reports that army guards had struck or beaten POWs.
- A. No.
- Q. Did you ever receive any reports that company guards had beaten or struck or otherwise mistreated POWs?
- A. Yes.
- Q. On how many occasions approximately?
- A. As I recall it, about three times.
- Q. I will ask you, what was the arrangement to have the night soil removed from your camp?
- A. The camp had a contract with inhabitants of that area, and these persons took on the responsibility of removing the night soil from the camp.

**PRESIDENT:** The Commission will stand adjourned until 0900 hours tomorrow morning.

The Commission then, at 1115 hours, on 20 November 1946, adjourned to meet at 0900 hours on 21 November 1946.

*Clair F. Schumacher*

*William R. Brady*

WILLIAM R. BRADY  
Captain Major  
Chief Prosecutor



HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse  
Yokohama, Japan  
Thursday, 21 November 1946

The Commission met, pursuant to adjournment, at 0930 hours on 21 November 1946, all the personnel of the Commission, prosecution and defense who were present at the close of the previous session in this case being present.

The accused, reporter and interpreters were also present.

**PRESIDENT:** The Commission is in session.

**PROSECUTION:** At this time the prosecution desires to enter into the record the following Special Order Number 290, Headquarters Eighth Army, dated 20 November 1946; "EXTRACT 19. Par. 13 SO 236 this Hq is announcing the appointment of the Military Commission to meet at the Yokohama District Court Building, Yokohama, Japan on or about 17 September 1946, is amended as follows: LT COL OSCAR ORR, General List Canadian, Infantry Corps, BCOF, is hereby detailed as a member of the prosecution vice CAPT. JOHN D. G. BOLAND, Canadian Army, BCOF. (AG 334). BY COMMAND OF LIEUTENANT GENERAL NICHOLENBERG."

**PRESIDENT:** This copy will be inserted into the record until replaced by an original when it comes forward. There is one minor correction, I believe, Colonel, you are not a member of BCOF.

**PROSECUTION (Col. Orr):** No, sir, that is not correct, but it is a natural mistake, we live there. The other description is correct, "General List, Canadian, Infantry Corps". We simply live with the British Commonwealth.

**PRESIDENT:** That will be brought to the attention of the proper authorities.

**PROSECUTION (Col. Orr):** Yes, I will do that.

**PROSECUTION:** Does the president desire to swear in Col. Orr?

Lt. Col. Oscar Orr was then sworn in as Assistant Prosecutor.

**PRESIDENT TO DEFENSE:** You may continue with the examination.

The witness, Hiroji Honda, resumed the stand, and was reminded, through the court interpreter, that he was still under the oath previously taken.

DIRECT EXAMINATION (continued)

Questions continued by the defense:  
(Answers through court interpreter)

Q. I will ask you whether or not during the period of time that you served as Camp Commandant of Bandai 18 whether or not you ever received any complaints from Captain Franken that Honda had ordered him to clean the latrines within that camp.

A. No.

Q. I will ask you whether or not Captain Stewart ever complained to you that Fenda had ordered him to do work which was humiliating and degrading.

A. No.

Q. I will ask you whether or not during the entire period that you served as the Camp Commander if you ever received any reports from any of the POW officers that Fenda had abused or mistreated him.

A. I did not receive any reports.

DEFENSE: No further questions.

#### CROSS EXAMINATION

Questions by the prosecution  
(Answers through the court interpreter)

Q. You have stated that you were camp commander of Bendal 13. During the period that you were camp commander of Bendal 13 were you ever a camp commander of any other camp?

A. Yes.

Q. Would you state to the Commission what other camps you commanded at the same time that you were commanding Camp 13?

A. Under the same system used, the other camp was Bendal Branch Camp No. 2.

Q. Will you state to the Commission where this branch camp was located? Shall I give it in detail?

Q. Yes, just the town, the town is sufficient.

A. It was located in Yoshika Hara.

Q. Will you state to the Commission how far this was from Bendal No. 1. Measuring the distance in a straight line, there was a distance of about two rls, or about five miles.

Q. Will you state what designations were given by the Japanese to Bendal 13 prior to its becoming Bendal 13?

A. It was called Dispatch Camp 46 of the Tokyo Prisoner of War Camps.

Q. How long did you command both camps, in other words, how long did you command Camp No. 1 and 2 simultaneously?

A. Inasmuch as I had been commanding Camp No. 1 all during my term up there and the period when I commanded No. 2 camp is during that term of my command of No. 1. I shall give the period of time I was given the command of No. 2, and that was a period when I had both camps under my command. I was ordered to command Camp No. 2 around March 20 of 1944, and had command of that camp until about July 28 or 29 of 1944.

Q. Was there any other prisoner of war camp other than these two to which we have now referred in the vicinity of the town of Imoto.

A. No.

Q. Except for these two camps have you any idea as to the distance to the nearest camp, prisoner of war camp?

A. It is difficult to state the distance, but there was another prisoner of war camp located about twelve or thirteen rls, or thirty to thirty-two and one-half miles away.

Q. What was the name of that prisoner of war camp?  
A. I think it was Mepetch Camp No. 6 of the Tokyo Prisoner of War Camps.

Q. Are you married?  
A. Yes, I am married.

Q. During the time that you commanded Sendai Branch Camp No. 1 where was your wife?  
A. She was living at Yumoto.

Q. And where were you living?  
A. We lived together at the same place.

Q. Did you sleep in your house in Yumoto every night?  
A. There were occasions when I slept within the camp, but aside from those occasions I slept at the house.

Q. Is it not true that you more frequently slept at home than at the camp?  
A. Yes.

Q. When was it your usual custom to come to the camp in the mornings?  
A. That depended on the season, but in January it was between seven and eight.

Q. And when did you leave for home, your home in Yumoto in the evening?  
A. Five o'clock.

Q. And where did you eat your lunch?  
A. At camp.

Q. And how frequently and how often, as a general practice, did you go to Sendai Branch Camp No. 2 in order properly to perform your duties there?  
A. That differed with the occasion, but usually I went about three days a week.

Q. Then it is true that you were frequently absent from the camp, Sendai Branch Camp No. 1 during various periods of time during the day or night.  
A. Of course I was absent during the periods I went to the other camp or when I slept at my home, but aside from that I was in this camp.

Q. How far from the boundary of the camp, Branch Camp No. 1, is the entrance to the coal mine in which the prisoners worked?  
A. Between 300 to 400 meters.

Q. And where in the camp did the mine guards receive the prisoners?  
A. They received them on the road leading out of the gate from the prisoner of war camp.

Q. You mean that they received them at the entrance of the camp and not inside the camp?  
A. Yes, it was at the entrance of the camp.

Q. How when the prisoners were called for duty, where did they form?  
A. Just inside of the gate.



Q. And who formed them into ranks preparatory to marching?  
A. It was the prisoner of war officer of the day who formed them into ranks.

Q. And what Japanese supervised this formation?  
A. It was the Japanese guard who was on duty that day.

Q. Would you call that man an orderly, or in our language charge of quarters?  
A. Yes.

DEFENSE: May we have an interpreters conference?

The interpreters conferred informally amongst themselves.

DEFENSE: It is merely this: that the term guard or orderly, duty officer, is all translated in Japanese as Nichoku, which means he can be called orderly, guard, non-com, duty officer on duty, similar to our O2. There is no parallel; that is the only thing we want to point out.

PROSECUTION: That is all right, but any of the three of those is all right. I am not trying to draw the line as fine as that. I had an objective in mind, and it is accomplished.

PRESIDENT: Continue with the examination.

Q. How were the Japanese selected for this duty?  
A. A guard takes on that duty for 24 hours at a time, and they would relieve each other, each at 24 hours.

LAW MEMBER: He does not seem to answer the question, does he. That is not in answer to the question that was asked. You just said how were the Japanese selected.

PROSECUTION: Yes sir. Well, it isn't quite answered. I am willing to let it go at that if he wishes to make it that way.

DEFENSE: May we have the question read back?

The reporter read back the last question.

Questions continued by the prosecution:  
(Answers through court interpreter)

Q. Now then, when the prisoners returned from the mines, where did the mine guards turn them over to the camp guard?  
A. It was at the same place as prisoners of war started out to work, that is, at the gate.

Q. And when was sick parade?  
A. The medical examination is held at 9:00 o'clock in the morning and 4:00 o'clock in the afternoon, twice a day.

Q. And where is it held with relation to the point the prisoners are turned over to the mine guards?

PROSECUTION: I can simplify that question; just withdraw that question and I will make it easier.

Q. Where was the sick period held?

A. In the dispensary.

Q. Where was the formation for sick period formed?

INTERPRETER: Sir, we cannot quite make that "sick period" go over in Japanese.

PROSECUTION: Well, the formation for the sick is what I had in mind.

PRESIDENT: Let me just inject here, we have been using sick period in the Michizawa case, how did you handle it then?

INTERPRETER: We just explained to them at that time that it was a formation for medical examination.

PRESIDENT: That's right. It has always been referred to as sick period.

INTERPRETER: Yes sir.

PRESIDENT: Captain Bready means the same thing.

PROSECUTION: I mean the same thing, only I know it is done in the medical inspection room. I want to know where the formation was for it, why the men were formed for it, called out.

PROSECUTION: Withdraw that question, I will try to ask another.

Q. When the work details returned, where did the men reporting sick form for medical inspection?

A. There was no definite place designated for such people to come to at our camp.

Q. But it was inside the camp and some distance from the entrance where the nine guards surrendered the prisoners to the camp guards, was it not?

A. It was inside of the camp, because in general, the ill prisoners reported to the prisoner of war officer of the day, and the officer's room was located inside of the camp.

Q. Were you present at all these formations to which we are referring?

A. No, and a definite formation for these sick prisoners of war was not held.

Q. Was Tsuda ever an orderly officer?

A. Yes.

Q. You have stated that if any of the events, peculiar or serious instances might occur in the camp, that you would hear of them, either by way of rumor or by reports from prisoner of war officers or from some similar source. Is that not true?

A. Yes, that is the fact.

Q. Now, if I were to tell you that a number of prisoners of war have stated that Corporal Scott died as a result of a certain incident, could you not say that that was a rumor?

DEFENSE: May it please the Commission, I do not exactly follow what the prosecutor is driving at.

PRESIDENT: I wonder if you couldn't add, "worthy of reporting"?

PROSECUTION: Yes sir, that would be excellent, "worthy of reporting".

PRESIDENT: Pardon my suggestion, but I thought it might save a little time.

WITNESS: I think that that would be a rumor worthy of reporting.

Q. In other words, all you know is that you didn't hear about the instances such as Scott's death, Henderson's beating, which have been referred to in this trial?

DEFENSE: If it please the Commission, I believe Henderson's beating took place in June of 1945.

PROSECUTION: I withdraw Henderson's beating.

WITNESS: Yes.

PROSECUTION: Your witness.

PRESIDENT: Any further redirect? did you make any investigation other than the death certificate submitted by the doctor to find any facts?

DEFENSE: A few questions.

#### REDIRECT EXAMINATION

Questions by defense: describe to us how the death occurred; and the (Answers through court interpreter)

Q. I will ask you, how many Gunzokus were assigned the duty as Hicchoku for the POW camp, that is, the job of meeting the POWs when they were returned from their work in the mines?

A. Five. One man in the dispensary, and also the presence of our medical officers about this. But didn't find out anything about this.

Q. Now would each of these five Gunzokus serve as Hicchoku from 12:00 o'clock of one day until 12:00 o'clock the following day, and would he be permitted to go home after his tour of duty had been completed?

A. He would go home.

Q. In other words, each of the Gunzokus would draw this duty of Hicchoku each fifth day, or once in five days, is that correct?

A. If they succeeded each other, then usually that was so.

Q. Was it the practice in the camp that one Gunzoku did succeed the other as duty officer for the day?

A. Yes. They had named his death, and the officer designated the part of his body, and that was all to the satisfaction.

Q. Now when you were away from Sendai 1B attending to the other camp referred to as 2B, I believe, would the events which took place in your absence from 1B be reported to you on your return?

A. Yes, of course they were reported, and in cases of urgent business I received reports by means of the telephone.

DEFENSE: No further questions, sir.

PRESIDENT: The Commission will take a short recess.



The Commission then took a recess until 1030 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

**PRESIDENT:** The Commission will be in session. We will continue with the examination by the Commission.

#### EXAMINATION BY THE COMMISSION

Questions by the Commission:

(Answers through the court interpreter)

Q. During the time from the 18th of April 1945 and 30th of November 1945, how many men approximately died at the dispatch camp of which you were commanding officer at Sendai?

A. About thirty.

Q. Were the deaths of the men reported to you immediately after the death occurred?

A. Yes.

Q. What was your custom in the matter of making an investigation of these deaths to determine the facts; did you make any investigation other than the death certificate submitted by the doctor to find any facts that might surround these deaths?

A. There were occasions when I went personally to the dispensary and spoke to the medical officer pertaining to the deaths, and there was also arrangement in which the prisoner of war officers reported to me on any point with which they were dissatisfied. Also the medical orderlies came to describe to me how the death occurred; and the Japanese doctor also came to describe to me in detail as to the cause of death.

Q. Did you make any investigation or find out any facts surrounding Corporal Scott's death?

A. I asked the man in the dispensary, and also the prisoner of war medical officers about this, but didn't find out anything that was unusual.

Q. How long before you left the camp as camp commander was it before Corporal Scott died?

A. It was at least three weeks before, because I left on the 16th.

Q. Did you talk to the prisoner of war medical officer about his death after he died?

A. Yes.

Q. What was the substance of your conversation?

A. The conversation was very simple, and I just asked what part of the man's body had caused his death, and the officer designated the part of his body, and that was all to the conversation.

Q. What part of the body did he say or indicate as to the cause of the death?

A. He was saying that it was his heart.

Q. Who was this officer who made this statement?

A. It was a prisoner of war officer named DeWolfe.

Q. Was he the prisoner of war medical officer?

A. Yes.

Q. Did you know Captain Bartlet in your camp?  
A. Is he an Englishman?

MEMBER OF COMMISSION: I will rephrase the question.

Q. Did you know a Captain Bartlet, a British medical officer who was a prisoner of war in your camp?

A. I knew a British captain, but I am not clear about his name.

Q. How many prisoners of war medical officers did you have in your camp?

A. From around February 20th before I was relieved of my post we had three, but previous to February 20th we had two.

Q. Who were the ones that you had at the time Corporal Scott died?

A. There were two, DeWolfe and the British Captain.

Q. Is this British captain to whom you refer, the man's name whom you seemingly could not remember a few minutes ago as to the question as to whether you knew Captain Bartlet?

A. Yes, but I am not sure about the name, but this is the British captain that I mean.

Q. Did you know Captain Franken, a Dutch prisoner of war?

A. Yes.

Q. Did either of these prisoners ever speak to you or say anything to you with reference to Corporal Scott's death?

A. No.

Q. Did the British medical captain whose name you did not remember, ever say anything to you or have any conversations with you with reference to Corporal Scott's death?

A. I did not receive any report from this medical officer.

Q. Were the guards in your camp authorized to strike or beat prisoners of war?

A. No.

Q. Did you ever receive any reports from anyone that the accused, Tsuda, struck any prisoners of war?

A. No.

PRESIDENT: Are there any further questions? If not, the witness may be excused.

There being no further questions the witness was excused and withdrew.

DEFENSE: The next witness for defense is Masaru Mikawa. I would like to point out to the Commission that this individual is being held in Sugamo awaiting trial, so before he testifies I should like to have the Commission inform him of his rights.

PRESIDENT (to witness): Before taking the oath, you are instructed that you may make an answer only to those questions you wish to answer, avoiding the necessity of answering any question which may in any way incriminate you or be in any way degrading.

WITNESS: I understand.

**PRESIDENT:** The responsibility for making any answer rests entirely with you. If there is any doubt in your mind, you may inquire regarding any question.

**WITNESS:** I understand.

**PRESIDENT:** You may take the oath.

Masaru Mikawa, witness for the defense, was sworn and testified through the court interpreter as follows:

**DIRECT EXAMINATION:**

Questions by the defense:  
(Answers through the court interpreter)

Q. Will you state your name.

A. Masaru Mikawa.

Q. Present address?

A. Sugamo Prison.

Q. Age and marital status?

A. I am 36 and married.

Q. Were you in the Japanese army?

A. Yes.

**DEFENSE:** At this time I should like to have the interpreter instruct this witness to answer the questions directly and not to engage in a great deal of irrelevant details.

The interpreter complied with the request.

**DEFENSE:** I should like to know whether or not the Commission has any objection to that instruction?

**PRESIDENT:** No, it is understood that that is the thinking of the Commission.

Questions continued by the defense:  
(Answers through interpreter)

Q. When were you inducted into the Japanese army?

A. On January 20, 1935.

Q. Did you continue to serve in the Japanese army until you became connected with the Sendai LB POW Camp?

A. No.

Q. Were you discharged from the Japanese army during that period of time?

A. Yes.

Q. When were you discharged?

A. November 31, 1936.

**LAW MEMBER:** Do you mean November 30th?

**DEFENSE:** Strike that question and we can probably save time.

Q. When did you first become associated with the POW Camp at Sendai known as LB?

A. January 10, 1944.



Q. And how long did you continue to serve at this POW Camp?

A. Until May 28th of the following year.

Q. That would be 1945?

A. Yes.

Q. Who was the Camp Commander at the time you reported for duty at this camp?

A. First Lieutenant Hiroji Honda.

Q. How long did he serve at this camp?

A. Until February 28, 1945.

Q. And who relieved Lt. Honda as camp commander of 1B Sendai?

A. First Lieutenant Takeichi Chisawa.

Q. How long did Lt. Chisawa continue to serve at that camp of which you knew?

A. Until the end of the war.

Q. Now I will ask you if, during the time that Lt. Honda served as camp commander of 1B, if he acted as a camp commandant for some other POW camp located within the vicinity of Yumoto.

A. He did.

Q. What camp was it?

A. It was the Dispatch Camp No. 14 of Tokyo Prisoner of War Camps located at Yushima Kura.

Q. How far is this camp located from Sendai 1B?

DEFENSE: These distances are approximately.

WITNESS: About twenty kilometers.

Q. Are both of these camps located in the neighborhood of Onahama?

A. No, one was located near Yumoto and the other was located near Fairs.

Q. Which camp was located near Yumoto?

A. The Sendai Branch Camp No. 1.

Q. Was there any POW camp located near Onahama?

A. No, the closest one to there is the Branch Camp No. 1 of Yumoto.

Q. Now what were your duties in this Camp 1B?

A. I was a general affairs non-commissioned officer.

Q. And what were your duties as the general affairs non-commissioned officer?

A. I received orders from the camp commander and performed the miscellaneous daily duties of the camp and acted as the stores accountant.

Q. Now if any POW commanding officer had any complaint to make to the camp commandant, would that complaint come to you before it was presented to the camp commandant?

A. Usually they came through the interpreter to my place.

Q. And you in turn pass them on to the camp commandant, is that correct?

A. Yes.

Q. Now when these complaints came to the camp interpreter, would he transcribe them into Japanese?

A. Yes.

- Q. Who was the camp interpreter at this time?
- A. It was Shinichi Okada.
- Q. And when did Okada terminate his duties at the POW Camp?
- A. I do not know when that was because he was still there when I left.
- Q. Now I will ask you whether or not, as the non-commissioned officer of Sandai LB, if in February of 1945 you wrote any reports concerning the death of a Corporal James L. Scott?
- A. Yes I know, because I made out the papers.
- Q. What do you recall about this Scott incident?
- A. None.
- Q. I will ask you whether or not, when you received a report of the Scott incident, what information you received concerning his death.
- A. I do not recall anything.
- Q. I will ask you whether or not it was one of your duties as duty non-commissioned officer of LB to forward all reports of death to the main camp.
- A. Yes.
- Q. And did you forward the death certificate on Scott to the main camp?
- A. Yes.
- Q. Did you receive any report that there was anything unusual about Scott's death?
- A. No.
- Q. Did you receive any report from Captain Bertlet that Scott had been kicked by Tsuda before he died?
- A. No.
- Q. Did you receive any report from Lt. De Wolfe that Scott had been kicked a short while before he died?
- A. No.
- Q. Did you receive any report from Captain Franken that Scott had been kicked by Tsuda a short while before he died?
- A. No.
- Q. Did you receive any report from any of the POW officers to the effect that Scott had been kicked a short while before he died?
- A. No.
- Q. Did you ever receive a report from any of the doctors or from any of the POW officers that Tsuda was ever denied medical attention or treatment to the POWs?
- A. No.
- Q. Did you receive any report from any of the Japanese medical personnel assigned to the dispensary that Tsuda had mistreated and abused Corporal Scott shortly before his death?
- A. No.
- Q. Did you ever receive any reports that any of the Japanese personnel had abused or mistreated Corporal Scott shortly before he died?
- A. No.

Q. I will ask you whether or not as a non-commissioned officer assigned to 1B you were kept advised of the happenings within the POW camp insofar as it pertains to the treatment of the POWs.

A. In general that was so.

Q. What was your means of securing this information?

A. Arrangement was made so that Captain Franken could submit reports to the interpreter Okada.

Q. Now I will ask you whether or not any such report as the beating of Scott was made to you by Captain Franken?

A. No.

Q. If such an incident had taken place within the camp, even though that incident had not been reported to you by the POW officers, would you have heard of it, in your opinion, would you have heard of it through rumor or gossip among the camp personnel?

A. If such a thing did occur, I would hear about it.

Q. Do you tell this Commission that you never had any such incident reported to you or that you never heard of such an incident having taken place at 1B?

A. Yes.

PRESIDENT: The Commission will adjourn until 1315 this afternoon.

The Commission then took a recess until 1315 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

PRESIDENT: The Commission is in session.

DEFENSE: At this time it has been stipulated between the prosecution and the defense that the camp referred to in the testimony of the prior witness as being Sendai No. 2, that that camp was later known as 14D.

PROSECUTION: It is the other way around, 14D became Sendai 3 and was until the end of the war.

DEFENSE: They are all one and the same camp, that is the big point.

The witness Masaru Mikawa resumed the stand and was reminded that he was still under the oath previously taken.

Questions continued by the defense:  
(Answers through the court interpreter)

Q. During the time that you served in this Sendai 1B Camp, did you know the accused, Tenda.

A. Yes.

Q. In what capacity did he serve at this Sendai 1B, and give us the approximate date, the time that he served.

A. Soon after I went there he was placed in charge of clothing, and about in March or April of 1945 he was assigned to gardening.

Q. Now at the time you went to the Sendai 1B camp, how many Gansokus were employed at the camp?

A. Five.



Q. Now did these Gunzokus take turns in serving as Nicchoku at the camp?  
A. Yes.

Q. What hours did they serve as Nicchoku?  
A. They worked for twenty-four hours.

Q. Then as I understand it, each one of the Gunzokus drew the duty of Nicchoku once in five days. Is that correct?  
A. Yes.

Q. Now when you served at this camp on the 10th of January in 1944, will you explain to the Commission how the POWs were escorted from the camp to the working place, that is, by what personnel?  
A. At that time either Gunzokus or civilian guards escorted them, but I do not remember which day it was.

Q. Now, were the civilian guards that you have mentioned, employees of the mining company or of the POW camp?  
A. They were employees of the mining company, but they acted as guards under the command of the camp commander.

Q. Now I will ask you whether or not these company guards who escorted the POWs from the camp to the mine, were they carrying sticks or rifles?  
A. They had sticks which were about a meter long.

Q. Did you ever receive any report during the period of time that you were at the camp that the employees of the mining company had struck or mistreated POWs?  
A. No.

PRESIDENT: Pardon the interruption, but may I ask if the defense is attempting to show through this questioning that the accused did not leave the camp and go to the face of the mine?

DEFENSE: Sir, I am merely showing that during this period of time that there are a number of affidavits that contend that beatings were administered by this man at the mining face and between the camp and the mine.

PRESIDENT: And what you are trying to do is merely to refute that?

DEFENSE: That is correct, sir.

PRESIDENT: Couldn't that be accomplished by asking him a direct straight question, if he ever had occasion to leave the camp?

DEFENSE: I am planning to do that.

PRESIDENT: Do you have to ask questions that lead up to it?

DEFENSE: Yes sir, for the simple fact that all of these affidavits mention various Japanese civilians and others, and I want to show that they were incidents reported, participated in by the civilian guards, army guards, and then I will ask whether or not he ever received a report concerning this man.

Q. During your time at the camp, were army guards employed?  
A. I think they came around the summer of 1944.

Q. Was that while you were present at the camp?  
 A. When I first went there, they were not there, but they came around August of 1944.

Q. I will ask you whether or not you ever received any reports that they had mistreated POWs?  
 A. No.

Q. Did you ever receive any report that Tsuda had mistreated or struck any POWs while you were at camp?  
 A. I did not receive any reports.

Q. I will ask you whether or not during the period of time you served at the camp, whether Tsuda escorted the POWs from the camp to the mining place.  
 A. No.

Q. Were his duties confined to the clothing room at the camp, the quarter-master supply room?  
 A. His duties were comprised simply of his duties pertaining to clothing and also Nichoku.

Q. Now I will ask you whether or not at any time that you were serving at this camp if either Captain Franken or Captain Thornton made any report to you concerning Tsuda's treatment of POWs?  
 A. No.

Q. Did you receive any reports or complaints from any parties concerning Tsuda's treatment of POWs?  
 A. No.

Q. Now I will ask you whether or not at your visits to the POW camp, if  
 DEFENSE: Your witness.

PROSECUTION: No cross-examination.

PRESIDENT: Any questions by the Commission? Apparently not; the witness may be excused.

There being no further questions the witness was excused and withdrew.

DEFENSE: The next witness for the defense will be Doctor Kazuhiro Shirakura.  
 Q. Now I will ask you whether or not in February 1945, you received any  
 Kazuhiro Shirakura, witness for the defense, was then sworn and testified through the court interpreter as follows:

#### DIRECT EXAMINATION

Q. Did you ever receive any reports from any of the POW medical personnel  
 Questions by the defense:

(Answers through the court interpreter)

Q. Will you state your name?

A. Kazuhiro Shirakura.

Q. Your age?

A. Thirty-three.

Q. Are you married or single?

A. I am married.

- Q. Your present address?
- A. Casa Hirumoya, Yumotomachi, Ishiki Gun, Fukushima Prefecture.
- Q. Did you ever work with a POW camp known as Sendai 1B?
- A. Yes.
- Q. Between what dates?
- A. From November of 1943 until around April 20th of 1945. Then thereafter, after a certain length of time, at the request of the camp commander, I served again at the camp until the end of the war.
- Q. And during the period of time from November of 1943 until April of 1945, were you in the Japanese army?
- A. No, I was serving as the doctor at the Joben Mining Company.
- Q. You are a doctor of medicine, are you not?
- A. Yes.
- Q. And you graduated from the Tokyo Special Medical School in 1937?
- A. Yes.
- Q. Now, I will ask you how many visits did you make to this POW camp each week while you were serving at Sendai 1B?
- A. I went there once every week on Thursday morning between the hours from 9:00 o'clock to 11:30.
- Q. Now in your absence, who took care of the POW medical needs?
- A. There were prisoner of war doctors there, and they did that.
- Q. Now I will ask you whether or not on your visits to the POW Camp, if you were kept advised as to what had been going on in the camp since your previous visit.
- LAW MEMBER: Do you mean on the medical side?
- DEFENSE: Yes sir. This will all be strictly on the medical side.
- WITNESS: I was kept informed about those who were seriously ill or those who were confined to the sick room or those who had been injured.
- Q. Now I will ask you whether or not in February 1945, you received any report concerning the condition of a POW by the name of Corporal James L. Scott.
- A. No.
- Q. Did you ever receive any report from any of the POW medical personnel that a certain POW had been struck or beaten a short while before his death by the accused, Tsuda?
- A. No.
- Q. Did you ever hear any rumors among the Japanese camp personnel or among the personnel at the mining company that Tsuda had struck or beaten a POW shortly before his death?
- A. No.
- Q. Did you ever receive a report from either the POW medical personnel or from the Japanese medical personnel assigned to the camp that Tsuda had abused or mistreated a POW shortly before his death?
- A. No.



- Q. In your opinion had such an incident taken place within the camp would you have known about it or had it reported to you by some member of the camp personnel?
- A. If such a thing did occur, I think it would come to my ears without fail.
- Q. I will ask you whether or not it was ever reported to you that Tsuda had refused to let POWs come to the dispensary for medical treatment.
- A. No.
- Q. Who were the medical POW officers serving at the camp during the time that you were there?
- A. The Dutch doctor was DeWolfe, and I have forgotten the name of the British doctor.
- Q. Would the British doctor's name be Bartlet?
- A. At the camp, inasmuch as names were not used, I did not remember his name, but after being called as a witness, I think that Bartlet was probably his name.
- Q. Now who were the Japanese medical personnel assigned to work in the dispensary?
- A. Toge Matsuzaki was the man and later on a man came, but I do not recall this man's name.
- Q. I will ask you whether or not you know if Tsuda escorted the POWs from the POW camp to the working place at the mine.
- A. I think that Tsuda did not take the prisoners over.
- Q. Do you know who did escort the prisoners from the camp to the mines?
- A. The company guards as well as the company personnel who supervised the prisoners of war directly came to receive the prisoners of war, and they took the prisoners over.
- Q. Did you ever receive any reports at the camp that Tsuda was interfering with the medical treatment being given to the POWs at the camp?
- A. No.
- Q. And do you tell this Commission that you never heard, either through rumor or by official report, that Tsuda administered a beating or kicking to a POW shortly before his death. Is that correct?
- A. Yes.

DESKINER: Your witness.

#### CROSS-EXAMINATION

Questions by prosecution:  
(Answers through court interpreter)

- Q. Dr. Shirakura, tell this Commission how long you studied medicine.
- A. I studied for four years in school, and it has been nine years and eight months since I became a doctor.
- Q. Were you practicing medicine all that time?
- A. I was working as such, and during the period I went into the army.
- Q. When you were a doctor at the mining company, except for the time that you visited the prisoner of war camp Sendai 1B, did you devote your entire time to medical treatment in the mines?
- A. Yes.

Q. Then during that period you were constantly in the mine engaged in your practice during the working day, except for that time that you were at the POW Camp, is that correct?

A. Yes.

Q. Then will you tell this Commission how you can state positively the method and means and who escorted the prisoners of war to and from the mining company?

A. That is because the camp itself was converted from buildings in which the company employees lived before, and in the vicinity of the camp there were other homes for the company workers. So when I made calls on the homes of company employees or went to the office on some business or another, I frequently saw the prisoners of war lined up walking either to or from the camp.

Q. But you only saw these on infrequent occasions; it was not your practice to be present at all formations by which these prisoners were marched to and from the camp, was it?

DEFENSE: May I ask that that question be simplified a little bit; I think it is pretty much involved.

PROSECUTION: We will see if the interpreter can handle it without undue difficulty.

WITNESS: Yes, I saw them only from time to time.

Q. While you were a doctor visiting the camp, did you know Koji Tenda personally?

A. I did not associate with him personally.

Q. Would you know him if you saw him?

A. Yes.

Q. And what was the contact with him that would make you know him when you saw him?

A. That is because Tenda was the biggest man among the Germans, and by the manner he walked, I could recognize him from a distance.

PROSECUTION: Let the record show that the witness demonstrated the movement of the shoulders when he walked.

DEFENSE: No objection. Will you demonstrate that again. I did not see it.

PROSECUTION (to witness): Will you demonstrate again how Koji Tenda moved his shoulders when he walked?

The witness complied with the request.

PROSECUTION: Let the record show that the witness again demonstrated how the accused was accustomed to walk.

Q. Did you ever hear Tenda called by prisoners of war as the "Frog"?

A. No.

Q. Now you say that you identified Tenda because of his size and peculiar walk. What other contacts have you had with him that makes him stand out in your mind so that you know him so well?

A. He had a very loud voice.

Q. So far you have explained your contact with Koku Tsuda merely by his physical peculiarities. I wish to ask you what contact you had with him personally so that you would know who he is.

DEFENSE: May it please the Commission, I have no objection to his going along this line, but here is a man who has attended the camp over a period of well over a year, and there were only about four or five Gunsokus in the group itself, located five minutes walking distance from the mine. If the prosecution wishes to pursue this line of argument, I have no objection. I just don't see what can be accomplished by it.

PROSECUTION: Prosecution wishes to bring out that this witness has had contact with Koku Tsuda other than merely knowing him by his peculiarities and by his name, that he was actually engaged in work with him such as having sick people brought before him and the like.

LAW MEMBER: Yes, I think there is a purpose in this line of questioning.

DEFENSE: I withdraw my objection. I have no objection to that if that is what he is going to show.

WITNESS: He came to my hospital once or twice for the purpose of medical examination.

Q. Dr. Shirakura, it was your practice to sign the death certificates of all prisoners of war who died in Sendai 13, was it not?

A. Yes.

Q. I am going to show you a photostatic copy of a death certificate and ask if you can identify it as one which you prepared?

PROSECUTION: Let the records show that I am showing the witness prosecution's Exhibit No. 56.

WITNESS: It is.

Q. Now when you signed that death certificate did you make any examination to determine the cause of death.

A. Around that time there were many prisoners of war who were ill and who died, and so though I saw some bodies, I do not recall whether it was Corporal Scott's, or whose body I had seen.

Q. If you signed a death certificate, it was your custom to state the cause of death, was it not?

A. Yes, in all death certificates I wrote the cause of death after asking the prisoner of war medical officer's medical opinion.

Q. Then you depended entirely upon the prisoner of war medical officer's recommendation as to the cause of death, is that correct?

A. The way we worked it was I conferred with the Dutch doctor who was older than myself and more skilled, and we both conferred with each other and put down the cause of death.

Q. Did you ever consult the British doctor with reference to the cause of death of British prisoners of war?

A. No, I did not consult the British doctor because of the fact that the Dutch doctor handled all the cases of internal medicines, while the British doctor handled the surgical side. Therefore, when the death occurred due to the diseases of internal organs, I conferred with



the Dutch doctor. This arrangement was carried out in accordance with orders which came out around January of 1945, matters pertaining to death of prisoners of war who suffered from diseases of internal organs. I did not confer with the British doctor, but conferred with the Dutch doctor. Another reason why I did not consult the British doctor was that his knowledge of Japanese was very slight, and my knowledge of English was very slight, whereas the Dutch doctor knew quite a bit of Japanese. The arrangement, when making out the death certificate, was for the man who worked at the dispensary, Matsuzaki, to ask the prisoner of war doctor about the cause of death, and then I wrote it down on the death certificate.

**PRESIDENT:** The Commission will take a short recess.

The Commission then took a Recess until 1445 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

**PRESIDENT:** The Commission is in session.

The witness, Shirakura, resumed the stand and was reminded he was still under the oath previously taken.

Questions continued by the prosecution:  
(Answers through court interpreter)

- Q. Dr. Shirakura, about how many death certificates did you sign during the period that you acted as doctor for Sendai Branch Camp No. 1.
- A. 26 or 27.
- Q. Can you give any estimate as to the number of deaths that occurred during the latter part of January or the first part of February 1945?
- A. Yes, during that time about 21 or 22 died.
- Q. Now you have testified that you do not remember the death of Scott or any of the surrounding circumstances which led up to or occurred at the time of his death, is that correct?
- A. Yes.
- Q. Then, isn't it true that you do not know whether or not Scott died as a result of a kicking by anyone, but more especially by Tenda, is that not correct?
- A. Yes, I do not know whether Scott died as a result of a kicking or not, but if such a thing did happen, I think I would have heard about it.
- Q. And why do you think you would have heard about it?
- A. That is because Tenda was a Gunzoku who did not have a very good reputation, and so even the Japanese personnel at the company disliked him. If such a thing had happened, I think it would be impossible for him to hide the facts.
- Q. Are you familiar with beriberi?
- A. I have studied it deeply, but I know about it generally.
- Q. Have you ever had any experience with cardiac beriberi?
- A. Yes.

Q. Do you think kicking a man with cardiac beriberi would help him?

DEFENSE: May it please the Commission, I do not believe there has been any showing here that this man Scott had cardiac beri beri, that is, by medical testimony, has there been?

PROSECUTION: Yes sir, there has.

DEFENSE: By medical testimony?

PROSECUTION: Bartlet's testimony.

DEFENSE: Does he state that? May I have just one minute to check this?

PRESIDENT: Paragraph 6 of Bartlet's affidavit.

DEFENSE: Yes, sir, I am in error.

WITNESS: No.

Q. You would not recommend such treatment for a person suffering from cardiac beriberi, would you?

A. Of course I would not recommend that.

Q. Did you know a Canadian prisoner of war by the name of Alexander Henderson?

A. I do not know him.

DEFENSE: I think that took place after he was at the camp.

PROSECUTION: He said he was at the camp until the end.

DEFENSE: April of 1945, I believe.

PROSECUTION: He was right there until the end according to his testimony.

PRESIDENT: It doesn't matter; he answered that he did not know, so continue with the questioning.

Q. Do you remember anyone having his head sewn up with stitches on account of a blow on the head?

A. I do not know the exact date, but it was around July of 1945 that there was a man that suffered a head injury, and I heard the story within the camp about two weeks after the incident had happened that the injury was as a result of Foude's blow.

PROSECUTION: Your witness.

PRESIDENT: Any further redirect?

DEFENSE: One question, sir.

#### REDIRECT EXAMINATION

Questions by the defense:  
(Answers through the court interpreter)

- Q. Doctor, I will ask you whether or not cardiac beriberi is not a disease which proves fatal to the patient in a very high percentage of cases, somewhere between 80 and 85 per cent of the cases?
- A. Cardiac beriberi is a very difficult disease to handle, and its death rate is considerably high.

Q. I will ask you whether or not an individual who has been suffering from malnutrition, from dysentery, from flu or from cardiac beriberi, if the mere fact that he walks around or stands, might not result in his death?

A. Yes, I think that the individual would not die simply because of walking or standing, and of course, that depends on the rate of walking, but I do not think he would die because he did walk.

Q. I will ask you whether or not at any time during the period that you served at this POW camp, if it was ever reported to you that Tsuda had inflicted a beating on a patient suffering from cardiac beriberi?

A. No.

DEFENSE: No further questions, sir.

#### EXAMINATION BY THE COMMISSION

Questions by the Commission:

(Answers through the court interpreter)

Q. Is it possible for a man suffering from a simple type of beriberi, supposing he is beaten, for that disease to be intensified into cardiac beriberi?

A. I have not made an intensive study of beriberi, so cannot make a clear statement, but my opinion is that usually it would not be possible for a slight case of beriberi to be changed into cardiac beriberi because of a beating, and if there was to be such a case occurring, then I think that a trace of cardiac beriberi was there from before.

Q. Doctor, was Tsuda a good friend of the camp commander, Honda?

A. I do not know the relationship between Tsuda and the camp commander, Honda.

Q. In your inspections and visits to the camp, did you ever notice whether or not Tsuda seemed to exercise any more authority than the other Gunseikus present for duty in the camp?

A. I do not recall noticing anything like that as stated in the question, and he was just performing his duties in connection with clothing. Later I saw him gardening in the camp, but still I did not notice anything like that stated in the question.

Q. Do you know just what authority he exercised in his gardening and the use of the prisoners of war?

A. I do not know what sort of authority he had.

Q. Was he in charge of the gardening operations for the camp?

A. I think he was in charge of that.

Q. What was Tsuda's reputation among the Japanese personnel and mine guards?

A. As I stated previously, Tsuda's reputation was not very good.

Q. What was the general consensus of opinion as to why his reputation was not good?

A. The reason was that although Tsuda performed his work diligently, he was a very big man who was not sociable, and he could not associate with other people very well. He had a loud voice and did not give a good impression to other people.



- Q. Were the other Japanese people afraid of him?
- A. Rather than being afraid of him, people tried to avoid him. People tried to avoid talking with him aside from business because he was so abrupt and un sociable.
- Q. Was he hot tempered?
- A. I do not know that.
- Q. Do you know whether Lt. DeWolfe spoke English?
- A. This Dutch doctor could speak English, German and Japanese.
- Q. Was it a custom generally for the Dutch doctor to treat the Dutch and English prisoners, or was it the custom for him to treat principally the Dutch prisoners of war, and the English doctor to treat the English prisoners of war?
- A. At the very first the system was for the Dutch doctor to treat the Dutch prisoners of war and the English doctor to treat the English prisoners of war, and this continued for a period of time, but beginning with the early part of January 1945, because the Dutch doctor was good in internal medicine and the English doctor was a specialist in surgery, they began treating patients according to the type of disease they suffered from and not with regard to nationalities, so the Dutch doctor handled the internal medicine cases and the English doctor handled the surgical cases.
- Q. Do you actually know how the doctors, the prisoner of war doctors in the camp, arranged and held their sick calls of the prisoners of war in their daily administration of their sick calls?
- A. Yes, the doctor had a list of patients, which had the patient's name, disease he had, the sick classification, the medicine to be administered and the treatment, and following this list, he would call the patients to be examined.
- Q. Wasn't Doctor Bartlet the senior medical officer, prisoner of war medical officer in camp, and was he not directly in charge of taking care of the medical needs of the British prisoners of war?
- A. In the camp the question as to who was the senior was not taken into consideration, and the only thing that was considered was that each doctor had his special field, one taking care of the internal medicine and the other surgery.
- Q. Would you then state that Captain Bartlet did nothing except surgery work in the camp?
- DEFENSE: May I ask if you are restricting that, sir?
- MEMBER OF COMMISSION: Around about February of 1945.
- DEFENSE: In January the order came out.
- MEMBER OF COMMISSION: February 1945, or at the time that Corporal Scott died.
- WITNESS: Although the order stated that the British doctor was to handle only the surgical cases, in actuality, during the time when there were a large number of patients confined in the hospital, some of the patients were examined by the British doctor because the Dutch doctor could not do all the work himself.
- Q. Then as I understand it, Captain Bartlet actually held sick call and did look after some of the patients who were suffering from ailments needing medical attention other than surgery?

DEFENSE: May it please the Commission, I respectfully object to the manner in which that question is worded. I don't think the statement has been made by the witness that Dr. DeWolfe, the Dutch doctor, and Dr. Bartlet, that one did only surgery and the other did general practice. I think the witness testified, as I understood it, that they moved into their specialized field in January, and that during this siege of illness, that the British doctor did attend other patients, but I don't recall that he said that the British doctor actually held sick call.

LAW MEMBER: I think the question might stand, and we will see what the witness answers to that. May we have the question again?

The reporter read back the question.

WITNESS: Usually during the general medical examination in the morning he looked after the surgical cases.

Q. Do you know definitely whether the order in January separating these two doctors into two respective fields of medical work had been put fully into effect by the 2nd of February 1945?

A. The order was put into effect right away, because the camp was still a military unit, so that when I went there at the end of February, the change was made as I had described earlier.

Q. Captain Bartlet has made an affidavit which has appeared in evidence before this Commission, from which I will quote an extract as follows: "At about 1700 hours on 2 February 1945 I was taking my evening sick parade as the men including Corporal Scott arrived back from the mine. TSUDA or TSUDA (otherwise known as "The Frog") took over the parade as the men arrived at the camp. Corporal Scott attempted to come and see me in order to report sick but TSUDA shouted out to him in Japanese that he was not sick, told him that he would not get any food if he did go sick and finally ordered him to leave medical inspection room. I appealed to TSUDA to allow Corporal Scott to report sick as I could see he was very ill but this was refused." What do you think Captain Bartlet meant by that statement?

DEFENSE: Before the answer to that question is given, sir, I would like to point out there is no contention on the part of the defense that Captain Bartlet did not make this statement, it has already been admitted in evidence before the Commission. Now as to what Captain Bartlet meant by the statement, that is purely within the province of the Commission. Now if the Commission is attempting to bring out any information, I would like to be informed as to what the intention of this question is.

MEMBER OF COMMISSION: The intent of this question is to clarify a situation in which the witness has given testimony which would indicate that Captain Bartlet had no connection with sick call and only performed matters pertaining to surgery at the time in question.

DEFENSE: May it please the Commission, if I recall correctly, the testimony that has been given here that when this order came out, even though the order was given that there would be a specialist to determine medicine and a specialist to determine surgery, even though that order had come out, that Captain Bartlet did treat other patients at the camp and did not restrict his activities solely and entirely to surgery cases. I mean, that has been my interpretation and understanding of all the evidence that has been given by this witness. May I make our position clear. We do not contend for one moment that Captain Bartlet merely performed surgery in this period of time when there were so many POWs that one man could not possibly have handled the job, and I do not think the inference was left there that Dr. Bartlet sat around and held his hands while DeWolfe did more than he could do, sir.

LAW MEMBER: I think, Mr. Brinsfield, the witness may answer the question.

WITNESS: I cannot grasp the question, particularly the portion as to what I think he means by that statement.

Q. In your weekly medical visit to the camp, did you ever see any evidences of any prisoners of war having been beaten to an extent as to require medical attention?

A. As I recall it, I do not recall any patient who required treatment as a result of being beaten.

Q. Did you ever hear or know of Touda striking or beating a prisoner of war?

A. I know of that case around July of 1945 when Touda struck and injured a man on the head.

Q. Do you know who the man was and what was the extent of the injury?

A. I do not know who the man was who was struck, but as to the extent of the injuries, I heard that the man had had to have stitches taken in his head to sew up the wound.

PRESIDENT: Any further questions?

PROSECUTION: Sir, I have one question I should like to ask, and that is all.

#### RE-CROSS EXAMINATION

Questions by the prosecution:  
(Answers through the court interpreter)

Q. I will ask you whether or not you personally attended this victim that you heard was struck by Touda?

A. No, I heard the rumors later.

PROSECUTION: No further questions.

DEFENSE: No further questions. May this witness be excused and go back to his home?

PRESIDENT: I know of no reason why he should not. Does prosecution know of any reason to recall him?

PROSECUTION: No sir.

DEFENSE: If it is necessary to get him back, I can get him back under a day's notice.

PRESIDENT: I think under the circumstances it can be explained to him we do not believe there will be need for him to return, but in an emergency if we do, we shall appreciate his coming back.

DEFENSE: Yes sir, that will be taken care of.



The interpreter translated as requested.

PRESIDENT: We will adjourn until 0900 tomorrow morning.

The Commission then, at 1600 hours, on 21 November 1945, adjourned to meet at 0900 hours on 22 November 1945.

The Commission met, pursuant to adjournment, at 0900 hours on 22 November 1945, all the personnel of the Commission, and the witnesses present at the close of the previous session.

*William R. Bready*  
WILLIAM R. BREADY

Captain Major  
Chief Prosecutor

*Clair F. Shumaker*

The accused, witnesses and interpreters were sworn in as usual.

DEFENSE: Defense calls as its next witness Senzo Kame.

Senzo Kame, witness for the defense, rose then swore and testified through the court interpreter as follows:

EXHIBIT EXAMINATION

Questions by the defense  
(Answered through the court interpreter)

- Q. Will you state your name, your age and your present address?  
A. Senzo Kame, age 32, my present address is 17 Ichiba Jan, Matsuyagi City, Kochi Prefecture.
- Q. Will you state your age and whether or not you are single?  
A. Thirty-two, and I am married.
- Q. Were you in the Japanese army?  
A. Yes.
- Q. Between what dates?  
A. From December of 1938 until June of 1941; also from February of 1944 until the end of the war.
- Q. Did you ever serve with a POW camp known as 13, located at Sendai?  
A. Yes.
- Q. Between what dates?  
A. From April 22, 1943, until the end of the war.
- Q. Who was the camp commandant during your period of service at this camp?  
A. First Lt. Ginzawa.
- Q. What were your duties in this camp?  
A. I was connected with the dispensary.
- Q. What type of work did you do in the dispensary?  
A. My duties in the dispensary were connected with the treatment, diagnosis, and issuing of medicines to patients.
- Q. Where were POWs employed during the time you were employed at this camp; where did they work?  
A. At the mine.

**HEADQUARTERS EIGHTH ARMY**

**Yokohama Courthouse  
Yokohama, Japan  
22 November 1946**

The Commission met, pursuant to adjournment, at 0900 hours on 22 November 1946, all the personnel of the Commission, prosecution and defense who were present at the close of the previous session in this case being present.

The accused, reporter and interpreters were also present.

**PRESIDENT:** The Commission is in session.

**DEFENSE:** Defense calls as its next witness Zensaku Kanno.

Zensaku Kanno, witness for the defense, was then sworn and testified through the court interpreter as follows:

**DIRECT EXAMINATION**

**Questions by the defense:**

**(Answers through the court interpreter)**

**Q.** Will you state your name, your age and your present address?

**A.** Zensaku Kanno, age 32, my present address is 17 Sekiba Aza, Motomachi Nara, Date Gun, Fukushima Prefecture.

**Q.** Will you state your age and whether or not you are single?

**A.** Thirty-two, and I am married.

**Q.** Were you in the Japanese army?

**A.** Yes.

**Q.** Between what dates?

**A.** From November of 1938 until June of 1941; also from February of 1944 until the end of the war.

**Q.** Did you ever serve with a POW Camp known as 1B, located at Sendai?

**A.** Yes.

**Q.** Between what dates?

**A.** From April 25, 1945, until the end of the war.

**Q.** Who was the camp commandant during your period of service at this camp?

**A.** First Lt. Ohizawa.

**Q.** What were your duties in this camp?

**A.** I was connected with the dispensary.

**Q.** What type of work did you do in the dispensary?

**A.** My duties in the dispensary were connected with the treatment diagnosed, and issuing of medicine to patients.

**Q.** Where were POWs employed during the time you were employed at this camp; where did they work?

**A.** At the mine.

- Q. Who escorted the POWs from the camp, the POW camp, to the working place at the mine?
- A. The company guards did that, and the company officers also did it with them.
- Q. How was escorted the POWs from the working place back to the camp after they completed a day's work?
- A. The same people who came to receive the prisoners did that, that is, the company guards and company officers.
- Q. Do you know whether or not these company guards or company officers carried rifles or sticks?
- A. They had sticks, but I did not see them carry rifles.
- Q. How I will ask you whether or not during the period of time that you served in the dispensary, whether you ever saw Tsuda strike or kick a POW?
- A. No.
- Q. You knew Koji Tsuda, didn't you, while you were at this camp?
- A. I knew him.
- Q. I will ask you whether or not during the period of time that you were assigned to the dispensary at this camp, if you ever heard rumors to the effect that Tsuda had beaten, struck or kicked POWs?
- A. No.
- Q. I will ask you whether or not you recall an occasion in June of 1946 when a POW who had received a blow on his head came to your office for medical treatment?
- A. I remember.
- Q. Do you remember the POW's name?
- A. No.
- Q. Tell us what you remember about this instance.
- A. All I can recall is that guards and prisoners of war came along with this man, but aside from the fact that the man was treated for light wounds, I cannot recall anything else about the matter.
- Q. When was this wound inflicted on the man?
- A. I cannot recall clearly, but it was in this vicinity.
- DEFENSE: Let the records show that he indicated the vicinity of his forehead.
- Q. And who treated the man when he came into the dispensary?
- A. It was the British doctor.
- Q. Do you know whether or not any stitches were required?
- A. I do not recall because I had not done it myself.
- Q. I will ask you whether or not during the time that you served in the dispensary of this camp, if you ever heard reports from the British medical officer or the Dutch medical officer that Tsuda had at some time kicked or struck a POW shortly before he died?
- A. No.
- Q. Do you know whether Tsuda ever interfered with the conduct of the sick call or sick period at the camp during the time that you served?
- A. I do not know of such thing.



Q. Did you ever hear reports to the effect that Tsuda would not permit POWs to report on sick periods?  
A. No.

Q. Did you ever receive reports or hear any complaints from the medical officers who were working in the dispensary, that is the POW officers, that Tsuda prevented or prohibited sick POWs from reporting on sick calls?  
A. No.

Q. During the period of time that you were at this camp, on how many occasions did you see Tsuda in the dispensary?  
A. I do not know how many times it was. A Gunseika, when he is Hirohiko,

will come to the dispensary to check up on the number of patients there during the hours outside of the time of sick calls, but I do not recall how many times I saw him there.

Q. Did you ever see Tsuda in attendance at the sick period?  
A. No.

Q. Who determined what POWs would be placed on light duty work?  
A. The Dutch and the British doctors diagnosed the men and determined that, and the Dutch doctor wrote the duty down on the memorandum, and we copied that into our notebook.

Q. Did you ever see, or did you ever hear Tsuda change the classification on any of these POWs the doctor had said were excused from duty or would be placed on light duty?  
A. I did not hear of any such thing, and since I went there, there was absolutely no such thing that happened.

Q. I will ask you whose permission the POWs had to secure before they could report for sick calls or come to the dispensary for treatment.

A. The arrangement was for the ill men to be assembled by the prisoner of war Hirohiko who brought the men over to the dispensary, and there was no definite permission needed as such.

Q. Now this prisoner of war Hirohiko, was he a prisoner of war himself, that is, one of the POWs?  
A. Yes.

Q. I will ask you if at any time during your period of service for this camp you heard or saw a large group of POWs being stood at attention as punishment for the violation of some camp rule or regulation?  
A. No.

Q. Did you ever hear that Tsuda had mistreated or abused the POWs by either striking them or hitting them during your term of service at this camp?  
A. No.

Q. I will ask you if you ever heard from the POW doctors or medical personnel, or from any Japanese that refer to your coming to the camp Tsuda had mistreated or abused a POW by the name of Smith?  
A. No.

DEFENSE: Your witness.

CROSS-EXAMINATION

Questions by the prosecution:  
(Answers through the court interpreter)

- Q. In June, 1945, or thereabouts, your attention was called to a certain POW who required medical treatment on account of a blow on the forehead. Would you tell this Commission, was this prisoner of war a Dutchman, a Canadian or an Englishman?
- A. I do not know what nationality he was.

PROSECUTION: The prosecution has no further questions.

EXAMINATION BY THE COMMISSION

Questions by the Commission:  
(Answers through the court interpreter)

- Q. Were you the only Japanese medical orderly present at the camp?
- A. There were others.
- Q. Were you in charge, or were you the senior Japanese medical orderly?
- A. Yes.
- Q. Were the other Japanese medical orderlies working under your general supervision and control?
- A. Yes.
- Q. What prisoner of war medical personnel did you have in the camp to assist you in the performance of medical duties in running the infirmary and giving the prisoner of war medical treatment?
- A. There was an American medical orderly by the name of Bennett and a Canadian medical lance corporal named Johnnie and a Dutch named Bruce. This last one, however, was not a medical orderly.
- Q. Was a Canadian medical orderly at the camp the whole time that you were there?
- A. Yes.
- Q. Was an American medical orderly there the whole time you were there?
- A. Yes.
- Q. Was the American medical orderly that you named as Bennett sent up to the camp from Tokyo?
- A. I do not know.
- Q. What in general, were these two medical orderlies' duties?
- A. They were assisting the doctors.
- Q. Did both of them work with the Dutch doctor?
- A. They were not limited to that.
- Q. Did Bartlett do any other medical work other than surgery?
- A. While I was there he was specializing in surgery. However, just prior to the end of the war around August, there were a great number of patients with diseases of the body. However, just prior to the end of the war, that is, around August, there were a great number of Canadian prisoners of war who became ill, and the captain began looking after some of them.
- Q. Did the two medical officers hold that sick period at the same time?
- A. Yes.

Q. Were they both usually present each day at the sick calls held at the same time?  
A. Both of them were present without fail.

Q. Were both of those sick calls held in the same room of the infirmary?

DEFENSE: May I ask for a clarification of that? Does the Commission understand there were two sick calls held, one for the Dutch, one for the British and one for the Canadians?

DEFENSE: The question as stated was, "Were both sick calls"; and I should like to get that distinguished because I do not think the witness understands that whether or not it was one or two sick calls or whether they were held at the same time.

WITNESS: It was in the same room.

PRESIDENT: Any further questions?

DEFENSE: Just a couple of questions, sir.

REDIRECT EXAMINATION.

Questions by the defense:  
(Answer through the court interpreter)

Q. How many times each day was sick parade held?

A. Once in a day we examined the new patients, however for those who required medicine or those who were injured, they came at any time during the day.

Q. How many nationalities of POWs did you have at this camp while you were working there?

RESPONSE: If the Commission please, I should like to make a correction in the last interpretation about the treatment for prisoners requiring medicine from "any time during the day" to "twice a day".

Q. How many nationalities of POWs were present in the camp during your stay there?

A. There were English, Dutch and Canadians.

Q. And you had only one dispensary in the camp, did you not?

A. Yes.

Q. And the sick period for the Dutch, the English and the Canadians was held at the same time, was it not?

A. Yes.

DEFENSE: No further questions.

PROSECUTION: If the Commission please, may I ask one question?

PRESIDENT: Yes, you may.



RECORDS EXAMINATION

Questions by the prosecution:  
(Answers through the court interpreter)

Q. Do you recall a Canadian doctor by the name of Captain Reid?  
A. Yes.

Q. What part did he play in these stock calls to which you have just testified?

A. He was assigned to the general sanitation within the camp. so I do not know what he did very well.

Q. Did he attend stock call?  
A. There were times when he attended, but usually he was elsewhere.

PROSECUTION: That is all.

PRESIDENT: The witness may be excused.

DEFENSE: May he return to his home?

PROSECUTION: Does prosecution believe that they may have any need to recall this witness?

PROSECUTION: No sir.

PRESIDENT: You may return.

There being no further questions, the witness was excused and withdrew.

DEFENSE: The next witness, if it please the Commission, is Shigehiko Kiyama.

Shigehiko Kiyama, a witness for the defense, was then sworn and testified through the court interpreter as follows:

DIRECT EXAMINATION

Questions by the defense:  
(Answers through the court interpreter)

Q. Will you state your name, your age and your present occupation?  
A. Shigehiko Kiyama, and I am the chief of the Labor Section of the Jodan Mining Corporation.

Q. What is your present address?  
A. My address is 41 Am Tatsuno Kuchi, Yumoto Machi, Yamanashi Prefecture.

Q. Are you married or single?  
A. I am married.

Q. Were you working at the Jodan Tanko Mining Company during the war?  
A. Yes.

Q. Did this company employ POWs?  
A. Yes.

Q. During what period were you working at this company?  
A. From April 1937 up to the present time.

- Q. What was the name of the POW camp from which you received your POW laborers.
- A. The name of the camp changed. First it was known as the Tokyo Dispatch Camp No. 4, and later it was changed to Sendai Branch Camp No. 1.
- Q. Now during the period of time 1 April 1944 to 15 August 1945, what were your duties with relation to the POW camp?
- A. My duties were to handle the requests submitted to the company by the prisoner of war camp and attend to them.
- Q. I will ask you, who provided the guards for escorting the POWs from the camp to the working place at the mine?
- A. During the time the camp was a dispatch camp, company guards were provided for them, but after it changed to a branch camp, the army provided the guards, as I recall it.
- Q. When did it change into a branch camp?
- A. The order first came out in April of 1945. The change over, however, was actually effected about the middle of June 1945, as I recall.
- Q. Now during this period of time, that is, after it became a branch camp, did you ever see Tsuda guarding these POWs from the camp to the mine working place?
- A. No.
- Q. Do you know what Tsuda's duties were within the camp at the time you were working there between the period of 1 April 1944 and 15 August 1945?
- A. I do not know.

DEFENSE: No further questions.

PRESIDENT: The Commission will take a short recess.

The Commission then took a recess until 1030 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

The witness, Shigehiko Kiyama, resumed the stand and was reminded through the court interpreter, that he was still under the oath previously taken.

#### CROSS EXAMINATION

Questions by the prosecution:  
(Answers through the court interpreter)

- Q. You have testified that you never saw Tsuda guarding prisoners coming from or going to the mine after the dispatch camp became a branch camp. Will you tell the Commission if you ever saw Tsuda guarding prisoners at any time when this camp was a dispatch camp?
- A. No.
- Q. Did you know Koju Tsuda while you were working at the mine during this period?
- A. I knew him, but not well.
- Q. Did you see him often during this period?
- A. No.

Q. Where did you perform your duties during this period?  
A. I was doing my duties at the company office.

Q. How did you come to know Tsuda?

A. When the Tokyo main camp commander or the Sendai main camp commander came to this camp, I went to the camp as a company official, and also at various times when the company provided things for the camp. I went to the camp personally, and on these occasions I came to know Tsuda. I cannot recollect clearly how it was that I came to know him, but did gradually get to know him.

Q. When prisoners of war were marched to and from the camp, was it your duty to supervise them in any way?  
A. No.

Q. Was Tsuda ever at the mine?

A. I do not recollect clearly, but I think he came there about once.

PROSECUTION: The presentation has completed cross-examination.

REBUTTAL: Any questions by the Commission? Apparently not, the witness may be excused.

There being no further questions, the witness was excused and withdrawn.

DEFENSE: The next witness will be Fujiko Matsuzaki.

Fujiko Matsuzaki, a witness for the defense, was then sworn and testified through the court interpreter as follows:

DIRECT EXAMINATION

Questions by the defense:  
(Answers through the court interpreter)

Q. Will you state your name and present address?

A. Fujiko Matsuzaki. My present address is #1 Aza Chiyotsumo, Onna Minamiga, Iwate Ward, Ichihiki Gun, Fukushima Prefecture.

Q. What is your age, and are you married or single?

A. I am 47 and married.

Q. Were you in the Japanese army?

A. Yes.

Q. Between what periods of time did you serve at Sendai 13 POW camp?

A. From August of 1945 until around May of 1946.

Q. What were your duties at the camp?

A. I was acting medical orderly, but was an employee of the company.

Q. Who were the medical officers, the POW medical officers, assigned to the camp during your term of duty there, your tour of duty?

A. There was a Dutch medical officer whose number was 3 and the English doctor whose number I have forgotten and who I merely called Doctor.

Q. Could the name of the Dutch doctor have been DeHofler?

A. No but a name that was similar to that, but as far as we were concerned, we just called him doctor.



- Q. Could the English doctor have been named Bartlett?
- A. I do not know the name clearly.
- Q. What were the names of the Japanese medical personnel who were working in the camp during the time that you were there, in the dispensary with him?
- A. Ever since I went there, there were no other medical orderlies there.
- Q. Now, during the time that you served at this camp, did the Japanese army have a medical orderly there?
- A. No.
- Q. Who took over your duties when you left the place in June of 1945?
- A. It was a man named Kanno.
- Q. During the period of time that you served at the camp as medical orderly, were there any POW medical orderlies assigned there?
- A. Yes, there were medical orderlies.
- Q. Do you recall the names of any of them?
- A. I recall.
- Q. Will you please state them?
- A. There was a Dutch man named Bruce, who I was told was not a regular medical orderly. There was an English medical orderly with a name something like Flick (phonetic) and a Canadian medical orderly named Bennett. These were the three.
- Q. How how often did the Japanese doctor come to this camp to examine the patients?
- A. Once a week.
- Q. In his absence, who took care of the medical affairs at the POW camp?
- A. The POW medical officers.
- Q. What were your duties in the dispensary?
- A. Inasmuch as there were medicines coming from the company, I received medicines from the company hospital, and also performed such duties as filling out the diagnosis charts.
- Q. How many times during the day was a sick period or sick call held in camp?
- A. The medical examination was held once in the morning, and then the treatment took place in the afternoon.
- Q. Now, during the period of time that you served at this camp, did you ever receive any reports from any of the Japanese medical personnel or from the POW medical personnel that Tsuda had prevented or prohibited certain of the POWs from coming on sick call?
- A. No.
- Q. Who determined what POWs were to go on sick call?
- A. The prisoner of war medical officer determined that when the man was a new patient.
- Q. Did Tsuda have any duties in connection with the holding of sick call while you were at the camp?
- A. When he was Hiechoku he took the sick prisoners of war over to the dispensary in the morning, because when a Gunroku becomes a Hiechoku, he will be questioned by the camp commander as to the number of newly sick patients, and such questions he must be able to answer, and so he would go to the dispensary.

- Q. How many of the Japanese personnel served in the capacity of Nichoku?  
A. There were five.
- Q. And did they take turns as Nichoku?  
A. Yes.
- Q. Now I will ask you if you ever received any reports from the POW medical personnel that Tsuda had prevented or prohibited any of the POWs from coming to sick call in the morning.  
A. No.
- Q. During your tour of duty at this camp, what were Tsuda's duties?  
A. I have forgotten periods of time, but for a time he was handling clothing supplies, and also he was connected with the gardens.
- Q. Did you know Tsuda while you were working in this POW camp?  
A. Yes.
- Q. Did you ever hear, or did you ever see Tsuda strike or otherwise abuse POWs?  
A. No.
- Q. During the time that you served at this camp, what guards escorted the POWs from the camp to the mining company where they worked?  
A. From the gate of the camp the company guards did that.
- Q. Did you ever hear that the company guards beat or mistreated POWs?  
A. I have heard once or twice that they struck prisoners of war, but I heard this by means of rumors, and so do not know the details.
- Q. Did you ever hear that the army guards struck or beat POWs?  
A. No.
- Q. Now I will ask you whether or not you were acting as a medical orderly at the camp in February of 1945.  
A. Yes.
- Q. Did you hear or was an incident reported to you in which a POW by the name of Scott, while reporting for sick call, was severely beaten or kicked by Tsuda and died as a result of this punishment?  
A. No.
- Q. Do you know a POW by the name of Corporal Scott?  
A. I do not recall.
- Q. Was it ever reported to you by any of the POWs, that is, POW medical personnel, that sometime in February a POW had been kicked by Tsuda and had died a few minutes or a few hours later?  
A. No.
- Q. Did you ever hear from any of the Japanese medical personnel working with you in February, 1945, that Tsuda had mistreated a POW who was reporting sick, and that this POW had died shortly thereafter?  
A. No.
- Q. I will ask you whether or not if such an incident had taken place within the camp, you would have heard it either by direct report or through rumor among the Japanese.  
A. If such a thing happened, I think that I would have heard about it without fail, but I did not hear of anything like that.

- Q. What was the first occasion, or when was the first occasion that you heard that a POW had died as a result of a kicking or beating administered by Tsuda, the approximate time.
- A. I first heard about it in 1946 during the season when it was still cold, when a member of the prosecution came to question us, and that is when I first heard about it.
- Q. Will you tell this Commission that you never heard either through rumors or through reports about the death of Scott until prosecution called you in for questioning in 1946, that is, that he had died as a result of beatings and being kicked.
- A. I can.
- Q. While you were at this camp, I will ask you if on occasions, the POW medical orderlies did not criticize the Gurusokus and give you other information concerning the happenings in camp during your absence?
- A. In matters pertaining to the dispensary, that is, things like injuries, they would give me information of things that happened in my absence, but as to other matters, I did not receive the information from them, and in regard to criticisms of Gurusokus, I seem to recall that I heard them saying, "Dane Dane", or "no good, no good" about a certain person. It has been so long ago that I have forgotten about when they were talking or what it was that made them say that.

DEFENSE: Your witness.

#### CROSS-EXAMINATION

Questions by the prosecution:  
(Answers through the court interpreter)

- Q. Do you remember any POW coming to the dispensary in the early part of 1945 for treatment, and then dying within an hour after that?
- A. I do not recall.
- Q. Do you recall any prisoner of war coming to the dispensary suffering from cardiac beriberi about that time who died shortly afterward?
- A. I do not recall.

PROSECUTION: Commission's witness.

#### EXAMINATION BY THE COMMISSION

Questions by the Commission:  
(Answers through the court interpreter)

- Q. When you were the medical orderly in the camp, did you see the death certificates that were made out for the prisoners of war who died?
- A. Yes, but I have seen them so long ago that I do not remember about them.
- Q. Who made out the death certificates; were they made out by the Allied prisoner of war medical officers?
- A. The death certificates were prepared by Dr. Shirakura.
- Q. How often did Dr. Shirakura come to the camp?
- A. He came once a week, but in between his regular calls whenever the need for him arose, he could be telephoned to come to the camp.



- Q. Was he present at the time of death of all the prisoners of war or present immediately before they died?
- A. There were times when he was there, and I think there were other times when he was not there.
- Q. Out of the prisoners of war who died, approximately how many times was the Japanese medical doctor present at the time of death of the prisoners of war?
- A. I cannot clearly state how many times he came, but he might have come about ten or fifteen times; that is not definite.
- Q. What was the basis of his information on which he made the death certificates for the men who died at times when he was not present?
- A. He asked the prisoner of war medical officers about the disease, name of the disease, and by that means prepared the certificate. In most cases the prisoner died of illness which lasted at least one or two weeks, so that Dr. Shirakura himself had personally seen the patients before death.
- Q. From which one of the prisoner of war medical officers did he get this information?
- A. I do not know that, but I think he asked them both.
- Q. In cases where prisoner of war personnel were very sick and near the point of death, were both the British prisoner of war officer, Captain Bartlett and the Dutch prisoner of war medical officer, Lt. DeWolfe, in attendance and treating the sick prisoners of war collectively and jointly?
- A. Yes; however before January of 1945 the Dutch doctor took care of the Dutch prisoners of war and the British doctor took care of the British prisoners of war, but around January of 1945 a change was made, so that one handled the internal medicine, the internal medical cases, while the other handled mostly the surgical side.
- Q. Was your sick call for all the prisoners of war held in one place at the same time and by both doctors for any ailment that they had, whether it required medical attention or surgical attention?
- A. It was held in the same room at the same time by both medical officers.
- Q. Did you have many men reporting for sick call in January, February and March of 1945?
- A. Yes.
- Q. Did any of these men require treatment for bruises, abrasions and cuts?
- DEFENSE: May it please the Commission, I should like to know the purpose of this line of the examination. I do not quite follow it, sir, because I mean, that is what all the doctors would be there for, there would be cuts and abrasions all along. I raise the question to determine in my own mind the relevancy to the case under consideration.
- LAW MEMBER: I think the objection will be overruled and the question will be answered.
- DEFENSE: May I ask the purpose of the question?

MEMBER OF COMMISSION: In my opinion that is immaterial. The answer will speak for itself, and the purpose of the question will be disclosed by additional questions.

DEFENSE: I think as defense we are entitled to know, sir, the purpose of this line of questioning, because we are not charged with all the cuts and abrasions that might have taken place in camp, and that is the manner in which the question has been asked. Now, if it is in regard to specific instances, I have no objections at all.

MEMBER OF COMMISSION: Additional questions will disclose the reason for this questioning.

DEFENSE: It is highly prejudicial, I might add, sir.

LAW MEMBER: The ruling is that the question will be answered by the witness.

WITNESS: Yes.

Q. Did any of these cuts or any of these treatments appear, or have the appearance of having been received by the prisoners of war as the result of beatings?

DEFENSE: Now I do raise an objection to that type of questioning. If the witness can testify as to whether or not he knows it, I have no objection to that question at all sir, or if the witness can determine whether or not any cut, bruise or abrasion was inflicted as a matter of punishment.

MEMBER OF COMMISSION: I will rephrase the question.

Q. Did any of these cuts, bruises or abrasions bear the appearance as having been the results of beatings, as you can best determine from your opinion as a medical orderly and being familiar with the treatments which appeared before you daily in the prisoner of war dispensary?

DEFENSE: Objection still stands to the question as it is phrased now.

LAW MEMBER: I think the witness is qualified to answer this question, and the objection will be overruled.

WITNESS: No.

Q. Did you ever see the accused, Tsuda, strike, beat or otherwise mistreat a prisoner of war?

A. No.

Q. Did you ever hear of him striking, beating or otherwise mistreating a prisoner of war?

A. Was that during the time I served at the camp?

Q. At any time?

A. I heard some rumors to that effect after I had left the camp and after Mr. Kanno had succeeded me.

Q. Do you know whether Tsuda ever struck, beat or mistreated a prisoner of war?

A. No.

Q. What was the source of these rumors you heard?  
A. The rumors were in the office.

MEMBER OF COMMISSION: Any further questions?

DEFENSE: Sir, I have one more question on redirect?

REDIRECT EXAMINATION

Questions by the defense:  
(Answers through the court interpreter)

Q. You stated a few moments ago that you heard a rumor that Tsuda had beat a POW or struck a POW. Tell us what the rumor was.  
A. It was after the camp became a branch camp and I had returned to my company. The rumor said that Tsuda had struck a prisoner of war with a hoe handle while out gardening.  
Q. And the rumors that you heard were picked up at your company office, at the mining company, is that right?  
A. Yes.

DEFENSE: No further questions.

PRESIDENT: If there are no further questions, the witness may be excused and he may also be dismissed and allowed to return to his home.

There being no further questions, the witness was excused and withdrew.

PRESIDENT: The Commission will adjourn until this afternoon at 1315 hours.

The Commission then took a recess until 1315 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their case.

PRESIDENT: The Commission is in session. Has the defense any further witnesses to call?

DEFENSE: Defense calls as its next witness Katsumi Hasegawa. I should like to point out to the Commission, sir, that this witness speaks some English. Now we can interrogate him, or attempt to interrogate him in English, if the Commission desires, and if we do not get along, we can switch to Japanese.

PRESIDENT: I think you had better give him the oath in Japanese, have it interpreted, and then we will continue to make the examination in English if we can. Will that be satisfactory?

WITNESS: I want to speak in Japanese, because I am afraid of my English.

LAW MEMBER: Does he want the questions interpreted in Japanese too?

PROSECUTION (to witness): Do you wish the questions interpreted in Japanese.

WITNESS: Also in Japanese.



**PRESIDENT:** We'd rather if you can, attempt to make the questioning in English, and then if it is not clear, you can go back, and we will then have the interpreters assist you. It will expedite matters such more if we can do it that way; however you will have to make the determination and the defense can clear that with you.

**PROSECUTION:** For the oath, we will read it both ways.

Katsumi Hasegawa, a witness for the defense, was then sworn, through the court interpreter and testified as follows:

**DIRECT EXAMINATION**

Questions by the defense:

Q. Will you state your name and your present address?

A. My name is Katsumi Hasegawa, and my address is 39 Takemouchi Mje, Utsunyo Machi, Ichikiga, Fukushima Prefecture.

Q. Are you married or single?

A. I am married.

Q. What is your age?

A. My age is 32 in Japanese way.

Q. Did you ever work at Senda POW camp?

A. Yes, I did.

Q. Between what dates?

A. From April 26, 1945, to March 20, 1944.

Q. Who was the camp commander at the time you were at this camp?

A. Lt. Renda.

Q. What were your duties within the camp, were you employed by the mining company or by the Japanese army?

A. I was employed by the mining company.

Q. What POW nationalities did you have at the camp during your stay there?

A. I beg your pardon, sir?

Q. Nationalities, Dutch, English, British, what?

A. Dutch; only Dutch.

Q. Was Captain Franken the POW officer while you were at the camp?

A. I beg your pardon.

**PRESIDENT:** Would it be possible perhaps, for you to move over a little more closely. There is a lot of extraneous noise that comes in, Mr. Brinsfield, and I believe that if he can hear you, he will be able to understand.

Q. Did you know Captain Franken?

A. Yes, I know.

Q. What were his duties at the camp?

A. He was in charge of clerk work.

Q. And who were the doctors, medical officers, the POWs, while you were at the camp?

A. Lt. DeWolfe.

Q. And who assisted Lt. DeWolfe in treating the POW patients?

A. Beg pardon.

Q. Who assisted or who helped Lt. DeWolfe in treating the POW patients?

A. Japanese doctor?

Q. Japanese, that's right.

A. Dr. Shirakura.

Q. Who were the medical orderlies working with Lt. DeWolfe?

A. Mr. Hirano and Mr. Matsunaki.

Q. I will ask you, if you received reports or complaints from the POWs for transmittal to Lt. Honda.

A. Yes, I did.

Q. In your work, did you ever receive any reports from Captain Franken that POWs were being mistreated by the Gunsekus?

A. No, never.

Q. Did you ever receive a report that a Gunseku by the name of Tsuda had mistreated or abused POWs?

A. No, I did not.

Q. Did you know Tsuda while you were at the camp?

A. Yes, I did.

Q. What were Tsuda's duties at the time you were at the camp?

A. I remember he was in charge of clothing materials.

Q. Now, did you ever receive any reports from Captain Franken that company guards or army guards had struck POWs?

A. No.

Q. Did you ever receive any reports that company guards or army guards had struck or mistreated POWs?

A. Yes, a few.

Q. Approximately how many times?

A. I don't remember exactly; two or three.

Q. During the period of time that you were in the camp acting as interpreter, whose duty was it to escort the POWs from the camp to the mining company where they worked?

A. Civilian guards and foremen.

Q. And by whom were they employed, for whom did they work?

A. For the company.

Q. The mining company?

A. Yes.

Q. And you tell the Commission that at no time while you served as an interpreter at this camp did you receive any reports that Tsuda had mistreated or abused POWs, is that correct?

A. No.

Q. Is it correct, did you receive any such reports that Tsuda had mistreated or abused POWs?

A. I remember, no, I did not.

Q. Did you ever hear any rumors to the effect that Tsuda had struck or beaten POWs?

A. I don't remember.

DEFENSE: No further questions.

#### CROSS-EXAMINATION

Questions by the prosecution:

Q. Will you state again the period of time that you were interpreter for the prisoners of war at Sendai 1B?

PROSECUTION: Do you understand? Will you state again the period that you were at Sendai 1B?

WITNESS: From April 26, 1943, to approximately March 20, 1944.

Q. While you were interpreter, were you living in the camp?

A. No.

Q. When were you in the camp during the day?

A. About four hours.

Q. About four hours?

A. Every day.

Q. Can you state to the Commission the customary time that you were in the camp in terms of hours?

A. Not customary.

PROSECUTION: Change that question.

Q. From what time to what time were you in the camp?

A. Sometimes from nine to noon, or sometimes ten to one. It is not fixed.

Q. Were all reports of prisoners of war submitted to you?

A. Only difficult ones.

Q. Only difficult ones?

A. Yes.

Q. In other words, not all reports were submitted to you.

A. Not all.

PROSECUTION: The Commission's witness. This was Tsuda striking or otherwise mistreating of some POWs.

PRESIDENT: There are no questions, the witness may be excused.

There being no further questions, the witness was excused and withdrew.

DEFENSE: Defense calls as its next witness Motochika Aoki.

Motochika Aoki, witness for the defense, was then sworn and testified through the court interpreter as follows:



# DIRECT EXAMINATION

Questions by the defense:

(Answers through the court interpreter)

Q. Will you state your name and address?

A. Motochika Aoki, my address is 941 Shinoschata, Isehata Mura, Higashibaragi Gun, Ibaraki Prefecture.

Q. Are you married or single?

A. I am married.

Q. What is your age?

A. Thirty-five.

Q. During the recent war were you employed at a POW camp known as Sendai 13.

A. Yes.

Q. What were your duties in connection with this camp?

A. My work consisted of requesting the company to purchase such items as work clothes or rubber-soled tabies for the use of the camp and of the company, and then bring the items back to the camp, this being done at the wish of the camp commander.

Q. By whom were you employed?

A. I was employed by the company.

Q. How did you spend any time at the POW camp itself, that is, inside the camp?

A. Yes.

Q. Did you ever see the POWs forming into work details, to be escorted to the mines for work?

A. Yes.

Q. What personnel escorted these POWs from the camp to the mine?

A. Company personnel.

Q. Did this company personnel carry sticks or rifles?

A. They carried sticks.

Q. I will ask you if, during the time that you were working at this camp, if you knew a Gunzoku by the name of Tenda.

A. I knew him.

Q. What were his duties at the camp?

A. He was in charge of army clothing and gardening.

Q. I will ask you whether or not, during the time you were connected with this POW camp, if you ever saw this man Tenda strike or otherwise mistreat or abuse POWs?

A. No.

Q. Did you ever hear rumors to the effect that Tenda did mistreat or abuse POWs?

A. I have heard.

Q. What did you hear?

A. I heard that he had grabbed the neck of a British officer, who I think was a captain, and pressed his head down.

Q. Do you recall from whom you heard this?

A. I do not recall.

Q. Now after you left the camp, the services of the camp, did you continue to work at the company, the Johan Mining Company?

A. No.

Q. Where did you go after you left the employment of the company?

A. Into the army.

Q. And was this the only rumor you heard about Tada's treatment of the POWs?

A. Yes.

Q. Did you ever hear that company guards or army guards mistreated or abused POWs?

A. No.

DEFENSE: Your witness.

#### CROSS EXAMINATION

Questions by the prosecution:  
(Answers through the court interpreter)

Q. Will you state to the Commission the period of time that you were at Sendai Branch Camp No. 1?

A. From August 1, 1943, until January 20, 1945.

Q. At that time were you living in the camp?

A. No.

Q. Where were you living?

A. At No. 2 Uyeda Kachi, Ichikigan, Fukushima Prefecture.

Q. How far from Sendai Branch Camp No. 1 is that?

A. About 6 ri or about 15 miles.

Q. And did you go back and forth to the branch camp each day?

A. Yes.

Q. During what hours of the day were you in the branch camp?

A. From eight in the morning until four o'clock.

PROSECUTION: Commission's witness.

PRESIDENT: No further questions, the witness may be excused.

There being no further questions, the witness was excused and withdrew.

DEFENSE: The next witness is Susukichi Kurimata.

Susukichi Kurimata, witness for the defense, was then sworn, and testified through the court interpreter as follows:

# DIRECT EXAMINATION

Questions by the defense:

(Answers through the court interpreter)

Q. Will you please state your name, your age and your present address.

A. Susukichi Kurimata, age 30. My present address is No. 2 Tennosaki, Tsumoto Machi, Iwakuni-gun, Fukushima Prefecture.

Q. Are you married or single?

A. I am married.

Q. Did you ever see Tada working or otherwise assist a POW while you

Q. Did you ever serve at the Sendai 18 POW camp?

A. Yes.

Q. Between what dates? Was Tada prohibited or prohibited with POWs from

A. From April 27th or 28th of 1945 until the end of the war.

Q. In what capacity did you serve in this camp?

A. I was a guard, and I also was ordered to handle the transportation of foods and various goods coming into the camp.

Q. Were you one of the Gunzoku at this camp?

A. I was a Gunzoku.

Q. How many Gunzoku were there employed in this camp?

A. I have forgotten.

Q. Approximately?

A. About five.

Q. How did each of the Gunzoku employed at the camp serve as a

A. Yes.

Q. Yes.

Q. And how long was the tour of duty for a man serving as a Nishoku.

A. It was 24 hours' duty.

Q. And the Gunzoku's alternated in taking this tour of duty?

A. Yes.

Q. Now I will ask you whether or not you were serving at this camp

in February of 1945?

A. Yes.

Q. I will ask you if you recall an incident which took place at the

camp involving a POW by the name of Scott?

A. I do not.

Q. Did you know a Corporal Scott who was a POW at the camp?

A. No.

Q. During the period of time that you were absent from the camp attending

to the transportation for vegetables and food and what not, would you

usually know what went on in the camp by talking with other members

of the Japanese camp personnel?

DEFENSE: Let's strike the question, maybe I can reword it.

Q. In your absence from the camp, if a POW had been kicked or beaten to

death, would you have heard about this incident from the camp personnel,

even though you might have been outside of the camp at the time this

incident took place?

A. Yes, I would have heard about it.



Q. Now I will ask you whether or not in February of 1945 you heard from any of the Japanese personnel or from any of the POW personnel that Tsuda had struck or beaten a POW when he reported for sick call, and that shortly thereafter this POW died?

A. No.

Q. At any time while you were connected with this camp, did you ever hear that Tsuda had mistreated or abused a certain POW who died as a result of the treatment received at the hands of Tsuda?

A. No.

Q. Did you ever see Tsuda strike or otherwise mistreat a POW while you were working at this camp?

A. No.

Q. Did you ever hear that Tsuda had prevented or prohibited sick POWs from reporting at sick call?

A. No.

Q. Did you ever hear that Tsuda struck, slapped or mistreated any POWs while you were at the camp?

A. I have heard.

Q. Tell us what you have heard.

A. I heard that once when the prisoners of war were about to start out to work at the mine Tsuda caught a prisoner of war who had already eaten his lunch and had an empty lunch box in his possession, and I heard that Tsuda warned him.

Q. Did you hear whether or not Tsuda slapped or struck a POW?

A. I heard that he struck him.

Q. I will ask you whether or not you were at this camp in June, July or 1945?

A. Yes.

Q. Did you hear in June, 1945, that a POW while working in the garden was struck by Tsuda, and as a result had to have medical treatment?

A. I have heard that Tsuda struck a person who had to have treatment.

Q. Now I will ask you, during the period of time that you served at this camp, who escorted the POWs from the camp to the working places?

A. The company guards and the company officers.

Q. Who were the medical officers at this camp while you served there?

A. That is, the POW medical officers.

A. I do not know their names.

Q. Do you know who determined what POWs would go on sick call and what POWs would be sent to work?

A. The prisoner of war medical officer.

Q. Did you ever see or hear that Tsuda interfered with POWs going to sick call?

A. No.

DEFENSE: Four witness.

PRESIDENT: I believe we will permit interruption at this point and take a short recess.

The Commission then took a recess until 1430 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

PRESIDENT: The Commission is in session. Continue with the cross-examination.

Suekichi Auriasta resumed the stand, and was reminded that he was still under the oath previously taken.

#### CROSS EXAMINATION

Questions by the prosecution:

(Answers through the court interpreter)

- Q. You have testified there were approximately five guards in this camp, that you were one of them, and that these guards went that these guards went on a 24 hour tour of duty alternately. Is that correct?
- A. Yes.
- Q. Were you on duty at Sendai Branch Camp No. 1 every day of the week?
- A. I generally went there every day except Sunday, or when I was absent due to illness.
- Q. And during the period that you were at Sendai Branch Camp No. 1, were you ever ill?
- A. Yes.
- Q. And during the period that you were at Sendai Branch Camp No. 1 were any of the other guards at any time ill?
- A. Yes.
- Q. Then it was impossible for guards to go on duty every fifth day because it would be possible that interruptions would prevent that. Is that not true?
- A. Yes, there were times when that could not be done.
- Q. When and how long were you ill?
- A. I have forgotten when it was, but my illness lasted, at the longest, from one to two days.
- Q. Where was your wife living during the time that you were at this camp?
- A. In Yumoto.
- Q. Did you live with your wife in Yumoto?
- A. Yes.
- Q. At what time, as a usual custom, were you actually in Branch Camp, Sendai 1st?
- A. I do not recall the exact time clearly, because the time differed between summer and winter. In winter I was there from around 9:00 o'clock in the morning until 4:30, and in summer from around 8:30 to around 5:00 o'clock.
- Q. When you were on duty, on a 24 hour duty as guard, where did you stay at night?
- A. On the nights when I take up duty as Micedhoku, then I stay that night at the camp.

Q. Did you ever hear of a case where a British captain prisoner of war was grabbed by the neck by Tenda and his head pressed down?  
A. I do not know.

Q. Can you tell me how many prisoners of war of whom you know died in this camp while you were a guard there?  
A. I do not know the number.

Q. Did you ever hear of a case where a prisoner of war was struck on the head by Tenda so as to require medical treatment in June or July of 1945?  
A. Yes, I heard that he had struck a prisoner on the head, and that the man required medical treatment.

Q. Do you know whether that prisoner was a Canadian prisoner of war, a British prisoner of war or a Dutch prisoner of war?  
A. I do not know.

Q. Did you ever hear of a case when Tenda kicked a British prisoner of war by the name of Captain Stewart?  
A. No.

Q. Did you know a British prisoner of war by the name of Captain Stewart?  
A. Yes.

Q. Did you see him frequently?  
A. Yes.

Q. Did you know a British prisoner of war by the name of Corporal James Scott?  
A. No.

Q. Then you are going to tell this Commission that you never heard of a case where a British prisoner of war was kicked by Tenda and died an hour after, you never heard of such a case, is that what you are going to tell this Commission?  
A. I can state that.

Q. Did you ever see any guard at Sendal Branch Camp No. 1 strike any prisoner of war at any time while you were there?  
A. Yes.

Q. Will you state to the Commission when you saw this?

PROSECUTOR: Withdraw that question please.

Q. Will you state to the Commission how many such instances you have seen?  
A. I do not recall.

Q. Will you hazard a guess as to how many times you have seen such an incident?

LAW MEMBER: Couldn't you phrase that a bit differently, Captain Hrensky, because we can't admit guesswork into evidence.

PROSECUTOR: We will strike that question.



Q. Will you tell the Commission approximately how many such instances you have seen?

A. The ones that I saw for myself were numbered about two or three times.

Q. Then you are going to state that you have not seen more than three occasions when a guard struck a prisoner of war at Sendai Branch Camp No. 1. Is that correct?

A. No.

LAW MEMBER: I think that phrase, "You are going to state," sounds rather ambiguous, Captain Bready. I take that as meaning, "Then you will in the future state", but I think your meaning is that, "You intend to state".

PROSECUTION: Yes sir.

LAW MEMBER: And I would ask you to put that more clearly.

PROSECUTION: All right, we will withdraw that question, we will rephrase it.

Q. And then you intend to state to this Commission that you know of only three instances where guards have struck prisoners of war at branch camp No. 1?

A. I have seen a number of cases, but I do not recall the exact number.

Q. Can you state to this Commission which guards you have seen striking prisoners?

A. Yes, I recall that I saw Fukagawa striking a prisoner of war near the office.

Q. Did you see any other guard strike a prisoner of war at this camp?

A. I have seen Tenda strike prisoners of war.

Q. When and how?

A. I do not recall that.

Q. How many times?

A. I do not recall that either.

Q. How do you account to this Commission for having made a statement to the effect that you have never heard of Tenda striking any prisoner of war while you were at this camp?

A. It is because I wasn't within the camp for a length of time, and so I did not hear about these things, neither did I see the actual scene of persons being struck or hit.

LAW MEMBER: Will you repeat the question, please?

The reporter read back the question.

DEFENSE: May it please the Commission, I would like to ask for the purpose of clarity, because we are mixed up on this thing too, we cannot make head or tails of it. The prosecution, in cross-examining him first finds out the instances he saw, and where he saw them, and concentrates on what he actually saw, and then changes the subject and asks him what he heard. I think the man is mixed up between the two as to what he heard and what he saw. We can simplify those questions and ask direct questions.

PROSECUTION: In direct examination he said he never saw Tsuda strike anyone.

LAW MEMBER: But in direct examination he also said I heard in June or July Tsuda struck a person, a prisoner who had to have treatment.

PRESIDENT: The defense brings out a point that if the answers are given by the witness that is one thing, but if he is being truthful and he misunderstands, then it is up to us to clarify it.

PROSECUTION: Is it all right with the Commission if I ask the question over again. I will withdraw that last question and answer.

Q. How do you account to this Commission for having made the statement that you never saw Tsuda strike a prisoner of war in this camp?

A. It is because I was out of the camp for the purpose of obtaining vegetables and other goods for the camp, and was out of the camp quite a bit, and so I did not recall these things.

Q. You stated to this Commission that you saw Tsuda strike prisoners of war, and I am asking you why it was that you stated in direct examination that you never saw Tsuda strike a prisoner of war at any time?

A. It was because I could not tell for sure whether Tsuda was striking a man or just yelling loud warning.

Q. Did you ever see Tsuda strike a British prisoner of war?

A. I do not know.

Q. Were you present when Tsuda took charge of a formation for sick call?

A. I do not recall.

Q. Were you present at any time when Tsuda formed prisoners of war for any purpose?

A. While I was running from the warehouse and the office, I saw Tsuda lining up the prisoners in preparation for going to work.

Q. How many times have you seen Tsuda calling the roll for prisoners of war when they were lined up in a formation, approximately how many times?

A. I am not present when taking roll call.

Q. Then you are going to tell the Commission that from April, 1943, to the end of the war, that you have never seen Tsuda in charge of a formation in which he was taking a roll call or present at any one formation during that whole period of time?

DEFENSE: May we ask that that question be simplified.

PROSECUTION: I will strike it out, and I will try it again.

Q. Then you are going to tell this Commission that during the period of time that you were at Branch Camp No. 1 you only saw Tsuda in charge of one prisoner of war formation, is that correct?

A. No, I have seen him a number of times doing that, but I recall only one for sure.

Q. At the one time that you say you are sure you saw Tsuda present and in charge of a formation, did you see Tsuda strike any prisoner of war?

A. I did not see him strike him.

Q. At this formation which you saw, did you see Tsuda kick any prisoner of war?

A. I have forgotten.

Q. Did you ever see Tsuda at any formation kick a prisoner of war, any prisoner of war on the shin with his foot?

A. No.

Q. Is it not true that it was customary for Tsuda when he was holding formations to kick prisoners of war on the shins?

PROSECUTION (to Interpreter): Remind this witness he is under oath.

DEFENSE: If it please the Commission, I think it has been done, and I don't see the necessity for the outburst.

PROSECUTION: I happen to know the custom; I happen to have read this whole record.

DEFENSE: I don't think it is necessary.

LAW MEMBER: Captain Bready, I don't think it is necessary to remind the witness.

PROSECUTION: I withdraw the request, but the question may stand.

LAW MEMBER: The question may stand, yes.

WITNESS: I do not know that.

Q. Did you ever see Tsuda drunk or under the influence of liquor while you were at Sendai Branch Camp No. 1?

DEFENSE: May I ask that this be restricted to duty hours, while he was on duty, because I imagine they all have taken drinks while they were off duty. Restrict it to the time that he was serving and working in the camp.

PROSECUTION: Not necessarily; if the Commission please, Tsuda is not charged with drunkenness or drinking, that is not the purpose of my question, and it makes no difference when he was drunk. I am merely asking him if he has ever seen him when he was drunk. Now the duty hours have nothing to do with it, because if Tsuda happened to have abused prisoners out of duty hours, that is just as much of a crime as if it were during duty hours.

DEFENSE: We are not charging Tsuda with being drunk.

PROSECUTION: I again assure the Commission that we are not trying to charge Tsuda with being drunk, but I happen to know things that are in the record.

DEFENSE: I should like to see the records to which he has reference.



PROSECUTION: It is our records; it is in our files.

LAW MEMBER: What record is this?

PROSECUTION: If the Commission please, the camp commander who was tried a long time ago.

LAW MEMBER: But I don't think we can have reference to anything that is not in evidence.

DEFENSE: We certainly cannot.

PROSECUTION: I am not making any reference to it, if the Commission please.

LAW MEMBER: There have been two references to a record which is not before this Commission, and I think it is not proper for any reference to be made to anything that is not in evidence.

PROSECUTION: I beg your pardon.

PRESIDENT: It can be brought in, and I think the law member is right. It can be brought in, but it is not in, and therefore until it is, why it certainly cannot be referred to. Think about it all you want, make reference to it, but it cannot be used except mentally.

PROSECUTION: This is also in the affidavits, if the Commission please.

LAW MEMBER: It is quite proper to refer to anything that is in the affidavits, but the objection to this question will be overruled. I think it is a legitimate question.

PROSECUTION: If the Commission please, any reference that has been made by me to the record has no bearing whatsoever. By that I mean I am not introducing the record, I merely referred to it inadvertently.

LAW MEMBER: Yes, all you could refer to is what is in evidence. Will you please restate the question to the witness if it has not been stated.

WITNESS: Is this within the camp?

Q. Under the influence of liquor in the camp.

A. There were times when he drank.

Q. Will you tell this Commission what sort of a fellow Tsuda was when he was under the influence of liquor.

LAW MEMBER: Captain Bready, may I ask your purpose in this line of questioning?

PROSECUTION: There is an affidavit to the effect he was drunk. There is also indication that when he is drunk he is not very pleasant, and that he does things he shouldn't do when he is drunk, and he has been drunk on frequent occasions. It is in one of the affidavits. I can't tell you the exact one; Col. Orr knows it.

PROSECUTION (Col. Orr): I do not know, I asked if there is one. I am not saying there is one.

DEFENSE: I should like to make this request. I have no objection to this line of questioning if you will ask the question if he saw him mistreat and abuse POWs during those times. That is the only thing in which we are interested, whether the man took one drink or 300, whether he slapped somebody, kicked somebody or knocked him down.

PRESIDENT (to prosecution): Will it handicap you tremendously if we have a recess until tomorrow morning?

PROSECUTION: I have just one more question. If it will help the Commission, I will withdraw the question.

PRESIDENT: I am not asking for that, I am just asking for your convenience.

PROSECUTION: If the Commission please, I will withdraw the question.

PRESIDENT: The witness may be excused.

There being no further questions, the witness was excused and withdrew.

DEFENSE: Defense calls as its last witness Yoshio Sato. I wish to point out to the Commission that this witness is 17 years of age, so before taking the oath, or after he has taken it, it might be well to ask him if he understands the full meaning of the oath and the obligations.

PRESIDENT: Yes, you can bring that out in the first question after he is sworn.

Yoshio Sato, witness for the defense, was then sworn and testified through the court interpreter as follows:

DIRECT EXAMINATION

questions by the defense:  
(Answers through the court interpreter)

Q. Do you understand what will happen to you if you fail to answer the questions asked truthfully?

A. I know.

Q. What will happen to you if you fail to answer the questions truthfully as they have been propounded to you in this courtroom?

A. I know that I will be punished.

DEFENSE: May we proceed, sir?

PRESIDENT: You may.

Q. Will you state your name and your address?

A. Yoshio Sato, No. 34 Yutakko, Iwasaki Mura, Iwakigun, Fukushima Prefecture.

Q. How old are you?

A. Eighteen.

Q. And you are single?

A. I am single.

Q. What were Honda's duties at the camp during the period of time that you were there?

A. He was in charge of clothing - 129 - and later in charge of guarding.

Q. Are you at present a student?  
A. Yes.

Q. Where do you go to school?  
A. The Taira Second Technical School.

Q. Do you remember a POW Camp that was located in Sendai No. 13?  
A. Yes.

Q. Did you used to work at that camp?  
A. Yes.

Q. Between what periods of time did you work at this camp?  
A. From August 1, 1943, until June 25, 1945.

Q. And were you the office or the errand boy around the camp?  
A. Yes.

Q. Did you live in the POW camp?  
A. No.

Q. At what time would you go to work in the morning, and what time did you quit at night?  
A. I went to work at eight o'clock and went home at four o'clock.

Q. Did you know a POW medical officer by the name of Bartlett?  
A. I do not know that name.

Q. Do you know a doctor by the name of DeWolfe?  
A. Yes.

Q. Did you know a medical orderly or sergeant by the name of Bennett?  
A. Yes.

Q. Now who was the camp commandant when you first went to work at this camp?  
A. First Lt. Hiroji Honda.

Q. And when did he leave the camp?  
A. As I recall, the beginning of February 1945.

Q. And who succeeded him as camp commandant?  
A. First Lt. Kakeichi Ohisawa.

Q. And he was the camp commandant at the time you left the POW camp, is that right?  
A. Yes.

Q. Now while you were working at this POW camp, did you visit the various sections of the camp, that is, the dispensary, the mess hall and the various supply rooms within the camp?  
A. Yes.

Q. Did you know a Gunseka by the name of Teuda?  
A. I know him.

Q. Is he in this courtroom now?  
A. Yes.

Q. What were Teuda's duties at the camp during the period of time that you were there?  
A. He was in charge of clothing supplies, and later in charge of gardening.



- Q. How how many Gunzokus worked in this camp?
- A. I do not know the number.
- Q. I will ask you whether or not sometime in February of 1945, you heard or saw a POW kicked by Tenda while he was in the dispensary for medical attention, and died a few hours later as a result of this beating?
- A. No.
- Q. Now I will ask you if you have ever heard from any of the Japanese personnel at the camp that Tenda had struck or beaten a POW and as result of this beating the POW died a few hours later?
- A. No.
- Q. Did you ever go over to the dispensary during the day while you were at work?
- A. Yes.
- Q. How often would you go over to the dispensary?
- A. I went about once a day.
- Q. When would you go over to the dispensary?
- A. During the noon hour I went over to play.
- Q. While you were going over to the dispensary, whom would you visit or play with while you were over there?
- A. With Mr. Bennett and Mr. Bruce, prisoner of war patients.
- Q. Now at any time did either Mr. Bennett or Mr. Bruce or any of the POWs tell you that Tenda had mistreated or abused a POW in February of 1945 by kicking him, and this POW died shortly thereafter?
- A. No.
- Q. In your opinion, had a POW been kicked and as a result of that kicking had died a few hours later, do you think you would have heard of it through rumors or some of the camp personnel?
- A. I think so.
- Q. Do you think that such an incident could have been kept secret?
- A. I think that it could not be kept secret.
- Q. Did you ever hear that Tenda prevented or prohibited POWs to report sick or to report to the medical room for treatment?
- A. No.
- Q. Did you know Captain Franken?
- A. Yes.
- Q. Did Captain Franken ever tell you that POWs were struck or were beaten by guards?
- A. No.
- Q. I will ask you whether or not you have heard that company guards had struck or beaten POWs?
- A. Yes.
- Q. On how many occasions did you hear?
- A. I do not remember the exact number.

*William K. Brandy*  
 William K. Brandy  
 Captain Major  
 Staff Sergeant

- Q. From whom did you hear that company guards had struck or mistreated POWs?
- A. I have heard from the prisoners of war, also from the guards.
- Q. Now, I will ask you if you have ever seen Foude slap or strike POWs?
- A. I have seen once.
- Q. How did Foude slap or strike this POW?
- A. He struck him with the palm of his hand once.
- Q. Did he knock the POW to the ground?
- A. No.
- Q. Is that the only occasion in which you ever saw Foude strike a POW?
- A. Yes.
- Q. Has there been any other occasion in which you have heard that Foude struck or mistreated POWs?
- A. No.
- Q. During the time that you worked at this camp, did you ever hear or were you ever told by Captain Franken that Foude required the officers to clean the latrines?
- A. No.
- Q. During the time that you were working at this camp, did Foude ever act as a guard and escort the POWs from the camp to the mining company where they worked?
- A. Yes.
- Q. On what occasion was that?
- A. When they went out to the gardens or when they went to carry vegetables.
- Q. How did you hear any other rumors concerning the bad treatment by Foude of POWs while you were at the camp?
- A. Yes.
- Q. Tell us about that.
- A. I heard that Foude's commands were not clear, although his voice was loud, and I heard the prisoners say this. I do not know anything else.

PROSECUTOR: May I have the answer again?

The reporter read back the answer.

PRESIDENT: The Commission will stand adjourned until 0900 hours tomorrow morning.

The Commission then, at 1600 hours, on 23 November 1946, adjourned to meet at 0900 hours on 23 November 1946.

*William A. Brady*  
 WILLIAM A. BRADY  
 Captain Major  
 Chief Prosecutor

HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse  
Yokohama, Japan  
Saturday, 23 November 1946

The Commission met, pursuant to adjournment, at 0900 hours on 23 November 1946, all the personnel of the Commission, prosecution and defense who were present at the close of the previous session in this case being present.

The accused, reporter and interpreters were also present.

PRESIDENT: The Commission is in session.

The witness, Yoshio Sato, resumed the stand and was reminded that he was still under the oath previously taken.

PRESIDENT: Continue with the examination.

PROSECUTION: May we have the last two questions and answers?

The reporter read back as requested.

DIRECT EXAMINATION, continued

Questions by the defense:

(Answers through the court interpreter)

Q. Did you ever hear about Tania slapping POWs on any occasions other than the ones you have already mentioned in your previous testimony?

A. No sir.

DEFENSE: No further questions, your witness.

CROSS-EXAMINATION

Questions by the prosecution:

(Answers through the court interpreter)

Q. You have testified that you heard rumors of bad treatment of prisoners of war.

PRESIDENT: Might I just inject here again, please; if ever before, it will be necessary in this instance to cut it down to ten or fifteen word questions at the very outside, so that you break up your preliminary remarks into two or three questions, you don't have to continue with all into one, and then we will eliminate the difficulty both with the interpreter and with the witness understanding; he will not have to retain that for a long time. So just simply say, is this so and so, or this is so and so; the testimony shows it, and then the question shows it. Pardon my interruption, but I am anxious that it get into the record correctly.



PROSECUTION: Yes sir, strike that question.

Q. You heard rumors of bad treatment of prisoners of war by the accused, is that correct?

A. Yes.

Q. What do you mean by bad treatment?

A. It was to the effect that Tsuda gave his commands in Japanese in a loud voice and very fast, so his commands could not be understood.

Q. And why did the prisoners of war make that complaint?

A. It was because the prisoners of war could not understand Tsuda's commands.

Q. What did Tsuda do if a prisoner of war did not understand his commands?

A. I think he scolded them in a loud voice.

Q. Do you consider what you have just described as mistreatment?

A. I do not think so.

Q. Then what is the mistreatment to which you refer?

A. I said so because I feel if he spoke his commands clearly, it would be easier on the prisoners to perform their work.

Q. And if they did not perform their work, what did Tsuda do about it?

A. I do not know about that.

Q. You were in the camp more or less continuously from eight in the morning until four in the afternoon every day, is that correct?

A. Yes.

Q. How many times a day do you estimate that you probably saw Tsuda?

A. At the mess time, and also in the office, and about two or three times at other times.

Q. How many times do you think you have seen prisoners of war in formations for any purpose such as sick call, going to mess?

A. I saw them in formation about once a day.

Q. And how many times have you seen formations of this kind of which Tsuda was in charge?

A. Is that on one given day?

Q. Any time during two years.

A. I think I saw him at least ten times.

Q. So you are going to tell this Commission that for the two years which you served in this prison camp, that you have only seen Tsuda attend formations ten times.

A. No, it is more than ten times, but I do not know the exact number.

Q. Now then, did you never in those times that you have seen Tsuda in charge of the formations, see him strike a prisoner of war?

A. Yes.

Q. Did you ever see a time when Tsuda gave an order and a prisoner didn't understand it?

A. No.

Q. Is it not true that Teuda was very difficult for prisoners of war to understand?

DEFENSE: I should like to get the answer to that last question.

The reporter read back the answer.

WITNESS: Yes.

Q. Is it not true that when prisoners of war were unable to understand Teuda it was his custom to strike and kick them?

A. I do not know.

Q. You are going to tell this Commission that you do not know; is that the truth?

DEFENSE: May it please the Commission, I think the witness has already answered that question one time. He has already said he did not know. I do not think he would be in a position to know.

PROSECUTION: I do not think it has been responsive.

LAW MEMBER: I think that phrase of yours, "You are going to tell the Commission" is not a happy phrase. "You are going to tell"; I think what you are driving at is that "You have told the Commission," "You insist on telling the Commission".

PROSECUTION: Do you wish me to use that phraseology?

LAW MEMBER: I don't like that phrase, "You are going to tell the Commission".

Q. Are you going to insist upon telling this Commission that you do not know whether or not Teuda struck or kicked prisoners of war when they failed to understand his orders?

A. When I passed any of the formations, I just went out passing by and did not stand around to see it, and so I do not know.

Q. Did you understand my question?

A. Yes.

Q. Did you not testify yesterday that you saw Teuda slap a prisoner of war with the palm of his hand?

A. Yes.

DEFENSE: Just for clarity, we are moving from the formation stage of this into the individual instances, is that correct? I should just like to know so that we can follow it. The last question has been based on formations and what happened in formations, and then we jumped to another line of questioning.

Q. Where did you see Teuda strike this prisoner?

A. In the yard of the prisoner of war camp.

Q. Who was that prisoner?

A. I do not know his name.

Q. Was he a British prisoner of war, a Canadian prisoner of war or a Dutch prisoner of war?

A. He was Canadian.

- Q. Did you know Corporal Bennett quite well?
- A. Yes.
- Q. You frequently talked to Corporal Bennett, is that not true?
- A. Yes.
- Q. Did you like Corporal Bennett?
- A. Yes.
- Q. Do you think that Corporal Bennett would be considered by you to be a truthful and honest man?
- A. I do not know that clearly.
- Q. Do you think that Corporal Bennett would state an untruth to you?
- A. I do not know that clearly.
- Q. Now you have stated that you saw mine guards strike prisoners, is that correct?
- A. No, just that I heard about it.
- Q. About how many beatings did you hear?
- A. I do not know the number of times.
- Q. Was it more than once?
- A. It has been over two years ago; so whether it was more than once, I do not know.
- Q. Where was the vegetable garden with relation to the barracks, to the barracks for the prisoners of war?
- A. There were two places.
- Q. How far away from the camp were these places?
- A. One place was 400 meters from the camp; the other was one kilometer away.
- Q. And how far was the mine from the camp?
- A. I think it was about 400 meters to the entrance of the mine.
- Q. And how far was the garden from the mine?
- A. One place was 100 meters away, and the other about 1 kilometer, and 400 to 500 meters away.

PROSECUTION: No further questions.

#### EXAMINATION BY THE COMMISSION

Questions by the Commission:

(Answers through the court interpreter)

- Q. How many years have you gone to school?
- A. Twelve years.
- Q. Can you count your numbers in Japanese?
- A. Yes.
- Q. What is the biggest number up to which you can count in Japanese?
- A. A trillion.
- Q. Do you consider ten as a very small number or a very large number?
- A. I think it is a small number.



Q. Did you spend a lot of time in the camp with Corporal Bennett?

A. Yes.

Q. Did he try to teach you English, and you try to teach him Japanese?

A. No, because we did not have too long a time.

Q. Could Corporal Bennett speak any Japanese?

A. A little.

Q. And could you speak any English?

A. Not clearly.

Q. Could you understand each other?

A. In general we could.

Q. Did you think he was a good man or a bad man?

A. I thought he was a good man.

Q. Did he ever deceive you or lie to you?

A. No.

A. There being no further questions, the witness was excused and withdrew.

DEFENSE: At this time the accused has been informed of his rights. He has elected to take the stand and make a sworn statement of his activities in this camp. Before he takes the stand, I should like for the Commission again to advise him of his rights.

PRESIDENT: I think, under the circumstances, to expedite matters, we will take a short break at this time and continue straight on with the examination. The Commission will take a short recess.

The Commission then took a recess until 0955 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

PRESIDENT: The Commission is in session.

The accused, Koju Tsuda took the stand.

PRESIDENT: Koju Tsuda, you may take the stand as a witness or you may remain silent. If you take the stand, you may make a sworn or an unsworn statement. But in either case you will be subject to cross examination on a statement made. Cross examination in no wise to be limited to matters brought out in direct examination. If you remain silent, the Commission may draw such inference from your failure to testify as may seem fair and competent to a reasonable mind after taking into consideration all the competent evidence in the case. What is your decision?

ACCUSED (Koju Tsuda): I shall testify under oath.

Koju Tsuda, a witness in his own behalf, was then sworn and testified through the court interpreter as follows:

# DIRECT EXAMINATION

Questions by the defense:  
(Answers through the court interpreter)

Q. Will you state your name, age and present address?  
A. My name is Koju Tsuda, my age is 33 and my address is Sugamo Prison in Tokyo.

Q. Are you married or single?

A. I am married.

Q. Were you in the Japanese army?

A. Yes.

Q. Between what dates?

A. I entered the army on January 30, 1935, until August 18, 1936. Then in August 1937, I was again called into the army and was released in August of 1940.

Q. At any time while you were serving in the Japanese army were you injured or wounded in combat?

A. I was not wounded.

Q. How when did you first become assigned to Sendai 1B POW camp?

A. On May 15, 1943.

Q. And how long did you continue to serve at this camp?

A. Until the end of August, 1945.

Q. Have you served in any other POW camp prior to going to Sendai 1B in service?

A. No.

Q. Before you entered the army, what was your occupation?

A. Farming.

Q. How many years have you attended school?

A. Nine years.

Q. At the time you were assigned to Sendai 1B POW camp, who was the camp commandant?

A. First Lieutenant Hiroji Honda.

Q. And for how long a period did Honda serve as a camp commandant at the camp?

A. Until the end of February, 1945.

Q. And who succeeded Honda as camp commandant of Sendai 1B?

A. First Lieutenant Daichi Ohsumi.

Q. When you were first assigned to the camp, what were your duties?

A. I was a guard at the place of work.

Q. How long did you serve in this capacity at the camp?

A. From August 1943, until January of 1944.

Q. How many other Japanese were there who occupied the POWs prior to 1944?

A. There were three altogether, including myself.

Q. And then what were your duties?

A. Then I became an assistant in clothing supply.

Q. And after January of 1944 you did not guard POWs, is that correct?

A. I did not.

PROSECUTION: If the Commission please, the prosecution wishes to give the defense every opportunity, but the last question was very leading, and we shall have to ask that such questions be phrased differently.

LAW MEMBER: Yes, the same occurred to me. I think that was too leading in the way it was phrased.

PROSECUTION: We made no objection with the other witnesses, but with the accused, we do.

DEFENSE: Sir, I can cover the same ground and take more time, if you desire.

LAW MEMBER: If you put it in this way, "Did you guard the prisoners" .... I mean the question was put in a way that would perhaps give the witness an idea how to answer.

DEFENSE: Sir, I can lay the proper foundation for each one.

PRESIDENT: That is not the point that the law member is bringing out. Don't confuse the issue. More latitude is being allowed in leading questions than ever before with Japanese witnesses. That is understood, and the Commission recognizes it and the Law Member does, and this is not criticism in general with the idea of leading questions where they are not too flagrant and actually suggest the answer.

Q. Now what were your duties after January of 1944?

A. I was the assistant in clothing supply up to the end of February, 1945.

Q. After you became assistant to the clothing supply officer, was it one of your duties to guard POWs?

A. No.

Q. Whose duty was it to guard POWs at that time, that is, from January 1944 to the remaining time you were at the camp?

A. Company guards sent over by the company and army guards.

Q. Now prior to January of 1944, who escorted the POWs from the camp to the working place at the mine?

A. Myself and the company guards and company officers guarded them together.

Q. Were there any other Gunzokus who guarded the POWs prior to January of 1944?

A. Yes.

Q. How many other Gunzokus were there who escorted the POWs prior to 1944?

A. There were three altogether, including myself.



- Q. Now I will ask you whether or not during the time that you served as a guard at this camp, you were ever present at the sick call or sick period held at this camp?
- Q. Can you name them?
- A. Yes.
- Q. State their names.
- A. Suikichi Kurimata, Sukeji Akatsuka and Koji Tada.
- Q. Were army guards ever used to escort the POWs from the camp to the working place prior to January of 1944?
- A. There were times when the Gunzoku guard was absent, and in these cases there were times when army guards escorted them; but aside from that the army guard did not go.
- Q. During your period of service at this camp, did you know a POW by the name of Captain Franken?
- A. I knew him.
- Q. Did you know the POW medical officers by the name of Lt. DeWolfe and Captain Bartlett?
- A. I knew a Mr. DeWolfe, but I am not sure of Mr. Bartlett.
- Q. Who was the Japanese doctor who served at this camp during your period of service?
- A. Mr. Shirakura.
- Q. Who was the Japanese medical personnel, that is, medical orderlies who assisted in the treatment of POWs?
- A. I remember Sgt. Kubota, Toyo Matsuzaki and Lance Corporal Kanoe.
- Q. Do you remember a POW by the name of Bennett?
- A. I know him.
- Q. Did he work in the dispensary?
- A. Yes.
- Q. Did you know a POW by the name of Bruce?
- A. Yes.
- Q. Did he work in the dispensary?
- A. Yes.
- Q. How many times a day was sick call or sick period held at this camp?
- A. Once.
- Q. Did you have any duties in connection with the conduct of sick call or sick period?
- A. No, sir. I personally did not have any duties connected with that, except when I was a Kiochoku. In that case I would take the patients over to the dispensary, these patients being brought to me by the prisoner of war officers.
- Q. Now who determined what POWs were to be taken over to the dispensary by the duty officer?
- A. The prisoners lined up to go for medical examination on their own free will at the signal from the guard office.

Q. Now I will ask you whether or not during the time that you served as a Nicchoku, did you ever prevent or prohibit a POW from going to the dispensary for medical examination or treatment?

A. No.

Q. Did you have as a part of your duty when you were the Nicchoku the assignment of determining what POWs would be permitted to go to the dispensary for medical examination?

A. No.

Q. Then how many of the Gunsoku served on this tour of duty as Nicchoku in the camp?

A. The number differed from time to time, but there were five men who did it for the longest period of time.

Q. How long would this tour of duty as Nicchoku last; how many hours?

A. Twenty-four hours, from 12:00 of one day to 12:00 o'clock of the next.

Q. And did each Gunsoku take a tour of twenty-four hours, that is, one followed the other?

A. Yes.

Q. Then that meant that each of you normally drew the tour of Nicchoku about once in five days, is that correct?

A. Yes.

PROSECUTION: If the Commission please, you refer to Gunsoku; did you mean to say Gunsoku?

DEFENSE: Gunsoku, yes. They were the ones who drew the Nicchoku duties; they were the guards.

Q. During your period of time as an employee at this camp, did you ever work in the dispensary?

A. No.

Q. Did you have the power or the authority to determine what POWs would be permitted to attend sick call or report to the dispensary for medical treatment?

A. No.

Q. Were the POWs permitted to report for sick call or for medical treatment whenever they felt it was necessary?

A. Yes.

Q. Did you at any time tell the POW that he could not report for sick call or for medical treatment at the dispensary?

A. No.

Q. In the camp who determined whether or not a POW needed medical treatment or needed to be excused from work?

A. The prisoner of war medical officers.

Q. Then, were you working at this POW camp in February of 1945?

A. Yes.

Q. As I understand it, you claim in this statement that at no time did you block or stop a POW who was reporting sick, and that POW as a result of the blocking or blocking did not show later, is that correct?

A. I shall testify that there was absolutely no such thing.

Q. I will ask you if, in February of 1945, or at any time prior to that date, if you knew a POW by the name of James L. Scott, a British prisoner of war?

A. No.

Q. I will ask you, if sometime during the first part of 1945, you recall an incident when you kicked a POW on the legs because he was reporting sick, and as a result of that kick, the POW died within an hour?

A. No.

Q. I will ask you whether or not you recall an occasion sometime in the first part of 1945 when a work detail was returning from the mine and a POW who was one of the members of that detail went in to report sick to Captain Bartlet, and you went into the dispensary and began to kick that POW on his legs, and shortly thereafter the POW died?

A. There was no such thing.

Q. I am going to have the interpreter read paragraphs 5 and 6 of prosecution's Exhibit No. 57, and ask you whether or not any such thing ever took place.

The interpreter complied with the request.

WITNESS: Absolutely not.

Q. I will ask you whether or not during your stay at this camp, if you ever heard of such an incident as the one which has just been related to you.

A. I never did hear.

Q. At any time while you were at this camp, did you strike or kick or abuse a POW who was in the dispensary for medical treatment?

A. No.

Q. Did Captain Bartlet ever tell you personally about such an incident having taken place?

A. No.

Q. Did Lt. DeWolfe ever tell you about such an incident having taken place?

A. No.

Q. Did Sergeant Bennett ever tell you about such an incident having taken place?

A. No.

Q. Do you recall any incident which took place at the camp which might be similar to this?

A. No.

Q. Did your camp commander or any of the other camp personnel ever mention to you that an incident such as Captain Bartlet has related, took place within the camp?

A. No.

Q. As I understand it, you state to this Commission that at no time did you kick or abuse a POW who was reporting sick, and that POW as a result of the beating or kicking died a few hours later, is that correct?

A. I shall testify that there was absolutely no such thing.



- Q. And you deny that you had any part in any such incident as has been related to you?
- A. I have absolutely no connection with any such incident.
- Q. Do you have any knowledge of any such incident having taken place within the camp?
- A. No, there was no such incident.
- Q. I will ask you whether or not you remember an occasion in which a POW by the name of Henderson was injured while working in the garden?
- A. I remember.
- Q. Do you have a copy of the charge and specifications in this case?
- A. Yes.
- Q. They are written in Japanese, are they not?
- A. It is written in Japanese.
- Q. I direct your attention to Specification No. 2. Do you recall the POW by the name of Alexander Henderson?
- A. Yes.
- Q. Do you recall an incident which took place in the garden sometime in June or July, 1945?
- A. I remember.
- Q. Explain to the Commission just what happened.
- A. As part of the self-supply program, I was in charge of the gardens where about 30 prisoners of war worked every day. It was either the end of June or the beginning of July, 1945, that I had around 30 prisoners of war lined up in one row, about one and one-half meters apart, breaking the ground. At that time Henderson was the second or third man, third man from the left in that row of thirty men, and while at work, it appeared the handle of his hoe had come off, and he was fixing it. I went over to see him as he repaired it. When I went over to see, what I saw at a glance was the fact that the handle had been affixed to the hoe in a manner which was the complete reverse of the usual, that is, usually the handle is fixed to the hoe at an acute angle of ten degrees, that is, measuring the angle from the perpendicular line. In this case he had fixed the handle to the hoe at an obtuse angle of ten degrees, which made it completely reverse. I felt that he could not use the hoe with it in that condition, and so I tried to fix it for him, and tried to pull out the handle again. Because of the fact that the handle had been inserted into the hoe very tightly, because of the fact that the hoe handle was inserted in a completely opposite manner, therefore I found it difficult to pull it out, and I could not do it alone, so I had Henderson step on the hoe while I pulled on the handle. When the handle came out, unintentionally the handle struck Henderson's head, and that is the manner in which he sustained his injury. I think this was an act of God.

DEFENSE: May the record show that the manner in which Henderson inserted the handle caused the movement to come away from the

Q. Now I will ask you, whether or not at the time you were pulling this handle away from the blade of the hoe, was Henderson holding that blade and leaning over as he was doing so?

A. He was pulling on the blade in this manner (indicating), and also holding it down with his hand and bending over so as to keep it from moving.

Q. Now, where were you standing when Henderson was bending over the blade in this manner (indicating)?

A. I was on this side (indicating).

Q. And Henderson was holding the blade close to the ground?

A. He was lower down, he was stepping on the blade with his foot, and he was bent over and holding it in this manner.

Q. And where were you standing?

A. I was on this side and pulling it in this manner.

Q. And did this handle to the hoe come loose suddenly?

A. It came out suddenly.

Q. And when it came out, it was pulled upward towards you, is that correct?

A. And when it came out, it came upward in this manner and struck his head, but it happened so fast, I do not know exactly how it happened.

Q. Now at the time were you angry with Henderson, and with him?

A. I wasn't angry.

Q. After Henderson was struck suddenly by this handle being pulled from the hoe, what happened next?

A. I bandaged him with a towel which the prisoner of war had.

Q. And was he required to continue work?

A. No, immediately afterwards I spoke to a company guard to have him taken to the dispensary, and soon afterward, the guard took him over to the dispensary.

Q. I show you a hoe, and ask you if this hoe is similar to the one you were using in the garden.

A. Yes.

Q. And will you show us how Henderson reinserted the handle in the hoe?

DEFENSE: May the record show that this hoe handle is about 26 inches; the blade is about 4 inches wide and about 6 inches long.

WITNESS: Usually this is the manner in which the handle is inserted, so that it will give power to the stroke.

DEFENSE: May the record show that the curvature of the handle curves down towards the working edge of the hoe.

WITNESS: But he had stuck the handle in in the opposite manner and had it like this.

DEFENSE: May the record show that the manner in which Henderson inserted the handle caused the curvature to curve away from the working edge of the blade.

PROSECUTION: Let the record also show . . .

PRESIDENT: Just a minute before we clutter up the record. So far as my knowledge of this incident is concerned, I recognize that in the majority of them the handle is at a very much closer angle to the face of the blade than is represented by this. I see what your point was.

PROSECUTION: I take that back.

PRESIDENT: It makes it a little bit technical.

DEFENSE: As far as the record is concerned, we have stated that this is similar to the one used, not identical.

PRESIDENT: That's right, and in reversing the handle here, it makes no difference in the angle, and that is what prosecution was going to bring up.

DEFENSE: May the record show that the accused indicated that Henderson was holding the working end of the hoe, while the accused was pulling the handle to remove it, and that in the sudden release of the handle, Henderson was struck in the head.

PRESIDENT: The Commission will adjourn until Monday morning at 0900.

The Commission then, at 1115 hours, on 23 November 1946, adjourned to meet at 0900 hours on Monday, 25 November 1946.

*Olavi T. Ahlmark*

*William E. Brady*  
—  
Septets. May 19  
Chief Prosecutor



HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse  
Yokohama, Japan  
Monday, 25 November 1946.

The Commission met, pursuant to adjournment, at 0915 hours on 25 November 1946, all the personnel of the Commission, prosecution and defense who were present at the close of the previous session in this case being present.

The accused, reporter and interpreters were also present.

PRESIDENT: The Commission is in session.

The accused, Koju Tsuda, resumed the stand, and was reminded that he was still under the oath previously taken.

PRESIDENT: Continue with the examination.

DIRECT EXAMINATION, continued.

Questions continued by the defense:  
(Answers through the court interpreter)

Q. Directing your attention again to Specification No. 2 of the charge, I will ask you whether or not you intentionally struck a POW by the name of Henderson?

A. No.

Q. Then the act occurred just as you have demonstrated before this Commission on Saturday, is that correct?

A. Yes.

Q. I will ask you whether or not while you were at this POW camp, if you knew a POW by the name of Conway?

A. I do not remember.

Q. I will ask you whether or not you recall a POW whose number was 379?

A. I cannot recall.

Q. I will ask you whether or not during your period of service at Sendai 1B if you recall having beaten up a POW by the name of Conway or by any other name, by using a stick or a club or a coal mine tool in administering that beating?

A. No.

Q. I will ask you whether or not while you were serving at this POW camp, if you ever worked down inside of the mines.

A. I have never gone inside of the mine.

Q. I next direct your attention to Specification No. 4, and ask you if you remember a POW by the name of Leo Johnson.

A. Yes.

- Q. Do you recall an incident which happened sometime in June of 1945 in which you administered a beating to Leo Johnson?
- A. I have never beaten him.
- Q. Do you recall an incident which took place sometime in June, 1945, in which you administered a beating to a POW by using a stick?
- A. I do not recall.
- Q. I will ask you whether or not you knew a POW by the name of Thomas George Marsh, as referred to in Specification No. 5.
- A. Yes.
- Q. What do you recall about this POW by the name of Marsh?
- A. He was a Canadian prisoner of war who was comparatively good in Japanese, so I have conversed with him.
- Q. Was his number 389?
- A. I think it was number 550.
- Q. Do you recall ever having administered a beating to a POW whose number was 389?
- A. I do not recall.
- Q. I will ask you whether or not at any time while you were at this POW camp, that you ever struck a POW by the name of Marsh, Thomas George Marsh?
- A. No.
- Q. I will ask you if you recall an incident which took place sometime in June of 1945 in which you asked a POW by the name of Marsh if he understood Japanese, and he answered that he did. Then you attempted to speak with him in Japanese, and because he did not understand, you administered a beating to him.
- A. I do not recall.
- Q. Do you recall any incident which took place while you were serving at this camp in which you administered a beating to a POW because he did not understand Japanese?
- A. I have never struck a person for not understanding me.
- Q. I next direct your attention to Specification No. 6, and ask you whether or not you knew a POW by the name of Jules Frovancher.
- A. Yes.
- Q. Was he a British or Canadian POW?
- A. I think he was Canadian.
- Q. When did the Canadians arrive in the camp?
- A. As I recall it on May 13 of 1945.
- Q. And prior to that time, that is, May 13, 1945, did you have any Canadians in the camp of Sendai?
- A. No.
- Q. Before the arrival of the Canadians, what other nationalities were there in this camp?
- A. Dutch, English and Americans.

- Q. Do you recall at any time while you were at this camp, having administered punishment to this POW named in Specification No. 5?
- A. I did not punish him.
- Q. Do you recall an incident which took place shortly after the Canadians arrived at Sendai in which you administered punishment to this POW by beating him over the body with a stick? The reason for beating is supposed to have been because you called this Provancher and he failed to answer.
- A. I did not strike him.
- Q. Do you have any particular reason to remember this POW by the name of Provancher?
- A. I remembered him as a Canadian prisoner of war with the number 440.
- Q. I will ask you whether or not you remember a POW by the name of Edward William Query?
- A. Yes.
- Q. What do you remember about this man?
- A. I remember him as a man who came to the camp on May 13, 1945, from the Kawasaki Camp.
- Q. Did he come at the same time that other Canadians arrived at the camp?
- A. Yes.
- Q. Do you recall, on an occasion sometime between May of 1945, until August of 1945, having administered a beating to this POW?
- A. I do not recall.
- Q. Do you recall ever having slapped or punched or beaten this individual with a stick or club during the period that he was at the camp?
- A. I did not strike him.
- Q. Do you recall a POW by the name of John B. Thomson, a Canadian?
- A. I do not recall him.
- Q. I will ask you whether or not you recall an incident which is supposed to have taken place sometime between May 1st of 1945 and the 31st of August 1945, in which you administered a beating to this POW?
- A. I do not recall.
- Q. I will ask you if, at any time during this period, you were working for the mining company where POWs were employed?
- A. No.
- Q. And you never worked inside of the mine, is that correct?
- A. Never.
- Q. I will ask you if you knew any people at the mine known as Suzuki No. 1, Suzuki No. 2 whose nickname was "Glasses", "Black Prince", Suzuki No. 3; and "Red Eyes" known as Sato.
- A. I knew that there were many Suzukis at the company.
- Q. Approximately how many?
- A. I recall two.



Q. Is the name Suzuki very common in Japan?  
A. It is prevalent at all places.

Q. Now how many Suzukis were working at the POW camp with you as Gunzokus?  
A. There were three Gunzokus with the name Suzuki.

Q. And how many Gunzokus did you have in the camp at this time?  
A. Five.

DEFENSE (to interpreter): Ask him if he knows the others named?

WITNESS: I do not know.

Q. I next direct your attention to Specification No. 9 and ask you whether and ask you whether or not you knew a POW by the name of Donald C. Steward, who was a British POW?

A. I know him.

Q. Did you ever have any difficulties with this man by the name of Steward?

A. Yes.

Q. Tell us about it.

A. I think it was around September of 1944. I was ordered by the Camp Commander to clean up the interior of the camp, using the prisoners of war. I told Steward that this was to be done by the prisoners of war. While I was telling Steward about this, before I got through with what I had to say, Steward started to go away. I tried to stop him, and approached him saying that I was not through with what I had to say. Just at that time I stumbled on a rock and I kicked Steward's feet. At that time I was suffering from arthritis of my leg, and so when I stumbled, my feet touched Steward's foot, and as I recall, I apologized to Steward through the interpreter for this.

Q. Were you ordered to apologize to Steward by the Camp Commander or by Sgt. Mikawa?

A. I had apologized voluntarily, but I reported these facts to Sgt. Mikawa.

Q. Now I will ask you whether or not at any time, did you force Captain Steward personally to clean out the drains within the camp confines?

A. No.

Q. I will ask you whether or not if at any time, you ordered Captain Steward to clean out drains and he declined to do so, and as a result of that, you forced his head into the drain.

A. No.

Q. Is this one occasion in which you struck Steward on the leg the only incident in which you were involved with Captain Steward?

A. There is no other incident with him.

Q. I will ask you whether or not you recall an incident which took place in June of 1945, as set forth in Specification No. 10.

A. I do not recall.

Q. I will ask you whether or not you recall an incident which took place sometime in June of 1945 in which a number of the POWs were ordered to replace paper on certain of the buildings, and they failed to affix that paper in a manner satisfactory to you, and you required them to do the job over again?

A. I remember.

Q. Tell us what happened on that occasion.

A. The paper sliding doors of the prisoner of war quarters had become tattered, and so we had requested the company, through the office, for some papers, and had received the paper to replace the torn paper on the sliding doors. Usually this paper is cut to fit the sliding doors, but in this case the paper came in all kinds of shapes. I prepared the paper and the paste, and by orders of Chiama, I had the prisoners of war paste on this paper. First I had only gone there bringing the paper and then returned after telling them to use this paper. About an hour later I went back to see the result. The paper was of all shapes. I found that they had pasted on many layers of paper at certain places and in all sorts of ways. The many layers of paper made the door panel dark, and bad from the point of view of sanitation, and if they used so many layers, there would not be enough paper to go around, so I did one panel myself and that was to serve as a model.

Q. Now, did you have any POW officers pasting on this paper?

A. No.

Q. Was Commander Finn, Charles R. Finn, assisting in affixing this paper to the door?

A. I do not think that he participated in that. I had informed the prisoners of war, through a Canadian named Finn, that they were to paste on this paper, but I do not think that he participated himself. Even in the officers room, I think the orderly performed that job and the officers did not do it themselves.

Q. Now when you went back to this place to demonstrate the correct manner in which the paper should be affixed on the door, how many POWs did you have around you at that time watching the demonstration?

A. I think there were about ten.

Q. Now I will ask you whether or not as punishment for the POWs having improperly affixed this paper, you required approximately 200 of them to stand at attention in the camp compound for some two and one-half hours?

A. Absolutely not.

Q. Did you ever require POWs to stand at attention for a long period of time as punishment for violation of some camp rule?

A. No.

Q. Did you set a time limit within which the POWs must complete this work of affixing the paper on these doors?

A. I did not limit the time.

Q. Did you slap or strike any of the POWs because they had failed to affix the paper on the doors in a proper manner?

A. No.

Q. I next direct your attention to Specification No. 11. I will ask you whether or not you recall a POW by the name of Franken?

A. Yes.

Q. Did you, at any time, order Captain Franken to clean the latrines in the POW camp, that is, personally to clean the latrines?

A. No.

- Q. Did you ever at any time order Franken to wash your socks?  
A. No.
- Q. Did you request of Captain Franken from time to time POW details to do the job of cleaning the latrines in the camp?  
A. Yes.
- Q. And did Captain Franken furnish you these work details from time to time?  
A. Yes.
- Q. As I understand it, it was Captain Franken's duty to supply you with the work details to perform those various jobs and not to do the work himself, is that correct?  
A. Yes.
- Q. I next direct your attention to Specification No. 12. I will ask you if, between the 15th of May 1945 and the 1st of August 1945, you ever struck or kicked any POWs about which you have not already given testimony.  
A. I have struck, but not kicked.
- Q. How I will ask you whether or not those POWs that you state you have struck, were POWs other than those mentioned in the eleven previous specifications?  
A. Yes.
- Q. Tell us about each and every one of those incidents.  
A. About July of 1945 there was a time when I struck a Dutch prisoner of war.
- Q. Do you recall the name of this Dutch POW or his number?  
A. I do not recall.
- Q. How did you strike this POW?  
A. With the palm of my hand.
- Q. Did the POW require medical attention as a result of this striking?  
A. No.
- Q. Why did you strike him?  
A. I had told this man to clean the mess hall several times, but even after repeated instructions, he did not do so; that was the reason.
- Q. How did you slap or strike any other POW?  
A. I do not recall.
- Q. Do you recall ever having heard that the company guards or the army guards had struck or beaten POWs during the time that you served at this camp?  
A. Yes.
- Q. What were those occasions?  
A. I only heard that they have done some striking, but did not hear the reason.
- Q. Do you know where those beatings or striking were administered?  
A. The company people did it outside of the camp.



Q. Now I will ask you whether or not during the time you served at this camp, if there have been any other occasions on which you punished the POWs by slapping them or by striking them?

A. No.

Q. Have you given this Commission all the information which you have on the abuses of POWs in which you participated?

A. I have stated everything about my acts in this court.

DEFENSE: Your witness.

PRESIDENT: The Commission will take a short recess.

The Commission then took a recess until 1045 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

PRESIDENT: The Commission is in session.

The accused, Koji Tanaka, resumed the stand, and was reminded that he was still under the oath previously taken.

PRESIDENT: Continue with the cross-examination of the witness.

Q. And you were in charge of CROSS-EXAMINATION not correct?

A. Yes.

Questions by the prosecution:  
(Answers through the court interpreter)

Q. At the time you served at Sendai 1B were you married?

A. I was married.

Q. Where was your wife at this time?

A. In Yumoto Machi.

Q. Were you living with her in the town of Yumoto during this period?

A. Yes.

Q. When did you first become acquainted with Lt. Honda?

A. May 15, 1945.

Q. You did not know Lt. Honda before you came to Branch Camp No. 1?

A. I did not know him.

Q. Did you ever visit Lt. Honda at his home in Yumoto?

A. Yes.

Q. How frequently did you visit him there, would you say?

A. I went about 20 or 30 times.

Q. You were a very good friend of Lt. Honda's, were you not?

A. Rather than friend, I was his subordinate and he was my superior officer.

Q. What did you do when you visited Lt. Honda. I will amplify that a little. Did you play games, did you go to any entertainment, just what did you do when you visited him?

A. We just drank tea, and that is the standard of things.

- Q. Then, in other words, you visited Lt. Honda for 20 or 30 times for the sole purpose of just drinking tea; is that correct?
- A. Yes.
- Q. Now at Sendai Branch Camp No. 1, on and after January 1945, you were assistant in charge of clothing supplies. What other jobs did you have at that time?
- A. I was doing Nicchoku.
- Q. And what other duties did you have at that time?
- A. I also did gardening besides clothing after January of 1945.
- Q. Now, tell this Commission where these gardens were of which you were in charge.
- A. Between 500 meters and 1000 meters east of the camp.
- Q. What help did you have in performing this duty?
- A. Company guards came to do guarding, and also army guards came twice a day to guard the prisoners of war. Also, just before the end of the war, about two Gunseikus came to help me, but their duty was mostly guarding, and also acted as officers.
- Q. And who did the gardening?
- A. The work in the garden was done by prisoners of war.
- Q. And you were in charge of this work, is that not correct?
- A. Yes.
- Q. How were these prisoners of war selected for this duty?
- A. I used those prisoners of war who were designated by the General Affairs Section.
- Q. Do you know the British Padre in this camp?
- A. Yes.
- Q. Do you recall his name?
- A. I recall it as "We" (phonetic).
- Q. Was it not "Webb"?
- A. I recall the name was similar to that, but I do not remember exactly.
- Q. Did Padre Webb ever go to the garden?
- A. Yes.
- Q. Did he ever work in the gardens?
- A. No, he did not actually work.
- Q. But he was frequently present, is that correct?
- A. Yes.
- Q. Did Steward ever go to the gardens?
- A. Yes.
- Q. That is to say Captain Donald Steward went to the gardens, is that correct?
- A. Yes.
- Q. Did Steward ever work in the gardens?
- A. No.

- Q. You state that Steward never worked in the gardens?
- A. Yes.
- Q. Did you use human fertilizer commonly known as "night soil" for the gardens?
- A. Yes.
- Q. And where did you get this human fertilizer for use in the gardens?
- A. It was from the camp.
- Q. And who got this human fertilizer and brought it to the gardens?
- A. The prisoner of war soldiers brought it out to the garden.
- Q. And when it was brought to the garden, who spread it on the ground?
- A. The prisoner of war soldiers.
- Q. Did Captain Donald Steward ever bring or help to bring or spread, or help to spread human fertilizer in the gardens?
- A. No.
- Q. Lt. Honda was tried and convicted for war crimes, was he not?
- A. Yes.
- Q. And you were a witness at the trial of Lt. Honda, were you not?
- A. I went there as a witness.
- Q. And you testified in the trial of Lt. Honda under oath, did you not?

DEFENSE: May it please the Commission, I believe the answer to all of this questioning is a matter of record, official record. The man testified, he has testified under oath. Captain Honda was here in person; he was asked that question. As to what transpired at that trial, can only be made a part of this record by introducing that record. If prosecution wants to introduce the record, or if this is purely for the purpose of testing the memory of the witness we have no objection to that.

PROSECUTION: If the Commission please, I think the counsel has a good point, but he is not carrying it to the proper conclusion. I am only going to introduce this record if it is necessary. There is no reason in the world why I could not refresh the memory of this accused and see which way he wants to testify.

DEFENSE: The point is, on what are you refreshing his memory? Is it something that has been brought out to this Commission or something you anticipate to bring out?

PROSECUTION: If the Commission please, I think before my cross-examination is concluded, it will appear why I am doing this. I do not like to state right at this moment.

LAW MEMBER: I think this questioning may be permitted. The objection of defense counsel will be overruled.



PROSECUTION: If you read Frank's testimony.

PROSECUTION: I am merely asking what he did, if he recalls what he did, to save the trouble of bringing in any extra testimony.

DEFENSE: We are strenuously objecting to that report, sir. Now, I have no objection if, after the witness has testified, then he wants to refresh his recollection, that is one thing, but to attempt to refresh his recollection before the man said anything, which is contrary to information he might have, is highly irregular, sir.

PROSECUTION: If the Commission please, he has already stated things that I think are incorrect, and I am now going to find out which side of the fence he is on.

LAW MEMBER: The objection will be overruled and the question may be permitted.

PROSECUTION: Will you repeat the last question, please?

The reporter read back the last question and answer.

Q. Do you recall your testimony in that case with respect to the work done by Captain Steward in the gardens?

A. I do not recall.

Q. Did you not say in your testimony that Steward worked at spreading fertilizer on the gardens after February of 1945?

A. I do not recall.

Q. Do you recall a statement that you made when you were a witness at the trial of Lt. Honda that you kicked Captain Steward?

A. I recall.

Q. Did you kick him?

A. As I described earlier, when I stumbled, my foot struck Steward's feet.

Q. Did you say anything about that when you testified in Lt. Honda's trial?

A. I do not recall.

Q. You have testified that he struck a prisoner of war. Did you only strike one prisoner of war during the period that you were in this camp?

A. Yes.

Q. Then in the two and one-half or so years that you were at this camp, you only struck one prisoner of war?

A. Yes.

Q. Do you recall a Dutch prisoner of war by the name of Beekman?

A. I do not recall him.

Q. Do you recall a small Dutch prisoner about 5'3" whom you struck at one time during your service at this camp?

A. I do not recall.

Q. Do you recall a Dutch prisoner of war by the name of Sergeant Sigmond?

DEFENSE: May I ask, for my own information, is he being charged with these beatings? Who is Sigmond? That is the first time I have heard about it.

PROSECUTION: If you read Franken's testimony. . .

DEFENSE: He says two Dutch prisoners, I believe. Does he mention Sigmond?

PROSECUTION: Sir, in Franken's testimony. . .

DEFENSE: May I ask who the small Dutch prisoner is; is that described in Captain Franken's testimony too?

PROSECUTION: Yes, it is described.

PROSECUTION (to reporter) May we have the last question?

The reporter read back the last question.

WITNESS: I do not recall.

Q. Now, do you recall any time in April 1945 when you kicked Captain Steward?

A. I did not kick him.

Q. Were you ever reprimanded by Lt. Honda for your treatment of prisoners of war?

A. No.

Q. Were you ever warned by Lt. Honda not to mistreat prisoners of war?

A. I did not receive any warning singly, but there was a time we received a warning as a group not to mistreat prisoners of war.

Q. How many times were you warned in this manner?

A. I think we received it about ten times.

Q. Were you ever warned as to your treatment of prisoners of war?

A. No.

Q. Were you ever severely reprimanded by Sgt. Mikawa for your treatment of prisoners of war?

A. No.

Q. Were you ever reprimanded by Sgt. Mikawa for kicking Steward?

A. There was a time I received a warning from him.

Q. And when was this?

A. Around September of 1944.

Q. Why were you warned?

A. About the case I described earlier when my feet struck Steward's leg.

Q. Did not Sgt. Mikawa direct you to apologize to Captain Steward?

A. I was never told to do such a thing by Sgt. Mikawa.

Q. Is it not true that Lt. Honda reprimanded you a number of times for your treatment of prisoners of war?

A. I was never reprimanded by him.

Q. Is it not true that Lt. Honda warned you, perhaps once a month, as to your treatment of prisoners of war?

LAW MEMBER: Do you mean personally or collectively?

PROSECUTION: I seen the way he testified; I don't know.

DEFENSE: May it please the Commission, I should like to point out at this time, this term "warning" is a term that was used when they got these groups together to give them the instructions as to the manner in which they shall treat POWs. Now, "reprimand", as far as the Japanese is concerned, is with reference to scolding. That is something with which we have had trouble throughout all of these cases from the very conception, the different in Japanese, trying to get over to him, the difference between reprimand, scolding and warning.

PROSECUTION: If the Commission please, the testimony speaks for itself. I am only introducing the testimony that I have. The Commission can reach any conclusion that it wishes as to what a warning means and what a reprimand means. In due time I will try to carry to a conclusion the objectives for which I am now aiming, but I should like to suggest that counsel is attempting to testify in court.

DEFENSE: I am merely pointing out the problems that we have had over several months here of war crimes trials with these terms; reprimand, warning and scolding. That is my only purpose in it, and if we continue to jump from reprimand to warning or scolding, it is going to necessitate a great deal of testifying to straighten it out. That is my only point.

Q. Did you ever state under oath, "I do not know how many times that I was reprimanded; however I was warned perhaps once a month"?

A. I did make a statement that the camp commander, Lt. Honda, used to gather the personnel of the camp and give warnings about once a month.

Q. You have not answered my question. My question is, "Did you make the statement which was just read to you when you testified in the trial of Lt. Honda?"

DEFENSE: May it please the Commission, we respectfully ask, if this record is going to be quoted to this accused, that the prosecution introduce that portion of the record dealing with Honda's testimony, and let's have the Commission have the whole picture.

PROSECUTION: If the Commission please, I am more than glad to produce the record, but I must lay the foundation for it, and I am attempting to lay that foundation. Once I have laid it, I will be glad to produce the record.

DEFENSE: It is not fair to take sentences of questions to raise questions, just lift questions out of a whole record and ask this man if he remembers what happened in January of this year. We have no objection if it is a matter of official record. Introduce the whole record; it speaks for itself.

PROSECUTION: If the Commission please, to simplify this matter, we will introduce the record of Lt. Honda into evidence. The prosecution introduces into evidence as its Exhibit No. 55, the certified records of the trial of Lt. Hiroji Honda, the complete record, including all evidence and appendices.

LAW MEMBER: Are you proposing to introduce into the record the complete record or only the part of it on which you are proposing to cross-examine the witness?



PROSECUTION: We will restrict our introduction of evidence to that portion.

LAW MEMBER: Is the defense counsel willing that the complete record be admitted into evidence without reading it?

DEFENSE: Do you mean the complete record of Honda or just the portion applicable to this witness? There are only about three pages applicable to this witness, I mean, the only purpose there, sir, if the whole record is introduced, it is certainly going to clutter up the record that we now have.

PROSECUTION: If the counsel will grant me, I will strike it out and re-introduce it.

PROSECUTION: If the Court please, the prosecution introduces into evidence as presentation's Exhibit No. 58, pages 324 to 327, inclusive, containing the evidence of the accused, Koji Tsuchi, in the trial of Hiroji Honda.

LAW MEMBER: Do you have anything to say on that, Mr. Brinfield, on the admissibility of this document?

DEFENSE: Just the portion dealing with it, sir.

LAW MEMBER: Pages 324 to 327 ...

PROSECUTION: Of the record of the trial of Hiroji Honda by a Military Commission organized by the Commanding General, Headquarters Eighth Army, tried at Yokohama Japn, on the 19th of January, 1946.

LAW MEMBER: Certified copy of the extract of the record of the trial of Lt. Hiroji Honda, pages 324 to 327, inclusive, being the portion relating to the testimony of the present accused, Tsuchi, will be admitted in evidence as Exhibit No. 58.

Certified copy of extract of the record of trial of Lt. Hiroji Honda, pages 324 to 327 inclusive, testimony relating to the accused, Koji Tsuchi, was then received in evidence and is marked Prosecution's Exhibit No. 58.

PROSECUTION: May we have the last question, please?

The reporter read back the question.

WITNESS: I made a different statement from that. I made an answer that was similar to this, but it is not absolutely the same statement I made.

Q. At the trial of Lt. Honda, did you not make the statement, "When I killed the prisoner referred to as Captain Steward," he received a slight bruise, and I was called in before Lt. Honda and severely reprimanded."

DEFENSE: From what page are you reading?

PROSECUTION: 326.

Q. "And was told that I was greatly at fault, and that I must apologize to the prisoner and so that incident was closed with my apology to that prisoner and the prisoner accepted my apology." You later corrected this statement stating that Sgt. Mikawa was the one who ordered you to make this apology.

DEFENSE: Let us read the record too, if you will, and answer, so that we can follow it.

PRESIDENT: So that this matter can be continuous, and I believe it cannot be now without interruption, we will call a recess.

PROSECUTION: To clarify the matter, I will ask the Commission for permission to strike that question, and I will reframe it.

PRESIDENT: No, I am not asking that. We can start at 1:15 with that portion of it. The Commission will stand adjourned until 1315 hours.

The Commission then took a recess until 1315 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

PRESIDENT: The Commission is in session.

The accused, Koju Tania, resumed the stand and was reminded that he was still under the oath previously taken.

PROSECUTION: If the Commission please, in order to simplify the contention of the defense, prosecution strikes its last question and will reframe it.

#### CROSS-EXAMINATION, continued.

Questions continued by the prosecution:  
(Answers through the court interpreter)

Q. In the trial of Lt. Honda you testified with respect to Captain Steward, with reference to an incident which occurred during the period April, 1943, to the end of February, 1945. To the question, "What happened after that occasion?" you answered, "When I kicked the prisoner, he received a slight bruise, and I was called in before Commandant Honda and severely reprimanded and was told that I was greatly at fault and that I must apologize to the prisoner, and so that incident was closed with my apology to that prisoner, and the prisoner accepted my apology." Q. Are you sure that was Lt. Honda that reprimanded you? A. That was Sgt. Mikawa. I will ask you whether or not you made that statement in the trial of Lt. Honda.

A. I do not recall.

Q. If you did make that statement, would it be true?

DEFENSE: I think that question is a little bit out of order. The witness has testified that he did not recall making the statement, and I presume he would not be able to say that if he made such a statement, would it be true. The record speaks for itself.

PROSECUTION: All right, we will withdraw that question.

Q. Is that statement true?

A. I should like to hear it read to me again.

PROSECUTION: The interpreter will re-read the statement.

PROSECUTION: Let the record show that the statement was re-read.

WITNESS: I do not recall making such a reply.

Q. The question is, is that statement true or false?

DEFENSE: If it please the Commission, the man has answered twice that he does not remember making a statement, how can he answer whether it was true or false?

PROSECUTION: He knows whether that was done or was not done. We are merely asking him. He stated once that it was.

DEFENSE: He answered twice in answer to your question . . .

PROSECUTION: I did not ask him, did he recall; I asked him, is that statement true or false.

LAW MEMBER: I think the witness may answer that question, the objection is overruled.

WITNESS: Do you mean if I were to have made that answer?

Q. Is that a correct statement or is it an incorrect statement?

A. That reply is not correct.

INTERPRETER: Sir, he was asking about the Sergeant's name, whether it was Mikawa or Maskawa, and his answer remains the same. He states that he would like to have all of this translated clearly and accurately so that he can be sure of his answer.

LAW MEMBER: He would like to have what translated, just this sentence?

INTERPRETER: No, everything.

LAW MEMBER: The whole record?

INTERPRETER: No, sir, just everything in general. He is saying that he would like to have all the questions and answers; he is making the request of us, sir, that all these questions to him and answers be clear.

DEFENSE: May it please the Commission, I think I can explain that. This question which has just been asked the witness actually begins on page 325 and it continues down to 326 practically to the bottom of the page. Now this question that has just been asked is an extract from that entire testimony, and if we are going to base questions on the testimony, I think that the witness should be given all the testimony that was given there, and then question him on it.

LAW MEMBER: I think that is a very reasonable request, because these three pages that have been admitted into evidence have not been read either in English or Japanese.



**PROSECUTION:** If the Commission please, to begin with, I am reading this verbatim from the record because the defense requested me to do so. I wanted to simplify the request by asking him categorically on simple questions all based upon this record, in order that he might qualify himself with respect to his previous testimony, but the defense has insisted that I read it verbatim, which is all right with me. If defense desires, I will read the entire testimony to the accused, but that would be an awful waste of time. Now, with respect to the defense's contention that this question starts way back, I disagree with the defense. I think it is very coherent at the point where I started. I am merely asking a simple question. In this evidence he states that he was severely reprimanded and was ordered to apologize, and according to the record, it states that Commandant Honda required him to do this. Then he changed that and said it was Sergeant Mikawa who ordered him to do it. It goes on to state that he understands the difference between reprimand and warning, all of which the defense is trying to explain to this Commission for the record, which is unnecessary. He knows the difference between those things, because it states so in the record. He is either lying or he is not lying, and I am trying to find out which he is doing.

**DEFENSE:** May I respectfully answer, if the prosecution wishes to testify, we have no objection to it.

**PROSECUTION:** If the Commission please, I resent that, because just a moment ago the defense was testifying, and I think neither of us should testify and I don't want it.

**DEFENSE:** I merely suggest, in order to get at this thing in an intelligent manner, that since the testimony of this witness given in the Honda trial only takes up two or three pages here, that the testimony all be read to the Commission, and then if questions are to be based on that, then those questions can be translated to the witness.

**LAW MEMBER:** I think that is a very reasonable request, and I would like to ask that those pages that have been admitted into evidence be read to the Commission, otherwise we do not know the background of these questions.

**PROSECUTION:** If the Commission please, prosecution will read into the evidence the testimony of Koju Tsuda given at the trial of Hiroji Honda.

Certified copy of the extract of the record of trial of Hiroji Honda, pages 324 to 327 inclusive, relating to the testimony of the accused, Koju Tsuda, was then read into the record.

**PROSECUTION:** May we have the last question and answer?

The reporter read back the last question and answer.

**PROSECUTION:** I will ask to have read to you again your answer in the trial of Hiroji Honda, and ask if that is a true or a false statement. In that case you said, "When I kicked the prisoner he received a slight bruise and I was called in before Commandant Honda and was severely reprimanded and was told that I was greatly at fault and that I must apologize to the prisoner and so that incident was closed with my apology to that prisoner, and the prisoner accepted my apology." "Q. Are you sure that it was Lt. Honda who reprimanded you?" "A. That was Sgt. Mikawa." I will ask the interpreter again to read that.

The interpreter complied with the request.

- Q. I will ask you again, is that a true or false statement?
- A. If I had used those exact words, that would be false because I do not recall making such a statement.
- Q. Now when you were on duty, at what time in the morning did you turn out the work details?
- A. Between six and eight in the morning.
- Q. And at what time did the men report for sick call?
- A. 9:00 A.M.
- Q. In other words, approximately three hours elapsed between the time that working parties were sent to work and the men went on sick call, is that correct?
- A. Three hours will have elapsed after the first group of men go out, but only about an hour will have elapsed after the last group of men go to work.
- Q. How many men were in a working detail?
- A. By working detail, exactly what do you mean?
- Q. In the morning you turned out prisoners of war at about 6:00 o'clock for work. At that time, how many men did you have to turn out?
- A. There was no fixed number.
- Q. Consider for a moment the British prisoners of war, how many barracks did they occupy, give me some approximation.
- A. Four or five.
- Q. About how many prisoners of war were there in each barracks?
- A. I do not recall.
- Q. Approximately?
- A. I think it was probably around sixty.
- Q. If you went to that barracks with sixty men in it, and fifty of them told you at 6:00 o'clock in the morning that they were too sick to work, what would you do?
- A. That would be just supposing, would it not?
- Q. Yes, I am asking him what he would do if there were only ten prisoners out of sixty turning out for work.
- A. I will report this to the senior general affairs non-commissioned officer.
- Q. And where is he located at that time in the morning?
- A. In the barracks.
- Q. Who was the senior affairs officer to whom you refer?
- A. In this case, are the prisoners of war British?
- Q. Yes, the British.
- A. Sergeant Mikawa. After Sergeant Mikawa left, that person was Corporal Kobayashi.
- Q. Now then, you would report this to Sergeant Mikawa. In the meantime, what are you doing with your detail?
- A. I will not do anything with regard to the work detail.

The interpreter complied with the request.

- Q. I will ask you again, is that a true or false statement?
- A. If I had used those exact words, that would be false because I do not recall making such a statement.
- Q. Now when you were on duty, at what time in the morning did you turn out the work details?
- A. Between six and eight in the morning.
- Q. And at what time did the men report for sick call?
- A. 9:00 A.M.
- Q. In other words, approximately three hours elapsed between the time that working parties were sent to work and the men went on sick call, is that correct?
- A. Three hours will have elapsed after the first group of men go out, but only about an hour will have elapsed after the last group of men go to work.
- Q. How many men were in a working detail?
- A. By working detail, exactly what do you mean?
- Q. In the morning you turned out prisoners of war at about 6:00 o'clock for work. At that time, how many men did you have to turn out?
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- Q. Consider for a moment the British prisoners of war, how many barracks did they occupy, give me some approximation.
- A. Four or five.
- Q. About how many prisoners of war were there in each barracks?
- A. I do not recall.
- Q. Approximately?
- A. I think it was probably around sixty.
- Q. If you went to that barracks with sixty men in it, and fifty of them told you at 6:00 o'clock in the morning that they were too sick to work, what would you do?
- A. That would be just supposing, would it not?
- Q. Yes, I am asking him what he would do if there were only ten prisoners out of sixty turning out for work.
- A. I will report this to the senior general affairs non-commissioned officer.
- Q. And where is he located at that time in the morning?
- A. In the barracks.
- Q. Who was the senior affairs officer to whom you refer?
- A. In this case, are the prisoners of war British?
- Q. Yes, the British.
- A. Sergeant Mikawa. After Sergeant Mikawa left, that person was Corporal Kobayashi.
- Q. Now then, you would report this to Sergeant Mikawa. In the meantime, what are you doing with your detail?
- A. I will not do anything with regard to the work detail.



Q. How would the work be done?

A. I think that the company personnel would be able to answer that, as I do not know very well about the work.

Q. In those barracks of sixty British soldiers, supposing there were five of them who stated they were too ill to work. What would you do with respect to those five prisoners of war?

A. They would be made to rest for medical examination.

Q. Suppose those prisoners of war were not sick, but merely wished to escape three hours of work, what would you do?

A. By that, "three hours of work", I would like to know what that means. I cannot understand that part of the question stating "three hours of work."

Q. Supposing a prisoner of war was not sick, but merely said so, what would you do in his case?

A. I will not be able to tell whether they are sick or not, because I am not a doctor, and so I would leave them alone as they said.

Q. If you did that, they would lose three hours of work, is that correct?

PRESIDENT: May I suggest that you change that to a day's work instead of three hours' work. That is what you mean, no doubt.

Q. In other words, they would lose a day's work, is that correct?

A. Of course they would not do difficult work if they rested from work.

Q. And then what would happen to them?

A. When they rested from work, they would be given a medical examination, and as a result of this medical examination, it will be decided whether they are sick or not.

Q. If you had prisoners of war working with you in the garden, and one of them became ill, could he leave immediately and report to the dispensary as sick?

A. Yes.

Q. Could he leave without asking your permission?

A. Yes, he could go.

Q. He could leave that working detail and go to the dispensary without asking your permission, is that your statement?

A. Yes, if I were not there, he would be able to leave without contacting me. But if I were there, somebody would come to speak to me, saying there was an ill man, that there was an ill man present.

Q. Did you ever refuse to grant permission to a prisoner of war who claimed to be sick, the privilege of leaving and going to the dispensary.

A. No.

Q. Now, supposing you are in charge of a work detail, one of the working party steals rice from a Japanese in the camp. What do you do in a case like that?

DEFENSE: I have no objection to the question. I am just wondering about the question as to the relevancy to the charge here of stealing rice. Just what is the point being raised or established?

PROSECUTION: If the Commission please, it is cross-examination, and I am trying to bring out a certain point.

LAW MEMBER: The objection is overruled, and the witness may answer the question.

DEFENSE: I have no objection, I was merely asking.

INTERPRETER: The witness is asking, in that case, do you mean the culprit is already known?

Q. You see a prisoner of war stealing rice from a Japanese. What do you do to that prisoner of war?

A. I would stop him, that is, in case I saw him doing that.

PRESIDENT: The Commission will take a short recess.

The Commission then took a recess until 1440, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

PRESIDENT: The Commission is in session.

The accused, Koju Tsuda, resumed the stand, and was reminded that he was still under the oath previously taken.

Questions continued by the prosecution:  
(Answers through the court interpreter)

Q. Do you know Sergeant Bennett?

A. Yes.

Q. Where did he work?

A. In the dispensary.

Q. Did you see him often?

A. Two or three times in five days.

Q. Did you go to the dispensary often?

A. I went about two or three times in a week.

Q. Who were the doctors in the dispensary, the prisoner of war doctors in the dispensary?

A. I do not recall the name, but there was a Dutch doctor, an English doctor and a Canadian doctor; we just called them "Doctor".

Q. You saw all three of these quite frequently?

A. Yes.

Q. Did you like Sergeant Bennett?

A. I did not particularly like him or hate him.

Q. Did you ever have any trouble with Sergeant Bennett?

A. There was none personally.

- Q. What sort of trouble did you have with him, personally or otherwise?
- A. He used to make errors in giving the number of men during roll call, and so there were times I corrected him.
- Q. Did you talk very much with the doctors?
- A. Not very much.
- Q. Did you have any trouble with the doctors?
- A. No.
- Q. Did you know Lt. Commander Finn?
- A. Yes.
- Q. What was his position in the camp?
- A. He was the man responsible for the Canadian prisoners of war.
- Q. Did you ever have any trouble with Lt. Commander Finn?
- A. No.
- Q. Now, did prisoners of war have any trouble in understanding you when you gave commands?
- A. I think there were times when they could not understand me, because I could not understand English and they could not understand Japanese very well.
- Q. Can you recall any instance when this occurred?
- A. I do not recall.
- Q. You cannot recall a single instance when a prisoner of war misunderstood you or your commands during two and one-half years, is that correct?
- A. Are you asking about the case in which they did not understand a bit of of the command or when they just faintly understood?
- Q. Either case.
- A. I do not recall.
- Q. You issued supplies to prisoners of war, clothing supplies to prisoners of war. How did you issue these supplies?
- A. I issued the clothing in accordance with orders from the camp commander and this issue of clothing was based upon the internment regulations. When I received these orders that certain items be issued, then I did so.
- Q. Where did you issue the clothing?
- A. I issued the clothing in the clothing warehouse at the place where there was no floor, one portion of the warehouse where there was no floor, and I spread out the clothing on the space which had a floor.
- Q. How did the prisoners of war receive this clothing from you?
- A. They received the clothing after counting their numbers.
- Q. Were they in formation, lined up, in other words?
- A. No.
- Q. If they failed to count their numbers correctly, did you ever strike them?
- A. No.



Q. Did you ever strike a prisoner of war when you were issuing clothing to him?

A. No.

Q. Did you ever inspect prisoners of war to see if they had all their clothing or that their clothing was in good condition?

PRESIDENT: May I ask what the counsel is trying to show in connection with clothing?

PROSECUTOR: If the Commission please, I am trying to show that he either did or did not strike prisoners of war on these occasions, and I will leave it to the Commission.

PRESIDENT: Just ask him those questions directly. If it can be accomplished without a build-up, or is there something in connection with the build-up?

PROSECUTOR: In cross-examination, the Commission will appreciate. I do not know what is going to happen. I am only trying to get things to happen. If I fall, that is one part of it, and if I win, that is another part. I am trying to get the truth. If the Commission desires to shorten it, I shall be glad to cooperate.

PRESIDENT: I am not making any suggestion that you shorten it at all, merely if there is some way in which we can expedite it and still accomplish the purpose. That is the thing I want to do, if possible.

PROSECUTOR: Yes, sir. May I have the last question, please?

The reporter read back the last question.

WITNESS: Yes.

Q. Did you ever strike, kick or beat a prisoner of war at a clothing inspection?

A. No.

Q. When Henderson was injured in the garden, was Padre Webb there in the garden at the same time?

A. I think he was there.

Q. Henderson has testified that you left him on the ground and that his head was bandaged by others. Is that true or false?

A. That is false, because he did not fall to the ground, and the others did not bandage his head.

Q. When did you leave Sental Branch Camp 1B?

A. The end of August, 1945.

Q. Were you warned to leave this camp by either the Camp Commandant or prisoner of war officers because of what the prisoners of war might do to you?

A. No.

Q. Is it not true that you left the camp on the 18th of August, 1945?

A. I do not recall the exact date.

Q. Then, it might have been the 18th of August that you left the camp. might it not?

A. I think it was a little later.

Q. Did you not once make the statement to the effect that you left this camp on the 18th of August or thereabouts, or very closely around the 18th of August, 1945.

DEFENSE: I don't recall the statement.

PROSECUTION: Withdraw that question. I will rephrase it.

Q. Did you ever make a statement to me at Sugamo Prison that you left Sendai Branch Camp No. 1B about the 18th of August, 1945?

A. I do not recall.

PROSECUTION: Commission's witness.

PRESIDENT: Any redirect?

DEFENSE: Yes, sir, there will be a few questions. Shall I proceed before the Commission asks its questions, sir?

PRESIDENT: Proceed.

#### REDIRECT EXAMINATION

Questions by the defense:  
(Answers through the court interpreter)

Q. I now direct your attention to a statement which you made on cross-examination relative to warnings given by Lt. Honda to camp personnel. How often did Lt. Honda warn the camp personnel relative to the treatment of POWs?

A. About once a month when he gathered all the personnel.

Q. Now, on these occasions, what kind of warning or instructions did Lt. Honda give to the camp personnel?

A. He said that prisoners of war were to be handled with care, and in regard to issue of articles to prisoners of war, there should be care taken that no mistake be made, because in the issue of these goods at other branch camps, there have been mistakes. He also told us that there had been prisoners of war escaping from other branch camps and warned us to prevent escapes beforehand.

Q. Now these meetings which you testified were held approximately once a month, were those meetings held purely for the purpose of instructing the camp personnel as to how POWs should be handled or were they held because some POW had been abused or mistreated by some individual in the camp?

A. I do not clearly know the intentions of the camp commander, but when he assembled us, usually he had notifications from the main camp to pass on to us also.

Q. Now I will ask you whether or not, while you were at this camp, if you were ever scolded by a Lt. Honda because of the treatment you had meted out to the POWs?

A. No.

Q. Now again directing your attention to testimony which you gave in the Honda Trial. At the time you testified at this trial, were you asked to give the details of the Steward incident?

PROSECUTION: If the Commission please, I believe the record answers that question. What was said is all a matter of record.

DEFENSE: As correctly as I recall, a great deal of detail was held here on cross-examination.

LAW MEMBER: I think the witness may answer that question.

A. I think there were no questions asking for the details.

Q. And you stated in that trial that Sergeant Mikawa reprimanded you, is that correct?

A. I would like to ask whether in English, this reprimand and warning are two different words, because at that time I had answered that I had been warned.

Q. When you gave answer to the question that you were reprimanded, tell the Commission exactly what you meant; what do you understand by the word "reprimand"?

DEFENSE: Strike that, I think we can get it better this way.

Q. Do you understand the words reprimand and warned to mean the same thing?

A. I think they are different.

Q. Explain what you understand is the difference between these two.

A. In the case of warning, there are two types, a warning that is given before a thing happens or after something happens; and in the case of a warning, it is given gently and kindly; but in the case of a reprimand, it is given very sternly by a person whose color of whose face has changed, and given very sternly.

Q. Now, I will ask you whether or not you were reprimanded by Sergeant Mikawa because of the Steward incident?

A. No, he warned me.

Q. You testified on cross-examination with reference to forming the men for working parties in the morning part of the day. Now, how often did you assemble the working parties at the camp?

A. I could not quote the figures, because it runs up to a considerable number.

Q. Would you form the working parties at 6:00 o'clock in the morning at times, or at times other than when you were serving as Nichoku?

A. No.

DEFENSE: No further questions.



EXAMINATION BY THE COMMISSION

Questions by the Commission:  
(Answers through the court interpreter)

- Q. Was the war over at the time you left the camp?  
A. Yes.
- Q. At that time had the Japanese Emperor proclaimed that the Japanese army was to surrender, and that one of the terms was that all Allied prisoners of war held by the Japanese were to be released immediately?  
A. I do not recall.
- Q. Were the prisoners still under guard at the time you left?  
A. I think at that time it was the prisoners of war who were at the gate and guarding the place.
- Q. Had any of the prisoners of war been evacuated and returned to the Allies?  
A. I do not know.
- Q. Were the Japanese personnel still there and administering the camp?  
A. There were some soldiers within the camp; I do not think they were doing things as before.
- Q. Had any of the other personnel left that had been present before the war was over and who had been engaged in running the camp?  
A. Yes.
- Q. Had the other Gunzokus gone at the time you left, or were they still there?  
A. They were there.
- Q. Did they go with you and leave at the same time with you?  
A. I do not know.
- Q. Why did you leave at the time that you did?  
A. It was by order of the camp commander, and so I do not know.
- Q. Do you mean by that, the camp commander ordered you to leave the camp?  
A. Yes.
- Q. When you left the camp, did you understand that you were fired, or that your services were no longer needed because the camp was soon to be closed or was being closed?  
A. I thought that there was no necessity for Gunzokus because the war was over, and at that time I felt that a Gunzoku was a sorry being.
- Q. Where did you go when you left the camp?  
A. To my native town.
- Q. How long was it after you left the camp before the prisoners of war left the camp?  
A. I do not know.
- Q. Did you come back to the camp any time after you left it?  
A. No.

Q. How far was your native town away from camp?  
A. About fifty miles.

PRESIDENT: Are there any further questions?

DEFENSE: There is one question I should like to ask.

REDIRECT EXAMINATION, continued.

Questions by the defense:  
(Answers through the court interpreter)

Q. After you were relieved from camp as a Gunzoku, did you at any subsequent date visit the camp, not go back to work, but visit back at the camp?

A. Yes.

Q. On how many occasions did you visit back at the camp after you left the employment of the camp?

A. Once.

Q. Were the POWs still at the camp at this time?

A. Yes.

DEFENSE: No further questions.

INTERPRETER: Sir, the witness is saying he has some things to say for himself.

PRESIDENT: Will you discuss it with him and see if there is anything that is relevant ...

PRESIDENT: Tell him to make his remarks.

ACCUSED: During the period of my service at the prisoner of war camp I was performing the duty allotted to me in accordance with the commands of my superior officer, and also in accordance with regulations. In spite of that, some of the prisoners of war and the persons who came here as witness said certain bad things about me, and I cannot understand why they made such statements. I'd like to certify that everything that I said about what I did is all the truth. It is said that Corporal Scott died a few hours after being struck, but I'd like to say that I was not connected in any way with Corporal Scott and did not strike him, nor did I hit him. Because of the fact that I cannot speak English, and most of the prisoners of war could not speak Japanese, there were misunderstandings between us, and at times I raised my voice, so I think there might have been occasions when the prisoners thought that I was scolding them, but that was not so. As all of you might already know, the Japanese army has very stern regulations, and so I might have handled them sternly in accordance with these regulations. Since I was taken to Sugamo Prison, it has been more than a year, during which time, day and night at Sugamo Prison, I prayed for those prisoners of war who had fallen ill and died, and I have also prayed for the good fortunes of those happy prisoners of war who have gone back to their native countries. These words I am saying come from the bottom of my heart. I would gladly accept punishment for things in which I was bad, but do not want to accept the guilt for those offenses of which I am not guilty. I am very

thankful for the careful consideration which the President of the Commission and all the other members of the Commission have given to the evidence and all the witnesses which have been presented in court during these many days of this trial. I would especially like to thank the defense counsel who put every effort into defending me by his efforts. I now put myself at the mercy of the Commission and ask for mercy as far as the laws will permit. That is all.

PRESIDENT: The witness may be excused.

The accused was excused, and resumed his seat.

PRESIDENT: Does the defense have any further witnesses?

DEFENSE: No; I have one further exhibit here I should like to introduce, and then I will be through.

PRESIDENT: You may submit it.

DEFENSE: At this time the defense offers as Exhibit A the affidavit of Robert Screen. The original of this affidavit is in the possession of the prosecution, and I presume they have no objection to its being introduced.

PROSECUTION: No objection.

PRESIDENT: Is it necessary that this be read into evidence?

PROSECUTION: It need not be read so far as I am concerned, unless defense so desires.

LAW MEMBER: The affidavit of Robert Screen will be admitted into evidence as Defense's Exhibit A.

The affidavit of Robert Screen was then received in evidence, read to the Commission except those portions lined out, and is marked Defense's Exhibit A.

DEFENSE: Defense rests.

PRESIDENT: Are there any further witnesses to be called by the prosecution?

PROSECUTION: No sir.

PRESIDENT: By the defense?

DEFENSE: No sir.

PRESIDENT: You will be prepared to make the closing statement in the morning then?

DEFENSE: Yes sir.



PROSECUTION: I should like to ask one question of the Commission. We have not put into evidence the letter from the Secretary of State with respect to the promised compliance. To my mind that is not necessary. I talked to the prosecution, and some Commissioners are requiring it, and I am merely requesting the president, if they wish to put it in. I do not require it myself. It is the exchange of correspondence between the Swiss government and the Japanese government and our State Department with respect to the compliance of the Japanese government with the Hague Convention Rules.

DEFENSE: That is unofficial, and it is not necessary.

PROSECUTION: I do not consider it necessary, but I talked it over with Colonel Blackstock at lunch today, and he said that some Commissioners require it.

DEFENSE: It is purely unofficial correspondence of a confidential nature.

PROSECUTION: If the Commission please, I do not think it is necessary. If this were a camp commander case, it might be a different situation, but with this type of case, I do not consider it essential.

DEFENSE: I might say they are frequently omitted unless there is some particular reason for it.

PRESIDENT: The Commission will adjourn until tomorrow morning at 0900.

The Commission then, at 1600 hours, on 25 November 1946, adjourned to meet at 0900 hours on 26 November 1946.

*Clair F. Shumaker*

*William R. Bready*  
WILLIAM R. BREADY  
Captain Major  
Chief Prosecutor

The Commission then, at 1145 hours, on Tuesday, November 26, 1946, adjourned to meet at 1100 hours Wednesday, November 27th.

*Clair F. Shumaker*

*William R. Bready*  
WILLIAM R. BREADY  
Captain Major  
Chief Prosecutor

HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse  
Yokohama, Japan  
Tuesday, 26 November 1945

The Commission met, pursuant to adjournment, at 0900 hours on 26 November 1945, all the personnel of the Commission, prosecution and defense who were present at the close of the previous session in this case being present.

The accused, reporter and interpreters were also present.

PRESIDENT: The Commission is in session. Does the prosecution wish to make an opening statement?

PROSECUTION: No sir, I waive opening argument. I will make the concluding argument with the Commission's permission.

PRESIDENT: Is the defense ready to make opening argument?

DEFENSE: Yes, sir.

Oral arguments were then made by the defense and prosecution, also by the Japanese defense counsel, Mr. Tatsuo Inagawa.

PRESIDENT: The necessary time for deliberation on this case cannot be anticipated, therefore temporary expedience will have to be used. I believe that I will be safe in saying that if the Commission were called at 1100 hours tomorrow morning, we might be able to pass all obstacles in view of the interruption we will sustain in attending a meeting early in the morning. The accused has been directed to be present tomorrow, and we do not want to hold other members of the Commission unnecessarily, so that I think we can arrive at 1100 hours tomorrow morning. The Commission will stand adjourned.

The Commission then, at 1145 hours, on Tuesday, November 26, 1945, adjourned to meet at 1100 hours Wednesday, November 27th.

Of Specification 6: Guilty.

Of Specification 10: Guilty.

Of Specification 12: Guilty.

Of Specification 13: Guilty.

Of the Charge: Guilty.

*William R. Bready*  
WILLIAM R. BREADY  
Captain Major  
Chief Prosecutor

HEADQUARTERS EIGHTH ARMY

PRESIDENT: Is there any further business to come before the Commission?

PROSECUTION: If the Commission please, there is nothing else.

DEFENSE: Defense has nothing, sir.

Yokohama Courthouse  
Yokohama, Japan  
Wednesday, 27 November 1946

PRESIDENT: The Commission will adjourn to meet at the call of the President.

The Commission met, pursuant to adjournment, at 1110 hours on 27 November 1946, all the personnel of the Commission, prosecution and defense who were present at the close of the previous session in this case being present.

The accused, reporter and interpreters were also present.

PRESIDENT: The Commission is now in session. Together with Prosecution's Exhibits No. 1 through No. 23, and Defense's Exhibit No. A, referred to, and identified therein, except ~~as follows~~ of the exhibits no have been listed and deleted, and initialed, constitute the complete record of trial.

KOJU TSUDA, the Commission, in closed session and upon secret written ballot, two thirds of the members present at the time the vote was taken concurring in each finding of Guilty, finds you:

Of Specification 1: Guilty, except the word "cause", and substituting therefor the words "contributing thereto"; of the excepted word Not Guilty and of the substituted words Guilty.

Colonel, Inf.  
President.

Of Specification 2: Guilty.

Of Specification 3: Guilty.

Of Specification 4: Guilty.

Of Specification 5: Guilty.

Of Specification 6: Guilty. I examined the record before it was authenticated, and Prosecution

and identified in the record are a part thereof except such portions of the record as have been deleted, and initialed.

Of Specification 7: Guilty.

Of Specification 8: Guilty.

Of Specification 9: Guilty.

Of Specification 10: Guilty.

Of Specification 11: Guilty.

Of Specification 12: Guilty.

Of the Charge: Guilty.

*John B. ...*  
MR. W. ...  
Defense Counsel.

SENTENCE

And again in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences you:

To be confined at hard labor, at such place as the reviewing or higher authority may direct, for the term of your natural life.



PRESIDENT: Is there any further business to come before the Commission?

PROSECUTION: If the Commission please, there is nothing else.

DEFENSE: Defense has nothing, sir.

PRESIDENT: The Commission will adjourn to meet at the call of the President.

The Commission then, at 1120 hours on 27 March 1946, adjourned to meet at the call of the president.

#### AUTHENTICATION OF RECORD

The foregoing typewritten record of trial, together with Prosecution's Exhibits No. 1 through No. 58, and Defense's Exhibit No. A, referred to, and identified therein, except such portions of the exhibits as have been lined out, deleted, and initialed, constitute the complete record of trial in this case.

*William R. Bready*  
WILLIAM R. BREADY  
Captain, Major  
Chief Prosecutor.

*Clair F. Shumacher*  
CLAIR F. SHUMACHER,  
Colonel, Inf.,  
President.

I examined the record before it was authenticated, and Prosecution Exhibits No. 1 through No. 58, and Defense's Exhibit No. A, referred to, and identified in the record are a part thereof except such portions of the exhibits as have been lined out, deleted, and initialed.

*Earl E. Brinsfield*  
EARL E. BRINSFIELD  
Defense Counsel

PRESIDENT: Is there any further business to come before the Commission?

PROSECUTION: If the Commission please, there is nothing else.

DEFENSE: Defense has nothing, sir.

PRESIDENT: The Commission will adjourn to meet at the call of the President.

The Commission then, at 1120 hours on 27 March 1946, adjourned to meet at the call of the president.

#### AUTHENTICATION OF RECORD

The foregoing typewritten record of trial, together with Prosecution's Exhibits No. 1 through No. 58, and Defense's Exhibit No. A, referred to, and identified therein, except such portions of the exhibits as have been lined out, deleted, and initialed, constitute the complete record of trial in this case.

*William R. Bready*  
WILLIAM R. BREADY  
Captain Major  
Chief Prosecutor.

*Clair F. Shumacher*  
CLAIR F. SHUMACHER,  
Colonel Inf.,  
President.

I examined the record before it was authenticated, and Prosecution Exhibits No. 1 through No. 58, and Defense's Exhibit No. A, referred to, and identified in the record are a part thereof except such portions of the exhibits as have been lined out, deleted, and initialed.

*Earl E. Brinsfield*  
EARL E. BRINSFIELD  
Defense Counsel