

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

Yokohama, Japan  
28 February 1949

UNITED STATES OF AMERICA VS RIMPEI KATO -  
UNITED STATES OF AMERICA VS OKIKATSU ARAO -  
UNITED STATES OF AMERICA VS GORO ISOYA -  
UNITED STATES OF AMERICA VS CHOHO MONONOBE -  
UNITED STATES OF AMERICA VS HIROSHI NUKATA -  
UNITED STATES OF AMERICA VS BUNRO SAHEKI -  
UNITED STATES OF AMERICA VS MITSUO TOMITA  
UNITED STATES OF AMERICA VS YAHEI TOYAMA  
UNITED STATES OF AMERICA VS TADAKAZU WAKAMATSU -

Review of the Staff Judge Advocate

1. The attached record of trial of the case of Rimpei Kato, Okikatsu Arai, Goro Isoya, Choho Mononobe, Hiroshi Nukata, Bunro Saheki, Mitsuo Tomita, Yahei Toyama, and Tadakazu Wakamatsu, tried at Yokohama, Japan, from 15 October 1948 to 3 December 1948 by a Military Commission appointed by paragraph 4, Special Orders Number 226, Headquarters Eighth Army, United States Army, dated 6 October 1948 as amended by paragraph 1, Special Orders Number 245, dated 28 October 1948, and paragraph 1, Special Orders Number 253 dated 6 November 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Rimpei Kato  
AGE: 56  
RESIDENCE: Mie Prefecture, Kawage Gun,  
Ueno-Mura, Chisato 839  
MARITAL STATUS: Married  
RELATIVES: None  
EDUCATION: War College (Graduated 1924)  
VOCATION: None  
MILITARY CAREER: OCS 1913 (Probationary  
Officer); 1913 Second Lieutenant;  
1916 First Lieutenant; 1923 Captain;  
1930 Major; 1932 Lieutenant Colonel;  
1937 Colonel; 1939 Major General;  
1942 Lieutenant General

DATE OF CONFINEMENT: 23 July 1948  
DATE OF ARRAIGNMENT: 15 October 1948  
PLACE OF TRIAL: Yokohama, Japan  
PERIOD OF TRIAL: 15 October 1948 -  
3 December 1948  
DATE OF SENTENCE: 3 December 1948  
SENTENCE: CHL for eighteen (18) years  
CLEMENCY RECOMMENDED BY COMMISSION: No

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NAME: Okikatsu Arai  
AGE: 47  
RESIDENCE: Tokyo Prefecture, Satagaya-  
Ku, Taishodo 168  
MARITAL STATUS: Married  
RELATIVES: Father & Mother  
EDUCATION: OCS & War College  
VOCATION: Unknown  
MILITARY CAREER: December 1, 1923  
Second Lieutenant; 1925 First  
Lieutenant; August 1, 1931 Captain;  
August 1, 1937 Major; 1938 Lieutenant  
Colonel; 1942 Colonel.

DATE OF CONFINEMENT: 21 July 1948  
DATE OF ARRAIGNMENT: 15 October 1948  
PLACE OF TRIAL: Yokohama, Japan  
PERIOD OF TRIAL: 15 October 1948 -  
3 December 1948  
DATE OF SENTENCE: 3 December 1948  
SENTENCE: CHL for six (6) years  
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Goro Isoya  
AGE: 52  
RESIDENCE: Kanagawa-Ken, Fujisawa-shi,  
Katase, Nishi Hama 2932  
MARITAL STATUS: Married  
RELATIVES: 2 Brothers, 1 Sister  
EDUCATION: War College (graduated  
1924)  
VOCATION: Company employee  
MILITARY CAREER: 1916 Second Lieutenant;  
1920 First Lieutenant; 1925 Captain;  
1931 Major; 1936 Lieutenant Colonel;  
1938 Colonel; 1942 Major General;  
1945 Lieutenant General

DATE OF CONFINEMENT: 22 July 1948  
DATE OF ARRAIGNMENT: 15 October 1948  
PLACE OF TRIAL: Yokohama, Japan  
PERIOD OF TRIAL: 15 October 1942 -  
3 December 1948  
DATE OF SENTENCE: 3 December 1948  
SENTENCE: CHL for one (1) year  
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Choho Mononobe  
AGE: 55  
RESIDENCE: Tokyo-to, Setagaya-Ku,  
Shimura, 1-129  
MARITAL STATUS: Married  
RELATIVES: Two Daughters, one son,  
Three brothers  
EDUCATION: Army Academy 1914; War  
College 1920  
VOCATION: Agriculture  
MILITARY CAREER: 1914 Second Lieutenant;  
1917 First Lieutenant; 1921 Captain;  
1925 Major; 1928 Lieutenant Colonel;  
1936 Colonel; 1940 Major General;  
1943 Lieutenant General

DATE OF CONFINEMENT: 21 July 1948  
DATE OF ARRAIGNMENT: 15 October 1948  
PLACE OF TRIAL: Yokohama, Japan  
PERIOD OF TRIAL: 15 October 1948 -  
3 December 1948  
DATE OF SENTENCE: 3 December 1948  
SENTENCE: CHL for one (1) year  
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Hiroshi Nukata  
AGE: 53  
RESIDENCE: 58 Ryudo Machi, Asabu,  
Minato-Ku, Tokyo  
MARITAL STATUS: Married  
RELATIVES: 2 Brothers & 1 Sister  
EDUCATION: Graduate of OCS and War  
College  
VOCATION: Professional Soldier  
MILITARY CAREER: December 1917-November  
1945; 1925 Captain; 1931 Major;  
1936 Lieutenant Colonel; 1938 Colonel;  
1941 Major General; March 1945 Lieutenant  
General

DATE OF CONFINEMENT: 21 July 1948  
DATE OF ARRAIGNMENT: 15 October 1948  
PLACE OF TRIAL: Yokohama, Japan  
PERIOD OF TRIAL: 15 October 1948 -  
3 December 1948  
DATE OF SENTENCE: 3 December 1948  
SENTENCE: CHL for six (6) years  
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Bunro Saheki  
AGE: 58  
RESIDENCE: Miyagi-Ken, Sendai-Shi,  
Nihon Sugidori, 29  
MARITAL STATUS: Married  
RELATIVES: Mother, 3 Daughters, 1 Son,  
2 Brothers, & 2 Sisters  
EDUCATION: Army Academy 1911; Army War  
College 1921; Higher War School 1930  
VOCATION: Company employee  
MILITARY CAREER: 1911 Second Lieutenant;  
1914 First Lieutenant; 1921 Captain;  
1925 Major; 1931 Lieutenant Colonel;  
1935 Colonel; 1938 Major General;  
1941 Lieutenant General.

DATE OF CONFINEMENT: 22 July 1948  
DATE OF ARRAIGNMENT: 15 October 1948  
PLACE OF TRIAL: Yokohama, Japan  
PERIOD OF TRIAL: 15 October 1948 -  
3 December 1948  
DATE OF SENTENCE: 3 December 1948  
SENTENCE: CHL for twenty-four (24)  
years.  
CLEMENCY RECOMMENDED BY COMMISSION: No



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NAME: Mitsuo Tomita  
PERSONAL DATA: Unknown

Nolle Prosequi (R 46)

NAME: Yahai Toyama  
PERSONAL DATA: Unknown

Nolle Prosequi (R 46)

NAME: Tadakazu Wakamatsu  
AGE: 55  
RESIDENCE: Tokyo-to, Musashino-shi,  
Kichi-joji 2977  
MARITAL STATUS: Married  
RELATIVES: One Brother  
EDUCATION: Military Academy; War  
College  
VOCATION: None  
MILITARY CAREER: December 1914 Second  
Lieutenant; August 1918 First  
Lieutenant; August 1923 Captain;  
August 1929 Major; August 1933 Lieutenant  
Colonel; August 1937 Colonel; August  
1939 Major General; December 1942  
Lieutenant General

DATE OF CONFINEMENT: 21 July 1948  
DATE OF ARRAIGNMENT: 15 October 1948  
PLACE OF TRIAL: Yokohama, Japan  
PERIOD OF TRIAL: 15 October 1948 -  
3 December 1948  
DATE OF SENTENCE: 3 December 1948  
SENTENCE: CHL for two (2) years  
CLEMENCY RECOMMENDED BY COMMISSION: No

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

<u>Charges and Specifications:</u>	<u>Pleas:</u>	<u>Findings:</u>	<u>Legally Sustained:</u>
KATO:			
Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	G	G	Yes
Sp 1: (As amended R 42) Accused did, between about 1 August 1942 and about 1 March 1945, willfully and unlawfully mistreat and abuse more than 30,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, over-crowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.	G	G, except the figures "30,000", substituting therefor the figures "17,000"; and excepting the words and figures "1 March 1945", substituting the words and figures "1 December 1942"; of the excepted words and figures Not Guilty; of the substituted words and figures, Guilty.	Yes
Sp 2: That the accused, between about 1 August 1942 and about 1 March 1945 did unlawfully disregard and fail to discharge his duties to control and restrain members of his command and persons under his supervision and control by permitting them to willfully and unlawfully mistreat and abuse more than 30,000 Allied prisoners of war by causing said prisoners of war to be transported	G	G, except the words and figures "1 March 1945", substituting the words and figures "1 November 1942"; and excepting the figures "30,000" and substituting the figures "17,000"; of the excepted words and figures, Not Guilty; of the substituted words and figures, Guilty.	Yes

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in ships without adequate protection from starvation, thirst, over-crowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.

ARAO:

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.

Sp 1: That the accused between about 1 August 1942 and about 1 March 1945, did willfully and unlawfully mistreat and abuse more than 30,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, over-crowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.

Sp 2: That the accused between about 1 August 1942 and about 1 March 1945 did unlawfully disregard and fail to discharge his duties to control and restrain members of his command and persons under his supervision and control by permitting them to willfully and unlawfully mistreat and abuse more than 30,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, over-crowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.

ISOYA:

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.

Sp 1: That the accused between about 1 September 1943 and about 1 February 1945 did willfully and unlawfully mistreat and abuse more than 10,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, over-crowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.

G, Yes  
except the words "Members of his Command and"; of the excepted words, Not Guilty.

G Yes

G Yes



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Sp 2: That the accused, between about 1 September 1943 and about 1 February 1945 did unlawfully disregard and fail to discharge his duties to control and restrain members of his command and persons under his supervision and control by permitting them to willfully and unlawfully mistreat and abuse more than 10,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, overcrowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.	G	G,	Yes
		except the words "Members of his command and"; of the excepted words, Not Guilty.	

MONONOBE:

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	G	G	Yes
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Sp 1: That the accused between about 1 August 1942 and about 1 September 1943, did willfully and unlawfully mistreat and abuse more than 10,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, overcrowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.	G	G	Yes
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Sp 2: That the accused between about 1 August 1942 and about 1 September 1943 did unlawfully disregard and fail to discharge his duties to control and restrain members of his command and persons under his supervision and control by permitting them to willfully and unlawfully mistreat and abuse more than 10,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, overcrowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.	G	G,	Yes
		except the words "Members of his command and"; of the excepted words, Not Guilty.	

NUKATA:

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	G	G	Yes
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Sp 1: That the accused, between about 15 October 1943 and about 1 February 1945, did willfully and unlawfully mistreat and abuse more than 10,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, overcrowding; acts of violence; dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.	G	G	Yes
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Sp 2: That the accused, between about 15 October 1943 and about 1 February 1945 did unlawfully disregard and fail to discharge his duties to control and restrain members of his command and persons under his supervision and control by permitting them to willfully and unlawfully mistreat and abuse more than 10,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, overcrowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.	G	G	Yes
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SAHEKI:

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	G	G	Yes
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Sp 1: That the accused between about 1 August 1942 and about 1 March 1945, did willfully and unlawfully mistreat and abuse more than 20,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, overcrowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.	G	G	Yes
			except the words and figures "1 March 1945", substituting therefor the words and figures "23 September 1943 and between about 28 July 1944 and about 1 March 1945". Of the excepted words, Not Guilty; of the substituted words, Guilty.

Sp 2: That the accused, between about 1 August 1942 and about 1 March 1945 did unlawfully disregard and fail to discharge his duties to control and restrain members of his command and persons under his supervision and control by permitting them to willfully and unlawfully mistreat and abuse more than 20,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, overcrowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.	G	G,	Yes
			except the words and figures "1 March 1945"; substituting therefor the words and figures "23 September 1943 and between about 28 July 1944 and about 1 March 1945"; of the excepted words, Not Guilty; of the substituted words, Guilty.



TOMITA:

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Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.

N G

Nolle Prosequi  
(R 46).

Sp 1: That the accused, between about 1 August 1942 and about 1 March 1945, did willfully and unlawfully mistreat and abuse more than 30,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, overcrowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease, and general impairment of health to all and death to many of said prisoners of war.

N G

Nolle Prosequi  
(R 46).

Sp 2: That the accused, between about 1 August 1942 and about 1 March 1945 did unlawfully disregard and fail to discharge his duties to control and restrain members of his command and persons under his supervision and control by permitting them to willfully and unlawfully mistreat and abuse more than 30,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, overcrowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.

N G

Nolle Prosequi  
(R 46).

TOYAMA:

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.

N G

Nolle Prosequi  
(R 46).

Sp 1: That the accused, between about 1 August 1942 and about 1 April 1944 and between about 1 April 1944 and 1 March 1945 did willfully and unlawfully mistreat and abuse more than 30,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, overcrowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease, and general impairment of health to all and death to many of said prisoners of war.

N G

Nolle Prosequi  
(R 46).

Sp 2: That the accused, between about 1 August 1942 and about 1 April 1944 and between about 1 April 1944 and 1 March 1945, did unlawfully disregard and fail to discharge his duties to control and

N G

Nolle Prosequi  
(R 46).

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restrain members of his command and persons under his supervision and control by permitting them to willfully and unlawfully mistreat and abuse more than 30,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, over-crowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.

WAKAMATSU:

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	G	G	Yes
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Sp 1: That the accused, between about 1 December 1942 and about 15 October 1943, did willfully and unlawfully mistreat and abuse more than 10,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, over-crowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.	G	G,	Yes
		except the figures "10,000", substituting therefor the figures "7,500"; of the excepted figures, Not Guilty; of the substituted figures, Guilty.	

Sp 2: That the accused, between about 1 December 1942 and about 15 October 1943, did unlawfully disregard and fail to discharge his duties to control and restrain members of his command and persons under his supervision and control by permitting them to willfully and unlawfully mistreat and abuse more than 10,000 Allied prisoners of war by causing said prisoners of war to be transported in ships without adequate protection from starvation, thirst, over-crowding, acts of violence, dangers of the sea, disease and general impairment of health, thereby causing pain, suffering, disease and general impairment of health to all and death to many of said prisoners of war.	G	G,	Yes
		except the figures "10,000", substituting therefor the figures "7,500"; of the excepted figures, Not Guilty; of the substituted figures, Guilty.	

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### 3. Summary of the Evidence:

#### a. For the Prosecution:

More than 30,000 Allied prisoners of war were transported in ships operated by the Japanese Armed Forces from Southern Areas to Japan between August 1942 and February 1945. More than 40 ships were involved. Conditions aboard the ships were such that the prisoners of war were without adequate protection from starvation, thirst, overcrowding, acts of violence, dangers of the sea and disease, thereby causing pain, suffering, disease, general impairment of health to many and death to some of said prisoners of war (Ex 1, 2).



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The prisoners of war were transported to Japan as a result of plans formulated by the Prisoner of War Administrative Department of the Ministry of War. Those plans included the army which was to forward the prisoners of war, the army which was to receive them, the number to be transferred and the port of embarkation. The plans were submitted for deliberation to the Military Affairs Bureau and Economic Mobilization Bureau of the Ministry of War and Department 3 of the General Staff Headquarters (Ex 6, 11, 12, 16, 23, 44). If these three agencies approved the plans the War Ministry would request the General Staff Headquarters to issue orders to the army commander who was to ship the prisoners of war and to the army commander who was to receive them (Ex 12).

The War Ministry could not give orders directly to Imperial Headquarters but after a matter was agreed upon in conference between the War Ministry and Imperial Headquarters orders would be issued through the Imperial Headquarters (Ex 12). Department 3 of General Staff Headquarters had the duty to report on the availability of shipping transportation for prisoners of war. If adequate transportation was not available, it was the duty of General Staff Headquarters to approve only such parts of the request for which transportation was available (Ex 12).

The Chief of Department 3 of General Staff Headquarters held the additional post of Chief of Transportation and Communications. As Chief of Department 3 he was a Staff Officer for the Chief of General Staff and as Chief of Transportation and Communications he was given the authority to issue detailed functional instructions (Ex 51). The highest planning agency for shipping transportation in the Japanese Army was the Office of the Chief of Transportation and Communications (Ex 16). Shipping transportation plans made by the Office of the Chief of Transportation and Communications were carried out by the Shipping Command at Ujina which functioned as an operating agency (Ex 16, 51). Directly under the Shipping Command at Ujina there were established shipping transport commands at shipping bases in every theater of operations outside of Japan proper (Ex 31). Each of the shipping transport commands was assigned the planning of transportation and various work at sea transportation operating bases in their respective areas. Under the shipping transport commands were established anchorage headquarters which were operational organs for loading and unloading at the various ports (Ex 31). The commanders of the above-mentioned units under the shipping command could exercise delegated command over embarking units on matters necessary for carrying out transportation (Ex 31).

The War Ministry requested accused Kato, who was then Chief of Transportation and Communications, to transport 15,000 prisoners of war to Japan. Kato advised the War Ministry that it would require five tons of space to transport each prisoner of war and that due to the shortage of ships it was impossible to ship all the prisoners of war requested. The War Ministry insisted, however, and requested that such a number be sent to Japan. A conference was held to discuss how to manage the transportation of prisoners of war despite the shortage of shipping. As a result of this conference a telegram known as Unsenden 557 was drafted by Major Tomita upon the order of accused Arac (Ex 22). Major Tomita was the person who planned the transportation of prisoners of war in the Office of the Chief of Transportation and Communications and Arac was the chief of the section (Ex 23). The draft was submitted to accused Kato who approved it and ordered it executed and dispatched (Ex 22). The text of Unsenden 557 was as follows:

"The acute shortage of labor in the homeland has led to urgent demands for the utilization of white PsW. It is desired that at least a few white PsW be transported on every homeward bound ship (both troop ships and munitions ships) and that your attention be given to this matter. It is requested that the shipping transport commands make a monthly estimation report (classifying special technicians) of numbers available by the end of the preceding month in addition to executing Transport Shipping Messages No's 375 and 547 (one character corrected; one character deleted, MATSUZAKI (Seal)), and that all possible means, such as carrying

PSW on deck, be used to transport as many PSW as possible before the winter season. Place of debarkation shall be HANSHIN (TN The Kobe and Osaka area) or KEIHIN (TN The Tokyo and Yokohama area).

"Message dispatched to Oka and Wataru Forces; Hongkong department of the Governor General of Occupied Territory: Shipping Commands.

"Information copies to:

"Tomi, Osamu, and Hayashi Forces; 2 and 3 Shipping Commands; 2 Shipping Transport Sector Unit.

"From Imperial Headquarters, Army Department." (Ex 4).

The general policy laid down by the Imperial General Headquarters was to make maximum use of shipping space. No limit was set as to the number of passengers who could be accommodated in any given space (Ex 39).

After receipt of Unsenden 557 Ujina had to deal with the transportation of increased numbers of prisoners of war despite the same number of ships. The number of men allotted to one *taubo* (3.95 sq yds) was increased from 3 to about 9, and as ships were sunk during the war it eventually reached the figure of about 12 or 13 (Ex 43).

The accused Scheki was Shipping Transport Commander at Ujina from December 1941 to March 1943 and from August 1944 till the end of the war. He remembered his office had received Unsenden 557. He was acquainted with the overloading policy which was carried out while he was at Ujina from August 1944 till the end of the war. Unsenden 557 had the effect of increasing the number of men per *taubo* but the same space allocated to Japanese troops was also allocated the prisoners of war (Ex 44, 51).

The Office of the Chief of Transportation and Communications would send orders through the Chief of the General Staff to Ujina ordering the transportation of prisoners of war. Major Tomita was in charge of drafting these orders which were referred to accused Arac for approval (Ex 23, 24). The orders normally would include the number of prisoners of war to be transported and the place from which they were to be transported. Generally these orders did not include the name of the ship on which the prisoners of war were to be transported (Ex 23, 43). Some orders stated that it was necessary to send so much cargo, so many Japanese troops and so many prisoners of war, while others stated to send them if possible (Ex 23).

The Ujina Shipping Command would draw up a detailed plan showing the name of the ship and the date of embarkation and would transmit this plan in the form of orders to the local shipping transport command. At the same time Ujina would send the detailed plan to the army commander in the field (Ex 23). The Commander at Ujina had a command responsibility for the conduct of transport commanders until near the end of 1944 when instructions from the Chief of General Staff, Imperial Headquarters, were dispatched to transport commanders that they were to receive their orders from the local army commanders (Ex 47).

Ujina issued orders to the Shipping Transport Commands at Manila and Singapore specifying the names of ships to be utilized and the numbers of prisoners of war to be loaded aboard the ships (Ex 36, 37, 38). Ujina was not responsible for the allocation of space on board ship. This was controlled by the anchorage commands which were directly responsible for all arrangements on board (Ex 42, 48).

Anchorage headquarters made reports to Ujina of the number of prisoners of war that were on the ships. Ujina knew beforehand just about how many could be loaded on each ship. Since the reports received from anchorage headquarters indicated that the number of prisoners of war loaded was greater than the capacities of the ships, Ujina should have known that the ships were overloaded (R 48).



*Revised*

When ships transporting prisoners of war arrived in Japan, the captain of the ship and the transport commander issued reports on transport conditions concerning overloading, unsanitary conditions and deaths of prisoners of war. These reports were submitted to Ujina (Ex 52).

From October 1942 to April 1944 reports were received by the Chief Medical Officer at Ujina indicating that overcrowding and unsanitary conditions existed on ships transporting prisoners of war. The Chief Medical Officer at Ujina reported the overcrowding and unsanitary conditions to accused Saheki in the fall of 1942 (Ex 62). Saheki then ordered him to dispatch a man to make a detailed study of conditions on the ships and to give proper guidance. As a result of the investigation the Chief Medical Officer told Saheki that the causes of the illnesses and deaths were congestion, unsanitary conditions and improper quarantine at the ports of embarkation. He frequently told Saheki that the number of prisoners of war per tsubo should be decreased. Saheki said he understood the situation very well but no particular action was taken. At a later date Saheki warned that more care regarding the quarantine must be taken at the ports of embarkation. Despite Saheki's warning, the congested conditions continued to prevail but illnesses decreased (Ex 62).

Around the end of 1942 and from time to time thereafter reports were received at the Office of the Chief of Transportation and Communications from Ujina revealing that prisoners of war were being transported to Japan from the Southern Areas under overcrowded conditions. In July or August 1944 a report was received from Ujina showing that the holds were very hot, prisoners of war were on deck, water was scarce and there were many sick (Ex 23).

The Chief Medical Officer at Ujina reported to the Chief of Medical Affairs Bureau of the War Ministry the congested and unsanitary conditions under which prisoners of war were transported to Japan (Ex 62). The War Ministry Medical Affairs Bureau investigated the sanitary conditions aboard the transports of prisoners of war and Japanese troops and found them to be not good (Ex 63). The investigation disclosed congested and unsanitary conditions aboard the transports. As a result of the investigation, the Director of the Medical Affairs Bureau of the War Ministry went to see accused Nukata who was then Chief of Transportation and Communications, General Staff Headquarters, and requested that the congested and unsanitary conditions be improved (Ex 64). Nukata stated that he would try to improve the toilet facilities and water supply but because of the shortage of shipping space he stated that it would be difficult to reduce the number of prisoners of war to be transported. Improvements were made in the toilet facilities and the drinking water supply (Ex 64).

The Prisoner of War Information Bureau of the War Ministry had knowledge that prisoners of war were arriving in Japan in very bad condition and that the general causes were the lack of ships, lack of medicines, inadequate food, long route taken and inadequate clothing for passage from tropical areas into colder areas. Two or three times the Prisoner of War Information Bureau verbally reported conditions aboard prisoner of war ships to the Shipping Section of Department 3 (Ex 10). In the opinion of Lieutenant Colonel Hoda of the Prisoner of War Information Bureau these conditions aboard prisoner of war ships continued after complaints by the Bureau were made to Department 3, for two reasons:

"(1) It was very difficult to overcome the basic attitude of all Japanese of looking down on prisoners of war as disgraced individuals contrary to the western attitude towards prisoners of war, and

"(2) Ships were needed more urgently to ship raw materials from the South Pacific to Japan and also to carry Japanese troops to and from Japan." (Ex 10)

As to Kato:

Accused Kato was Chief of Transportation and Communications and of Department 3 of General Staff Headquarters when he approved Unsenden 557 and ordered it to be executed and dispatched (Ex 22). Kato formulated the policy

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for the transportation of prisoners of war after he had advised the War Ministry that it would require five tons of space to transport each prisoner of war and that due to the shortage of ships it was impossible to ship as many as had been requested by the War Ministry (Ex 22). Unsenden 557 had the effect of increasing the number of men shipped per tsubo (Ex 44).

As to Wakamatsu:

Accused Wakamatsu was Chief of Department 3 General Staff Headquarters from December 1942 to October 1943 (Ex 32). The overloading policy was being followed by Department 3 when Wakamatsu was assigned there in December 1942 and was followed by him during the time he was Chief of the Department (Ex 32).

As to Nukata:

Accused Nukata became Chief of Department 3 of General Staff Headquarters in October 1943 (Ex 32). The 10th Shipping Section, Department 3, dispatched a wire to a field commander stating that prisoners of war were not to be loaded on vessels carrying military supplies. The field commander replied that if he followed this policy it would be impossible to transport large numbers of prisoners of war. Thereupon the Prisoner of War Administration Section wired the field commander to load the prisoners of war, even a small number of them, on top of the ore or on the deck. The 10th Shipping Section then dispatched a message to the field commander telling him to act in accordance with instructions he received in the wire from the Prisoner of War Administration Section. Before this message was dispatched by the 10th Shipping Section it was shown to Nukata who placed his seal on it (Ex 27).

After an investigation disclosed congested conditions, insufficient toilet facilities and contaminated drinking water aboard ships transporting prisoners of war the Director of Medical Affairs Bureau, War Ministry, went to see Nukata and requested that the above-mentioned conditions be improved. Nukata stated he would try to improve toilet facilities and water supply but because of the shortage of shipping space it would be difficult to reduce the number of prisoners of war to be transported (Ex 64).

As to Arai:

Accused Arai became Chief of Section 10, Department 3 in the latter part of May 1942 (Ex 34). Major Tomita was in charge of drafting orders for the transportation of prisoners of war which were referred to accused Arai for approval (Ex 23, 24). Arai ordered Major Tomita to draft the message now known as Unsenden 557 (Ex 20, 22). Unsenden 557 had the effect of increasing the number of men shipped per tsubo (Ex 44).

The 10th Shipping Section, Department 3, dispatched a wire to a field commander stating that prisoners of war were not to be loaded on ships carrying military supplies. The field commander replied that if he followed this policy it would be impossible to transport large numbers of prisoners of war. Thereupon the Prisoner of War Administration Section wired the field commander to load the prisoners of war, even a small number of them, on top of the ore or on the deck. The 10th Shipping Section then dispatched a message to the field commander telling him to act in accordance with instructions he received in the wire from the Prisoner of War Administration Section. Before this message was dispatched by the 10th Shipping Section it was shown to Arai who placed his seal on it (Ex 27).

As to Saheki:

Accused Saheki was Shipping Transport Commander at Ujina from December 1941 to May 1943 and from August 1944 till the end of the war. He remembered that his office had received Unsenden 557. He was acquainted with the overloading policy which was carried out while he was at Ujina from August 1944



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till the end of the war. The purpose of sending Unsenden 557 was to facilitate the transportation of prisoners of war to Japan. This telegram had the effect of increasing the number of men per tsubo. When this telegram was received Saheki made no complaint to Department 3. (Ex 44).

The Commander at Ujina had command responsibility for the conduct of the transport commanders until near the end of 1944 when instructions from the Chief of General Staff, Imperial Headquarters, were dispatched to transport commanders that they were to receive their orders from the local army commanders (Ex 47).

Anchorage headquarters made reports to Ujina of the number of prisoners of war that were on the ships. Ujina knew beforehand just about how many prisoners of war could be loaded on each of these ships. According to the reports, however, the numbers of prisoners of war were greater than the capacities of the ships. Therefore Ujina should have known that the ships were overloaded (Ex 48).

Saheki and his staff were well acquainted with the policy of overloading prisoners of war because they actually planned the overloading of transports in accordance with the orders of Imperial Headquarters (Ex 52).

Transport reports, issued by the captains of the ships and the transport commanders, were presented to the Commander of the Moji Anchorage Headquarters after the prisoners of war had landed at Moji. Then the reports were sent to the Office of the 1st Shipping Transport Command. The Commander of the 1st Shipping Transport Command then submitted a true copy of these reports to Saheki's Headquarters, including comments on the sanitary conditions, the overloaded conditions and what should have been done to take care of them. Therefore, Saheki's Headquarters should have known a great deal about transport conditions and they should have been responsible for devising plans for the future improvement of transport conditions (Ex 52).

From October 1942 to April 1944 reports were received by the Chief Medical Officer at Ujina indicating that overcrowding and unsanitary conditions existed on ships transporting prisoners of war. The Chief Medical Officer at Ujina reported the overcrowded and unsanitary conditions to Saheki in the fall of 1942. Saheki then ordered him to dispatch a man to make a detailed study of conditions on the ships and to give proper guidance. As a result of the investigation the Chief Medical Officer told Saheki that the causes of the illnesses and deaths were congestion, unsanitary conditions, and improper quarantine at the ports of embarkation. The Chief Medical Officer frequently told Saheki that the number of prisoners of war per tsubo should be decreased. Saheki said he understood the situation very well but no particular action was taken. At a later date Saheki warned that more care regarding the ~~general~~ must be taken at the ports of embarkation. Despite Saheki's warning congested conditions continued to prevail (Ex 42).

As to Mononobe:

Accused Mononobe was Chief of Staff of the Ujina Shipping Command from August 1942 to August 1943 (Ex 42, 51). Plans for the transportation of prisoners of war passed through Mononobe to the Commander at Ujina (Ex 42). Mononobe recalled that most of the major and more important orders came through his hands but that he did not see some of the smaller ones (Ex 56).

As to Isoya:

Accused Isoya was Chief of Staff of the Shipping Command at Ujina from August 1943 till February 1945. His duties were to assist the shipping commander and to execute army transportation plans. When Isoya became Chief of Staff at Ujina about one ton per man of shipping space was being allocated.

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Isoya did not think that it was sufficient shipping space to transport prisoners of war from the Philippine Islands to Japan without causing sickness and deaths by reason of extreme overcrowding. Isoya stated that then, however, there was no time to consider how much space was safe or unsafe in transporting prisoners of war. Other work piled up and the only concern was what should be done to attain victory. Isoya did not remember taking any steps to relieve the overcrowding of prisoners of war in their transportation to Japan (Ex 51).

b. For the Defense:

The War Ministry issued orders to the southern theater commanders to return prisoners of war to Japan. Pursuant to these orders the theater commanders selected prisoners of war to be transported to Japan. It was the duty of the theater commanders to furnish food, clothing, and an adequate supply of water and medicines to prisoners of war who were being transported to Japan from their theaters (Ex E).

The anchorage commands would receive an order from the theater commander that a certain number of prisoners of war were to be transported from the theater and to draw up a detailed loading plan for them. The anchorage commands would then plan and set forth all the details and the theater commander would inspect and approve. Then the prisoners of war would be transported (Ex G).

The Camp Commander of the Hong Kong Prisoner of War Camp handled six shipments involving 4,000 prisoners of war. He received written orders from the theater commander directing that a certain number of prisoners of war would be prepared for shipment on a certain date for a specifically named ship. The orders further stated that a guard escort unit would be furnished by the Prisoner of War Camp consisting of a designated number of officers and men. The duties of the escort guard commander were to oversee the prisoners of war and to concern himself with their safety and with the proper issue of food and medicines. The orders further stated the type of clothing, amount of food and number of blankets to be issued (Ex H). Similar procedures were followed at Taiwan (Ex K, L).

The transportation of prisoners of war from China to Japan was accomplished under the following procedure (Ex I):

1. The War Minister in Tokyo would issue an instruction to the Theater Commander to ship prisoners of war to Japan.
2. The Theater Commander would then issue an order to the Anchorage Command to prepare ship allocation and details of space allocation for a certain number of PW's to be shipped to Japan. For example, the Theater Commander would order the Anchorage Command to prepare the ship allocation and the details of space allocation for 1,000 PW's.
3. The Anchorage Command would study the situation, and might advise the Theater Commander that only 750 PW's could be adequately transported.
4. The Theater Commander would then insist that the original number of 1,000 PW's be transported; or, might revise the number to 750 PW's as recommended by the Anchorage Command.
5. The Anchorage Command, upon the decision made by the Theater Commander, would then proceed with the detailed study and preparation of ship allocation and space allocation for the number of PW's decided by the Theater Commander, and submit them to him (Theater Commander) for his approval.



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6. The Theater Commander, would then notify the POW Camp Commander to prepare 1,000 PW's (or the number of PW's decided upon by the Theater Commander) for shipment to Japan and to have them (PW's) at the dock at a certain time.
7. The POW Camp Commander would then select the number of PW's to be transported.
8. The POW Camp Commander would then allocate and supply the food, clothing, water, medicines, medical supplies, and other necessities for the PW's; and have all these supplies brought to the dock with the PW's.
9. The POW Camp Commander sent a guard escort to accompany the PW's while in transit; and also to distribute the food, water, medicines, etc., to the PW's in transit.
10. The Guard Escort Commander would decide how many of the PW's would go into each hold of the ship because the Anchorage Command only designated what over-all space was to be utilized.
11. The Guard Escort Commander would distribute the food, water, medicines, etc., to the PW's, during transportation to Japan, in accordance with rules and regulations promulgated by the War Minister; which had been passed down to the Theater Commander, then to the POW Camp Commandant, and then to the Guard Escort Commander. (However, the Theater Commander could vary these regulations a little, in accordance with the conditions existent in his theater at the time.)

The Lisbon Maru sailed from Hong Kong for Osaka on 26 September 1942 loaded with cargo, 1,900 prisoners of war and about 800 Japanese troops. The Anchorage Commander allocated the various holds of the ship for cargo, prisoners of war and Japanese troops. The Escort Guard Commander had the sole discretion as to how many prisoners of war would be allocated into each hold. Approximately four men or less were allocated per tsubo. This applied to Japanese troops as well as to prisoners of war. In the opinion of the Shipmaster, the prisoners of war were overcrowded and he protested to the Anchorage Commander who did not heed the protest. The Anchorage Commander was responsible for the overcrowded condition of prisoners of war on board the Lisbon Maru (Ex M).

The Theater Commander of the Southern General Army, Count Terauchi, had absolute power and control over all prisoners of war interned in his jurisdiction. He had the right to decide when and under what conditions prisoners of war would be transported to Japan. The various ships at the anchorage commands which were within his jurisdiction were under his absolute power and control (Ex Q).

The procedure for transporting prisoners of war from the Philippines to Japan was as follows (Ex W):

The War Minister at Tokyo would issue an order to Count Terauchi (Commander in Chief of the Southern General Army) to transport PW's from the Southern Area to Japan.

The Headquarters of the Southern General Army would then survey the POW situation in the Southern Area and decide from which Theater of the Southern Area the PW's were to be chosen. (There were several theaters in the Southern General Army Area and these were under various Theater Commanding Generals).

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The Headquarters of the Southern General Army would then order General Yamashita (Theater Commanding General of the 14th Area Army) to select a certain number of PW's from the POW Camps in his theater and prepare them for shipment to Japan.

General Yamashita would then pass these orders along to General Ko who was the Commanding General in charge of all POW Camps in his theater.

General Ko would then select the PW's for shipment and have them at the designated port at a specified time. Also, he would send a Guard Escort Commander to accompany the PW's to Japan.

The Guard Escort Commander would be responsible for the safety and health of the PW's en route.

After the Headquarters of the Southern General Army had ordered General Yamashita to select a certain number of PW's for shipment to Japan, they (The Headquarters of the Southern General Army) would order the Shipping Headquarters of the Southern General Army to prepare plans for the shipment of these PW's to Japan.

The Shipping Headquarters of the Southern General Army would then order the Anchorage Command (the one nearest the POW Camp from where the PW's were to be taken) to prepare the details for the transporting of these PW's.

The Anchorage Command would then select the ship, figure out the amount of space necessary for the PW's and also figure the amount of food, water, clothing, medicines, medical supplies, etc., necessary for the PW's en route.

The Anchorage Command would secure the food, water, clothing, medicines, etc., from the 14th Army Headquarters (General Yamashita).

At the pre-arranged date, the PW's would be brought to the Port of Embarkation by the Guard Escort Commander and loaded aboard the ship in conformity with the plans of the Anchorage Command.

The Shipping Headquarters of the Southern General Army, the Anchorage Commands, and the 14th Army were under the command and control of the Commander in Chief of the Southern General Army and were not connected with, or under the jurisdiction of Tokyo at any time.

The anchorage commander had the complete authority to load the ship in any manner he saw fit. He designated the space to be occupied by all passengers including prisoners of war (Ex U).

On 1 July 1944, 1060 prisoners of war were loaded on a ship which sailed from Singapore for Japan. The loading officer from the anchorage command, in the presence of the ship commander and escort guard commander, supervised the designation of space to prisoners of war (Ex V).

On many occasions between May 1943 and September 1944 the Commanding General, 14th Army, received directives from the War Ministry to transfer an approximate number of prisoners of war as soon as possible. The directives

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were general and were not specific orders. The Commanding General then held a conference with a shipping unit in order to determine how many ships would be available and when. The Commanding General then decided how prisoners of war would be shipped based upon the availability of ships as determined by the conference. Because of the unavailability of shipping in the Philippine Theater they were forced to overload ships with prisoners of war and Japanese troops (Ex Y).

The transport commander was in charge of such matters as clothing, food and sanitation for personnel and as such was responsible for the conditions under which prisoners of war traveled during the shipping transportation. The transport commander was selected by the prisoner of war camp commander or the army commander (Ex AB, AC).

The Prisoner of War Administration Department of the War Ministry drafted orders for the transfer of prisoners of war from the theaters of operations to the homeland. These orders would be addressed to the supreme army commander in the theater of operations in charge of prisoners of war under his jurisdiction. Department 3 of General Staff Headquarters did not originate the plans of how many prisoners of war would be sent from the theaters of operations to the homeland. These were planned by the Prisoner of War Administration Department of the War Ministry (Ex AC).

The Ujina Command was not under the command of the Office of Transportation and Communications but was under the command of the Chief of General Staff. The Office of Transportation and Communications took care of the drafting and transmission of orders but the orders were those of the Chief of General Staff (Ex AF).

Even in peacetime, when ships were scarce, it was customary to dock load the ships (Ex AF).

The first time Ujina knew how many prisoners of war were aboard a certain ship was when it received a message from the shipping transportation organization in the theater of operations from which the ship sailed (Ex AF).

Department 3 of Imperial Headquarters requested the War Ministry to build new ships. The request for new ships necessary for operations was fulfilled. The request for civilian ships was not fulfilled (Ex AI).

When Ujina ordered a basic number of prisoners of war to be transported the shipping transport command had discretionary authority to increase or decrease the number of prisoners of war to be loaded on a ship. The shipping transport command would inspect a ship that had arrived for facilities and conditions. Then they would call the army headquarters and tell them, using Ujina orders as a basis, the number of prisoners of war that could be loaded on the ship, the tonnage of cargo that could be loaded, the approximate date of loading and the destination. The army would then state what cargo they would like to have loaded. Upon mutual agreement the exact number of prisoners of war or troops and the exact tonnage of the cargo to be loaded would be decided. Subsequently the army would send the shipping transport command a written transportation request in detail (Ex AJ).

Ujina did not command the quarantine stations in the theaters of operations. They were under the supreme commander of their respective areas (Ex AK).

The affiant of prosecution's Exhibit 23 explains his statement appearing on page 2 thereof, that the Office of Chief Transportation and Signals would send an order through the Chief of General Staff to Ujina ordering the transportation, by averring that had this phrase been interpreted to him

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properly in Japanese he would have given a negative answer simply because it was not true. The chain of command pertaining to this phase was as follows: Orders pertaining to shipping transportation were drafted in the Office of Transportation and Signals for in this respect it was a staff section of the Chief of General Staff. The Chief of General Staff would receive the document and would forward it directly to the commanding officer at Ujina as an order (Ex BA).

The total serviceable tonnage of the Japanese merchant fleet reached its peak in February 1942 and declined steadily thereafter. By August 1945, it had been reduced by 95% of its February 1942 high (Ex C, BC).

Certified true copies of 169 signed affidavits of army officers, enlisted men, and former servicemen, many of whom were officers of field grade rank, were in the following form (Ex BD):

"The following statement is true to the best of my knowledge, information, and belief:

"1. I was a prisoner of war of the Japanese.

"2. On or about the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, I was transported from \_\_\_\_\_ to \_\_\_\_\_ aboard the \_\_\_\_\_.

"3. During the course of this voyage, the food, water, medical care and supplies, and space allocated to prisoners of war were inadequate.

"4. The theater commander had command authority over all facilities in the port of embarkation above named. The theater commander arbitrarily designated the ship and the number of prisoners of war to be allocated to each ship for transportation. This fact was common knowledge amongst all the prisoners of war who were being transported to Japan. Prisoner of war officers, Japanese Army personnel at the ports of embarkation, and Japanese civilian and Army personnel who were passengers aboard the same ships, stated that the theater commander was solely and completely responsible for the inadequate conditions under which prisoner of war personnel were transported.

"5. It is incontrovertable that the theater commander, who had command authority over the port of embarkation from which we sailed, was solely responsible for the inadequate food, lack of water, lack of medical care and supplies, and crowded conditions to which we were subjected during the aforementioned voyage.

"(Signed) \_\_\_\_\_".

#### 4. Opinion:

The accused were arraigned and each accused pleaded not guilty to the respective charges and specifications (R 7). After the pleas were received the defense was granted an eighteen-day continuance for the purpose of conducting an investigation (R 7-9).

The commission reconvened five weeks later (R 10). After examining members of the commission on voir dire pertaining to military background and experience the defense counsel offered to prove that the commission members were arbitrarily chosen without regard to background, knowledge, or understanding of the case (R 23). The attention of the commission was directed to paragraph 3, c, Letter Order, General Headquarters, SCAP, dated 5 December 1945, which provides as follows:

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"3. Membership of Commission

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- 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  
\*\*\*\*\* (R 24).

The defense counsel proposed to prove the manner in which the commission members are allocated and drawn by a witness who was alleged to be reluctant to appear as a defense witness on voir dire (R 22). Representations were made that the witness was a clerk in the Administrative Office who was in charge of selecting commissions and that he was presently downstairs in the Executive Office (R 22, 24). The commission was requested to issue a subpoena for the appearance of the witness (R 22). The request was denied by the commission (R 25).

After a brief adjournment, the defense announced to the commission that upon inquiry the defense had been told that the witness would not appear to testify but would make a deposition (R 27). The defense did not desire the taking of a deposition (R 27). They offered to prove that military commissions are not selected for a particular case after a review of their qualifications but are selected solely on the basis of availability. The defense then moved the commission to direct the witness in question and three others to appear before the commission and testify with respect to the qualifications of the members of this commission (R 28). The commission then asked the defense whether or not statements could be obtained from the four witnesses. Defense replied that they had been advised by the Chief of the Defense Section that those witnesses would answer questions which were propounded to them in writing but that they did not desire to appear in this case as witnesses (R 29). The commission then denied the motion of the defense in view of the remark of the defense that statements could be secured from the witnesses (R 31).

The defense then moved for a mis-trial on the grounds that the denial of the previous motion was prejudicial to the right of the accused to have present available witnesses on his own behalf (R 31). The motion for mistrial was denied (R 32). The defense requested a continuance until such time as they could propound questions to the persons they had requested as witnesses and until responses were had thereto (R 32). A number of continuances were granted the defense over a period of four days (R 32-41). On the fourth day the defense announced to the commission that in view of the fact that the depositions had not been returned, the defense had no challenge for cause (R 41). The trial was concluded eight days later during which time the defense failed to offer the depositions in evidence or to challenge any member of the commission for cause.

The refusal of the commission to subpoena the witnesses requested did not deprive the accused of a fair trial. The commission assertively made the refusal because the defense indicated that depositions were obtainable. Since depositions were admissible evidence before the commission it was not an abuse of discretion on its part to refuse to require the presence of the witnesses where it displayed a willingness to grant continuances until the defense had obtained the depositions. Continuances were granted the accused over a four-day period until the defense elected to make no challenges for cause.

Each accused changed his plea from not guilty to guilty to the respective charges and specifications (R 43, 44). After the prosecution had rested the defense counsel in an opening statement, proposed to prove seven points by the introduction of documentary evidence (R 82, 83). Each of the seven points, if proven, was in denial of the offenses alleged. The president of the commission asked the defense whether the evidence which it proposed to introduce was aimed solely at controverting the general issue (R 84). The defense replied that the evidence was being introduced purely by way of mitigation (R 84).

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Six accused were former lieutenant generals and one accused was a former colonel. In addition to the regularly appointed advisory counsel for the defense each accused introduced individual Japanese defense counsel (R 4, 41). Under the circumstances it does not appear that the pleas of guilty were improvidently made. It was therefore proper for the commission to receive the more than two hundred defense exhibits which tended to deny and to consider them purely in mitigation.

The prosecution in its closing argument suggested to the commission a range of appropriate sentences for the respective accused (R 111-113). In response to the closing argument of the prosecution the defense recommended slightly lesser sentences (R 113-116). The prosecution then stated to the commission that since the specific recommendations of the defense were within the ranges proposed by the prosecution it had no objection to them (R 116). None of the sentences as adjudged was in excess of the maximum specific recommendations of the defense (R 119-122).

The record is legally sufficient to support the findings of the commission. The commission was constituted by proper authority and had jurisdiction over each of the accused and of the offenses charged. There is no evidence that any one of the accused was not sane at the time of the commission of the alleged acts or at the time of the trial. The accused were given a fair trial and were very ably defended. No ruling of the commission is deemed to have affected adversely the substantial rights of the accused.

#### 5. Recommendations:

As to Kato: No petition for clemency has been submitted. The accused was sentenced to confinement at hard labor for eighteen (18) years. The sentence is legal and is not considered excessive. It is recommended that the findings of the commission be approved. It is further recommended that owing to the length of time the accused has been in confinement prior to the date of sentence, one and one-half (1 1/2) months of the sentence be remitted.

As to Arai: Documental materials on appeal for Arai, submitted by Seiichi Kishi, individual defense counsel, have been considered in this review. The accused was sentenced to confinement at hard labor for six (6) years. It is recommended that the findings of the commission be approved. Judicial notice has been taken of certain acts of cooperation with Allied Forces by the accused. It is considered that these merit recognition in the form of clemency. It is recommended that three years of the sentence be remitted. It is further recommended that owing to the length of time the accused has been in confinement prior to the date of sentence, an additional one and one-half (1 1/2) months of the sentence be remitted.

As to Isoya: No petition for clemency has been submitted. The accused was sentenced to confinement at hard labor for one (1) year. The sentence is legal and is not considered excessive. It is recommended that the findings of the commission be approved. It is further recommended that owing to the length of time the accused has been in confinement prior to the date of sentence, one and one-half (1 1/2) months of the sentence be remitted.

As to Mononobe: No petition for clemency has been submitted. The accused was sentenced to confinement at hard labor for one (1) year. The sentence is legal and is not considered excessive. It is recommended that the findings of the commission be approved. It is further recommended that owing to the length of time the accused has been in confinement prior to the date of sentence, one and one-half (1 1/2) months of the sentence be remitted.

As to Nukata: No petition for clemency has been submitted. The accused was sentenced to confinement at hard labor for six (6) years. The sentence is legal and is not considered excessive. It is recommended that the findings of the commission be approved. It is recommended that owing to the length of time the accused has been in confinement prior to the date of sentence, one and one-half (1 1/2) months of the sentence be remitted.

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As to Saheki: No petition for clemency has been submitted. The accused was sentenced to confinement at hard labor for twenty-four (24) years. The sentence is legal and is not considered excessive. It is recommended that the findings of the commission be approved. It is further recommended that owing to the length of time the accused has been in confinement prior to the date of sentence, one and one-half (1 1/2) months of the sentence be remitted.

As to Wakamatsu: No petition for clemency has been submitted. The accused was sentenced to confinement at hard labor for two (2) years. The sentence is legal and is not considered excessive. It is recommended that the findings of the commission be approved. It is further recommended that owing to the length of time the accused has been in confinement prior to the date of sentence, one and one-half (1 1/2) months of the sentence be remitted.

6. Action:

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

THOMAS J. HENDERSON  
Major JAGC  
Judge Advocate Section

I concur in general. However, in view of the particular circumstances involved in the case of Arao, it is recommended that the entire unserved portion of the sentence be remitted.

An alternate proposed action to implement this recommendation is attached.

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

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