

V.S. 183-J

VS

ARRAIGNMENT
and
PUBLIC TRIAL

106

COPY NO.: 10

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HEADQUARTERS
PHILIPPINES-RYUKYUS COMMAND

Military Commission)
:
Orders No.....8)

APO 707
22 January 1947

Before a Military Commission which convened at the High Commissioner's Residence, Manila, Philippine Islands, on 1 October 1946, pursuant to Letter Order, General Headquarters, SCAP, AG 000.5 (18 July 46) LS, dated 18 July 1946, Subject: "Trial of Morikazu Ohsugi", with indorsement thereto, General Headquarters, AFAC, dated 18 July 1946, and paragraph 21, Special Orders 214, Headquarters AFWESPAC, 17 September 1946, paragraph 24, Special Orders 224, Headquarters AFWESPAC, 30 September 1946 and paragraph 35, Special Orders 230, Headquarters AFWESPAC, 7 October 1946, was arraigned and tried:

Morikazu OHSUGI ISN 51J-127851

CHARGE

That Morikazu OHSUGI, formerly Vice Admiral of the Imperial Japanese Navy Forces, on the dates and at the places hereinafter specified, and while a state of war existed between the United States of America, its allies and dependencies, and Japan, did violate the laws and customs of war.

Specification 1: (As amended) In that Morikazu OHSUGI, a member of the Imperial Japanese Navy Forces, at and about Maros Airfield and/or Makassar, Celebes, Netherlands East Indies, on or about 8 July 1945, during a time of war between the United States of America, its allies and dependencies, and Japan, did wrongfully and unlawfully permit and consent and/or ratify and fail to prevent and take corrective and punitive action against and/or fail to prevent and/or did actually order and direct members of the Imperial Japanese Navy Forces under his command and jurisdiction to kill four (4) unknown Americans, all members of the armed forces of the United States of America, and who were then prisoners of war, and that pursuant to and in accordance with such order and direction and/or permission and consent and/or ratification and failure, the following members of the said Japanese Navy Forces, to wit, Toyooki INAGAKI, Yoshiyuki NAKAMURA and Kohei NAKAO, did wrongfully and unlawfully kill said four (4) unknown Americans by striking them with swords, in violation of the laws and customs of war.

Specification 2: (As amended) In that Morikazu OHSUGI, a member of the Imperial Japanese Navy Forces, at and about Kendari, Celebes, Netherlands East Indies, on or about 24 November 1944, during a time of war between the United States of America, its allies and dependencies, and Japan, did wrongfully and unlawfully permit and consent and/or ratify and fail to prevent and take corrective and punitive action against and/or fail to prevent and/or did actually order and direct members of the Imperial Japanese Navy Forces under his command and jurisdiction to kill nine (9) unknown Americans, all members of the armed forces of the United States of America, and who were then prisoners of war, and that pursuant to and in accordance with such order and direction and/or permission and consent and/or ratification and failure, the following members of the said Imperial Japanese Navy Forces, to wit, Sazae CHUMA, Toshio MITANI, Toshitake OGAWA, Isokichi YAMAMOTO and Tooru TANAKA, did wrongfully and unlawfully kill said nine (9) unknown Americans by striking them with swords, in violation of the laws and customs of war.

PLEAS

To all Specifications and the Charge: NOT GUILTY

FINDINGS

Of Amended Specification 1: GUILTY, except the words: "consent and/or ratify and fail to prevent and take corrective and punitive action against and/or fail to prevent and/or did actually order and direct," substituting therefore the words, "give consent and/or fail to prevent and to take corrective and punitive action against"; except the words, "to kill," substituting therefore the words, "in the killing of"; except the words, "order and direction and/or", without substitution; and except the words, "ratification and failure," substituting therefore the words, "failure to prevent and to take corrective and punitive action against." Of the excepted words, NOT GUILTY: of the substituted words, GUILTY.

Of Amended Specification 2: as further amended, GUILTY, except the words, "permit and consent and/or ratify and fail to prevent and take corrective and punitive action against and/or fail to prevent and/or did actually order and direct," substituting therefore the words, "order and direct and/or fail to prevent and to take corrective and punitive action against"; except the words, "permission and consent and/or ratification and failure," substituting therefore the words, "failure to prevent and to take corrective and punitive action against"; and except the words, "Toshitake OGAWA, Isokichi YAMAMOTO and Tooru TANAKA," substituting therefore the words, Yoshitaka OGAWA, Isokichi YAMAMOTO and Tooru TANAKA, together with other members of the Japanese military or naval forces." Of the excepted words, NOT GUILTY; of the substituted words, GUILTY.

Of the Charge, GUILTY.

SENTENCE

Life Imprisonment.

The sentence was adjudged 31 October 1946.

The sentence is approved and will be duly executed. Sugamo Prison, Tokyo, Japan, is designated as the place of confinement.

BY COMMAND OF MAJOR GENERAL MOORE:

J. G. CHRISTIANSEN
Major General, USA
Deputy Commander and
Chief of Staff

OFFICIAL:

J. J. Gerhardt

J. J. GERHARDT
Colonel, AGD
Adjutant General

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PHILRYCOM Stockade, APO 900
- 2 - CO, LUPOW #1

CERTIFICATION

THIS CERTIFIES that this volume is a part of the
proceedings of the Military Commission appointed by

Paragraph 21, Special Orders 214, Headquarters,
United States Army Forces, Western Pacific,
dated 17 September 1946; amended by

Paragraph 22, Special Orders 240, Headquarters,
United States Army Forces, Western Pacific,
dated 18 October 1946,

in the trial of the case of the United States of America
against Morikazu OHSUGI.

Dated 12 November 1946.

A. L. Parmelee

A. L. PARMELEE
Colonel, CAC
President of Commission

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

UNITED STATES OF AMERICA

VS

MORIKAZU OHSUGI

ARRAIGNMENT
and
PUBLIC TRIAL

Court No. 4
High Commissioner's Residence
Manila, P. I.
1 October 1946

Met, pursuant to notice, at 0945 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President & Law Member
LIEUTENANT COLONEL WILLIAM P. MOORE, AGD
LIEUTENANT COLONEL JAMES H. STELL, INF
CAPTAIN ELBERT E. CLANTON, TC

APPEARANCES:

FOR THE PROSECUTION:

CAPTAIN SAMUEL ROWE, QMC

FOR THE DEFENSE:

MR. LOUIS B. FEDER

OFFICIAL INTERPRETERS FOR THE COMMISSION:

LT. FRED H. UYEHARA	Japanese
1ec 3 TAKEO SAITO	Japanese
ESPERANZA CORNEJO	Japanese
2d LT. HAKUZO NITTA	Japanese

OFFICIAL REPORTERS FOR THE COMMISSION:

SIDNEY YOUNG
ROBERT M. LEFLER

I N D E X

WITNESSES

DIRECT CROSS REDIRECT RECROSS EXAM BY
COMM.

Seijiro Dan

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E X H I B I T S

OFFERED RECEIVED WITHDRAWN

Prosecution's Exhibit 1	4	4
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DOCUMENTARY EVIDENCE

INCORPORATED INTO THE RECORD

Charge	10 (14)
Specifications	11 (14)

GENERAL

PAGE NO.

Rights of the Accused

7

P R O C E E D I N G S

(The Commission convened, pursuant to notice, at 0945 hours, 1 October 1946 in Court No. 4, High Commissioner's Residence, Manila, P. I.)

COLONEL PARMELEE: The Commission will come to order and hear any matter to be brought before it.

CAPTAIN ROWE: If the Commission please, it has been agreed between accused, his counsel, and the prosecution, that translation of these proceedings into Japanese by the official interpreter is not required since the accused has his own personal interpreter. It is therefore requested, and defense counsel joins in the request that such translation be dispensed with unless specifically requested by the accused in the course of trial.

COLONEL PARMELEE: Is that arrangement satisfactory to the defense?

MR. FEDER: It is satisfactory, Sir.

COLONEL PARMELEE: So ordered.

CAPTAIN ROWE: There has been referred to this Commission for trial the case of the United States of America against Morikazu Ohsugi, ISN 51J-127851. The accused is now present together with defense counsel appointed by the convening authority and counsels of his own choice. The prosecution is ready to proceed.

COLONEL PARMELEE: Does the defense agree that the internment serial number of Morikazu Ohsugi, as stated, is correct?

MR. FEDER: This is the first information that I have had of the serial number, but I assume it is correct

and I agree that that may be the designated serial number of the defendant.

CAPTAIN ROWE: Would you mind asking the accused?

MR. FEDER: I will ask the accused.

CAPTAIN ROWE: The accused stated to his counsel that that is the correct internment serial number.

COLONEL PARMELEE: Very well, you may proceed.

CAPTAIN ROWE: The prosecution submits and reads for incorporation into the record of these proceedings, the following document:

"HEADQUARTERS
"UNITED STATES ARMY FORCES WESTERN PACIFIC

"Special Orders) "APO 707
"No.....214) "17 September 1946

"EXTRACT

"21. The following officers are appointed members of a Military Commission to meet in the City of Manila, Philippine Islands, at the call of the President thereof, for the trial of Morikazu OHSUGI, accused war criminal. (Authority: 1st Ind. GHQ, AFPAC, APO 500, 18 July 1946, to letter GHQ, SCAP, file AG 000.5 (18 July 46) LS, dated 18 July 1946, subj: 'Trial of Morikazu Ohsugi'):

"COL ARCHIBALD L. PARMELEE CAC President
& Law Member
LT COL WILLIAM P MOORE AGD
LT COL JAMES H STELL INF
CAPT ELBERT E CLANTON TC

"The Prosecution will be conducted by CAPT SAMUEL ROWE, QMC. The Defense Counsel will be MR REUBEN BONDA, CS.

"The Commission will follow the provisions of Letter, GHQ, SCAP, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals."

"The record of trial including any judgment or sentence will be transmitted directly to this headquarters for action by the appointing authority.

"BY COMMAND OF MAJOR GENERAL CHRISTIANSEN:

"OFFICIAL:

"/s/ W. B. Moore
/t/ W. B. MOORE
Lt Col., AGD
Asst Adj Gen

J J GERHARDT
Colonel, AGD
Adjutant General "

COLONEL PARMELEE: Is there an order out detailing Mr. Feder as the defense counsel?

CAPTAIN ROWE: There is no order out to my knowledge, but he has been assigned as associate defense counsel and now made counsel-in-chief because Mr. Bonda is tied up in another case and the order will be forthcoming. Upon receipt of the order, it will be placed into the record at the proper time.

COLONEL PARMELEE: There being no objection, the special orders will be incorporated into the record of these proceedings.

MR. FEDER: No objection, sir.

COLONEL PARMELEE: There is one correction. The initials of the Adjutant General should be W. P. Moore, Assistant Adjutant General.

CAPTAIN ROWE: Let the record indicate the administrative correction has been made with the approval of the Law Member and President of the Commission that

the signature of W. B. Moore, as read in the order, should be changed to W. P. Moore.

CAPTAIN ROWE: The prosecution offers in evidence the following document marked for purposes of identification as Prosecution's Exhibit No. 1:

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

COLONEL PARMELEE: Is there any objection by the defense?

MR. FEDER: No objection.

COLONEL PARMELEE: There being no objection the document will be received in evidence as Prosecution's Exhibit No. 1.

(Prosecution's Exhibit No. 1 received in evidence.)

CAPTAIN ROWE: Let the record indicate that the prosecution's submission for identification is now approved as Prosecution's Exhibit No. 1.

The prosecution offers into evidence the following document marked for identification as Prosecution's Exhibit No. 2:

Letter Order AG 000.5 (18 July 1946) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 18 July 1946, Subject, "Trial of Morikazu Ohsugi," and first indorsement thereto dated 18 July 1946.

COLONEL PARMELEE: Any objection by the defense?

MR. FEDER: No objection, Sir, except in the first indorsement, prosecutor for the trial is designated as 2nd Lieutenant Morris D. Forkosch. I believe the prosecutor should make some comment on that.

COLONEL PARMELEE: Will the prosecutor correct that to indicate the correct prosecutor?

CAPTAIN ROWE: That will come in in the course of trial, but for the purpose of the record at the present time the prosecutor directed to prosecute this case is Captain Samuel Rowe, QMC, since Lieutenant Morris D. Forkosch, the former prosecutor has been sent back to the States.

COLONEL PARMELEE: Is that satisfactory?

MR. FEDER: That is satisfactory.

COLONEL PARMELEE: There being no objection, the document stated will be received into evidence as Prosecution's Exhibit No. 2.

(Prosecution's Exhibit No. 2
received in evidence.)

CAPTAIN ROWE: The prosecution offers in evidence the following document marked for purposes of identification as Prosecution's Exhibit No. 3:

Letter Order, President of this Commission, dated 1 October 1946, Subject, "Summoning and Swearing of Witnesses for the trial of U. S. A. versus Morikazu Ohsugi."

COLONEL PARMELEE: Is there any objection by the defense?

MR. FEDER: There is no objection, Sir.

COLONEL PARMELEE: There being no objection,
the document will be received into evidence as Prosecution's
Exhibit No. 3.

(Prosecution's Exhibit No.3
received into evidence.)

CAPTAIN ROWE: To further comply with the
order, Mr. Reuben Bonda will be entered into the record
on this trial so that when he completes the case which he
is now on, he will then continue with this trial in
compliance with the order.

COLONEL PARMELEE: Very well.

CAPTAIN ROWE: The prosecution is ready to
proceed with the arraignment of Morikazu Ohsugi, ISN
51J-127851.

The reporters will be sworn.

(Sidney Young and Robert M. Lefler were duly sworn
as reporters.)

CAPTAIN ROWE: The interpreters will be sworn.

(Lieutenant Fred H. Uyehara, T/3 Takeo Saito and
Esperanza Cornejo were duly sworn as interpreters.)

CAPTAIN ROWE: The Commission will be sworn.

(Colonel Archibald L. Parmelee, Lieutenant
Colonel William P. Moore, Lieutenant Colonel James
H. Stell, and Captain Elbert E. Clanton were duly sworn.

COLONEL PARMELEE: The prosecution will be
sworn.

(Captain Samuel . Rowe was duly sworn as
prosecutor.)

CAPTAIN ROWE: A certified copy of the Charge and Specifications against Morikazu Ohsugi, ISN 51J-127851, together with a true and complete translation thereof was served upon the accused by 2nd Lieutenant Morris D. Forkosch, Inf., on 29 July 1946, at Manila, Republic of the Philippines. The amended Specifications were served on the accused by 2nd Lieutenant Morris D. Forkosch, Inf., on 31 July 1946, at Manila, Republic of the Philippines. Defense counsel who had been duly appointed by the executive for War Crimes Trials was furnished a copy of the Charge and Specifications, together with the Amended Specifications against the accused on or about the same time as the service of the Charge and Specifications made upon the accused and the defense has been working on the preparation of this case since that time.

COLONEL FARMELEE: The rights of the accused as set forth in paragraph 5-b of letter dated 5 December 1946, General Headquarters, Supreme Commander for the Allied Powers, entitled "Regulations Governing the Trial of Accused War Criminals" heretofore introduced into evidence as Prosecution's Exhibit No. 1 will be read and translated to the accused.

CAPTAIN ROWE: (Reading):

"RIGHTS OF THE ACCUSED. The Accused shall be entitled:

"(1) To have in advance of trial a copy of the Charge and Specifications clearly worded so as to

apprise him 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 charge and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them."

(Interpreter Cornojo translated Rights of the Accused to the accused.)

COLONEL PARMELEE: The provisions of sub-section 1 having been complied with, it appearing that a certified copy of the Charge and Specifications as amended, together with the true and complete translation thereof, was served upon the accused on 31 July 1946, when does the accused desire to introduce as defense counsel?

MR. FEDER: If the Commission please, I would like to have that request upon the defendant translated into Japanese.

(Request of the Commission was translated to the accused by the Interpreter Saito.

THE ACCUSED: Mr. Louis Feder, Mr. Takahashi and Mr. Yoshikawa.

COLONEL PARMELEE: Does the accused wish to have the Charge and Specifications read and translated to him?

MR. FEDER: No, Sir. The accused has a Japanese translation of the Charge and Specifications.

COLONEL PARMELEE: Very well.

Does the accused understand the Charge and Specifications, Affidavit of Accuser, Reference for Trial and Certificate of Service in this case?

MR. FEDER: Yes, sir, he does.

CAPTAIN ROWE: The prosecution will now read the Charge and Specifications against Morikazu Ohsugi.

(Reading):

"GENERAL HEADQUARTERS
"SUPREME COMMANDER FOR THE ALLIED POWERS

"Before the) "UNITED STATES OF AMERICA
MILITARY COMMISSION)
convened by the) vs
COMMANDING GENERAL)
United States Army Forces,) "Morikazu OHSUGI
Western Pacific)

"CHARGE

"That Morikazu OHSUGI, formerly Vice Admiral of the Imperial Japanese Navy Forces, on the dates and at the places hereinafter specified, and while a state of war existed between the United States of America, its allies and dependencies, and Japan, did violate the laws and customs of war."

"GENERAL HEADQUARTERS
"SUPREME COMMANDER FOR THE ALLIED POWERS

"Before the)	"UNITED STATES OF AMERICA
MILITARY COMMISSION)	
convened by the)	vs
COMMANDING GENERAL,)	
United States Army Forces,)	Morikazu OHSUGI
Western Pacific)	

"~~AMENDED~~ ^{OF} SPECIFICATIONS

"1. In that Morikazu OHSUGI, a member of the Imperial Japanese Navy Forces, at and about Maros Airfield and/or Makassar, Celebes, Netherlands East Indies, on or about 8 July 1945, during a time of war between the United States of America, its allies and dependencies, and Japan, did wrongfully and unlawfully permit and consent and/or ratify and fail to prevent and take corrective and punitive action against and/or fail to prevent and/or did actually order and direct members of the Imperial Japanese Navy Forces under his command and jurisdiction to kill four (4) unknown Americans, all members of the armed forces of the United States of America, and who were then prisoners of war, and that pursuant to and in accordance with such order and direction and/or permission and consent and/or ratification and failure, the following members of the said Imperial Japanese Navy Forces, to wit, Toyooki INAGAKI, Yoshiyuki NAKAMURA and Kohei NAKAO, did wrongfully and unlawfully kill said four (4) unknown Americans by striking them with swords, in violation of the laws and customs of war.

Q What year?

A 1944.

Q Name the raid that you went on prior to April 1944.

A We went to Enokawan in the month of June 1943.

Q Name a raid that you went on during the month of March 1944.

MR. COHN: I again object, if it please the Commission, on the grounds that there has been no evidence that the witness went on a raid in March of 1944.

MR. ROBB: He can so testify if he didn't.

COLONEL CHASE: I think you had better ask him whether or not he went on a raid during a certain month, or ask him the date of the raid just before the one on which he is testifying. Do something like that to fix it a little more clearly.

MR. ROBB: I will withdraw the question.

Q Did you go on a raid during the month of March 1944?

A I cannot recall.

Q Do you know where the town of Silay, in Occidental Negros, is?

A Yes, I know.

Q Did you go on a raid to Silay?

A No, we never went there.

Q Did you go with Lieutenant Nakajima on all the raids that he went on?

A I went sometimes, and other times I did not go. Silay was not a raid but an investigation, and I went on that investigation.

"2. In that Morikazu OHSUGI, a member of the Imperial Japanese Navy Forces, at and about Kendari, Celebes, Netherlands East Indies, on or about 24 November 1944, during a time of war between the United States of America, its allies and dependencies, and Japan, did wrongfully and unlawfully permit and consent and/or ratify and fail to prevent and take corrective and punitive action against and/or fail to prevent and/or did actually order and direct members of the Imperial Japanese Navy Forces under his command and jurisdiction to kill nine (9) unknown Americans, all members of the armed forces of the United States of America, and who were then prisoners of war, and that pursuant to and in accordance with such order and direction and/or permission and consent and/or ratification and failure, the following members of the said Imperial Japanese Navy Forces, to wit, Sazae CHUMA, Toshio MITANI, Toshitake OGAWA, Isokichi YAMAMOTO and Tooru TANAKA, did wrongfully and unlawfully kill said nine (9) unknown Americans by striking them with swords, in violation of the laws and customs of war.

"Dated: 26 July 1946

/s/ "William S. Yard
/t/ WILLIAM S. YARD
Capt., JAGD
Chief, Prosecution Division

"AFFIDAVIT

"Before me personally appeared the above-named accuser this 26th day of July 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing amendment of specifications, and

"further that he had investigated the matters set forth in the said amendment and that it is true in fact to the best of his knowledge and belief.

/s/ "Addison T. Shepherd
/t/ ADDISON T. SHEPHERD
1st Lt., JAGD"

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

"Referred for trial to Captain Samuel Rowe, prosecutor of the Military Commission appointed by paragraph 21, Special Order No. 214, this headquarters, 17 December 1946.

"BY COMMAND OF MAJOR GENERAL CHRISTIANSEN:

/s/ W. P. Moore
Lt. Col., AGD
Assistant Adjutant General"

"I hereby certify that I have served a copy hereof, together with a true and complete translation thereof into Japanese, of the above-named accused this 31st day of July 1946.

/s/ Morris D. Forkosch
2d Lt., Inf., 01336900"

COLONEL PARMELEE: Does the accused want the Charge, Specifications, Affidavit of Accuser, Reference for Trial and Certificate of Service, translated to him?

MR. FEDER: No, Sir.

COLONEL PARMELEE: There being no objection, the Charge and Specifications are incorporated into the record of these proceedings.

Is the accused now ready to enter his plea?

MR. FEDER: The accused is now ready, Sir.

Will the interpreter ask the accused in Japanese how the accused pleads?

COLONEL PARMELEE: I will notify the accused at this time he may enter his plea and we may ask him to reply himself.

CAPTAIN ROWE: If the Commission please, before he enters his plea, it has been stipulated and agreed by the prosecution and defense for a slight correction to be made to amended Specification 2. There is an error in that they list after the words, "To-wit, Sazae CHUMA, Toshio MITANI, Toshitake OGAWA, Isokichi YAMAMOTO and Tooru TANAKA, did wrongfully and unlawfully kill said nine (9) unknown Americans by striking them with swords, in violation of the laws and customs of war." That is an error and the correction is that after the words, "To-wit, Sazae CHUMA, Toshio MITANI, Toshitake OGAWA, Isokichi YAMAMOTO and Tooru TANAKA, did wrongfully and unlawfully kill five (5) of the unknown Americans by striking them with swords, and the other four unknown Americans were killed by unknown Japanese military forces, in violation of the laws and customs of war."

I would like to strike my correction. My correction now will read as follows: As agreed between the prosecution and defense by stipulation after the words, "To-wit Sazae CHUMA, Toshio MITANI, Toshitake OGAWA, Isokichi YAMAMOTO and Tooru TANAKA, together with other members of the Japanese military or naval forces, did wrongfully and unlawfully kill the said nine (9) unknown Americans by striking them with swords in violation of the laws and customs of war."

COLONEL PARMELEE: Does the defense join in that stipulation?

MR. FEDER: I would like to have that read back to me, Sir.

(The last stipulation was read by the reporter.)

MR. FEDER: At this time, Sir, the defense stipulates to the amendment without any prejudice on the part of the defense to at a later time object to this amendment insofar as sufficiency is concerned.

COLONEL PARMELEE: The Specifications under which the accused is to be tried must be definitely established at this time.

MR. FEDER: In that event, Sir, the defense does not make any comment if that is the amendment that the prosecution desires to enter in the record at the present time. That is the Charge and the defense has no comment.

CAPTAIN ROWE: If it please the Commission, the prosecution and defense by oral stipulation, have agreed to this correction to be made in open court on the amended specification. We have already agreed upon it. It is just a matter of record to show that we did agree unless he can show any prejudice shown on the part of the Rights of the Accused.

COLONEL PARMELEE: The Commission wants to be certain that the Specifications are definite before proceeding with the trial. The prosecution has entered an amendment. I presume that the defense was consulted and told about that amendment. What we want in the record now is a definite acquiescence or dissent.

MR. FEDER: The defense at this time will waive the serving of this amendment upon the accused. If that is the amendment that the prosecution wishes to make at the present time, we at this time do not make any objection or comment.

COLONEL PARMELEE: The amendment proposed by the prosecution is accepted by the Commission and the trial will proceed with an amendment. When the defense

is asked later whether they are prepared to proceed, if they say they are, it is assumed that they are prepared to proceed on the amended Specifications.

MR. FEDER: That is satisfactory, Sir.

COLONEL PARMELEE: Will the accused please stand.

Morikazu Ohsugi, at this time the Commission will hear your plea to the original Charge and Specifications which have been incorporated into the record of these proceedings. The original Charge and Specifications as amended during these proceedings which have been incorporated into the record will be the basis of the plea. You may plead either Guilty or Not Guilty.

(The above statement was translated to the accused by Interpreter Saito.)

THE ACCUSED: Not Guilty.

COLONEL PARMELEE: Is the prosecution ready to proceed with this trial?

CAPTAIN ROWE: The prosecution is ready to proceed?

COLONEL PARMELEE: Is the defense ready to proceed at this time?

MR. FEDER: At this stage, if the Commission please, the defense would like to make a motion.

The defense would like a motion to quash, or strike out the Charge and Specifications, or I may term it a motion to make more definite and certain the allegations in the Specifications. Our motion is based upon the fact that there are substantial defects in the specifications

which actually prevent the accused from making a proper defense in that it does not apprise the accused of the offense intended to be charged. The defense maintains that the Specifications are not stated in simple and concise language. They don't state facts constituting the offense in simple and concise language. It appears that the Specifications allege more than one offense conjunctively and alternatively. The Commission will notice the Specifications are so worded that there are quite a number of "ands", "or's", and "and/or's".

We maintain that the Specifications are uncertain, unintelligible, vague, ambiguous, contradictory and inconsistent and the meaning of the allegations are obscure and equivocal and are susceptible to various interpretations.

It is a fundamental rule of law in a civil court and a military court, and in fact, in any court, that the accused should be apprised of the crime that he is being charged with. Now, in looking over the Specifications, that is, the first amended Specification and the second amended Specification, they allege acts of commission and acts of omission. The fourth line of the first amended Specification, reading from there, the Specification reads, "Did wrongfully and unlawfully permit and consent and/or ratify." Now, these terms are contradictory. "Ratify" means, ratifying a pre-existing, or prior act, or approving a prior act while in the word before, they use "consented", or "consent", which means consenting to a commission of an act after

it was performed and shown. Further, the Specification reads --

COLONEL PARMELEE: May I interrupt the defense counsel just a minute. The Commission does not have a copy of the Charge and Specifications.

CAPTAIN ROWE: The prosecution apologizes at this time.

MR. FEDER: Repeating the analyses of the language used in the first amended Specification, I call the Commission's attention to line four, reading from, "Did wrongfully and unlawfully permit and consent and/or ratify and fail to prevent."

Now, the word "consent" is joined by a conjunctive word and an alternative word, with "ratify". Now, it certainly is inconsistent to say that one "ratified" a particular act, which means that he ratified or consented or approved of an act after it had been committed. That is inconsistent with the word, "consented", which means that he had given prior approval. We would like to know whether the accused is charged with consenting to the performance of an act, whether he is charged with ratifying an act, whether he is charged with failing to prevent an act, or whether he is charged with failing to take corrective action or punitive action. Then they charge him further on "and/or did actually order and direct," and before that they say, "and fail to prevent." Now, I submit that an accused in any court has a right to be apprised of the offense with which he is charged. That is fundamental law. Now, the same applies with

the second amended Specification. The same or similar language is used there. They charge him with consenting and then they state, "and/or ratifying and fail to prevent and take corrective and punitive action against and/or fail to prevent and/or did actually order and direct members" to do such-and-such an act.

Now, as I analyze those allegations there is no continuity there. Aside from the language being repugnant and inconsistent, it certainly does not allow the defense to prepare to defend this case or defend the accused. We would like to know what the defendant is charged with. If the Commission desires to know, I have authority I could quote. I have quite a bit of authority. I have military authority and I have civil authority I could quote on the subject. Reading from Winthrop's Military Law and Precedents, Second Edition, Reprint, 1920, it says on page 134, "an important requisite in all pleading, 'says Gould,' is certainty. This requisite 'he adds,' implies that the matter pleaded must be clearly and distinctly stated, so that it may be fully understood by the adverse party, the counsel, the jury, and the judges." Further down on the same page it states, "the rule as to certainty is, as a general principle, applicable to the military charge in the same manner as to the criminal indictment or declaration of the civil practice, and will properly be observed in framing specifications."

Then reading from page 135, there is a headnote "not to be repugnant or inconsistent." Then quoting, "that is to say, that the material portions of the charge are not to be opposed in meaning or effect, or to contradict each other. This rule is repeated by all the principal authorities, civil and military. It is an important one, since a failure to observe it may result in nullifying the charge, or at least the specification in which the repugnancy occurs."

Then reading further, "nor ambiguous," that is the head-note on page 135. "That is to say, the charge must not contain allegations of which the meaning is obscure or equivocal and which are susceptible of different interpretations,"

I will just add one more quotation and, I believe, I will be through. Page 144 of the same authority states, "It may be added that double pleading, consisting sometimes in joining two or more separate distinct instances of the same offense, but more frequently in blending different specific offenses, in one specification, has been a not uncommon fault in our service, and has been repeatedly condemned in orders."

I believe that a mere reading of the specification illustrates the uncertainty, the vagueness, of the offense which is charged against this defendant.

COLONEL PARMELEE: The Commission will recess for approximately ten minutes.

(Short recess)

COLONEL PARMELEE: The Commission is in session.

Does the prosecution oppose the motion?

CAPTAIN ROWE: The prosecution opposes the motion on two grounds. Firstly, by injecting the motion at this time, the accused is put in jeopardy. The accused already had the charges read to him and he understood them. He so testified in open court through his counsel. The accused already had pleaded "not guilty" after he had the opportunity to determine whether he knew and understood the charges and specifications against him and his remark was that he did.

If such a motion as counsel for the defense attempts to present at this time is made, he is placing his own accused in jeopardy. He is injecting his own ideas which is completely irregular as far as procedure is concerned. By the accused's plea of "not guilty" the burden falls upon the prosecution to prove the elements contained in the Specifications.

The second reason for opposing this motion is that it is entirely dilatory tactics being practiced on the part of the defense. The accused was served with the Amended Specifications and Charge on July 31, 1946. Since July 1946 the defense was preparing their case for defense. The prosecution was always ready to clarify any problems and any difficulties had dealing with pleadings and procedure, and the prosecution is especially interested in protecting the rights of the accused. At no time between July 31st and the day of this trial did the defense raise the question that they did not understand the pleadings. That is taking an unfair advantage of the time of this Commission, the time of the prosecution, the time of the Government, and undue expense to the Government and also preventing the accused from having an immediate trial as quickly as practicable, for his own right to determine whether he is guilty or to be acquitted. Now, let us examine the pleadings. The only responsibility that the Government has in charging the accused is with the Charge. He is charged with violation of the laws and customs of war. Is there anything clearer than that? For the purposes of his own guidance and to limit the prosecution in the presentation of its case, specifications are given to the accused to

guide him further so that he can specifically see under what basis the prosecution intends to prove the charges against him. The defense raised one question about the coordinating conjunctive and the word "or." In order to save time and space, that is not an improper pleading, as he attempted to show when he read page 144 of Military Law and Precedents. He says "double pleading is an uncommon fault," but he was referring to the charge, not the specification. There is no double pleading in that charge. He is charged with one item, violation of the laws and customs of war.

Now, and/or conjunctives means just what it is, taking English in its literal language. It means two sentences. Instead of writing up two sentences they used a combined conjunctive meaning both sentences. There is no inconsistency in that. The prosecution intends to prove them, that is why they gave him that Specification, to make it more specific. In fact, the prosecution has taken a further burden on its hands to actually deliberately prove the item to its nth degree. We are limiting ourselves to that proof. There is no ambiguity there. The prosecution intends to prove it, as you will see, when the case proceeds. If the prosecution fails to prove at the close of the prosecution's case, the motion made by the defense would be proper but since the accused already has pleaded not guilty, the trial must go on and he understands the Charge and Specifications under which he is charged.

COLONEL PARMELEE: The Commission will retire to consider the motion, and will make its decision at 1300 hours

this date. The trial will be considered in a status of the Commission deliberating on this motion between the time at present and 1300 hours.

MR. FEDER: If the Commission please, may I clarify one thing here, please.

COLONEL PARMELEE: Yes.

MR. FEDER: In regard to this question of the accused being in jeopardy by entering his plea, it seems that I followed the procedure for arraignment from here pretty closely and it says on page 5 of the Arraignment Procedure, "Is the accused now ready to enter his plea?" on the next line it states, "DEFENSE COUNSEL (here makes any preliminary motion, such as for a Bill of Particulars)" so I assume that the motion was made under the plea. I knew it was a rather unusual procedure but following the ritual of this procedure I made the motion after the defendant pleaded guilty. I ask the court to consider it as a matter of record that this motion was made prior to the plea. It is surely a technical procedure and in all fairness to the defendant and rights in a fair trial, I urge the Commission to consider that the motion was made prior to the plea of the accused.

COLONEL PARMELEE: The Commission will not consider that technicality, the order in which it was made. It will consider that the motion was made as to the sufficiency of the specifications without regard to whether the plea was entered.

MR. FEDER: Thank you, sir.

AFTERNOON SESSION

(The Commission met, pursuant to recess, at 1300 hours.)

COLONEL PARMELEE: The Commission is now in session.

CAPTAIN ROWE: If the Commission please, let the record show that all members of the Commission are present; the accused is present, together with his defense counsel and counsel of his own choice and interpreters of his own choice; the prosecution is present and is ready to proceed. The status of the case thus far is that a motion has been made to make more definite and certain by the defense and to quash Specifications 1 and 2. Consideration of that motion is being taken up by the Commission in executive session and we are awaiting decision by the Commission.

COLONEL PARMELEE: The Commission has considered the motion of the defense and is of the opinion that the amended Specifications as drawn and the Charge are proper in that they allege certain atrocities in violation of the laws of war, that they state those who committed the atrocities, where known, and they give the approximate date of the incident, the situs of the atrocities and state by what manner or instrument the atrocities were committed. As to the defendant in this case, they clearly state his relationship, or alleged relationship, with the members of the Japanese Imperial Forces, Naval Forces, who are alleged to have committed the atrocities in violation of the laws of war. The motion is denied.

CAPTAIN ROWE: The prosecution would like to swear in another interpreter.

(Second Lieutenant Hakuzo Nitta was duly sworn as an interpreter.)

CAPTAIN ROWE: The prosecution desires to make an opening statement. This case involves the problem dealing with the responsibility of command. It does not say that the accused actually committed the atrocity which the prosecution intends to prove, but it was within the knowledge of the accused and by direct order of the accused. Those are the two gravamen features of this case. According to the rules of war as to the rights, duties and obligations alike, they are regulated by the purpose of the war. It is under rules of war between armies and navies to subdue the enemy and accomplish its objective. The belligerent may use every means possible to subdue the enemy as long as the means adopted are not contrary to any existing laws or repugnant to the general sense of morals in mankind. Morality and religion mitigated the savagery of war. A belligerent has no right under modern warfare to take away the lives of an enemy whom he can subdue by other means.

MR. FEDER: If I may interrupt for just a moment--I don't know whether the prosecution is making an opening statement or a closing argument.

COLONEL PARMELEE: The prosecution is required by Prosecution's Exhibit No. 1 to make an opening statement.

MR. FEDER: As I understand, an opening statement is a statement of what the prosecution intends to prove. Now, it seems the prosecution is going into a

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closing argument or summation of the case.

COLONEL PARMELEE: Well, I believe that the prosecution will probably touch, or will tell the Commission what he intends to prove when he gets through with his introductory remarks.

MR. FEDER: I hate to interrupt--I was just waiting for the opening statement by the prosecution.

COLONEL PARMELEE: Proceed.

CAPTAIN ROWE: This is introducing the basic background for my witnesses. To continue with my previous statement, the method of a belligerent in subduing an enemy by other means is accomplished by taking prisoners-of-war. The killing of prisoners-of-war can only be justified in those extreme cases where resistance on their part or the part of others who came to their rescue rendered it impossible for the belligerent to keep those prisoners. War is an abnormal condition between countries. It is for that reason --it is not for that reason a condition of unrestrained lawlessness and license. War is a conflict between military forces and is only secondarily a relation between subjects individually. The principles of humanity condemn methods used that involve cruelty, savagery, and treachery. It reprobates the ill treatment of helpless prisoners-of-war. The principle of chivalry among the military called for the maintenance of pledged faith, the fulfillment of promises and engagements, the manifestation of generosity at a moment of triumph.

On or about 1 October 1944, an American Naval plane was shot down near Salabangka, Celebes Islands. Nine American airmen were captured by the Kendari Garrison. They were held as prisoners-of-war to the knowledge of the commander, Vice Admiral Ohsugi. About 24 November, 1944, five of these prisoners were beheaded by the Kendari Garrison and four of the prisoners were beheaded by the 23rd Air Unit Headquarters, also located near or around Kendari. On or about 25 June 1945, an American B-24 plane of the 13th Air Force was shot down near Pangkadjene, Celebes. Japanese searching parties apprehended four survivors. These survivors were made prisoners-of-war and brought back to Makassar, the headquarters of Admiral Ohsugi. About 10 July 1945, these four men were beheaded at Maros Field. The commander of both garrisons was Morikazu Ohsugi, the accused in this case. The accused defied his own superior and took the law into his own hands and committed the four flyers to their death in violation of the rules of land warfare and in violation of Article 89 of the Geneva Convention relating to prisoners-of-war. The prisoners-of-war never violated any rules for which they were condemned to death. It is merely a situation of personal vengeance and reprisal by Admiral Ohsugi for the bombings of his airfield. Acting under orders never furnishes a valid excuse.

Oriental despotism was an idea in this war. The Japanese military and its leaders carry the shame and responsibility brought upon humanity and prisoners-of-war in violation of the honorable profession of war. Evolved

principles of our international law are securely based on reason, natural law and inalienable rights to limit powers legislatively in order to protect minorities and human rights.

The evidence to be adduced by the prosecution will be from the Japanese who were involved in this plan of murdering helpless prisoners-of-war in violation of the laws of war. From their own mouths there will be developed in this case the importance of responsibility which rested upon Vice Admiral Ohsugi, the accused in this case. You will hear the story from the chief of staff down through the execution. You will then see that the plan of Admiral Ohsugi was "Let my will be in place of reason." You will hear the story as related by his own legal advisor of his staff and his own judge advocate, and still, in spite of advising him not to kill, Ohsugi felt superior in his judgment of the situation and condemned these men to death without trial.

Commanders of troops who fail to prevent the commission of wrongs in violation of laws of war are themselves, war criminals. Justice Jackson, in his report to the president on June 7, 1945, stated, "We do not accept as the paradox that legal responsibility should be the least where the power is the greatest." On January 25, 1919, during the preliminary World War I Peace Conference, it was declared by the Commission for determining war criminals as, "Offenses by military authorities, without distinction of rank, who either ordered or abstained from preventing violations of the

laws or customs of war. It cannot be said that these prisoners of war were killed with no knowledge on the part of Admiral Ohsugi. The prosecution intends to establish that knowledge, and, at least, Admiral Ohsugi gave tacit approval, if not his own authorization, to kill these 13 Americans, helpless prisoners-of-war. Knowledge, combined with the failure to prevent on the part of the commander having a duty to prevent makes him personally liable for the atrocities.

Soldiers or sailors of the army or the navy invariably reflect the attitude of their general or admiral. The leader is the essence and center of control. The resulting liability must be commensurate with resultant crime. To hold otherwise would be to prevaricate the fundamental nature of the command function, especially in time of war. Powerful as he may become in time of war, the commander is still not autocratic or absolute. He still remains responsible before the bar of universal justice.

The prosecution intends to prove that the accused had knowledge that he himself violated the laws of war. The prosecution will prove that the accused deliberately violated his own order from the Imperial Emperor and Imperial Commander to comply with the Geneva Convention. And, the prosecution will prove that Admiral Ohsugi never made a reasonable effort to do everything possible to prevent the violation of the laws of war and of the execution of these flyers. And, all this was within the knowledge of the accused, together with his subordinates.

The prosecution, for its first witness on this case, will call Seijiro Dan. The prosecution intends to prove Specification No. 2 first and then Specification No. 1. All of the witnesses being presented now will apply to the amended Specification No. 2.

COLONEL PARMELEE: Before the first witness is called, I would like to inquire as to whether the presence of all members of the Commission, the accused, his counsel, and prosecution was noted.

CAPTAIN ROWE: Yes, sir.

SEIJIRO DAN

a witness for the prosecution, being first duly sworn,
testified through Interpreters Saito, Nitta, and
Cornejo as follows:

DIRECT EXAMINATION

BY CAPTAIN ROWE:

Q Seijiro Dan, what is your name, your rank, and
nationality?

A Seijiro Dan; rank, ensign; and nationality, Japan-
ese.

Q When were you inducted into the Japanese Imperial
Forces?

A The first of June, 1944.

Q Are you a member of the regular Japanese Imperial
Navy?

A Yes.

Q Do you remember about what date you came to the
Colobes Islands?

A Yes.

MR. FEDER: If the Commission please, I'd
like to interrupt here. I am sorry to make these inter-
ruptions. I think the prosecution should advise all
the witnesses and all subsequent witnesses of their
right to refuse to answer a question which may ~~tend~~
to incriminate them.

COLONEL PARMELEE: Is the witness a suspected
war criminal under charges?

CAPTAIN ROWE: No charges.

COLONEL PARMELEE: Is it anticipated that he
may be?

~~1. ANSWER~~ CAPTAIN ROWE: No charges anticipated.

Furthermore, prosecution would like to make a comment on that. There is no justifiable rule, unless defense can appraise the prosecution ~~that~~ such a right exists in dealings with international war criminals. The right does exist in the American Constitution for American citizens, ~~that~~ they are not bound to incriminate themselves. We are bound by letter of 5 December 1945 as to the procedure and evidence in this case and nowhere in that letter does it say that a man is to be warned of those rights, but I stand to be corrected if the defense can clarify that to me.

COLONEL PARMELEE: It is true that those rights do not pertain by explicit language in the letter of 5 December 1945, but there is some justification for warning the witness that he cannot be used as a witness against himself.

CAPTAIN ROWE: If that is the desire of the Commission, it is satisfactory with the prosecution to proceed on that basis. I have no objection to that.

COLONEL PARMELEE: The Commission will now warn the witness of his right to not incriminate himself by being a witness against himself. In other words, anything that he says that he feels would make him a witness against himself or incriminate him, he does not need answer. If the Commission feels that a question is put which he considers self-incriminating, is not incriminating, the Commission may so rule. The interpreter will translate.

(Translated to witness by Interpreter Saito.)

COLONEL PARMELEE: Has the translation been completed?

INTERPRETER SAITO: Yes.

COLONEL PARMELEE: Did the accused understand?
Are these instructions satisfactory now?

MR. FEDER: Yes, Sir, they are.

COLONEL PARMELEE: Very well, proceed.

CAPTAIN ROWE: To what unit were you assigned in the Celebes?

A 23d Special Base Area, Celebes Detachment.

Q About what dates were you attached to the Kendari Celebes Detachment?

A From October 30, 1943 until the termination of the war.

Q What was your rank during the time that you were a member of the Kendari Sub-Unit?

A Warrant officer and commander of the communication section.

Q Is the Kendari Sub Unit a part of the 23d Special Naval Base at Makassar?

A That is right.

Q Who was in command of the 23d Special Naval Base at Makassar?

A Vice Admiral Ohsugi.

Q Who was in command of the Kendari Sub-Unit of the 23d Special Naval Base?

A Captain Gosuke Taniguchi.

Q Do you recall what dates, or about what dates, Captain Taniguchi was in command of the Kendari garrison?

A It was from the latter part of September, 1944, until the termination of the war.

Q When you said that you were in charge of communications, what did you mean by that?

A Each expeditionary unit has a communication unit. I was in charge of that.

Q Did all sub-units have communications with their main unit at Makassar?

A They always maintained communications.

Q How did they maintain their communications?

A There was constant communications between Makassar and Kendari.

Q Now, will you explain how communication was conducted? Was it by naval vessel, by plane, by telegraph, by telegram, or dispatcher or what?

A We have a certain constant wave length between the Makassar headquarters and Kendari and this wave length was constant and we had constant communications. There were no radio telephone communications.

Q Then, would Makassar communicate to you by telegraph?

MR. FEDER: I object to the question as leading.
Let the witness testify as to the means of communicating.

CAPTAIN ROWE: I will withdraw the question.

How did Makassar communicate to you -- telephone, telegraph, or radio?

A I received communications in radio wireless codes.

Q Were you in charge of the radio wireless at Kendari?

A I had operators and codifiers below me.

Q Did you receive all coded messages from Makassar?

A Yes.

Q Do you recall an incident about October, 1944, in connection with nine American flyers?

A Yes, I recall.

Q Will you explain to this Commission to the best of your memory and knowledge all you know about that incident?

MR. FEDER: If I may interrupt, that is a very broad question. I mean, I think the prosecution should confine himself to stating definite questions. The whole case involves these nine American flyers. I don't know what answers the witness will make; whether any part of that answer will be incompetent. I think the prosecution --

COLONEL PARMELEE: Can the prosecution gain the information by asking specific questions?

CAPTAIN ROWE: I would rather hear the story. I, myself, don't know the story that is in the mind of this witness. The question is right within the Specifications itself. It isn't too broad. He took part in it; whether he remembers anything about it -- I want to know anything he knows about the incident. If there are any objections he thinks are objectionable, counsel can make those objections.

MR. FEDER: It is common court procedure not to ask the witness to ramble on and probably have a lot of immaterial and irrelevant matters in his answer. I believe the prosecution should state a definite and specific question so in case I want to object I might have that opportunity.

COLONEL PARMELEE: Will the prosecution ask certain questions that will gain the story and not use general questions of that nature?

CAPTAIN ROWE: The prosecution will at the proper time. At the present time the prosecution would like to know the story from this witness and if the question is objected to I would like counsel to make his proper objection and have a ruling. This is one question I am not withdrawing.

COLONEL PARMELEE: The question seems proper. The Commission is interested in getting the story. If the answer as given is not proper, you may interpose an objection.

MR. FEDER: The defense will agree to that question subject to a motion to strike.

CAPTAIN ROWE: Either the defense makes an objection or not.

COLONEL PARMELEE: The question is proper. If we could narrow it, it might be a little better. If the prosecution does not know what the witness is going to say and is trying to get a story for the basis of the incident, that is what the Commission is after.

MR. FEDER: I have no further comments.

COLONEL PARMELEE: The Commission will recess for approximately ten minutes.

(Short recess)

COLONEL PARMELEE: The Commission is in session.

CAPTAIN ROWE: Will the reporter read the last question.

(The last question was read by the reporter.)

A On the 5th or 6th of October 1944 I returned with nine flyers to Kendari.

COLONEL PARMELEE: Is that 1944 or 1945?

A 1944. The nine flyers were brought to me by Indonesians when I went to Boenkoe on some other business,

and I brought them back to Kendari because it was convenient for me to bring them back. I handed over the nine flyers and what armament and equipment they had to 2nd Lieutenant Chiuma at Kendari. That is all I have to relate. You will have to interrogate me on further points.

Q Why did you go to capture those flyers?

A We did not go to capture the flyers. We went to Boenkoe on some other business, and since it was convenient to bring them back on our ship we did so.

Q When you received these flyers from Indonesians, did you know their nationality?

A I knew they were Americans when we brought them back.

Q How did you know that?

A When we took them aboard our ship they told us they were from Morotai and that they were flyers and had been shot down.

Q Did you ask whether there were any more flyers besides those nine?

MR. FEDER: I object to that question as being incompetent and irrelevant. The 2nd Specification deals only with nine flyers. We are not interested in any other flyers.

COLONEL PARMELEE: Will the reporter read the last question?

(The last question was read by the reporter)

COLONEL PARMELEE: Objection sustained.

Q Did you take any property from these flyers?

A No, we did not take anything.

Q Did the flyers have any identification tags on them?

A When we took them aboard ship, we put their identification tags and whatever equipment they had in a bag. When we received the flyers from the Indonesians they had a separate bag in which all of these items were contained.

Q Including their identification tags?

A Yes.

Q Were these flyers Americans?

A Yes.

Q You are positive they were Americans?

A We recognized them as Americans positively.

Q When you brought these prisoners back to Kendari, what did you do with them?

A We handed over the nine flyers and all their equipment to Ensign Chiuma, who was waiting at the port.

Q What did Ensign Chiuma do with these flyers?

MR. FEDER: I object to that as calling for a conclusion of the witness. His reply will call for hearsay.

COLONEL PARMELEE: Will you ask the witness if he knows what Ensign Chiuma did --

CAPTAIN ROWE: I will withdraw the question.

Q What did you observe Lieutenant Chiuma do with those flyers?

A No, I did not see what he did.

Q Were they kept at the Kendari garrison, or were they shipped to Makassar?

A I believe they were held at Kendari.

Q Were they held at Kendari as prisoners-of-war?

A I believe they were held as prisoners-of-war.

Q Did Captain Taniguchi know that there were nine prisoners

of war at Koudari?

MR. FEDER: I object to that question as calling for a conclusion of the witness. He doesn't know what somebody else knows -- what Captain Taniguchi knows.

COLONEL PARMELEE: The witness might know. If he doesn't know he will now state.

MR. FEDER: He will be testifying as to somebody else's state of mind. How would he know what somebody else knows?

COLONEL PARMELEE: Will the reporter please read the last question?

(The last question was read by the reporter.)

COLONEL PARMELEE: The question is proper. The witness will testify to the best of his knowledge and belief.

MR. FEDER: If the Commission please, I wish that the witness be instructed to answer as to matters within his own knowledge, not what he believes or what he heard, but matters only within his own knowledge. I have noticed several times he stated, "I believe such a fact." There is no foundation for his belief; whether he obtained that information from somebody else, we don't know.

COLONEL PARMELEE: It is difficult to go behind what the witness says. He is under oath to tell the truth and is testifying to the best of his knowledge and belief. Ask the interpreters to ascertain from the witness if he testified to the best of his knowledge and belief.

THE WITNESS: I am testifying as I know.

COLONEL PARMELEE: Very well, proceed.

CAPTAIN ROWE: Will the reporter please read the last question?

(The last question was read by the reporter.)

A He knew.

Q How did he know?

A He was the commander of the unit at that time, and a report was made to him.

Q Who made the report?

A I believe Ensign Chiuna made the report.

Q Did you speak to Taniguchi at any time about these flyers?

A I spoke to Captain Taniguchi about the time when we took the prisoners-of-war until we reached Kendari.

Q What did Taniguchi do after he received the information about these flyers?

A I don't know.

Q How long were these flyers kept in Kendari?

A I believe it was about approximately one and a half months.

Q During that one and one-half month period did Taniguchi send a message to general headquarters in Makassar that he has nine American flyers as prisoners-of war?

MR. FEDER: I object to that as leading. That is definitely a leading question. Let the witness testify as to any messages he sends.

COLONEL PARMELEE: The witness is in a position, if he were in charge of communications, to know whether such a message was sent. It would be within his knowledge. The objection is overruled.

A Yes.

Q How long after he had these prisoners-of-war did he send a message about them to general headquarters?

A I believe that he sent such a message on the evening of October 8th.

Q What was the date that the flyers were brought into Kendari by you?

A I believe we entered port on October 8th at Kendari.

Q In other words, Captain Taniguchi sent a message informing headquarters about these prisoners-of-war the same day, is that correct?

A I believe we entered port at four o'clock on October 8th, and the message was dispatched eight or nine o'clock that evening.

Q Do you recall, to the best of your memory, the contents of that message?

MR. FEDER: I object to that question that no foundation has been laid. There is no evidence that he sent the message.

COLONEL PARMELEE: Will the prosecution establish whether or not the witness saw the message.

CAPTAIN ROWE: I will develop that.

MR. FEDER: I believe he should lay a foundation and then ask him whether he saw the message. "Did you send a message yourself, or did you see the message before it was sent?"

COLONEL PARMELEE: The witness has testified that such a message was sent, and he is testifying apparently from his personal knowledge. The question now is does he have the

knowledge as a foundation for knowing what its contents might be.

MR. FEDER: That is my objection right there.

CAPTAIN ROWE: I will withdraw the question and lay the proper foundation.

Q Did Taniguchi give you that message that you sent to Makassar in connection with the nine fliers?

A Yes.

Q When you received that message from Captain Taniguchi, did you read it?

A Yes, I read it.

Q After you read that message did you understand its contents.

A Yes, I understood the contents.

Q To the best of your knowledge and belief, were you told to whom you should send that message?

A It was addressed to the commander of the 23d Special Base Unit.

Q. Who was the commander of 23rd special naval base unit?

A. Vice Admiral Ohsugi.

Q. And do you recall the contents of the message you sent to the commander of the 23rd naval base unit?

A. Yes, I remember.

Q. Will you please give the contents of that message to the best of your general knowledge?

A. To the best of my knowledge, the contents went like this: "Captured 9 American flyers. The above were crews on EBY which bombed Kendari on approximately October 5."

Q. Was that message sent in code?

A. Yes, it was sent in code.

Q. Did you ever receive an answer to that message?

A. Yes, sometime later.

Q. What was that answer?

A. We received a message regarding their disposition.

Q. What was the message in connection with disposition of these flyers?

MR. FIDDER: I object to that on the ground there is no foundation laid for it. He didn't state that he read it. He received the message himself, personally, as head of the naval unit. Of course, he would have received the message, but whether he read it personally -- there is no foundation laid for that.

COLONEL PARMELEE: Will the prosecution lay the foundation by specific questioning?

CAPTAIN ROWE: I will withdraw the question and lay a foundation.

Q. Did you receive all messages that were sent in code?

A Yes.

Q Will you explain the system of getting that message or any message in code to the commanding officer and translated?

A We translated the messages we received from Makassar and took them to the commander.

Q Do you see every message after it is decoded?

A Yes, I read all of them.

Q Do you sign or initial the message after it is decoded?

A We took them to the commander after I signed them.

Q When you say "we" took them, who do you mean by "we"?

A Usually the dispatcher takes it to the commander but when I received the message regarding the disposition of the prisoners of war I took it myself, thinking it important.

Q Now, what did that message say in connection with the disposition of the flyers?

A I do not recollect the exact wording, but the following message was received on or about 24 November; "Secret 08" standing for the date, "2130" standing for 9:30; "Carry out disposition."

COLONEL PERMELEE: Commission will adjourn and reconvene at 0830 hours tomorrow.

(The Commission adjourned at 1500 hours to reconvene at 0830 hours, 2 October 1946.)

USA -vs- Morikazu OHSUGI
Prosecution's Exhibit No. 1
1 Oct 1946

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

APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

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

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- (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

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

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- (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 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.

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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.

5. 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 proscribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

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

R E S T R I C T E D

BABIC: Ltr. GHQ, SCAP, file AG 000.5 (18 July 46) IS, dated 18 July 1946, subject: "Trial of Morikazu OHSUGI".

AG 000.5 (18 July 46) IS 1st Ind

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

TO: Commanding General, United States Army Forces, Western Pacific,
APO 707

1. Pursuant to authority delegated the Commander-in-Chief, United States Army Forces, Pacific, contained in letter, file AG 000.5 (18 July 46) IS, General Headquarters, Supreme Commander for the Allied Powers, Subject: "Trial of Morikazu Ohsugi", dated 18 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:

Morikazu Ohsugi

2. The trial will be held in the city of Manila, Philippine Islands. The trial held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, dated 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 officer, assigned to General Headquarters, Supreme Commander for the Allied Powers, has been made available to your command for service as prosecutor on the Military Commission to be convened by you for this purpose:

Prosecutor for the Trial

2nd Lt Morris D. Forkosh, INF, O-1336900, Prosecutor

By command of General MacARTHUR:

R. G. HERSEY
Lt. Col. AGD.
Asst. ADJ. Gen.

1 Incl:

1. Chg vs Morikazu Ohsugi

USA -vs- Morikazu OHSUGI
Prosecution's Exhibit No. 2
1007 1946

A CERTIFIED TRUE COPY:

James S. Miner
JAMES S. MINER
2nd Lt. INF

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (18 July 46) LS

APC 500
18 July 1946

SUBJECT: Trial of Morikazu Ohzugi

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 charge:

Morikazu Ohzugi

2. The trial will be held in the city of Manila, Philippine Islands. All trials held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, dated 5 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:

R. G. HERSEY
Lt. Col. AGD.
Asst. ADJ. Gen.

1 Incl:
1. Chg vs Morikazu Ohzugi

A CERTIFIED TRUE COPY:

James S. Miner
JAMES S. MINER
2nd Lt. INF

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (18 July 46) LS

APC 500
18 July 1946

SUBJECT: Trial of Morikazu Ohzugi

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 charge:

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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:

R. G. HERSEY
Lt. Col. AGD.
Asst. ADJ. Gen.

1 Incl:
1. Chg vs Morikazu Ohagi

A CERTIFIED TRUE COPY:

James S. Miner
JAMES S. MINER
2nd Lt. INF

MILITARY COMMISSION
CONVENED BY THE COMMANDING GENERAL
UNITED STATES ARMED FORCES, WESTERN PACIFIC

APD 707
1 October 1946

SUBJECT: Summoning and Swearing of Witnesses for U.S.A.
vs Morikazu OHSUGI.

TO: Prosecutor for Commission

1. Pursuant to authority of provisions of letter, General Headquarters Supreme Commander the Allied Powers, 5 December 1945, subject: "Regulations Governing the Trials of Accused War Criminals", you are authorized, as prosecutor of the case referred for trial to the Military Commission convened by the Commanding General, United States Armed Forces, Western Pacific, by paragraph 21 Special Order No. 214, dated 17 September 1946, to issue for this Commission subpoenas and subpoenas duces tecum to compel the attendance of witnesses to any such trial and to require such witnesses to bring with them any papers or documents which may be used as evidence in such trial and to administer oaths or affirmations to witnesses and other persons.

Archibald L. Parmelee
ARCHIBALD L. PARMELEE
Col. CAC
President of Commission

U. S. A. vs
PROSECUTION

Morikazu Ohsugi

EXHIBIT No. 3

RECEIVED 1 Oct 1946