

HEADQUARTERS
 UNITED STATES FORCES
 CHINA THEATER
 Office of the Theater Judge Advocate

APO 971
 2 April 1946

JA 201 - Kaburagi, Masataka
 Major General
 Imperial Japanese Army

SUBJECT: Review of the Record of Trial by a Military Commission of Kaburagi, Masataka, Major General, Imperial Japanese Army, et. al.

TO : The Commanding General, United States Forces, China Theater, APO 971.

1. OFFENSES:

a. Charge: Violation of the Laws of War.

That the accused, as members of the Japanese Imperial Army and employees of the Imperial Government of Japan, acting jointly, did willfully and unlawfully commit cruel, inhuman and brutal atrocities against certain American Prisoners of War.

- (1) Acting jointly and in pursuance of a common intent, did, willfully and unlawfully, mistreat and torture three American Prisoners of War, held captive by the Japanese Armed Forces, by parading them publicly through the city streets of Hankow, China, and did commit and suffer to be committed brutal and atrocious beatings and assaults upon them, and did cause them to be exposed to the insults and curiosity of the public.
- (2) Acting jointly and in pursuance of a common intent, did, willfully and unlawfully, mistreat, brutally torture and execute without cause or trial three American Prisoners of War, by striking them with fists, clubs and strangling them with ropes until dead.

b. Convening Authority: Lieutenant General A.C. Wedemeyer, U.S. Army Commanding General, United States Forces, China Theater.

c. Place of Trial: Courtroom in the Ward Road Jail, Shanghai, China.

d. Date of Trial: Arraignment, 24 January 1946; Interlocutory Motions 1 February and 4 February 1946; Trial 11 February 1946 to 28 February 1946.

e. Pleas, Findings and Sentences:

		<u>Pleas</u>	<u>Findings</u>	<u>Sentence</u>
MASATAKA KABURAGI	- Major General, Chief of Staff, 34th Imperial Japanese Army	Ch NG Sp 1 NG Sp 2 NG	G G G	Death
KAMEJI FUKUMOTO	- Colonel, Commanding Hankow Gendarmerie (Jap)	Ch NG Sp 1 NG Sp 2 NG	G G G	Life
SADATSUKU SAKAI	- Major, Special Secret Service, Hankow Gendarmerie (Jap)	Ch NG Sp 1 NG Sp 2 NG	G G G	20 years

Pleas, Findings and Sentences: (Cont'd)

		<u>Pleas</u>	<u>Findings</u>	<u>Sentence</u>
KEISUKE KOSAKA	- Captain, Special Secret Service, Hankow Gendarmerie (Jap)	Ch NG Sp 1 NG sp 2 NG	G G G	3 years
TSUTOMU FUJII	- Warrant Officer, Hankow Gendarmerie Detachment (Jap)	Ch NG Sp 1 NG Sp 2 NG	NG G G	Death
SHOZO MASUI	- Sergeant Major, Special Secret Service, Hankow Gendarmerie Detachment	Ch NG Sp 1 NG Sp 2 NG	G G G	Death
MINORU HISMATSU	- Sergeant Major, Press Information 34th Imperial Japanese Army	Ch NG Sp 1 NG Sp 2 NG	G G G	15 years
HISAYOSHI YAMAGUCHI	- Corporal, Propaganda, 34th Imperial Japanese Army	Ch NG Sp 1 NG Sp 2 NG	G G G	15 years
KOKICHI TSUKADA	- Sergeant, Chinese Intelligence, Hankow Gendarmerie Detachment	Ch NG Sp 1 NG Sp 2 NG	G NG G	12 years
YOSHIYUKI TAKEUCHI	- Sergeant, Special Secret Service, Hankow Gendarmerie Detachment	Ch NG Sp 1 NG Sp 2 NG	G NG G	12 years
JUNICHI FUJII	- Sergeant, Special Secret Service, Hankow Gendarmerie Detachment	Ch NG Sp 1 NG Sp 2 NG	G NG G	12 years
MASARU MIZUTA	- Lance Corporal, Propaganda, 34th Imperial Japanese Army	Ch NG Sp 1 NG Sp 2 NG	G NG G	18 months
YOSABURO SHIRAKAWA	- Lance Corporal, Special Secret Service, Hankow Gendarmerie Detachment	Ch NG Sp 1 NG Sp 2 NG	NG G G	Death
SHOJI NISHIKAWA	- Superior Private, Press Information, 34th Imperial Japanese Army	Ch NG Sp 1 NG Sp 2 NG	NG G G	15 years
KOICHI MASUDA	- Sergeant, Special Secret Service, Hq. Hankow Gendarmerie	Ch NG Sp 1 NG Sp 2 NG	NG G G	Death
RYOICHI MANABE	- Consul, Imperial Japanese Consulate General, Hankow	Ch NG Sp 1 NG Sp 2 NG	G NG G	3 years
SHOHEI HAMADA	- Consular Police, Imperial Japanese Consulate General, Hankow	Ch NG Sp 1 NG Sp 2 NG	NG NG NG	-
TAKUMI KATO	- Interpreter, Liaison Officer, Chinese Model Youth Corps, Hankow	Ch NG Sp 1 NG Sp 2 NG	G NG G	2 years

f. Maximum Sentence: As a military commission may direct.

2. PRELIMINARY REMARKS:

a. Pursuant to paragraph 5, Special Orders No. 19, Headquarters, United States Forces, China Theater, dated 21 January 1946, a Military Commission was appointed for the trial of persons, units and organizations accused as war criminals in this Theater (R 1), and on completion thereof to transmit the record of trial, including any judgment or sentence directly to Headquarters, United States Forces, China Theater, for action by the appointing authority (the Commanding General, United States Forces, China Theater) (R 1). By letter of transmittal, dated 21 January 1946, the charges against the accused in the instant case were forwarded by the Theater Judge Advocate to the Commanding General, United States Forces, China Theater (R 1). By first indorsement, dated 21 January 1946, the charges against the accused in the instant case were referred for trial by the Commanding General, United States Forces, China Theater, to the Military Commission appointed by paragraph 5, Special Orders No. 19, Headquarters, United States Forces, China Theater, dated 31 January 1946 (R 1).

b. The charge and specifications name twenty-two accused, but only eighteen had been apprehended and brought to trial. Four of the accused, Izumi, Terada, Nakamura and Hata, had not been apprehended, and were not on trial before the commission in the instant case (R 2).

3. EVIDENCE.

a. The following is a brief summary of the competent evidence (except as to more detailed evidence with respect to each accused, which evidence is set forth at the conclusion of this summary):

The accused were members of the Imperial Japanese Army (R 191, 279, 282, 299, 309), the Hankow Gendarmerie (R 194, 196, 232, 243, 255, 261, 267, 275, 318, 331, 338, 364), the office of the Consulate General at Hankow (R 350), and employee of the Imperial Japanese Army (R 369). See organizational charts (Ex 34, and Ex a) for the relative positions of the accused in the military and civilian organizations involved. The city of Hankow, China, had been bombed by the United States Army Air Forces (R 199; Ex #42) and the Japs desired to spread propaganda among the populace to the effect that the Japs had shot down American airplanes (R 244; Ex #48), that the Chinese had captured American fliers (Ex #48), and that the Chinese populace was incensed against the Americans (Ex #70).

On 21 November 1944, a B-29 returning from a raid on Omura crash, landed in a rice paddy about 150 miles from Hankow, China (Ex 3). Of the eleven crew members, three bailed out before the crash, and just prior to the crash the co-pilot, 1st Lt. Vernon D. Schaefer was struck by a bullet and lost consciousness. He regained consciousness at a Jap guard post. Three other members of the crew were there - Lt Lester R. White, Sgt Henry Wheaton and Sergeant Forbes (Ex 3). Lieutenant Schaefer attempted to ask them about the other crew members but Jap guards prevented this by striking him. When he again regained consciousness, White, Wheaton and Forbes were gone and the Jap medical aid man told him they were taken to Hankow and that he would follow soon (Ex 3). Schaefer was taken to Hankow on 11 December 1944. Jap officers at Hankow questioned him about White, Wheaton and Forbes and told him his story did not jibe with theirs. Schaefer did not see them at Hankow and did not hear anything about them. He was taken to Shanghai where he met three other United States fliers who told him that White, Wheaton and Forbes had been there (Ex 3).

In the latter part of November 1944, the accused Kaburagi (then Colonel and Chief of Staff of the Japanese 34th Army) had a "confidential" conversation with Lieutenant General Sano, the Commanding General of the 34th Army on "the use of American prisoners of war in a parade through the city of Hankow" (Ex #36; R 198). Around 11 December 1944, Kaburagi had a second discussion at the official residence of the Commanding General (Lieutenant General Sano), at

which time it was decided to parade the American prisoners of war through the streets of Hankow. Orders to that effect were immediately given (Ex #36; R 199). Kaburagi ordered 1st Lt. Izumi to carry out the plans of the parading of the American prisoners of war, and gave his approval based on the plans of the Commanding General (Ex #36; R 199-200). Kaburagi believed that the parading of the American prisoners of war through the city would slacken the air raids and would put Chiang-Kai-Shek in an awkward position, since it would appear that he was using American planes to kill his own people (Ex #42; R 203).

At a meeting in November 1944 called by Consul Manabe for propaganda purposes, a discussion took place relative to the Chinese Model Youth Corps (an organization which received its directives from Lieutenant Colonel Endo of the Japanese Imperial Army) parading the American prisoners of war for propaganda purposes (Ex 32, 38, 82, R 350-352). At the close of the meeting on 15 December 1944 held at Sogo Hall and attended by Manabe, Lieutenant Izumi announced to him that the parade of American prisoners of war would be held on 16 December 1944 (Ex #82, R 352).

Japan had agreed to abide by the provisions of the Geneva Prisoner of War Convention (Ex #1). A number of the accused Japanese officers and officials who planned and took part in the planning of the prisoners of war parade knew that such parade was morally wrong and in violation of international law (R 202, 357, Ex #40, 242, 244).

Kaburagi transmitted the orders about the parade and to "conduct the affair" to Lieutenant Izumi (R 199), and he issued orders to Izumi and told him the purpose of the affair was to relax American bombardment in Hankow (R 203). Izumi went to Major Sakai (Chief of Special Secret Service Section, Hankow Gendarmerie) in early part of December and told him about the plan to parade the American prisoners of war (Exs #48, 50, R 243) and requested the Gendarmerie to participate. Izumi returned on the 14 or 15th of December and informed Sakai that the "Army had decided upon the plans for this parade, that there was an order from the Chief of Staff and that they will conduct it on 16 December (R 244). Izumi gave Sakai tentative plans that for propaganda purposes it would appear that (1) Chinese would apprehend the American prisoners of war, (2) march them through the city, and (3) turn them over to Jap Army (Ex #47-50); and further stated that stringent punishment would be inflicted upon the American prisoners after the parade (Ex #48, 50); and that the decision to punish the prisoners severely had been made by the Army (Ex 48, 50) and that gendarmes would be necessary to cooperate (Ex 48, 50, R 245). Sakai made a report of this to Colonel Fukumoto (Ex #40, 44; R 233, 242).

Manabe requested Consular Police Chief Shinohara to send consulate police to the parade "to stop the violence of the people against the prisoners" (R 353) and to prevent the Japanese populace from committing any acts of mob violence (Ex #82). Sakai and Fukumoto discussed the request for gendarmerie participation at the parade and agreed to comply (Ex #40, 44, 48, 50; R 233, 239, 242, 245).

On 16 December 1944 orders were issued by the Hankow Gendarmerie Detachment (Sgt Masui, Special Secret Service) to Sergeant Fujii, Shimooka, Takeuchi and Tsukada from the Operations Section to participate in the parading of the American prisoners of war (Ex #78; R 261, 275). A truck arrived from the Information Section and Lance Corporal Mizuta, Sergeant Hata and Gendarmes Masui, Fujii, Shimooka, Hakamura and Takeuchi left on the truck for the detention house where the American prisoners of war were kept (Ex #78, R 262, 268). The prisoners were the last three American fliers imprisoned at the 34th Army Prison in Hankow in November 1944. The three prisoners of war were led out into the corridor of the detention house and their arms were "bound together" (Ex #78, R 269, 262, 319). "Everyone present assisted in tying the prisoners of war" (Ex #78). The truck then went to the Chinese Model Youth Corps and arrived at about 1040. Takeuchi marched the three prisoners of war to the office of the Model Youth Corps and led them into a room

adjoining the office (Ex #78, 76, R 319). The prisoners on the truck were covered with a black drape or curtain "so that they would not be seen" (Ex #58, 72; R 265, 268, 319).

The order of the parade was arranged in the yard of the Model Youth Corps (Ex #78). The route of the parade was from the Model Youth Corps - Han Ching Street - French Concession - Tich Lu Restaurant - Wu Chu Street - Huang Po Street - Szu Min Street - Kiang Han Street - Chung Shan Street - San Min Street - Min Chu Street - Han Cheng Street - Li Chi Street - Chung Shan Street - Hopei Street - Wu Chu Street - Han Ching Street - Hopei Street - Wu Chu Street - Han Ching Street - Model Youth Corps (Ex #78). The parade extended for a distance of six kilometers (R 321), and lasted from about 1300 to 1600 (Ex 38).

From the moment the parade left the Model Youth Corps, mob violence against the prisoners broke out (Ex #78, 72, R 263, 270, 274, 277, 328). The prisoners were beaten in the parade with a stick by Sergeant Takeuchi and with fists by Sergeant Fujii and Sergeant Tsukada (R 78). The prisoners were beaten by the crowd (Chinese and Japanese) with fists (Ex 78, R 277, 3220, and brute force (Ex #72) and Masui stopped a Chinese from beating the prisoners with sticks (Ex #72). Masui saw people in crowd "carrying rods (about 4cm)" (Ex #72), throughout the parade, both Japanese and Chinese were constantly beating the prisoners (Ex #60, Ex #66, 78, 72, 272, 277, 106). At Hunan Road, Tsukada was pushed by someone and "blood from a prisoner's nose stained" his overcoat (Ex #60). The parade stopped at a number of places, at which speeches were made by participants of the parade and propaganda leaflets were distributed (Ex #72, 78, 60; R 106, 321). No one suggested that the parade be stopped (R 266). Gendarmerie Captain Yumoto, adjutant to Colonel Fukumoto stepped out of his office and saw the parade, and a member of the Model Youth Corps making a speech (R 106). He saw a mob (Chinese and some Japanese) assaulting the prisoners, and saw that the prisoners' faces were bloody (R 106). The Americans were then being assaulted in front of the Gendarmerie Headquarters (R 107). He reported to his Commanding Officer, Colonel Fukumoto (R 106) and both went by motor car to Sun Yat Sen's statue, where parade was at that time (R 107). Saw that prisoners were rather exhausted (R 108), but heard no discussion by anyone concerning stopping the parade (R 108). The parade ended at the Model Youth Corps (R 264, Ex #78). After the prisoners were brought back to the Model Youth Corps about 1700, they rested on the lawn (Ex #38, R 375). They were so fatigued that they were leaning on each other's shoulders, and practically sleeping with their faces uplifted to the skies". (Ex #75). After a while the prisoners were removed "to the empty building behind the library", awaiting the arrival of a truck (Ex 38).

At about 1800 hours, Sergeant Yamaguchi of the Information Section of the 34th Army was out to the Model Youth Corps to guard the American prisoners (Ex #68, R 301). A truck was dispatched from the Information Section (Ex #76, R 285) with Sergeant Hata, Nishikawa and Hismatsu to the Model Youth Corps (Ex #62, 70; R 285, 310) and arrived about 2000 hours. The prisoners were immediately put on the truck and then proceeded to the Gendarmerie Detachment. Sergeant Yamaguchi was taken along from the Model Youth Corps (Ex #70, 66; R 310, 285-286). At the Gendarmerie Detachment, Sergeant Hata got off the truck, entered the Gendarmerie Detachment Headquarters and about 20 to 30 minutes later came out with five or six gendarmes including one W/O, and all got on the truck (Ex #70, 66; R 310, 286). A "guide" was obtained from the Hankow Japanese Consulate Police and the truck then proceeded to the crematorium (Ex #80, 66, 70, 74, 62; R 286, 310, 302, 332). Arrangements had been made at 0900 by the Gendarmerie with the crematorium for the cremation of "three gendarmes" that evening (R 52, 61). The Chinese caretaker had prepared the ovens for the cremation (R 53, 62). Upon arrival at the crematorium the prisoners were unloaded and taken to the waiting room (Ex #74, 62, 66, 70; R 287). "The prisoners were extremely exhausted due to having been beaten during the march that day; they could not stand by themselves, and also had bruises on the face and elsewhere" (Ex #62, R 53). The prisoners were then led out one at a time to the terrace of the crematorium, beaten with wooded sticks and strangled with ropes (R 54, 48, 50, 311, 324, 341, 346, 348; Ex #62, 70, 68, 66, 74).

The strangulation was accomplished as follows:

"A rope was wound around the neck of the prisoner and two persons hold either end of the rope and pulled and somebody else held the legs and arms of the prisoner." (R 326). It took from 5 to 10 minutes to strangle the prisoner (R 335). After the killing had been completed, the American prisoners were carried into the crematorium, placed in the two ovens that were in operation, the ovens were fired and the American fliers cremated (R 288, 312, 325, 303-304, 333; Ex #70, 62, 68, 74, 66). While the prisoners were being killed their omitted groans, moans and noises (R 346, 327, 63; Ex #80, 66). No other cremations had taken place that night (R 65). The following morning (17 December 1944) the coolies went to the crematorium and saw blood on the terrace where the prisoners were beaten (R 50, 65). That same morning a Japanese gendarme appeared at the crematorium and instructed the Chinese in charge to throw the ashes into the pond "because they were supposed to be bad things" (R 54). The Chinese collected the ashes in a dust pan and buried them (R 55) and these ashes were subsequently removed by American authorities (R 66; Ex #29, 30).

After the parade the Swiss Consul (Mr. Schoch) lodged a protest with the Japanese Consulate (Ex #83) and talked in person with Jap Consul Manabe (R 356). Neither Manabe nor the Jap Consulate took action on the protest or the report of Mr. Schoch that the American prisoners had received violence and been injured, but Schoch was advised that the consulate merely heard rumors of the incident and was advised to go to the Army for details (R 356). Izumi told the staff that: "Whatever you saw or heard last night, you must never tell anyone else and if you have trouble answering them, then tell them that probably the prisoners were sent to Shanghai" (R 304). When Schoch went to the Army, Izumi reported his protest to Kaburagi, and told Kaburagi that the Swiss Consul was informed that Jap Army did not participate and that the Chinese were responsible for the incident (R 217). Kaburagi made no inquiry as to the nature of Schoch's protest or its contents (R 218).

b. Each of the accused (except Hamada, who was acquitted), testified on his own behalf at his own request (R 150, 191, 194, 196, 231, 242, 255, 261, 267, 275, 279, 282, 299, 309, 318, 331, 338, 350, 364, 369) and each of the accused (except Sergeant Fujii) made one or more written statements (Ex #31, 32, 35, through 82 inclusive).

c. The following is a resume of the pertinent facts contained in the written statements made by the accused and the testimony given before the Commission:

(1) KABURAGI, Masataka was Chief of Staff of 34th Army, stationed at Hankow, China, and held rank of Colonel in December 1944. In latter part of November 1944, he called on Lieutenant General Sano, Commanding General of 34th Army, had a confidential conversation on the use of American prisoners of war in a parade through the city streets of Hankow. The purpose was to "influence the opinions of the people in the city and make Chiang Kai Shek put a halt to the bombing the city". This first discussion about the parade was confidential in nature between Kaburagi and the Commanding General (Ex #36; R 198; Ex 42).

A second meeting took place between Kaburagi and the Commanding General on 11 December 1944, at the official residence of the Commanding General. It was then decided to have a parade of the American prisoners of war on the streets of Hankow for "propaganda purposes". Orders were issued and the Commanding General instructed Kaburagi to transmit such orders to Major Hyoiga, the officer in charge and have him conduct the affair (Ex #36; R 199).

He transmitted "verbal" orders to Lieutenant Izumi to hold the parade and told Izumi that the purpose was to relax American bombardment in Hankow (Ex #42; R 203). Was worried that parade "may leave bad influence upon Japanese in America", but Izumi told him that "parade will be held by the Chinese Model Youth Corps and we won't be responsible for it. As long as the Japanese

Army doesn't appear in the parade we won't be responsible for it" (R 203). He knew that parade would be a violation of international law (R 202). He gave no concern to the possibility that prisoners of war would be injured in parade (R 203).

On 16 December 1944, he was at 34th Army Headquarters during the entire day. First learned of parade on 17th when Lieutenant Izumi reported to him (Ex #36; R 204). Izumi reported that during the parade the prisoners of war were assaulted by the populace and beaten; that gendarmes participated in order to guard prisoners of war (Ex #36; R 213). He did not ask for details, nor did he inquire as to extent of injuries of prisoners of war (R 204); nor did he contact Colonel Fukumoto for details, or Major Hattori of Hankow Gendarmerie, though he knew that gendarmes participated in the parade (R 204; Ex #42). He made no inquiry as to what became of the prisoners or to what extent the injuries were treated, nor did he inquire of the prison officials (R 205).

He did not report the situation to General Sano as received from Izumi (R 205), nor is he certain if he ever reported to General Sano (R 206). Heard neither rumors nor gossip as to what happened at parade (R 206).

When General Sano was away, he acted and made decisions in the name of the Commanding General in case of emergencies (R 207), and he had the power to fix the date of the parade in the absence of General Sano (R 207, 222). Though General Sano ordered the parade to take place before he left Hankow, Kaburagi had the power to act in emergencies in the absence of General Sano (R 224).

Izumi reported to him about Schoch's protest (Ex #83) and told him that Schoch was informed that the Jap Army did not participate, but that the Chinese were responsible for the incident (R 217). Kaburagi made no inquiry as to the nature or contents of Schoch's protest, but transmitted Izumi's report to General Sano (R 218). He apologized to General Sano for not submitting the plan of the parade, and General Sano replied "It's too late; there is no other way" (R 215). He learned about the execution and cremation of the prisoners of war for the first time, when he read in a newspaper in Tokyo in November 1945 that the prisoners had been killed (R 200).

(2) FUKUMOTO, Kameji was Commanding Officer of the Headquarters, Hankow Gendarmerie (Ex #40, 44; R 232). He was under the command of the 34th Army Headquarters with regards to operational security (Ex #40) and practically all his duties of gendarmerie concerned operational security (Ex #40); he received his orders in the name of the Army Chief of Staff, and his reports were submitted to the Chief of Staff (Ex #40).

He learned in the early part of December 1944 about the Army's plan for the parade of the American fliers (Ex #40; R 233); he was informed that it was an order of the Chief of Staff, and that the Gendarmerie was to cooperate (Ex #40; R 233). He had been Commanding Officer of the Hankow Gendarmerie since 19 May 1944 and in the Jap Army for 26 years (R 236). He ordered the Special Secret Service Section Chief (Major Sakai) to have the Gendarmerie Detachment Commanding Officer (Hattori) receive orders directly from the Army with respect to the parade (Ex #40). He also ordered the Gendarmerie Detachment Commanding Officer, that in the event the Army should request gendarmes after the parade, to dispatch the necessary number of gendarmes and to place them under the direct command of the Army (Ex #40).

He never expressed his opposition to the parade outside of his Headquarters (R 237). When he went to 34th Army Headquarters on 16 December to attend a meeting, he had knowledge that parade was to take place that afternoon (R 238). He did not say to Major Sakai that gendarmes must not be used in parade, but that gendarmes must not be connected with this incident (R 239).

His adjutant, Captain Yumoto, told him "we stopped some Japanese from assaulting the prisoners of war near the Kiangwan Road cross-roads", and thereafter he proceeded in automobile with his adjutant in direction of parade and merely observed situation for 4-5 minutes (Ex #40; R 241); he returned to his office but made no inquiry of gendarmes whether prisoners had been injured or molested (R 241), and was informed when parade had ended; he then returned to his quarters (Ex #40). He felt that the parade was in violation of international law (R 242). He never asked Major Sakai as to what disposition was made of the prisoners after the parade (R 241).

(3) SAKAI, Sadatsuku was Special Secret Service Section Chief, Hankow Gendarmerie Headquarters; his Commanding Officer was Colonel Fukumoto, and he had been in the Jap Army for 30 years (R 243; Ex #48). Heard about the plan to parade American prisoners of war around 4th or 5th of December from Izumi (R 243; Ex #48, 50). He reported the conversation to Colonel Fukumoto and was told that from the standpoint of international law the plan would cause trouble (R 244). Izumi came back on 14th or 15th December and said "army had decided upon the plans for this parade, that there was an order from the Chief of Staff and that they will conduct it on 16 December" (R 244; Ex #48, 50). Izumi asked for 5 or 6 gendarmes and said that the army would carry out and bear responsibility for the disposition after the parade; that he was contemplating inflicting stringent punishment upon the American prisoners, and that according to necessity they would like to have gendarmes (R 25; Ex #48, 50). He immediately went upstairs and reported to Colonel Fukumoto, who replied that since it was an army order, he could do nothing about it (R 245; Ex 50, 48).

During the parade on 16 December he was in his office, never left office, arrived at 0900 and returned to quarters about 1630; however, when procession passed window, he merely "peered out". (Ex #48).

Around 4:30 in the afternoon, he received a phone call from Sergeant Shimo Oka who said that Major Hattori wanted to have "someone from the headquarters present...at the action to be taken after the parade" (R 246; Ex #48). He told Kosaka to send someone and Masuda was sent (R 246; Ex #48). In January 1945 he heard from Kosaka that Masuda had gone to a crematorium (R 250). He transmitted to Hattori, Colonel Fukumoto's orders "to dispatch gendarmes in case they are asked for by the army in their taking definite disposition of the prisoners (R 250).

(4) KOSAKA, Keisuke was then a First Lieutenant in the Army Gendarmerie, and has been in the Jap army for 26 years (Ex #52, R 255); was attached to Special Secret Service Section under Major Sakai as Section Chief and Colonel Fukumoto as Commanding Officer (Ex #52; R 256). He first heard about parade of American prisoners of war during early part of December 1944 on a visit to the Army Information Section (Ex #52; R 256). On 15 December 1944, he spoke to Terazono, unofficial staff member of Chinese Police Bureau and Chinese Police Chief Wang about the parade, and said that gendarmes could do nothing about stopping it, since they were not conducting it (Ex #52).

On 16 December 1944 he went on duty at 0900 and at 1620 saw a sign on bulletin board of Information Section relating to the parade of American prisoners of war (R 256; Ex #52). After 1700 he was told by his Section Chief (Major Sakai) to send someone to the Gendarmerie Detachment as "witness to disposition", and he sent Masuda (R 257; Ex #52). On 17th he asked Masuda what he did at Detachment and was told that he "went to assist at a cremation" (Ex #52; R 257). Two or three days later he gave a report to Sakai (R 257), but did not report to his Commanding Officer, Fukumoto (R 259), nor did he ask Masuda for any further details (R 258).

(5) FUJII, Tsutomu was Army Gendarmerie warrant officer, had been inducted in 1933 and was in charge of Internal Affairs Section under Major Hattori as Commanding Officer (R 338-339). He learned about the parade on the 15th of December, but did not see or participate therein (R 339). About 7 in the evening while at the office he received a phone call from Major Hattori to "go

to the disposition of the fliers" (R 339, Ex #56) and "go along and witness it" (Ex #56). The Commanding Officer (Major Hattori) told him that the punishment of the fliers would be "strangling and cremation" and that Shimooka had the details (R 340). He understood his duty to be "of seeing to it that the others did not fail to carry out the orders to the letter in strangling the prisoners as punishment" (R 340). He assisted in strangling one of the prisoners at the crematorium, by pulling one end of the cord (R 341-342; Ex #62). He checked the pulse and breathing (Ex #62; R 342). The corpse was loaded on a flat board and introduced into the crematory furnace (Ex #62). Upon return from crematorium he informed Major Hattori of his return (R 343) and next morning made his report that "the three American prisoners have been strangled and cremated last night" (R 344). "All those who went there (the crematorium) had come for the purpose of executing the prisoners and cremating them" (R 345). If he had so desired, he could have refrained from taking part in the strangulation (R 345). He did not have any experience in checking pulse and respiration (R 345), and did not check prior to placing bodies in the oven (R 345). A rope was put around the prisoner's neck, he wound one end of the rope around his hand and pulled - the prisoner "emitted a little noise" (R 347). He did not think whether it was right or wrong to kill the prisoner (R 347). The usual method of execution in the Japanese Army was by firing squad (R 348). He had received instructions that "prisoners were to be handled in the same manner as to soldiers of your own army" (R 348). At the crematorium he was not subject to any orders from anyone, since he was the ranking officer (R 349).

(6) MASUI, Shozo was inducted in 1937 and was Army Gendarmerie Sergeant major (R 318; Ex #72). He was acting section chief of the Special Secret Service Section (R 318). He learned about the parade about noon on 15 December (Ex #72, R 318). On 16 December 1944 at morning assembly he was instructed by Major Hattori that the Chinese under supervision of the Army would conduct a parade, and that he was to go in civilian clothes and stay near the prisoners "to prevent their escape" (R 319; Ex #72). He went to the detention house, secured the prisoners, tied them, and after the prisoners were "covered with blankets" so that they could not be seen, took them to the Model Youth Corps (R 319; Ex #72). He accompanied the parade, which stopped at five places for speeches and rest, and finally left the parade in front of the gendarmerie detachment before its conclusion (R 321-322; Ex #72). The prisoners were beaten by the mob with fists and "brute force", and some persons carried rods (about 4 cm) but the gendarmes could not prevent mob from attacking prisoners (R 322; Ex #72).

At about 7 o'clock in the evening he received a phone call from Major Hattori "that the prisoners that were paraded today are to be cremated", and he was told to go along with Shimo Oka (R 323; Ex #74). He proceeded by truck to the crematorium, and saw the prisoners covered with something "that looked like a blanket" while on the truck (Ex #74). At the crematorium he assisted in strangling two of the American prisoners of war (R 324; Ex #74). He did not think it was wrong to kill the prisoners (R 326). "A rope was wound around the neck of the prisoner and two persons held either end of the rope and pulled and somebody else held the legs and the arms of the prisoner" (R 326). The prisoners emitted some noise while being strangled (R 327). After the prisoners were strangled they were first placed on a flat board and then on a cart used for cremation purposes and then put into the oven, and he helped at the middle oven (Ex #74). When he left for the crematorium he thought that he "was to aid in the killing of the prisoners" (R 326).

(7) HISAMATSU, Minoru was Sergeant in Japanese Army, assigned to Information Section of 34th Army (R 282; Ex #66). During latter part of November and early December he heard about a parade of prisoners (R 283). On the morning of 16 December he was told to go to parade and take "some pictures of the Chinese civilians striking the American prisoners of war" (R 283; Ex #66). He went to Model Youth Corps and took a picture of beginning of parade and then

took several other pictures of parade (R 284; Ex #66). Saw the people crowding around the prisoners of war, striking and beating them (R 284; Ex #66). Later he saw pictures of the parade and the fliers in the Propaganda Section of his department (R 293).

After supper he returned to his office and Lieutenant Izumi informed him that "The prisoners of war are to be executed by the Gendarmerie Detachment, so you and Sergeant Hata go there" (Ex #66; R 285). He went to the Model Youth Corps by truck, the fliers were loaded on the truck and they then proceeded to the Gendarmerie Detachment, where a Warrant Officer and five or six gendarmes got on a truck, and after securing a Consular police as a guide proceeded to the crematorium (Ex #66; R 286). Everyone got off the truck, the fliers were taken into a waiting room, their shoes were removed, the ropes were untied and the fliers were taken out one at a time and strangled (R 287; Ex #66). He heard "groaning" and "boisterous voices" of the gendarmes (Ex #66). He and Sergeant Yamaguchi found a four-wheeled cart which they wheeled to the entrance. He helped place the corpses on the cart and push the cart to the entrance of the ovens. Two of the corpses were placed in the center oven and one in the other oven, because one of the ovens was damaged (Ex #66; R 288). The ovens were lit, and he remained there for about 30 minutes while the bodies were burned (Ex #66; R 288). He did not report to Lieutenant Izumi about the events (R 288). He was told to give the following answer to questions; "The parade was held by the Chinese and therefore we do not know anything; after the completion of the parade the prisoners had been turned over to the Gendarmerie and therefore we do not know anything", and upon further questioning to say that the prisoners were probably sent to Shanghai (R 289; Ex #66). He believed that he was to help in anything that was required in killing the prisoners at the crematorium (R 294). He believed the prisoners were dead when brought in, but made no check (R 296). Three or four persons hold the arms and legs of each prisoner when each was brought back after the killing (R 296). He sat near the prisoners both on the truck and in the crematorium but did not hear them say anything (R 298).

(8) YAMAGUCHI, Hisayoshi was corporal in Japanese Army assigned to Information Section (R 299); Ex #68). He went to Chinese Model Youth Corps with Lieutenant Izumi on several occasions in connection with the parade (Ex #66) and on 16 December 1944 he went there and made preparations for the march of the three American prisoners of war through Hankow (Ex #68; R 300). Izumi told those in uniform not to go along with the parade, but to report at the Hankow Gendarmerie Detachment about six. Since he was in uniform he returned to the Information Section and did not follow the parade (Ex #68; R 300-301). He had been designated to establish liaison with the Model Youth Corps. The plans for the parade were given to Kato (Ex #66).

In the evening of 16 December he went to the Gendarmerie Detachment and was sent to the Model Youth Corps to "guard the three prisoners of war" (Ex #66; R 301). When the truck arrived, the prisoners of war were placed thereon and he proceeded to the Gendarmerie Detachment (R 301; Ex #68). Here five or six gendarmes got on the truck including a warrant officer, and after a road guide from the Consular Police arrived, the truck headed for the crematory (Ex #68; R 301-302). When he arrived at the crematorium he went into a waiting room and watched while the prisoners were being killed; saw three or four persons in a group killing the prisoner (R 302-303; Ex #68). He "heard moans" (Ex #68). He helped carry the prisoners to the oven, and remembers having carried the second prisoner to the oven (Ex #68, R 303-304). He was told by Izumi to go with the gendarmes and "test his guts" (R 305). Was instructed on the 17th to keep his mouth shut (R 306).

(9) TSUKADA, Kokichi was a sergeant with the Hankow Gendarmerie Detachment (Ex #60; R 275). Heard about parade in afternoon of 15 December 1944 (R 275); Ex #60). Was asked to cooperate and furnish one or two Chinese assistants to the Gendarmerie; he transmitted this request to Sergeant Terrada who

told him to "send them out" (Ex #60; R 275-276). On 16 December he was ordered to "accompany the Chinese, Li, at the parade today" (Ex #60, R 276). He went out and overtook the procession, "to participate in the security measures of the parade" (Ex #60, R 276). Throughout the parade both the Japanese and Chinese were constantly beating the prisoners with fists (R 277; Ex #60). He saw a photographer from the information section taking pictures (Ex #60). He did not stay to the end, but left the parade at the statue of Sun Yat Sen because he became hungry (R 277-278); Ex #60). While in the parade he was wearing "western clothes" and an overcoat (R 278). He believed in the divine power of the emperor and considered the order from Sergeant Terrada to accompany the Chinese, Li, in the parade, an order of the Emperor, but at the time he left the parade he "had forgotten about it" (R 278-279).

(10) TAKEUCHI, Yoshiyuki was a sergeant in the Japanese Army gendarmerie and assigned to the Special Service Section of the Hankow Gendarmerie (R 261; Ex #78). On 15 December 1944, he heard of the parade of American prisoners of war to be held the following day (R 261; Ex #78). On 16 December Sergeant Masui ordered him to participate in the parading of the American prisoners (Ex #78; R 261). He changed into civilian clothes, got into a vehicle, went to the place of detention, took the prisoners and went to the Model Youth Corps (R 262; Ex #78). Before the prisoners were taken out of the place of detention, he assisted in tying and binding their arms together (Ex #78; R 262). He got off the truck and marched the 3 prisoners to the office and then to a room adjoining the office (R 263; Ex #78). He followed the parade until it arrived at the Model Youth Corps in the end (R 264; Ex #78). From the moment the parade left the Model Youth Corps "mob violence broke out" (Ex #78; R 263). The crowd assaulted the prisoners with fists, but he did not think they were beaten with sticks or rods (Ex #78). After the prisoners were returned to the Model Youth Corps, he noticed "That the prisoners of war were so fatigued that they leaned on each other's shoulders, and practically sleeping with their faces uplifted to the skies" (Ex 78). While the prisoners were being transported from the detention house, they were covered with a black cotton curtain (R 265-266). No one suggested that the parade be halted or stopped (R 266). He never discussed the parade after the 16th of December (R 267).

(11) FUJII, Junichi was a sergeant in the Gendarmerie attached to the Hankow detachment, and a member of the Special Secret Service Section of the detachment (R 268). First learned about the parade on 16 December when he received orders to wear civilian clothes and go to the Model Youth Corps to participate in security measures in the parade of the prisoners (R 268). He got on the truck and went to the place of confinement, and secured the prisoners whose arms were tied with a rope (R 269); the prisoners were placed on the truck and taken to the Model Youth Corps (R 269). He marched along during the parade, and saw violence against the prisoners by Chinese and Japanese, but could not prevent the violence (R 270). He left parade in front of Gendarmerie Detachment Headquarters (R 271). The prisoners were tied individually, and were beaten with fists by the crowd (R 272). Neither he nor anyone else suggested that parade be stopped because prisoners were being beaten (R 273). When the vehicle left the prison "the prisoners" were "covered with a black cotton cloth" (R 273), and he heard speeches at the places where the parade had stopped to rest (R 273).

(12) MIZUTA, Masaru was corporal in 34th Japanese Army, attached to the Information Section (R 279, Ex #58). Learned about parade on 14 December (R 260, Ex #58). On 16 December he was told by Sergeant Hata to go along and get the prisoners from the place of confinement and take them to the Model Youth Corps. He went by truck, and the prisoners were brought out, arms tied, placed on the truck and taken to Model Youth Corps (R 280-281; Ex #58). He helped in placing the prisoners on the truck, covered them with some black-out curtains "in order to keep the people from seeing the prisoners", and helped to take the prisoners of war off the truck (R 281-282; Ex #58). He did not attend the parade. He learned on 16 December that the prisoners of war would be killed but was excused and did not go to the crematory in the evening (R 281; Ex #58). About two days later, he heard that the prisoners had been strangled to death (Ex #58).

(13) SHIRAKAWA, Yosaburo was lance corporal at the Hankow Gendarmerie

Headquarters, in charge of taking care of mail for civilians attached to Army; Major Hattori was his superior (R 331). Was in Special Secret Service Section of the Hankow Gendarmerie, whose section chief was Sergeant Masui (R 333). He saw the parade but did not participate in it (R 331). After supper on 16 December he was told by Sergeant Shimooka that the American prisoners would be disposed of, and that he should wait at the entrance for a vehicle (R 332). Upon arrival at the crematorium he stood guard at the truck for about 15 minutes. Later he pulled the cord which was placed around the neck of one of the Americans and strangled him (R 332, 334; Ex #62). He and another pulled the rope. Both arms of the prisoner were placed on his chest and pressed down by a third man, while a fourth was sitting on the prisoner's feet (R 334). He pulled on the rope for about 5 to 10 minutes (R 335). Subsequently he assisted in strangling a second prisoner (R 336). The prisoners struggled some (R 335, 337). He did not think about whether it was right or wrong to kill the Americans (R 337). The prisoners emitted some sounds in the beginning (R 338). After the prisoners had been "disposed of", they were loaded one by one on a shutter and transported to the crematory (Ex #62; R 333). There were three ovens in the crematory, but only two were usable; two men were placed in one furnace, and one in the other; the fires were lighted. He waited about 30 minutes on the spot and then returned (Ex #62).

(14) NISHIKAWA, Shoji was a superior private with the Information Section of the 34th Army in Hankow (R 309; Ex #70). Between 11 and 14 December he heard about parade of American prisoners of war (R 309; Ex #70). He saw the parade in front of Information Section and at statue of Sun Yat Sen, but took no part in it (R 310; Ex #70).

In the evening, on instructions from Sergeant Hata, he went to the Model Youth Corps, picked up the three prisoners and proceeded to Gendarmerie detachment, where five or six gendarmes including a Warrant Officer got on the truck, and after a Consulate Police guide was obtained, they proceeded to the crematory (R 30; Ex #70). He was assigned to security duty (R 310; Ex #70). He saw all three prisoners of war strangled; each was led out with a rope tied and tightened about his neck (R 311; Ex #70). While outside one of the prisoners got up, and he pushed the prisoner on his chest causing him to fall without resisting (R 311; Ex #70). He helped to carry the third prisoner into the crematorium by holding his legs (R 312). He thought it was wrong to kill the prisoners (R 317).

(15) MASUDA, Koichi, on 16 December 1944, was a gendarmerie corporal and member of the Special Secret Service of the Hankow Gendarmerie Headquarters (R 364). In the afternoon he received orders from Captain Kosaka to report to Sergeant Shimo Oka for "tonight the prisoners who were paraded today will be disposed of" (R 364; Ex #62; 64). He was told to wait for a vehicle from the Information Section. He got aboard, went to the crematorium and assisted in killing one of the prisoners (R 364-366; Ex #62, 64). He first "wound the rope around the prisoner's neck" and then held the prisoner's legs while he was being strangled (R 365-366; Ex #62). The following day he reported to Captain Kosaka, "Last night we went to the crematorium, strangled them and cremated them" (R 366; Ex #64). He did not think he was doing anything wrong in strangling the prisoner (R 366).

(16) MANABE, Ryoichi was Consul at Hankow Japanese Consulate General, had duties of intelligence and propaganda, and supervision of civilian affairs and propaganda of Japanese people (Ex #82; R 350). Called a meeting in November 1944 for propaganda plans for December 8; army and Consulate had "contract" to carry on propaganda; discussion took place relative to Model Youth Corps using prisoners of war for propaganda (Ex #82; R 350-351).

On 15 December he attended a meeting at Sogo Hall to discuss propaganda for January 9th, and heard "There will be a parading of the prisoners tomorrow." (Ex #82; R 351-352); and he told Lieutenant Izumi not to publicize

parade in newspapers and to take measures to protect prisoners (Ex #82). On his return to the Consulate, he asked Police Chief, Mr. Shinohara to send Consulate Police to the parade "to stop the violence of the people against the prisoners" (R 359; Ex #82). He did not report to Consul General that parade would be held, because he did not think that parading of prisoners required reporting to his superior "in a rush" (R 353, 355, Ex #82). He did nothing on the 16th December respecting opposition to the parade, although he was told on 15 December that "there probably would be violence during the parade (R 355-356; Ex #82). Mr. Kato of Model Youth Corps attended meeting called by Manabe for propaganda purposes; Kato would be contacted for any liaison between Consulate and Model Youth Corps (R 354).

In latter part of December, Swiss Consul Schoch came to Manabe and requested details of parade, and inquired about injuries to prisoners of war (Ex 82, 83; R 356), and was told by Manabe to "Please ask the Army for the details in this matter. We at the Consulate General, know nothing other than what we heard from other people" (Ex #82). The consulate took no action on Schoch's report (R 356; Ex #83), and he never conferred with Shinohara, Chief of Consulate police, after Schoch's report to ascertain extent of violence to prisoners of war (R 357), although he considered it morally wrong to parade the prisoners (R 357).

(17) HAMADA, Shohei was attached to the Japanese Consulate Police Station at Hankow. He heard about the parade of the three American prisoners of war on 16 December. About 9:30 in the evening a gendarme came in and requested someone to go with them and guide them to the crematory. He reported the request to Police Lieutenant Schikawa, who told Hamada to go as guide. He then went to Gendarmerie Detachment and got on the truck, believes there were about 12 persons on the truck. He directed the way to the crematory, and upon arrival went inside. Saw three Americans brought in; then Americans were taken outside, and he heard "voices and groaning outside". He peeped once towards the ovens, and then returned to the Consulate Police Station where he reported to Police Lieutenant Ishikawa, "The Gendarmerie went to the crematory and killed and cremated the Americans". Next morning a non-commissioned officer from the Information Section came and said that Army orders were to direct the Consulate Police not to make public this matter, and that "it is most secret even within the Army" (Ex #60).

(18) KATO, Takumi was an interpreter and liaison man between the Japanese and the Model Youth Corps, under supervision of the 34th Army (R 370; Ex #32, 38). Toward the end of November 1944, Lieutenant Izumi came and said that he planned to have American prisoners "taken around on the streets outside and also have speeches" and that he wanted the Model Youth Corps to do it (R 371; Ex #38). He attended meetings at the Consulate where the parade was discussed (R 372; Ex #38). On 15 December, Lieutenant Izumi came and discussed plan of parade, and said that the prisoners would be brought to the Model Youth Corps on 16 December and that the prisoners were to be kept by the Model Youth Corps after the parade until a truck came to take them away (R 373; Ex #32, 38). The prisoners were brought to the Model Youth Corps on the 16th, were paraded, brought back to the Model Youth Corps and in the evening were taken away (Ex #32, 38, R 374-375). Kato observed, during the parade, that the prisoners were beaten by "men in plain clothes", and that the beating at Lichi Road "was especially fierce" (Ex #32, 38, R 375), but he did not suggest stopping the parade (R 377). The Model Youth Corps made arrangements for the carrying out of the parade and provided speakers (R 374; Ex #32, 38). He reported to Colonel Endo of the Army Liaison Bureau the "parade which was requested by the Army Information Section was carried out as scheduled by the Model Youth Corps (R 375; Ex #38). Later Izumi thanked him "very much for the other time" (R 375). The Information Section demanded that the Youth Corps sponsor the parade; and whatever the Japanese Army requested of any Chinese organization, that organization had to accept unconditionally (Ex #38).

4. DISCUSSION:

a (1) The accused were charged with committing cruel and inhuman and brutal atrocities against three American prisoners of war in that they (1) paraded such prisoners publicly through the streets of Hankow; (2) suffered to be committed brutal and atrocious beatings and assaults upon them; (3) caused them to be exposed to the insults and curiosity of the public; and (4) strangling them with ropes until dead, in violation of the Laws and Customs of War (R 2).

(2) The acts charged constitute "War crimes" and the individuals perpetrating these acts are designated as war criminals. All persons, regardless of political rank, who during the war, in their official capacity, have committed acts which violated (1) the laws and customs of legitimate warfare, or (2) the principles of criminal law that are generally observed in civilized legal systems, or who have ordered, consented to, or conspired in the commission of such acts are designated as war criminals, and subject to such punishment as a Military Commission sees fit to inflict (Oppenheim, International Law (Lauterpacht, 6th rev. ed.) p 451).

(3) The Rules of Land Warfare and the Geneva Prisoner of War Convention provide:

"Prisoners of war are in the power of the enemy power, but not of the individuals or bodies of troops who capture them.

"They must at all times be treated with humanity and protected, particularly against acts of violence, insults, and public curiosity.

"Measures of reprisal against them are prohibited."
(G.P.W., art 2; FM 27-10, sec 73).

Japan agreed to abide by the Geneva Prisoner of War regulations (Ex #1, R 33).

(4) The evidence is legally sufficient to support the findings (and sentences) of the commission. The parading of the American prisoners of war through the streets of Hankow and subjecting them to the beatings of the populace definitely violated the rules which civilized nations have generally recognized as governing the conduct of war and which are set forth in the Geneva Convention with which the Japanese Government agreed to comply, and offended the very conscience of civilized humanity. All those who participated in the planning and/or execution of the parade whether by order or voluntarily were guilty of a war crime.

In addition to being a violation of international law, the killing (strangulation and cremation) of the American prisoners of war was an offense recognized by the legal systems of all States as murder.

b (1) The accused, Kaburagi, Fukumoto, Sakai and Kosaka were found guilty of both specifications and the Charge, and the evidence as to each fully supports the findings and sentences.

(2) Kaburagi was Chief of Staff of the 34th Jap Army. It was he who held the confidential conferences with Gen. Sano relative to parading the American prisoners of war for propaganda purposes. His plea of ignorance of the parade which took

place in the city of Hankow and in which thousands participated must be rejected as a matter of law. He was not only Chief of Staff but also the commanding officer in the absence of Gen. Sano, and it was his duty to keep posted and informed of the affairs of the Army. He had a certain responsibility which he could not shed. This doctrine of responsibility bears a direct relation to criminal negligence.

When he gave an order to Lt. Izumi for the parade (R 200) he assumed full responsibility for the consequences flowing therefrom. His failure to keep fully informed under the circumstances constituted culpable criminal negligence.

The facts indicate that Kaburagi could have postponed the parade had he so desired (R 224). Had he exercised this power, he would not have set a force in motion which resulted in the murder of the three American fliers.

When Kaburagi gave the order for the parade to Izumi he assumed full liability for the consequences of any acts of atrocity perpetrated by the troops over which he exercised control and supervision not only as chief of staff but as commanding officer in the absence of Gen. Sano. The nature of his position cast upon him the continuous duty to examine the conduct of those under his charge. It was his duty to make frequent inquiry and inspection if that were deemed necessary. He cannot escape liability by a plea of ignorance.

He concurred in the plan to have the parade take place under Chinese auspices, well knowing that it was his duty to protect the American prisoners of war and that active participation of the Japanese military would be violative of international law. Having set this series of internationally unlawful acts in motion, he further violated the law, by his own statements, in failing to make proper inquiry into the events that took place on 16 December 1944 and undertook to make no investigation despite the protest of the Swiss Consul.

Thus the findings of guilty by the Military Commission against the accused Kaburagi and the death sentence imposed are fully supported by the evidence.

(3) The accused, Col. Fukumoto, was commanding officer of Hankow Gendarmerie Headquarters. He knew of the plans to parade the American fliers (R 232) and that the gendarmes were to participate (1) to prevent violence, (2) to prevent escape, (3) to make disposition after the parade (R 233). He was no novice in military procedure since he had been in the Army for 26 years. Though he knew that the parade "violates human moral codes and also international law" (239, 242), yet he permitted the gendarmes to be used at the same time trying to evade responsibility by stating that they were "not (to be) connected with this incident" (239). He never asked for any report from Maj. Sakai (241). The evidence fully supports the findings, and the sentence to life imprisonment. The Commission might well have adjudged death.

(4) Major Sakai, was Colonel Fukumoto's assistant at Gendarmerie Headquarters and was fully aware of the plans for the parade (R 243, Ex 48, 50). He knew that this was a violation of international law (R 244). He also was aware of the plans to inflict stronger punishment upon the prisoners after the parade (R 25, Ex 48, 50). His actions in transmitting orders to the Gendarmerie Detachment to cooperate in the parade and on directing a headquarters gendarme to attend at the action to be taken after the parade were not acts of blind obedience to orders as would relieve him from responsibility. The evidence supports the findings of the Commission and the sentence to 20 years confinement.

(5) Captain Kosaka was with the Special Secret Service under command of Major Sakai. He dispatched Masuda to the Hankow Gendarmerie Detachment "as witness to disposition (R 257) and reported to Maj. Sakai that Masuda went to the Detachment to assist at a cremation (R 257, 260). Like the others, all his acts and omissions fitted into the plan of parading, torturing and killing of the American prisoners of war. The evidence in the record fully supports the finding of guilty and the sentence.

c. Manabe was a Consul in Hankow in charge of intelligence and propaganda. He knew about the plans to parade the prisoners of war, heard it discussed at his propaganda meetings, yet he took no action to stop it in any way and took it upon himself to decide that his superior, the consul general, would have no authority or influence to prevent the crime, and apparently did not advise him of plans for the parade. When the Swiss Consul, Schoch, inquired about the fate of the prisoners, he sent him to the Army, denying that he had any knowledge of it other than rumors from the people (R 256). He knew it was morally wrong to parade the prisoners (357) yet he made no inquiry either prior to subsequent to the parade. His part is amply established by the evidence, and the findings and sentence as to him is approved.

d. Coming now to those participants in the parade and/or killing and cremation of the American prisoners of war it is appropriate to consider the defense of "superior orders".

It is well established that obedience of superior orders is not a defense to the commission of a crime (W.D. Ed. Manual, EM 11, p 31; Regulations, Hq USF CT, dated 21 Jan 46, sec 16 f; EM 27-10, sec 345.1).

In Mitchell v. Harmony (13 Howard 115, 117) Chief Justice Taney of the U.S. Supreme Court declared:

"It can never be maintained that a military officer can justify himself for doing an unlawful act by producing the order of his superior. The order may palliate, but it cannot justify the deed."

Winthrop in Military Law and Precedents (p 887) states that an order which commands the doing of an act which is unlawful or legally unauthorized, can, however regular, proper, or just it may appear on its face, protect no one concerned in the performance. That even if the illegal order proceeded from the highest authority of government, even though it may have been given directly by the President as Commander-in-Chief of the Army - it still would not protect the subordinate who acts upon it.

The fact that a rule of warfare has been violated in pursuance of an order of the belligerent government or of an individual belligerent commander does not deprive the act in question of its character as a war crime; neither does it, in principle, confer upon the perpetrator immunity from punishment by the injured belligerent (Oppenheim, Int. Law (Lauterpacht, 6th ed.) 452).

Thus while a military commission may consider the "doctrine of superior orders" in mitigation of punishment, it is no defense to the perpetration of the illegal acts for which the accused were tried and sentenced (Regulations Hq, USF CT, dated, 21 Jan 46, Sec 16 f).

e. All the circumstances surrounding the killing of the three American prisoners of war clearly indicate that it was not a legal execution ordered, supervised and accomplished in accordance with established rules of procedure. The usual method of execution in the Japanese Army was by firing squad (348). The investigation conducted in this case did not disclose that the American prisoners had been subjected to trial, summary or otherwise. The defense did not claim that such was the fact. Those of the accused who were responsible admitted that the disposition of the prisoners after the parade was in violation of international law.

The efforts of the gendarmerie to make their preparations for the cremation appear to be a normal procedure by stating that "three gendarmes" were to be cremated that evening, the furtive manner in which the prisoners were brought to the crematorium, the placing of guards at the gate, the crude and cruel method of effecting the execution by use of the ropes with which their arms had been bound, the "loud and boisterous" language of these gendarmes actively engaged in the execution, all point to the inescapable conclusion that these prisoners of war were brutally murdered.

f. W/O Fujii, Masui, Shirakawa and Masuda were sentenced to "death by hanging" (R 407). Each of these individuals participated in the actual strangling of the three American prisoners of war. The record sustains the findings and sentences. The Military Commission was the judge of the facts. It had the advantage of seeing and hearing all witnesses and each of the accused who testified. It was in a position to determine the credibility of the testimony, and its findings should not be disturbed unless there is no evidence to support such findings as a matter of law.

(1) (W/O) FUJII voluntarily participated in the strangling of the prisoners. He could have refrained from doing so had he so desired (R 345). He was sent to the crematorium to see that the others did not fail to carry out the orders (R 340), he believed that it was his job to supervise the actions of the members of the Detachment (R 340) and to give the necessary orders to the subordinates (R 341). Yet he saw fit to get in "on the kill".

(2) MASUI was a Sergeant Major in the Gendarmerie. He participated in the parade, but left it before the end (R 322), and he also took the prisoners from the place of detention to the Model Youth Corps before the parade (R 319). In the evening he was told by Major Hattori that Sgt Shimo Oka had details of the cremation, and that he was to "go along with him" (R 323). He was superior in grade to Sgt Shimo Oka. He participated in strangling two of the prisoners (R 324, 325) though no one in authority, superior to him, had given him any orders to commit these murders. He "thought" that he "was to aid in the killing of the prisoners" (R 326).

(3) SHIRAKAWA was a corporal in the Gendarmerie. His section chief was Sgt Masui and the ranking member of the gendarmerie at the crematorium was W/O Fujii. None of these gave him any orders to participate in the killing. Yet when Sgt Shimo Oka said "pull the rope", he pulled, and thus assisted in strangling two of the American prisoners (R 332). The evidence fully supports the finding and sentence.

(4) MASUDA was a corporal in the Special Secret Service of the Hankow Gendarmerie (R 364). He assisted in strangling one of the prisoners, by winding the rope around his neck and holding his legs (R 365). His active participation in the murder of the American prisoner merits the finding and sentence.

(5) MISAMATSU was a Sergeant in the Army. He took pictures of the parade (R 284) and took the prisoners from the Model Youth Corps to the Gendarmerie Detachment and thence to the crematorium (R 285). He carried the fliers to the opening of the oven (R 288), and he knew that the prisoners were going to be killed (R 294). His participation in the parade and execution of the prisoners has been established beyond a reasonable doubt by his own testimony, and the Commission, on the evidence, was justified in its finding and sentence.

(6) YAMAGUCHI was a corporal attached to the Information Section. He visited the Model Youth Corps on several occasions in the connection with the parade, but did not participate in the parade, because he was in uniform (Ex #68, R 300, 301). He was told "Tonight the gendarmes will handle the three prisoners of war so go there and test your courage." (Ex #68, R 301). He went to crematorium, and carried prisoners to the oven (R #68). The evidence is sufficient to support the findings and sentence of the Commission.

(7) NISHIKAWA was a Superior Private with the Information Section. He picked up the prisoners at the Model Youth Corps in the evening of 16 December (R 310), did sentry duty at the Crematorium (R 310), saw the strangling of the prisoners (R311), pushed one of the prisoners back when he got to his feet (R 311), helped carry one of strangled prisoners to the crematorium by holding one of the prisoners's legs" (R 312). The evidence in the record is ample and sufficient to support the finding and the sentence of the Commission.

(8) Insofar as TSUKADA TAKEUCHI and (Sgt) FUJII are concerned the record discloses that they participated in the parade. Tsukada accompanied a Chinese investigator to the parade (R 279). He was in civilian clothes and went there for the purpose of taking part in the "security" measures". Takeuchi's part in the proceedings was greater. He went to the 34th Army Prison to get the American prisoners. He helped to tie them up and was with the parade until the end. (Sgt.) Fujii also went to the 34th Army Prison to get the American prisoners. He helped to tie their arms and thereafter remained with the parade until it reached the Gendarmerie Detachment headquarters. While the evidence is not clear as to their actually taking part in the beating of the American prisoners, and while it is true that they did not participate in the torturing and killing of the prisoners after the parade, it is evident their acts were violative of the rules of war relating to the treatment of prisoners of war. They knew or should have known that the entire proceedings were unlawful. The record of trial is sufficient to sustain the findings and sentences.

(9) MIZUTA was a Lance Corporal. He went to the place of confinement and brought the prisoners to the Model Youth Corps (R 280). He did not participate thereafter. The finding and sentence as to him is fully supported by the evidence in the record.

(10) KATO acted as an interpreter and in a liaison capacity between the Model Youth Corps and the 34th Army. He participated in the planning of the parade. He followed the parade for the purpose of taking care of any "unexpected incident" that might arise (Ex 38). The conclusion is inescapable that the 34th Army actually directed the Model Youth Corps through the accused Kato and that his part in the incident was an active one. The evidence justifies the finding of the Commission and the sentence imposed.

(11) HAMADA was acquitted by the Commission, and any further reference to him is deemed superfluous.

The defense raised the question of the "Divine Power" of the Emperor, and sought to create the impression that the accused were merely obeying the orders of a "God". But that this doctrine was a pure myth was demonstrated both by the words and actions of some of the accused. Masui, who was sent to "protect" the prisoners in the parade, left it before the end (R 322); Tsukada became hungry and left parade at Statue of Sun Yet Sen (R 277, 279); Sgt Fujii left the parade because his foot hurt (R 271); and Nishikawa stated "that even if I were ordered, and even though someone told me it was my duty to perform such a mission again, I would not do it" (Ex #70). Certainly the words and actions of the accused do not tend to even substantially quadrate with the concept of a "Divine Mission".

g. The prosecution's case was based on a charge of conspiracy on the part of all the accused to deal with the American prisoners of war in violation of accepted rules of international law. The conspiracy was a continuing one and involved not only the parading of the prisoners but the killing and cremation of the prisoners. Despite the differences in rank, the fact that some of the accused were military personnel and others were civilian, it is believed that the evidence sustains and bears out the charge that the accused did conspire one with the other, to commit these unlawful acts. It is equally evident that the court could find each of the accused individually guilty for his individual acts. The very nature of the entire proceedings and the care with which the participants concealed their part in the parading, killing and cremation of the American prisoners, indicates concerted action on the part of all.

h. The special plea of the defense to the jurisdiction of the commission was properly overruled by the commission. The defense based its plea on the grounds that (1) military government had not been established and (2) the United States has no extra-territorial rights in China. The plea is directed to the power and authority of the Commanding General, United States Forces, China Theater, to appoint this commission. The jurisdiction of a properly constituted military commission over war criminals and war crimes is too well established to require citation of authorities.

With respect to your power and authority to appoint this military commission, the United States Supreme Court in the recent Yamashita case stated:

"Such a commission may be appointed by an field commander, or by a commander competent to appoint a general court-martial, * (2 Winthrop, Military Law and Precedents, 2nd ed, 1302)".

and again:

"An important incident to the conduct of war is the adoption of measures by the military commander, not only to repel and defeat the enemy, but to seize and subject to disciplinary measures those enemies who, in their attempt to thwart or impede our military effort, have violated the law of war. Ex parte Quirin (317 U.S. 28). The trial and punishment of enemy combatants who have committed violations of the law of war is thus not only a part of the conduct of war operating as a preventive measure against such violations, but is an exercise of the authority sanctioned by Congress to administer the system of military justice recognized by the law of war. That sanction is without qualification as to the exercise of this authority so long as a state of war exists -- from its declaration until peace is proclaimed. See United States v. Anderson, 9 Wall. 56, 70; The Protector, 12 Wall. 700, 702; McElrath v. United States, 102 U.S. 426, 438, Kalen v. Anderson, 255 U.S. 1, 9-10. The war power, from which the commission derives its existence, is not limited to victories in the field, but carries with it the inherent power to guard against the immediate renewal of the conflict, and to remedy, at least in ways Congress has recognized, the evils which the military operations have produced. See Stewart v. Kalen, 11 Wall, 493, 507".

The Joint Chiefs of Staff of our military forces, with the approval of the State Department, authorized you to appoint an appropriate military tribunal to proceed with the trial of the accused. By order, dated 21 January 1946, this military commission was specifically constituted and directed to proceed with the trial of the accused on the charges of this case.

The question of extra-territoriality does not apply to this case. That doctrine applies to trials of United States citizens (Hinckley, American Consular Jurisdiction in the Orient, 86, 115; In re Ross, 140 U.S. 453).

i. The several interlocutory motions made by the defense during the course of the trial were properly denied by the Commission.

Under the regulations established for the conduct of trials of war criminals the accused were entitled to have in advance of trial a copy of the charges and specifications so worded as clearly to apprise the accused of each offense charged (Par 14a, Regulations Governing the Trial of War Criminals, Headquarters, United States Forces, China Theater, 21 January 1945). The charges and specifications served on the accused were of a sufficient clarity to so apprise them, and the denial of their motion for a bill of particulars was not prejudicial.

The denial of the defense motion for an order directing the prosecution to furnish copies of all statements signed by the accused prior to trial was not prejudicial to the accused. The statements were made by the accused. They had complete and personal knowledge of the contents. Although this motion was first granted, and then on reargument denied, this did not in any way affect the proper conduct of the trial.

j. The record of trial discloses that each of the accused was given full opportunity to prepare and present his defense. No errors or irregularities were committed that substantially prejudiced the rights of any of the accused.

5. CLEMENCY: None of the five members of the commission recommended clemency. The defense counsel submitted a request for clemency for a majority of the accused. Although it is abundantly clear that the commission carefully weighed the evidence and adjudged sentences it is believed that in the cases of Tsukada, Sergeant Fujii and Takeuchi, a reading of the record leaves a doubt, not necessarily a reasonable one, concerning their participation in the beating of the prisoners of war during the parade of which they were members. In seeking to be scrupulously fair, it may be that some will not receive adequate punishment but it is better to err on the side of mercy than on that of harshness. No reasons appear for disturbing the sentences of the other accused.

6. OPINION: It is the opinion of this office that:

- a. The Commission was legally constituted;
- b. The Commission had jurisdiction of the persons and the offenses;
- c. The evidence supports the findings of guilty.
- d. The record discloses no errors injuriously affecting the substantial rights of any of the accused;
- e. The sentences are legal.

7. RECOMMENDATIONS: It is accordingly recommended that, except in the cases of Tsukada, Sergeant Fujii and Takeuchi, the sentences be approved and ordered executed. In the excepted cases, it is recommended that the sentences be reduced from 12 to 6 years and that as reduced they be ordered executed.

8. ACTION: Under the authority granted by the Joint Chiefs of Staff you are empowered to approve and execute any sentences adjudged, including the death sentence. An action designed to carry the above recommendations into effect should they meet with your approval is submitted herewith.

s/ Edward J. Murphy Jr.,
t/ EDWARD J. MURPHY JR.
Captain, JAGD
Asst. Theater Judge Advocate.

s/ Edward H. Young
t/ EDWARD H. YOUNG
Colonel, JAGD
Theater Judge Advocate

s/ Jeremiah J. O'Connor
t/ JEREMIAH J. O'CONNOR
Lieut. Colonel, JAGD
Deputy Theater Judge Advocate.

Hq China Service Command, APO 908, 19 Aug 46

A TRUE CERTIFIED COPY:

Sylvio L. Bousquin
SYLVIO L. BOUSQUIN
Lieut. Colonel, JAGD
Adjutant General