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

Yokohama, Japan  
January 7, 1949

UNITED STATES OF AMERICA VS TOSHIO TASHIRO  
UNITED STATES OF AMERICA VS HATSUAKI KAMBE  
UNITED STATES OF AMERICA VS YATAISHI OKUBO  
UNITED STATES OF AMERICA VS KEIJI KANIMOTO  
UNITED STATES OF AMERICA VS MASAO KOSHIKAWA

Review of the Staff Judge Advocate

1. The attached record of trial of the case of Toshio Tashiro, Hatsuaki Kambe, Yataishi Okubo, Keiji Kanimoto and Masao Koshikawa tried at Yokohama, Japan, from 24 March 1948 to 8 July 1948, by a Military Commission appointed by paragraph 11, Special Orders No. 66, this Headquarters, dated 22 March 1948, as amended by paragraph 2, Special Orders No. 81, this headquarters, dated 9 April 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Toshio Tashiro  
AGE: 60  
RESIDENCE: Ichi prefecture,  
Machina Gun, Yanata Mura  
Mashio Aza Co 103-1  
MARRITAL STATUS: Married  
RELATIVES: wife, son,  
daughter, sister.  
EDUCATION: Graduated ele-  
mentary school, 2 years  
of high school  
VOCATION: Chief of prison  
MILITARY CAREER: Served in  
Army 1 Dec 1909 to 30 Nov  
1910, discharged as superior  
private. Civilian guard at  
Tokyo Military prison from  
12 June 1943 to 1 June 1945.  
Returned to Army as Captain  
warden of Tokyo Military  
prison 1 June 1945.

DATE OF CONFINEMENT: 16 April  
1946  
DATE OF ARRANGEMENT: 24 March  
1948  
PLACE OF TRIAL: Yokohama, Japan  
PERIOD OF TRIAL: 24 March to  
8 July 1948  
DATE OF SENTENCE: 8 July 1948  
SENTENCE: Death by hanging.  
CLEMENCY RECOMMENDED BY  
COMMISSION: No

NAME: Hatsuaki Kambe  
AGE: 30  
RESIDENCE: Tokyo-to, Daito-  
ku, Shitayakaniyoshi-machi,  
16.  
MARRITAL STATUS: Married  
RELATIVES: wife, father,  
mother, 4 brothers, 2  
sisters  
EDUCATION: 8 Years  
VOCATION: Truck driver  
MILITARY CAREER: Entered ser-  
vice March 1939, discharged  
in Nov 1942 due to wounds.

DATE OF CONFINEMENT: 30 March  
1946  
DATE OF ARRANGEMENT: 24 March  
1948  
PLACE OF TRIAL: Yokohama, Japan  
PERIOD OF TRIAL: 24 March to  
1948  
DATE OF SENTENCE: 8 July 1948  
SENTENCE: Death by hanging  
CLEMENCY RECOMMENDED BY  
COMMISSION: No

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Served at Tokyo Military Prison as a civilian guard from June 1944 to 1 June 1945, and as a corporal from 1 June 1945 until end of war.

NAME: Mataishi Okubo  
AGE: 33  
RESIDENCE: Tokyo-to, Ota-ku, Magone-cho, Higashi 2 Chome 954 Banchi  
MARRITAL STATUS: Married  
RELATIVES: Wife, daughter, sister and brother.  
EDUCATION: 9 years  
VOCATION: Office clerk  
MILITARY CAREER: Entered active service in April 1935, discharged March 1937. Civilian guard at Tokyo Military Prison from 5 May 1945 to 1 June 1945, from 1 June 1945 to end of war as Sgt Major at same prison.

DATE OF CONFINEMENT: 13 March 1947  
DATE OF ARRIVAL: 24 March 1948  
PLACE OF TRIAL: Yokohama, Japan  
PERIOD OF TRIAL: 24 March to 8 July 1948  
DATE OF SENTENCE: 8 July 1948  
SENTENCE: Death by hanging.  
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Keiji Kaminoto  
AGE: 30  
RESIDENCE: Tokyo-to, Shibuya-ku, Yoyogi Torigawa-cho 1383  
MARRITAL STATUS: Married  
RELATIVES: Wife, 2 sons, mother, 3 brothers, and 2 sisters.  
EDUCATION: 8 years  
VOCATION: Clerk for mining company  
MILITARY CAREER: Served as private for one month, then discharged. Served at Tokyo military prison as civilian guard from September 1944 to 1 June 1945 and as corporal from 1 June 1945 until end of war.

DATE OF CONFINEMENT: 30 October 1947  
DATE OF ARRIVAL: 24 March 1948  
PLACE OF TRIAL: Yokohama, Japan  
PERIOD OF TRIAL: 24 March to 8 July 1948  
DATE OF SENTENCE: 8 July 1948  
SENTENCE: Death by hanging.  
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Masao Koshikawa  
AGE: 53  
RESIDENCE: Tokyo-to Shibuya-ku, Yoyogi Tomiwaya Machi 1425  
MARRITAL STATUS: Married  
RELATIVES: Father, step-mother, wife, 3 sons, 1 daughter, a brother.  
EDUCATION: 8 years of primary school  
VOCATION: Military prison guard  
MILITARY CAREER: Drafted into Army 1 Dec 1916, discharged 30 Nov 1918

DATE OF CONFINEMENT: 15 April 1945  
DATE OF ARRIVAL: 24 March 1948  
PLACE OF TRIAL: Yokohama, Japan  
PERIOD OF TRIAL: 24 March to 8 July 1948  
DATE OF SENTENCE: 8 July 1948  
SENTENCE: Death by hanging.  
CLEMENCY RECOMMENDED BY COMMISSION: No.

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as superior private. Employed as civilian guard, Tokyo Military Prison from 8 May 1920 to 1 June 1945. From 1 June 1945 to Sept 1945 as 2d Lt at Tokyo Military Prison.

(2) Synopsis of Charges, Pleas, Findings and Legal Sufficiency:

<u>Charges and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
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TASHIRO

Ch: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.	NG	G	Yes
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Sp 1: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully order and direct Mataishi Okubo, Hatsuaki Kembe, Keiji Kaminoto and other subordinates to kill any American Prisoners of War, who, during an air raid, and while their cells were burning, might escape from said cells, thereby causing the deaths of seventeen (17) unidentified American Prisoners of War, who were killed pursuant to said order.	NG	G	No
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Sp 2: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully disregard and fail to discharge his duty to control and restrain Mataishi Okubo, Hatsuaki Kembe, Keiji Kaminoto and other members of his command and persons under his supervision and control, by permitting them to kill seventeen (17) unidentified American Prisoners of War During an air raid.	NG	G	No
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Sp 3: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully disregard and fail to discharge his duty by failing to provide for the safety of sixty-two (62) American Prisoners of War, seventeen of whom are unidentified and forty-five (45) of whom are identified and forty-five (45) of whom are identified as follows, "sub-	NG	G	Yes in part
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whom are identified as follows:  
 2d Lt Clifford Manning; Sgt  
 John W. Welsh; Sgt Robert K  
 Sedon; Pfc Edwin P Lund; Sgt  
 Archer S Kronick; 2d Lt Justice  
 J Buttala; S/Sgt Anthony F  
 Scolaro; Sgt William W Suther-  
 land; Major Ralph H Chapel;  
 2d Lt Harvey M Glick; 2d Lt  
 Harold J Nelson, Jr; 2d Lt  
 James A Reinhart, Jr; 2d Lt  
 Edward Sullivan; Flight Officer  
 John T Hostey; T/Sgt Frederick  
 E Hulse; Sgt John W Meagher;  
 Lt Col Doyle L Turner; Capt  
 Elmer G Hahn; 2d Lt Eugene J  
 Rodinger; 2d Lt John T Price;  
 2d Lt David H Gerhardt; Sgt  
 Donald W MacNiven; 2d Lt  
 Andrew J. Iitz; Cpl Walter  
 C Grubb; 2d Lt Eugene A Homyak;  
 2d Lt John R Jennings; S/Sgt  
 Allen K Hill; Sgt Otto J Marek;  
 S/Sgt Alfred J McNamara; Cpl  
 Darwin J Muller; 2d Lt William  
 F Muhlenberg; 2d Lt Theodore C  
 Reynolds; Sgt Donald I Schubert;  
 T/Sgt Jim W Verhines; Sgt T I  
 Klingensmith; Sgt Gilbert C  
 Stockinger; S/Sgt Chester A  
 Johnson, Jr; Cpl Allen L  
 Vorsch; 2d Lt Donald I Bartholomew;  
 1st Lt Alpheus G Carlo; S/Sgt  
 Lawrence T Duff; 2d Lt Ray E  
 Herry; Sgt Henry I Maunge; Sgt  
 Douglas Pannon and Cpl Calvin R  
 Raymond; by failing to protect  
 said prisoners from the hazards  
 of war; by failing to authorize  
 the release of said Prisoners of  
 War from their cells in said  
 Prison in case of air raid and  
 fire; by failing to furnish his  
 subordinates with a plan for  
 release of said Prisoners of War  
 in the event of air raid and fire  
 at said Prison and by specif-  
 ically ordering his subordinates  
 not to release said Prisoners of  
 War during an air raid and fire  
 on said dates, thereby causing  
 the deaths of forty-five (45)  
 unidentified American Prisoners  
 of War, by burning.

stituting therefor the  
 words, "sixty-five (65)  
 American prisoners of  
 war, five (5) of whom  
 are unidentified and  
 sixty (60) of whom are  
 identified as follows:"  
 except the names:  
 Sergeant Archer S Kronick  
 Corporal Walter C Grubb  
 Second Lieutenant Donald  
 L Bartholomew.  
 Adding the names:  
 "Second Lieutenant Herbert  
 Edman  
 Sergeant Noel E Beck  
 Second Lieutenant  
 Gerould I. Giddings  
 Corporal Glenn H Fodek  
 Sergeant Harry E McMillen  
 Sergeant Leonard McNeill  
 Sergeant Maurice Myers  
 Sergeant Robert H Nead  
 Sergeant Thaddeus J  
 Pasternak  
 Sergeant Kenneth  
 Petterson  
 Corporal James W Pettit  
 Sergeant David M Powell  
 Technical Sergeant Raymond  
 C Richmond  
 Corporal Jean J Schwartz  
 Second Lieutenant Donald  
 J Van Dever  
 Sergeant Portram Ware  
 Second Lieutenant James C  
 Warren, Jr.  
 Corporal Ieverne J Zehler;"  
 and except the words, "forty-  
 five (45) unidentified American  
 prisoners of war by burning,"  
 substituting therefor the  
 words, "forty-eight (48)  
 unidentified American pris-  
 oners of war," (Of the ex-  
 cepted words and names, Not  
 Guilty and of the substituted  
 words and added names, Guilty.

NOTE

Ch: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the laws and Customs of War. NG G Yes

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Sp: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully kill eight (8) unidentified American Prisoners of War. NC G Yes, in part

OKUBO

Ch: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War. NG G Yes

Sp: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully kill three (3) unidentified American Prisoners of War. NG G Yes, in part

KAWANO

Ch: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War. NG G Yes

Sp: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully kill six (6) unidentified American Prisoners of War. NG G Yes, in part

KOSHIKAWA

Ch: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War. NG G No

Sp 1: On or about 25 May 1945 and 26 May 1945, accused did willfully and unlawfully disregard and fail to discharge his duty by failing to release, or cause the release of sixty-two (62) American Prisoners of War from their burning cells in said Prison, seventeen (17) of said Prisoners of War being unidentified and forty-five (45) of said Prisoners of War being identified as follows: 2d Lt Clifford Mannin; Sgt John Welsh; Sgt Robert K Sedon; Pfc Edwin P Lund; Sgt Archer S Kronick; 2d Lt Justice J Tutala; S/Sgt Anthony F Scolaro; Sgt William ... NG G No except the words "sixty-two (62) American prisoners of war from their burning cells in said prison, seventeen (17) of said prisoners of war being unidentified and forty-five (45) of said prisoners of war being identified as follows," substituting therefor the words, "sixty-five (65) American prisoners of war from their burning cells in said prison, five (5) of said prisoners of war being uniden-

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Sutherland; Major Ralph H Chapel; 2d Lt. Harvey M Glick; 2d Lt Harold J Nelson, Jr; 2d Lt James A Reinhart, Jr; 2d Lt Edward Sullivan; Flight Officer John T Hostey; T/Sgt Frederick E Hulso; Sgt John W Meagher; Lt Col Doyle L Turner; Capt Elmer G Hahn; 2d Lt Eugene J Redinger; 2d Lt John T Price; 2d Lt David E Gerhardt; Sgt Donald W MacNiven; 2d Lt Andrew J Litz; Cpl Walter E Grubb; 2d Lt Eugene I Konyak; 2d Lt John R Jennings; S/Sgt Allen K Hill; Sgt Otto J Marek; S/Sgt Alfred J McNamara; Cpl Darwin J Muller; 2d Lt William F Mühlenberg; 2d Lt Theodore C Reynolds; Sgt Donald L Schubert; T/Sgt Jim W Verhines; Sgt T L Klingensmith; Sgt Gilbert C Stockinger; S/Sgt Chester A Johnson, Jr; Cpl Allen L Morsch; 2d Lt Donald L Bartholomew; 1st Lt Alpheus G Carle; S/Sgt Lawrence T Duffy; 2d Lt Roy E Harry; Sgt Henry I Younge; Sgt Douglas Bannon and Cpl Calvin R Raymond; thereby causing the deaths of forty-five (45) of said American Prisoners of War, by burning.

tified and sixty (60) of said prisoners of war being identified as follows;" except the names: Sergeant Archer S Kronick Corporal Walter C. Grubb Second Lieutenant Donald L Bartholomew. Adding the names: "Second Lieutenant Herbert Edman Sergeant Noel E Beck Second Lieutenant Gerould L Giddings Corporal Glenn H Hodak Sergeant Harry E McMillen Sergeant Leonard McNeill Sergeant Maurice Myers Sergeant Robert H Moad Sergeant Thaddeus J Pasternak Sergeant Kenneth A Petterson Corporal James M Pettot Sergeant David H Powell Technical Sergeant Raymond C Richmond Corporal Jean J Schwartz Second Lieutenant Donald J Van Dever Sergeant Bertram Ware Second Lieutenant James C Warren, Jr. Corporal Laverne J Zuhler;" and except the words "Thereby causing the deaths of forty-five (45) of said American prisoners of war by burning" substituting therefor the words, "thereby causing the deaths of forty-eight (48) of said American prisoners of war;" of the excepted words and names Not Guilty and of the substituted words and added names, Guilty.

Sp 2: On or about 1 April 1945 and 26 May 1945, accused, together with Toshio Tashiro and others, participated as a leader, organizer, instigator and accomplice in the formulation and execution of a common plan or conspiracy to fail to release, or cause the release of, sixty-two (62) American Prisoners of War from their cells in said Prison in the event of a fire, air-raid or other common disaster, and in furtherance of said conspiracy did fail during an air-raid and consequent fire to release, or cause release of, said sixty-

NG

G

No

except the words "sixty-two (62) American prisoners of war," substituting therefor the words, "sixty-five (65) American prisoners of war;" except the words, "said sixty-two American prisoners of war, forty-five (45) of whom have been identified as shown in Specification 1 herein, and seventeen (17) of whom are unidentified, "substituting therefor the words, "said sixty-five (65) American prisoners of war, sixty (60)

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two (62) American Prisoners of War, forty-five (45) of whom have been identified as shown in Specification 1 herein, and seventeen (17) of whom are unidentified, thereby causing the deaths of forty-five (45) of said American Prisoners of War by burning in their cells on 25 and 26 May 1945.

of whom have been identified as shown in Specification 1 as amended herein, and five (5) of whom are unidentified." And except the words, "thereby causing the deaths of forty-five (45) of said American prisoners of war by burning in their cells," substituting therefor the words, "Thereby causing the deaths of forty-eight (48) of said American prisoners of war;" of the excepted words Not Guilty and of the substituted words, Guilty.

Sp 3: From and after 26 May 1945, accused, acting together with Toshio Tashiro and others, in pursuance of a common intent and design did conspire to prevent the Government of the United States of America from obtaining true and correct information as to the capture, status, conditions of confinement; death and place of burial of sixty-two (62) American Prisoners of War, forty-five (45) of whom have been identified as shown in specification 1 herein and seventeen (17) of whom are unidentified, and in furtherance thereof did at divers times and places withhold, conceal and suppress such information from the Japanese Government and from the Government of the United States of America and did fabricate and cause to be fabricated, and transmit to the Japanese Government and to the American Occupation authorities false and misleading information concerning the aforesaid matters.

NG	G	No
	except the words	
	"sixty-two (62)	
	American prisoners of	
	war, forty-five (45)	
	of whom have been identified	
	as shown in Specification	
	1 herein	
	and seventeen (17) of	
	whom are unidentified,"	
	substituting therefor	
	the words "sixty-five	
	(65) American prisoners	
	of war, sixty (60) of	
	whom have been identified	
	as shown in Specification	
	1 as amended herein and	
	five (5) of whom are	
	unidentified;" of the	
	excepted words, Not	
	Guilty and of the substituted	
	words, Guilty.	

### 3. Summary of Evidence

#### (1) Undisputed General Facts:

The accused were members of the personnel of Tokyo Military Prison also known as Shibuya Military Prison, holding the following positions: Toshio TASHIRO, Warden, or Prison Head (Tx 7, p 1, 3 1270, Masao

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KOSHIKAWA, Chief Jailer, or Guard (Ex 7, p 1, R 1144), Hatsuaki KATSE, Jailer, or Guard, (Ex 7, p 4, R 961), Mataishi OTSUGI, Jailer, or Guard (Ex 7, p 4, R 833), Keiichi MATSUO, Jailer, or Guard, (Ex 7, p 5, R 1025).

On the night of 25-26 May 1945, Tokyo Military Prison caught fire from incendiary bombs dropped by American bombers, and the following American prisoners, confined in cell block 4 of said prison, perished during the fire: 1. BANNON, Douglas, 39344169, Sergeant; 2. BENTON, Justice J., O-2063716, 2nd Lieutenant; 3. CARLE, Alpheus G., O-690044, 1st Lieutenant; 4. CHAFFIN, Ralph H., O-401367, Major; 5. DUFFY, Lawrence T., 11056539, S/Sergeant; 6. FERRAROT, David P., O-707826, 2nd Lieutenant; 7. GLICK, Harvey M., O-2072443, 2nd Lieutenant; 8. HARM, Elmer G., O-478847, Captain; 9. HARRY, Ray, O-825626, 2nd Lieutenant; 10. HILL, Allen W., 19190662, S/Sergeant; 11. HOWE, Eugene L., O-2065769, 2nd Lieutenant; 12. HESTON, John T., T-5261, F/O; 13. HUNST, Frederick, 6919449, T/Sergeant; 14. JENNINGS, John R., O-302847, 2nd Lieutenant; 15. JOHNSON, Chester A., 38415508, S/Sergeant; 16. KLINSMITH, T. I., 33704320, Sergeant; 17. LITZ, Andrew J., O-2058700, 2nd Lieutenant; 18. LUND, Edwin F., 39472403, PFC; 19. MACIVY, Donald W., 31455503, Sergeant; 20. MANNING, Clifford, O-2060552, 2nd Lieutenant; 21. MARY, Otto J., 36691346, Sergeant; 22. McNEERA, Alfred J., 17131456, S/Sergeant; 23. MEACHER, John W., 33671406, Sergeant; 24. MORROW, Allen L., 17051668, Corporal; 25. MURPHY, William F., O-1635147, 2nd Lieutenant; 26. MYERS, Darwin J., 37427206, Corporal; 27. NELSON, Harold J. Jr., O-2068724, 2nd Lieutenant; 28. PRICE, John T., O-830919, 2nd Lieutenant; 29. RAMOND, Calvin P., 42070670, Corporal; 30. REINER, Eugene J., O-683059, 2nd Lieutenant; 31. REINHART, James A. Jr., O-772730, 2nd Lieutenant; 32. THOMAS, Theodore G., O-223530, 2nd Lieutenant; 33. SCHUBERT, Donald 11138661, Sergeant; 34. SCOFIELD, Anthony T., 16078362, S/Sergeant; 35. SEDON, Robert P., 33683142, Sergeant; 36. STONINGER, G. C., 33803057, Sergeant; 37. SULLIVAN, Edward, O-802362, 2nd Lieutenant; 38. SUTHERLAND, William W., 17190973, Sergeant; 39. THOMAS, Doyle I., O-393552, Lieut. Colonel; 40. VERMINS, Jim W., 19003409, T/Sergeant; 41. WILSON, John W., 36877951, Sergeant; 42. YOUNG, Henry I., 42031151, Sergeant; 43. ZIMM, Herbert, O-978105, 2nd Lieutenant; 44. ZACK, Noel E., 33723035, Sergeant; 45. GIDDINGS, Percival J., O-767523, 2nd Lieutenant; 46. WOOD, Glen W., 33297053, Corporal; 47. McTILLY, Harry E., 33715004, Sergeant; 48. McTILLY, Leonard, 34726533, Sergeant; 49. WATSON, Maurice, 13200699, Sergeant; 50. WATSON, Robert W. 17112447, Sergeant; 51. EASTBAY, Thaddeus J., 34141720, Sergeant; 52. WATSON, Kenneth J., 42044727, Sergeant; 53. WATSON, James W., 33203255, Corporal; 54. POWELL, David W., 31403102, Sergeant; 55. RICHMOND, Raymond C., 35376077, T/Sergeant; 56. SCHWARTZ, Jean J., 42069407, Corporal; 57. VAN DYKE, Donald J., O-2058526, 2nd Lieutenant; 58. WATSON, Bertran, 33828131, Sergeant; 59. WATSON, James C. Jr., O-2065260, 2nd Lieutenant; 60. WATSON, Leverne, J., 12139226, Corporal (Ex 1, 2, 3, 4, 69, R 1655, 1656).

There is a question in the record, as to whether there were two or five additional unidentified American prisoners who perished during the fire. (Ex 69, R 1656) (This will be hereinafter mentioned in the disputed facts.)

The Tokyo Military Prison was described as follows:

"The site of the Army Prison forms a rectangle, which spreads from south to north, and is surrounded by brick walls of 12 shaku in height. Towards the southern end lies the parade ground, and to the west of the northern end stands the medical dispensary. To the east of the northern end stands the kitchen. \*\*\*\* The central part is

(p. 8 of, 92 Toshio Tashiro et al Case #73)

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divided in two zones: the east of which is the cell zone, and the western side is the workshop zone. Between the two zones, an observation post is established. There are six ward houses facing the south, standing in order from north to south as detention house Nos. 1, 2, 3, 4 and 5." (Ex 4, p.12, Ex 8, p.5, 12)

The situation of the area surrounding the prison was as follows:

"The northern side is adjacent to the Moyogi parade ground, across a road. The northern, southern and eastern sides, with the exception of the southwestern corner, face a crowded area of private houses." (Ex 8, p.5).

All of the American prisoners were confined in cell block 4, which is described as follows:

"No. 4 ward house is constructed of wood, with tile roofing, similar to the other wards. There are 17 cells in the ward, and each cell has an area of 2 tsubos, being 1 ken wide and 2 ken long (T.M.: about 6 feet by 12 feet). The front and rear of the cell are constructed with lattice made from timber of 3½ sun square, with intervals of 3 sun. To both sides of the cell, there are pillars at intervals of 3 shaku, and pine wood boards of over 1 sun thickness are affixed. At the corner of the north side, a toilet with a portable chamber pot, and washing facilities, are provided. The floor is made of boards, and its height is about 2 shaku. The door of the cell is attached to the south side. The lock is made strongly of iron, and is placed so that it cannot be touched from the inside. Iron bars are put in at two points between the lattice, on both sides of the door, as shown in appended sketch No. 2, and drawing No. 3, illustrating the building and cell." (Ex 8, p.5)

The prison personnel was composed of:

"1 commandant, 8 chief jailers, and 70 jailers. However, due to absences at that time, the existing number of the personnel consisted of 1 commandant, 5 chief jailers, and 53 jailers. However, among these were 13 jailers who were still under training, and not yet appointed to their duties. Furthermore, 10 jailers were taking vacations, due to sicknesses, or suffering from calamities caused by the air raid of 23 May, and 1 chief jailer and 2 jailers were dispatched to Yokura for the purpose of guarding convicts who were being transported." (Ex 8, p.5).

The circumstances of the burning of the prison were as follows:

"At 2230 hours on 25 May there was a precautionary warning, and at about 2250 hours air raid alarms were sounded. Chief jailer 'HITACHI' was on night duty that night. At about a little after 2300 hours the first Allied plane penetrated the sky over the Imperial Capitol, and opened an incendiary bomb assault. However, since the prison was surrounded by high walls, it was estimated that if incendiary bombs dropped within the prison were successfully extinguished, it would be easy to defend against the fire spreading from the outside, and all the men were encouraged to extinguish all the incendiary bombs dropped." (Ex 8, p.7).

Either late at night on the 25th, or early in the morning of the 26th,

"a flight of Allied planes came from the east, and incendiary bombs finally dropped on the medical dispensary, and successively 7 or 8 bombs dropped on the No. 3 workshop, the observation post, and on several other points. At first, since the attacks by the Allied planes on the prison were comparatively light, all the bombs were successfully extinguished by the activities of the fire fighting squad. However, at that time, private houses located in the west and south were already burning.

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Subsequent attacks by a flight of the Allied planes from the west were extremely severe, and continued persistently, and many bombs were dropped. The fire of the private houses surrounding the prison, was intensified by a violent wind at that time. As the danger of fire spreading from the outside increased, we endeavored to combat the fire from outside as well as the incendiary bombs dropped within the prison. However, because several parts of the prison were ignited by incendiary bombs, and by fire from outside, it finally became impossible to extinguish the flames," and fire fighting activities ceased, and the prison was finally reduced to ashes. (Ex 8, p 7, 8)

The next morning after the fire, two American dead bodies were found in the inner compound, just south of the inner gate, a number between the east wall and the cell blocks, thirty odd in the remains of cell block 4, and one north of the inner gate and near the guard house. (R 275, 354, 411, 412, 419, 425, 447, 448, 631, 676, 968, 1000, 1005, 1016, 1017, 1021-1022, 1103-1112, 1115, 1119, 1120, 1157-1159, 1174, 1240, 1259, 1280, 1281, 1339, 1340, 1366, 1368, 1374, 1386, 1387, Ex 34, 37, 38, 39, 40, 48, 54).

Most of the American bodies were buried in the air raid shelter between cell blocks 2 and 3, in a common grave, and when they were exhumed by the Occupation Forces, after the war, a large number of bodies had broken leg bones, but it could not be determined whether the bones had been broken before or after death. (Ex 4, 23, 37, R 220, 813, 1493-1494).

By radio and newspapers, the American airmen had been repeatedly charged with "indiscriminate incendiary bombing" of civilian homes and other non-military objectives; and they were charged with, first, bombing and causing fires to the perimeters of cities, thereby cutting off the means of escape of the populace, and, second, bombing and setting fire to the interiors of the cities; and, in that manner, entrapped and killed thousands of civilians. In this radio and newspaper campaign, the airmen were called "ogres" and "murderers", and there had been a "serious" and "ferocious" feeling of resentment and hostility engendered in the public, towards the airmen. (R 1284, 1628, 1646-1647).

(2) The Protocol or Japanese Report of the Fire:

In October 1945 the accused, Toshio TASHIRO, made a report to the Japanese Army, of the deaths of the American Prisoners, in part as follows:

"As it became impossible to extinguish the fire, the fire fighting activity was stopped; and at the same time a measure to evacuate the prisoners to the outside, was taken. However, the enemy's attacks with incendiary bombs was extremely severe, and the violent wind increased the intensity of the fire, and the dangers were acute. Thereupon, the commandant recognized that there was no time to evacuate, and ordered the immediate release of prisoners, temporarily stopping the fire fighting activity. It is thought that it was about 0130 hours of the 26th when the commandant ordered the release of prisoners." "As the majority of the prisoners in No. 2 ward were patients or weak persons, the release of these men required some time. Although only ten odd minutes passed after the release was launched, the wooden structures which became heated after the stoppage of fire fighting, ignited with unexpected speed. The workshops, located at the windward side, were already engulfed in frightful flames, and the premises of the prison were swept by a violent wind, mingled with sparks, and it was impossible to move forward with the eyes open. Two emergency gates were located to the east, on the windward side, and it was impossible to open them, due to the violent blaze from the private houses. Meanwhile, exit was also impossible through the small gate, located to the north, on account of a strong, burning wind. In the end, only one prison gate remained available for escape." (Ex 2, p 8).

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"Under such circumstances, attacks by the Allied planes continued, and, due to the close proximity of danger, there was utter confusion in the prison, and orders and instructions could not be thoroughly carried out. During this time, jailer KAMIMOTO, who undertook the opening of No. 4 ward, in the face of violent flames, opened four cell blocks located in the central part of the ward, and the jailer KAMBE succeeded in opening three cells on the east side of the same ward. Thus, seven cells were opened. Jailer KAMBE indicated the direction of the gate to the prisoners. At this time the attacks by the Allied planes became more severe, and the flames were very intense, and the men were about to fall. Just at this time an incendiary bomb fell on No. 4 ward and its vicinity, making it impossible for them to open the remaining cells. By the time these two jailers tried to escape from the impending danger to their lives, the areas of No. 2 and No. 3 wards was already a sea of flames. Since it was impossible to get out from the prison gate, the jailers resigned themselves to death by burning. However, having remembered the existence of an unfinished cave type air raid shelter at the parade ground in the premises, they barely took refuge there." (Ex 8, p 8).

According to said protocol, the Japanese prisoners were evacuated first, because:

"It was considered that if the suspected violators of military regulations were released to the outside alone, there was great chance that they might be injured by the people who lost their parents and children, and who were burned out of their homes by the indiscriminate bombing by Allied planes, and who were in an extremely excited state. The necessity for protecting the prisoners, was recognized. However, because of the shortage of guards, at first the army prisoners were released. It was planned that these men would act as guards for the suspected violators of military regulations, believing that there was enough margin of time to carry it out." (Ex 8, p 10).

"Believing that if we succeeded in extinguishing the incendiary bombs dropped in the prison, we would be able to escape the conflagration, we exerted all of our efforts to combat the fire. Due to these circumstances, we were delayed in commanding the prisoners to evacuate to the outside." (Ex 8, p 10).

The Prosecution does not admit the statements and conclusions contained in the protocol, but, on the contrary, the oral proof in the case is an attempt to disprove and overcome such statements and conclusions.

### 3. The Prosecution's Proof on the Disputed Facts:

#### a. Prefatory explanation:

The purpose of the Prosecution's proof is to show that the American prisoners met their deaths during the fire designedly, and in accordance with a preconceived plan; or, at least, as a result of the gross negligence of TASHIRO and KOSHIKAWA, in not earlier releasing them.

The Prosecution's evidence on the material disputed facts comes almost entirely from Japanese Nationals. The Defense has impeached the testimony of a number of these witnesses, by practically every means known to the law; and they have built their case, to a large extent, on the claim that the determinative evidence of the Prosecution is not credible, nor worthy of belief. In order, therefore, to be fair to the Defense in this review, reference to the testimony of each of the Prosecution's witnesses must be made, instead of presenting the evidence as a continuous, integrated narrative.

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b. Toshio TASHIRO

Accused, Toshio TASHIRO, prison head, was convicted of ordering his subordinates to kill seventeen prisoners, (Spec 1, R 1656) of unlawfully failing to restrain certain of his subordinates from killing the same seventeen prisoners, (Spec 2, R 1656) and causing the deaths of sixty-five American prisoners, including the same seventeen American prisoners, by gross negligence (Spec 3, R 1656). Thus, the evidence tending to prove Spec 1, may be relevant in tending to disprove Spec 2, and part of Spec 3, and vice versa. It will be necessary, therefore, to present the evidence against TASHIRO, as a whole without segregating specific parts to the several specifications.

(1a) Charles H. WILSON, connected with the Investigation Division, Legal Section, GHQ, SCAP, mainly investigating war crimes, under Lieutenant KREVOLIN, was introduced, and through him the Prosecution introduced Exhibit 23, consisting of a report by Lieutenant KREVOLIN, maps and plate of the Tokyo Military Prison, and statements of the accused, KIMMOTO, KOSHIKAWA and other data. (Ex 23, 23a-23j, R 37, 40).

(b) Witness helped Lieutenant Churchill in identifying the sixty-two Americans perishing at the fire on 25-26 May 1945, and, in doing so, ran across leads they thought indicated criminality. (R 44) KIMMOTO and KOSHIKAWA voluntarily gave the statements attached to Exhibit 23. (R 33) He was present when the bodies were disinterred. Thirty-two "dog tags" were found, some duplicates. Some were found in a pile of rubbish, by sifting ashes. Most were found between the kitchen and the wall. Some were found by digging with a stick. (R 34-35).

(c) In trying to identify the Americans, TASHIRO failed to give him any prison records, saying they had been burned. (R 38, 39, 41, 42, 43) The accused made no effort to conceal "dog tags", but they did not tell where they were, saying they did not know. (R 43-44) He identified photographs. (Ex 9-22, R 43).

(2) Binzaburo KUROKI testified that he was a doctor, attached to Tokyo Military Prison before and during May 1945. (Ex 25, R 51) He was at the prison, possibly on the 27th or 28th of May 1945, although he does not remember the date, to get his books, etc., and found some of his property had been burned. KOSHIKAWA and TASHIRO came separately to see him, in January and March 1946. KOSHIKAWA told him to say he had made out death certificates for the Americans perishing the night of the fire, and he agreed to do so. TASHIRO said he was resigned to the fact that he would be punished for the deaths of the Americans, since he was the commandant. He does not remember TASHIRO saying anything of prisoner of war death certificates. KOSHIKAWA turned over to him a typewritten report of the fire. Both KOSHIKAWA and TASHIRO said they had to make the report. (Ex 25, p 2, R 53, 58-60) It was his duty to make out death certificates, (R 65) but the bodies had been disposed of, he thinks, when he visited the prison. (R 54, 56-58) On that day he does not think he discussed death certificates for the Americans, with KOSHIKAWA. (R 55) If death certificates had been necessary, he would have requested to see the bodies but the unit commander "can confirm the deaths". (R 57) He does not think KOSHIKAWA knew whether or not he made out death certificates. (R 65) When his affidavit says KOSHIKAWA took advantage of his ignorance, the words are too strong. (R 60) He never heard any Americans were "cut down", and cannot believe such a thing occurred. (R 68) He thinks the report turned over to him by KOSHIKAWA is the same as the "protocol", and the words "death certificates" do not appear in it. (R 69) "TASHIRO is a man of character, and a very amiable person." (R 62).

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(3) Shiro INOUE testified he was formerly a member of the Legal Section of the Eastern Army of Japan, court martial trials, as prosecutor and professor, and he visited Tokyo Military Prison about twice a month from 1941 until 1945. (R 70, 86, 100, Ex 26) There were about twenty-five allied prisoners "interned" in cell block 4, in May 1945. He visited there the last time about two weeks before the fire, to interrogate a Japanese political prisoner. (Ex 26) He saw TASHIRO when he came to the Legal Section office on 26 May 1945 to report the fire. TASHIRO stated the prison was destroyed and some prisoners perished, and valuable documents were burned. (Ex 26) According to Japanese Army prison law, all persons, in case of an emergency, are requested to evacuate the prisoners. (Ex 26) TASHIRO should have prepared to evacuate all prisoners, under the circumstances. (Ex 26) If TASHIRO deliberately failed to evacuate the prisoners, in an emergency, intending for them to lose their lives, and, because thereof, they were killed, TASHIRO would be guilty of murder. If a guard killed a prisoner because he was trying to escape from a burning cell block, he also would be guilty of murder. (Ex 26, R 91-93) If the prison chief led the guard to believe that he, the chief, wanted the prisoner killed, and that the guard would be justified in killing the prisoner, the chief would be responsible. (Ex 26, R 74) Since fire drills were not required, under prison regulations, he does not think TASHIRO had any legal duty to hold fire drills. (Ex 26, R 76-78, 81-84) TASHIRO was given ten days confinement for his conduct at the time of the fire. As he does not know the facts, he cannot express an opinion as to whether ten days was adequate punishment. (R 91) TASHIRO could have been punished for his acts, under Japanese law, without the acts being criminal, and he does not believe a crime was committed by TASHIRO. (R 84-86, 95, 96) The last inspection he made of the prison, was in October 1944, and the prison was equipped with fire fighting equipment to every two cells, and he found nothing wrong with the prison. (R 86-89) TASHIRO was sympathetic and kind to the prisoners. (R 89-90) He knew TASHIRO had a plan to fight fires in case they occurred. (R 88-90, 100) It was the duty of SHIMIZU's department to pass on the plans, and, if there were any defects therein, to point them out to TASHIRO, for correction. (R 105-109) If preference were shown Japanese prisoners in the evacuation, over Americans, by TASHIRO, he would be guilty of a crime. (R 103) General SHIMIZU committed suicide. (R 104).

(4) Genzaburo OKI was a lawyer in the Legal Section, and worked as an assistant to the legal chief. The Legal Section had jurisdiction over Tokyo Military Prison, of which TASHIRO was chief warden. (R 114) There were sixty-two American prisoners in Tokyo Military Prison on 25 May 1945, being placed there for detention while they were being investigated by the Legal Section. (R 115-116) In oral report was made to the Legal Section, of the fire at the prison, on or about 27 May, either by TASHIRO or the Eastern Army, which stated the prison had been burned, all allied prisoners burned to death, all Japanese prisoners saved, and six prisoners escaped. (R 117, 118) Later, he talked to TASHIRO about the fire, but he does not remember of learning from him that all Americans had died, and no Japanese prisoners perished. (R 117-118) In an inspection of the prison, by General Fujii and witness, TASHIRO stated in the event of an air raid, he would not release the prisoners when an air raid warning occurred, but they would be released or evacuated when there was danger. TASHIRO was referring to all prisoners. (R 119, 132, 142) No detailed investigation of the fire was made until after the termination of the war, at which time the War Ministry ordered it investigated, and it was TASHIRO'S duty to get up the report. (R 121-122, 140, 142) Later, witness heard General SHIMIZU say that a report was going to be made, that TASHIRO and his subordinates "had done their best" the night of the fire, and since he had heard that all the Americans perished, and no Japanese prisoners died, he had his doubts about their doing their best. However, he, a Colonel, in uniform, "advised" KOSHIKAWA, in uniform, to make a report showing "they did their best", and he does not know that

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