

**The Canadian War Crimes Liaison Detachment – Far East and the Prosecution of  
Japanese “Minor” War Crimes**

**by**

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### **Author's Declaration**

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners.

I understand that my thesis may be made electronically available to the public.

## Abstract

The members of the Canadian War Crimes Liaison Detachment – Far East travelled across the Pacific in April 1946 to participate in “minor” war crimes trials in Hong Kong and Japan. The assignment stemmed from the harrowing experiences of the Winnipeg Grenadiers and Royal Rifles of Canada in Hong Kong and Japan following the Japanese invasion in December 1941 through to their liberation from POW camps at the end of the Pacific War. Literature pertaining to war crimes trials during this period focuses primarily on the Nuremberg and other European trials, or on the major, often politicized Tokyo Trial. This dissertation addresses the frequently proffered recommendation in the literature that further explorations into the “minor” trials of 5600 Japanese war criminals are needed. The members of the Canadian Detachment served as prosecutors at the American operated Yokohama War Crimes Trials, as well as the British Hong Kong War Crimes Courts. Their cases covered the entirety of the POW experience, from atrocities during battle and in the immediate aftermath, to brutal abuses and medical neglect in POW camps and exploitation in war-related and dangerous labour. The Canadian trials were steeped in emerging and evolving legal concepts including issues of command responsibility and superior orders, as well as the use of common or joint trials and broadly expanded rules of evidence. The uncertainty of trial outcomes and the leniency of many of the sentences combined with the genuine effort extended by the Canadian Detachment members in investigation, case development, and in the courtroom belie the crude and misguided application of a victors’ justice framework. Although the trials were not marked with a clear sense of unfairness, their historical legacy has ultimately been a failure. When the international community sought answers to war crimes starting in the latter half of the twentieth century, these trial records have been left to gather dust on archive shelves. However, the transcripts offer historians the opportunity to better understand both the brutality and banality of the POW experience, and the legal community a series of pragmatic and thorough avenues for addressing violations of the laws and customs of war.

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Having the opportunity to work with Whitney Lackenbauer and harness even a fraction of his enthusiasm and energy has been an amazing experience for me. His support of my project and my development as a scholar has been unwavering. Our meetings were usually whirlwinds and always proved intellectually stimulating and comical. We managed to cover more terrain in fleeting conversations than I ever thought possible – whether they took place during quick treks across campus, or via skype from the Arctic to Nova Scotia. Jenn Lackenbauer frequently offered an ear for my dissertating troubles. She offered much needed advice, particularly during the latter stages of this project, plenty of which ended up tacked to my office wall.

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My mother Reeta and father Reg instilled in me a passion for learning at a young age and have fostered it throughout my lifetime. Mom, your unwavering support and positivity lightened the burden throughout. My sister Ellen is my academic role model and I’ll look up to her for my entire career. Adrienne’s family, particularly her grandmother Barb, mother Louise, and sister Barbara, have been strong supporters of mine and have been great friends along the way. Finally, Ade, you are my best friend, my partner, my treasured critic, and sharer of ideas. Through the highs and lows you’ve kept me moving forward. Thank you so, so much.

## **Dedication**

To Mom: for all of those encouraging chats and phone calls spanning 30 years now. Your belief in me has always been delivered with sincerity no matter what the task at hand.

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## **List of Abbreviations**

**ALFSEA** – Allied Land Forces South East Asia  
**BAAG** – British Army Aid Group  
**BCOF** – British Commonwealth Occupation Force  
**CWCAC** – Canadian War Crimes Advisory Committee  
**DEA** – Department of External Affairs  
**DHH** – Directorate of History and Heritage  
**GHQ** – General Headquarters  
**GOC** – General Officer Commanding  
**HKSRA** – Hong Kong Singapore Royal Artillery  
**HKVA** – Hong Kong Veterans Association  
**HKVDC** – Hong Kong Volunteer Defence Corps  
**ICC** – International Criminal Court  
**ICTR** – International Criminal Tribunal for Rwanda  
**ICTY** – International Criminal Tribunal for the Former Yugoslavia  
**IJA** – Imperial Japanese Army  
**IMTFE** – International Military Tribunal for the Far East  
**JAG** – Judge Advocate General  
**LAC** – Library and Archives Canada  
**NARA** – National Archives and Records Administration  
**POWs** – Prisoners of War  
**RCAF** – Royal Canadian Air Force  
**RCAMC** – Royal Canadian Army Medical Corps  
**RRC** – Royal Rifles of Canada  
**SCAP** – Supreme Commander for the Allied Powers  
**SEAC** – South East Asia Command  
**UKLIM** – United Kingdom Liaison Mission, Japan  
**UNWCC** – United Nations War Crimes Commission  
**WCAC** – War Crimes Advisory Committee  
**WCIS** – War Crimes Investigation Section  
**WCIT** – War Crimes Investigation Team  
**WG** – Winnipeg Grenadiers

## Introduction

On the morning of 3 March 1947, Major John Horace Dickey sailed under the Golden Gate Bridge in San Francisco, fresh off an arduous trip across the Pacific Ocean from Yokohama. Having just served as a chief prosecutor at the Yokohama War Crimes Trials for thirteen months, Dickey split his time on the journey between exercising on the deck, clinging to his bunk to stave off seasickness, and in the ships' hospital attending to travel-mate and recent trial judge Colonel Thomas Moss. Dickey quietly made his way home to Halifax by rail with stops in Vancouver, Calgary, and Ottawa.<sup>1</sup> No fanfare greeted his return. Yet he had played an important role overseas, serving as chief prosecutor for three trials implicating four individuals at Yokohama, helping to represent Canadian interest as a part of the Canadian War Crimes Liaison Detachment – Far East. This detachment investigated, prepared, and prosecuted cases in Hong Kong and Japan, covering the entirety of the Canadian Prisoners of War (POWs) experience from the Battle of Hong Kong in 1941 through to their liberation in August 1945. The Detachments' contributions, seldom acknowledged after the fact, were exhaustive and uncovered an extensive series of war crimes against the men; the brutal and direct outrages exacted as punishment and blind rage, and the more banal and drudging abuses as the men were starved and worked to extremes and denied medical treatment.

When war criminals arrive in court, the gavel lies in the hands of the victor. The vanquished must trust their fate to the judicial principles of their enemies. This is a practical

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<sup>1</sup> The Army Museum [hereafter AM], John Dickey Papers 1999.6.1 [hereafter John Dickey Papers], John Dickey to Mrs. W.B. Wallace, 5, 6, 9, 10, 14 March 1947. During his time in Japan Dickey wrote to his mother in Nova Scotia regularly. Hereafter, letters from this collection will be referred to as 'Dickey to Mrs. W.B. Wallace' followed by the date of writing.

reality: the history of countries trying their own war criminals is weak, no matter the outcome of the conflict.<sup>2</sup> Through the nineteenth and early twentieth centuries, bilateral and multilateral treaties codified a more ‘civilized’ approach to warfare and to the treatment of POWs. For this codification to have any practical meaning, participating nations drew on treaty agreements from Geneva and The Hague, as well as traditional laws of warfare, to formulate war crimes trials. Given this system, whenever a court renders judgment it faces a potential accusation of *victors’ justice* – that the decision was a foregone conclusion and the system inherently biased in a way that no defence can counter or mitigate. Justice is meted out swiftly, without the safeguards reasonably expected in a national civil court. Sentencing is more strict and apt to be corporal; rules of evidence are loose and slanted to the side of the prosecution. However true these contentions may be in trials with clear political aims, applying this framework to all war crimes trials is problematic.

This study seeks to recreate the experience of Canadian prosecutors who served as prosecutors in “minor” war crimes trials in Hong Kong and Japan following the end of the Pacific War. In so doing, it repudiates the notion that these trials were a simple case of victors’ justice. Instead, a critical examination of the efforts of the Canadian War Crimes Liaison Detachment – Far East members in their investigation, case development, and prosecution, as well as the uncertainty of the results in the courtroom, yields a more nuanced and positive portrait of due process and the carriage of justice.

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<sup>2</sup> After convincing the Allied governments to allow them to try their own nationals in response to a prepared list of alleged war criminals, Germany brought only a fraction to trial, acquitted a large proportion of those and gave relatively minor sentences to those who were found guilty. See Alan Kramer, “The First Wave of International War Crimes Trials: Istanbul and Leipzig,” *European Review* 14, no. 4 (2006): 446-449. Victors have rarely looked at the actions of their own troops with an eye to legal recourse, as transgressions tend to get whitewashed in the shadow of victory.

The trials of Second World War German leaders at Nuremberg dominate the historiography on war crimes trials. Scholarship ranges from broad overviews of the trials and psychological analysis of the defendants, to more focused interpretations dealing with the legal machinations of the trials themselves, or more recent Holocaust scholarship that deals with regular citizens' complicity with the Nazi war machine.<sup>3</sup> Accordingly, the Nuremberg Trials overshadow those that took place in the Asia-Pacific theatre after the Pacific War. The International Military Tribunal for the Far East (IMTFE, popularly known as the Tokyo Trial), dominates what literature exists on these trials. For sixty years, commentators have debated this 'Nuremberg for the Pacific,'<sup>4</sup> which has played a key role in the way Japanese citizens imagine their past and their country's role in the war.

English and Japanese scholarship has shifted in the decades since the trial. Initial analysts declared the Tokyo Trial a success, both in its exploration of Japanese aggression in the Pacific and in the precedents it set for international law. Early critics argued that the trial was simple revenge from the Allies who lacked the moral authority to run the trials in the first place in light of the dropping of the atomic bombs.<sup>5</sup> In the early 1970s, American scholar Richard Minear, writing in the context of the Vietnam War, lashed out at American neo-imperialism and

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<sup>3</sup> For a useful overview of the development of Nuremberg and related Holocaust scholarship see Patricia Heberer and Jürgen Matthäus eds., *Atrocities on Trial: Historical Perspectives on the Politics of Prosecuting War Crimes* (Lincoln: University of Nebraska Press, 2008): xiii-xxviii. Some of the best known works on Nuremberg include broad overviews such as: Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (New York: Alfred A. Knopf, 1992), Joseph E. Perisco, *Nuremberg: Infamy on Trial* (New York: Viking Press, 1994); legal and memory questions: Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven, CT.: Yale University Press, 2001) and Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford: Oxford University Press, 2001); collaboration/complicity: Saul Friedlander, *Memory, History and the Extermination of the Jews of Europe* (Bloomington, Ind.: Indiana University Press, 1993) and Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: HarperCollins, 1992).

<sup>4</sup> Arnold Brackman, *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials* (New York: William Morrow and Company, Inc., 1987).

<sup>5</sup> For an excellent discussion of the English and Japanese historiographies of the Tokyo Trials please see Yuma Totani, *The Tokyo War Crimes: The Pursuit of Justice in the Wake of World War II* (Cambridge, Mass.: Harvard University Asia Center, 2008), 1-4, 246-259.

dismissed the Tokyo Trial as a precursor to self-righteous American foreign policy.<sup>6</sup> His book, *Victors' Justice*, remains the staple text of reference in English scholarship and aims to “demolish the credibility of the Tokyo trial and its verdict.”<sup>7</sup>

The United States' decision in the 1980s to release previously classified documents on the Tokyo Trial held at National Archives and Records Administration (NARA) revitalized the field. A more balanced reinterpretation has emerged, spearheaded by Japanese scholar Awaya Kentarō. Awaya argues that binary arguments casting the Tokyo Trial as either fully reprisal or fully just missed the mark. Historical reality falls somewhere in between.<sup>8</sup> Despite problems with the trial (which the Japanese nationalist school use to write off the entire conception of the Tokyo Trial), Awaya argues that Japanese commentators' excessive focus on Allied political expediency prevented the Japanese citizenry from coming to terms with its militaristic past. He cites the omission of Emperor Hirohito from the docket, as well as the exclusion of cases of forced sexual slavery, bacteriological warfare and medical experiments, as major political and legal limitations of the trial. *Victors' justice* remains at the forefront of the historiographical discussion. The older interpretation had seen the trial as going too far in seeking a criminal pattern and meting out justice or vengeance, Awaya saw the trial as limited – albeit with the unfortunate effect of skewing Japan's memory of the war.

More recent and diverse works, drawing on methodologies and sources from the fields of legal studies, political science, and international relations, can be grouped into legal-historical

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<sup>6</sup> Richard Minear, *Victors' Justice: The Tokyo War Crimes Trial* (Princeton: Princeton University Press, 1971). Minear denounces the trials on almost every conceivable point, including the vagueness of the conspiracy charge, the jurisdiction of the court, the question of aggressive war, the retroactivity of the verdict, the concept of command responsibility, the selection of judges (both of victor nations and victim nations), questionable legal procedures, the failure to try Allied leaders, inconsistencies in the selection of defendants as well as the permission of non-traditional forms of evidence.

<sup>7</sup> Minear, *Victors' Justice*, ix.

<sup>8</sup> Awaya's research has been disseminated through several articles and monographs, but the landmark work, and the one most cited across the Tokyo Trial literature is Awaya Kentarō, *Tōkyō saibon ron* (A Treatise on the Tokyo Trial) (Tokyo: Ōtsuki shoten 1989), also see Totani, *The Tokyo War Crimes Trial*, 250.

and diplomatic fields. Scholars have analysed the trial from the vantage point of an early-Cold War forum for foreign relations,<sup>9</sup> as well as a precursor for the International Criminal Tribunals for Rwanda and the Former Yugoslavia (ICTR and ICTY) and the International Criminal Court (ICC).<sup>10</sup> Yuma Totani's recent contribution to the literature provides the most thorough discussion of bilingual secondary material on the trial, and also contributes to the debate about a positive historical legacy (while downplaying victors' justice).<sup>11</sup>

Almost every study dealing with the Tokyo Trial includes a cursory statement about the value of studying the 2200 national trials held in the Asia-Pacific region involving over 5600 war crimes suspects. This sentence is invariably followed by one of two things: a footnote crediting Philip Piccigallo's 1979 publication *The Japanese on Trial* on "minor" war crimes in the Pacific theatre, or a summon for further research on these national trials by another generation of historians.<sup>12</sup> These "minor" trials, defined as Class 'B' and 'C,' differed from the major or Class 'A' International Military Tribunals at Tokyo and Nuremberg which focused on crimes against peace with the pursuit of aggressive war at the fore. "Minor" war crimes trials focused on conventional war crimes and crimes against humanity.<sup>13</sup> At the core, "minor" war crimes trials dealt with specific incidents committed by individuals, while major war crimes trials focused on

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<sup>9</sup> See Higurashi Yoshinobu, *Tōkyō saiban no kokusai kankei: kokusai seiji ni okeru kenryoku to kihan* (International Relations of the Tokyo Trial: Power and Norms in International Politics), (Tokyo: Bokutakusha, 2002). As discussed in Totani, *The Tokyo War Crimes Trial*, 257.

<sup>10</sup> See Fujita Hisakazu, "Tōkyō saiban no konnichiteki imi," (The Relevance of the Tokyo Trial Today), *Hōritsu jihō* 60, no. 9 (1989): 24-30. As discussed in Totani, *The Tokyo War Crimes Trial*, p. 258. English legal scholars have also identified patterns and precedents from Tokyo that have acted as building blocks in modern international law. For example see James Meernik, "Victor's Justice or the Law?: Judging and Punishing at the International Criminal Trial for the Former Yugoslavia," *Journal of Conflict Resolution* 47, no. 2 (April 2003):140-162 and Theodor Meron, "Reflections on the Prosecution of War Crimes by International Tribunals," *The American Journal of International Law* 100 (2006): 551-579. Theodor Meron has sat as a judge on both the ICTY and ICTR.

<sup>11</sup> Totani, *The Tokyo War Crimes Trial*, particularly chapters 2-4.

<sup>12</sup> See Totani, *The Tokyo War Crimes Trial*, 261-262, John Dower, *Embracing Defeat: Japan in the Wake of World War II* (New York: W.W. Norton & Company, 1999), 447, n. 6, Meirion and Susan Harries, *Sheathing the Sword: The Demilitarisation of Japan* (New York: MacMillan Publishing, 1987), 326, and Gavan Daws, *Prisoners of the Japanese: POWs of World War II in the Pacific* (New York: William Morrow Company, 1994), 438.

<sup>13</sup> For an extensive discussion of the categorization of war crimes, see Dower, *Embracing Defeat*, 455-458.

political, economic, and military decision-making. “Minor” trials were held in Japan, Hong Kong, the Philippines, Malaya, Burma, China and other locations throughout the Pacific, falling under the military jurisdiction of occupying authorities including the United States, Britain, Australia, and China.

Similar to the Tokyo Trial, initial accounts written by legal participants in the “minor” trials were congratulatory and sought to explain how the trials functioned, while ensuring that the writers’ roles were positively preserved.<sup>14</sup> This literature lacks overt critiques, a reflection of modest contemporary interest in the trials compared to Tokyo. Lawyers or case reviewers wrote review pieces for American bar association publications to clarify the way in which these trials functioned, but they tended to focus on the practical matters rather than any lofty critiques.

Piccigallo’s *The Japanese on Trial* (1979), the first substantive work in English on the “minor” trials, remains the foundational study for Class ‘B’ and ‘C’ war crimes trials in the Asia-Pacific region. Piccigallo surveyed the legal machinations of the various Allied war crimes operations and the concurrent diplomatic implications of the trials.<sup>15</sup> While offering an outstanding compilation of trial figures and results, as well as a brief analysis of each country’s efforts, he wrote the book to “serve introductory purposes at best” with the interest to “lay the groundwork for, and perhaps stimulate, further inquiry into Japanese war crimes trials.”<sup>16</sup>

Unfortunately, this important work has not stimulated much subsequent scholarship. The growth of studies on the Tokyo Trial since the 1980s has not been matched by comparable work on the

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<sup>14</sup> Regarding the Yokohama War Crimes Trials see Albert Lyman, “A Reviewer Reviews the Yokohama War Crimes Trials,” *The Journal of the Bar Association of the District of Columbia* 17, no. 6 (June 1950): 267-280, Robert W. Miller, “War Crimes Trials at Yokohama,” *Brooklyn Law Review* 15, no. 2 (April 1949): 191-209, and Paul E. Spurlock, “The Yokohama War Crimes Trials: The Truth About a Misunderstood Subject,” *American Bar Association Journal* 36 (May 1950): 387-389, 436-437. Spurlock and Lyman were both case reviewers at the Yokohama War Crimes Trials, while Miller was one of the most experienced defence lawyers at Yokohama and was a professor of law at Syracuse University.

<sup>15</sup> Philip R. Piccigallo, *The Japanese on Trial: Allied War Crimes Operations in the East, 1945-1949* (Austin: University of Texas Press, 1979), xiv-xv.

<sup>16</sup> Piccigallo, *The Japanese on Trial*, xiii.



“minor” trials. This is unfortunate, given that the trial records speak to issues as varied as the experiences of POWs, early Cold War foreign relations, and specific legal questions and precedents.

R. John Pritchard’s work on British “minor” war crimes trials in the Pacific is an exception to the general trend in which scholars identify a need to build up the literature but seldom actually do so. He argues that the specific focus of the “minor” trials made them less susceptible to politicization. With no aggressive war narrative to record, pattern of criminality to confirm, or call for punishment over justice, the “minor” trials were free to function with greater focus on infractions of the laws of war than the major ones.<sup>17</sup> Pritchard’s work reveals the professionalism of British Courts in the Pacific and their lawyers’ passion and dedication to uphold the values and beliefs of their legal traditions in theatre.<sup>18</sup>

Legal scholar Suzannah Linton has recently revived the field through an extensive online documentary project on the British trials at Hong Kong through the University of Hong Kong, as well as an article highlighting the legal significance of the war crimes courts. Linton seeks to “rediscover” the trials, making documents available to researchers and reviewing specific legal aspects of the trials. She argues that the British trials were politically motivated in seeking to re-establish British prestige in the area as it had been substantially diminished. In the end, Linton suggests that more recent war crimes tribunals could have drawn upon precedents and procedures from these earlier British trials.<sup>19</sup>

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<sup>17</sup> R. John Pritchard, “Lessons from British Proceedings against Japanese War Criminals,” *The Human Rights Review* 3, no. 2 (1978): 105. This article was written under the context of the Irish ‘Troubles’ and in search of juridical precedents that would benefit an understanding of the period.

<sup>18</sup> R. John Pritchard, “The Historical Experience of British War Crimes Courts in the Far East, 1946-1948,” *International Relations* 6 (1978): 315.

<sup>19</sup> Suzannah Linton and Hong Kong University Libraries, “Hong Kong War Crimes Trials Collection: HKU Libraries Digital Initiatives,” Hong Kong University, [hkwtc.lib.hku.hk/exhibits/show/hkwtc/home](http://hkwtc.lib.hku.hk/exhibits/show/hkwtc/home) (accessed 21 January 2011) as well as Suzannah Linton, “Rediscovering the War Crimes Trials in Hong, 1946-48,” *Melbourne Journal of International Law* 13, no. 1 (June 2012): 8-9.

More generally, several scholars have attempted to force “minor” war crimes trials into the victors’ justice framework without providing supporting evidence. Using Minear’s frame of analysis (although he expressly stated his support for conventional war crimes trials),<sup>20</sup> these academics have applied the main critique and constraints of major trials of senior political and military leaders onto “minor” war crimes trials – an idea that this dissertation contests. For example, Jon Elster’s survey on transitional justice argues that the Japanese trials paled in comparison to those held in Germany, and were “perhaps the closest approximation to pure political justice in the universe of cases.”<sup>21</sup> Elster contends that the German trials “conformed to legal justice” both in “adherence to due process and uncertainty about the outcome,”<sup>22</sup> but the Tokyo Trial was a show trial and a case of victors’ justice. He fails to ground his assertion that, “[o]n a smaller scale, the same can be said about the Yokohama trials,” in any evidence.<sup>23</sup>

“Minor” war crimes trials also emerge on the periphery of studies focusing on particular Japanese atrocities or exploring the experiences of Allied POWs. Authors use trial records to draw attention to the variety, severity, and impact of Japanese war crimes, or to reconstruct the experiences of POWs. For example, Japanese historian Yuki Tanaka utilizes Australian

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<sup>20</sup> Minear, *Victors’ Justice*, x. In this case, Minear was referring to the case of Lt. William Calley, who was found responsible and criminally negligent for the Mai Lai Massacre during the Vietnam War.

<sup>21</sup> Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004), 86.

<sup>22</sup> Elster, *Closing the Books*, 85-86 Elster describes *political justice* as when a new governing body (SCAP) “unilaterally and without the possibility of appeal designates the wrongdoers and decides what shall be done with them.” He also explains that this political justice “can take the form of *show trials*” which he readily links to the IMTFE. The simplest definition of *legal justice* is plainly being at the opposite end of the continuum of justice from political. See page Elster, *Closing the Books*, 84.

<sup>23</sup> Elster, *Closing the Books*, 86, n. 25. Elster cites David Cohen and Lawrence Taylor for this point, but gives no page number, or indication of how these sources support his contention. The Taylor reference, *A Trial of General’s* is certainly critical of war crimes trials in the Pacific, but in the section of the text dealing with trials he focuses on the trial of Homma Masaharu in the Philippines and the trial of Yamashita Tomoyuki in Manila with no reference to the Yokohama Trials at all. Straining the point, the Yamashita trial was completed several weeks before trials began at Yokohama. Cohen’s work, again does not deal with the Yokohama Trials, making Elster’s contention irrelevant. Cohen’s article deals with questions of individual responsibility for war crimes, and looks the trial records from Nuremberg, Tokyo and the Yamashita trial. The full references are: Lawrence Taylor, *A Trial of Generals: Homma, Yamashita, MacArthur* (South Bend, Ind.: Icarus Press, 1981) and David Cohen, “Beyond Nuremberg: Individual Responsibility for War Crimes,” in Carla Hesse and Robert Post, eds., *Human Rights in Political Transitions: Gettysburg to Bosnia* (New York: Zone Books, 1999), 53-92.

transcripts to illuminate the story of Japanese atrocities including the Sandakan Death Marches and the murder of civilians at Kavieng, Papua New Guinea.<sup>24</sup> Charles Roland also uses trial records to document the day-to-day experiences of Allied POWs captured after the fall of Hong Kong in 1941.<sup>25</sup> Although the trials themselves are not the focus of this work, the affidavits, camp diaries, witness statements, and trial transcriptions provide intimate insight into POWs' experiences.

From a Canadian perspective, three historians have laid the foundation for an exploration of the “minor” war crimes trials. John Stanton, Patrick Brode, and Yuki Takatori all investigate Canadian involvement in postwar legal structures, albeit from diplomatic and major-trial vantage points. All three analyse negotiation for Canadian involvement in the Tokyo Trial, but none give the “minor” trials – the original intention of the Canadian government – more than brief treatment or passing comment.

John Stanton identifies the Canadian government's reluctance and American (and to a lesser degree British) pressure as major themes in the build-up to the Japanese trials.<sup>26</sup> Once Canada had committed to issues “of direct concern to Canada,” the United States “expected a *quid pro quo*: Canada's participation in an International Military Tribunal for the Far East.”<sup>27</sup> When the Canadian Department of External Affairs (DEA) decided to participate in the prosecutions of alleged Japanese war criminals who had committed atrocities against Canadian soldiers and nationals captured at Hong Kong in December 1941, its officials were already being

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<sup>24</sup> Yuki Tanaka, *Hidden Horrors: Japanese War Crimes in World War II* (Boulder, Col.: Westview Press, 1996), particularly chapters 1-2, 6.

<sup>25</sup> Charles Roland, *Long Night's Journey into Day: Prisoners of War in Hong Kong and Japan, 1941-1945* (Waterloo: Wilfrid Laurier University Press, 2001), particularly chapters 3 and 8. Roland uses trial documents combined with oral history interviews to investigate camp conditions in Hong Kong and Japan.

<sup>26</sup> John Stanton, “Canada and War Crimes: Judgment at Tokyo,” *International Journal* 55 (Summer 2000): 379. See also John Stanton, “Reluctant Vengeance: Canada at the Tokyo War Crimes Tribunal,” *The Journal of American and Canadian Studies* 17 (1999): 61-87.

<sup>27</sup> Stanton, “Canada and War Crimes,” 387. Italics added.

drawn into playing a much larger role in providing a judge and a member of the prosecution for the trials in Tokyo. Stanton's work, much like Canadian policy on Japanese war crimes, shifts from the "minor" (the mistreatment of Canadian soldiers) to the major (major war criminals) once Canada committed to participate in the Tokyo Trial. The historiography of Canadian participation in Japanese war crimes trials, concentrating on the Class 'A' trials, mirrors this direction, leaving the 'B' and 'C' trials under-explored.

Patrick Brode's landmark study of Canada's prosecution of war criminals following the Second World War offers the most substantive discussion of the "minor" trials. Although Brode's work focuses predominantly on European trials, particularly that of Brigadeführer Kurt Meyer (the commander of the 12<sup>th</sup> SS Panzer division who was deemed responsible for the deaths of several Canadian POWs at Normandy in 1944),<sup>28</sup> his general assessment of trials in Japan and Hong Kong offers the best overview of Canadian involvement in the prosecution of war crimes after the Pacific War. Given that his study deals with all Canadian war crimes prosecutions from 1944-1948, his engagement with Canadian legal efforts in Japan and Hong Kong is avowedly modest.

Historian Yuki Takatori has also explored Canadian involvement in the Tokyo Trial, arguing that although the DEA was tentative, the strong personalities of Canadians at Tokyo

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<sup>28</sup> Patrick Brode, *Casual Slaughters and Accidental Judgments: Canadian War Crimes Prosecutions, 1944-1948* (Toronto: University of Toronto Press, 1997). Although *Casual Slaughters and Accidental Judgments* purports to be a survey of Canadian war crimes prosecutions between 1944-1948, Brode focuses predominantly on Meyer, secondly on other European trials, and then dedicates two brief chapters on Canadian involvement at Tokyo, Yokohama and Hong Kong. A significant body of Canadian scholarship has been produced dealing with the trial of Kurt Meyer beyond Brode's book. This includes: B.J.S. Macdonald, *The Trial of Kurt Meyer* (Toronto: Clarke, Irwin & Company Limited, 1954), Howard Margolian, *Conduct Unbecoming: The Story of the Murder of Canadian Prisoners of War in Normandy* (Toronto: University of Toronto Press, 1998), P. Whitney Lackenbauer, "Kurt Meyer, 12<sup>th</sup> SS Panzer Division, and the Murder of Canadian Prisoners of War in Normandy: An Historical and Historiographical Appraisal," *Gateway 3* (March 2001), 22pp (online), P. Whitney Lackenbauer and Chris Madsen, "Justifying Atrocity: Lieutenant-Colonel Maurice Andrew and the Defence of Brigadeführer Kurt Meyer," in Yves Tremblay, ed., *Canadian Military History since the 17<sup>th</sup> Century* (Ottawa: Department of National Defence, 2001), 553-564, and P. Whitney Lackenbauer and Chris Madsen, eds., *Kurt Meyer on Trial: A Documentary Record* (Kingston, ON.: Canadian Defence Academy Press, 2007).

made the trial less of a solely American venture than previous scholars have characterized.<sup>29</sup>

Takatori's research focuses mainly on the actions of Canada's representatives (justice E. Stuart McDougall, prosecutor Henry G. Nolan, and diplomat E.H. Norman), but her observations are relevant to understanding the experience of Canadians working on the "minor" trials as well. Despite their limited mandate, Canadian Detachment members in Japan and Hong Kong went well beyond their orders and involved themselves in extra responsibilities both inside the courtroom and out.

In summary, the Canadian scholarship reflects the broader body of "minor" war crimes literature in its marginal discussion of Class 'B' and 'C' trials, disproportionate focus on European questions, and its fixation on the Tokyo Trial.<sup>30</sup> The existing literature lacks any deep reflection on or analysis of Canadian involvement in the "minor" war crimes trials in the Pacific.<sup>31</sup> To address this deficiency, this study investigates the role of the Canadian War Crimes Liaison Detachment – Far East in "minor" trials in Hong Kong and Yokohama. The Canadian Detachment was comprised of four lawyers and a small support staff, but worked alongside three

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<sup>29</sup> Yuki Takatori, "Justice Tempered by Realpolitik: Canada's Role in the Tokyo Trial," *International Journal of Canadian Studies* 32 (2005): 148. See also Yuki Takatori, "'America's' War Crimes Trial? Commonwealth Leadership at the International Military Tribunal for the Far East, 1946-48," *The Journal of Imperial and Commonwealth History* 35, no. 4 (2007): 549-568.

<sup>30</sup> Two master's theses from the Royal Military College explore Canadian involvement in war crimes trials following the Second World War. Although sub-titled "Canadian War Crimes Prosecutions at the end of the Second World War," Lisa Goodyear's study focuses only on the European legal questions surrounding Kurt Meyer and Wilhelm Mohnke. Jay Hancock identifies a need to investigate the Japanese war record in comparison to the abundance of European material, but focuses entirely on the Class 'A' trials, leaving the "minor" unexplored. See Lisa L. Goodyear, "In the Name of Justice or Finding a Place: Canadian War Crimes Prosecutions at the End of the Second World War," (masters' theses, Royal Military College, 2002) and Jay Hancock, "Determined Victor: Canada's Role in the Prosecution of Class 'A' Japanese War Criminals" (master's thesis, Royal Military College, 2002). My master's thesis explores John Dickey's role as a prosecutor at the Yokohama War Crimes Trials. See Mark Sweeney, "Letters from Yokohama: Major John Dickey and the Prosecution of Japanese Class 'B' and 'C' War Crimes (master's thesis, Saint Mary's University, 2008).

<sup>31</sup> Charles Roland has used trial records to discuss the experiences of Canadian and Allied POWs in *Long Night's Journey into Day*, and a discussion of Inouye Kanao, the "Kamloops Kid" a Japanese-Canadian who faced war crimes and treason charges in the aftermath of the Second World War, has taken place over two paragraphs in Patricia Roy, J.L. Granatstein, Masako Iino and Hiroko Takamura, *Mutual Hostages: Canadians and Japanese during the Second World War* (Toronto: University of Toronto Press, 1990), 73, and in Merrily Weisbord and Marilyn Simonds Mohr, *The Valour and the Horror: The Untold Story of Canadians in the Second World War* (Toronto: HarperCollins, 1991), 45, 56.

judges, several witnesses and the Canadian Legation in Tokyo.<sup>32</sup> The men served a unique role, acting autonomously as Canadian representatives, but also transitioning into the broader cooperative context of the Allied occupations. Accordingly, the Detachment members' efforts must be situated within the postwar and early Cold War diplomatic environment. At times, their roles required as much diplomacy as legal training.

Tracing the actions of the Canadian Detachment through the archival record yields no evidence of blind adherence to (or expectation of) a preordained outcome. Canadian legal efforts were exhaustive in the investigative, preparation, and trial stages. Lawyers ensured their cases were thoroughly prepared and cogently argued. Within the trials' legal structure, cases only went to trial when it was clear that there was sufficient evidence in place. This reduced the expectation for acquittals. Nevertheless, various "not guilty" findings proved that the court took war crimes seriously but also weighed the evidence and arguments presented in the courtroom thoughtfully.

Overall, the lawyers that Canada sent overseas pursued their orders judiciously and fairly. Although they shared some of the racialized lenses of their contemporaries, racism was not a driving force in their pursuit of justice. The accused men received reasonable treatment, and the review process and the participants' personal ideas about fairness imbued the trials with a sense of balance. The four Canadian lawyers each secured guilty findings in the majority of their cases, but when they could not gather sufficient evidence (a particular challenge in the battle-related cases and some of the POW camp trials) the court decided against their arguments.

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<sup>32</sup> The Canadian War Crimes Liaison Detachment – Far East was comprised of: Lt. Col. Oscar Orr (officer-in-charge), Major George Beverly Puddicombe, Captain John D.C. Boland, Captain John H. Dickey, Sergeant-Major Harold B. Shepherd, Sergeant-Major Robert Manchester, Sergeant-Major Arthur Hogg, Staff-Sergeant Robert W. Martin, and later Company Sergeant-Major W.E. Preston. Dickey and Boland were both promoted to Major during the assignment.

Although the “minor” trials have received scant scholarly attention, local newspapers provided Canadians with trial results and special interest pieces while the Canadian Detachment operated in the Pacific. Armed with information provided by the detachment, hometown newspapers provided their readers with updates from the trials, using language that set up stronger notions of victors’ justice than anything evident in the trials themselves. Media reports reflected a sense of intense personal angst toward the Japanese, in sharp contrast to the careful deliberation, preparation, and demonstration of justice at Yokohama and Hong Kong. This may help to explain why there is a lingering sense that these were show trials. Careful analysis of the experiences of the Canadian War Crimes Liaison Detachment – Far East, however, reveals that this was anything but the case.

This dissertation adopts a mixed methodology. The Hong Kong trials receive focused, individual treatment. One chapter is allotted to trials resultant from incidents during and in the immediate aftermath of the invasion and battle of Hong Kong. It highlights the complications in securing sound evidence under the fog of war, and exemplifies the fluid nature of the “minor” war crimes trials, illustrating that Major G.B. Puddicombe learned lessons as he went through trial and error in the courtroom. These trials dealt with the command responsibility of Japanese commanding officers for the actions of their subordinates. Two chapters explore trials relating to the Canadian POW experience in Hong Kong. The first deals with the Hong Kong POW HQ Commander and his Medical Officer. The second is a more complicated case involving a Japanese-Canadian who worked for the Hong Kong POW Camp HQ and later the Japanese *Kempeitai* (Japanese military police) as an interpreter. These trials revealed medical, labour, and food-related maltreatment of POWs, as well as violent actions inflicted upon them in the camps.

This approach is warranted given that each trial has unique features requiring independent assessment. Each of the Canadian POWs did their soldiering and spent at least one year of captivity in Hong Kong before their captors shipped portions of the contingent off to Japan as labourers for the remainder of the war.

1184 of the surviving POWs crossed to the Japanese home islands to face forced labour and horrendous conditions. Whereas the Hong Kong trials had a broad focus and many unique components, the Canadian trials at Yokohama tended to involve recurrent themes. Rather than giving each camp its own specific chapter, I treat the Yokohama trials together, analyzing themes of medical maltreatment, physical abuses, forced labour, and unsafe working and living conditions as they played out through the trials prosecuted by Oscar Orr, John Boland and John Dickey. With this approach I hope not to minimize the hardship experienced by the POWs, but rather to examine their experiences as played out in the courtrooms.

To illuminate the broader experience of the Canadian legal team both within the courtroom and in the occupations more broadly, chapter seven examines the additional workload that members of the Detachment assumed, their assistance to recently repatriated Japanese-Canadians who arrived in Yokohama, as well as voluntarism with church organizations and the Commonwealth War Graves Association. These myriad activities reflected individual personalities and the detachment members' willingness to assume responsibilities beyond their assigned mandate.

The final chapter contends that the Canadian public, rather than being oblivious to the “minor” war crimes trials in the Pacific,<sup>33</sup> learned about the trials in the media. In the cases of Winnipeg and the Eastern Townships, from which many of the POWs originated, local editors provided regular content about the “minor” trials that the detachment members sent through the

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<sup>33</sup> Brode, *Casual Slaughters and Accidental Judgments*, 191.



SCAP public relations office and the Canadian Department of National Defence. Newspaper articles provided a conduit for the public to understand the trials and the POW experience more broadly.

The broader aim of this study is to reconstruct the role of the Canadian Detachment in pursuing justice for war crimes within the international context of distinct British and American systems. It examines how relationships worked diplomatically and as matters of policy, which allowed the Canadians to participate fully in the trials as prosecutors and judges assimilated into a larger Allied cooperative effort. Records related to the Detachment's investigative and preparation work reveal a group that held exalted notions of justice, but also one that understood the practical realities of the assignment and continually made adjustments in the face of complications. Orr, Puddicombe, Dickey, and Boland proved willing to expend as much effort as was necessary to ensure that they carried out their orders and that justice was served.

Through the trial records themselves I was able to unpack a different set of issues, in turn recovering the foundation for the entire Canadian war crimes effort in the Asia-Pacific theatre that has gone missing because of historiographic neglect and a shift of focus at the time. The original Canadian intent was to punish alleged war criminals who had committed specific crimes against Canadian nationals. In order for Canada to participate in these "minor" trials, American authorities required Canadian representation in the major trial at Tokyo. This has deflected focus onto the trials of politicians and high-ranking militarists, thus leaving in the shadows the Canadian soldiers who stimulated the legal exercise in the first place. Although historians have tended to overlook the "minor" trials, important Canadian stories unfolded in the courtrooms, the

toil of soldiers and POWs recollected through the reading of affidavits, witness testimony, and the examination of the accused.

The conditions that men faced during the battle and in the uncertain period following their surrender came to light in the Hong Kong War Crimes Courts. Their long incarceration and forced labour received treatment in Hong Kong and at the Yokohama War Crimes Trials. Trials recounted the brutal and the banal: extraordinary beatings and punishments in response to minor infractions, dangerous working conditions (and war-related labour) to long and agonizing medical and nutritional neglect that ground the men down over time. Accordingly, these trials facilitate a deeper understanding of what transpired on the battlefield, in the camps, and at labour sites. Although the global community forgot about these courts martial-styled trials, which did not find a place in the precedent-setting corpus of international jurisprudence or heavily influence legal procedure as war crimes trials evolved, they remain an important (and largely untapped) source of evidence for military and legal historians.

## Chapter 1

### **Original Intentions and Necessary Evils: Securing Canadian Involvement in “Minor” War Crimes Trials in Hong Kong and Japan**

The context in which the Canadians of ‘C’ Force found themselves in Hong Kong in 1941 and their story for the next four years set the stage for Canada’s role in “minor” war crimes trials in the Pacific. Hong Kong had been a British colony since the Qing Dynasty of China conceded it following the end of the First Opium War in 1842. The colony expanded with the gain of territorial rights to the Kowloon peninsula in 1860 and the New Territories in 1898. On the eve of war, the population of Hong Kong was 1.7 million, half of which was comprised of refugees from the war in China.<sup>34</sup> The Island of Hong Kong is itself only 29 square miles, but the entirety of the colony, inclusive of Kowloon and the New Territories was 410 square miles. The European population, inclusive of the garrison, was 25 000.

Scholars have detailed the origins of the Pacific War,<sup>35</sup> with longstanding hostilities in the region extending back to the Meiji Restoration in 1868. The reinstatement of imperial rule in Japan marked a shift toward nationalistic and anti-western attitudes as well as a resurgence of economic and military strength. Instabilities in the region manifested in the invasion and annexation of Okinawa in 1872, the First Sino-Japanese War in 1894 as well as victory in the Russo-Japanese War of 1904-05, and the annexation of Korea in 1910, which shifted the balance

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<sup>34</sup> Terry Copp, “The Defence of Hong Kong, December 1941,” *Canadian Military History* 10, no. 4 (2001): 6.

<sup>35</sup> See for example, Akira Iriye, *The Origins of the Second World War in Asia and the Pacific* (New York: Longman, 1987), Peter Duus, Ramon H. Meyers, and Mark Peattie, eds., *The Japanese Wartime Empire, 1931-1945* (Princeton: Princeton University Press, 1996), and Marius B. Jansen, *The Making of Modern Japan* (Cambridge: Harvard University Press, 2000).

of power in East Asia and caused alarm in the international community. The 1930s marked a watershed in Japanese expansionary policies, exemplified by the Mukden Incident of 18 September 1931 which opened the door for an extended conquest by the Japanese of Manchuria, the Japanese government walking away from the League of Nations in 1933, and the Marco Polo Bridge Incident of 7 July 1937. The Rape of Nanjing followed the fall of Nanjing on 13 December 1937. Japanese soldiers went on a rampage, terrorizing, killing, raping, burning and looting for seven weeks. Casualty figures range from 200 000 to 300 000 and widespread rape of local women and children.<sup>36</sup>

On 27 September 1940, the Japanese government signed a decade-long military and economic pact with Germany and Italy that solidified the Axis Powers. The ramifications of the Tripartite Pact were more visible in Europe, but it sent the message to the United States that it should remain neutral or would find itself embroiled in a two-front war. The freezing of Japanese assets by the United States and Commonwealth countries exacerbated tensions in the Pacific, largely the result of these incidents and the Japanese forcing their way into French Indochina. An embargo on motor and aircraft oil by the United States followed on 1 August 1941. One of the final pieces of the puzzle involved the replacement of Prince Konoe as Prime Minister with Tōjō Hideki on 18 October 1941, placing a militarist at the helm of the Japanese government. Although these incidents cannot be depicted as one coherent and forward marching plan to war, they laid down 80 years of increasing aggression for Japan and laid the groundwork for what was to come.

Hong Kong presented the British with increased urgency in the face of Japanese imperialism in the 1930s. The US would not stand for Japan's expansionary policies, and Japan

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<sup>36</sup> For a legal discussion of how the Tokyo Trial dealt with the Rape of Nanjing see Timothy Brook, "The Tokyo Judgment and the Rape of Nanking," *The Journal of Asian Studies* 60, no. 3 (August 2001): 673-700.

– seeking raw materials such as oil from the Dutch East Indies – was not prepared to stop.

Although the United States remained neutral when German troops entered Poland in September 1939, Britain’s commitment to the European front exposed its colonial holdings in the Pacific. British forces were badly overstretched, with commitments prioritized to home defence and Europe, followed by the Middle East, India and Malaya and Singapore.

British planners confronted several problems when contemplating defence plans for Hong Kong. The British Chiefs of Staff decided the colony should be “regarded as an outpost and held as long as possible” in the case of war with Japan “it could neither be reinforced nor relieved.”<sup>37</sup> Sir Geoffrey Northcote, Governor of Hong Kong, recommended withdrawing the British garrison to avoid the slaughter of civilians and destruction of property, but military planners decided against it. It would convey the wrong political message to the Chinese and the United States and encourage Japanese expansionism. Major-General Grasset (General Officer Commanding, British troops in China, Hong Kong defences), nearing the end of his tenure in Hong Kong, had long been looking for more troops. British officials would and could not supply them.<sup>38</sup>

In the 1930s, British military and political planners realised that the state of defence and number of garrison troops in Hong Kong were inadequate, but they remained committed to holding the outpost as a “forward base of operations to exert pressure on the Japanese and to maintain British prestige in the area.”<sup>39</sup> Imperial Defence College exercises in 1934 indicated that three battalions could not withstand an attack for more than twenty days and recommended

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<sup>37</sup> C.P. Stacey, *Six Years of War: The Army in Canada, Britain and the Pacific, Vol. 1: Official History of the Canadian Army in the Second World War* (Ottawa: Queen’s Printer, 1957), 438.

<sup>38</sup> Galen Roger Perras, “Our Position in the Far East would be Stronger without this Unsatisfactory Commitment’: Britain and the Reinforcement of Hong Kong, 1941,” *Canadian Journal of History* 30, no. 2 (August 1995): 232.

<sup>39</sup> Paul Dickson, “Crerar and the Decision to Garrison Hong Kong,” *Canadian Military History* 3, no. 1 (1994): 99.

adding at least another battalion (if not an entire brigade) and supplemental Royal Air Force assets to hold out until support from the main fleet could arrive.<sup>40</sup>

The terms of the Washington Naval Treaty also meant that the British could not substantially improve the fortifications and naval facilities at Hong Kong between 1922 and 1936. Furthermore, British officials did not consider troop increases viable as they would neither prevent an attack nor afford a sustained defence. Churchill contended that if the Japanese invaded there was “not the slightest chance”<sup>41</sup> of defending the isolated colony. This was exemplified by the negative review that he gave a report from Air Chief Marshall Sir Robert Brooke-Popham (Commander-in-Chief of the Far East), who claimed that more resources were necessary to secure Hong Kong. While Brooke-Popham knew that the Far East was a lower British priority, he insisted that two battalions would increase security in the region. In early 1941, Churchill remained uninterested in reinforcing Hong Kong, and would have preferred to commit fewer troops.<sup>42</sup> In short, senior British decision-makers harboured no desire to invest substantially in the defence of Hong Kong.

In August 1941, Major-General A.E. Grasset travelled through Ottawa en route to the United Kingdom. There he met with Major-General H.D.G. Crerar, the Canadian Chief of the Defence Staff. Grasset, who was Canadian-born and thus enjoyed a personal connection to the senior dominion, asserted that the “addition of two or more battalions to the forces then at Hong Kong would render the garrison strong enough to withstand for an extensive period of siege an attack by such forces as the Japanese could bring to bear against it.”<sup>43</sup> Although his “long

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<sup>40</sup> Perras, “Our Position in the Far East Would be Stronger without this Unsatisfactory Commitment,” 236.

<sup>41</sup> See Churchill quote as used in the title of: Tony Banham, *Not the Slightest Chance: The Defence of Hong Kong, 1941* (Vancouver: University of British Columbia Press, 2003).

<sup>42</sup> Perras, “Our Position in the Far East,” 246-247.

<sup>43</sup> Dickson, “Crerar and the Decision to Garrison Hong Kong,” 102.

discussions” with Crerar and Ralston were informal and unrecorded, they foreshadowed an official British request for Canadian assistance.<sup>44</sup>

After arriving in the UK in September 1941, Grasset approached British defence officials about additional troops. To Churchill he described a changed situation in Far East, highlighting a reinforced Malaya and insisting that shoring up Hong Kong would have a “great moral effect.” The British could deter Japan if they proceeded with a policy cultivating American support while emphasizing Chinese independence.<sup>45</sup> Churchill eventually endorsed Grasset’s plan, but he remained convinced that British troops had no chance of holding Hong Kong in the case of Japanese invasion. In the fall of 1941, however, British military planners sensed that the Japanese might turn north to Russia and avoid the Southeast Asian colony altogether. To bolster deterrence, these planners appealed to Canada.

On 19 September 1941, Britain formally requested Canadian aid in the defence of Hong Kong. The request noted changes in the British position in the Far East and claimed that two additional battalions would strengthen the garrison. The plan would reassure Chiang Kai Shek that the British were serious about holding onto Hong Kong and that the colony was safer than before. The request also subtly reminded the Canadians that Britain was stretched too thin and emphasized Canada’s “special position in the North Pacific,” noting that the Americans had recently sent a small contingent to the Philippines.<sup>46</sup>

In October 1941 Canadian defence officials selected two battalions to travel to Hong Kong to shore up defences: the Winnipeg Grenadiers (WG), who had just completed garrison duty in Jamaica, and the Royal Rifles of Canada (RRC) who had been posted to Newfoundland.

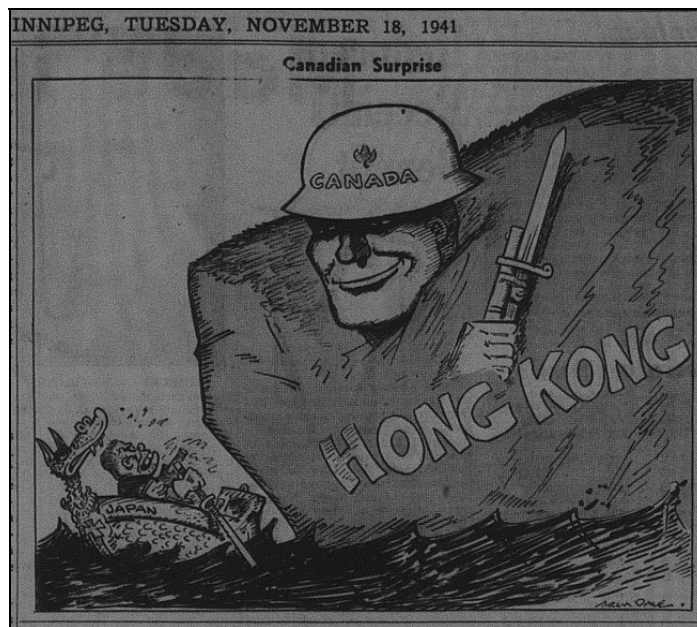
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<sup>44</sup> Stacey, *Six Years of War*, 439.

<sup>45</sup> Dickson, “Crerar and the Decision to Garrison Hong Kong,” 103.

<sup>46</sup> As cited in Stacey, *Six Years of War*, 440-441. For more on the decision-making process see Timothy Wilford, *Canada’s Road to the Pacific War: Intelligence, Strategy, and the Far East Crisis* (Vancouver: University of British Columbia Press, 2011).

Although the two battalions were due for refresher training, National Defence officials – anticipating no clear and imminent threat – decided that both would have ample time during transit and upon arrival in Hong Kong to complete it. In late October 1941, 96 officers and 1877 other ranks (along with a handful of medical, nursing, dental and religious attendants) shipped off for Hong Kong and arrived at Sham Shui Po – the very location where they would spend most of the war incarcerated as POWs.



**Figure 1 - A calm confidence upon departure. (Winnipeg Free Press, 18 November 1941)**

The Canadians, (referred to collectively as ‘C’ Force) joined British troops (Royal Scots and Middlesex Regiment), two Indian battalions (5/7<sup>th</sup> Rajputs and 2/14<sup>th</sup> Punjabs), and the Hong Kong Volunteer Defence Corps (HKVDC). The Canadians continued their training, running exercises throughout the challenging Hong Kong terrain. Initial defence plans involved a delay on the mainland (New Territories and Kowloon) and sustained defence of the island, as there was little air or naval support. Canadian Brigadier J.K. Lawson had command over Island Brigade which included the ‘C’ Force with the role of opposing sea landings. Military exercises, however, transitioned rapidly into hasty warfare following the unexpected Japanese invasion.



The 38<sup>th</sup> Division of the 23<sup>rd</sup> Imperial Japanese Army (IJA) invaded Hong Kong on 7-8 December. Facing overwhelming attacks on the ground and air, the Mainland Brigade held out until 11 December when Major-General C.M. Maltby withdrew the majority of his forces back onto the island. Skirmishes continued between the Japanese troops and the Rajputs until the latter's withdrawal on 13 December. Hong Kong Governor Mark Aitcheson Young rejected the Japanese terms of surrender the same day. Maltby's reorganization of the troops split the Canadians: the Grenadiers remained under Lawson as a part of the West Brigade while Brigadier Wallis absorbed the Royal Rifles into the East Brigade.

The Japanese invaded the island on 18 December. Three regiments in the 38<sup>th</sup> Division of the IJA under the command of Major-General Itō Takeo crossed from the mainland: the 228<sup>th</sup> under Colonel Doi Teihichi crossed at Braemar; the 229<sup>th</sup> under Tanaka Ryosaburo who embarked from Devil's Peak and landed near Lye Mun; and the 230<sup>th</sup> under Shoji Toshishige departed near Kai Tak and landed just east of North Point. Each regiment committed two of their three battalions to the attack, up to 1000 strong each with substantial artillery backing. The objective for the 228<sup>th</sup> was Jardine's Lookout and Wong Nei Chong Gap; the 229<sup>th</sup> was to aim for Mouth Parker; and the 230<sup>th</sup> was to gain Mount Nicholson to the west of Wong Nei Chong Gap. The aim was to progress inland, split the island, and gain the high ground.



Wong Nei Chong Gap area. The company had splintered en route, and those led by John Osborn pushed toward Jardine’s Lookout and on to Mount Butler. The Japanese counterattacked and surrounded Osborn and his men. The Japanese threw grenades down onto the Canadians and Osborn caught several and hurled them back. When one landed that he could not return, the officer threw himself on it as it exploded, sacrificing his life for his comrades. The sergeant who recommended Osborn for his posthumous Victoria Cross claimed that Osborn’s gallantry saved at least seven men. In due course, however, the numerically superior Japanese troops inevitably overran the Canadians and took the survivors prisoner.<sup>48</sup> The majority of the force surrendered on ‘Black Christmas’ and the following day. 290 soldiers with ‘C’ Force died in the battle – but the final death toll reached 557 after four years of incarceration under the Japanese.<sup>49</sup>



**Figure 3 - The Hong Kong Memorial Wall In Ottawa. (Photograph in possession of author)**

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<sup>48</sup> Osborn’s Victoria Cross citation – *London Gazette*, no. 37517, 2 April 1946 – is available at: Directorate of History and Heritage, “Victoria Cross – Second World War, 1939-1945, John Robert Osborn,” National Defence and the Canadian Forces, <http://www.cmp-cpm.forces.gc.ca/dhh-dhp/gal/vcg-gcv/bio/osborn-jr-eng.asp> (accessed 20 September 2012).

<sup>49</sup> Casualty figures are from Stacey, *Six Years of War*, 488-489.

Until September 1942, the Japanese held the Canadian POWs at North Point on the island. The camp was a fly-infested mess, with a diphtheria epidemic eventually killing more than one hundred Canadians. The POW Camp administration executed four Canadians who they captured adrift in the waters off Hong Kong trying to escape. The remainder of the Canadian POWs were transferred to the Sham Shui Po Camp in September 1942. Facing a labour shortage as the war progressed, the Japanese government eventually shipped out 1184 Canadians to work camps in Japan in four drafts. The Canadians toiled in coal and nickel mines, on loading docks and foundries, doing dangerous and war-related work, all the while trying to survive starvation diets and abuse from violent guards.<sup>50</sup> The trials that the Canadian War Crimes Liaison Detachment participated in emanated from this battle and the treatment of POWs under the command of the Japanese.

### **Japan and the 1929 Geneva Convention on the Treatment of Prisoners of War**

Japan's relationship with the 1929 Geneva Convention is an integral issue in the discussion of postwar Pacific war crimes trials.<sup>51</sup> The legal implications of Japan's decision not to ratify the treaty, and the cultural cleavages between how the Japanese and much of the Western world interpreted issues in the Convention, imbue the trials with controversy. The Geneva Convention framed the majority of grievances articulated by returning Allied POWs and, alongside other conventions and customary law, provided grounds for "minor" war crimes trials against Japanese perpetrators. Individuals engaged on commissions and, as prosecution, defence and review staff toiled with questions about its validity and application throughout their tenure,

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<sup>50</sup> Puddicombe fonds, Vol. 1-3, Sham Shui Po, Labour draft distribution chart.

<sup>51</sup> For a copy of the treaty please see "Geneva Convention, 1929, Convention Relative to the Treatment of Prisoners of War," in Dietrich Schindler and Jiri Torman, eds., *The Laws of Armed Conflict: A Collection of Conventions, Resolutions and Other Documents*, 4<sup>th</sup> ed. (Leiden and Boston: Martinus Nijhoff Publishers, 2004), 421-444.

toiling deeply with how to balance demands for justice with the legal implication of Japan's status in international treaties.

A formal codification of warfare took shape in the international community during the latter half of the nineteenth century. Schindler and Torman identify four main reasons why this step beyond traditional customary practices took place. First, the introduction of compulsory service vastly increased the size of national armies, expanding both the scale of battle and problems associated with maintaining discipline. Second, the size of forces and improvements in technology increased destructive power. Third, the nineteenth century brought increased demands in the Western world for containment of the destructive forces of war. Fourth, it emerged concurrent to the codification of European private law.<sup>52</sup>

The period beginning with the development of the Lieber Code (1863) and the first Geneva Convention of 1864, through to the Hague Peace Conferences in 1899 and 1907, marked the most influential period in the development of the regulation of warfare. Henry Dunant's *A Memory of Solferino* laid the foundation for the International Committee of the Red Cross as well as the 1864 Geneva Convention as his recollections of the slaughter and abuse of power at Solferino brought the brutality of warfare to a wider audience.<sup>53</sup> One of the major outcomes of this period was the clear identification of who could participate in conflict and who required safeguards in identifying combatants and civilians.<sup>54</sup>

The Lieber Code (or Instructions) set the foundation for the treatment of POWs as a function of regulated warfare. Developed by Francis Lieber and applied during the American

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<sup>52</sup> Schindler and Torman, eds., *The Laws of Armed Conflicts*, v-vi.

<sup>53</sup> Henry Dunant, *A Memory of Solferino* (Geneva: International Committee of the Red Cross, 1986).

<sup>54</sup> Schindler and Torman, eds., *The Laws of Armed Conflicts*, vi.

Civil War, the code signified the first major step toward humane treatment of prisoners.<sup>55</sup> The latter half of the nineteenth century saw international multinational conventions developed and signed, regulating the future ways wars should be fought, who constituted a participant, what a valid target was, and what type of weapons could be used. The most important conventions included the first Geneva Convention in 1864, the Hague Peace Conferences of 1899 and 1907, and the 1929 Geneva Convention which “provided restraint and guidance to the actions of most off the nations involved in World War.”<sup>56</sup>

In connection to the Canadian POWs at Hong Kong and the role of the Canadian Detachment seeking justice on their behalf, the 1929 Geneva Convention offered guidelines for the treatment of POWs and sick and wounded during the battle. The POW convention provided consensus rules for the treatment of POWs, their accommodation, food, clothing and medical care, allowance and prohibition of different types of labour, personal correspondence and updates through official POW bureaus as well as guidelines for discipline.<sup>57</sup> The convention upgraded and completed shortcomings from the Hague Conventions of 1899 and 1907 and represented the standard for the treatment of POWs during World War II.

Countries that participated in an international conference had to take two steps to confirm their willingness to abide by the terms encompassed by the treaty. Initially the representatives signed the treaty implying their initial agreement with the spirit of the convention. The participants then took the document back to their government for ratification after a discussion in their own parliament. Both steps were required to bind a country to the convention.<sup>58</sup>

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<sup>55</sup> Roland, *Long Night's Journey into Day*, xiii-xiv and Schindler and Torman, eds., *The Laws of Armed Conflicts*, vi.

<sup>56</sup> Roland, *Long Night's Journey into Day*, xiv.

<sup>57</sup> Geneva Convention 1929, Convention Relative to the Treatment of Prisoners of War.

<sup>58</sup> Roland, *Long Night's Journey into Day*, xiv.

Japanese representatives at Geneva signed off on both conventions, but after debate in the Diet, officials ratified the second convention but not the one relative to POWs. Historians and legal scholars have explained this dismissal as a reflection of a cultural chasm. The terms of the treaty expected soldiers to treat POWs better than they themselves could expect to be treated. The treaty's provisions also generate concern that they could encourage air attacks, given that pilots could expect fair treatment as POWs in the case of forced landings.<sup>59</sup> More fundamentally, Japanese officials thought the convention and its obligations would be culturally inappropriate. They did not permit their soldiers to become prisoners, and "treaty provisions on punishment of POWs were more advantageous to Allied POWs than corresponding Japanese law would be to Japanese soldiers, thus necessitating a change in Japanese codes and laws."<sup>60</sup>

Immediately after the Japanese armed forces swept through the Pacific in December 1941, Allied leaders expressed concern with Japan's non-adherence to the POW convention and communicated to Japanese officials that they intended to abide by the customary laws of war. In response to Commonwealth and American inquiries through neutral diplomatic channels, the Japanese responded that although they had not ratified the 1929 Geneva Convention and were not bound to it, they would apply its provisions *mutatis mutandis* (generally the same, but altered where required) to POWs in their possession, and that they would keep European standards in mind for food and clothing distribution.<sup>61</sup> Accordingly, Allied leaders expected that their POWs would receive humane treatment. Nevertheless, the communicated stance of the Japanese military government was far from the reality in POW camps in Japan and across the Japanese-occupied Pacific theatre. Policy and the practical reality were vastly different.

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<sup>59</sup> Linton, "Rediscovering the War Crimes Trials in Hong Kong," 4, 18.

<sup>60</sup> Roland, *Long Night's Journey into Day*, xv.

<sup>61</sup> IMTFE Exhibit No. 1490, Memorandum from Togo to the Swiss Minister, 29 January 1942, as cited in Charles G. Roland, "Allied POWs, Japanese Captors and the Geneva Convention," *War & Society* 9, no. 2 (1991): 85. See also Piccigallo, *The Japanese on Trial*, 3.

Part of the foundation of “minor” war crimes trials was the 1929 Geneva Convention, particularly as it related to the ‘B’ class of war crime, murder or ill-treatment of prisoners of war. One of the main arguments by Allied and Japanese defence lawyers (as well as historians and other trial critics) held that, because Japan never ratified the 1929 Convention, its soldiers should not have been bound to it. Many of the same humane treatment principles were covered in other conventions, but not in as specific terms.<sup>62</sup>

Historians have attempted to explain how and why the Japanese troops committed atrocities. Scholarship points to a strict adherence to orders within the Japanese forces as a main cause. The IJA, as an institution, provided little guidance (beyond moral authority) that would allow an individual soldier to disregard an illegal order akin to what Western expectations (and legal recourse) would allow Allied soldiers to do. Japanese troops fell in within a closed system where their peers put them under tremendous pressure. By extension, increased brutality was a marker of brotherhood and masculinity in the field.<sup>63</sup> Historian Charles Roland argues that Japanese brutality during the Pacific War reflected the shift in the 1930s and 1940s to an ultra-nationalistic, *Bushido* inspired military culture (one that had not been prevalent when the Japanese were very accommodating to Russian and German POWs during the Sino-Japanese and

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<sup>62</sup> For example, Orr argued in one case, that the Hague Convention was as relevant as any other in its relation to forced labour: “All we demand is the purpose of this argument is humane treatment. We will forget about the Geneva Conference and stay with the Hague Convention that everybody is bound by. That says prisoners of war shall be treated humanely. Is that not inhumane treatment? In other words, is that not inhumane treatment to make them work when they are sick? In other words, that is the only argument there. It might be against some other law to make him work on war work. It is A, B, C – it is elemental. We wouldn’t have to say he lost a leg or had gangrene. It would be inhumane to send a man out to work with a temperature of 104° although he might recover the next day. But it would be inhumane to have sent him.” National Archives and Records Administration [hereafter NARA], RG 331, SCAP, JAG, War Crimes Division, Records of Trial File, UD 1865, Box No. 9565, *USA vs Masao Uwamori*, Case Docket 133, 68. Hereafter *USA vs Uwamori*.

<sup>63</sup> Meirion Harries and Susie Harries, *Soldiers of the Sun: The Rise and Fall of the Imperial Japanese Army* (New York: Random House Inc., 1991), 479.



First World Wars).<sup>64</sup> The Japanese Army Field Service Code indicated that becoming a prisoner of the enemy was a great dishonour, thus placing a stigma on captured enemy troops.

Strict adherence to military hierarchy amongst Japanese soldiers placed Allied POWs at the bottom rung. Corporal punishment within the IJA was an unofficial but accepted practice that operated in a unidirectional manner. POWs received the brunt of punishment as it trickled down from the top.<sup>65</sup> If someone in the middle-ranks received a beating, he tended to inflict the same on someone lower in the hierarchy until it reached the bottom. For example, Edward Drea indicates that IJA training included commonplace beatings and abuse of lower ranks to instill discipline, thus mirroring the mistreatment of Allied POWs:

A new recruit might be ordered to stand at attention – all day. Forbidden to move, even to relieve himself, the young man would stand motionless for several hours. When the agony became too great, he would collapse and would promptly receive a beating, because he was still supposed to be at attention. His will power or self-discipline was at fault and needed cultivation.<sup>66</sup>

It was unlikely that a low ranking soldier would consider international legal opinions about corporal punishment after receiving a beating from a superior officer. No clear evidence has emerged from the War Ministry promoting systematic maltreatment of Allied POWs, but the thinly veiled prohibition on the use of force as punishment was never expected for camp commandants, guards, and other officials with authority over POWs.

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<sup>64</sup> Roland, “Allied POWs, Japanese Captors and the Geneva Convention,” 87. See also Felicia Yap, “Prisoners of War and Civilian Internees of the Japanese in British Asia: The Similarities and Contrasts of Experience,” *Journal of Contemporary History* 47, no. 2 (April 2012): 323, and Miki Y. Ishikida, *Toward Peace: War Responsibility, Postwar Compensation, and Peace Movements and Education in Japan* (New York: iUniverse Inc., 2005), 12.

<sup>65</sup> Yap, “Prisoners of War and Civilian Internees,” 325.

<sup>66</sup> Edward J. Drea, *In the Service of the Emperor: Essays on the Imperial Japanese Army* (Lincoln: University of Nebraska Press, 1998), 83-84. In reference to the Yokohama Trials dealing with standing at attention, see for example: NARA, RG 331, SCAP, Legal Section, Prosecution Division, USA Versus Japanese War Criminals, Case File 1945-1949, UD 1321, Box. 1607, Yoshida Case, No. 69, Specification 20 (Okuda); RG 331, SCAP, Legal Section, Prosecution Division, USA Versus Japanese War Criminals, Case File 1945-1949, UD 1321, Box. 1582, Kanechi Kondo Case, No. 115, Specifications 1-3; *USA vs Masao Uwamori*, Specification 5 (B) and 8 (B).

Significant cultural cleavages also influenced the ways that Japanese law and soldiers interpreted the ideas set out in the Geneva Convention. In a Western sense, *mutatis mutandis* connotes that a law or treaty will be enforced or followed with only minor or unsubstantial changes. This interpretation implied that the Japanese would uphold the spirit of the Geneva Convention and treat Allied POWs as provided for in the terms of the treaty. The Japanese interpretation of the term allows for a general adherence to the law or treaty, but also permits an alteration in its meaning as the situation develops.<sup>67</sup> The training and mentality of enlisted troops in the IJA during the Pacific War was tantamount to the maxim “death before dishonour” – troops were trained to fight to death and resist even when hope of survival was gone.<sup>68</sup> Japanese troops frequently opted for suicide over capture. With its foundations in the *Bushido* code – an unwillingness to surrender and subsequently become a prisoner – it is unsurprising that Japanese troops looked upon Allied POWs with disdain. In a firmly nationalistic institution rooted in a particular ethos of honour, treating someone who acted dishonourably posed ideological problems.

The brutality of Japanese war crimes generated the need for “minor” war crimes trials in the Pacific, while the Geneva Convention and traditional laws and customs of war furnished the juridical foundation. Differences in Japanese and Western thought on the treatment of POWs and other components of total warfare prompted spirited debate in the courtrooms and pointed critiques of the trial programs. In response to outrages committed against ‘C’ Force soldiers, the Canadian government needed to secure agreements with the American and British in order to

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<sup>67</sup> Duke University, Rare Book, Manuscript, and Special Collections Library, Durham, North Carolina (Duke), Robert L. Eichelberger Papers, 1728-1998 [hereafter Eichelberger Papers], 10<sup>th</sup> Information and Historical Service, Headquarters Eighth Army, *Special Study of the Yokohama War Crimes Trials, December 1945 – September 1947* [hereafter *Special Study of the Yokohama War Crimes Trials*], 12.

<sup>68</sup> Drea, *In the Service of the Emperor*, 76.

participate in Pacific “minor” war crimes trials in a region where they had no occupation force or authority.

### **Diplomatic Exchange**

Following the end of the Second World War, soldiers were keen to return home to some sense of normalcy after years of struggle and toil against the Axis Powers. So it was for the sick and exhausted men who had shipped off to Hong Kong in the fall of 1941 and now made their way home with harrowing memories of violence, back breaking labour, horrific living conditions, and starvation diets endured for more than four years in POW camps. In acknowledgement of the injustice that these soldiers had faced in captivity, a small group of lawyers and support staff boarded a plane in Ottawa in April 1946 bound for Tokyo. They would take part in two separate series of “minor” war crimes trials under the British in Hong Kong and the Americans at Yokohama, Japan. While most Canadians began to cast their gaze to a more promising future, the Canadian War Crimes Liaison Detachment – Far East would spend the next year dredging up a murky past.

Remaining true to a long policy of reserved involvement in international matters, the Mackenzie King government was hesitant to commit to war crimes matters, but eventually decided to prosecute specific incidents of war crimes that directly affected Canadian nationals. Canada demonstrated it would align with international favour but opted not to overstep the line into direct involvement (exemplified by middle-of-the-road statements of support for condemnation statements on German atrocities in occupied territories in 1941-1942). When the United Nations Commission for the Investigation of War Crimes entered its developmental stages after a meeting between Churchill and Roosevelt in the fall of 1942, Vincent Massey, the

Canadian High Commissioner to the United Kingdom, attended the initial meetings because he was in London and his attendance brought little political risk. As long as he did not promote lofty, potentially politicized trials, and showed interest only in matters of direct concern to Canada, King's government could enjoy limited involvement and thus avoid appearing indifferent to the suffering of occupied Europe. In practical terms, however, dominion officials considered war crimes largely a European problem.<sup>69</sup>

In September and October 1943, Canadian officials asserted that Canadian membership in the United Nations War Crimes Commission (UNWCC) would be limited to advising on technical matters and participation would relate mainly to matters of direct Canadian concern – a central tenant of Canadian governmental interest in the war crimes question from this point onward. Canada had little interest in participating in trials condemning aggressive war, policies of extermination of Jewish population and other minorities in Europe, or the wanton destruction by the Imperial Japanese Forces in the Pacific. Although Canadian lawyers involved in the impending war crimes trials went well beyond their given mandates, the federal government sought to limit the scope of their participation to specific atrocities committed against Canadian soldiers and nationals.

To address the individual abuses of Canadian nationals, the Legal Advisor in the Department of External Affairs (DEA), J.E. Read, recommended the formation of the Canadian War Crimes Advisory Committee (CWCAC) in November 1943. Interdepartmental in make-up, the CWCAC's role involved examining evidence related to Canadian concerns and interests. Cabinet also instructed it to avoid international questions by gathering evidence directly related

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<sup>69</sup> Library and Archives Canada [hereafter LAC], Record Group 24, Department of Defence fonds [hereafter RG 24], Vol. 2906, HQS 8959-9-5, Pt. 1, Memorandum, "Canada and the Punishment of War Crimes" attached to letter from W.L. Mackenzie King, Ottawa to Arthur G. Slaght, MP, Toronto, 3 November 1943. The best discussion available on the build-up to Canadian involvement in war crimes trials, with a particular focus on the Tokyo Trial is Stanton, "Canada and War Crimes," 376-400.

to Canadians concerns, but to avoid anything beyond that scope.<sup>70</sup> The CWCAC also issued legal recommendations on how Canada should approach daunting questions of international law in the absence of clear precedents. Aside from managing information and evidence, the committee provided the Canadian government with an informed stance once war crimes issues became more pressing at the end of the war.<sup>71</sup>

CWCAC member E.R. Hopkins explained their stance – and that of the federal government more broadly on war crimes:

The Canadian interest in enemy war crimes is not perhaps so extensive as that of other countries. Canada has not been over-run; not many Canadian nationals remained in Occupied Europe; and, on the whole, Canadian prisoners of war appear to have received treatment at least as favourable as that accorded to the nationals of any other country. Nevertheless, Canada has a two-fold interest in the matter. In the first place, we are interested in the establishment and maintenance of international law and order – in demonstrating that war crimes do not pay. Secondly, we are interested in bringing to trial any war criminals shown to have committed an atrocity against a Canadian, and in obtaining a pattern of enemy conduct towards Canadians, so far as observance of the laws and usages of war are concerned.

Putting the matter another way, it seems to me that we must:-

- (a) satisfy the Canadian people that everything in reason is being done to ensure the just punishment of persons who have committed war crimes against Canadians; and
- (b) satisfy other countries that we are doing everything in reason to cooperate in the general task of bringing all enemy war criminals to justice.<sup>72</sup>

Hopkins noted Canadians' reserved stance, as well as the federal government's European focus.

Ottawa officials sought to appease their citizens and global neighbours by taking a stance against war crimes, but they were reticent to commit fully. Furthermore, Hopkins's comment that

Canadian POWs had received appropriate treatment reflected his fixation on the European

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<sup>70</sup> LAC, RG 24, Vol. 2906, HQS 8959-9-5, Pt. 1, Vincent Massey to Right Honourable Viscount Cranborne, Dominions Office, 13 December 1943.

<sup>71</sup> The CWCAC was comprised of: Chair, J.E. Read (DEA – Legal Advisor), Honorary Counsel, Arthur Slaght (MP, Lawyer), Secretary, Lt. Commander Curran (later E.R. Hopkins), Group Captain Strathy (DND) and Charles Stein (Justice). CWCAC's membership changed on numerous occasions while it was relevant.

<sup>72</sup> LAC, RG 24, Vol. 2906, HQS 8959-9-5, Pt. 1, E.R. Hopkins, Secretary, War Crimes Advisory Committee, Report to Heads of Division, Department of External Affairs, on the Canadian Interest in War Crimes, 5 June 1945. Underlining was added to document in pencil by a reader.

experience and overlooked the toil faced by the Canadians in Hong Kong. In the developmental stages of formulating its war crimes strategy, the Canadian view was unambiguously transatlantic.<sup>73</sup>

The military's interests were more practical than those of their government counterparts. Defence officials pulled together the No. 1 War Crimes Investigation Unit under Lt. Col. Bruce J.S. Macdonald, who began to gather evidence (predominantly in Europe) to ferret out Nazis culpable for killing Canadian POWs in Normandy. The War Crimes Investigation Section (WCIS), supported by the Directorate of Administration and set up in October 1945, backed Macdonald's unit. Lt. Col. Oscar Orr commanded the section with a mandate to investigate war crimes against Canadian soldiers and civilians in the Pacific theatre, prepare trials, and support Macdonald's unit however they could. The primary function of the section was to interrogate returning POWs and compile evidence.

In the fall and winter of 1945-1946, the WCIS collected 1108 depositions and constructed a list of 58 Japanese individuals against whom they recommended pursuing cases.<sup>74</sup> Staffed by three officers and three other ranks, the section worked in conjunction with legal staffs from each of the Command Areas and Districts to arrange the interrogations of returning POWs.<sup>75</sup> Accordingly, the Canadian approach was pragmatic and goal-oriented. It avoided legalistic debate and focused on specific outrages against Canadian nationals. The group of Canadian

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<sup>73</sup> This idea is influenced by Robert Bothwell, "Eyes West: Canada and the Cold War in Asia," in Greg Donaghy, ed., *Canada and the Early Cold War, 1943-1947* (Ottawa: Department of Foreign Affairs and International Trade, 1998): 59-68.

<sup>74</sup> Major W.P. McClemon, the Directorate of Administration for the War Crimes Section of the Canadian Army entitled "Final Report, War Crimes Investigation Section, 30 Aug 47," available (amongst other places) from the Directorate of History and Heritage [hereafter DHH] for the Department of National Defence filed as: 133.3A1013 (D1) Report – War Crimes Investig Sec – AHO, 30 Aug 47. This document will be referred to as McClemon, "Final Report" hereafter.

<sup>75</sup> LAC, RG 24, Vol. 6546, HQ, 650-135-2, DND Army, Inter-Office Correspondence, Lt. Col. Oscar Orr, Ottawa to D, ADM, "War Crimes Investigation Section, Precis of Functions & Activities," 1 March 1946.

military lawyers who travelled to Japan were selected from this section – but only after procedural and administrative questions had been solved.

Two substantial questions faced Canadian authorities. First, Canada had no acts or statutes allowing for the trial of war crimes suspects. Second, Canada had no occupation force in the Pacific theatre to run trials. CWCAC, along with the Deputy Ministers of Defence and Justice, answered the first, recommending that Cabinet use the War Measures Act to pass an Order-in-Council governing the custody, trial, and punishments of war criminals. Macdonald, as well as Hopkins and Strathy of the CWCAC, constructed the War Crimes Regulations (Canada) based on the British Royal Warrant of 14 June 1945. This straightforward set of regulations allowed for trials dealing with traditional violations of the laws and usages of war and avoided uncharted territory related to crimes against peace or humanity. On par with other sets of regulations, the loose rules of procedure allowed for a wide definition of what was acceptable evidence and limited the range of protest for the accused. The process of drafting and reviewing the regulations was tedious and extended. Cabinet accepted the Regulations on 29 August 1945 and introduced them in the House of Commons in early September.<sup>76</sup>

Since Canada was not an occupying force in the Pacific, it lacked the clout to convene war crimes trials. Although British Prime Minister Clement Attlee asked Canada to participate in the Commonwealth Occupation force in the Pacific, Canada rejected the offer in August 1945.<sup>77</sup> Canadians had prepared a volunteer force to contribute to the final assault on Japan (Canadian Army Pacific Force) under American leadership after the end of fighting in Europe, but Japan's

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<sup>76</sup> Brode, *Casual Slaughters and Accidental Judgments*, 47-53. For a short and focused discussion on the drafting of the Regulations please see Patrick Brode, "Bruce Macdonald and the Drafting of Canada's War Crimes Regulations, 1945," *Gazette of the Law Society of Upper Canada* 29 (1995): 274-282. A copy of the regulations is available in Lackenbauer and Madsen, eds., *Kurt Meyer on Trial*, 61.

<sup>77</sup> Peter Bates, *Japan and the British Commonwealth Occupation Force, 1946-52* (London: Brassey's (UK) Ltd., 1993), 13.

capitulation in August 1945 allowed for demobilization.<sup>78</sup> The majority of Canada's war effort and interest had been dedicated to the European theatre, after all, and the country had already committed to occupation duties in Europe.<sup>79</sup>

It was logistically impractical and politically undesirable to bring alleged war criminals to Canada for trial. Accordingly, Canada needed to reach an agreement with other occupying powers to participate in theatre. The newly minted Canadian Regulations would mean nothing unless authorities could strike an agreement with the Americans and British in their Pacific zones of occupation. The Japanese home islands fell mainly under the control of the Supreme Commander for the Allied Powers (SCAP) – in essence, an American occupation under General Douglas MacArthur. The SCAP occupation oversaw the Yokohama War Crimes Trials operated by the American Eighth Army under Lieutenant-General Robert Eichelberger. The British Commonwealth Occupation Force (BCOF) played a role in the demilitarisation of Japan, but the real British sphere of influence emanated from Singapore, the headquarters for the British War Crimes Branch, and British Ceylon at Allied Land Forces South East Asia (ALFSEA).

Canada's alignment with Britain was straightforward, given the countries' long-established military relationship. Canadian officers were able to serve as prosecuting and presiding members on the British commissions through the Visiting Forces (British Commonwealth) Act of 1933 and the Army Order 81/1945 (set forth from the Royal Warrant of 14 June 1945) respectively.<sup>80</sup> Questions remained whether a Canadian officer could act as

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<sup>78</sup> Bates, *Japan and the British Commonwealth Occupation Force*, 13. On the CAPF see Galen Roger Perras, "No Need to Send an Army Across the Pacific: Mackenzie King and the Pacific Conflict, 1939-45," in *Mackenzie King: Citizenship and Community*, ed. John English, Kenneth McLaughlin and P. Whitney Lackenbauer (Toronto: Robin Brass Studio, 2002), 124-150.

<sup>79</sup> Bates, *Japan and the British Commonwealth Occupation Force*, 13.

<sup>80</sup> Royal Warrant, Army Order 81/1945, Regulation 5, 3. Having a Canadian member sit in judgment on the commissions was straightforward as the Royal Warrant allowed for Allied members.



prosecutor at the trials, if they could merely act as an assistant or “solicitor,”<sup>81</sup> or if their attachment to the British Forces required the Visiting Forces Act.<sup>82</sup> The eventual interpretation was that a Canadian officer serving outside of Canada was “serving together” with a British force under Section 4(4)(a) of the Visiting Forces Act, which meant that they were to be “treated as if they were members of the United Kingdom forces of relative rank.”<sup>83</sup>

Given the Canadian government’s initial desire to avoid significant international obligations, fitting into the American equation proved more complicated. When Canadian officials requested to participate in American “minor” war crimes trials, the Americans countered that to do so, Canada must send representation to the forthcoming International Military Tribunal in Tokyo. Without many options, the Americans required that Canada – if they wanted to participate in the Yokohama War Crimes Trials – provide a judge and prosecutor for the Tokyo Trial, thus forcing Canada to make commitments it had hoped to avoid.<sup>84</sup>

From 20-25 November 1945, two CWCAC members travelled to Washington to meet with Major Joseph B. Keenan (chief prosecutor, IMTFE) and other officials to get a sense of the practical requirements expected of the Canadians if they became involved in Pacific war crimes trials. Keenan himself was mainly concerned with the Class ‘A’ war crimes, and assured the men that the Class ‘B’ and ‘C’ trials against specific individuals and groups of the Japanese Armed Forces would be “a purely military responsibility,” while Class ‘A’ proceedings would be civilian and international in scope. Accordingly, there would be “a water-tight division between

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<sup>81</sup> The National Archives (United Kingdom) [hereafter NA], War Office [hereafter WO], 32/12201, Eric Machtig, Under Secretary of State for Dominion Affairs of Great Britain to Alfred Rive, Acting Official Secretary to the High Commission for Canada, 14 March 1946.

<sup>82</sup> NA WO 32/12201, Colonel P. Halse for Military Deputy J.A.G. to Eric Machtig, Under Secretary of State for Dominion Affairs of Great Britain, 18 March 1946.

<sup>83</sup> NA, WO 32/12201, NEJ to C.R. Price, Dominions Office, 2 August 1946.

<sup>84</sup> Stanton, “Reluctant Vengeance,” 71.

the methods of handling” the “minor” and the major trials.<sup>85</sup> With this commitment, Canadians found themselves involved in a more widely publicized series of war crimes trials, allowing them to prosecute the ‘minor’ war crimes trials in which veterans and the public had pressured them to participate.<sup>86</sup>

The Canadian War Crimes Liaison Detachment – Far East formed from the WCIS in early 1946. Its officers were mandated to “assist or lead in the prosecution of Lesser War Criminals before the Military Commissions (Japan) or War Crimes Courts (Hong Kong), depending to an extent on the proportion of Canadian interest in the alleged crimes of the various accused.”<sup>87</sup> The American and British occupation authorities would run the trials, but the Canadians in the Detachment could attach themselves to the various investigative bodies, pool and share evidence, and prosecute and provide judges for trials with a distinct Canadian interest. Cabinet supported the Detachment in pursuing trials against those “whose alleged criminality has resulted in the death or permanent disability of a Canadian national or a member of the Canadian armed forces or whose offence is in other respects considered to be of a most serious nature.”<sup>88</sup> British and American authorities also assigned additional prosecutions with no Canadian interest to the Detachment members, which they were keen to accept (as the men were qualified and available in what was often an understaffed and overworked atmosphere). The officers also exceeded their mandate outside of the courtroom, involving themselves with the repatriation of Japanese-Canadians, the Commonwealth War Graves Association, and the Sacred Heart Convent.<sup>89</sup>

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<sup>85</sup> LAC, RG 24, Vol. 2906, HQS 9859-9-5, Pt. 2, Strathy and Jennings to WCAC, 30 November 1945.

<sup>86</sup> The scholarship on Canadian participation in Pacific war crimes trials tends to transition with this decision to focus on major rather than “minor” trials.

<sup>87</sup> McClelland, Final Report.

<sup>88</sup> LAC, Record Group 2, Privy Council Office fonds [hereafter RG 2], Vol. 65 – File C-20-5-1946, Document 137, Memorandum to the Cabinet, Re: Canadian participation in Far Eastern war crimes trials.

<sup>89</sup> For more on the additional activities of the Canadian Detachment in Hong Kong and Japan see chapter seven.

## The Composition of the Canadian War Crimes Liaison Detachment – Far East

The Canadian Detachment was comprised of four lawyers, two former POWs who acted as witnesses and support staff, and two assistants. The Detachment's main branch, headquartered in Tokyo, worked under the auspices of the Americans through SCAP and participated in the Yokohama War Crimes Trials. A sub-Detachment travelled to Hong Kong and operated under the British (ALFSEA and Land Forces, Hong Kong) at the Hong Kong War Crimes Courts. Along with the main body of the Detachment were three judges working independently of the Detachment itself: Major J.T. Loranger sat at the Hong Kong War Crimes Courts, and Colonel Thomas Moss sat on Commissions at Yokohama until Lt. Col. M.J. Griffin replaced him.<sup>90</sup>

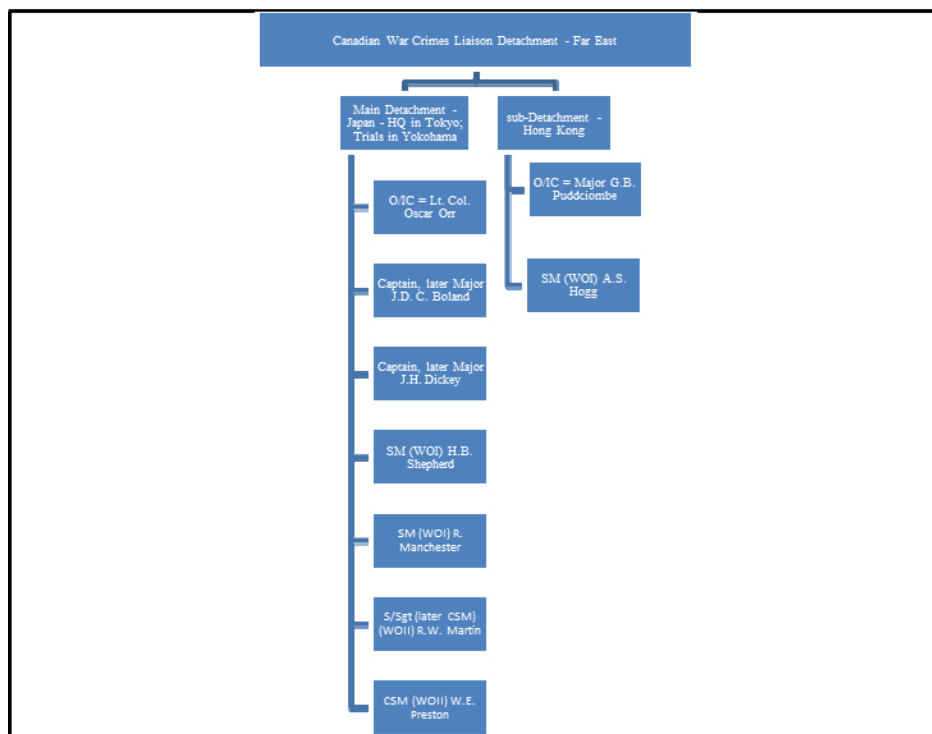


Figure 4 - Composition of the Canadian War Crimes Liaison Detachment - Far East

<sup>90</sup> I say somewhat independently as although they were not on the main roster of the Detachment and had some distance as they were working as judges while the rest of the men were on the prosecution teams, there really is little separation of roles and individuals in an occupation force. Although the main Detachment was separate from the Canadians working at the Class 'A' Tokyo Trials, they still socialized with their staff and spend a great deal of time together. This was the same case with the judges.

Lieutenant Colonel James Oscar Fitzalan Harley Orr, more frequently referred to as Col. Orr or Oscar Orr, headed the Canadian Detachment. Born 27 July 1892 on the Red Pheasant Reserve in Saskatchewan where his father was an agricultural instructor, Orr stayed with his grandparents in St. Thomas, Ontario, until running away to join the Solls and Downs circus at the age of ten. The First World War proved a watershed, kick-starting his military and legal life. He joined the Royal Canadian Naval Volunteer Reserve on 5 August 1914 and in October enlisted in the 29<sup>th</sup> Vancouver Battalion. He arrived in France on 15 September 1915. Serving as a part of the Canadian Expeditionary Force (2<sup>nd</sup> Division, 6<sup>th</sup> Canadian Brigade), Orr was injured along the Ypres Salient following the Battle of Mont Sorrel on 16 July 1916.<sup>91</sup>

A story that he was quick to share, alongside a memento he was wont to show, Orr was on the receiving end of a piece of shrapnel. The three-ounce piece of fractured artillery struck him between the eyes and went down his throat. “Life since then has been if not on borrowed time at least a greatly appreciated bonus,” he reminisced. Orr received treatment in-theatre and returned to Canada in October 1916. He was promoted to Captain later that year and appointed Adjutant of the 1<sup>st</sup> Depot Battalion supply depot in Vancouver until further surgeries forced his discharge in September 1918.<sup>92</sup> He kept the shrapnel mounted in his living room with the inscription “From Fritz to Oscar, July 16, 1916.”<sup>93</sup>

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<sup>91</sup> The biographical sketch of Oscar Orr has been compiled from various sources, including the following: Archives of Ontario [hereafter AO], William Orr Family Papers, F945, MU4725 [hereafter Orr Family Papers], Envelope 1, Oscar Orr, Vancouver, BC, 28 February 1981, “Biographical notes about the donor of the William Orr military papers etc (1838 rebellion)” and Envelope 7, National Defence Headquarters, Ottawa, 30 March 1946, Statement of Service and Qualifications, Rank and Service of Major (A/Lt.-Col.) J.O.F.H. Orr, MBE (Regt.) Spec. empld. Japanese War Crimes Commission; Archives & Records Management of Hamilton Health Sciences & McMaster University’s Faculty of Health Sciences [hereafter HHS/FHS Archives], Dr. Charles Roland Research Materials, Oral History Collection in the History of Medicine Subfonds [hereafter Dr. Charles Roland Research Materials], Charles Roland interview with J.O.F.H. Orr, 23 April 1985; *The Vancouver Sun*, 18 November 1988, 22 June 1990, 13 July 1993, 4 November 1992; *B.C. Magazine*, 27 June 1953.

<sup>92</sup> AO, Orr Family Papers, Envelope 1, Oscar Orr, Vancouver, BC, 28 February 1981, “Biographical notes about the donor of the William Orr military papers etc (1838 rebellion).”

<sup>93</sup> *The Vancouver Sun*, 13 July 1992. Moments into an interview with medical historian Dr. Charles Roland about his experiences with the POW trials in Japan, Orr chimed in “Remind me, I want to show you a piece of shell they

While posted in Vancouver, Orr completed a law degree at the Vancouver Law School that he had started before enlisting, passed the bar in 1916, and spent five years articling with the Law Society of British Columbia. He served the City of Vancouver as Assistant City Prosecutor beginning in 1922 and as City Prosecutor in 1935. When the Second World War broke out, Orr again heeded the call and in June 1940 rejoined his old regiment, which had been amalgamated into the Irish Fusiliers of Canada (the Vancouver Regiment) as part of the Home Guard. He became Assistant to the Judge Advocate General for the Pacific Command at Victoria, receiving a promotion to Major. At the end of the hostilities National Defence transferred Orr to the Office of the Adjutant General as an Assistant where he worked in the precursor to the Canadian War Crimes Liaison Detachment. Orr accepted the transfer to Ottawa (and eventually Japan), albeit with reticence:

when the war was ended they asked me to go to this one. They couldn't get anybody else to take it, and I just said I didn't want to go anywhere. But I wouldn't refuse, you know, if they wanted it. I'd do what they told me but I.... Anyway, I went to Japan. First of all I went to Ottawa for a few months as an assistant - - what in the hell do they call it, Assistant Adjutant General, I think. Then I went from there to Japan in charge of, in command of the War Crimes Section for the Far East.<sup>94</sup>

Orr's second in command, and the Canadian representative in Hong Kong, was Major George Beverly Puddicombe. Puddicombe also was a veteran of the First World War, having volunteered for the CEF right out of school (with some militia experience) at the age of eighteen.<sup>95</sup> Puddicombe saw action throughout the famed Hundred Days, including the Second Battle of Arras, the Second Battle of the Marne (Reims), and the battles of Cambrai and

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took out of my head. But I'll show it to you later." See Dr. Charles Roland Research Materials, Charles Roland interview with J.O.F.H. Orr, 23 April 1985.

<sup>94</sup> Dr. Charles Roland Research Materials, Charles Roland interview with J.O.F.H. Orr, 23 April 1985.

<sup>95</sup> LAC, Record Group 150, Records of the Canadian Expeditionary Force [hereafter RG 150], Accession 1992-93/166, Box 8014-62, 72<sup>nd</sup> (Queen's) Battery, CEF, Attestation Paper, No. 433126, Puddicombe, George Beverly.

Valenciennes. He later described his service as “two years CFA in the first World War, service in France, Germany, Belgium and thereabouts.”<sup>96</sup> He remained overseas as a part of the occupation force in Germany in 1919.

After returning to Canada, Puddicombe graduated from McGill University in 1923 with a Bachelor of Arts, and in 1926 from the Faculty of Law with a Bachelor of Civil Law.<sup>97</sup> He articulated under Canadian Senator George Green Foster, received his call to the bar in 1926, and spent much of the next fifteen years in private practice in Montreal. Much like Orr, Puddicombe forwent his comfortable and lucrative career for national service at the onset of the Second World War. In July 1940, he returned to active service, this time as First Captain Paymaster of the Victoria Rifles. Promoted to Major in 1943, he went to National Defence Headquarters in Ottawa until his appointment as President of Courts Martial in Montreal and Petawawa for eight months.<sup>98</sup>

Detachment lawyer Captain John Dickey came from a long line of legal professionals. His great grandfather was Honorable Robert Barry Dickey, Father of Confederation (called to bar 1834), his grandfather the Honourable Arthur Rupert Dickey, former Minister of Justice and National Defence (called to bar in 1875), and his father Horace Beaumont Arthur Dickey (called to bar in 1907). Born 14 September 1914 in Edmonton, Alberta, Dickey moved to Nova Scotia after his father was killed in action during the First World War.<sup>99</sup> He graduated with a Bachelor of Arts from Saint Mary’s College in Halifax in 1936 and went on to study law, receiving his

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<sup>96</sup> LAC, MG 30, E 567, G.B. Puddicombe fonds [hereafter Puddicombe fonds], Vol. 2-31, G.B. Puddicombe to Norman Romer, Esquire, Canadian Celanese Company, 25 February 1948. Much of Puddicombe’s personal information comes courtesy of a commemorative article: Jean-Jacques Lefebvre, “Nos disparus: George Beverly Puddicombe,” *La revue du barreau*, 31, no. 1 (janvier 1972): 69-71.

<sup>97</sup> Puddicombe fonds, Vol. 2-31, G.B. Puddicombe to Norman Romer, Esquire, Canadian Celanese Company, 25 February 1948.

<sup>98</sup> Lefebvre, “Nos disparus: George Beverly Puddicombe,” 69-71.

<sup>99</sup> *The Mail-Star*, 11 February 1965. His great-great grandfather was also a lawyer, but not a member of the bar association.

LLB (second in his class) from Dalhousie Law School in 1940. When he passed the Nova Scotia Bar Association that fall, his family became the first with fourth successive generations to hold the honour.<sup>100</sup>

Dickey worked for the Halifax law firm MacDonald, McInnes, MacQuarrie and Pattilo until he volunteered for the Canadian Army in 1942. His military experience kept him as part of the Home Guard, which he described as “an exercise in frustration.”<sup>101</sup> Dickey spent most of the war in Brockville, Petawawa and Halifax, undergoing training in artillery, anti-aircraft gunnery and infantry postings. In May 1945 he was posted to Vernon, British Columbia to prepare for Pacific service. There he would train until October 1945.<sup>102</sup>

By late August 1945, Dickey and his prospective employers tried to acquire his release so he could return to the practice in Halifax. Dickey, his firm, the commanding officer of No. 3 Pacific Infantry Training Brigade in Vernon, and National Defence Headquarters in Ottawa exchanged letters to try to secure a quick and painless release. The requests were for naught, and Dickey was despatched to Ottawa on 5 October 1945 to join the Adjutant General’s Branch where he worked with the WCIS until he left for Japan with the Detachment in April 1946.<sup>103</sup>

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<sup>100</sup> Dickey’s biographical sketch draws on Nova Scotia Archives and Records Management [hereafter NSARM], MG 100, Vol. 234 #22, C.S. Stayner, *The Stewart Family Genealogy*; *The Mail Star*, 11 February 1965; *The Chronicle Herald*, 29 April, 30 April 1996; AM, John Dickey Papers, Folder 2.0, Various newspaper clippings; Harry Flemming, *A Century Plus: McInnes Cooper & Robertson* (Halifax: S.N., 1989).

<sup>101</sup> Flemming, *A Century Plus*, 59.

<sup>102</sup> AM, John Dickey Papers, Folder 4.0, Canadian Army (Active) Certificate of Service, 15 May 1947 and Canadian Army (A.F.) Officer’s Record of Service Book, Dickey John Horace.

<sup>103</sup> AM, John Dickey Papers, Folder 4.0, Canadian Army (A.F.) Officer’s Record of Service Book, Dickey John Horace, for letter seeking release see for example, Folder 6.2, Lieut. John Dickey, Vernon, BC, to Officer Commanding, No. 3 Pacific Training Facility, Vernon, BC, 24 August 1945 and 4 September 1945, Office of Minister of National Defence, Ottawa to Messrs. Macdonald, McInnes, Macquarrie and Cooper, Halifax, NS, 6 September 1945, Folder 1.2, W.C. Macdonald, House of Commons, Ottawa, to Lieutenant John Dickey, #3 Pacific Infantry Training Battalion, Vernon, BC, 13 and 26 September 1945. William Chisholm Macdonald was MP for Halifax from 1940-1946. A great deal of the more inside insight into the Detachment’s experience in Japan necessarily emerges through Dickey’s lens as he wrote almost daily letters home which have been donated by his widow, Joyce, and are archived at the Army Museum in Halifax.

Detachment legal officer Captain John (Jack) D.C. Boland was born in Ottawa on 25 November 1910.<sup>104</sup> A junior officer like Dickey, Boland's military service was similar in that he spent much of the war in Infantry Training Centers, and served as an adjutant. Boland's wartime services wrapped up as a courts martial prosecutor for eighteen months.<sup>105</sup> He was a member of the Ontario Bar Association and lived in the nation's capital before and after he ventured across the Pacific.

The Detachment also included two NCO's who were former POWs, having served in Hong Kong and been incarcerated there and in Japan. Their primary function was to act as live prosecution witnesses for cases related to their incarceration in the POW Camps. They proved valuable, given that the cases necessarily relied on affidavit evidence that could not be cross-examined. Providing live witnesses allowed for a stronger case and more convincing evidence. They assisted in the interrogation process and helped with various organizational tasks within the Detachment. Sgt. Major Harold Shepherd was a member of the Royal Rifles of Canada and spent much of the war as a POW at Omine Camp in Fukuoka, Japan. A native of Lake-St. John, Quebec, he was a key witness in the Omine cases because he had "kept a watchful eye on the administration of the camp" and "made many complaints to the Japs about the treatment of prisoners."<sup>106</sup> He was also involved in an altercation with one of the camp guards who bayoneted him in the arm. The second NCO, Sgt. Major Robert Manchester, was a Winnipeg Grenadier and a key witness for the Niigata Camp – reputedly one of the worst camps in Japan

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<sup>104</sup> LAC, Record Group 25, Records of the Department of External Affairs [hereafter RG 25], Vol. 3641, 4060-C-40, Pt. 2, Application to Travel to Continental Asia, John Douglas Charles Boland, Ottawa, 15 March 1946.

<sup>105</sup> DHH, Personnel Files, Boland, John Douglas.

<sup>106</sup> LAC, RG 24, Vol. 2892, HQS 8959-9-4, Pt. 1, Lt. Col. Orr, Ottawa, Inter-Departmental Correspondence, DND, Army, to D Adm, 2 March 1946.



for Canadian POWs. Manchester, a Winnipegger, was a trained investigator with the City Relief Department.<sup>107</sup>

The Detachment also included a small staff of administrative assistants who helped the lawyers with clerical tasks. Initially, two individuals made the trip: one to Hong Kong with Puddicombe and one in Japan with the main Detachment. Vancouver native Sgt. Major Arthur Hogg, a court reporter at Pacific Command prior to joining the Detachment, was chief clerk for Puddicombe in Hong Kong.<sup>108</sup> Staff Sergeant Robert W. Martin, originally of Weyburn, Saskatchewan, joined the WCIS and eventually the Canadian Detachment in Japan. Officially designated as a stenographer, he became a general assistant for the Detachment while in theatre.<sup>109</sup> Additional help was required, however, and a third individual arrived in September 1946 to assist the operations in Japan. Sgt. Major Preston left Canada for Japan with a typewriter in stow when the Detachment had trouble securing an extra one locally.<sup>110</sup>

Selection criteria for the Detachment remain unclear. Mounds of official documentation, personal letters, transcripts of speeches and other archival documentation yield no written explanation explaining how an individual was chosen. Both Orr and Puddicombe spent portions of the Second World War engaged in military law postings: Orr as Assistant Judge Advocate General for Military District 11 (British Columbia and the Yukon) and Puddicombe as Permanent President of the Courts Martial at Montreal and Petawawa.<sup>111</sup> The two senior members had been involved in law for substantially longer than the junior ranks, and had toiled

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<sup>107</sup> LAC, RG 24, Vol. 2892, HQS 8959-9-4, Pt. 1, Colonel H.M. Cathcart, D Adm, Ottawa, Memorandum to AG (through VAG and DAG (B)), Ottawa, 15 March 1946.

<sup>108</sup> LAC, RG 24, Vol. 2892, HQS 8959-9-4, Pt. 1, Lt. Col. Oscar Orr, Ottawa, to D Adm 1, 3 March 1946.

<sup>109</sup> LAC, RG 24, Vol. 2892, HQS 8959-9-4, Pt. 1, S/Sgt. R.W. Martin, Ottawa, Inter-Departmental Correspondence, DND, Army, Adm 3, 2 March 1946. See also Vol. 2892, HQS 8959-9-4, Pt. 3, WCIS, D Adm, Draft Press Release, 23 July 1946.

<sup>110</sup> LAC, RG 24, Vol. 2892, HQS 8959-9-4, Pt. 2, Major Griffin, D Adm for Colonel Cathcart, Ottawa, Inter-Departmental Correspondence, DND, Army, 4 September 1946.

<sup>111</sup> For Orr see "Orr's Ordered Court," *B.C. Magazine*, 27 June 1953 and for Puddicombe see Puddicombe fonds, Vol. 2-31, G.B. Puddicombe to Norman Romer, Esquire, Canadian Celanese Company, 25 February 1948.

in military law on the domestic front. Dickey and Boland, on the other hand, had little practical civil legal experience – or military for that matter. Dickey had only practiced for two years before leaving for military service in 1942.<sup>112</sup> What the two junior Canadians offered was their characteristics as well educated, young, and keen participants. While most soldiers clamored to return to civilian life at war's end, Dickey and Boland were willing to stay on, travel halfway around the world, and embroil themselves in a legal saga that would keep them abroad for more than eleven months. Dickey had options, given that his civil firm was keen to get him back, and the same was true for Boland. Nevertheless, they were willing, and they went.<sup>113</sup>

The four Detachment lawyers and their small support staff bore responsibility for protecting Canadian interest in “minor” war crimes trials throughout the Pacific, seeking justice for the brutalities suffered by Canadian POWs. While the majority of the focus at the time, and the research since, shifted to the Tokyo Trial once Canada made that commitment, the Detachment members followed their orders: collecting evidence, designing cases, and prosecuting trials against members of the Japanese Forces who were responsible for the suffering of Canadians in Hong Kong and Japan. Accordingly, although their assignment was limited in scope, the members of the Canadian War Crimes Liaison Detachment – Far East accomplished much more

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<sup>112</sup> Flemming, *A Century Plus*, 59 Dickey noted in a letter home that after signifying his interest in going to Japan, his superior officer, Colonel Jennings, was recommending him and “advised [him] strongly to take the chance if poss.” Dickey to Mrs. W.B. Wallace, 1 March 1946.

<sup>113</sup> Dickey to Mrs. W.B. Wallace, 1 March 1946. According to Dickey, Jennings was “being extremely helpful and interested” and had “undertaken to let [him] go on the shortest notice if necessary.” The military administration was pleased with the individuals they had secured leading up to departure, having they turned down at least one attractive and qualified candidate. J.N. Herapath wrote to Orr on 25 February 1946 to request appointment on the Liaison Detachment. DND rejected Herapath, but ensured he would be given “first consideration” if another position opened up.<sup>113</sup> Herapath had extensive legal experience before and after his commission in the RCAF, graduating from Osgoode Hall in 1927 and working in the City of Toronto Legal Department until 1941. With the RCAF, he prosecuted and defended in the courts martials and in 1945 acted as Command Legal Officer at North West Air Command HQ in Edmonton and subsequently took a post in November 1945 at RCAF HQ making amendments to Air Force acts and regulations. In marginalia, Orr noted, however, that he understood from “Strathy that the RCAF will be very loath to part with any legal people now.” See LAC, RG 24, Vol. 6546, HQ, 650-135-2, S/L J.N. Herapath, Ottawa, to Colonel Orr, Ottawa, 25 February 1946.

than expected, exceeding their mandates to involve themselves in additional prosecutorial and investigative work with international colleagues.

The involvement of the Canadian Detachment in war crimes trials in Hong Kong and Japan mirrored a broader transition in Canadian international relations and domestic politics. On the global scale, Canada emerged from the Second World War more affluent, self-confident, and engaged in international affairs, signifying its ascension to ‘middle power’ status. As a result of this rise in status, and a disinclination to appear weak on war crimes internationally (or to returning veterans), Canada could not avoid participating in war crimes trials. The mandate given to the Canadian Detachment was restrictive, however, reflective of Mackenzie King’s non-involvement or limited liability approach to international affairs: in short, to play it safe abroad to keep things united at home. Canada’s nascent approach to responsible internationalism, which Louis St. Laurent and Lester Pearson developed in the late 1940s, was foreshadowed by the Canadian Detachment’s approach in theatre. Young, capable, and intelligent lawyers interpreted their restricted mandate liberally. The Canadians had the opportunity to strive for deeper involvement within and beyond the courtroom because the trials were focused, pragmatic, and largely off the political radar.

More generally, Allied nations enjoyed a high level of cohesion in prosecuting Japanese “minor” war crimes. Canadian, Australian, Chinese, Dutch, and British Detachments worked within American frameworks in Japan, China, India and the Pacific Islands. British Courts were open to allow Allied prosecutors and judges to participate in trials that implicated their own nationals (or in several cases just filling in required staffing spots). Cooperation went beyond participation in Allied-run national tribunals: the theatre was the scene of countless examples of sharing affidavits and other pieces of evidence, pooling of resources and a general collaborative

mentality. In addition to sharing legal expertise and methods, participants worked cooperatively, sharing accommodations, meals and transportation. The Canadian Detachment fits within this larger cooperative trend.

## Chapter 2

### **Situating the Canadian Detachment within British and American Structures**

Once the Mackenzie King government decided upon a structure for Canadian involvement in “minor” war crimes trials in the Pacific, it fell to the members of the Canadian Detachment to situate themselves within established Allied programs. Major Puddicombe, representing the sub-Detachment in Hong Kong, made a quick transition into the British structure, and working in a familiar legal system, found himself in front of the bench after a month – subsequently making a contribution that exceeded Canadian claims and interest in the region. The learning curve for members of the main Detachment in Tokyo was steeper, and situating themselves within a larger administrative framework proved frustrating. Detachment members were all keen to make the most of their legal experience, but Major Puddicombe managed to gather forward momentum in the British system while Orr, Dickey, and Boland struggled to get their cases in front of the Commissions at Yokohama.

The nature of the Canadian investigative work and the content of the trials differed significantly between Japan and Hong Kong. The main Detachment focused on incidents that emanated from the Canadian POW experience at labour sites and POW camps in Japan. Its investigative work proved challenging, however, as cases required extensive travel to individual camp sites. Even in Tokyo, securing translators, additional staff, and transportation proved challenging. Topically, Puddicombe’s prosecutions were diverse, running the war crimes gamut from heat of the battle atrocities, POW deprivations, and the cruel and brutal world of the Japanese military police – often referred to interchangeably as the *Kempeitai* or Gendarmerie.

Investigative work, however, was within a ferry-ride for Puddicombe and securing resources required a fraction of the waiting time faced by his colleagues. Although Puddicombe traipsed arduous landscape during some of his fieldwork, gathering the evidence he needed to build his cases proved a far less administratively harrowing experience.



**Figure 5- Seven of the eight original members of the Canadian detachment prior to departure. Back row, left to right, RSM Hogg, S/Sgt. Martin, SM Manchester, SM Shepherd; front row, left to right, Captain Boland, Lt. Col. Orr, Major Puddicombe. Missing from the photo is Captain John Dickey. (*Montreal Daily Star*, 11 April 1946)**

The Canadian War Crimes Liaison Detachment – Far East departed for Washington by train from Ottawa on the afternoon of 9 April 1946. They logged over 10 000 miles in the air, hopping across the United States and Pacific Ocean with stops in Kansas, San Francisco, Hawaii, Kwajalein, and Guam, eventually arriving to Tokyo on 15 April. Their first impressions highlighted the desolation wrought by the war. Dickey noted in a letter home the shock of the

“almost unbelievable destruction” through Yokohama and parts of Tokyo, which were “literally flat and wiped out.”<sup>114</sup> The detachment members found the industrial outskirts of Tokyo decimated by Allied firebombing and littered with makeshift shelters. Central Tokyo, however, emerged virtually unscathed, and the men were amazed with the architecture of the buildings they would soon occupy, namely the Dai Ichi building (MacArthur’s headquarters) and the Meiji Building – the headquarters of the SCAP Legal Section as well as the Prosecution Staff of the Tokyo Trial.<sup>115</sup>

The Canadians spent the better part of the next ten days arranging billets and office space and initiating basic administration. With the situation in Japan stable, Col. Orr departed for Hong Kong along with Major Puddicombe and Sergeant Major Hogg, arriving on 28 April 1946.<sup>116</sup> The trio met with Lt. Col. Minshull Ford, the head of the War Crimes Investigation Team (WCIT), and were briefed by Major-General Francis Festing, the General Officer Commanding Land Forces, Hong Kong.<sup>117</sup> Orr’s group in Hong Kong made the most of its time and immediately began to interrogate the primary group of alleged war criminals that they had identified before setting out from Ottawa. The trio visited Stanley Prison to interrogate POW Camp Commander Colonel Tokunaga Isao as well as interpreters Inouye Kanao and Niimori Genechiro. Orr departed Hong Kong on 5 May 1946 to meet with ALFSEA officials in Singapore, while Puddicombe and Hogg settled straight into their investigative work. Major Puddicombe was the sole Canadian representative in the prosecution section of the British-operated “minor” war crimes trials in Hong Kong. Assisted by a chronically-ill Arthur Hogg,

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<sup>114</sup> Dickey to Mrs. W.B. Wallace, 19 April 1946. For description of travel see AM, John Dickey Papers, Folder 5, untitled travel information as well as Dickey to Mrs. W.B. Wallace, 9, 12, 13, 16 April 1946.

<sup>115</sup> LAC, RG 24, Vol. 8018, TOK-1-2-10 – Lt. Col. Oscar Orr, Tokyo to Secretary DND, Ottawa, 19 April 1946 and Dickey to Mrs. W.B. Wallace, 17, 19 April 1946.

<sup>116</sup> Puddicombe fonds, Vol. 1-1, Log Book.

<sup>117</sup> Puddicombe fonds, Vol. 1-1, Log Book.

Puddicombe pursued cases that National Defence had identified as particularly relevant to Canada, but accepted orders from Land Forces, Hong Kong to prosecute cases with no Canadian interest.

The only departmental review of the Detachment's work in the Pacific undersold Puddicombe's efforts at the Hong Kong court. The Final Report of the War Crimes Investigation Section credited Puddicombe for undertaking the investigation and prosecution of ten individuals of Canadian interest, securing guilty findings against nine of them. This contributed to the Detachment total of 68 individuals of the "Lesser War Criminal type."<sup>118</sup> These figures, however, provide a misleading snapshot of his involvement. Puddicombe prosecuted the majority of the individuals listed in the report, but it only recorded cases with a clear Canadian component.<sup>119</sup> Overall, he was the prosecutor and investigator in seven trials implicating fourteen individuals. The report's author, Major McClemon, did not include two trials that dealt with charges against five members of the Japanese Gendarmerie in Hong Kong who had allegedly abused local Chinese residents during Japanese occupation.<sup>120</sup>

The Final Report both over- and under-stated the contribution of the Canadian Detachment at Yokohama as well. The report noted the completion of 6 common trials implicating 25 individuals as well as an additional 25 individual trials equating to 49 convictions and one acquittal. A thorough review of SCAP Legal Section archival files at NARA in College Park, Maryland reveals a more limited scope, as a significant portion of the individuals listed in the report's appendix were tried before the Detachment arrived in Japan or after its members

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<sup>118</sup> McClemon, "Final Report," 1, 4, Appendix B. Please see Appendix 3a for a copy, and Appendix 1 for Puddicombe's prosecutions.

<sup>119</sup> Puddicombe was the chief prosecutor for five of the six trials listed in the report, and only observed and provided evidence in the Yabuke Rikie Trial, prosecuted by British Black Watch solicitor D.G. McGregor. Yabuke was tried alongside civilians Takemoto Otojiro and Ohtsuka Sekitaro who were not listed in the Final Report. See NA, WO 235/937.

<sup>120</sup> These figures have been compiled using notes from the Puddicombe fonds, cases files from NA, WO 235 as well as the HCWCT Collection from HKU.



departed. These accused war criminals had Canadian POWs identified in the specifications against them or faced affidavit evidence supplied by the Canadian Detachment, but Canadian prosecutors did not actively prosecute the cases. The Final Report also omitted individuals accused in the larger common trials prosecuted by Orr and Boland, presumably because they were part of the camp staff where Canadians were held but did not face Canadian specifications. For the purposes of this study, a “Canadian case” requires Canadian prosecution and Canadian content in the indictment. These criteria yield twelve trials implicating 31 individuals at Yokohama. Five of these trials were common (or joint) trials, while the remainder were individual trials.<sup>121</sup>

The accomplishments of the sub-Detachment in Hong Kong were considerable. Puddicombe’s contribution as a prosecutor outweighed each of his colleagues at Yokohama. There were fewer and shorter delays in the British system than in the American program which regularly faced the bottleneck of an enormous caseload and limited staff. The pool of lawyers in Hong Kong was substantially smaller than that at Yokohama, but with a fraction of the caseload the environment afforded Puddicombe the opportunity to exceed expectations. The Canadian officer transitioned smoothly into the British system as case preparation resembled his previous training, while his compatriots in Japan dealt with a more abrupt learning curve to situate themselves within the American system. Nevertheless, Puddicombe’s case preparation was extensive: gathering documentary evidence, interviewing locals and expert witnesses, interrogating alleged war criminals at Stanley Prison, and visiting the POW Camps, battlefield scenes and other points of interest in Hong Kong and Kowloon.

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<sup>121</sup> Please see Appendix 3a for a copy from the WCIS, Final Report and Appendix 2 for the Yokohama prosecutions.

## British and American “Minor” War Crimes

The British “minor” program pursued “specific War Crimes”<sup>122</sup> as outlined in the ALFSEA War Crimes Instructions:

shooting and killing without justification; shooting and killing on the false pretence that the prisoner was escaping; assault with violence causing death, and other forms of murder or manslaughter; shooting, wounding with bayonet, torture and unjustified violence; other forms of ill-treatment causing the infliction of grievous bodily harm; theft of money and goods; unjustified imprisonment; insufficient food, water and clothing; lack of medical attention; bad treatment in hospitals; employment on work having direct connection with the operations of the war, or on unhealthy or dangerous work; detailing Allied personnel in an area exposed to the fire of the fighting zone; making use of PW or civilians as a screen, and such cases as attacks on hospitals or hospital ships, and on merchant ships without making provision for survivors; interrogation by “third degree” or other forcible methods; as well as crimes against the laws of humanity, “crimes and atrocities committed by Japanese or satellite enemy nationals against civilians of whatever nationality during the continuance of hostilities.”<sup>123</sup>

British trials drew jurisdiction from royal prerogative and operated under the British Royal Warrant of 14 June 1945, promulgated through the War Office as Special Army Order 81/1945.<sup>124</sup> The Commander-in-Chief of ALFSEA had authority to “convene military courts and authorize the findings.”<sup>125</sup> ALFSEA fit in the hierarchy under South East Asia Command (SEAC), which had been involved in investigating war crimes and arresting suspected war criminals since the end of hostilities in the Pacific.<sup>126</sup>

The Judge Advocate General in India was responsible for preparing the initial cases, while the War Crimes Branch in Singapore oversaw the entire British program, operating

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<sup>122</sup> NA, WO 203/6092 – Allied Land Forces, South East Asia, War Crimes Instructions No. 1 2<sup>nd</sup> Edition, May 1946, 1, [hereafter War Crimes Instructions, 2<sup>nd</sup> Edition].

<sup>123</sup> War Crimes Instructions, 2<sup>nd</sup> Edition, 1-2.

<sup>124</sup> See A.P.V. Rogers, “War Crimes Trials Under The Royal Warrant: British Practice, 1945-1949,” *International and Comparative Law Quarterly* 39, no. 4 (October 1990), 789 and United Kingdom, Army Order 81/1945.

<sup>125</sup> Hayashi Hirofumi, “British War Crimes Trials of Japanese,” *Nature-People-Society: Science and the Humanities* no. 31 (July 2001).

<sup>126</sup> Hirofumi, “British War Crimes Trials of Japanese.”

seventeen regional investigation teams and various branches to coordinate the localized legal and administrative requirements for the trials.<sup>127</sup> The British Pacific war crimes program was second largest in case volume, following the American trials. According to Brode, British military courts prosecuted 920 Japanese at 23 locations – twenty percent of all Allied prosecutions in the Pacific theatre.<sup>128</sup> The British program operated courts across the Pacific ranging from the Headquarters in Changi (Singapore), to Hong Kong, Alor Star and Johore Bahru (Malaya), Kuala Lumpur, Maymyo and Rangoon (Burma), and Jesselton (Borneo).<sup>129</sup> Wherever possible, courts in each location held trials related to incidents that occurred within their regional and geographical jurisdictions, although in some cases individuals were tried for committing war crimes in multiple regions.<sup>130</sup> All told, the British “minor” war crimes effort in the Pacific consisted of 306 trials, 920 accused, 811 convictions, and 107 acquittals.<sup>131</sup>

The American program derived jurisdiction for military commissions from statute law, and successfully tested the constitutionality of trial authority through three Supreme Court challenges (*ex parte Richard Quirin* (1942); *in re Yamashita* (1946); *in re Homma* (1946)).<sup>132</sup> American authorities crafted specific regulations for each theatre (European, Mediterranean, Pacific) and updated them in response to challenges throughout. They pieced together a set of regulations in September 1945, ahead of the Yamashita and Homma trials which designated war crimes within a single definition, and similar to the British, provided an extended list of

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<sup>127</sup> Rogers, “War Crimes Under The Royal Warrant,” 789, Puddicombe fonds, Vol. 2-30, “War Crimes Trials Hong Kong Style,” 2, and Piccigallo, *The Japanese on Trial*, 102.

<sup>128</sup> Brode, *Casual Slaughters and Accidental Judgments*, 161. Although, divergently, Hirofumi notes that the British trials took place in twenty cities in five regions in Hirofumi, “British War Crimes Trials of Japanese.”

<sup>129</sup> See NA, WO 311/543 – Japanese War Crimes – Monthly Summations and Results of Trials.

<sup>130</sup> See for example the trial of Niimori Genechiro, in which he was tried for his actions in Hong Kong, on the high seas, and in Shanghai. See NA, WO 235/892, Niimori Genechiro Trial [hereafter Niimori Trial].

<sup>131</sup> Piccigallo, *The Japanese on Trial*, 120. There is some debate about the figures, but these are the most widely accepted numbers.

<sup>132</sup> United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. I, Annex II (London: His Majesty’s Stationary Office, 1947), 111, as cited in Piccigallo, *The Japanese on Trial*, 35.

offences.<sup>133</sup> Superseding the original regulations, SCAP released an amended version of the regulations in on 5 December 1945, which categorized war crimes into the more widely recognized classification of (A) crimes against peace, (B) conventional war crimes, and (C) crimes against humanity:

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

B. Violations of the law or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

C. Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.<sup>134</sup>

The Canadian Detachment focused on the Class ‘B’ war crimes at Yokohama, but discussions rarely framed the crimes in such categorical terms. Dower notes that Class ‘B’ and ‘C’ crimes were “often confused and it became common to refer to “B/C” war crimes.”<sup>135</sup>

The United States Army operated war crimes courts in Japan, the Philippines (location of the Yamashita and Homma trials), China (dealing mainly with the trial and execution of downed American fliers), and through the Navy at Guam (dealing with atrocities throughout the Pacific Islands). The Yokohama War Crimes Trials were the most extensive. The Yamashita and Homma trials took place first, set the major precedents, and still garner the most debate. Yet

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<sup>133</sup> UNWCC, *Law Reports of Trials of War Criminals*, vol. I, 113-114. SCAP updated the regulations again in February and December 1946. See Supreme Commander for the Allied Powers, *Trials of Class “B” and Class “C” War Criminals*, Monograph 5, SCAP Historical Monographs, 1954-1951, History of the Nonmilitary Activities of the Occupation of Japan. (Tokyo: SCAP, 1952), 71.

<sup>134</sup> AM, The Dickey Papers, SCAP, GHQ, Regulations Governing the Trials of Accused War Criminals, 5 December 1945, Section 2b, [hereafter SCAP Regulations].

<sup>135</sup> Dower, *Embracing Defeat*, 443.

Yokohama had a significantly larger case volume than any other American venue, trying 319 cases and 996 individuals. The trials dealt with a broad sweep of atrocities and mistreatments, from slappings through to medical experimentation. The Yokohama Trials focussed mainly on maltreatments in POW camps in the Japan Home Islands, particularly holding Camp Commandants accountable for command responsibility in allowing their subordinates to abuse prisoners and for permitting poor conditions (food, hygiene, medical, labour, heat/cold) in the camps that violated prisoners' rights under international law.

### **Structure of Surrounding Governance**

The Yokohama trials took place in the thick of the American occupation of Japan. The General Headquarters for SCAP was located in Tokyo, which meant the bulk of the military and civilian staff were local, as were the administrative bodies tied to the courts and most of the resources upon which the Canadians drew. Accessing these resources, however, meant overcoming considerable administrative logjams and restrictive policies. Hong Kong operated with more leniency and less bureaucracy, sitting further on the fringes of the British occupational forces, away from the Headquarters of ALFSEA (also known as SEAC) in British Ceylon (now Sri Lanka) and the main War Crimes Branch that oversaw the British program in Singapore.<sup>136</sup>

In the transition period following the Japanese occupation of Hong Kong, British Vice-Admiral Sir Cecil Harcourt established a Military Administration with General Officer Commanding (GOC) Major-General Festing. The Military Administration had full judicial, legislative, and executive powers,<sup>137</sup> with responsibility for removing Japanese forces from Hong Kong and then restoring order to the colony. The Military Administration faced challenges

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<sup>136</sup> Piccigallo, *The Japanese on Trial*, 102.

<sup>137</sup> Linton, "Hong Kong's War Crimes Trials."

including instituting a new currency, rebuilding the shipping ports that the Americans had bombed, and repairing streets and other infrastructure that had fallen into desperate disrepair during the occupation. Two of Harcourt's major responsibilities involved building relationships with the Chinese, who had expected to regain some degree of control over Hong Kong, and creating a reliable police force.<sup>138</sup>

Harcourt handed over responsibility for governance to pre-war Governor Sir Mark Aitchison Young and his Civil Administration on 1 May 1946.<sup>139</sup> This transition involved the reinstatement of traditional British posts, including the Colonial Secretary (David Mercer MacDougall), the Colonial Secretariat office, as well as the Judiciary and Supreme Court. Re-establishments continued in the following months, including Sir Henry W.B. Blackall as Chief Justice on 5 July 1946, and John Bowes Griffin replacing George Edward Strickland as Attorney General on 1 December 1946.

ALFSEA provided authority for the Hong Kong War Crimes Courts, but operational command rested with the GOC Major-General Festing and drew jurisdiction from the Royal Warrant. The operation of trials, confirmation of sentences, and administration of war criminals were the responsibility of military authorities in Hong Kong and Singapore. The relationship between military and civil authorities, however, was particularly important when it came to the issues of incarceration and execution of war criminals at Stanley Prison, or when responsibilities fell to civil courts dependant on the situation (as was the case with Inouye Kanao).<sup>140</sup>

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<sup>138</sup> Vice-Admiral Sir Cecil Harcourt, "The Military Administration of Hong Kong," *Journal of the Royal Central Asian Society* 39, no. 1 (January 1947): 8-14.

<sup>139</sup> Harcourt, "Military Administration," 14. See also G.C. Hamilton, *Government Departments in Hong Kong, 1841-1969* (Hong Kong: Government Press, Hong Kong, 1969), 17.

<sup>140</sup> Linton, "Hong Kong's War Crimes Trials," and Public Records Office, Hong Kong [hereafter PRO, HK], HKRS, 163-1-210.

In Hong Kong, alleged war criminals were held at Stanley Prison before their trials and following sentencing. Civil government officials were initially unsure whether they had authority to incarcerate the prisoners or, more importantly, to carry out executions.<sup>141</sup> The war crimes trials operated under a Royal Warrant, and were not simply military orders; thus jurisdiction was “in force wherever the accused are within limits of the command whose commander is the duly authorised convening officer.”<sup>142</sup> Accordingly, military and civil authorities in Hong Kong could cooperatively carry out decisions from the War Crimes Courts without altering local legislation. This arrangement remained until the Allies concluded a formal peace treaty with Japan.<sup>143</sup>

Although none of the execution orders that Puddicombe secured were carried through (Inouye Kanao was eventually executed following a civil trial and Tokunaga and Saito had their death sentences commuted to life and twenty years respectively), executions took place at Stanley Prison. The gallows at Stanley were the only available in the colony, run cooperatively by the military and civil administrations. The Colonial Secretariat’s office confirmed that executions could be carried out, and Land Forces, Hong Kong had to make arrangements with the Commission for Prisons.<sup>144</sup> Civil authorities were responsible for incarcerating the war criminals and carrying out the actual executions, while the military authorities were responsible

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<sup>141</sup> PRO, HK, HKRS, 163-1-210, Colonel Welch for GOC, Land Forces, Hong Kong, to D.M. MacDougall, Honourable Colonial Secretary, 28 June 1946. Welch noted that executions would have to take place at the civil prison as they were the only gallows in the colony of Hong Kong and that the arrangements for executions would need to be made by the Superintendent of Prisons, while the arrangement for witnesses and disposal of bodies would be up to Land Forces, Hong Kong.

<sup>142</sup> PRO, HK, HKRS, 163-1-210, HQ, ALFSEA to HQ Land Forces Hong Kong, n.d., 6-1. This communique also noted that the Colonial Office’s position was that war criminals sentences should be carried out in the country in which they were tried under normal prison conditions of that country. Regarding time period, Governor, Hong Kong to Secretary of State for the Colonies, 24 January 1947.

<sup>143</sup> PRO, HK, HKRS, 163-1-210, Secretary of State for the Colonies, to Governor of Hong Kong, 19 July 1946.

<sup>144</sup> PRO, HK, HKRS, 163-1-210, Colonel Welch, Land Forces, Hong Kong to David Mercer MacDougall, Colonial Secretary, 28 June 1946 and *illegible* for Colonial Secretary to Colonel Welch, Land Forces, 3 July 1946.

for paying the hangman, providing witnesses (usually the prosecution, or a British defence officer) and disposing the bodies.<sup>145</sup>

The Canadians in Japan functioned under the auspices of the American-led Allied occupation of Japan. Nevertheless, the Commonwealth countries made a substantial contribution to the occupation, with its core goals of demilitarizing and democratizing Japanese society. War crimes trials, particularly the Tokyo Trial and the Yokohama War Crimes Trials, were a conduit to justice and truth through judicial practice, but also as a means of educating the Japanese public about the atrocities committed by their leaders and peers. Although the occupation reverted to a “reverse course” phase at the onset of the early Cold War, the trials played an important function in the restructuring of Japanese society.<sup>146</sup>

The trials in Japan functioned under a military occupation, with everything operating under the Supreme Commander for the Far East, General Douglas MacArthur. The War Crimes Branch under Judge Advocate Colonel Alva C. Carpenter undertook initial war crimes work in Japan. Beginning in secret in March 1945, the branch began gathering evidence and affidavits about alleged war crimes. In October that year, the War Crimes Branch became the SCAP Legal Section, with the primary responsibility of investigating and prosecuting war crimes. MacArthur authorized Lieutenant-General Robert L. Eichelberger, Commander of the United States Eighth

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<sup>145</sup> PRO, HK, HKRS, 163-1-210, Colonel Welch, Land Forces, Hong Kong to David Mercer MacDougall, Colonial Secretary, 28 June 1946, see also .” Suzannah Linton Interview with Major Murray I Ormsby (United Kingdom 21 July and 4 August 2011), 13-14, Hong Kong War Crimes Trials Collection, [http://hkwtc.lib.hku.hk/archive/files/int-20110918\\_af84c07fa3.pdf](http://hkwtc.lib.hku.hk/archive/files/int-20110918_af84c07fa3.pdf) (accessed 20 September 2012), 30-31.

Following the execution, the bodies of condemned Japanese war criminals were buried at sea south of Hong Kong. PRO, HK, HKRS, 163-1-210, Major (*illegible*) for Colonel in Charge, Land Forces, Hong Kong, to Harbour Master, Hong Kong, 31 July 1946. Of the 24 death sentences ordered by the Hong Kong War Crimes Court, three were not confirmed. See Linton, “Hong Kong’s War Crimes Trials.” This number does not include Inouye.

<sup>146</sup> For quote above and a transnational and well balanced discussion of the occupation see Robert E. Ward and Sakamoto Yoshikazu, eds., *Democratizing Japan: The Allied Occupation* (Honolulu: University of Hawaii Press, 1987), xiii.



Army, to convene the Yokohama War Crimes Trials. Eichelberger became responsible for operating the actual trials as well as providing personnel for the commission, defence counsel, reporters, interpreters, translators, and court orderlies. The Legal Section furnished the prosecution and investigators.<sup>147</sup>

The role of Canadian prosecutors, Commission members, as well as Canadian specifications in the Yokohama War Crimes Trials did not go unchallenged and required clarification and justification. Defence counsels attempted to leverage this inconsistency, through motions in the courtroom and following sentencing as part of defence petitions for clemency or sentence modification. This was not unique to Canadians, with similar complaints lodged against the Australians and Dutch. The issue did not bear scrutiny and was rejected whenever raised. The protest illustrates the uncertainty between the portrayal of the trials as a purely national venture and as international tribunals as permitted in the regulations. Although the Canadian Detachment formed part of the larger program and assimilated within the program, they were to some degree detached and viewed as separate.

For example, the defence counsel for the Sumidagawa personnel, in constant search of procedural peculiarities, challenged the jurisdiction of the court on the basis of the nationality of the specifications, prosecution, and Commission members. Dr. Robert W. Miller contended that all specifications that did not have sole American focus should be stricken as the Commission only had jurisdiction to try issues that were committed against American parties. The idea that a defendant may be tried by a Canadian or other Allied commission again at a later date for the same incident – a case of double jeopardy – concerned Miller.

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<sup>147</sup> Eichelberger Papers, *Special Study of the Yokohama War Crimes Trials*, 2-5.

Orr offered both a simple, and a more multi-layered response. His first point was blunt and intimated that the defence were soldiers with orders from the convening officer to hear the case: that was the end of it. In a more nuanced and thorough response, Orr noted that as a prosecutor he was not assigned by the Canadian government, but was on loan and assigned to the trial by the convening officer by his own prerogative. He cited the SCAP rules that provided jurisdiction over any individual in custody of the convening power and noted that the international military tribunals at Tokyo and Nuremberg dealt with issues that had no effect on American citizens. He also argued that the only authority in Japan for operating war crimes trials was SCAP, not the BCOF (in which Canada was not officially represented), so branching off and operating a Canadian trial as took place in Europe was impossible.<sup>148</sup> This was enough to convince the Commission to deny Miller's motion, but nationality arose in the courtroom on other occasions and frequently came up in clemency petitions.

The Canadians in Japan cooperated with the rest of the Legal Section staff, albeit under unique circumstances. Administratively they lacked a clear anchor and bounced between American and British (BCOF) care. Structurally, the Australian, British, and Chinese had their own designation within the organizational structure of the Legal Section, while the Canadians operated on the fringes.<sup>149</sup> Nonetheless, the Canadians managed to acclimatize themselves with the system and thrived inside the courtroom. The Canadians did not operate undetected on the fringes, however, and Dickey in particular built a friendly relationship with Colonel Leo Blackstock, head of the Prosecution Section.

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<sup>148</sup> NARA, RG 331, SCAP, Legal Section, Prosecution Division, USA Versus Japanese War Criminals, Case File 1945-1949, Box. 1582, Saburo Mizukoshi Case, No. 91, [hereafter *USA vs Mizukoshi et al*], 12-18.

<sup>149</sup> When the Legal Section organized into specific divisions they included eight specific units: Criminal Registry, Liaison, Law, Investigation, Prosecution, Australian, British, and Chinese. See Eichelberger Papers, *Special Study of the Yokohama War Crimes Trials*, 3.

The Hong Kong “minor” war crimes courts focused mainly on maltreatments of POWs and civilians by Japanese troops and members of the *Kempeitai* after the Fall of Hong Kong in December 1941, as well as incidents in Waichow, Formosa, China and at sea.<sup>150</sup> The majority of the accused were members of the Japanese occupation police force, the *Kempeitai*, but also included members of the Imperial Japanese Army and Navy and, to a lesser extent, Japanese civilians and Formosan guards.<sup>151</sup> According to Linton there were 46 Hong Kong trials implicating 123 individuals, with 93 charges laid in total. Incidents geographically specific to Hong Kong included 31 individuals and 57 charges, 70% implicating members of the *Kempeitai*, and 10% each of IJA members during the invasion, after the invasion at POW camps, and civilians (interpreters and medics). The trials began on 28 March 1946 and ended on 20 December 1948, with the last sentence promulgated on 18 February 1949. All told, the British convened 46 trials involving 123 individuals during this period.<sup>152</sup>

The trials focused on “violations of the laws and usages of war” that took place after 2 September 1939.<sup>153</sup> This meant that any war crimes that had taken place by the Japanese in China during or after the invasion of Manchuria up to and until the German invasion of Poland

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<sup>150</sup> Suzannah Linton’s figures from the Hong Kong War Crimes Trials Collection break down the total number of charges at the trials to 93, of which 57 related geographically to Hong Kong, 25 to Formosa, 6 to China, 1 to Japan and 4 from the high seas. See Linton, “Hong Kong War Crimes Trials Collection.” War criminals that were wanted by the British in Hong Kong but had travelled elsewhere during the remainder of the war were often transferred in from other regions of the Pacific. There were Japanese held at Sugamo Prison in Tokyo that the British at Hong Kong were interested in. Transportation orders were issued by the Liaison Officer attached to the British Minor War Crimes Section in Tokyo, Lt. Col R.I.M. Henderson. Dickey and Shepherd were assigned the task of accompanying a wanted war criminal, Major-General Kinoshita from Tokyo to Iwakuni so he could be dispatched to Hong Kong at the request of Lt. Col. Henderson of the British Minor War Crimes Section in Tokyo. Dickey remained in Japan, but Shepherd continued along to Hong Kong with Kinoshita, who was wanted for his part as the General Chief of the Southeast Asia *Kempeitai* in Shanghai. He was found guilty and sentenced to life imprisonment in the fall of 1948. For Henderson and Sugamo Prison see PRO, HK, HKRS 163-1-122A, Com. Gen US to C in C Hong Kong, 3 July 1946. (Document 52). For Dickey and Shepherd’s movement orders see AM, John Dickey Papers, Folder 5, Lt. Col. Oscar Orr to Captain J.H. Dickey, 24 September 1946 and Lt. Col. R.I.M. Henderson to Warrant Officer H. Shepherd, 24 September 1946. For trial record see NA, WO 235/1116.

<sup>151</sup> Hirofumi, “British War Crimes Trials of Japanese.”

<sup>152</sup> Linton, “Hong Kong War Crimes Trials Collection.”

<sup>153</sup> A.O. 81/1945, Regulation 1.

and British declaration of war did not fall under the jurisdiction of the Court. In practical terms, it covered atrocities committed during the attacks on Singapore, Malaya and Hong Kong in December 1941 through to the end of hostilities. Although the British trials dealt with atrocities committed against local civilian populations, they followed a timeline after the Japanese invasion of British colonial holdings in the Pacific.

Trials combined English legal procedure with traditional Courts Martial, typically involving one or more charges against an individual or group having been “concerned in” maltreatment, killing, or other transgressions. Trials sat in front of a panel of three judges: the President of Lieutenant-Colonel (informally referred to as a half-colonel) or higher rank, and two other members, one Major and one Captain (at a minimum).<sup>154</sup> The prosecution was predominantly British, and initially the defence was as well. Over time, Japanese counsel with a British advisor provided the defence.<sup>155</sup> DJAG ALFSEA supplied the President, members and prosecution, while Command Headquarters supplied the defence officer and orderlies, guards and other required individuals. The Co-Ordinating Section provided non-legal officers, interpreters and shorthand writers. This reflected one of the strongest features of the “minor” war crimes trials: the differentiation of supply for prosecution and defence, allowing for more freedom of action for the defence counsel.

ALFSEA maintained contact with its legal staff, updating them on developments in the British trials and those internationally. Officials informed judges of external legal developments, exemplified by Loranger’s possession of summaries and notes about “minor” war crimes trials in

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<sup>154</sup> War Crimes Instructions, 2<sup>nd</sup> Edition, 8.

<sup>155</sup> Former judge and prosecutor Major Ormsby later noted that he thought the Japanese were better represented by the British officers as the Japanese lawyers were “too polite.” He considered the British officers “not particularly polite,” and noted he considered them able to “offset the cruel Prosecutor.” Linton interview with Ormsby, 13-14.

Europe and the Pacific, as well as the Class ‘A’ trials.<sup>156</sup> British officials also sent circulars to the prosecution on various legal issues, including an assertive reminder that the prosecutors were not to request or suggest sentences to the judges. ALFSEA insisted that the prosecution be non-partisan, solely responsible for assisting the court in finding the truth by laying out all relevant evidence before the court. The model prosecutor would “act with scrupulous candour, fairness and moderation towards the accused.”<sup>157</sup>

The convening authorities went to great lengths to furnish the witnesses requested by the prosecution. Conversely, the accused and their counsel had responsibility, both practically and financially, to arrange for witnesses. Locating requested defence witnesses proved challenging as many had returned to Japan or had moved on to different Pacific War hotspots after serving in Hong Kong. Inouye Kanao, for example, was tried in May 1946, and struggled to contact several witnesses he wanted to call and in getting documents from Tokyo.<sup>158</sup> Witnesses (other than enemy nationals) were accommodated by the convening headquarters, given everything “possible for the comfort” and their expenses covered by the convening headquarters.<sup>159</sup> Many of the defence witnesses were already in custody at Stanley Prison. It was within this structure that Major Puddicombe began his work in Hong Kong. Armed with the affidavits of Canadian POWs and instructions from Ottawa, he had his investigative work splayed out in front of him: behind the walls of Stanley Prison to the south, through the mountains that reflected the harsh geography of Hong Kong in which the fighting took place, and at the sites of internment and labour of the Canadian POWs.

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<sup>156</sup> DHH, J.T. Loranger fonds, 2004/63 [hereafter Loranger fonds], Series 1-1, Notes for Presidents, 7 May 1947 which summarizes the Peleus Trial, the Almelo Trial, the Dreirwalde Case and Essen Case of lynching. Loranger also had notes from the Tokyo Trial and a summary of the Nuremberg Trial and a variety of UNWCC papers. Loranger also had summaries from the Yamashita Trial, see Series 3-16.

<sup>157</sup> Puddicombe fonds, Vol. 1-2, Colonel for Legal Staff, ALFSEA, Singapore, to All Officers, 11 July 1946.

<sup>158</sup> NA, WO 235/927, Inouye Kanao Trial, “Petition Against the Finding and Sentence of a Military Court,” 1-2.

<sup>159</sup> War Crimes Instructions, 2<sup>nd</sup> Edition, 9.

The primary source of evidence that Puddicombe in Hong Kong and Dickey, Boland, and Orr at the Yokohama War Crimes Trials drew upon were affidavits taken from returning Canadian POWs. In the courtroom and as a tool for drafting charges or specifications, affidavits were indispensable. After liberation from various camps at Hong Kong and Japan, surviving Canadian POWs were interviewed three times, the final upon their return to Canada. Each submitted an affidavit speaking specifically to incidents of maltreatments and abuses which they witnessed or of which they were victims.<sup>160</sup> The WCIS at the DND collected and copied the affidavits and indexed them by prisoner, perpetrator, and by subject (including mines, camps, or incidents).<sup>161</sup> In court, the affidavits were linked to a photograph which helped identify potential war criminals when their names were misspelled or when they were only identified by nickname (as was often the case).<sup>162</sup> The affidavits described isolated incidents or individuals that stood out to the POW, or provided a broad roadmap of the POW experience, spanning the timeline from North Point through to liberation. In these cases, all but the pertinent points were omitted<sup>163</sup> and the relevant descriptions read onto the official trial record during the proceedings and the affidavit entered as an exhibit.

The “business of War Crimes”<sup>164</sup> in Hong Kong was a two-tiered process. Initially the WCIT under Lt. Col. Ford uncovered, investigated and reported war crimes.<sup>165</sup> The team had administrative, legal and investigative officers (usually former police officers from China) and a staff of female stenographers. The team interrogated locals for information, followed up on leads, held identification line-ups, questioned alleged war criminals, and collected whatever un-

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<sup>160</sup> AM, John Dickey Papers, 2.1 - Don Brown, “Copy Canada’s Jap War Trial Setup.”

<sup>161</sup> LAC, RG 24, Vol. 8020, Receipts for Affidavits from CRD, Lt. Col. Oscar Orr, “Index to Canadian Affidavits,” and Brown, “Copy Canada’s Jap War Trial Setup.”

<sup>162</sup> Brown, “Copy Canada’s Jap War Trial Setup.”

<sup>163</sup> Literally struck out with a red pencil.

<sup>164</sup> Puddicombe fonds, Vol. 2-30, “War Crimes Trials Hong Kong Style,” 2.

<sup>165</sup> Puddicombe fonds, Vol. 2-30, “War Crimes Trials Hong Kong Style,” 2.

destroyed documentation could be recovered. The WCIT also advertised incidents or individuals in the *South China Morning Post* and *China Mail* asking for local residents with information to come forward.<sup>166</sup> Once the team collected and sifted the evidence they created draft charges and briefed the ALFSEA War Crimes Branch in Singapore. ALFSEA reviewed the information and “approved or amended the brief, or refused permission to prosecute (a very rare occurrence),” and if approved “the brief was returned to Hong Kong and a trial required.”<sup>167</sup>

Immediately after arriving in Asia, Orr forwarded a list of proposed cases compiled in Ottawa before his departure to the War Crimes Branch in Singapore. Puddicombe began his first prosecution four days later, making this another example of the distance between practical realities and bureaucratic channels. Topping that list was Colonel Tokunaga Isao, the commander of all of the POW Camps in Hong Kong. The Canadians were mainly interested in him for his ill-treatment and neglect of the POWs, as well as his role in the execution of four escaped Canadian POWs. Following Tokunaga was his Medical Officer Captain Saito Shunkichi, accused of neglecting Canadians and allowing a diphtheria epidemic to devastate the camps. Two interpreters from the Hong Kong Camps were also on the list: Inouye Kanao for his public beating of two Canadian officers, and Niimori Genechiro for beating a Canadian on a transport ship. Yabuke Rikie and Takemoto Otojiro were also sought for their role in the torture of Canadian civilian T.C. Monaghan.<sup>168</sup>

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<sup>166</sup> NA, WO 235/1015, Shoji Toshishige Trial, 76. The Investigation Team interviewed local residents, collecting statements and making affidavits speaking to the crimes committed by the Japanese occupation authorities as well as the general living conditions facing those under occupation. For example see NA, WO 325/89, Hong Kong: Killing and Ill Treatment of POWs and Civilians, Apr 1946-Sept 1946 and WO 325/107, Hong Kong: Killing and Ill Treatment of POWs Sept 1946-July 1947.

<sup>167</sup> Puddicombe fonds, Vol. 2-30, “War Crimes Trials Hong Kong Style,” 3.

<sup>168</sup> LAC, RG 24, Vol. 8019, TOK-1-5, Lt. Col. Oscar Orr, Tokyo, to HQ, ALFSEA, Singapore, 18 May 1946. Orr also noted interest in pursuing a case against the perpetrators of a murder of two RCAF members (Warrant Officers Low and Smith) who were killed in Gladok, Batavia in 1942.

Although Puddicombe was able to align himself within the British program, his role as Canadian representative brought with it significant variations, particularly his dual role as investigator and prosecutor. British staff prosecutors received a document called an ‘Abstract of Evidence’ shortly before a trial began. They took the document, prepared an opening statement, and had the stenographers type it up. They did not actively gather evidence, but put their talents on display in the courtroom.<sup>169</sup> Puddicombe brought Canadian national interest and evidence to contribute to an already functional framework. Puddicombe and Hogg spent much of the first month in Hong Kong interrogating prisoners at Stanley Prison, inspecting North Point and Sham Shui Po POW camps, attending other trials, interviewing locals, and communicating with Ottawa.

The Hong Kong sub-Detachment placed a high priority on gathering evidence related to the execution of four escaped Canadian POWs in August 1942. While the details of the escape, capture, torture and execution of Payne, Berzenski, Adams, and Ellis are discussed in chapter four, one of Puddicombe’s main investigative tasks was to reconstruct the story of their execution and to locate their remains. The WCIT interrogated Tokunaga and Saito but got nowhere. Tokunaga referred officials to a falsified report he had sent to the POW Information Bureau in Tokyo claiming the four men were shot while exiting through a hole in the camp fence. Investigators picked the story apart: several POWs had assisted the men in their escape *over* the fence and no gun shots had been heard at the camp that night. A second story pinned the execution on Lieutenant Wada (who had died before the end of the war), claiming he had transported the men to the mainland for further interrogation and summarily executed them for

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<sup>169</sup> Linton interview with Ormsby, 16. Ormsby noted that the Australian prosecutors were much more engaged in the investigation process, gathering their own evidence and seeking out witnesses.



“causing a disturbance.”<sup>170</sup> The bodies were supposedly buried nearby on Argyle Street. Tokunaga had allegedly scolded Wada over the issue and passed the incident along to the Japanese Chief-of-Staff in Hong Kong, Eguchi. This version was contradicted by an eyewitness who had seen the four men at the Forfar Street POW HQ *after* the execution was alleged to have taken place.

The Graves Registration Unit had been unable to locate the bodies and the WCIT believed that the Argyle Street alibi was untrue. Puddicombe interrogated Saito, Tokunaga, Niimori and Lieutenant Tanaka multiple times and in June 1946 took them, with picks and shovels, to the Argyle Street cemetery. Puddicombe explained that no one believed their story and told them they had five minutes to point out the graves or they would be taken to King’s Park Football Field and made to dig until the four Canadians were found. According to Puddicombe, the bluff worked and Saito spoke up, admitting that he had been present at the execution and would show the investigators where the bodies were buried. After the confession, Tokunaga claimed he gave the command, but was under orders to do so and sent a false report to Tokyo “to escape a big investigation.”<sup>171</sup> Upon later reflection, Puddicombe assumed that Saito confessed after sticking to his original story closely because he had accused him of being a coward a few days prior to the outing to Argyle Street, “which seemed to startle him.” When Saito asked why, Puddicombe responded “[b]ecause you are afraid to tell the truth.’ That may have rankled. I don’t know. At any rate, all now confessed the details.”<sup>172</sup>

The investigative work around the execution of the four Canadians had a significant documentary component, including assessing statements in POW affidavits as well as ordering

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<sup>170</sup> Puddicombe fonds, Vol. 2-30, “War Crimes Trials Hong Kong Style,” 22.

<sup>171</sup> Puddicombe fonds, Vol. 2-30, “War Crimes Trials Hong Kong Style,” 26. Puddicombe noted that high on a hill west of King’s Park Football Field a small memorial was placed bearing a plaque paying service to Payne, Berzenski, Adams and Ellis for having died doing their duty endeavouring to escape.

<sup>172</sup> Puddicombe fonds, Vol. 2-30, “War Crimes Trials Hong Kong Style,” 26.

dental records and attestation papers.<sup>173</sup> It also required substantial footwork: interrogating Tokunaga, Saito, Tanaka, as well as others at Stanley Prison; interviewing Chinese civilians in Kowloon and Macau; and trips to King's Park and the surrounding areas, initially with the Commonwealth War Graves staff and then with the Japanese prisoners themselves.<sup>174</sup> Puddicombe's general investigation work also included arranging and indexing affidavit evidence, working with local witnesses (both those he approached for his main cases and those that were assigned to him for prosecution-only work the day before his *Kempeitai* cases started), as well as day trips to North Point, Sham Shui Po and the Bowen Road Hospital. In the build-up to the first invasion trial, Puddicombe had Major-General Shoji lead him to the spot where General Lawson was buried. Prior to the second invasion trial, Puddicombe spent even more time travelling the hectic terrain of the Hong Kong battlefields.<sup>175</sup>

The primary Canadian concern in Japan related to the treatment of the POWs whom the Japanese had brought in for labour. The Detachment members based their investigation on a document compiled by the WCIS and DND Adjutant-General that outlined the shipment and distribution of Canadian POWs for forced labour in Japan, and identified individuals of interest. The first draft departed Hong Kong on 15 December 1943 with 663 men, including Captain J.A.G. Reid, Royal Canadian Army Medical Corps (RCAMC). The men were dispersed between Omine Camp in Fukuoka for work in a coal mine, and a variety of smaller camps (Kawasaki 3D, Omori HQ, Sumidagawa, Shinagawa Hospital and later Sendai Camps) in the Yokohama and

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<sup>173</sup> Puddicombe fonds, Vol. 2-12.

<sup>174</sup> Puddicombe fonds, Vol. 2-10, Lt. Col. F.C. Minshull-Ford to Col. 'A', HQ, Land Forces, Hong Kong, 18 June 1946 and Major Tse Walenn for Colonel-in-Charge, Land Forces, Hong Kong, 21 June 1946. Puddicombe took the suspects to King's Park on 26 June 1946 and received statements of admission of the execution without trial on 28 June 1946. See Puddicombe fonds, Vol. 1-1.

<sup>175</sup> Puddicombe fonds, Vol. 1-2.

Tokyo regions for work in coal and iron mines, shipyards, loading platforms, and dock work. The second draft departed on 15 August 1943 with 376 other ranks. Most of these men went to Niigata 5B and 15B camps to work in coal and iron mines, as well as an iron works and foundry. The remainder of the second draft were sent to Oeyama for employment in a nickel mine and foundry. The third draft of POWs departed Hong Kong on 15 December 1943 with 98 men aboard. Some of the men went to Narumi and Toyama camps for factory work, while the rest went to Oeyama to work alongside men from the second draft. The fourth and final draft left Hong Kong on 29 April 1944 with 47 men destined for camps at Sendai.<sup>176</sup>

Armed with their preliminary material, the Canadians learned how they would proceed in the investigation period during a Legal Section prosecution meeting in late April 1946. Working collectively with the broader Legal Section and drawing upon evidence collected by the Americans, Australians, British and New Zealanders, they focused (as per their mandate) only on specific camps that held Canadians. Rather than sifting and re-sifting evidence for each possible war criminal, the SCAP Legal Section pooled evidence, making it available to all members of the investigation and prosecution staff. Dickey noted that this approach allowed the Canadians to focus on a “relatively small number of camps” and to draw efficiently from a wide body of evidence.<sup>177</sup> Dickey had reservations about complex and unwieldy common trials, but he recognized that the Canadians needed to adjust their approaches to align themselves with the American system.

Each Canadian Detachment member took on geographically-specific investigations. Dickey’s cases related to the internment and forced labour of Canadian POWs at Omine Camp in Kyushu outside Fukuoka. He prosecuted four individuals over three trials, including two camp

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<sup>176</sup> Puddicombe fonds, Vol. 1-3, War Crimes Investigation Section, NDHQ, “Notes of conversation with officers going to districts to assist AJAGs in preparation of depositions from repatriates,” Ottawa, 8 January 1946, 2-3.

<sup>177</sup> Dickey to Mrs. W.B. Wallace, 22 April 1946.

commandants and some of the staff. Boland's assignment required the investigation and prosecution of incidents that took place at the Niigata and Sendai camps.<sup>178</sup> The former, the location of 77 Canadian deaths, Canadian officials considered to be "the worst place in Japan."<sup>179</sup> Boland was chief or assistant prosecutor on four trials featuring thirteen accused. Orr was in charge of Tokyo 3D and other Tokyo area camps (including Sumidagawa and Oeyama), eventually prosecuting five trials featuring fourteen accused.

### **International cooperation – "a real economy of evidence"**

The Canadians in Japan operated in a similar manner as Puddicombe in Hong Kong. While the other international members of the Prosecution Section worked mainly from prepared investigation reports, developed by the Investigation Section, the Canadians did most of their own legwork. The Investigation Section provided a significant pool of resources through the "examination of the scenes of the crimes, interrogation of witnesses and suspects, interrogation of prisoners of war, interception of Japanese mail, requests for information to the Japanese Government, and examination of reports, rosters and other official documents."<sup>180</sup> The investigation process for the Canadians boiled down to three specific portions: analysis of documentary evidence (both their own and Investigation Section material); interrogation of suspects and other individuals at Sugamo Prison in Tokyo; and investigation trips to the actual sites of the POW camps and the surrounding towns.

Dickey's assignment was the Omine POW Camp, the location where the Japanese forced 150 Canadians to toil year-round in a coalmine. His initial impression of the camp was that it

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<sup>178</sup> Niigata and Sendai are both north of Tokyo, on the east and west coasts of Honshu respectively.

<sup>179</sup> Puddicombe fonds, Vol. 1-3, "Notes of a conversation with officers going to districts to assist AJAGs," 3. Tokyo 3D, Oeyama and Omine accounted for 26, 21 and 13 respectively.

<sup>180</sup> SCAP, *Trials of Class "B" and Class "C" War Criminals*, 55

“was in fact one of the best run and most pleasant in which our lads were imprisoned.”<sup>181</sup> There were only 21 Americans at the camp, so the Legal Section staff left Dickey to his own devices, making it “pretty much our own show.”<sup>182</sup> Dickey had charge of the investigation, case preparation, and prosecution of the Omine cases, assisted in the courtroom by American lawyer Jesse Dietch. Dickey was initially keen to get moving on the case and to make an investigative trip to Fukuoka. Only days after settling into the case, he announced some interesting and promising leads that could prove to be “most interesting and complicated.”<sup>183</sup>

Dickey’s superiors from the Legal Section provided him with a list of individuals accused of beating POWs at Omine, and requested that he prepare a roster of the camp staff and compose a charge against the administration. They considered Kaneko Takio, one of the camp commandants, a priority, and were interested in the circumstances surrounding the death of Canadian G.W. Murray. Dickey’s instructions closed out with a final note of instruction: “GO TO IT.”<sup>184</sup> Dickey was anxious to comply, but administrative delays meant that his investigative trip would have to wait. While awaiting travel orders and clearance from Col. Orr to leave Tokyo, Dickey spent his time reviewing affidavits and investigation reports as well as interrogating prisoners at Sugamo Prison.

The investigation process was a cooperative procedure, allowing the men to draw on the efforts of others and to provide evidence in exchange. The Canadians made their affidavits and gathered materials available and, conversely, drew on volumes from the Investigation Section and other Allied divisions. Although scant on details, Dickey repeatedly mentioned in letters home that the Detachment provided evidence for others, noting, for example, that they were

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<sup>181</sup> Dickey to Mrs. W.B. Wallace, 22 April 1946.

<sup>182</sup> Dickey to Mrs. W.B. Wallace, 24 April 1946.

<sup>183</sup> Dickey to Mrs. W.B. Wallace, 26 April 1946.

<sup>184</sup> LAC, RG 24, Vol. 8019, TOK-2-2 – Fukuoka Camp No. 5 – Omine, Directive Re Omine Camp, 24 April 1946.

providing the Americans with a good volume of evidence on a case which has up to now posed a bit of a problem to them. We are also working in closely with the Australian and British who will eventually be quite helpful to us though at the moment we are providing them with information without much return.<sup>185</sup>

These reciprocal relationships functioned through the sharing of evidence and maintaining open lines of communication. The British and Australian Divisions provided the Canadian Detachment with indexes of their affidavits so they could request copies or information for their own investigations on camps with overlap.<sup>186</sup> The Detachments also made specific requests of each other relating to individual cases. During the preparation for his case against Oeyama Camp Commandant, Lt. Hazama Kosaku, Orr approached the Australian and British Divisions to inquire whether they had incidents relating to their people that he should incorporate into his specifications.<sup>187</sup> Orr also contacted the British Section when he came across evidence of the beating of a member of the Middlesex Regiment at Niigata 5B, requesting that his British colleagues supply an affidavit so it could be added to the case.<sup>188</sup> A written request to the Investigation Division was the primary method of gathering information on an individual or camp.<sup>189</sup>

The Canadian Detachment secured large volumes of evidence through the Investigation Section. Staff investigators compiled folders that organized investigation documents by geographic region and specific camp, and members of the prosecution staff could sign them out.

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<sup>185</sup> Dickey to Mrs. R.B. Wallace, 2 May 1946, 2-3.

<sup>186</sup> LAC, RG 24, Vol. 8020, TOK-5-6, Lt. Col. R.I.M. Henderson, Officer in Charge, British Minor War Crimes Liaison Section, Tokyo, to Legal Section, Tokyo (for Distribution to Investigation, Prosecution, Criminal Registry, Records & Files, Liaison, Australian and Canadian Divisions), 3 June 1946 and LAC, RG 24, Vol. 8020, TOK-5-6, "List No 1 – Affidavits held by Australian Division Legal Section GHQ SCAP," 11 June 1946.

<sup>187</sup> LAC, RG 24, Vol. 8020, TOK-5-7, Lt. Col. Oscar Orr, Tokyo, to Australian Division; British Division, 4 June 1946.

<sup>188</sup> LAC, RG 24, Vol. 8020, TOK-5-6, Lt. Col. Oscar Orr, Tokyo, to British Division, Tokyo, 5 August 1946. This specification did not make it to the trial of Yokoyama Kanzaburo, as he was tried, along with four other individuals on a specification that they had bayoneted an American POW to death. See NARA, RG 331, SCAP, JAG, War Crimes Division, Records of Trial File, UD 1865, Box No. 9572, *US vs Tatsuro Fujita et 4*, Case Docket 176.

<sup>189</sup> See LAC RG 24, Vol. 8019, TOK-5-4 – Investigation Section – Col. Rudsill.

Dickey, for example, made use of three massive files in his work on Omine POW Camp. The files contained information relating to the camp and its relationship with the Furakawa Mining Company. One folder was predominantly affidavits, photographs and statements, drawn from American, Australian, Canadian and British sources.<sup>190</sup> The second two files contained lists of camp staff and officials, POW rolls, death certificates, blueprints of the camp and mine area, a report from an investigative trip made the Investigation Section. It also contained Dickey's draft specifications, notes, and photographs, as well as translated documents dealing with the provisions for POW labour, a report by the mining company, and transcripts of interrogations of suspected war criminals and related individuals (two of whom Dickey interrogated, one at Sugamo, the other in Fukuoka).<sup>191</sup>

A second key source of evidence for the Detachment involved interrogations at Sugamo Prison. Pre-trial, alleged war criminals (and those later found guilty of their crimes) were incarcerated this Tokyo prison, nearly six miles north-northeast of the Imperial Palace in Toshima Ku.<sup>192</sup> Constructed in the 1920s, the prison had originally been used to house political prisoners by the Japanese government and was architecturally modeled on European jails. The compound covered about six acres and was surrounded by a 12-foot high concrete wall. An additional 12-acre outer compound was added during the early years of the occupation to prevent breakout and to protect American coal and food stores. While the Eighth Army troops were preparing Sugamo (which had survived most of the American bombing of Tokyo), war criminals

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<sup>190</sup> NARA, RG 331, SCAP, Legal Section, Administrative Division, Area Case File, 1945-1948, UD 1189, Box 922, File 5, FU-6, Volume 1, A-V.

<sup>191</sup> NARA, RG 331, SCAP, Legal Section, Administrative Division, Area Case File, 1945-1948, UD 1189, Box 922, File 6, FU-6, Volume 2, Miscellaneous and Volume 3, Miscellaneous. Dickey drew on the files for his case preparation: he and Jessie Dietch both signed out files: Dickey twice, from 24 April to 16 May 1946 and 23 July 1946 to 18 February 1947, and Dietch from 11 to 20 June 1946. See NARA, RG 331, SCAP, Legal Section, Administrative Division, Area Case File, 1945-1948, UD 1189, Box 922, File 5, FU-6, Volume 1, A-V, "File FU-6."

<sup>192</sup> John L. Ginn, *Sugamo Prison: An Account of the Trial and Sentencing of Japanese War Criminals in 1948, by a U.S. Participant* (Jefferson, N.C.: McFarland & Company, 1992), 1.

were held in a prison on Omori Island in Tokyo Bay until they were transferred in December 1945. During the period of American occupation, Sugamo held more than 2000 war criminals and witnesses, both of the major and “minor” varieties.

The use of interpreters for interrogations at Sugamo was optional, but Dickey tended to utilize them to help overcome linguistic and cultural barriers crafting his Omine cases. Early in his deployment, he tended to be skeptical of the translation process, seeing it as another avenue for the guilty to avoid guilt. Dickey noted that “no one is ever satisfied with the translation of even an isolated phrase let alone a long statement,” which made “dealing with witnesses most difficult” as they had “a sure means of escape from conflicting testimony by claiming that they have been mis-translated.”<sup>193</sup> He found some prisoners cooperative but came away frustrated with the situation in general. Commenting on the issue of translation, he noted that:

[d]ealing with the Nips through the medium of an interpreter is difficult and exasperating. However there is no alternative. In fact a knowledge of the language would not help much as the main difficulty is their carefree disregard of the truth even when under oath and the strange twist of the Oriental mind which produces the most extraordinary replies to simple questions. For instance a negative question invariably gets a reply like “Yes, I did not do that” or “No, I did that.”<sup>194</sup>

This statement reveals that Dickey was imbued with some of the negative stereotypes of the Japanese prevalent in wartime North America (his loose and regular use of “Nips” exemplifying this), but linguistic issues explain his perception of Japanese evasiveness. Double negatives, which appear contradictory in English, are commonly used in Japanese. Rather than cancelling each other out, as in English, the conflicting terms are mutually reinforcing in Japanese.<sup>195</sup> Dickey’s assumption and generalization that there was an evasive “twist of the Oriental mind” reflected an intercultural disconnect. This misperception not only influenced the

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<sup>193</sup> Dickey to Mrs. W.B. Wallace, 4 May 1946.

<sup>194</sup> Dickey to Mrs. W.B. Wallace, 7 May 1946.

<sup>195</sup> Stefan Kaiser, *et al* eds., *Japanese: A Comprehensive Grammar* (New York: Routledge, 2001), 129.



way in which Dickey dealt with the individuals he interrogated, but also the way in which he responded to the information he gathered. Accordingly, Dickey brought along Sergeant Major Shepherd to act as an “active check on the embroidering of stories.”<sup>196</sup> The lawyer expected that having an ex-POW in the room would ensure that prisoners did not “deviate too far from the truth,” although he remained convinced that “there is no defence against loss of memory when it suits convenience.”<sup>197</sup>

In investigations as well as in court records, Japanese names proved problematic for the under-trained Allied participants. Dickey and Shepherd made one trip to Sugamo with the intention to interview three suspects “with names similar to persons whom [they wanted] to charge with assorted war crimes.”<sup>198</sup> Dickey dismissed one of the three who successfully accounted for himself in the prison records, but the other two held his interest:

[w]e were then assigned an interpreter and had the first of the remaining two brought in. He fitted the description we had of him just about perfectly and in about an hour of questioning I satisfied myself that he is the one we want. He lied till he was blue in the face but made enough mistakes to permit the truth to seep through. The next step will be for someone to take a full statement from him which will be sworn to and signed. Having sent him off we saw the other prisoner and this was a different story. He did not fit the most distinctive part of the description and questioning brought out a very reasonable story. As a matter of fact [sic] I think we can satisfactorily identify him as one of the better characters in the particular camp with which he was connected. It was an interesting and useful morning.<sup>199</sup>

Dickey also interrogated Yamanaka Toshitsugo, who had been at Tokyo 3D Camp and was one of the main perpetrators in the beating of Canadian POW Private Alexander Baraskiwich.<sup>200</sup> Orr

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<sup>196</sup> Dickey to Mrs. W.B. Wallace, 27 April 1946.

<sup>197</sup> Dickey to Mrs. W.B. Wallace, 27 April 1946.

<sup>198</sup> Dickey to Mrs. W.B. Wallace, 17-18 May 1946. Throughout the SCAP documentation, including the trial transcripts and case reviews (as well as the index for the microfilmed reviews) there are war criminals who had their names spelled in a variety of minor ways. This causes a great deal of confusion when trying to track down files on an individual, particularly when keyword searching.

<sup>199</sup> Dickey to Mrs. W.B. Wallace, 17-18 May 1946.

<sup>200</sup> LAC, RG 24, Vol. 8019, TOK 2-3 – Tokyo 3D, John H. Dickey for Lt. Col. Oscar Orr, Tokyo, reference for Check Sheet, Yamanaka Toshiji (Toshitsugo), 20 May 1946.

eventually prosecuted the Yamanaka *et al* case, but Dickey carried out the interrogations and identification work while Orr was in Hong Kong and Singapore.<sup>201</sup>

Sugamo Prison thus acted as a pool of potential suspects and sources of information for Canadian prosecutors, allowing Dickey to compound his intelligence based on the Canadian affidavits with some of the Omine staff before setting off on a more in-depth investigation trip.<sup>202</sup> The Canadian Detachment did the majority of their on-the-ground investigative work in May and June 1946. Special investigation teams from the Legal Section had already been to most of the POW camps, and their reports helped the Detachment in preparing its cases.<sup>203</sup> All Canadian members spent time in the main camps that they were assigned, with Dickey electing to bring Captain Lloyd Graham of Henry Nolan's staff and former Omine POW Shepherd to visit the camp and coalmine in Fukuoka. Graham was included "partly to give him the trip and partly to help with translation."<sup>204</sup> He spoke "Japanese quite fluently and will be useful to check on the native interpreters."<sup>205</sup> Shepherd offered much the same as he had in the Sugamo interrogations, to ensure the relative accuracy of Japanese testimony. The trip was indispensable for Dickey's Omine cases, but was also an unparalleled personal opportunity. (He and Lloyd Graham also had the opportunity to explore Beppu, a resort town, while they were away.)

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<sup>201</sup> The Yamanaka Trial reference is NARA, RG 331, SCAP, JAG, War Crimes Division, Records of Trial File, UD 1865, Box No. 9611, *USA vs Toshitsugo Yamanaka ET 2*, Case Docket 60 [hereafter *USA vs Yamanaka et al*].

<sup>202</sup> The Legal Section divided the investigation process in Japan into different geographic regions and war crimes classes. Japan's seven regions included Hokkaido (Sapporo as center); Northern Japan (Sendai); Central Japan (Tokyo); Southern Japan (Osaka); Western Japan (Nagoya); Southeastern Japan (Hiroshima); Kyushu (Fukuoka). The categorisation of war crimes comprised six groupings: POW atrocity cases; ship transport cases; *Kempeitai* cases; plane crash and airmen cases; medical cases (vivisection, experiments); and miscellaneous. See SCAP, *Trials of Class "B" and Class "C" War Criminals*, 52-53.

<sup>203</sup> General Headquarters, Supreme Commander for the Allied Powers, *Summation No. 8: Non-Military Activities in Japan for the month of May 1946*, 6.

<sup>204</sup> Dickey to Mrs. W.B. Wallace, 16 May 1946.

<sup>205</sup> Dickey to Mrs. W.B. Wallace, 16 May 1946.

Expanding upon the investigation that began by two Americans February 1946, Dickey built a comprehensive evidence base to push forward his cases.<sup>206</sup> Despite hang-ups securing transportation and coordinating with Boland's trip to Niigata (because Orr was away and only one legal officer could be in the field at the same time), Dickey and his team got away to Kyushu on 22 May 1946. SCAP allowed the trio "approximately ten...days in connection with the investigation of war crimes"<sup>207</sup> which kept them on the road from 22 May until arriving back the morning of 6 June. The trio arrived in Fukuoka by train and settled in in at their naval billet. Fukuoka, a naval and marine stronghold, was a main site for the arrival of repatriated Japanese troops and an embarkation point for Korean labourers returning home. Dickey began his work with local staff in Fukuoka, sifting through the available documentary material and arranging interrogations which soon generated an address for one suspect.<sup>208</sup>

On 27 May the trio made the arduous trek by jeep to Omine. Dickey reported that the roads were "the worst [he] ever had the bad luck to travel," having the dimensions "of a run down back alley."<sup>209</sup> As the trip continued into the countryside, he described a "narrow road full of holes running straight into a steep winding valley," which brought them "across two ranges of quite respectable mountains." The ride, "over the roughest thing you can imagine as an excuse for a road," continued in and out of two valleys peppered with small coalmines and covered in

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<sup>206</sup> Regarding previous investigation trip, see: NARA, RG 331, SCAP, Legal Section, Administrative Division, Area Case File, 1945-1948, UD 1189, Box 922, File 6, FU-6, Volume 2, Miscellaneous, Legal Section, Investigation Division, 2<sup>nd</sup> Lt. Melvin S. Cohn and 2<sup>nd</sup> Lt. Robert E. Humphreys, "Re Investigation of Prisoner of War Camp No. Five-B," 21 February 1946. Regarding support for trip, see: Dickey to Mrs. W.B. Wallace, 30 April 1946.

<sup>207</sup> AM, John Dickey Papers, Folder 5.0, Major W.L. Day, Assistant Adjutant General, GHQ, United States Army Forces, Pacific to Captain J.H. Dickey, 16 May 1946.

<sup>208</sup> Dickey to Mrs. W.B. Wallace, 25 May 1946, see also LAC, RG 24, Vol. 8019, TOK 2-2, Fukuoka Camp No. 5 – Omine, Captain John H. Dickey to Lt. Col. Oscar Orr, Progress Report, Investigations Fukuoka Area, 25 May 1946.

<sup>209</sup> Dickey to Mrs. W.B. Wallace, 28 May 1946.

terraced cultivations.<sup>210</sup> When the group arrived in Kawasaki they secured a guide from the local police detachment who directed them the rest of the way to the camp.

Shepherd's return to the site of his internment was a triumph, but was met with mixed emotion from the personnel still engaged in scaled-down operations. He was "greeted warmly" by the remaining company employees, but in other sections of the camp his appearance was a "shock and gave rise to no rejoicing."<sup>211</sup> The men toured the site to gain a better understanding of how it operated before reviewing the remaining documentation and interrogating the Furakawa Mining Company superintendent. The Canadians appropriated the mine supervisor's office as a work space which Dickey deemed "good psychology."<sup>212</sup> The trio interviewed company employees and camp staff and arranged to transfer other individuals to Fukuoka for further questioning.<sup>213</sup>

The Canadians spent the following two days in Fukuoka, interrogating mine workers and former guards from Omine. Dickey requested that the Fukuoka Branch of the Investigation Division bring in four suspects for questioning: Takemiya Kiyomitsu, Matsui Satoru (who had bayoneted Shepherd during an altercation at the camp), Fukami Takeo, and Ando Kazuo.<sup>214</sup> Ando Kazuo, also known as Fukami Kazuo, had taken on his wife's family name and moved to Soyeda with her family after the end of the war. The Investigation Section had him arrested and brought to Sugamo Prison.<sup>215</sup> The other three interrogations took a great deal of time,

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<sup>210</sup> Dickey to Mrs. W.B. Wallace, 28 May 1946.

<sup>211</sup> Dickey to Mrs. W.B. Wallace, 28 May 1946.

<sup>212</sup> Dickey to Mrs. W.B. Wallace, 28 May 1946.

<sup>213</sup> Dickey to Mrs. W.B. Wallace, 28 May 1946.

<sup>214</sup> LAC, RG 24, Vol. 8019, TOK 2-2 – Fukuoka Camp No. 5 – Omine, Captain J.H. Dickey, Investigation Officer, to Legal Section, War Crimes Investigation Division, Fukuoka Division, 27 May 1946. Satoru and Fukami Takeo eventually were called as witnesses at the Kaneko/Uchida trial and Fukami Kazuo was tried at Yokohama in February 1947.

<sup>215</sup> LAC, RG 24, Vol. 8019, TOK 2-2 – Fukuoka Camp No. 5 – Omine, Report on Omine Investigation.

particularly that of Matsui who spoke to the treatment of POWs at Omine and the actions of the camp staff, including Camp Commandant Lt. Kaneko Takeo.<sup>216</sup>

On 1 June the Canadians returned to Omine to close out the investigation. Following a few additional interrogations, the men set into the real purpose of the trip. Donning mining clothes, they headed down into the shafts and work areas, taking photographs, asking questions, and having “a pretty hectic time.”<sup>217</sup> The group travelled to the section of the mine where two Canadian POWs, Campbell and Fitzpatrick, were killed, inspected the makeshift mining equipment and climbed “through much mud & debris to a point about 100 meters from the portion worked by the prisoners when gas conditions were found to be dangerous.”<sup>218</sup> After exploring the mine, Dickey was confident that they had learned everything they could. As a matter of ceremony, the men visited the gravesite where the Japanese had buried Canadians and then returned to Fukuoka.<sup>219</sup> The team spent the next day printing the photographs they had taken, arranging their files, and picking up an unexpected tip about the whereabouts of Kaneko. They then set out for an airfield at Ayshai. After two days of waiting for a plane to arrive because of inclement weather, they opted to take the train back to Tokyo.<sup>220</sup>

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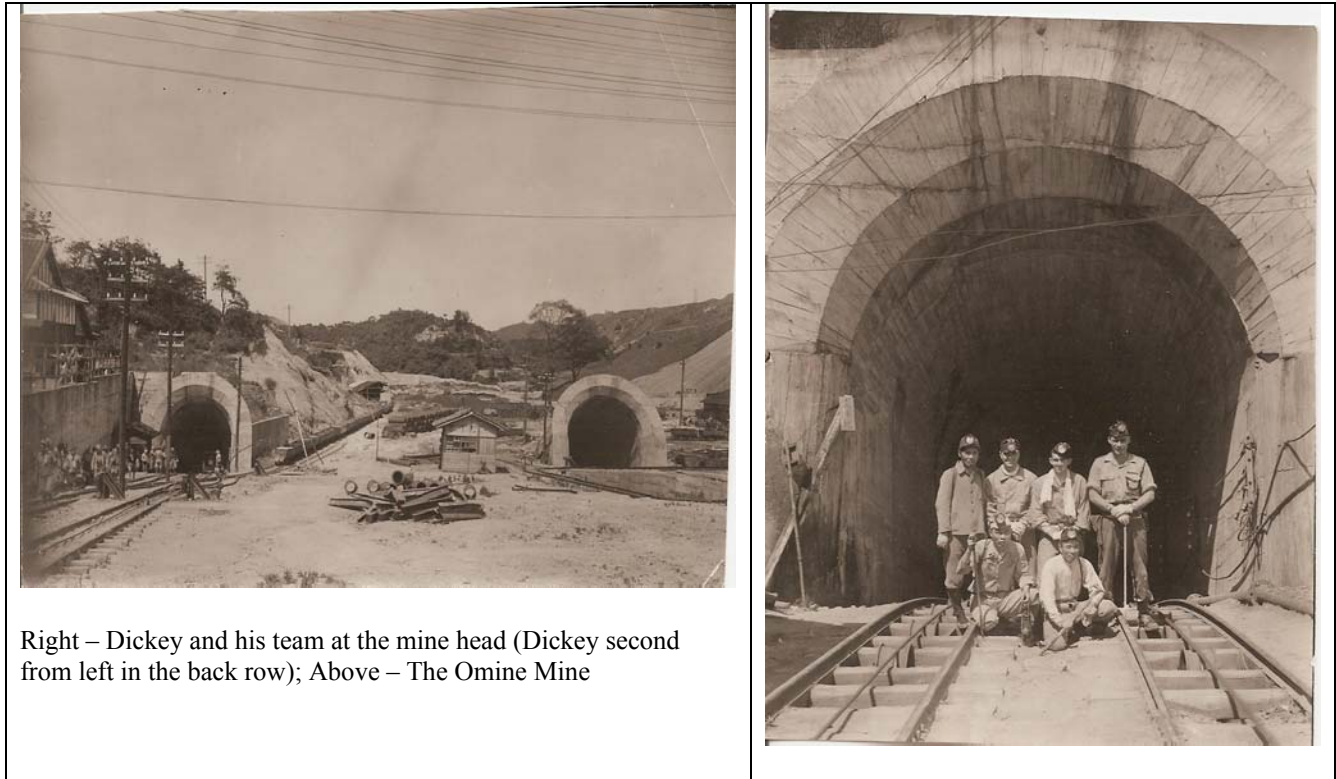
<sup>216</sup> Dickey to Mrs. W.B. Wallace, 30-31 May 1946 and AM, John Dickey Papers, Folder 5.0, Statement of Satoru Matsui, Fukuoka, Kyushu, Japan, 29 May 1946. Matsui offered up so much information that they held him overnight.

<sup>217</sup> Dickey to Mrs. W.B. Wallace, 1 June 1946.

<sup>218</sup> LAC, RG 24, Vol. 8019, TOK 2-2, Fukuoka Camp No. 5 – Omine, Report on Omine Investigation.

<sup>219</sup> Dickey to Mrs. W.B. Wallace, 1 June 1946.

<sup>220</sup> Dickey to Mrs. W.B. Wallace, 3 and 5 June 1946.



Right – Dickey and his team at the mine head (Dickey second from left in the back row); Above – The Omine Mine

**Figure 6 – Dickey’s Omine Investigation. (AM, The Dickey Papers)**

The Canadian Detachment’s investigation process was protracted, and the men sought to gather comprehensive evidence. Once they ensured a *prima facie* case was in place, the next step was to develop the charge and specifications against an individual or group of alleged war criminals. Differing from the British trials which utilized numerous charges, the American process presented a broad charge naming an individual and alleging a violation of the laws and customs of war connected to a series of specifications that alleged specific incidents of war crimes. The wording of the main charge was typically vague, providing that an individual (or group), between a set of dates while Japan was at war against the United States and its Allies, had “violat[e]d the Laws and Customs of War,” and identified a location, and an identification of the military branch with which the accused served (unless, of course, the accused was a civilian. The specifications bared the real content of the war crimes, and identified the specific date and

action (or inaction) carried out by an alleged war criminal, whether it detail a beating, torture, or something more long-term like command responsibility for allowing medical or living conditions in a POW camp to detriment POW health. These could range from one or two specific incidents to hundreds, depending on the case. Each specification alleged a separate incident, and in many cases (especially for command responsibility issues) several sub-specifications were entered in support of a main specification. When large trials such as the Camp Case in Hong Kong featured charges presented in a disorderly manner (with some charges applying some accused but not others), the specification system in Yokohama made the prosecution, defence, and commission members point directly to an incident and an individual. Since the specifications were connected directly to each accused, this reduced the possibility of unfairly sentencing an individual who was not charged with an incident but may have been connected to it alongside a co-accused.<sup>221</sup>

As a trial progressed, the specifications allowed the prosecution to identify specific incidents and provide precise evidence. The use of specifications cumulatively supported the broader charge of violations of the laws and customs of war, but allowed for the investigation of a series of incidents rather than one omnibus charge. Framing his coming approach in *USA vs Mizukoshi et al*, Oscar Orr succinctly explained their use:

We have tried to simplify these trials as much as possible by getting down to small issues, and these issues are contained in these specifications that you have heard read at some length here this morning. Each specification contains an issue, a small simple thing, and we hope that it will be simple, nothing complicated about it; and when the accused pleaded not guilty, you can assume from that that he denied what we allege in that issue; and that is all you have to decide, whether he did or didn't do the thing with which he is charged.<sup>222</sup>

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<sup>221</sup> For example, in the reduction of sentence for Saito in the Camp Case, the reviewer noted that Saito's presence at the execution of Payne and the other three Canadian POWs may have influenced his sentencing even though he was not implicated by that specific charge. See Tokunaga et al Trial, Brigadier (*illegible*), DJAG, SEALF, Singapore, to Commander, Land Forces, Hong Kong, 9 May 1947.

<sup>222</sup> *USA vs Mizukoshi et al*, 24.

Prior to the trial, the prosecutor was required to furnish the Legal Section with a case analysis that outlined the specifications with an indication of what evidence would be used for each specification as well as a general statement of facts.<sup>223</sup> The case analysis was much more complex as it required a statement of facts, as well as background on the camp, a biographical sketch of the individual, and a listing of intent to use witnesses, affidavit evidence and any other sources of evidence, linked with the specifications those items spoke to. Dickey's investigation file on Omine included penciled draft charges against individuals not brought to trial.

The men worked long hours while preparing their cases, beginning at 8am each day, and often consuming evenings and weekends to make up for the sluggishness that the oppressive Japanese heat caused at midday. In the thorough pre-trial analysis, Dickey noted that the charge and specification needed to be "drawn out with a particularity and detail" foreign to Canadian criminal or military procedure. The charges were typically abstract, but the barristers needed to write the analysis precisely and in great "length and complexity in order to avoid [sic] missing something which may prove to be essential." Since this was Dickey's first time working with specifications and such a detailed analysis, his preparations took tremendous "time[,] to say nothing of patience."<sup>224</sup>

Although the Canadians were unaccustomed to this format, Dickey adapted to the system quickly and received approval for his first case – a common trial of Kaneko Takio and Uchida Teshiharu – on 12 July. He had the rest of his cases written and approved by the end of July, "and on their way to the 8<sup>th</sup> Army with request for convening Commissions."<sup>225</sup> Although Boland also acclimatized himself quickly to the American system, Orr found it and the

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<sup>223</sup> AM, John Dickey Papers, SCAP Legal Section, Prosecution Division, Leo G. Blackstock, Chief, "Subject: Standard Operating Procedure," 12 July 1946.

<sup>224</sup> Dickey to Mrs. W.B. Wallace, 11 June 1946, see also 26 and 29 June 1946.

<sup>225</sup> Dickey to Mrs. W.B. Wallace 12 July 1946 and 27 July 1946.



concomitant pre-trial work agitating. As a seasoned lawyer Orr was “used to doing things his own way” and found “it difficult to change,” Dickey observed, while he and Boland were “not so set in [their] ways,” so it did “not make so much difference.”<sup>226</sup> An exasperated Orr commented to Ottawa:

The paper work connected with a very simple case...now weighs in the neighborhood of fifty pounds. An ordinary case requires more paper work than the preparation of a case for the Supreme Court of Canada. Trials seem to go on for anywhere from three to forty days. It must be understood that most of the evidence is on paper and that this makes for paper work. I hesitate to say that I must have more help, knowing the expense involved. I certainly could use another good stenographer with some administrative and filing experience. I do not need one of Court Reporter ability or experience, although the better the stenographer, the greater should be the output. I believe another stenographer would pay by shortening the stay of the rest of the Detachment. I repeat, however, that I do not put this matter forward as an indispensable, but certainly most desirable, if possible to comply.<sup>227</sup>

## **Review Process**

Each of the Yokohama trials was reviewed as a safeguard against excessive sentencing or prejudice against the accused. Initially, Legal Section officers carried out the review process, but a backlog of cases as early as May 1946 led to the creation of an independent Reviewing Branch with personnel specifically assigned to assess the trials.<sup>228</sup> The process originated with one reviewer, but expanded to a department of 28 individuals – mostly civilians with legal training and between 10 and 37 years’ experience.<sup>229</sup> The Reviewing Branch received trial transcripts

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<sup>226</sup> Dickey to Mrs. W.B. Wallace, 26, 29 June 1946.

<sup>227</sup> LAC, RG 24, Vol. 8018, TOK-1-2-2, Lt. Col. Oscar Orr, Tokyo, to Secretary, Department of National Defence, Ottawa, 9 July 1946.

<sup>228</sup> Eichelberger Papers, *Special Study of the Yokohama War Crimes Trials*, 5.

<sup>229</sup> Spurlock, “The Yokohama War Crimes Trials,” 436. Much of the statistical data Spurlock included in his personal account in the *American Bar Association* journal was drawn from Eichelberger Papers, *Special Study of the Yokohama War Crimes Trials*, for the review process see particularly pages 36-39.

regardless of whether the defence counsel intended to petition the finding. (No review was required for not guilty findings.)<sup>230</sup>

A reviewer would take on a case – a task ranging in time from a few days to three to four months – and thoroughly scour the record for errors prejudicial to the accused. They analysed each case according to SCAP rules of procedure and through a broader lens of international legal tradition: “the rules of land warfare, the principles of international law, and proper precedents.”<sup>231</sup> After assessing a trial, a reviewer crafted a document with a synopsis of facts, an opinion, and a recommendation. This typically included a short biographical summary of the accused: name, age, residence, marital status, education, vocation, military service and sentence. If a special finding was required, the reviewer noted the change in terminology – often a series of “excepted words” that indicated a shift in dates, an exclusion of actions, or frequently exempting a war criminal for responsibility for contributing to the death of an individual.<sup>232</sup>

The reviewer made a recommendation that approved the sentence or suggested a commutation. If they found the sentence or finding inadequate, they could not recommend an increase of sentence or the reversal of an acquittal, which posed more of an issue as the trials wore on and sentences eased.<sup>233</sup> If the reviewer noted a disservice in the courtroom, a re-trial was possible. The Eighth Army Judge Advocate then reviewed the file and assessed the review, either confirming the findings, recommending the reviewer’s suggestions, or providing an

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<sup>230</sup> *Trials of Class “B” and “C” War Criminals*, 205.

<sup>231</sup> Spurlock, “The Yokohama War Crimes Trials,” 436.

<sup>232</sup> Information about reviews has been gleaned from trial reviews. They can be found in a variety of places, as they are often (but not always) included along with trial records in the NARA, RG 331 files, and are also filed individually at NARA, RG331, SCAP, JAG, War Crimes Division, Records of Trial File, 1945-1949, UD 1865, Boxes 9671-9672 (these boxes include Case Reviews 1-72 and 84-198). The reviews are also available on microfilm as reproduced by NARA as “Reviews of the Yokohama Class B and Class C War Crimes Trials by the U.S. Eighth Army Judge Advocate 1946-1948.” Other pieces of information were added to the biographical section as the trials wore on and the need for additional information wore on. In later reviews a line was included as to whether clemency had been recommended and the dates of trial were also included.

<sup>233</sup> Spurlock, “The Yokohama War Crimes Trials,” 389.

alternative recommendation. The Commanding General (initially Lt. General Robert L. Eichelberger followed by Lt. General Walton H. Walker in the fall of 1948), as the convening authority, then reviewed the file and answered a series of questions:

1. Is the record legally sufficient to support the findings of the commission?
2. Was there prejudicial error?
3. Did the accused received [sic] a fair trial?
4. Was the accused represented by competent counsel?
5. Is the sentence excessive?
6. Is clemency indicated?
7. Was the accused sane at the time of the trial?
8. Was the accused sane at the time of the commission of the alleged offence?<sup>234</sup>

Death sentences received further review by the Theatre Judge Advocate's office in Tokyo and General MacArthur.<sup>235</sup> Of the 124 death sentences given at Yokohama, 73 were reduced to prison sentences – either by the Reviewing Branch or by MacArthur – ranging from commutation to life to a reversal and acquittal. Of the 63 life sentences, six were reduced to shorter prison terms, and 25 of the other 667 other term sentences were reduced.<sup>236</sup>

In contrast to the automatic review built into the American system, the British put the onus on the defence counsel and the accused to pursue a review. With a guilty finding, the accused had the right to petition the finding or sentence within fourteen days.<sup>237</sup> This allowed the accused and their defence counsel to highlight any inadequacies or injustices they saw in the trial, or to raise new or conflicting evidence. Initially, the GOC Land Forces, Hong Kong, reviewed proceedings, as did a member of the DJAG office of ALFSEA in Singapore. The GOC

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<sup>234</sup> *Trial of Class "B" and "C" War Criminals*, 206 as well as Eichelberger Papers, *Special Study of the Yokohama War Crimes Trials*, 37 and Spurlock, "The Yokohama War Crimes Trials," 436.

<sup>235</sup> Spurlock, "The Yokohama War Crimes Trials," 436-437.

<sup>236</sup> *Trial of Class "B" and "C" War Criminals*, 202-204.

<sup>237</sup> The trials transcripts for Tanaka Ryosaburo were reviewed by authorities at Land Forces, Hong Kong and no action was taken while the Camp Case transcript was reviewed and confirmed by Brigadier Rogers, Commander, Land Forces, Hong Kong who commuted the sentences of Tokunaga and Saito from death to life and twenty years respectively.

then had the option to review the file again before promulgating the sentence.<sup>238</sup> The officials generally dismissed petitions that did not raise new evidence or only reiterated arguments already adequately covered in the courtroom. Pritchard observes that 17% of all convicted Japanese war criminals received reduced sentences or were released, often because the trials somehow violated rules of procedure.<sup>239</sup> The reviewing officer in Singapore did not require legal training and generally accepted recommendations made by the GOC<sup>240</sup> After the third review, the convening officer confirmed the final sentence by initialling the appropriate column of the trial schedule. This review process had relevance to Canada because three of its Detachment's cases were ultimately adjusted (Inouye, Tokunaga and Saito from the Camp Case, and two from the Yabuke Case).

The Canadian Detachment's investigative and preparation experiences were exhaustive. The men brought with them a central understanding of the war criminals they were mandated to pursue and an extensive dossier of POW evidence in affidavit form. Upon arrival in Hong Kong and Japan they aligned themselves with the British and American systems and drew on extensive investigative resources gathered by the WCIT and Investigation Section respectively, as well as interrogation opportunities at Stanley and Sugamo prisons. Once the lawyers had crafted a solid foundation for their assignments they set out on investigation trips to round out their

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<sup>238</sup> The General Officer Commanding Land Forces, Hong Kong was initially Major-General Sir Francis Festing from the end of the Japanese occupation until he was replaced by Major-General Sir George Erskin in 1946. Erskin held the post until 1948 when he was replaced by Major-General Francis Matthews (1948-1949); Lt.-General Sir Francis Festing (June-September 1949); Lt.-Gen Sir Robert Mansergh (1949-1951).

<sup>239</sup> Pritchard, "The Historical Experience of British War Crimes Courts," 323.

<sup>240</sup> Occasionally the officer recommended reductions and in one case, criticised the GOC, Hong Kong for commuting a death sentence to life imprisonment. NA, WO 235/1012, Pt. 1, Tokunaga Isao, Saito Shunkichi, Tanaka Hitochi, Tsutada Itsuo and Harada Jotaro Trial [hereafter Tokunaga et al Trial], Brigadier (*illegible*), DJAG, South East Asia Land Forces, to Commander, Land Forces, Hong Kong, 9 May 1947 and same officer to AG3 GHQ SEALF, 14 July 1947. All of the cases that Puddicombe had a hand in were reviewed at ALFSEA by either a Brigadier or Colonel. R. John Pritchard, "The Gift of Clemency following British War Crimes Trials in the Far East, 1946-1948," *Criminal Law Forum* 7, no. 1 (1996): 21, especially note 17.

understanding of the camps and worksites and to gather additional evidence. Pre-trial case development was an extended process, particularly for the main-Detachment working under American rules. It required the crafting of charges, specifications, and case analysis as well as writing opening statements.

Major Puddicombe managed to position himself within the British system with more ease than the rest of his colleagues under the Americans. While they adjusted to new legal styles and seemingly endless paperwork, Puddicombe was quick to find himself in the courtroom and took on a large caseload. After less than a month in Asia, Puddicombe began his first prosecution in front of the Hong Kong War Crimes Courts. In the end, he built cases against fourteen accused over seven trials through to May 1947, in turn gaining a mastery over multiple facets of Japanese war crimes: flagrant atrocities during heat of battle, brutal privations forced on the POWs in camps by soldiers and officers, as well as the sadistic torture of civilians by members of the *Kempeitai*. Because he prosecuted such a wide array of content, I examine Puddicombe's efforts in individual chapters. Chapter three investigates his most complicated prosecutions stemming from the Battle of Hong Kong. Chapters four and five examine POW camp trials, while chapter seven deals with his additional prosecutions.

## Chapter 3

### Hong Kong – Locating Atrocity and Placing Troops: Prosecuting War Crimes under the Fog of War

*Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates.*

*Yamashita versus Styer* (1946)<sup>241</sup>

*I do not think they were killed instantly, they were all suffering from heavy wounds and calling for water, some for Mother and some for God. Instead of showing any help the Japanese throwed stones and one sentry even fired a shot into that pit.*

Chan Yam Kwong, Tanaka Trial (1947)<sup>242</sup>

*[S]uch excesses customarily occur during and immediately after a surrender, not days or weeks later.*

Historian Charles Roland (1991)<sup>243</sup>

Major Puddicombe's invasion cases proved the most uncertain and challenging, both in preparation and prosecution. The investigations were complex: affidavits were vague and reliable witnesses hard to secure. Connecting the troops of each commanding officer at the appropriate time and location of the atrocities was nearly impossible given uncertainty about how the battle had actually unfolded. These invasion trials demonstrated that findings at the Hong Kong War Crimes Courts were anything but predestined. The short period for additional preparation between the end of one trial and the beginning of the next required Puddicombe to adjust his

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<sup>241</sup> *Yamashita versus Styer*, Supreme Court of the United States, 4 February 1946, Majority Decision. This ruling can also be found in DHH, Loranger fonds, Series 3 - 16 - Gen. Tomoyuki Yamashita Trial, or as published in the appendix of A. Frank Reel, *The Case of General Yamashita* (New York: Octagon Books, 1971), 262. Passage was quoted by Puddicombe in Tanaka Trial, Closing Address by Prosecutor, p 19.

<sup>242</sup> Tanaka Trial, 60 – evidence from examination of Chan Yam Kwong regarding the treatment of HKVDC soldiers after their surrender near Lye Mun Barracks.

<sup>243</sup> Roland, "Allied POWs, Japanese Captors and the Geneva Convention," 92.

approach out in the field and inside the courtroom, revealing the continuing learning curve that guided prosecutors in the Pacific.

The Winnipeg Grenadiers and Royal Rifles of Canada faced the quick and brutal Japanese assault on Hong Kong in late 1941. The troops of the 38<sup>th</sup> Division of the IJA attacked the fringes of the colony on 8 December, invaded the Island on 17/18 December, and Hong Kong surrendered a week later. Japanese commanding officers, cruelly indifferent to their soldiers' actions, permitted their troops to kill captured soldiers, to rape nurses, and to maintain POWs in the line of fire. Amongst the mountains and valleys of Hong Kong, Japanese soldiers treated Canadian captives reprehensibly: beating, binding, and even murdering them outright. The POWs repatriated to Canada after four years offered vivid recollections of the atrocities during and immediately after of the battle, leaving no question that the Japanese had committed war crimes. Under the fog of war and in the confusion of battle, however, substantiating the recollections with sound evidence proved extremely challenging when two of the commanding officers of the invading Japanese troops were brought to trial in the spring of 1947.

British authorities assigned Major Puddicombe to prosecute two of the three invasion trials in Hong Kong: those against Major-General Shoji Toshishige (230<sup>th</sup>) and Major-General Tanaka Ryosaburo (229<sup>th</sup>).<sup>244</sup> There was no question that the atrocities took place, but a lack of

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<sup>244</sup> A third invasion trial took place at the Hong Kong War Crimes Courts in January and February 1948. Lieutenant-General Ito Takeo was found guilty and received a twelve year sentence for allowing his troops to bayonet and kill captured Allied soldiers. There was a fair amount of crossover from the Tanaka Trial to the Ito Trial as several highlighted incidents took place around Repulse Bay and Salesian Mission, but he was also brought in on particulars such as the incidents of rape and massacre at St. Stephen's College and the Jockey Club at the Happy Valley Race Track. See NA, WO 235/1107, Ito Takeo Trial. Alongside Shoji and Tanaka, Major-General Doi Teihichi (228<sup>th</sup>) also commanded troops during the invasion of Hong Kong, but was never captured following the war. His eventual fate is unclear, with one source noting that he died on 15 May 1943, but another claims that he eventually returned to Japan and became a Buddhist priest. DHH, 593. (D35), Memo, Charles P. Stacey, Memo of interview with Maj. GB Puddicombe 11 Jul 47 re. prosecution of Jap officers accused of war crimes; LAC, RG 24, Vol. 8019, TOK-5-4, Lt. Col. Oscar Orr, Tokyo, to Lt. Col. Rudsill, SCAP Legal Section Investigation Section, Tokyo, 25 May 1946, and DHH, 593.013 (D7), Battle Progress Report of 228 Japanese Inf Regt, Hong Kong (Narrative by Colonel Doi), September 1952. The Commander of the 23<sup>rd</sup> Army was also tried for war crimes. The trial of Sakai Takashi took place in Nanking by the Chinese War Crimes Military Tribunal. Sakai was found guilty

evidence and questions about the battle narrative made it nearly impossible to connect the crimes to a specific group of soldiers. A not guilty finding in the first trial forced Puddicombe to make adjustments in his approach. Many of the alleged atrocities took place at the isolated Wong Nei Chong Gap where multiple regiments converged. The trail of destruction was plainly evident, but war crime investigators faced a major challenge in linking the atrocities to regimental soldiers or follow-up troops. The best eye-witnesses available to the prosecution – Allied participants in the battle who filed affidavits – were better suited to identify location rather than a Japanese regiment or company. Unlike the POW camp trials where the men had long-term relationships with their tormentors, the invasion trials were predicated on a much more tenuous reconstruction of short-term events. Lacking the clearly articulated statements and the documentation that came from the POW camps, the fog of war compounded problems for the prosecution seeking to establish command responsibility for war crimes.

The invasion trial charges revolved around the concept of command responsibility – a relatively new convention at the time of the Shoji and Tanaka trials. Neither commanding officer sat accused of personally committing war crimes, but of allowing the atrocities to take place. The idea that a commanding officer is responsible for the actions of his troops is a traditional military axiom, but the concept that he should be held criminally responsible for not preventing or punishing his subordinates was a controversial idea developed through the Hague Convention of 1907 and applied initially in Leipzig after the First World War. The precedent for command responsibility was solidified in *USA vs Yamashita* trial from October to December

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for his involvement in a war of aggression (a Class ‘A’ War Crime, a crime against peace) as well as crimes against humanity and crimes against peace for his command responsibility role in the murder of POWs, wounded soldiers and non-combatants as well as the rape, plunder and deportation of civilians, involvement in cruel punishment and torture and destruction of property. Sakai was sentenced to death. See UNWCC, “Trial of Takashi Sakai,” *Law Reports of War Criminals, Volume III* (London: His Majesty’s Stationary Office, 1948) and Piccigallo, *The Japanese on Trial*, 164.



1945 and was expanded upon at the *Abbaye d'Ardenne* (1945-46), *High Command* (1947-48) and *Hostages* (1947-48) cases in Europe. Allied trials throughout the Pacific also applied this concept frequently.

*USA vs Yamashita* applied command responsibility beyond its traditional function at the field officer level to a top ranking general. Japanese General Yamashita Tomoyuki (dubbed “the Tiger of Malaya” and “the Beast of Bataan”) was responsible for the actions of 30 000 soldiers during the invasions and occupation of Malaya and Singapore and then 260 000 troops as commander of the Fourteenth Area Army during the defence of the Philippines at the end of the Pacific War. The international media, contemporary legal experts, and two dissenting United States Supreme Court judges criticized the haste in which his trial took place, but timing of the trial and its findings allowed subsequent prosecutors to cite it as an important precedent.<sup>245</sup> Another core critique related to the exorbitantly high expectation that the Yamashita Standard placed on a commanding officer to prevent, curtail, or punish actions that he may or may not have had any means of knowing about. Tanaka Ryosaburo argued that he had been cut off from his troops and that communication systems had failed. Trials focusing on incidents during battle present substantial problems. How tenable is it to try to assign responsibility to people largely just struggling to stay alive? Were atrocities committed during battle carried out systematically or isolated occurrences in the ‘heat of the battle?’ Cultural barriers dividing soldiers meant that the definitive identification of the offending troops, and thus the commanding officer, proved nearly impossible.

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<sup>245</sup> Piccigallo, *The Japanese on Trial*, 55, 56.

## Shoji Trial

The WCIS identified Major-General Shoji Toshishige as a priority objective based on allegations that as commander of the 230<sup>th</sup> Infantry Regiment he had allowed his troops to bayonet and murder Canadian and other Allied soldiers at the point of capitulation and in the immediate aftermath.<sup>246</sup> In Hong Kong, Puddicombe travelled the battlefield, following the route of the Shoji's men as best he could, but the weight of his evidence for the Shoji Trial when it came to trial came from Canadian affidavits collected before the Detachment left Ottawa. In the build-up to the trial, he, Hogg and the WCIT all understood that their evidence might not be enough to directly connect Shoji's men to the atrocities, or even to the locations where they were committed.<sup>247</sup>

Puddicombe's affidavits were graphic and described violent excesses committed by invading Japanese troops, but offered little in terms of identification outside of generalities about where the troops had been posted. Statements disclosing an inability to identify their abuses were common:

- The Japanese troops, I do not know the regiment, stormed the position.<sup>248</sup>
- I could not identify the Japanese soldiers responsible for this and I do not know the name of their unit.<sup>249</sup>
- I do not know the names of any of the Japanese involved all I know is that they belonged to the Japanese Gorilla [sic] Forces.<sup>250</sup>
- I do not know any of the Japanese soldiers involved.<sup>251</sup>
- I do not know the names or descriptions of the Japs who committed these atrocities on me and the other fellows when we were first taken prisoners of war in 1941.<sup>252</sup>

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<sup>246</sup> Puddicombe fonds, Vol. 1-3, War Crimes Investigation Section, NDHQ, "Notes of conversation with officers going to districts to assist AJAGs in preparation of depositions from repatriates," Ottawa, 8 January 1946.

<sup>247</sup> Puddicombe fonds, Vol. 2-15, Major Puddicombe, Hong Kong to Secretary, Army HQ, Ottawa, 26 February 1947.

<sup>248</sup> Shoji Trial, Exhibit H.

<sup>249</sup> Shoji Trial, Exhibit M.

<sup>250</sup> Shoji Trial, Exhibit Q.

<sup>251</sup> Shoji Trial, Exhibit R.

<sup>252</sup> Shoji Trial, Exhibit O.

Puddicombe had plenty to substantiate the volume and barbarity of the war crimes, but little linking the actions to any unit.

When the trial began on 10 March 1947, Puddicombe presented a narrative that followed the capture and maltreatment of members of the Winnipeg Grenadiers and HKVDC around Wong Nei Chong Gap between 17-26 December, as well as the mistreatment of St. John's Ambulance and RAMC Advanced Dressing Station staff between 18-20 December. As a defence tactic, Shoji plead not guilty and neither he nor his defence counsel offered a sustained defence or many words to the Court. He opted not to take the stand, and relied on two statements he had given. His defence counsel, Takano Junjiro, rather than entering a full defence, entered a plea of 'no case to answer' which emphasized the weakness of the Puddicombe's case placing Shoji's troops at the alleged atrocities and discounted the possibility that Tanaka's, Doi's or supplemental follow-up troops could have been at the specified locations at the alleged times. The majority of the Puddicombe's witnesses testified to the location of the fighting and alleged atrocities, or provided accounts of what they had seen take place after capture. Puddicombe accurately placed the location of the atrocities and much of the battle (he had the court trek out to Wong Nei Chong Gap and Stanley Gap Road to inspect the sites), but he had difficulties placing Shoji's troops at any of the locations in question. This posed problems as the trial wore on.

The crux of Puddicombe's case began with events on 19 December, when members of the West Brigade (particularly members of the Winnipeg Grenadiers and HKVDC) began to surrender. After laying down their arms, between 20-30 members of the West Brigade who had defended "Q" Store at Stanley Gap were "hit with steel helmets, rifle butts, sword scabbards and entrenching tools" as they left the store and were "lined up and tied with their hands behind their

backs.”<sup>253</sup> During inspection, Japanese soldiers bayoneted four of these individuals without provocation. When the POWs marched back past that point the following day, the four bodies still lay in pools of blood. Prosecution witness Edward Charles Fincher, Company Quartermaster Sergeant attached to No. 3 Company of HKVDC, related the incident as follows:

I was captured with about 20 others late in the afternoon of December 19. We were assembled on the roadside and an officer was going through my pockets at the time. He was searching me, and Japanese troops were moving up the other side of the road. One Japanese soldier with a camouflage net over him caught sight of us and in English accused us of killing too many Japanese. He came across the road with his rifle lowered and made for some of the fellows at the back of me. I heard slight groans but did not see the actual bayonetting of the three men. They were undoubtedly killed by this same soldier.<sup>254</sup>

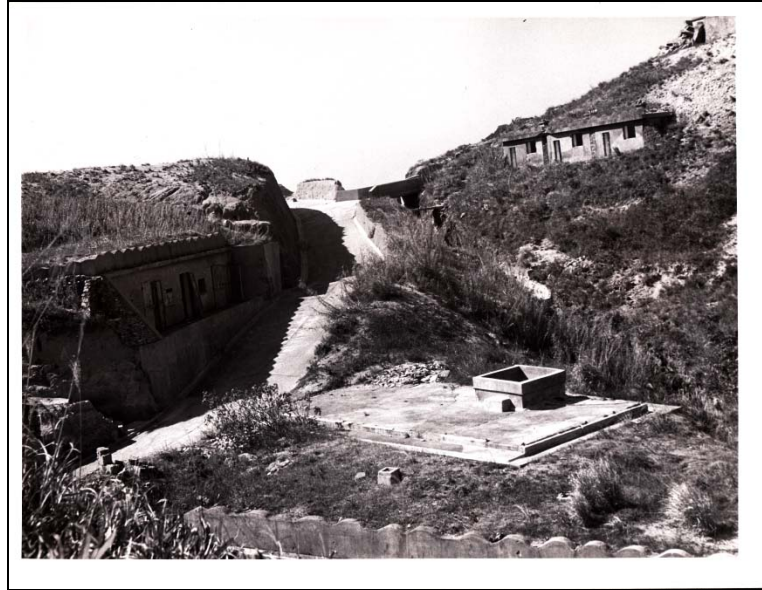
The POWs subsequently were marched to a nearby hut which had previously been used as a mess hall near Stanley Gap Road. The “Stanley Gap Road Incident” between 19-20 December was a main focus of the trial. Roughly 200 members of West Brigade were bound together, taken to the roadside hut, and crammed inside. Prisoners had no room to lie down, forcing some to lie on top of the wounded. They were left in the hut overnight, without water, medical supplies or bandages.<sup>255</sup>

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<sup>253</sup> Shoji Trial, Abstract of Evidence.

<sup>254</sup> Shoji Trial, 28. C.P. Stacey notes in *Six Years of War* that the Japanese, including Shoji, were shocked at the pure numbers of casualties they took in the early fighting against the British defences at Hong Kong. Shoji sent an apology to the divisional commander (Major-General Sano) on 20 December for having incurred extensive casualties in the area of Wong Nei Chong Gap on 19 December, in the area of 800. Shoji’s 3<sup>rd</sup> Battalion absorbed serious casualties, including their commander. Stacey, *Six Years of War*, 482. The “Q” Store incident was also corroborated by James Risley Winyard of the HKVDC, see Shoji Trial, 37.

<sup>255</sup> Shoji Trial, Exhibit H and 29.



**Figure 7 – “This road leads off the Stanley Gap Road up to Jardine’s Lookout. The cement square is the flooring of the mess hut in which from 80-200 prisoners were herded, 19-20 Dec 41. The hut was hit by our own fire. Many prisoners were killed.” (DHH, 593. (D36), Hong Kong, C 89)**

Part III, Article 7 of the Geneva Convention, 1929 stipulates that as “soon as possible after their capture, prisoners of war shall be evacuated to depots sufficiently removed from the fighting zone for them to be out of danger.”<sup>256</sup> The members of West Brigade were not afforded these rights. The following morning the hut was hit with British mortar fire, with at least one round crashing through the roof. Japanese sentries refused to allow the POWs to leave the hut, bayoneting and killing any who breeched the doorway trying to get to safety.<sup>257</sup>

Winnipeg Grenadier Sgt. Thomas Marsh’s affidavit was read in front of the court and described the incident:

The place was so crowded there was no place to lie down and in fact some of the wounded were stood on. I was lying on a Dead Canadian and beneath him was a living Chinaman who was trying to get up. I tried to help him get up but the crush was so great it was impossible to do so. Shortly after this two trench mortar shells hit the building, killing a third of the prisoners in this building and started a panic.

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<sup>256</sup> Convention relative to the Treatment of Prisoners of War, Geneva, 27 July 1929, Part III, Article 7. Article 7 also stipulates that only prisoners whose injuries would cause greater risks to their safety should be kept temporarily in danger zones, but that prisoners should not be unnecessarily exposed to danger while awaiting evacuation.

<sup>257</sup> Shoji Trial, Abstract of Evidence and Exhibit H.

Those who could tried to get out at the door and these were bayoneted to death by the Japanese sentries.<sup>258</sup>

Several other Winnipeg Grenadiers confirmed that they were held in the hut, about 15' by 20' in size, for about eighteen hours. The sentries threatened the prisoners who were demanding water at gunpoint throughout the night.<sup>259</sup>

The Japanese marched the surviving prisoners across the island to North Point Camp, the main headquarters for POWs on Hong Kong Island. The men marched in columns with their hands tied behind their backs and together in groups of seven (some affidavits say 30) to the Wong Nei Chong Gap area. According to Grenadier Marsh, the Japanese then forced them on

a seven or eight mile march, uphill and downhill. There was no food nor water during the march. A lot of the men were badly wounded. I personally had been shot through the head, the bullet entering in front of my right ear and came out just in front of my left ear. I had a bullet through my right leg and a broken arm.<sup>260</sup>

After marching about a mile, the Japanese soldiers forced the men to remove their boots and walk barefoot over gravel and stones for the rest of the journey. The soldiers also looted any valuables that the prisoners could not conceal.<sup>261</sup>

Only those POWs who were able to walk under their own power made the trek. No one left in the hut was ever seen or heard from again.<sup>262</sup> Several affidavits noted that any wounded men who fell out of line were cut loose and bayoneted to death. This fate befell at least one Canadian soldier,<sup>263</sup> and was described by Corporal Sydney Hiscox, WG, in an affidavit:

On the way to North Point, Pte. Wesley Kilfoyle, Winnipeg Grenadier, was bayoneted by one of the Japanese sentries and then rolled over the embankment [sic]. Pte. Kilfoyle some time previously had been wounded in the stomach and we had only been marching about three-quarters of an hour when he collapsed and went down. I was one of the

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<sup>258</sup> Shoji Trial, Exhibit H.

<sup>259</sup> Shoji Trial, Exhibits J, M, N, P, Q, R, S and T.

<sup>260</sup> Shoji Trial, Exhibit H.

<sup>261</sup> Shoji Trial, Exhibit V.

<sup>262</sup> Shoji Trial, Exhibits M,

<sup>263</sup> Shoji Trial, Exhibits H, J.

men chained with Kilfoyle, he being about third from the front and I was about the seventh. The two prisoners next to Kilfoyle assisted him along the road for about another ten minutes when he collapsed again. This time the...Japanese sentry cut him loose from the chain, bayoneted him and rolled him over the edge of a steep embankment [sic]. I heard Kilfoyle scream as he went down the side of the embankment [sic]. I never saw Kilfoyle again. This Japanese sentry was not one of the Artillery Unit previously mentioned. I do not know what Unit he belonged to.”<sup>264</sup>

The trek took about one day, but none of the POWs who produced affidavits could identify which Japanese unit or regiment had been in charge.<sup>265</sup>

The final series of atrocities that Puddicombe outlined in evidence related to the bayonetting and shooting of personnel manning an Advanced Dressing Station. Although these men wore full medical kit, including Red Cross Brassards, the Japanese troops killed the members of the St. John’s Ambulance Brigade as soon as they exited the station to surrender. A group of RAMC held out in the station for an extra day and, attempting to surrender, improvised a Red Cross flag with an attached note proclaiming that they were Medics and unarmed. When they slid the note outside the building, the Japanese unleashed a barrage of short range fire. When the RAMC members finally exited they were beaten and bound, and their Red Cross brassards torn off.<sup>266</sup>

The biggest prosecutorial hurdle that Puddicombe faced in the trial was the lack of indisputable evidence clearly tying Shoji’s troops to the atrocities, or placing them decisively in the locations in question at the appropriate times. The Shoji Butai was in Wong Nei Chong Gap during the period under examination, but questions abounded because three Japanese regiments used the region as a rendezvous point. Puddicome could never fully discredit the idea that the atrocities may have been committed by clean up troops rather than the infantry. In the courtroom, Puddicombe could not untangle the uncertainty and crossover that characterized the

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<sup>264</sup> Shoji Trial, Exhibit P.

<sup>265</sup> Shoji Trial, Exhibit Q.

<sup>266</sup> Shoji Trial, Exhibit C1.

battle in the Wong Nei Chong Gap. POW affidavits described abuses in great detail but failed to inculcate Shoji's troops. Similarly, his witnesses provided region-specific descriptions but failed to identify which regiment had captured or ill-treated them.

With little to directly connect Shoji's troops to the crimes, Puddicombe tried to situate the atrocities geographically in the different sections of Wong Nei Chong Gap. If he could place the atrocity in the path of the Shoji Butai, there was a chance that he could convince the Court that they were carried out by Shoji's men. In particular, he attempted to get his witnesses to place the Canadian HQ and the hut involved in the Stanley Gap Road Incident. He encouraged the HKVDC witnesses to lay out the exact location of their positions and describe the geography of the region.<sup>267</sup> Puddicombe also presented photographs and maps so that each witness could provide the court with an exact sense of where they were and where war crimes took place.<sup>268</sup> Puddicombe led the entire court to Wong Nei Chong Gap and along the Stanley Gap Road, recalling several witnesses to identify specific locations such as pill-boxes and the hut in which they were interned. This pinpointed the atrocities, but did little to connect Shoji's men to them.

Puddicombe's weakness was defence attorney Takano Junjiro's strength. During his cross-examinations, Takano did not delve deeply into the questions of whether each incident had taken place. He focused on general location or abuse specific questions and then asked the witness questions about whether they could identify the troops that captured or abused them. For example, Takano asked Zimmern of the HKVDC:

Q. The Japanese soldiers that assaulted the soldiers that surrendered, did they have any special markings or not, do you remember?

A. They always had a white tag here (left chest). Besides the camouflage I could not recognize any special markings.

Q. Can you remember what the soldiers wore on their heads?

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<sup>267</sup> For example, Shoji Trial, 27.

<sup>268</sup> Shoji Trial, 4, 50-52 and Exhibit E, F and A1. Page 44 of the trial transcript is a good example of the questions Puddicombe asked surrounding the pictures, getting witness Zimmern to identify the locations in each photograph.



A. Helmets, generally camouflaged with branches and brush wood.<sup>269</sup>

These answers were typically vague, failing to link the Japanese soldiers or officers to any particular unit.

Takano exploited this ambiguity. Shoji's statement described severe cross-over, confusion, and miscommunication amongst the Doi and Shoji regiments around Five Junction Road. Shoji provided a basic overview of his regiment's movements from landing through to January 1942, but was scant on the specific details.<sup>270</sup> He claimed the areas were subjected to "confused attacking" from his men, the Doi Butai, the Iwabuchi Butai as well as a platoon of the Tanaka Butai and artillery fire directed from the Divisional Command.<sup>271</sup> Shoji identified various locations where his position progressed throughout the battle, overlaying them onto a map of Hong Kong which demonstrates the Shoji Regiment achieving their basic objectives – driving toward Victoria via Wong Nei Chong Gap and Mount Nicholson.<sup>272</sup>

Shoji knew that his men captured the buildings around the Canadian HQ defended by Lawson. He had read the inscription claiming that Okada, a platoon leader of 3<sup>rd</sup> Brigade, 230<sup>th</sup> Regiment, had taken the area, and claimed that only his men took POWs in the Wong Nei Chong Gap area. Thirty-seven were sent, unbound, to Divisional HQ.<sup>273</sup> Shoji claimed to have laid out the following instructions before his soldiers marched any prisoners:

1. Any cases needing attention to be taken to hospital, serious cases to have first consideration and prisoners were not to be ill-treated.
2. A guard to be placed at head and rear of column.

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<sup>269</sup> Shoji Trial, 47.

<sup>270</sup> Shoji attributed the vagueness due to the document being "written without any ref material. The incidents occurred over 5 years ago and my mental powers have deteriorated as a result of sickness incurred at GUADALCANAL operations, and as a result the dates, unit positions, strength and other details cannot be absolutely certain. However, it is to the best of my ability true and I hope there are no mistakes." See Shoji Trial, Exhibit Z. After serving in Hong Kong, Shoji was involved in the operations at Batavia (Djakarta) and Guadalcanal, see *Singapore Free Press*, 29 August 1947.

<sup>271</sup> *Ibid.*

<sup>272</sup> Shoji Trial, Exhibits Y and A1.

<sup>273</sup> Shoji Trial, Exhibit Y.

3. Prisoners to be handed over only to Div. H.Q.
4. Receipt to be obtained for the prisoners.<sup>274</sup>

He insisted that he never lost contact with his troops and knew where his men were throughout the battle.

Takano entered a submission of ‘no case to answer’ on the final day of the trial, simply claiming that he had no need to present a defence. The prosecution had to prove “that the accused was concerned in the ill-treatment of the prisoners in the Wongneichong Gap area between December 17 and 26, 1941.”<sup>275</sup> Puddicombe had proven ill-treatment in that region during those dates, but Takano argued that he needed to prove that the culprits fell under the Shoji’s command.<sup>276</sup> Takano systematically reviewed each of the alleged incidents, asking the Court if Puddicombe had sufficiently connected Shoji’s troops to them.<sup>277</sup>

Puddicombe counter-argued that the burden of proof should fall to the defence after the prosecution laid out a *prima facie* case. He demonstrated that an offence had taken place and connected the accused to that offence.<sup>278</sup> Puddicombe cited the *Manual of Military Law*, stating

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<sup>274</sup> Shoji Trial, Exhibit Y.

<sup>275</sup> Shoji Trial, Exhibit D1.

<sup>276</sup> *Ibid.*

<sup>277</sup> Similar questions regarding troop cross-over and regimental territory arose early in the battle on the Mainland. One example took place when personnel from the Doi Butai crossed into Shoji’s territory at Gin Drinkers Line and attacked the Royal Scots pre-emptively. The area around Shing Mun Redoubt, an important sector and one of the main Japanese objectives, fell within the boundaries of General Shoji’s attack plan. According to C.P. Stacey, Colonel Doi had asked for permission to exploit any opportunities he saw while exploring the area around Shing Mun. Assuming that the British troops were not prepared for an early attack, Doi chose to send his troops across into Shoji’s area and engaged the Royal Scots at the Redoubt. Although the Doi Regiment overtook the Scots, his superiors ordered that he and his men fall back as the Redoubt was in Shoji’s territory. Doi declined the withdraw order, and eventually got approval from his superiors to remain in the area. See Stacey, *Six Years of War*, 465, 467. Lindsay credits Doi’s Regiment with capturing Shing Mun Redoubt, but notes that Doi was being tempted to attack the Redoubt but it lay firmly in Shoji’s sector. Lindsay notes, “[i]n the Japanese army, orders, once issued, had to be rigidly obeyed forthwith; there was no flexibility, or opportunity for commanders to use their discretion.” He offers no explanation why then, Doi was able to take the Redoubt in spite of its location. Stacey also notes confusion on the Island side, with both Shoji and Doi’s regiments claiming the capture of Jardine’s Lookout. Oliver Lindsay, *The Battle for Hong Kong, 1941-1945: Hostage to Fortune* (Montreal & Kingston: McGill-Queen’s University Press, 2006), 73. This crossover is emphasized in Doi’s battle narrative at DHH, see 593.013 (D7), Battle Progress Report of 228 Japanese Inf Regt, Hong Kong (Narrative by Colonel Doi), September 1952. The idea of an officer ignoring orders is unusual in the IJA.

<sup>278</sup> Shoji Trial, 110.

that “he who alleges a fact must prove it, whether the allegation is couched in affirmative or negative terms. It follows that it is incumbent on the prosecution to give evidence showing the commission of the offence and connecting the accused therewith.”<sup>279</sup> Puddicombe alleged that if Takano chose not to enter a defence, the evidence of the atrocities and their location was enough for the Court to find the accused guilty.<sup>280</sup> He failed to convince the court.

The Court closed for ninety minutes to deliberate on Major-General Shoji’s trial fate. Considering both the prosecution’s case and the defence’s submission of no case to answer, the Court concurred with the latter and found Shoji not guilty.<sup>281</sup> *The China Mail* reported on the result, reproducing verbatim the submission by Takano and Puddicombe’s reply. Shoji, who had sat solemnly with his eyes closed during his counsel’s submission, stood with the announcement of his verdict. After a few moments “engrossed in his own thoughts,”<sup>282</sup> he turned, bowed to Takano, and then rushed to grasp the hand of Major Puddicombe. Shoji then walked around shaking hands with everyone in the courtroom.<sup>283</sup>

Outcomes were not foregone conclusions at the Hong Kong War Crimes Courts, and Shoji’s fate clearly repudiates any idea that victor’s justice dictated guilty verdicts in all war crimes proceedings. In short, Puddicombe’s case was not strong enough to secure a guilty finding. This experience forced Puddicombe to adjust his preparation for the impending Tanaka Trial. Yet the lawyer harboured no hard feelings from his unsuccessful effort, acknowledging later that he was fond of Shoji and respected him as a soldier. He considered him a real fighter

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<sup>279</sup> Shoji Trial, 110. See: *Extracts From Manual of Military Law, 1929: Reprinted for use in the Canadian Army* (Ottawa: King’s Printer, 1941), 72.

<sup>280</sup> Shoji Trial, Prosecution Closing Address.

<sup>281</sup> Shoji Trial, 115.

<sup>282</sup> *The China Mail*, 18 March 1947.

<sup>283</sup> *The China Mail*, 18 March 1947. The front page piece notes somewhat comically that Shoji’s handshake with Puddicombe “proved the initial movement in a hand-shaking campaign. The 57-year-old Japanese Major-General then swept round the Courtroom with two surprised guards from the Devonshire Regiment hot on his heels, scattering embarrassed Chinese spectators at his approach as he proceeded to shake every hand within reach, and disappeared into the Court’s Chambers.”

and noted in a speech after returning to Canada that Shoji was “a merry fellow, popular with his guards and fellow prisoners,” and he “couldn’t feel sorry when the court found him “not guilty.”<sup>284</sup>

## **The Tanaka Trial**

Two days following the Shoji finding, Puddicombe set out with Major-General Tanaka and spent a total of five days plodding over the battlefields, taking photographs, getting a sense of the landscape, and developing a battle narrative. The lawyer had invested little time in the field before the Shoji Trial and more than made up for it in the lead up to the Tanaka Trial. Puddicombe spent the first three days with Tanaka familiarizing himself with the relevant terrain: 19 March at Lye Mun and Sau Ki Wan where Tanaka and his two battalions landed; 20 March from Sau Ki Wan, following his entire route through to Repulse Bay; and 21 March at Deep Water Bay. Puddicombe thought highly of Tanaka’s soldierly qualities and was impressed with his troops’ accomplishments over such tough terrain:

Tanaka was pretty much of a gentleman, too. I asked him to guide me over his battle route, which he was glad to do. As I have mentioned before, Hongkong is extremely mountainous. We started at the waterfront, one fine morning in April, last and went straight up the side of Mount Parker... We carried with us only some sandwiches field glasses and a thermos or so. It was a very arduous climb that fine morning. But the last time Tanaka had done it had had been on the night of the 18<sup>th</sup>-19<sup>th</sup> December, 1941. He and his troops had carried full equipment plus three days rations. They had had no guides. Whatever else he and those under him had done, you had to credit him for that performance.<sup>285</sup>

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<sup>284</sup> Puddicombe fonds, Vol. 2-31, Address to 60<sup>th</sup> Branch, Canadian Legion, B.R.S.L., 17 October 1947. An Australian court in Singapore later tried Shoji for atrocities committed against Australian and other Allied troops in the area around Batavia (Djakarta), see *Sydney Morning Herald*, 30 August 1947.

<sup>285</sup> Puddicombe fonds, Vol. 2-31, Address to 60<sup>th</sup> Branch, Canadian Legion, B.R.S.L., 17 October 1947.

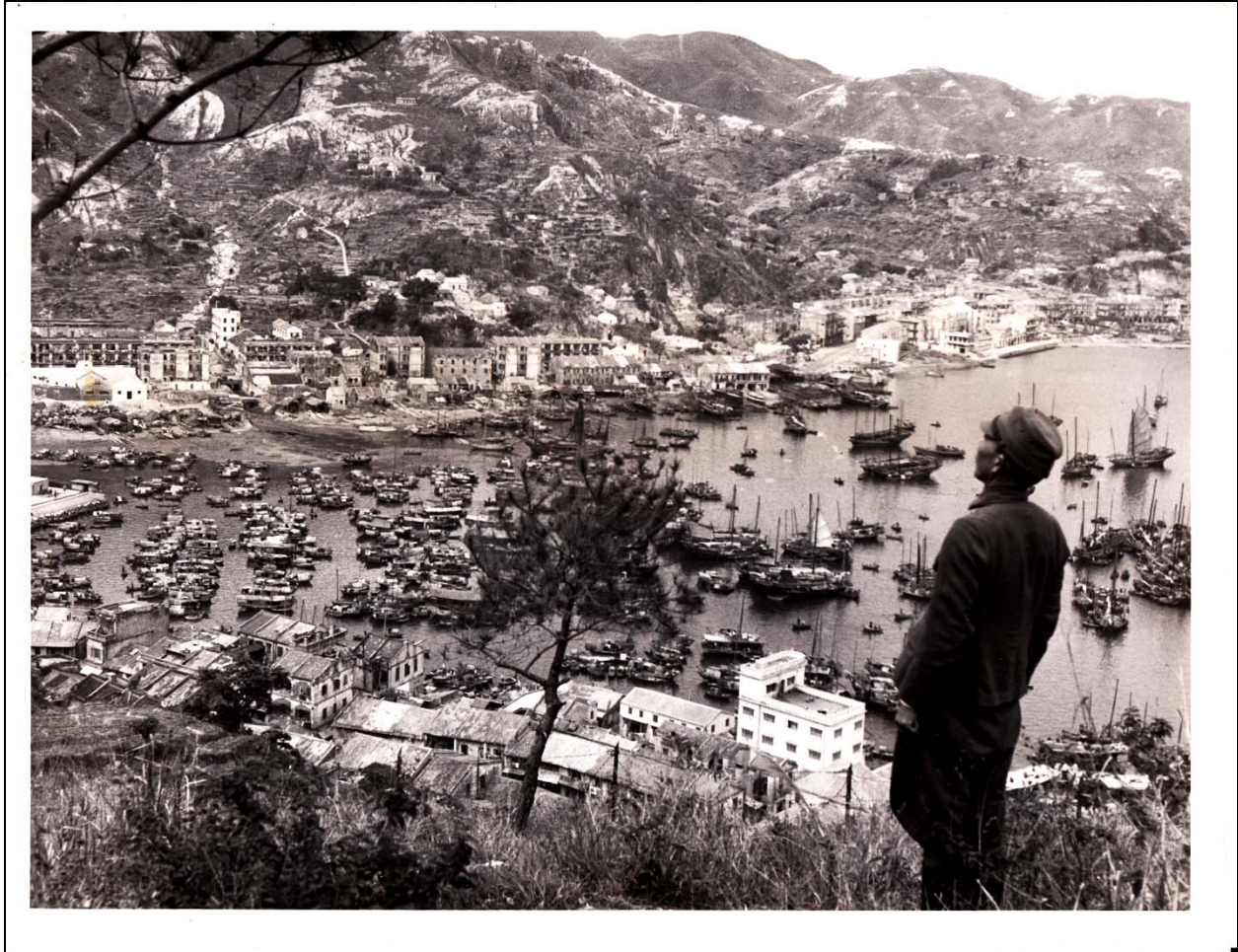
Puddicombe spent another two days touring key locations around Repulse Bay with several of his witnesses, including Colonel Lindsay Tasman Ride, Hong Kong Field Ambulance, and British Army Aid Group (BAAG).<sup>286</sup>

Through these field investigations Puddicombe secured a better understanding of the pattern and routes of Tanaka's 229<sup>th</sup> than he had developed for Shoji's 230<sup>th</sup> – knowledge that provided him with more confidence leading into the trial. Rather than relying mainly on affidavits as he had during in the Shoji Trial, Puddicombe would bombard the Court with ordinance maps, photographs of locations and remains. Puddicombe entered the Tanaka Butai symbol into evidence along with a solid identification so he could have witnesses identify the marks.<sup>287</sup> He prepared to put Tanaka's troops into the locations where the atrocities had been committed, thus avoiding the pitfall of his previous experience in the courtroom.

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<sup>286</sup> Puddicombe fonds, Vol. 1-2, entries for 19, 20, 21, 24 and 25 March 1947.

<sup>287</sup> Tanaka Trial, Exhibit F1, G1 and 125.



**Figure 8 – “Sau Ki Wan where the Tanaka Butai landed the night of 18-19 Dec 41. Figure in foreground is Tanaka himself, taken 19 Mar 47 from Lye Mun Barracks, Sai Wan hill.” (DHH, 593 (D29), Photographs, Hong Kong Area, Officers interned, etc. (also Col Tokunaga, Comdt Sham Shui Po PW Camp), D 69, PMR 79-164.)**

The WCIT advertised in local Hong Kong newspapers looking for individuals that would be able to speak to the killing of captives by Tanaka’s men, and Puddicombe secured multiple local witnesses in this fashion.<sup>288</sup> The sub-Detachment also imported an important witness from Montreal. Major (Doctor) S.M. Banfill, RCAMC, testified that he heard there was a general

<sup>288</sup> Puddicombe fonds, Vol. 2-18, Martin H.C. Tso, Canton, to Officer in Charge, War Crimes Investigation Team, Hong Kong, 31 March 1947. The *South China Morning Post* advertisement that Tso responded to asked for witnesses that could provide information about the Japanese attack at Repulse Bay (19-23 December 1941), Eucliffe, Repulse Bay (19-23 December 1941) as well as the bayonetting of wounded and captives at Lyon Light (18-25 December 1941), at Over Bay or The Ridge (19-24 December 1941) and the killing of captives and wounded at Sai Wan Hill and Salesian Mission (18-19 December 1941). See clipping in Puddicombe fonds, 2-18, “Trial of Major General Tanaka Ryosaburo,” 25 March 1947. Tso was called as a witness in the Tanaka Trial: see Tanaka Trial, 63.

order to kill captured troops.<sup>289</sup> War Crimes Courts had a propensity to “discount heavily affidavit evidence because witness not subject to cross/examination,”<sup>290</sup> so bringing in a credible witness enhanced the case. The Canadian military thus invested great energy to get Banfill to Hong Kong: McGill University initially refused the request that Banfill be allowed to leave his teaching position mid-term, but Defence Minister Brooke Claxton’s personal efforts led the university administrators to change their mind.<sup>291</sup>

Tanaka was 53 years old at the time of his trial, having put in more than 30 years of service with the IJA. He had served in Japan, Manchuria, Hong Kong, and New Guinea.<sup>292</sup> His landing party attacked Hong Kong at Sau Ki Wan on 18 December with the objective of reaching converging with the other regiments at Wong Nei Chong Gap and carrying on to High West.<sup>293</sup> The regiment proceeded from Sau Ki Wan over Mount Parker, through Stanley and Wong Nei Chong Gaps, beyond ‘The Ridge’ and Castle Eucliffe to Repulse Bay and Deep Water Bay finally clearing Brick Hill and Shou Shan Hill by 25 December.<sup>294</sup>

The Tanaka Trial took place over sixteen sessions from 8 April to 22 May 1947. Tanaka faced three charges: the first two alleged his complicity in the inhumane treatment of prisoners of war and surrendered troops by soldiers under his command between 17-28 December 1941, and a third to the killing of medical personnel at the Salesian Mission on 19 December.<sup>295</sup>

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<sup>289</sup> Puddicombe fonds, 2-18, Telegram from Canadian War Crimes Liaison Detachment, H.Q. Land Forces, Hong Kong to Defensor Ottawa Canada. See also *Winnipeg Free Press*, 8 April 1947.

<sup>290</sup> *Ibid.*

<sup>291</sup> Puddicombe fonds, 1-20, Cipher Message, Major Jack Boland for Lt. Col. Oscar Orr, Canadian War Crimes Liaison Detachment, Tokyo to Major Puddicombe, Canadian War Crimes Liaison Detachment, H.Q. Land Forces SEAC, Hong Kong, 14 March 1947.

<sup>292</sup> Tanaka Trial, Particulars of Accused.

<sup>293</sup> Tanaka Trial, Abstract of Evidence. High West is a hill next to Victoria Peak on Hong Kong Island, it is west of Victoria Peak and north of Pok Fu Lam. The 229<sup>th</sup> made it the majority of the way across Hong Kong Island, coming just short of High West by the surrender on 25 December 1941.

<sup>294</sup> Tanaka Trial, Abstract of Evidence and Stacey, *Six Years of War*, Map 7.

<sup>295</sup> Tanaka Trial, Charge Sheet. Puddicombe had petitioned Singapore to add a third charge which gave distinction between POWs and surrendered personnel to allow for less back-and-forth over semantics in the courtroom. Puddicombe fonds, Vol. 2-18, Lt. Col. Stewart, Singapore, to Major Puddicombe, Hong Kong, 28 March 1947. The

Puddicombe explained the differentiation of the first two charges in his closing address: that the category of victim depended on if the soldier had surrendered and been taken into custody (POW) or if they had “signified their willingness to be taken captive” but had not been fully taken into custody, making them surrendered personnel.<sup>296</sup> Puddicombe structured his case against Tanaka in four stages, highlighting atrocities during each and alleging that the Tanaka Butai left a trail “littered with the corpses of murdered men, men bound, then bayoneted or shot”<sup>297</sup> at Sau Ki Wan, Repulse Bay, the road from Wong Nei Chong Gap to Repulse Bay, and Lyon Light at Deep Water Bay.



**Figure 9 - Landing site of Tanaka Butai. (Tanaka Trial, Exhibit A)**

The Tanaka Butai began its alleged transgressions in the area around Sau Ki Wan. One incident followed the capture of 30 HKVDC personnel stationed near the Lye Mun barracks.

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original and altered charge sheets are in DHH, Loranger fonds, Series 3-5. Puddicombe’s request launched a heated discussion between he and Lt. Col. Stewart (former president of the Hong Kong Court and currently working at the Legal Office of ALFSEA at Singapore) about the way he had approached the change and over the term “medical personnel”. See Puddicombe fonds, Vol. 2-18, Puddicombe, Hong Kong to Shamus (Lt. Col. Stewart), 1 April 1947 and Lt. Col. Stewart, Singapore, to Major Puddicombe, Hong Kong, 11 April 1947 as well as Puddicombe fonds, Vol. 1-12, Puddicombe, Hong Kong to Col. J.C. Stewart, War Crimes Legal Section, G.H.Q. SEALF, Singapore, 8 May 1947.

<sup>296</sup> Tanaka Trial, Exhibit R1, 1.

<sup>297</sup> Tanaka Trial, Exhibit R1, 2.



The men were detained in a magazine, and when they were eventually released they were bayoneted en masse while exiting. Chan Yam Kwong managed to survive the incident: he was stabbed through his thick coat and the surface bleeding from his wrist covered his overcoat, leaving his attackers with the impression that he was dead. He was discarded along with the other bodies by the Japanese who threw them over a wall.<sup>298</sup> Chan remained in the pile of corpses for three days and nights. After a Chinese civilian alerted him that the Japanese had moved on, he and another Volunteer escaped. He testified that:

I was thrown over the wall and there were my other comrades down there. I do not think they were killed instantly, they were all suffering from heavy wounds and calling for water, some for Mother and some for God. Instead of showing any help the Japanese threw [sic] stones and one sentry even fired a shot into that pit.<sup>299</sup>

The evidence Puddicombe presented about the Salesian Mission Massacre was far more detailed as it was one of the incidents the Detachment was briefed on before departing Ottawa.<sup>300</sup> British planners selected the Salesian Mission as the island medical store in October 1941. The Mission was stocked with a one year supply of medical equipment and various supplies to maintain military hospitals, aid posts, and advanced dressing and surgical centers.<sup>301</sup> It functioned as a military first aid post manned by the RCAMC, a civilian first aid post operated by St. John Ambulance and Auxiliary Nursing Service, and the medical store of the RAMC, with a total staff of forty.<sup>302</sup>

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<sup>298</sup> Tanaka Trial, 60.

<sup>299</sup> Tanaka Trial, 60.

<sup>300</sup> DHH 593. (D8), War Crimes Investigation Section, NDHQ, Ottawa, 8 January 1946, "Notes of Conversation with Officers going to Districts to Assist AJAGs in Preparation of Depositions from Repatriates."

<sup>301</sup> Charles G. Roland, "Massacre and Rape in Hong Kong: Two Case Studies Involving Medical Personnel and Patients," *Journal of Contemporary History* 32, no. 1 (1997), 44. Roland provides the most thorough discussion of the atrocities against medical staff at the Salesian Mission, and other medical centers in the Hong Kong region, from a medical historian's point of view in the aforementioned article and in chapter two of Roland, *Long Night's Journey into Day*.

<sup>302</sup> Tanaka Trial, Abstract of Evidence; Roland, "Massacre and Rape in Hong Kong," 46.



Figure 10 – “Salesian Mission from Lye Mun Barracks, Mount Parker in Rear.” (DHH, 593. (D36), D71)

On the morning of 19 December the Tanaka Butai arrived at the mission and the staff surrendered without firing a shot. The mission flew a Red Cross flag, but according to Banfill there was a chance it had been shot down and was not visible to the Japanese. When the Japanese troops arrived, they led the staff outside onto the grounds facing Sau Ki Wan and broke the staff into three groups: Chinese and SJAC personnel, European women, and soldiers.<sup>303</sup> The female staff members of the Mission were taken away from the site and marched back toward Lye Mun Barracks.<sup>304</sup> The medical staff had their Red Cross identification thrown to the ground, and were sent off toward Sau Ki Wan. Banfill and the rest of the soldiers were marched out on Island Road several hundred meters toward Tai Tam.<sup>305</sup>

Banfill described the harrowing experience, explaining that the men were

taken off the road to the right on a path which led up on to the side of the mountain. They were lined up facing the road. An English speaking Japanese officer was brought along and questioned me about who we were. I answered that we were a medical post and non-combatants. His answer was ‘Soldier first, medical afterwards.’ I was tied up with a rope around my arms and neck - - my arms behind me and tied around my neck;

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<sup>303</sup> Tanaka Trial, 18.

<sup>304</sup> Tanaka Trial, 19. This humane treatment of female nurses was not common, as was seen in the incidents surrounding the rape and murder of females at St. Stephen’s College, and on a larger scale, the rape of Chinese civilian women on the mainland and island. See Roland, “Massacre and Rape in Hong Kong.”

<sup>305</sup> Tanaka Trial, 18-19.

the others were marched past me through a little gully and on to a slope facing me with their backs towards the direction of the road.<sup>306</sup>

Banfill was thrown to the ground and, upon hearing gun shots, twisted to see men fall into the ditch. Several soldiers were shot while they scrambled to get away, and Banfill was promptly kicked in the face so that he did not witness anything else. He was then marched off toward the water catchment near Tai Tam Gap.<sup>307</sup>

Banfill's strongest piece of evidence emanated from a conversation he had with one of the Japanese guards as he was being led away. Banfill protested the shooting of the soldiers and medical staff, and he recalled the exact reply of the junior officer (identified only as Honda): "they were 'order is all captives must die'."<sup>308</sup> The Japanese told Banfill he was being kept alive to point out landmines. During the trek with the Tanaka Butai, he conversed at length with Honda, who had been educated at a Church of England School in Tokyo. The pair discussed religion and the morality of war. Honda told Banfill he was sorry he would have to be killed and attempted to have him spared, but his request was denied. Ultimately Banfill was spared, brought back to North Point, and ended up a POW in Hong Kong for four years.<sup>309</sup>

The second stage of Puddicombe's case highlighted the murder of a group of Royal Rifles and Royal Army Ordinance Corps at Eucliffe, a private estate on Repulse Bay. Again he was forced to rely solely on affidavit evidence, this time that of Company Sergeant Major Hamlen, who described the capture and killing of the men. When a group of soldiers were cut off trying to sever Japanese communication lines, they were taken captive, their hands tied

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<sup>306</sup> Tanaka Trial, 19.

<sup>307</sup> Tanaka Trial, 19.

<sup>308</sup> Tanaka Trial, 20. This Honda was the same individual which Tanaka wished to call as a witness unsuccessfully.

<sup>309</sup> Major Banfill stayed in Hong Kong after travelling there to act as a witness in the Tanaka trial, where he became Dean of the Faculty of Medicine at the University of Hong Kong, until moving back to Canada to take on a position at McGill in 1952 where he would hold the title of associate dean of the Faculty of Medicine beginning in 1964. McGill lived to almost 100 years, dying in at Montreal General Hospital in April 2007 from the result of a fall. *The National Post*, 30 May 2007.

behind their backs, and led to a grassy slope. According to Hamlen, the men “knew then [they] were going to be shot because on top of the bank were pools of blood and at the bottom of the bank near the sea were dozens of dead bodies and it was evidence that they had been shot on top of the bank and fallen down.”<sup>310</sup> The men were seated at the edge of the bank, their feet hanging over the edge, and then shot from behind by a firing squad. Hamlen survived, as he explained:

I turned my head to the left as I was being fired at the bullet passed through my neck above the left shoulder and came out at my right cheek. I did not lose consciousness and the force of the bullet hitting me knocked me free from the others and I rolled down the bank. I then lay on a concrete path with my hands tied behind my back and the bodies of the three Canadians rolled down on top of me. One had been killed instantly.<sup>311</sup>

Hamlen waited at the bottom for the troops to leave the scene, then travelled toward Deep Water Bay beach and met with Allied troops. He made it to Queen Mary Hospital by 27 December.<sup>312</sup>

The third stage focused on four episodes along the road from Wong Nei Chong Gap to Repulse Bay. The Tanaka Butai was headed for High West, but they had swung south along a track to Repulse Bay while looking to move west.<sup>313</sup> Puddicombe pointed to several murders along this route. He introduced witnesses who testified to the execution of captured soldiers alongside a stone wall. Aiming to confirm that these were not regular casualties, Colonel Lindsay Ride told the court that he had received permission from the Japanese to search for wounded Allied personnel in the area. While searching along the roadside, he and two other medical officers found suspect bodies and chose to investigate nearby residences known as ‘the Ridge.’ There they found dead British soldiers, lying face down with their unbound hands behind their backs. Ride explained that

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<sup>310</sup> Tanaka Trial, Exhibit N.

<sup>311</sup> Tanaka Trial, Exhibit N.

<sup>312</sup> Tanaka Trial, Exhibit N.

<sup>313</sup> Tanaka Trial, 180-183.

the hands although they were not tied were stiff and behind the back and could not be moved. The wrists were swollen and there was an obvious bruise on either wrist which could have been made by a cloth being tied round the wrist. These bodies had bayonet marks on the back and some of them had the side of the skull knocked in.<sup>314</sup>

Ride noted that they found over twelve bodies with bound hands and ankles at the base of a retaining wall that had blood stains on top of it.<sup>315</sup> At the residence known as Overbays, further along the road, they found partially burnt bodies on the floor. Witness George Lemay, HKVDC, stated that in early January he had been allowed out from North Point as a part of a burial team that found eighteen bodies at the base of a retaining wall near ‘the Ridge’ tennis court, all of which had their hands bound.<sup>316</sup> The witnesses in this stage emphasized that the evidence proved that the 229<sup>th</sup> Regiment regularly killed surrendered troops, noting that the surrendered men “bore evidence of the manner in which life had departed from them, hands tied, shooting, bayonetting or beheading.”<sup>317</sup>

The final geographic stage of Puddicombe’s case homed in on two incidents near Deep Water Bay. The first involved the killing of three officers at Shou Shan Hill and second the slaughter of a company of Winnipeg Grenadiers at Little Hong Kong. Puddicombe had a local Chinese farmer describe to the Court the murder he witnessed and then take everyone to the location where he claimed the bodies were dumped. Lai Kwong testified that he saw Japanese soldiers lead three European officers from a residence on 25 December. Lai described the scene: “the Japanese soldiers took the officers to this place, and then they shouted, one – two – three - - and made the officers raise their hands and then they swung their swords - - as I demonstrated - -

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<sup>314</sup> Tanaka Trial, 77. Ride held a doctoral degree in medicine and taught at Hong Kong University.

<sup>315</sup> Tanaka Trial, 78.

<sup>316</sup> Tanaka Trial, 81.

<sup>317</sup> Tanaka Trial, Exhibit R1, 4.

and slashed it into the officers body.”<sup>318</sup> Lai showed the Court the well and gully where the soldiers had disposed of the bodies.



**Figure 11- “Disused well at Shuson [sic] Hill reported to have contained bodies of Canadians. Feb 1947.” Officer from Commonwealth War Graves inspecting the site. (DHH, 593.009 (D6), “C” Force Cemeteries – Hong Kong & Japan, Scrapbook, “Hong Kong,” HK 14)<sup>319</sup>**

Defence counsel Mr. Sakai cast considerable doubt about Lai’s story and character. He underscored variances in Lai’s statement and testimony, including the number of Japanese soldiers involved and the weapons used in the killing. Lai also claimed that the officers had worn crowns on their shoulders, and that the man thrown down the well had worn a gold ring on his finger.<sup>320</sup> Major Cross of the 14<sup>th</sup> WCIT testified they found neither ring nor crowns when they exhumed a skeleton from the well, but they had found British .303 ammunition clips and empty corned beef tins. Further muddying the story, the medical officer who examined the bones declared that they “were those of an oriental,”<sup>321</sup> basing his opinion on the smaller size of the bones. Another defence witness, Captain Diggins of the Graves Concentration Unit, noted

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<sup>318</sup> Tanaka Trial, 121.

<sup>319</sup> This is not the photograph described below, but rather an image of an individual inspecting the well.

<sup>320</sup> Tanaka Trial, 122.

<sup>321</sup> Tanaka Trial, Exhibit R1, 12. A photograph of the skeletal remains was entered into evidence as Exhibit E1.

that investigators had also found Japanese bullets in the well, and that he and the Medical Branch of Land Forces, Hong Kong believed the body in the well was Chinese based on the weight of the bones and the bridge of the nose.<sup>322</sup> Puddicombe sought to dispel the notion that the body was not an Allied officer, arguing that the presumption of heritage based only on size was worthless legal evidence. He noted pithily: “there are small Europeans. This Court has had before it on one or two occasions, a certain Lt. Col. of the WINNIPEG GRENADIERS who is certainly no giant.”<sup>323</sup>

Puddicombe re-constructed the slaughter of the “A” Company Grenadiers more tenuously, basing the claim on the affidavit of Grenadier Private James Fowler. Fowler witnessed Japanese soldiers bayoneting the Grenadiers who had been on his right flank after his comrades were overrun and had surrendered. Fowler claimed that he had seen the men put down their weapons and raise their hands in surrender. Those that were injured and lying on the ground were bayoneted by Japanese soldiers. As he watched the incident unfold, he “heard cries and screams from the wounded as they were killed by these bayonet thrusts.”<sup>324</sup>

When Tanaka took the stand – both in the courtroom and in the various sites the court visited on the battlefield – he aimed to shift the blame away from his men and sought to diminish his personal responsibility for any wrongdoing.<sup>325</sup> He alluded to significant cross-over of troops in this battle space, raising questions about whether his men could actually have committed the atrocities by detailing the route of his regiment and emphasizing the close proximity of the other infantry regiments and supplemental units. Tanaka also downplayed his personal responsibility by denying knowledge of the incidents and claiming that he did his best to warn his men not to

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<sup>322</sup> Tanaka Trial, 202.

<sup>323</sup> Tanaka Trial, Exhibit R1, 12.

<sup>324</sup> Tanaka Trial, Exhibit Z.

<sup>325</sup> Tanaka Trial, 132-200.

commit atrocities. He aimed to deflect Puddicombe's accusations by claiming that he was unaware of the incidents. For example, when pressed about the execution of the Royal Rifles at the cliff-side near Eucliffe shortly after his speech to the guests at Repulse Bay Hotel, Tanaka claimed that he had left and had not heard any shots fired.<sup>326</sup> This stood in stark contrast to evidence from prosecution witness J.M. Baud who had been staying at the hotel and listened to Tanaka's speech. He claimed that less than fifteen minutes after Tanaka finished he witnessed a line of troops marched to the edge of a bank, seated along the edge, and shot from behind by Japanese troops.<sup>327</sup>

Tanaka insisted that gave several addresses to his lower-ranking officers on the differences in Western and Asian ideas about becoming a POW and that he had explained what was expected under international law. He hoped to avoid any "big mistakes" by his troops based on these cultural differences.<sup>328</sup> When pressed on why he chose to offer addresses and warnings rather than orders on the issues, Tanaka explained that he could not give a related order more than once, and if a soldier disobeyed an order he would be charged with mutiny and manslaughter at a court martial. If one only disobeyed the caution or instruction, they would receive the manslaughter charge.<sup>329</sup> Regardless of the subtleties, none of his men faced any charges.

In the defence's closing argument, Sakai aimed to soften the image that Puddicombe had crafted of Tanaka. He sought to discredit the prosecution witnesses where he could, but oddly tried to claim both that Tanaka was not responsible for the atrocities that were alleged – and that the incidents had not actually taken place. In response Puddicombe piled on evidence

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<sup>326</sup> Tanaka Trial, 191-192.

<sup>327</sup> Tanaka Trial, 97-99.

<sup>328</sup> Tanaka considered a "big mistake" to be inhumane treatment or insults, while Puddicombe assume it might involve killing POWS. Tanaka Trial, 168.

<sup>329</sup> Tanaka Trial, 169.



illustrating the consistent commission of war crimes along the invasion route. In the Shoji Trial Puddicombe had neglected to clearly connect the men of the 230<sup>th</sup> Regiment to the atrocities, but in his closing arguments in the Tanaka case he clearly linked the general and the men under his command to the crimes. Puddicombe structured his argument to prove three conditions: that the atrocities actually occurred; that Tanaka's troops had committed them; and that Tanaka was responsible for the conduct of his troops.<sup>330</sup>

Sakai argued that the existence of criminal acts was not clear and, if they were, that the prosecution failed to prove that they were committed by Tanaka's troops. He alleged that Tanaka had properly commanded and supervised his troops, instructing them in international law and following generally accepted procedures outlined by the IJA. If his men committed atrocities, it happened when Tanaka was out of contact with them in the early days of the invasion of the island when he had no practical control over his men.<sup>331</sup> Taken in parts, his address had compelling points.

In one piece, however, the defence's argument fell flat in the face of the evidence. Puddicombe highlighted the testimony provided by live witnesses from each of the locations, filling in with affidavits where witnesses fell short. Admonishing the idea that the atrocities had not taken place, he surveyed the incidents and noted that "[d]espite the Accused's denial that any such thing happened, irrespective of who did it, . . . it is submitted that it has been proved beyond the peradventure of a doubt that, all up and down the line of march of the TANAKA BUTAI, prisoners of war, surrendered personnel, and in regard to the SALESIAN MISSION only, medical personnel, were butchered by Japanese troops."<sup>332</sup>

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<sup>330</sup> Tanaka Trial, Exhibit R1, 3.

<sup>331</sup> Tanaka Trial, Exhibit Q1.

<sup>332</sup> Tanaka Trial, Exhibit R1, 4.

Puddicombe also strived to ensure that Tanaka's troops were identified as clearly as possible. Sakai claimed that the men must have been from a clean-up company rather than from Tanaka's invasion regiments, but Puddicombe managed to place Tanaka's men at most relevant locations on the dates of the incidents. He highlighted timelines from Tanaka's testimony and cross-referenced the locations of troops from the 229<sup>th</sup> on the map. Given the circumstantial nature of this evidence, he also gave the court a short lecture on the relevance of general facts in the absence of more traditional and direct forms of evidence. Puddicombe had two witnesses who were able to identify the symbols on the uniforms of the soldiers who committed atrocities. For those that could not clearly identify their attackers, Puddicombe explained that the majority of the witnesses would not have recalled identification patches, mainly because they were undergoing extreme stress and had seen their colleagues killed and feared for their lives.<sup>333</sup>

Emphasizing Tanaka's responsibility as a commanding officer, Puddicombe reviewed the principles of the 1907 Hague Convention, specifically that

lawful belligerents must be "Commanded by a person responsible for his subordinates." The whole spirit of the International Conventions, it is submitted, is that the Commander is responsible for the actions of his troops. It is maintained that he must take really effective measures to prevent breaches of the conventions. He cannot be excused by proving, simply, that he warned his troops against committing acts in contravention of the Conventions. He must, it is submitted, show more constructive measures were taken.<sup>334</sup>

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<sup>333</sup> Puddicombe also used his own dress in the courtroom as an example: "BANFILL, for instance, his friends massacred before his eyes, he himself told, that as soon as he had served their purpose, they would kill him, too, could hardly be expected to observe minor details of Japanese dress for future reference. None of the European witnesses could be expected to have been anything but perturbed at the moment of capture. But even had things been normal, it is doubtful if, in the majority of cases, their powers of observation would have been developed to a sufficiently high point to have remembered such a detail after five years. Before any aspersions are cast, I would suggest a simple test to the Court. The present prosecutor appeared before you for 52 sittings in a recent case. He wore, at one time and another, various uniforms including bush shirts, service dress and battle dress. On one only, of these, did he wear a shoulder patch. On which type of dress was the patch and what did it look like? (It is expected that the Senior Member will know the form of the patch, at least)." See Tanaka Trial, Exhibit R1, 13.

<sup>334</sup> Tanaka Trial, Exhibit R1, 21-22.

He insisted that Tanaka took no retributive actions to stop his men from committing atrocities. Although Banfill gave the only evidence indicating an order to kill POWs, Puddicombe implied that the incidents were so widespread that a clear thread of criminality ran through the men under the general's command. Tanaka did not expect his men to take POWs, and Puddicombe discerned a tension between Tanaka's alleged orders that POWs be treated according to international law and his instructions that his men prefer death to surrender.

When the court rendered its decision, Tanaka was found guilty of the first and second charges pertaining to the POWs and surrendered personnel. It was not clear that his troops had been responsible for the rampage on the Salesian Mission, so he was found not guilty of the third. Major-General Shoji, who was still being held at Stanley Gaol, was brought in as a character witness. He claimed that Tanaka "was a man of honesty, sincerity and justice. He was also very sensitive and, therefore, he was a man of sympathy too. His defect is that he is short-tempered and loses his temper easily. Whenever he heard of untrue or illicit matters he used to get angry."<sup>335</sup> He characterized Tanaka as a man of principle who required those under him to adhere strictly to military discipline.

The Court allowed Tanaka to return to the stand, where he pleaded:

I can declare that during the operation, I, as the Regimental Head, tried my best in realizing sincerity and humanity, and I have no doubt that I fulfilled my duty as Regimental head in teaching my subordinates, and I taught them humanity and sincerity. I swear and declare that I did so. During the case I heard witnesses for Prosecution stating various things, some of which I could barely believe existed. I, therefore, plead, Mr. President, and the honourable members of the Court will decide my case with honesty, fairness and justice. Other than that, I am afraid that I am mentally confused to state further and, therefore, I only apply that Mr. President will treat my case with generosity.<sup>336</sup>

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<sup>335</sup> Tanaka Trial, 243.

<sup>336</sup> Tanaka Trial, 243-244.

The Court adjourned for one hour and forty-five minutes before reassembling to deliver Tanaka's sentence. For his failure in responsibility, he was handed down a twenty-year prison sentence.<sup>337</sup>

Tanaka and his defence counsel petitioned the finding for a reduction in sentence but were unsuccessful. Summarizing the findings of the trial, the reviewer argued that the "prosecution established beyond any doubt that the specific atrocities alleged did in fact occur and there is no room for reasonable doubt that the Tanaka Butai was implicated except as regards the incident referred to in the third charge."<sup>338</sup> The review noted that Puddicombe provided ample evidence from witnesses and affidavits to demonstrate that Tanaka did not exert proper control over his men to ensure there were no transgressions or brutalities counter to international law. The submitted evidence revealed a commander who was indifferent to the actions of his subordinates and took "no firm measures to control their activities, despite the fact that, on his own admission, he was apprehensive as to how his troops might behave."<sup>339</sup> Tanaka's command responsibility was the crux of the trial, and the reviewer summarized Japanese general's obligation to prevent or condemn atrocities: "it is quite clear that the accused must have known that such acts were being performed by his men as to infringe the rules of warfare. To that extent the accused may be said to have been 'concerned' in the atrocities complained of."<sup>340</sup>

The invasion trials proved to be the most complicated judicial challenges that Puddicombe faced in Hong Kong. Evidence was sparse and eyewitness accounts few and far between. In the POW camp cases witnesses and affiants had no trouble identifying their abusers, but in the invasion

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<sup>337</sup> Tanaka Trial, 244.

<sup>338</sup> Tanaka Trial, DJAG, SEALF to Commander, Land Forces Hong Kong, 17 July 1947.

<sup>339</sup> *Ibid.*

<sup>340</sup> *Ibid.*

trials the prosecution had to reconcile stacks of recollections of shocking brutality with scant chance of linking them to anyone on the ground. There was a steep learning curve for Puddicombe in the courtroom, between his POW and *Kempeitai* cases (see chapters 4-5, 7) and the invasion trials. The Shoji Trial forced him to operate with little damning evidence. Puddicombe remodeled his approach and focused during the break between trials on finding evidence and witnesses that could place Tanaka's troops in the locations of the atrocities. His efforts were rewarded with a conviction.

Shoji's acquittal demonstrates that outcomes were not predetermined at Hong Kong and the trials were far from 'show trials.' Although evidence admittance rules were broad, the Court scrutinized the material presented. Procedurally the defence was afforded every opportunity to defend the Regimental Commanders and was allotted additional preparation time. The president was quick to quell prosecutors who overstepped their bounds. Puddicombe had a tendency to push the pace in the courtroom and was repeatedly rebuked by the president. One example came during the Tanaka Trial when the advisory officer noted that the defence was unable to formulate a full picture of the evidence because translations were not being completed. The Court responded by insisting that Puddicombe wait until each interaction was completed before he progressed with new questions.<sup>341</sup> In the beginning stages of the same trial, Tanaka was granted a lengthy adjournment because he did not have faith in his original counsel. He was afforded the opportunity secure new counsel and the Court allowed for an eleven day adjournment for preparation. The pragmatism of military law was also evident. Tanaka's new defence lawyer permitted Puddicombe to call Major Banfill – due to depart Hong Kong shortly – to the stand before adjournment to ensure that his testimony could be entered.<sup>342</sup>

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<sup>341</sup> Tanaka Trial, 184.

<sup>342</sup> Tanaka Trial, 9, 13, 19.

The challenges Puddicombe faced in the Shoji and Tanaka Trials reflect the uncertainty of each set of findings at the Hong Kong War Crimes Courts, in direct opposition to the notion of victors' justice. There was question as to whether Shoji's troops committed the atrocities and he was duly acquitted. In Tanaka's case, Puddicombe increased his pre-trial efforts and was able to gather stronger evidence and more convincing witnesses. When it came down to facts in the courtroom, it was clear Tanaka's men had run wild and killed surrendered personnel and POWs. It was not clear that his men were responsible for the killing of medical personnel at the Salesian Mission, however, and the Court found him not guilty of that charge. These trials gave commanding officers the opportunity to explain themselves in the light of day, outside of the fog of war, and required taking of responsibility for a loss of control on the battlefield and an unacceptable expression of aggression amongst the Japanese troops.

## Chapter 4

### Hong Kong – From the Brutal to the Banal: POW Camps in Hong Kong After Surrender

*To me of course the camp case just had two big facets, the execution of the four boys and the callous treatment of the sick lads during that first winter when there was no excuse for lack of anything.*

Major G.B. Puddicombe (1947)<sup>343</sup>

*The death of every man who died of diphtheria because of the failure to ensure segregation or the lack of serum is directly his responsibility no less than if he had grasped the man by the throat and choked him to death.*

Major G.B. Puddicombe, Closing Address (1947)<sup>344</sup>

*I don't know who is responsible for those sentences, but every Canadian soldier who was in Hong Kong believes that these men were responsible for the deaths of their comrades, and I am sure their feelings on the commutation will be the same as my own.*

Brigadier W.J. Home, Winnipeg Grenadiers (1947)<sup>345</sup>

Puddicombe's POW camp prosecutions covered the breadth of the camp administration and staff: from the commander in charge of the entire POW structure in Hong Kong and his medical officer to interpreters and guards. For these cases, evidence was more readily available than was the case with the invasion trials, in spite of the Japanese effort to destroy documentation at the end of the war. Witnesses and affiants clearly identified their malefactors after toiling under them for so long. The nature of the abuses that they faced was broad, ranging from exacting measures that sought to kill, injure, or humiliate POWs to more casual indifference that slowly ground the will and welfare of the men. Although Puddicombe bore the burden of some of the most consequential cases at Hong Kong, the commutation of two of the Camp Case sentences

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<sup>343</sup> Puddicombe fonds, Vol. 1-13, Lt. Col. Orr, Tokyo, to Major Puddicombe, Hong Kong, 16 February 1947.

<sup>344</sup> Loranger fonds, Series 3, File 4, Prosecution – Closing Address, 23.

<sup>345</sup> *Montreal Daily Star*, 25 August 1947.

following the trial suggests that Canadian officials lacked diplomatic control in the major decision making related to the trials. When two of the main Japanese perpetrators were given respite from their death sentences, the British offered little or no explanation to officials in Ottawa.

Puddicombe arrived in Hong Kong ready to seek justice against the tormentors of Canadian POWs. The POW camp cases were the primary reason that the Canadian government sent representatives to Hong Kong to participate in the British trials, and the chief prosecutor came armed with a thick stack of cross-listed affidavits. The POW trials, emerging from years of toil by Canadians and other Allied POWs, resonated deeply with the former prisoners – and with Canadians more broadly. In the invasion trials, interactions between the accused and their support troops were fast and shrouded in the fog of war. By contrast, prolonged relationships between Canadian prisoners and POW Camp staff meant that, once released, prisoners readily recalled Japanese names (or nicknames) and recounted crimes committed against them. Men like Tokunaga, Saito, Inouye and Niimori came up repeatedly in affidavits, eliciting angry and vivid memories of hardship and abuse.

The crimes committed against POWs in the camp system took place under the cruel light of day. With the POW cases it was clear who the perpetrators were and where the alleged actions had taken place: the two main POW Camps holding Canadians in Hong Kong, namely North Point Camp on the Island and Sham Shui Po Camp in Kowloon. All told, Puddicombe prosecuted three trials involving seven individuals relating to POWs' experiences at these camps. The most extensive and complicated trial, nicknamed the Camp Case, was against the administration and staff of the POW HQ in Hong Kong. A second trial (of a camp interpreter)



had a Canadian component but focused mainly on the tragic story of the sinking of the *Lisbon Maru*, a transport ship filled with British POWs heading for Japan. The third trial, the complex tale of Japanese-Canadian interpreter Inouye Kanao, dealt with questions of nationality and treason, and is covered in the next chapter.



**Figure 12 - POW Camp Commander Colonel Tokunaga Isao and his Medical Officer Dr. Saito Shunkichi. (*Montreal Daily Star*, 25 August 1947)**

## **Camp Case**

The brutal conditions, abuse, and neglect faced by the Canadian POWs in Hong Kong were a high priority for National Defence officials in Ottawa as the war drew to a close. Detachment officers were instructed to pursue a “general indictment of the whole Hong Kong PW Adm from the top (Gov Gen) to the last man that happens to be in custody.”<sup>346</sup> This resulted in a massive trial with eleven charges brought forth in a joint trial against the Hong Kong POW Camp administration. The defendants included Colonel Tokunaga Isao, the officer in charge of

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<sup>346</sup> Puddicombe fonds, Vol. 1-3, Instructions re. war trials, the draft of 9 March, 1946.

all Hong Kong POW Camps; Captain Saito Shunkichi, the principal Medical Officer; Chief Intelligence Officer and adjutant Lieutenant Tanaka Hitochi; and two others, Interpreter Tsutada Itsuo and Sergeant Harada Jotaro.<sup>347</sup>

The trial spanned the entire POW experience in Hong Kong, involving hygienic, medical, and labour issues as well as physical violence. It ran the gamut of war crimes charges (except for medical and biological experimentation), including crimes of omission (poor hygiene, sanitation, food, and living conditions; not providing drugs) and commission (forced labour while sick; physical violence). The case alleged that a culture of violence and maltreatment had developed under Tokunaga. Puddicombe's prosecution highlighted specific atrocities including the execution without trial of Canadian and British escapees and the abuse of Chinese civilians. The Camp Case trial revealed the mind-numbing, day-to-day toil of the men as well as the extraordinary callousness of the Japanese staff as they beat, starved, and neglected prisoners to the limits of human capability.

The trial was front page news in the *South China Morning Post* throughout the months that it ran. Phrases such as "Callous Indifference," "Calculated Humiliation," and "Indescribable Filth" encapsulated the camp experience in the courtroom and across the front pages.<sup>348</sup> The trial dragged on from 17 October 1946 to 14 February 1947, with multiple delays as well as 54 sessions in the courtroom. Puddicombe summarized that the trial was a "long and wearisome

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<sup>347</sup> NA, WO 235/1012 Pt 1, Tokunaga Isao, Saito Shunkichi, Tanaka Hitochi, Tsutada Itsuo and Harada Jotaro Trial [hereafter Tokunaga et al Trial]. Tanaka had been the Officer in Charge of the Intelligence Section of the POW HQ from 31 January 1942 until 1 April 1945 and also held other roles including: Commandant of Upper Argyle Street Officers Camp (January 1943 to April 1944), Commandant of Sham Shui Po Camp (May 1944-March 1945), Adjutant and Officer in Charge of General Affairs Section of HQ (February 1944-April 1945); Tsutada was interpreter at Sham Shui Po Camp (April-September 1942, February-September 1943); Harada was a member of the camp staff at Upper Argyle Street Officer Scamp (October 1943-April 1944), Sham Shui Po Camp (April-August 1944, July-Surrender 1945), HQ (August 1944-January 1945), Bowen Road POW Hospital (January-July 1945). See DHH, Loranger Fonds, Series 3, Folder 4 – Camp Case, "Abstract of Evidence."

<sup>348</sup> *South China Morning Post*, 18 October 1946.

ordeal” and that “[e]ven those condemned to the supreme penalty must have been glad when the final word was said.”<sup>349</sup>

The first five of the charges dealt with the inhumane treatment of POWs in various camps and hospitals in Hong Kong while the balance concentrated on specific abuses of POWs and civilians as well as the misappropriation of Red Cross parcels. The broader charges covered the following matters for the Sham Shui Po, North Point and Upper Argyle Street Officers POW Camps, as well as the Indian Military and Bowen Road hospitals:

- (a) inadequate accommodation, sanitation, food and clothing
- (b) harsh treatment of sick Ps.O.W. and failure to provide drugs and other facilities for their treatment
- (c) beatings and ill-treatment
- (d) working parties sent on war work and dangerous projects
- (e) inhumane working of Ps.O.W. when physically unfit.
- (f) compulsory signing of a parole
- (g) collective punishments
- (h) general ill-treatment.<sup>350</sup>

The first charge fell on all of the accused for their role against British, Canadian, and Dutch POWs at Sham Shui Po Camp. Tsutada and Harada faced only this charge, while Tokunaga and Saito faced similar allegations for each of the other named camps and hospitals under their command and Tanaka was also implicated for his command of the Upper Argyle Street Officers Camp. Tokunaga had five other incidents raised in the charges: three related to his response to failed Canadian and British escape plans, one alleging the misappropriation of Red Cross food and medicine, and one for torturing and killing Chinese civilians. Tanaka solely faced an additional charge alleging the mistreatment of two Chinese drivers and two British POWs.

The trial itself boiled down to two main issues: those related to omission (medical disinterest and poor living conditions) and those linked to the active maltreatment of POWs

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<sup>349</sup> Puddicombe fonds, Vol. 2-30, War Crimes Trials Hong Kong Style – Memorandum [report] – 1946, 17.

<sup>350</sup> NA, WO 235/1012, Pt 1, Brigadier, DJAG, South East Asia Land Forces to Commander, Land Forces, Hong Kong, 9 May 1947. This was the general way Puddicombe arranged his evidence for each specific charge.

(such as beatings, executions, or forced labour). Lt. Col. Orr emphasized the importance of the case to the mandate of the Canadian Detachment, and particularly the focal points of the case: the “execution of the four boys and the callous treatment of the sick lads during that first winter when there was no excuse for lack of anything.”<sup>351</sup> While the trial sat five men, Tokunaga and Saito were the main focus, with the prosecuting using the other accused to “point up the general policy of ill-treatment and calculated humiliation which was the apparent policy of the Camps [sic] Commander, TOKUNAGA.”<sup>352</sup> Puddicombe’s cross-examinations were particularly aggressive and probing against Tokunaga and Saito – the men with main responsibility for the well-being of the POWs in Hong Kong.

Former POWs recalled the much-maligned “Fat Pig” Tokunaga with resentment and castigation, having struggled under his rule for so long.<sup>353</sup> They considered Tokunaga a callous and dismissive commandant who cared little for their welfare. The prosecution alleged that Tokunaga and Saito had resources to prevent a diphtheria epidemic, which claimed 101 Canadian lives, but did nothing to stop it. Puddicombe showed that with minimal effort the camp staff could have reduced casualties. For example, stores of serum were available locally but were not secured.

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<sup>351</sup> Puddicombe fonds, Vol. 1-13, Lt. Col. Oscar Orr, Tokyo, to Major Puddicombe, Hong Kong, 16 February 1947.

<sup>352</sup> Tokunaga et al Trial, Exhibit E, Prosecutor’s Opening Address, 2.

<sup>353</sup> During a speech Puddicombe noted that Tokunaga had been “reduced to fighting weight” by the time the Camp Case came to trial. Puddicombe fonds, Vol. 2-30, War Crimes Trials Hong Kong Style – Memorandum [report] – 1946, 6. One question given by the defence during Tokunaga’s direct examination went as follows: Q. There is a statement saying that when you were the POW Camp Commandant you were very fat, is that a fact or not? A. I was not only fat when I was Camp Commandant, I was fat ever since I was a child; however, at present I am quite thin. Tokunaga et al Trial, 457. Canadian Lt. Col. J.N.B. Crawford noted picking Tokunaga out of a lineup at Stanley Prison in a newspaper report: Tokunaga (the fat pig) was the most difficult to recognize ; we remembered him as a fat, arrogant colonel, in charge of all the prisoner-of-war camps in the area. Now he is a thin, sick, and very deflated prisoner.” The article went on to explain that the “story told in explaining his loss in weight is that he has been bribing his former adjutant, Tanaka, into keeping his mouth shut by giving him half his ration.” *Winnipeg Free Press*, 18 December 1946.

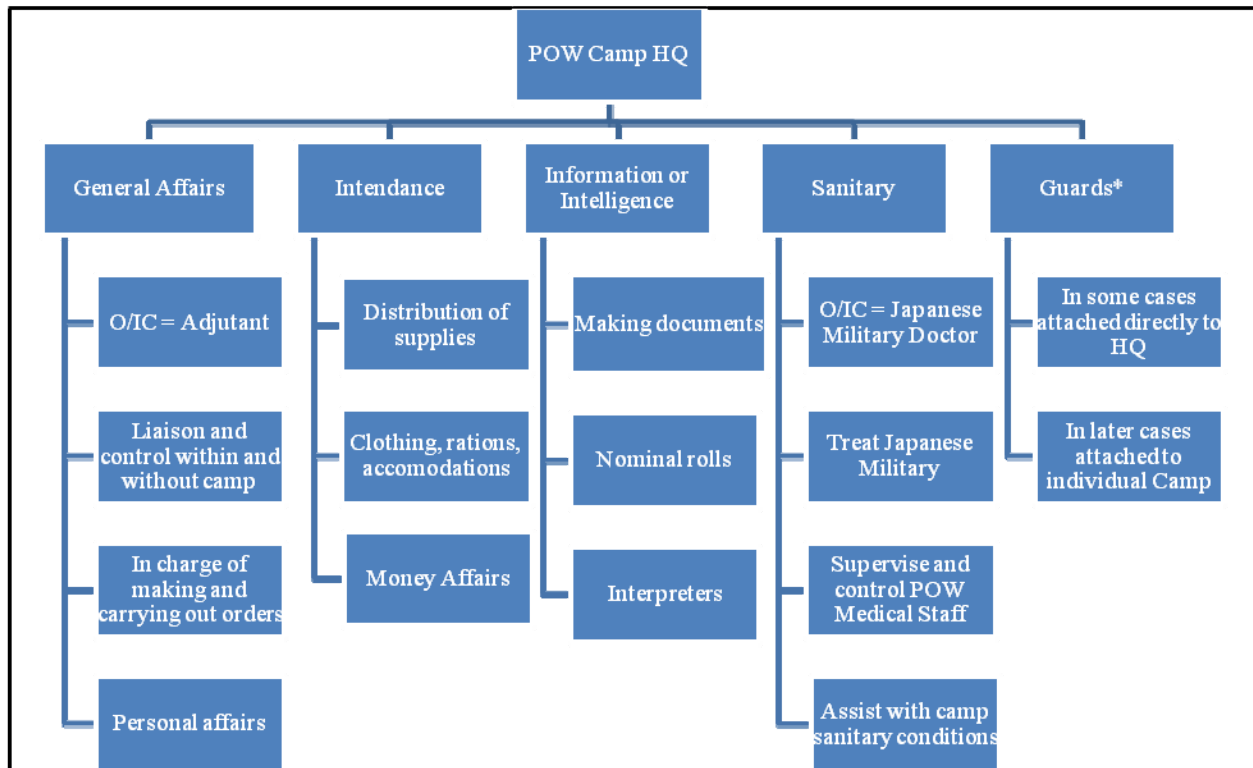


Figure 13 - Hong Kong POW HQ layout as described by Tokunaga and Saito.

Puddicombe sought to highlight the dreadful conditions in the camp and to prove that Tokunaga and Saito were culpable. The Hong Kong POW staff had resources to improve the lot of the POWs, but let the conditions continuously deteriorate. The camp sites in Hong Kong and Kowloon were overcrowded and poorly set up. Flies coated every exposed surface. Overcrowded huts lacked windows, leaving the men exposed to the wind, wet and cold. Sanitary arrangements were few and far between. Anyone who could not make the trek outside to overflowing and infested latrines used buckets that inevitably ended up toppled. Food was a disgrace, the rice often offset with stones, sawdust or excrement. The POWs suffered from (and many died from) various malnutrition-related deficiency diseases. Food levels were inadequate, averaging around 1900-2000 calories (when a minimum of 2500 were required to keep the men healthy, especially with the work levels demanded of them).

As the trial proceeded, stories revealed that much inhumane treatment stemmed from inaction rather than action – although the direct actions of Tokunaga and his crew also had brutal impacts on the POWs. Puddicombe spent considerable time overviewing the general experience before delving into harrowing specifics. He crafted a convincing argument that although housing, sanitary, and nutritional deficiencies could be expected amidst postwar uncertainty, Tokunaga and Saito had resources available to improve the plight of POWs but opted not to do so. Beyond indifference, Puddicombe also highlighted specific incidents where the accused went out of their way to inflict suffering on the POWs.<sup>354</sup> Puddicombe placed particular emphasis on the treatment of the medical conditions (particularly the diphtheria epidemic), the exploitation of POW labour, and specific incidents of violent abuse (notably the execution of the four escaped Canadian POWs).

Saito Shunkichi was the Japanese Medical Officer responsible for the Hong Kong POW Camps from 31 January 1942 until the end of the war. He assisted Tokunaga and the individual Camp Commandants to maintain healthy sanitary and hygienic conditions, and was in charge of the medical treatment given to Japanese staff. Most relevantly for the trials, he “direct[ed] and supervise[d] the POW Medical staff”<sup>355</sup> – four members of the Royal Canadian Army Medical Corps (RCAMC) (Major John N.B. Crawford and Captains John A.G. Reid, Stanley Martin Banfill and Gordon Cameron Gray) who became POWs and medical officers at the various camps.<sup>356</sup> Saito oversaw everything they did, including decisions whether an individual could avoid labour, go to the hospital, or determine the quantity of medical supplies required.

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<sup>354</sup> Loranger fonds, Series 3, File 4, Prosecution – Closing Address, 2.

<sup>355</sup> Tokunaga et al Trial, 568.

<sup>356</sup> Puddicombe fonds, Vol. 1-11, *Canadian Prisoners of War and Missing Personnel in the Far East*, and Roland, *Long Night's Journey into Day*, 10.

In medical terms, Saito was relatively inexperienced. This, combined with his disinterest in the well-being of the POWs, proved disastrous. Saito received his medical training at Kyoto Prefecture Medical College, receiving a Bachelor of Medicine and his qualification as a practitioner in 1940. After graduating, he completed a two-month course focusing on internal disease and entered the IJA that May, receiving his training as a Medical Officer. In July 1940 he was promoted to Medical Lieutenant and in August he was shipped to Canton, China. On 31 January 1942 he assumed the post of Medical Officer for the Hong Kong POW Camps – a position he held until the Japanese surrender.<sup>357</sup> It was a serious responsibility, particularly for an officer with limited battlefield and practical medical experience.

The appalling medical conditions in Hong Kong precipitated sweeping hazards, including outbreaks of dysentery and avitaminosis, but the medical portion of the trial focused on the diphtheria epidemic that broke out amongst the Canadian troops in the summer of 1942 and exploded that fall.<sup>358</sup> Diphtheria is an infectious disease produced by bacterial growth. One of the first identifiable symptoms is a sore throat and the formation of a membrane that makes breathing difficult. If untreated, a toxin will develop, interfering with the function of nerves, negatively affecting the function of the heart, throat and limbs. Paralysis may occur and death can result from the closing of the throat or heart failure. Unhealthy and overcrowded conditions at North Point POW camp certainly aggravated symptoms of this serious ailment.

The Canadian medical officers first noted symptoms of diphtheria in August 1942. When the Japanese failed to provide anti-toxin or segregation, the situation escalated. Puddicombe explained that three straightforward steps could have prevented the epidemic: early detection through throat swabs; segregation of affected individuals; and the use of an anti-diphtheria

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<sup>357</sup> Tokunaga et al Trial, 568.

<sup>358</sup> For the best at length discussion of the diphtheria epidemic see Roland, *Long Night's Journey into Day*, 156-171.

serum. When the Japanese moved the Canadians from North Point to Sham Shui Po, they required that everyone – including the diphtheria cases – be moved with the group rather than segregating the afflicted. Canadian medical officers recorded 494 cases amongst their ranks of 1680 in the fall of 1942. The epidemic was brought under control in the late fall as serum became available (largely through black market efforts) and swabs were taken with those testing positive segregated.

Diphtheria was eminently treatable by the 1940's. The initial Japanese denial and subsequent lack of supplies and support meant that 101 Canadian POWs died of the disease. The Japanese tried to misreport the cause of death by ordering Canadian officers not to list diphtheria on the death certificates of the men who succumbed to the disease, labelling it as acute membranous tonsillitis instead.<sup>359</sup> Puddicombe argued that if Saito (and through his command, Tokunaga) had properly executed his duties as Medical Officer, Canadian lives would have been spared. The epidemic could have been avoided, or at least managed.

Puddicombe needed to prove that preventative and reactionary measures to deal with diphtheria were possible and available. First, this involved demonstrating that the throat swabs could have been analysed in Hong Kong. The Japanese had a laboratory and the Government of Hong Kong operated a lab throughout the occupation. Second, he proved that segregation was simple and eminently possible. The question of whether serum was available in the colony was more challenging to answer. Saito insisted that it was not, but British POWs had managed to secure black market serum and quell an outbreak in their ranks. Through the testimony of Dr. Selwyn-Clarke, the Director of Medical Services for Hong Kong, Puddicombe was able to prove that there was a normal stock of serum in the colony at the time of capitulation. The prosecutor

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<sup>359</sup> Tokunaga et al Trial, 25, 28-29. According to Crawford they were also instructed on one occasion that dysentery was an unacceptable cause of death.



also visited a pharmacist that operated throughout the Japanese occupation who claimed that he had no challenges getting serum, and noted a glut in the local market during the summer of 1942.<sup>360</sup>

Puddicombe alleged that Saito, having a sound understanding of the area, should have been able to secure serum for the Canadians. One medical witness claimed that he believed Saito's attitude during the period had been "callously indifferent to the epidemic as a whole."<sup>361</sup> Another claimed Saito was "careless in the extreme" and that he beat hospitalized patients for not sitting up and saluting.<sup>362</sup> Conversely, Saito maintained that his actions conformed within the responsibilities placed upon him and that he did the best he could in complex circumstances. On the stand Saito deflected claims that he had been cruel and indifferent, at one point shifting blame onto the Canadians for their own lack of medical and preventative knowledge:

In one word it could be said that the medical knowledge of the Canadian POWs was very low. Also it could be said that the Canadian medical staff did not do their best. I will now give some examples in the way in which the Canadian POWs lacked medical knowledge. Firstly, the Canadians did not like the idea of gargling with drugs. The reason for this was because the gargle liquid made out of the drugs had a peculiar fish-like smell. Secondly, the Canadian POWs freely entered the segregation wards. This free entry into the wards was a great danger in contracting the disease. It was laid down that only Canadian medical staff could enter the segregation wards. Thirdly, at that time only a small amount of tobacco was made available to the POWs, that is to say, only the POWs that worked outside the camp at Shamshuipo received tobacco. This tobacco the Canadians passed around from mouth to mouth. This passing around of the tobacco by the mouth was the main reason why the germ entered by the throat. Another preventative measure was the using of the masks which I forgot to state before. The Canadians did not like the idea of using the masks and the majority of the Canadians did not use the masks. By these four reasons, it could be understood how the Canadian POWs were lacking in medical knowledge.<sup>363</sup>

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<sup>360</sup> Puddicombe discussed this issue throughout the trial, and described it most concisely in notes to speeches he delivered at a variety of churches, community clubs and Legions following his return to Canada. See Puddicombe fonds, Vol. 2-31.

<sup>361</sup> Tokunaga et al Trial, 65.

<sup>362</sup> Tokunaga et al Trial, 133.

<sup>363</sup> Tokunaga et al Trial, 603.

Several other diseases – also eminently treatable – were prevalent amongst the POWs. Lt. Col. Crawford claimed that the Canadians faced an alarming number of cases of beri-beri at North Point. While incidents of the illness rose, Saito ordered a decrease in distribution of thiamine to treat it. Allied POWs also faced rampant dysentery in the spring of 1942. True to form, the Japanese provided only a fraction of the available medicine required to treat the cases. Affiants emphasized Saito’s callousness, noting that he purposefully withheld medications and reportedly ordered POW medical staff to allow patients to die (“let him die”; “let the men die”) rather than transferring them to the hospital.<sup>364</sup> The POW medical officers offered convincing evidence that they could have mitigated the impact of the ailments on the POWs had they been provided with the resources that they requested and been allowed to work with fewer restrictions. Both constraints were the result of Saito’s cruelty.<sup>365</sup>

Puddicombe aimed to portray Saito as indifferent and lazy at best, cruel and callous at worst. In his closing address, he reminded the Court that Saito expended next to no energy locating serum or even the ingredients for its manufacture.<sup>366</sup> Saito ignored requests for swabs, and the call for segregation as a precaution for spread of disease. More troubling was witness Fredericks’s evidence that he had heard Saito comment: “Let the man die.”<sup>367</sup>

A minor feature of the trial, but one that had severe implications for the Hong Kong POWs related to the misappropriation of Red Cross goods. Sent with the intention of supplementing the diets and medical stores of the POWs, parcels that made it through to the men

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<sup>364</sup> Tokunaga et al Trial, 178. Both the response of “let him die” and “the men can die” was produced in evidence from E.C. Frederick, the former in response to a rejected hospital transfer request and the latter in response to a request for anti-diphtheria serum.

<sup>365</sup> Tokunaga et al Trial, 57, 157. Canadian Lt. Col. Crawford acted as a live witness in the case, and Major J.A.G. Reid’s affidavit was a key piece of evidence. Dr. A.M. Rodrigues, HKVDC, and Dr. J.W. Anderson, BAMC also acted as witnesses.

<sup>366</sup> Puddicombe notes that the men were denied the request of a horse which could be used to make serum. Loranger fonds, Series 3, File 4, Prosecution – Closing Address, 14, Puddicombe fonds, Vol. 2-31.

<sup>367</sup> Loranger fonds, Series 3, File 4, Prosecution – Closing Address, 14 and Tokunaga et al Trial, 177.

containing cigarettes and food improved morale – and health in the case of food. These goods, however, rarely made it beyond the camp administration or individual camp commandants.<sup>368</sup>

The charges accused Tokunaga of allocating the goods for his own personal use and for allowing his subordinates to do the same. Puddicombe raised this problem through POW affidavits, but more convincingly had a witness discuss the many times that he had seen Red Cross tins on Tokunaga's desk and the flourishing sale of Red Cross goods on the black market. Indeed, interpreter Niimori and another employee allegedly opened a store selling the goods.

Tokunaga's alleged violations were both direct and indirect. In his defence, he argued that the POWs had given him some of the goods as gifts, while dockworkers had pilfered the material that made it to the black market.<sup>369</sup> Puddicombe retorted that no one had the right to give these parcels away and that it was ultimately Tokunaga's responsibility to ensure that the goods were distributed to the men.

The trial also highlighted the limitations that the Japanese placed on the interactions between the POWs and International Red Cross representatives. Prosecution witnesses described the Red Cross visits to the Hong Kong camps, scheduled to take place every six months, as a "complete farce."<sup>370</sup> Tokunaga and his camp staff staged the meetings and forced the POWs to keep their complaints quiet. Former POW and Singapore WCIT member Lt. Col. Kerr explained that the meetings with Red Cross officials rarely lasted more than five minutes and the Japanese provided him with stock answers to the few questions that the representative posed. The POWs were not permitted to send outgoing letters with the representative and Tokunaga led the camp tours, which were short and provided a distorted view of actual conditions.<sup>371</sup> The camp was

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<sup>368</sup> Roland, *Long Night's Journey into Day*, 72-73.

<sup>369</sup> Tokunaga et al Trial, 448-450.

<sup>370</sup> Tokunaga et al Trial, 167.

<sup>371</sup> Tokunaga et al Trial, 353.

prepped ahead of time, giving the inspector what Dr. J.W. Anderson believed was a false impression, implying that POWs “were all enjoying ourselves.”<sup>372</sup>

Another important section of Puddicombe’s case related to the exploitation of POW labour in Hong Kong. He emphasized two main components during the trial: the use of sick and injured POWs in dangerous labour, and the use of POWs in war-related labour. Forced labour was universal to the Asia-Pacific POW experience, the concept being that POWs needed to work to earn their food. The Canadian experience in Hong Kong and in Japan was consistent with this situation. The 1929 Geneva Convention provided that belligerents could use POW labour as long as the men were healthy, the work safe, and at least a full 24-hours of rest provided to POW labourers per week. Moreover, the Geneva Convention precluded the involvement of POWs in war-related labour (the “manufacture or transport of arms or munitions”) and from “unhealthy or dangerous work.”<sup>373</sup> Puddicombe sought to prove that Tokunaga had compelled the Canadian and British troops to violate both guidelines.

Although the labour portion of the POW experience was more harrowing for those shipped off to Japan to supplement the labour shortages later in the war (see chapter 6), prisoners faced brutal working conditions in Hong Kong as well. The men performed various tasks, starting with an enhancement of the Kai Tak Airstrip. The men worked in groups of roughly 300-400, leaving camp between 5:30-6:30 am and returning between 8:00-9:00 pm. The crew reflected a mix of able-bodied, sick and injured men, with several carted out on stretchers.<sup>374</sup>

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<sup>372</sup> Tokunaga et al Trial, 167. Anderson was a surgeon who had been working at the Bowen Road Hospital at the time of the Japanese occupation and remained interned there and at Sham Shui Po until the end of hostilities. For more on the efforts of Red Cross representatives and the investigation of the Hong Kong situation, see DHH, 113.3R2009 (D21), Notes on Activities Hong Kong delegation of International Red Cross during Jap Occupation of Hong Kong.

<sup>373</sup> 1929 Geneva Convention, Articles 31 and 32.

<sup>374</sup> Tokunaga et al Trial, 122-123.

The POWs described the work as brutally hard, under Japanese supervisors with expectations akin to “slave drivers.”<sup>375</sup> The malnourished men toiled poorly dressed with worn out shoes. When the men lodged complaints about the lack of safety precautions, beatings ensued. For the POWs who stayed on in Hong Kong, the labour routine involved garden work, digging tunnels for ammunition storage, transporting and handling drums of petrol, carrying and storing bombs, and cleaning up debris from American bombing.<sup>376</sup> Two of the men died working on tunnels. Witness Sergeant-Major Frederick Lewis, Royal Artillery, noted that knowledge that the Japanese forced the men to do war work was more offensive than the brutality of the labour:

Q. What type of work did you do on these working parties?

A. I have dug tunnels, I have man-handled 500 kilo aerial bombs and I have shifted millions of 50-gallon drums of petrol, cases and cases of small arms. I have dug HAPPY VALLEY. In fact I have done just about everything I should not have done.

Q. What do you mean when you say that?

A. It was part of my business to know the Manual of Military Law and in that manual is contained the HAGUE Convention and I think I have sufficient intelligence to know what I should have done.

Q. Why do you say you have done something you should not have done?

A. The Convention states that POWs will not be worked on anything which directly or indirectly contributes to any of the enemy’s war effort.<sup>377</sup>

Puddicombe characterized the Hong Kong POW experience as one where violent outbursts were prevalent. He sought to demonstrate the accused were complicit in the development of an environment that permitted and encouraged the abuse and beatings of POWs across the five sites outlined in the charges. Guards and staff responded to routine and minor

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<sup>375</sup> Tokunaga et al Trial, 125.

<sup>376</sup> Tokunaga et al Trial, 124, 145-146.

<sup>377</sup> Tokunaga et al Trial, 123.

infractions with intense and aggravated violence. The lengthy list of beatings presented to the court revealed that guards and staff believed it was acceptable to discipline the POWs with violence. Beyond slappings (which the defense counsel sought to downplay through their acceptable and informal use in the IJA hierarchy), Puddicombe emphasized that the accused and their staff beat men unconscious, hit them with fists, kicks, and all matter of implements. The abuse began early in 1942 and continued until the end of the Japanese occupation. Select incidents happened in isolation, but several occurred in direct view of camp commandants, as well as Saito and Tokunaga.

Puddicombe called witnesses to supplement the affidavit evidence that spoke to the general circumstances facing the POWs and specific incidents of abuse. When asked about the attitude of the Japanese toward the POWs, Lt. Col. Erik Mitchell, HKVDC, responded: “They treated us more like criminals than as POWs. They seemed to do their best to humiliate us in every conceivable way.”<sup>378</sup> Sergeant-Major Lewis reiterated this idea, describing the relationship between the Japanese staff and the POWs:

The relationship, so far as I can say, was that the Japanese in general treated us as slaves. We were there purely to be worked and not fed and in cases of infractions of rules and orders, we were punished individually or collectively. Generally speaking the Japanese Camp staff, from top to bottom, were a bad lot but there were one or two relatively decent individuals.<sup>379</sup>

The execution of four Canadian POWs was one of its most poignant features of the trial. Charges six and seven dealt with the story of escaped Canadian prisoners: the first implicated Tokunaga and Tanaka in their maltreatment and the latter placed responsibility for killing the four men on Tokunaga. As early as January 1946, Canadian officials emphasized the alleged execution as a key point for their regional investigators to note when taking depositions from

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<sup>378</sup> Tokunaga et al Trial, 99.

<sup>379</sup> Tokunaga et al Trial, 129.

returning POWs.<sup>380</sup> Gathering intelligence on the murders was a top priority for the WCIS in Ottawa, and necessitated cooperation between the No. 1 Canadian War Crimes Unit in Europe and the WCIS to counter Tokunaga's report that the escapees were killed going through the wire. Orr had Macdonald track down members of the Middlesex Regiment who had been in a pillbox with one of the prisoners, as well as one individual who had been in Stanley Prison and seen and spoken to the four Canadians, thus proving that they were recaptured after the escape and killed after the fact.<sup>381</sup>

While the Canadian POWs were at North Point, "smack on the waterfront about a mile from Causeway Bay,"<sup>382</sup> four Canadian POWs attempted escape on 21 August 1942: Sgt. John Payne, Lieutenant Corporal George Berzenski and Privates John Adams and Percy Ellis. The Japanese had forced the Canadians to sign a parole promising that they would not try to escape. Although several Canadians refused to sign, their commanding officers convinced them to comply to avoid immediate repercussions – and then to ignore the commitment. Many viewed escape as a military necessity and political duty. With this rationale in mind, the four men awaited appropriate circumstances to escape from the camp, travel across Hong Kong harbour, and proceed onward to Canton and the British Army Aid Group.<sup>383</sup>

The men waited until typhoon season which provided them with a blustery night and sufficient distraction to avert the attention of the guards. The four POWs, along with a crew of accomplices, carried out a plan on 21 August that required sneaking a ladder out of one of the

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<sup>380</sup> Puddicombe fonds, Vol. 1-3, War Crimes Investigation Section, National Defence Headquarters, Ottawa, 8 January 1946, "Notes of conversation with officers going to districts to assist AJAGs in preparation of depositions from repatriates."

<sup>381</sup> LAC, RG 24, Vol. 12 839, 392-50A, see variety of correspondence between Oscar Orr for Major-General E.G. Weeks, Adjutant-General, NDHQ, Ottawa and Major J.A. MacDonald, No 1 Canadian War Crimes Investigation Unit, Canadian Military Headquarters, London in January and February 1946 as well as interview evidence files from the same months.

<sup>382</sup> Puddicombe fonds, Vol. 2-31.

<sup>383</sup> Puddicombe fonds, Vol. 2-31.

warehouses along the perimeter of the camp, escaping over the roof of the camp hospital, and darting into the darkness to liberate a sampan from along the waterfront. The men who remained in the camp snuck the ladder back inside, unbeknownst to the guard. Filled with adrenaline and concern they lay awake all evening, and did not hear any signs of capture.<sup>384</sup> The storm tossed the men from their stolen sampan while they attempted to cross the harbour, and their inability to swim to shore meant they could only wait for the Japanese harbour patrol to bring them in. The story remained muddled, as no Canadian ever saw the four men again, but rumours soon worked their way through the ranks.

When investigators started to pore over the case they grappled with mixed messages. Tokunaga claimed during his initial interrogation that all four men were seen breaking out of the camp through holes in the fence and, when prompted to stop, did not. Accordingly, they were shot on sight with four very accurate shots. Tokunaga submitted a report to the POW Information Bureau in Tokyo, thus closing the matter.<sup>385</sup> Investigators found that the report chafed with the affidavits given by the POWs who had helped the Canadians escape: all noted that the men had escaped over the roof of the hospital, not through a fence, and that they had not heard any shots that night.<sup>386</sup>

In light of these testimonies, Tokunaga shifted his story. He claimed that a harbour patrol plucked the four men clinging to a sampan from the water and delivered them to the North Point Camp Commandant Lt. Wada and the Camp Guard Commander. They were instructed to take the men to Tokunaga at the Forfar Street HQ in Kowloon. Allegedly, the Canadians tried to escape custody during transit and the two Japanese officers shot them out of hand. Tokunaga claimed that he was “very concerned” about the incident and had both officers held while he met

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<sup>384</sup> Tokunaga et al Trial, Exhibit E, Prosecutor’s Opening Address, 3, and Trial Record, 239.

<sup>385</sup> Tokunaga et al Trial, Exhibit B(2), Report on Prisoners of War Shot, Hong Kong P.O.W. Camps.

<sup>386</sup> Tokunaga et al Trial, Exhibit E, Prosecutor’s Opening Address, 3.



with Governor General Isagi to decide how to punish the men. According to Tokunaga, Isagi claimed he gave orders for the shooting and that he did not need to punish the men. The story suited Tokunaga well, given that Wada had died shortly after the end of the war. When asked why he had made the false report to the POW Information Bureau, Tokunaga claimed that he had sought to avoid a big investigation. For the time being, Tokunaga held fast to his story, as did his fellow alleged war criminals (including Saito).

Puddicombe and the Investigation Team worked with a few key witnesses who could prove the Japanese captured the POWs alive. The witnesses saw the men after the night of their escape, thus contradicting Tokunaga's story. One witness, Mak Kee Sing, a young boy who worked at the POW HQ as a waiter, saw four 'European looking' individuals brought into the HQ along with interpreter Niimori and Tokunaga. A distinguishing scar above the eye of Berzenski (earned when an animal kicked him as a child on his family farm in Manitoba) suggested that it was the Canadians. The boy then explained that the Japanese brutally beat the men with a baseball bat.<sup>387</sup> Another witness verified this story, having assisted in an interrogation of the Canadians, and remembered the names of Payne and Berzenski.<sup>388</sup>

The evidence of Lau Kam, a local truck driver who forced to serve the Japanese during the occupation, proved even more damning. He recalled that four European POWs, guarded by soldiers rather than gendarmes, were loaded on the back of his truck. He received orders to take the guards and prisoners to King's Park football field after stopping to pick up shovels and picks. He claimed that he overheard an execution order given after the men were taken around the hills and out of sight. Later he saw the guards returning, cleaning their swords, and carrying the clothes of the POWs who were nowhere to be seen. This piece of pre-trial evidence gave

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<sup>387</sup> This incident was described in both the Tokunaga et al and Niimori war crimes trials.

<sup>388</sup> Tokunaga et al Trial, 294-295. The witness was Augusto Victal.

Puddicombe leverage in securing a solid and damning statement from the Japanese men involved in the execution.<sup>389</sup>

Tokunaga and Saito had held very close to the second story, claiming that Noma had ordered the execution after the Canadians attempted another escape from custody and the bodies had been interned at the Argyle Street cemetery. The WCIT had already uncovered several sets of human remains at King's Park; given the number of bodies and the machine gun bullet pockmarks in the earthen wall on the eastern end, they assumed the Japanese used the grounds for executions. Puddicombe then opted to take a more aggressive tack. On 26 June 1946, Puddicombe took Tokunaga, Saito, Niimori and Tanaka to the Argyle Street cemetery, along with an interpreter, an officer from the Graves Registration Unit and the top two officers from the WCIT. He prompted the Japanese officers to point out where the graves of the Canadians were; they claimed it was impossible without a copy of the cemetery chart. The Graves Registration officer offered them one, but noted that the names of Payne, Berzenski, Ellis and Adams were not listed on it. When this met with silence, Puddicombe immediately applied pressure:

This was my cue. I pointed out to them that they had said the graves were in Argyle St. "I do not believe they are here", I said. I think the four were buried in Kings Park Football Field. Now, you have five minutes to point out the graves here. At the end of that time, if we still have not been shown the graves, we will take you to King's Park. There with pick and shovel you will dig until we find the bodies of those four Canadians or you have levelled the surrounding hills.<sup>390</sup>

This bluff worked: Saito admitted that he had been present at the execution when a medical officer offered to point out where the bodies were buried. The following day the WCIT took new statements, and Tokunaga tried to mitigate his culpability, aiming to shift responsibility up

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<sup>389</sup> Puddicombe fonds, Vol. 2-31.

<sup>390</sup> Puddicombe fonds, Vol. 2-31

the occupation hierarchy.<sup>391</sup> Puddicombe's later explained that he believed Saito's confession stemmed from a conversation they had at Stanley Prison. Puddicombe called Saito a coward which seemed to rattle him. Saito asked Puddicombe why he said that to him, to which Puddicombe replied "'Because you are afraid to tell the truth'. That may have rankled. I don't know. At any rate, all now confessed the details."<sup>392</sup>

On the stand, Saito recalled that fateful night, noting that the men were:

the four Canadians were lined up and shot under the command of Lt. Wada. I think they were blindfolded at that time. Also as I saw it their hands were tied behind their back. The rifleman were standing at a place on a higher level than the place where stood the four Canadians. The distance between the place where the riflemen were standing and the place where four Canadian were standing was about 5 meters. I think that Lt. Wada gave the order to fire, the riflemen aimed at the hearts of the POWs, immediately after the firing the four POWs fell down, then a short time later I went to the four Canadian to see whether they were dead or not. After I found out that they were dead I reported this to Lt. Wada, he ordered one of the soldiers to have the bodies buried on the spot.<sup>393</sup>

Tokunaga was more argumentative and evasive under cross-examination. He regularly threw Puddicombe's questions back at him, avoided direct answers, and forced Puddicombe to chase a response through multiple re-statements. Tokunaga repeatedly claimed that he had done his best to provide for the POWs within the guidelines set by the War Ministry in Tokyo and by the Governor General of Hong Kong, Isogai Rensusuke. The main defence tactic aimed to shift responsibility up to Isogai, or down to the various heads of Intendence, Medicine, and other subordinate units. When all else failed, Tokunaga attempted to deny that the incidents had taken place or that he had any knowledge of them, blankly responding that he had not received any

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<sup>391</sup> Information for this section is drawn from Tokunaga et al Trial, Exhibit E, Puddicombe fonds, Vol. 1-1, Log Book, as well as various speech notes in Vol. 2-31.

<sup>392</sup> Puddicombe fonds, Vol. 2-30, G.B. Puddicombe, "War Crimes Trials Hong Kong Style," 26.

<sup>393</sup> Tokunaga et al Trial, 683.

such reports. Toward the end of the trial, Puddicombe remarked to Orr that he thought Tokunaga had sufficiently sealed his own fate:

Colonel Tokunaga ended his evidence today. In my opinion, which is notorious for being wrong on all occasions, he has succeeded in hanging not only himself but also his medical adviser.<sup>394</sup>

When given a final opportunity to speak, most of the accused remained silent. Tokunaga, however, opted to say some words in mitigation, mainly seeking leniency for his subordinates. He alleged that they did their best, worked hard at the camps, and had the best intentions with regard to the POWs. As for himself, he claimed to have carried out his duties to the best of his ability and admitted that he now realized his actions caused suffering and had that on his conscience. In a plea for leniency, Tokunaga noted that while in prison he “read books every morning and evening I have made prayers to atone for my crimes.”<sup>395</sup> Following these pleas for mitigation, the court retired for an hour and a half to consider the sentence.<sup>396</sup>

Fifty-four trial sittings had revealed the range of brutalities Tokunaga and his staff had committed against the POWs, from the extreme to the mundane. Accordingly, the President announced guilty findings across the board. Special findings disassociated some of the men from responsibility for killing POWs and, although there were specific instances of not guilty findings, all five men received sentences. Tanaka, Tsutada and Harada all received minor sentences for causing suffering to the POWs: three, two, and one year(s) prison terms respectively. Tokunaga and Saito each received death sentences for their role in causing suffering and the deaths of POWs in the Hong Kong Camp structure.<sup>397</sup>

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<sup>394</sup> Puddicombe fonds, Vol. 2-9, Major Puddicombe, Hong Kong to Lt. Col. Oscar Orr, Tokyo, 15 January 1947.

<sup>395</sup> Tokunaga et al Trial, 802. Harada also added quickly that his “mind is in a confusion and I am not able to say much, but I would like the Court to be very considerate towards me.”

<sup>396</sup> *South China Morning Post*, 14 February 1947.

<sup>397</sup> Tokunaga et al Trial, 803.

The findings fulfilled what Puddicombe and Orr had expected. The minor players in the trial had received nominal sentences, while the major players were set to be executed for their role in POW deaths. Puddicombe appeared to be pleased. He notified Orr that he had “no comments to make,” and thought “the Death sentences were expected, and the gaol sentences were ample for the offences proved against the interested accused.”<sup>398</sup>

### **Post-Trial Commutations**

Although the Camp Case had the widest reaching impact on Canadians, both in the number of surviving POWs involved and the number of casualties caused by the action and inaction of the accused, the verdict received little fanfare in Canada. In the months following, however, the results raised the hackles of Canadians when ALFSEA officials commuted the death sentences levied to Tokunaga and Saito to life imprisonment and 20 years. Although the British convening authorities provided no clear explanation, it appears that a letter of support written on behalf of Saito and Tokunaga by the Director of Medical Services for Hong Kong, Dr. Percy Selwyn-Clarke, heavily influenced this decision.

Immediately following the sentencing, Selwyn-Clarke sent a letter of support to Major-General Sir George Erskine, GOC Land Forces, Hong Kong, offering a meagre offset for the actions confirmed in the courtroom. On behalf of Saito, he explained that although the Japanese officer had a challenging time getting medical supplies into the camps through open avenues, Saito eventually allowed some goods into the Ma Tau Chung Camp which helped Selwyn-Clarke as the only doctor in the camp. He also noted that he did not consider Saito “altogether normal mentally.” As for Tokunaga, Selwyn-Clarke observed that he had allowed weekly food parcels to reach the POWs, which raised morale and allowed for the flow of goods into the Bowen Road

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<sup>398</sup> Puddicombe fonds, Vol. 1-25, Major Puddicombe, Hong Kong to Lt. Col. Orr, Tokyo, 27 February 1947.

Hospital. Personally, he opined that Tokunaga was “lazy and greedy rather than deliberately sadistic.” Allowing that his aim was not to be unduly critical of the finding or the courts, Selwyn-Clarke sought to appeal to Erskine’s sense of British respectability and requested that he consider commuting their sentences to life imprisonment with the “British sense of justice” in mind. Selwyn-Clarke also secured a letter of support from his Deputy Director, Dr. Isaac Newton, who worked with Saito for about five months. Newton explained that he felt Saito was a “small fry” in the Japanese military system and that he thought there was little that could be done to improve the situation. Newton listed several occasions where Saito had bettered the situation for the POWs, including allowing him some movement between camps and hospitals to perform surgery, and permitting additional food into St. Theresa’s Hospital.<sup>399</sup> The examples that these two men offered in support of Tokunaga and Saito tended to be minor and practical, and could hardly nullify the string of examples revealed during the lengthy trial.<sup>400</sup>

Officials at ALFSEA HQ in Singapore reviewed the letters, along with petitions from Tokunaga and Saito and the trial transcript. When the file arrived back in Hong Kong in May 1947, military authorities recommended that the petitions added nothing new to the trial. They noted, however, the possibility that the discussion of Saito’s presence at the execution of Payne and the other Canadians may have unduly influenced his sentence – although he was not charged with the offence. The British Brigadier responsible for the review indicated that this may have influenced the severity of the sentence and recommended the GOC confirm the findings and consider altering the sentencing for Saito (but not for Tokunaga).<sup>401</sup>

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<sup>399</sup> Tokunaga et al Trial, Dr. Isaac Newton, Hong Kong to Dr. Percy Selwyn-Clarke, Hong Kong, 17 February 1947.

<sup>400</sup> Roland also notes that if such weight were given to the Hong Kong doctors in influencing the decision, it begs the question as to why neither served as witnesses during the trial itself. *Long Night’s Journey into Day*, 171.

<sup>401</sup> Tokunaga et al Trial, Brigadier (*illegible*), DJAG, SEALF, Singapore, to Commander, Land Forces, Hong Kong, 9 May 1947.

During the next two months, the confirming authority (GOC Land Forces, Hong Kong) completed another review of the trial. Acting-commander Brigadier Rogers signed off on the file, indicating on the schedule affixed to the trial transcript that he confirmed the findings but commuted Saito to 20 years and Tokunaga to life imprisonment.<sup>402</sup> When Land Forces, Hong Kong communicated the alterations to ALFSEA and the Department of the Judge Advocate General in the Pacific Theatre, the original reviewing officer was shocked at the decision and was asserted that there was no clear reason to commute Tokunaga's sentence. He assumed that Selwyn-Clarke's letter had influenced the commander – but could scarcely believe that the letter had induced an adjustment to Tokunaga's sentence.

Rogers was hesitant to communicate the alteration directly from Hong Kong to Canadian authorities, and requested ALFSEA authorities break the news. In the interim, Major Loranger communicated with National Defence officials in Ottawa who inquired whether the findings had been confirmed. ALFSEA sent an abrupt telegraph to DND stating that the findings were confirmed as they had been in the courtroom, but that the death sentences had been commuted.<sup>403</sup> The decision was made without Canadian consultation and when officials in Ottawa requested more information, little was provided.

The one line communique from Singapore was the only information officials in Ottawa received regarding the commutations. What, if any, action officials took in the time between receiving the communication, 23 July, and when media reports went public on 25 August remains unclear. When Canadian officials announced the commutation publically, voices of

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<sup>402</sup> Tokunaga et al Trial, Schedule. The *Montreal Daily Star*, 26 August 1947, also notes that Army authorities claimed that they believed the Acting General Officer Commanding (“a British General” is incorrect) took it upon himself to commute the sentences. Unfortunately, little is known about Rogers, or why Erskine was not at the helm in Hong Kong at the time. Perhaps something would illuminate the story in the Imperial War Museum, Private Papers of General Sir George Erskine, GCB KBE DSO, or on Rogers in NA, Library, The Army List, 355.3 355.03.

<sup>403</sup> Tokunaga et al Trial, Brigadier (*illegible*), DJAG, SEALF, Singapore, to AG3, 14 July 1947 as well as Cipher Telegraph 7AG, HQ Land Forces, Hong Kong to Defence Ottawa, 11 July 1947, Cipher Telegraph 8AG, HQ Land Forces, Hong Kong to SEALF, 11 July 1947 and SEALF to Defence Ottawa, nd, July.

displeasure came in three waves: from Puddicombe, representing the Detachment and himself (now as a civilian); from POWs as individuals and in the semblance of the Winnipeg Grenadiers Association; and from the Canadian Government, although it treaded diplomatic waters as carefully as ever.

Puddicombe was understandably devastated by the announcement and became the most outspoken on the issue. He firmly believed in the conviction and sentences, particularly after investing such time immersed in the evidence and consequences of Tokunaga and Saito's (in)actions, and spoke out against the commutation in Canadian Legion speeches. He denounced the British decision as disingenuous, suggested that it ran counter to the purpose of the trials themselves, and questioned the qualifications of the reviewer. He noted in a speech that the commutations could have been part of the "Love your Enemies' Theory" and were "commuted on the recommendation of officers who heard no single word of evidence, nor saw so much as a single witness in the flesh."<sup>404</sup> He lamented that the GOC had received poor legal advice.<sup>405</sup>

Puddicombe misaimed some of his criticism at the Singapore HQ when he reiterated the idea that the reviewers were nowhere near as qualified as the members of the court, and "would be astonished if on the staff of the War Crimes Legal Section...there was more than a qualified lawyer."<sup>406</sup> This may have been true, but the decision emanated from Hong Kong (as he conceded in a later interview). On a philosophical level, Puddicombe saw the decision as a rebuke of the merits of the trials themselves, noting that "the value, if any, of war crimes trials is

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<sup>404</sup> Puddicombe fonds, Vol. 2-30, "War Crimes Trials, Hong Kong Style," 17, 18. Puddicombe suppressed his criticism when it came to matters of policy, however, and limited it to private correspondence with Orr. See for example: Puddicombe fonds, Vol. 2-7, Major Puddicombe, Hong Kong to Lt. Col. Orr, Tokyo, 2 October 1946. In this letter, Puddicombe rails against the Niimori decision (quoted below) but notes that he had elected to "keep my big mouth shut" as regarded his displeasure with the decision.

<sup>405</sup> *The Standard* (Montreal), 4 October 1947.

<sup>406</sup> *The Herald* (Montreal), 25 September 1947.



lost unless it appears that we will resolutely carry out punishment where guilty is established.”<sup>407</sup>

In his first newspaper interview following discharge, he asserted that the legal advisors to the General Officer Commanding had erred and done a disservice to the program. He reaffirmed the fairness of the trials and the leniency of the courts in sentencing. Given that Tokunaga and Saito had been found culpable for the deaths of 125 Canadian soldiers, Puddicombe questioned: “How many men does a man have to kill to be hanged?”<sup>408</sup>

Colonel J.C. Stewart, a former Court President who later transferred to the ALFSEA HQ in Singapore, and Major Loranger privately shared their displeasure in the decision and jokingly tried to imagine what Puddicombe’s reaction would have been. Stewart was “very disappointed to read about the fate of Colonel TOKONAGA [sic] and I shudder to think what old BEVERLEY will have to say. I am sure he will blame the legal people in view of what was said in the Press about the General have [sic] the best legal advice.”<sup>409</sup> Loranger replied that he had been in contact with Puddicombe, who “was surprised at the commutations at first. He thought that maybe some of the findings had been altered, but when he heard that they had all be confirmed he stated he could but to [sic] accept the discretion of the A/GOC. I, too, would have liked to have been there on the minute he got the first news!!”<sup>410</sup>

Former POWs also took the commutation as a slap in the face to them and their fallen brethren. The President of the Winnipeg Grenadiers Association wired Ottawa on behalf of its members to seek a justification. Lt. Col. G. Trist (whose affidavit had been entered as evidence in the Inouye Trial) also spoke out, his anger tempered with realism. The Japanese responsible

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<sup>407</sup> Puddicombe fonds, 2-31.

<sup>408</sup> *The Standard* (Montreal), 4 October 1947.

<sup>409</sup> DHH, Loranger fonds, Series 1-1, Colonel J.C. Stewart, Singapore, to Major J.T. Loranger, Hong Kong, 1 September 1947.

<sup>410</sup> DHH, Loranger fonds, Series 1-1, Major J.T. Loranger, Hong Kong, to Colonel J.C. Stewart, Singapore, 10 September 1947.

for the killings of the four escaped Canadians were “savages with a thin veneer of civilization,” but he assumed that any protest he or the Grenadiers offered would probably not “do much good.”<sup>411</sup> Colonel J.A. Bailie reflected on the commutation in light of the reburial of 300 Canadians at Sai Wan Cemetery which he had been instrumental in arranging, claiming that most “of the Canadians who served at Hong Kong will be very bitter at the commutation of these sentences. I was there and I considered the trials exceedingly fair.”<sup>412</sup>

Brigadier W.J. Home, who had commanded the Royal Rifles following the death of Brigadier Lawson, was even more outspoken. Home made a statement in Montreal (where he was acting General Officer Commanding Quebec Command) decrying the decision a “miscarriage of justice” for all Hong Kong veterans. Noting the brutality and callousness of Tokunaga and Saito, he was perplexed: “I don’t know who is responsible for those sentences, but every Canadian soldier who was in Hong Kong believes that these men were responsible for the deaths of their comrades, and I am sure their feelings on the commutation will be the same as my own.”<sup>413</sup>

The Department of National Defence officially criticized the decision in the media but appears to have done little to follow through on it. It issued a statement explaining that the decision had been made in theatre in June but that the Canadian Government had only recently learned of it and had not been consulted at any point.<sup>414</sup> The press release claimed that DND would make “strong representations” on behalf of the Canadians, and that officials were “sharply critical”<sup>415</sup> of the decision. When the WCIS closed out and submitted its Final Report in August

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<sup>411</sup> *Montreal Daily Star*, 26 August 1947.

<sup>412</sup> *Montreal Daily Star*, 26 August 1947. For more on the Bailie and the Canadian Detachment involvement in the reburial program see Chapter 7.

<sup>413</sup> *Montreal Daily Star*, 25 August 1947.

<sup>414</sup> *Montreal Daily Star*, 27 August 1947.

<sup>415</sup> *Montreal Daily Star*, 25 August 1947.

1947, Major W.P. McClemont cited the commutation as an unfinished matter. Department officials still did not understand the decision, which had caused “a great deal of editorial comment in the Crown Colony of Hong Kong itself.”<sup>416</sup> The only overt action on the matter came in the form of a communique to the Under-Secretary of State for External Affairs to follow up with the British War Office.<sup>417</sup> According to the *Canberra Times*, the British did not respond to the Canadian enquiry until December 1947 and even then offered little more explanation than the original communique. The British Government would not “interfere with the British Far East military authorities” and thus refused to intervene.<sup>418</sup>

Whatever factors influenced Rogers’s decision to commute the death sentence, they generated friction between the differing ideas about justice held by the various invested parties. The decision let down the people seeking retribution for the POW experience in Hong Kong. The original reviewing authority recommended commuting Saito’s death sentence, but even he was shocked when Tokunaga was lumped in with Saito and avoided the gallows pole. This decision demonstrated how little consideration British authorities gave to their Canadian counterparts in the broader war crimes picture. Although Puddicombe had secured the conviction and provided the lion’s share of evidence, Canadian officials had no say in the ultimate fate of war criminals – and did not even warrant a clear explanation.<sup>419</sup>

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<sup>416</sup> Final Report, 5.

<sup>417</sup> The paragraph dedicated to the matter directs the reader to correspondence on the issue being filed under HQS 8959-9-4 FD 100 and FD 80, which are not in the LAC files in corresponding order. See LAC, RG 24, Vol. 2892, HQS 8959-9-4, pt. 1-3.

<sup>418</sup> *Canberra Times*, 10 December 1947.

<sup>419</sup> On similar developments regarding the fate of German war criminal Kurt Meyer, see Lackenbauer and Madsen, eds., *Kurt Meyer on Trial*, 645-50.

## Niimori Trial

Niimori Genichiro was despatched to Hong Kong on 29 March 1942 and served as chief interpreter within Tokunaga's POW camp structure. Niimori's strong command of English was the result of his residence in the United States, where he worked for eighteen years in Dayton, Ohio.<sup>420</sup> In Hong Kong, he worked as Tokunaga's personal interpreter at HQ on Forfar Road, and at the various camps and hospitals throughout the colony.<sup>421</sup> He also acted as POW liaison and interpreter on two overseas drafts that took POWs from Hong Kong to Japan for labour distribution. The first and most relevant to the trial took place in September 1942 aboard the infamous *Lisbon Maru*, which sunk off the coast of Shanghai. The gravest charges against him stemmed from his involvement in the battering down of the POWs after torpedoes struck the ship. The charges also alleged he was involved in shooting POWs who attempted to escape the holds.

Niimori faced eight charges, five linked to his time in Hong Kong that dealt with isolated incidents of physical abuse and stealing Red Cross parcels or personal effects from the POWs. The other three charges involved his actions on the draft ships and at Shanghai. Puddicombe served as prosecution on the case. Niimori was one of the rare defendants at the Hong Kong War Crimes Courts who was afforded the luxury of two Japanese defence lawyers.<sup>422</sup> Although Canadian authorities identified Niimori as a primary concern for Canadian prosecutors, the trial itself honed in mainly on his alleged brutality against British POWs in transit to Japan.

The Canadian component of the trial was limited to three distinct incidents of beatings. Puddicombe depicted Niimori as a power-hungry interpreter with a short temper and a ruthless

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<sup>420</sup> Niimori Trial, 146.

<sup>421</sup> Niimori Trial, Exhibit U.

<sup>422</sup> Niimori's defence counsel was comprised of two Japanese barristers, Takahashi Mikio and Nibun Yurito. Due to organizational complications, Major Loranger narrowly missed the opportunity to represent Canadian interests on the bench.

edge with the POWs, relying mainly on affidavit evidence to construct this relatively straightforward portion of the case. Many of the Royal Rifles recalled vividly one incident when they saw Niimori punch, kick and whip Rifleman Doucett aboard the *Toyama Maru* when the prisoner tried to trade some of his kit to the ship's staff in return for food. At least six different men noted the beating and claimed that Doucett never recovered from it. He died shortly after his arrival at the Narumi POW Camp in Japan.<sup>423</sup> The beating was easy enough to prove to the Court, but the allegation that the beating hastened Doucett's death did not carry sufficient weight, given that Doucett had already suffered from diphtheria and malnutrition.<sup>424</sup>

Another incident involved Niimori brutally beating several patients during an interrogation at Bowen Road Hospital. Hospitalization in Hong Kong was rare, so those held at Bowen Road were in some of the worst shape of any of the POWs.<sup>425</sup> The hospital staff found a bag or a small case just outside the wire on the hospital grounds, which raised the suspicion amongst the Japanese authorities. Tokunaga sent Niimori to the hospital to investigate, and he decided that the Canadian patients' answers were unsatisfactory. Niimori took the men from their rooms, and they returned with severe signs of abuse on their faces and backs. According to a witness who helped operate the hospital during the occupation, one of the patients even committed suicide prior to his interrogation.<sup>426</sup>

The capture and execution of Payne and the Canadian POWs played only a minor role in Niimori's trial. In this case, however, Puddicombe had only minimal evidence to link Niimori to the beating of the four men after their recapture. The eventual fate of the men was not included in the charges and could not be divulged in the courtroom. Puddicombe read at length several

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<sup>423</sup> Niimori Trial, 70 and Exhibits M, N, O, P, Q, R.

<sup>424</sup> Niimori Trial, 302. Ultimately, this required a special finding exempting Niimori of responsibility for contributing to Doucett's death.

<sup>425</sup> Niimori Trial, 90.

<sup>426</sup> Niimori Trial, 90, 94.

affidavits setting the context for the escape, but offered nothing against Niimori for the alleged beating.<sup>427</sup> Puddicombe relied on two witnesses who had worked at the POW HQ at Forfar Road.<sup>428</sup> Mak Kee-Shing claimed he had seen Niimori, along with the four Canadians as well as Tanaka and Tokunaga through the kitchen window at HQ and saw Niimori beat the prisoners all over their bodies with a “wooden pole, like a bat which is used in playing games,”<sup>429</sup> leaving them bleeding. Matsuda Kenichi, a former interpreter, noted that he had seen the four Canadians at HQ and they “looked as if they had a rough time” during their interrogation.<sup>430</sup> Niimori was found not guilty on this charge.<sup>431</sup>

Most of the trial focused on Niimori’s role in the labour drafts, particularly his role in atrocities carried out against British POWs aboard the *Lisbon Maru*. The ship departed on 27 September 1942 with about 1800 POWs in stow.<sup>432</sup> (There were no Canadians aboard the fateful draft, however, given that the first 663 Canadians selected for overseas labour did not depart Hong Kong until 19 January 1943.)<sup>433</sup> The *Lisbon Maru* set sail, laden down with a load of 1800 POWs, along with primary materials bound for Osaka as well as 32 tonnes of five-inch shells bound for Tokyo.<sup>434</sup> On October 1 an American submarine, *USS Grouper*, torpedoed the ship off the coast of China. While the Americans thought they had successfully frustrated more Japanese shipping they had, in fact, caused the worst American-on-British friendly fire incident in military

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<sup>427</sup> Niimori Trial, 75, Exhibits V and W.

<sup>428</sup> Niimori Trial, 75 and 79.

<sup>429</sup> Niimori Trial, 77.

<sup>430</sup> Niimori Trial, 81.

<sup>431</sup> Niimori Trial, 302.

<sup>432</sup> Niimori Trial, 11 and Roland, *Long Night’s Journey into Day*, 210.

<sup>433</sup> DHH, 593. (D8) Hong Kong, War Crimes Investigation Section, National Defence Headquarters, Ottawa, 8 January 1946, “Notes of conversation with officers going to districts to assist AJAGs in preparation of depositions from repatriates.” Draft I left on 19 January 1943 with 663 men, Draft II left on 15 August 1943 with 376 men, Draft III left on 15 December 1943 with 98 men and Draft IV left on 29 April 1944 with 47 men.

<sup>434</sup> Tony Banham, *The Sinking of the Lisbon Maru: Britain’s Forgotten Wartime Tragedy* (Aberdeen, Hong Kong: Hong Kong, 2006), 39.

history.<sup>435</sup> The charges alleged that Niimori, with the POWs under his responsibility, ill-treated the men “including the battenning down of the Prisoners of War in the holds of the said ship after it [was] torpedoed and was in sinking condition, whereby many of them lost their lives and the remainder underwent physical and mental suffering.”<sup>436</sup> Additionally, he was accused of abusing and neglecting survivors who had been collected on the dockside at Shanghai after the sinking. Puddicombe sought to prove that Niimori was responsible for the well-being of the POWs, purported to be in charge of them, and participated in their active mistreatment once the ship was struck.

Puddicombe aimed to offer the court a clear sense of the ship’s narrative, asking each of his eight witnesses about their removal from Hong Kong, who the leaders aboard the ship were, and the basic timeline. Lieutenant Wada was the officer in charge of the shipment of POWs and Niimori was his interpreter, acting as liaison between the POWs and the crew. All of the affiants described conditions in the holds of the ship as small, cramped, dark, dank and malodorous.<sup>437</sup> The men were given a 6’ x 2’ space to lie down with their kit, which included their “boots, canvas shoes, underwear, shirts and shorts, two blankets, a mess tin, eating utensils, an overcoat and a haversack.”<sup>438</sup> The sanitary and hygienic conditions aboard the vessel were wretched, the holds poorly lit and ventilated, packed with men, including those suffering from malnutrition (men suffering from diphtheria were moved to the deck). The ship authorities allowed the men out of the hold once a day to the deck to relieve themselves.<sup>439</sup> Communication and conduct with the Japanese staff through Niimori was poor. Several witnesses noted that the Japanese

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<sup>435</sup> Banham, *The Sinking of the Lisbon Maru*, 64-65, Niimori Trial, 12.

<sup>436</sup> Niimori Trial, Charge Sheet.

<sup>437</sup> Niimori Trial, 13, 21.

<sup>438</sup> Banham, *The Sinking of the Lisbon Maru*, 37. Information about the spacing, Niimori Trial, 21.

<sup>439</sup> Niimori Trial, 29-30.

officers met the senior officer's requests with indifference or hostility even early on in the journey.<sup>440</sup>

The situation in the hold spiraled out of control when the American torpedo attack breached the hull. Following the attack, the captain decided to batten down the hatches, giving the POWs only a marginal chance of survival. This decision left the prisoners in the dark with no fresh air coming into the holds.<sup>441</sup> Men began fainting and collapsing, toppling latrine buckets, intensifying the smell and the poor hygiene situation. The Japanese moved sick prisoners on the deck with dysentery or diphtheria down below with the rest of the men along with cans for them to deal with their symptoms. The men were "there all night in a stifling atmosphere with men fainting and collapsing from the heat. We had no water other than what we had conserved in our water bottles on the previous day."<sup>442</sup> One of the senior POWs, Colonel Stewart, urged the men to remain calm and to limit discussion and movement as much as possible to conserve oxygen. He made several appeals to Niimori, through a POW who could speak Japanese,<sup>443</sup> but the Japanese refused to open the holds and send down water.

Col. Stewart also asked Niimori if the prisoners could be allowed to open a port to allow in air, or to have some water. Niimori allegedly replied "[i]f you want water, drink your own piss. If you want to shit, shit in your own bed."<sup>444</sup> When the Japanese finally gave the men water, Stewart asked to conserve it for the sick men. When one man who could not hold out lunged for the bucket and took a drink, the next thing the men heard was "Jesus Christ, it's

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<sup>440</sup> The senior British officer on the *Lisbon Maru* was Lt. Col. Stewart of 1<sup>st</sup> Battalion, Middlesex Regiment and he was accommodated in the second hold of the ship. Niimori Trial, 21.

<sup>441</sup> Niimori Trial, 31. The holds were to have been shut with tarps pulled across. Exacerbating the ventilation issue, there were also chutes which allowed for the flow of air down into the holds which were cut down, dropping into the holds allowing for no fresh air to enter.

<sup>442</sup> Niimori Trial, 12.

<sup>443</sup> Niimori Trial, 31. Witness Frank Burns Miles claimed that Niimori warned the prisoners that if anyone attempted to get out of the holds they would be shot by Japanese sentries.

<sup>444</sup> Niimori Trial, 57.



piss.”<sup>445</sup> This action exemplified Niimori’s disdain for the POWs, as did his proclamation that they all would die in the holds.

The Japanese crew was swiftly removed from the boat after the torpedo attack, leaving only a few sentries and, briefly, Niimori. When some of the prisoners managed to cut through a section of the batten and tried to sneak onto the deck, shots were fired at them from the bridge.<sup>446</sup> Witnesses recalled Niimori on the bridge with four Japanese guards, two of whom were shooting. One of the men quoted in Puddicombe’s affidavits alleged hearing Niimori’s voice yell something in Japanese and immediately thereafter shots tore into the hold.<sup>447</sup> The POWs widened the holes in the battens and began to flood out, with many diving straight into the water in hope that another boat would pick them up or swimming toward an island about 6 miles away. Much to their chagrin, the Japanese fired at them as they tried to swim away. The survivors swam until they found a raft and were picked up by Chinese fishermen on their junkets or sampans and taken to port. Others made it to a nearby island where they spent the night until Japanese marines picked them up the following morning.<sup>448</sup>

The men arrived at a Shanghai port and mustered along the dockside. Niimori’s second charge emanated from his actions at the dock, where he beat and neglected the POWs. The prisoners, most of whom were naked, were forced to stand at the dock in the cold. Some individuals, including an ill prisoner R.H. Challis, wore two handkerchiefs covering themselves. When Niimori ordered some of them to remove the cloths, Challis interjected, asking for permission to keep them for decency’s sake. Niimori allegedly slapped and then kicked him on the ground. Challis was “very badly sunburned and [his] skin was in blisters and he was in

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<sup>445</sup> Niimori Trial, 59. The urine issue as explained by witness Howell, was corroborated by witness Miles, 35.

<sup>446</sup> Niimori Trial, 51.

<sup>447</sup> Niimori Trial, 174.

<sup>448</sup> Niimori Trial, 53.

complete agony but nothing was done about it.”<sup>449</sup> The general picture of Niimori’s actions at the quayside had him marching around in a furor giving orders to POWs and sentries alike and “slapping people left right and center,” “dashing around among these defenceless men and slashing them with a piece of wood, for no apparent reason.”<sup>450</sup>

According to Tse Dichuan, typist at the Forfar Road POW HQ, Niimori later explained why no POWs could escape from the ship. Niimori brought back a nominal roll that he had been carrying since the *Lisbon Maru* incident to the HQ in early 1943. Tse had orders to type up the names from the nominal roll into the categories of drowned, survived, and hospitalized. When he commented to Niimori that “it was very lucky that there was no escaped on that list,” Niimori responded that “it was impossible for the men to escape because Lt Wada, S/M Hayashi and I battened down all the hatches and blockaded all the gangways.”<sup>451</sup>

Niimori’s defence for the *Lisbon Maru* and Shanghai dock portions of the trial downplayed his responsibility and shifted responsibility onto Lieutenant Wada. He was argumentative, forgetful, and aimed to portray any of his positive actions not as his duties but as acts of goodwill toward the POWs in the hold. His aim was to prove superior orders, or deny accusations including the claim that he told the POWs they would be shot if they attempted to get out of the holds.<sup>452</sup> During cross-examination Puddicombe struggled with Niimori, trying to get clear answers from him, and although he could tie him to most of the beatings, allegations about hearing his voice on the bridge were the main piece of evidence linking him to the *Lisbon Maru* atrocities.<sup>453</sup>

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<sup>449</sup> Niimori Trial, 61.

<sup>450</sup> Niimori Trial, 54 and 15.

<sup>451</sup> Niimori Trial, 64.

<sup>452</sup> Niimori Trial, 163-164.

<sup>453</sup> Niimori Trial, 171.

Niimori's response to his 15 year sentence in the courtroom was one of unbridled enthusiasm. The *China Mail* reported that in a marked change from his solemnness throughout the trial, Niimori jumped up, danced and hugged his defence counsel. He then ran up to the members of the court, bowing three times and saluting.<sup>454</sup> Major Puddicombe considered Niimori's sentence shockingly lenient in relation to the incidents detailed in the charges against him. The prosecutor relayed his frustration to Orr in a letter following the announcement of Niimori's sentence, which made him question his qualification to prosecute the Camp Case:

I find it very difficult to reconcile the sentence with the findings, particularly in the first charge which, subject to correction, was tantamount to finding the accused accessory to the fact and, therefore, equally guilty with the principals who caused the tremendous loss of life entailed in the battering down of the prisoners of war in the holds, and the sinking of the "Lisbon Maru."

Since hearing the sentence I have endeavoured to keep my big mouth shut and make no comments. However, to you, I may say this: if ever I am found guilty of being an accessory to them murder of 900 odd. [sic] human beings, I hope I may be sentenced by No. 7 War Crimes Court.

It is appreciated that the quantum of sentence is not part of the responsibility of the Prosecutor. However, I cannot escape the feeling that, in some way, the prosecution failed in its presentation. I say this because, if so, it would be better if someone else prosecuted in the case against TOKUNAGA, SAITO et al.<sup>455</sup>

Many years later, M.I. Ormsby, the British member on the Court, recalled his gut feeling in casting his vote in this case. Ormsby's was the dissenting voice in the finding, and he claimed 65 years later that he saved Niimori's life – if he had voted in unison with the rest of the panel, Niimori would have hung. Ormsby still maintained that Niimori "was guilty as hell," but did not think the evidence on the *Lisbon Maru* charge was sufficient, given that so much weight rested on the was assertion that Niimori's voice bellowed the order. It was too easy to imitate or

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<sup>454</sup> *The China Mail*, 2 October 1946. Of the incident, Puddicombe noted that he had not witnessed the scene, but that Hogg corroborated the description in the newspaper. See Puddicombe fonds, Vol. 2-7, Major Puddicombe, Hong Kong, to Lt. Col. Orr, Tokyo, 2 October 1946.

<sup>455</sup> Puddicombe fonds, Vol. 2-7, Major Puddicombe, Hong Kong to Lt. Col. Orr, Tokyo, 2 October 1946.

mistake a voice, Ormsby suggested, and that was not enough to send someone to the gallows on.<sup>456</sup>

All told, the Camp Case and Niimori trials had Puddicombe prosecute a much broader range of war crimes than he did in the invasion trials. The POWs were subjected to a long and cruel ordeal that was interspersed with intensive incidents of brutal abuse. Exploitive labour, nutritional and hygienic deficiencies, and disease were the norm in a dismal environment that placed the POWs at the bottom of the hierarchy. Faced with resource constraints, the Japanese made few efforts to better the lot of the prisoners and diverted supplies that were meant for their use. Tokunaga applied collective punishment and created an environment where violent retribution was permitted if not promoted. Niimori exemplified the type of individual who took advantage of his position to mistreat the men. Another Hong Kong interpreter, Japanese-Canadian Inouye Kanao, also used his position to exploit and leverage revenge on the POWs, but in his case Inouye sought to exact harm on the Canadians in particular.

Although Canadian officials had marked the Camp Case among the highest priorities ahead of the Detachment leaving Ottawa, its outcome was a disappointment. The ultimate verdicts and sentences dealt a significant blow to Puddicombe, the other Canadian Detachment members, and surviving POWs. National Defence officials' lack of input indicated how little influence Canada had in the theatre, and British authorities proved uninterested in complicating their own work to inform (never mind kowtow) to Canadians. The Canadians barked at home more than they actually attempted to bite abroad – an approach magnified in the diplomatic approach to the Inouye Kanao trial where complete avoidance was the preferred method of dealing with potentially troubling legal questions.

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<sup>456</sup> Linton interview with Ormsby (United Kingdom 21 July and 4 August 2011), 17-18.

## Chapter 5

### **Hong Kong – A “guest of the Dominion of Canada”: Nationality and the War Crimes and Treason Trials of Inouye Kanao**

In May 1946, while presiding over the Hong Kong War Crimes Court, Lieutenant Colonel J.C. Stewart of India’s Judge Advocate General office offered his final assessment of Inouye Kanao, an alleged Japanese-Canadian war criminal on the stand for his actions in Japanese-occupied Hong Kong. Stewart considered Inouye’s nationality a significant issue and, before delivering a death sentence, denounced Inouye’s actions in this light:

Your culpability is greatly aggravated by the fact that you were the guest of the Dominion of Canada in your youth and there you received kindness and free education which should have impressed on your mind the decent ways of civilised people and made it impossible for you to be concerned, directly or indirectly, in such an outrage against humanity.<sup>457</sup>

Throughout his legal saga, Inouye shifted his national allegiances to suit his circumstances, characterizing himself as a citizen or victim of Canada or a citizen or victim of Japan when it served his personal interests. Each formulation bore elements of truth – but did little to excuse his reprehensible behaviour in Hong Kong during the war.

Inouye’s actions as an interpreter at the Hong Kong POW camps in 1942 and later for the Japanese Gendarmerie landed him in front of the “minor” war crimes court at Hong Kong in May 1946. His trial concentrated on his brutal use of torture tactics against Hong Kong civilians suspected of espionage. Inouye successfully petitioned his guilty finding and death sentence based on his British subject-status through Canadian birth, quashing his war crimes sentence. In a period of diplomatic discussion and uncertainty, Canada sought minimal involvement, hoping

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<sup>457</sup> NA, WO, 235/927, Trial of Inouye Kanao [hereafter Inouye Trial], 149.

that the problem could be dealt with far from domestic soil. The eventual outcome was a High Treason trial convened by British authorities in Hong Kong. The framework of the trial and Inouye's defence contrasted significantly from the war crimes trial, but the outcome again placed Inouye at the gallows pole. Subsequent petitions failed to save Inouye and he was executed on 26 August 1947. Guilty of High Treason, authorities applied the British Treason Act of 1351 to Inouye's situation to substitute where the British war crimes trial had failed.

Inouye's legal story presents a complex and conflicting series of pressures. As an individual, Inouye toiled with loyalties he felt toward his country of birth and those he held for Japan and his family's heritage. He presented extreme examples of both during his trials. Legally, his situation tested the parameters of military law, and required the application of centuries' old treason law to prevent him from evading justice. Politically, Inouye's British subject-status elicited a hesitant response from the Canadian government which sought to avoid the inevitable political discord that would erupt were Inouye brought back to Canada for trial. The British government eventually carried out the High Treason trial in Hong Kong, thus absolving Canada of any responsibility to act and seizing an opportunity to re-establish credibility in the eyes of Hong Kong's residents.

Inouye Kanao was born in Kamloops, British Columbia, on 24 May 1916. His father, Inouye Tadashi, was a first generation Japanese immigrant from Tokyo who received the Military Medal while serving with the 131<sup>st</sup> Battalion of the New Westminster Regiment during the First World War. Kanao's grandfather, Inouye Chotara, was president of the Keio Electric Tramways Company of Tokyo and a member of Japanese Parliament and House of Peers. The family expected that young Kanao would work in business as an intermediary between Japan and North America. After attending public schools in Port Haney and Vancouver, he travelled to

Waseda in September 1936 to complete a qualifying year learning to read and write Japanese before enrolling in Waseda University.<sup>458</sup>

Inouye and his *Nisei* contemporaries were not well received when they arrived in Japan. He claimed that the Japanese, especially members of the military, were arrogant and did not accept or respect *Nisei* because they had learned English and were too accustomed to Western culture. According to Inouye, he and a *Nisei* reporter were arrested by the Japanese gendarmerie in Tokyo, questioned, and given water torture. This experience caused long term health problems and forced him to withdraw from university after he contracted pleurisy and was hospitalised.<sup>459</sup>

Inouye went to stay with his grandfather and enrolled in an agricultural program. He never told his grandfather about the water torture, but was eventually moved to a sanatorium in 1940 with lung problems. During his war crimes trial, Inouye divulged that he had worked at the POW camps in Hong Kong from May 1942 until September 1943 as an interpreter. He was transferred to Singapore to interpret with the 4<sup>th</sup> Division in Singapore from September to December 1943 and travelled to Osaka with them. Inouye was discharged on 28 March 1944, and secured employment in Kobe as a clerk for Iwae and Company, involved in importing and exporting goods. He accepted a transfer with the firm to Hong Kong in June 1944 to reunite with a woman he had married during his previous term in Hong Kong. Upon arrival he was given an ultimatum by POW Camp Commander Colonel Tokunaga Isao that he either be deported or act as an interpreter with the Gendarmerie, which he did from June 1944 until February 1945 after which he took on a job with a commercial firm in Hong Kong until his the end of hostilities. Inouye claimed that Tokunaga gave him the ultimatum because he knew too

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<sup>458</sup> Inouye Trial 80, 102-104 regarding birthplace and grandfather, and 148 regarding military career of father.

<sup>459</sup> Inouye Trial, 81-3.

much about him and that Tokunaga “did not want things said about him.”<sup>460</sup> Although Inouye’s defence counsel claimed during closing argument that Inouye was never a soldier in the Imperial Japanese Army, Inouye later provided confirmation that he had been conscripted and served in Manchuria from 1937-1939 in the hopes of proving Japanese nationality following his high treason trial.<sup>461</sup>

### **The Portrayal of the “Kamloops Kid”**

Inouye Kanao’s infamy is connected to the Canadian experience after the Battle of Hong Kong in 1941 and subsequent war crimes trials. Most frequently, Inouye – known as “the Kamloops Kid” or “Slap Happy” – has been co-opted for a specific political purpose. This is best exemplified by the Canadian historian J.L. Granatstein, who depicts Inouye as vicious and vengeful, a scorned Japanese-Canadian who wanted nothing more than to strike back at Canadian POWs in retaliation for his childhood treatment in Canada.

The foundation of this interpretation, based on Canadian POWs’ interactions with Inouye while he was an interpreter at the POW camps in Hong Kong, is essentially correct. Granatstein’s contention is based on more than two hundred affidavits in which returning POWs mention Inouye<sup>462</sup> – affidavits collected by the WCIS to build cases based on POW experiences in Hong Kong and Japan – and confirmed in veterans’ memoirs disclosing pointedly negative experiences with Inouye.<sup>463</sup> This received version selectively builds upon Inouye’s persona as a

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<sup>460</sup> Inouye Trial, 86 as well as 107, Exhibit W.

<sup>461</sup> See PRO, HK, HKRS, 163-1-216, Inouye Kanao, J. 528, Petition to His Majesty the King, 20 August 1947.

<sup>462</sup> Roy et al, *Mutual Hostages*, 73. The affidavits which Granatstein discusses are located at DHH, 163.009 (D41). Granatstein’s other work that frames Inouye in the same light is J.L. Granatstein, *The Last Good War: An Illustrated History of Canada in World War Two, 1939-1945* (Vancouver: Douglas & McIntyre, 2005), 60.

<sup>463</sup> The memoirs and oral histories that deal with Inouye all view him in essentially the same way. See, for example: Daniel G. Dancocks, *In Enemy Hands: Canadian Prisoners of War, 1939-1945* (Edmonton: Hurtig, 1983), 240-241; William Allister, *Where Life and Death Hold Hands* (Toronto: Stoddart Publishing Co., 1989), 80; Ken Cambon, *Guest of Hirohito* (Vancouver: PW Press, 1990), 49; and George MacDonnell, *One Soldier’s Story, 1939-1945*:



war criminal, but in a skewed and erroneous way. Inouye becomes an example of extreme *Nisei* disloyalty during the Second World War and is blamed for “several deaths and countless beatings”<sup>464</sup> – an interpretation exacerbated by the portrayal of the Kamloops Kid in the McKenna brothers’ *The Valour and the Horror* documentary miniseries.<sup>465</sup> During his war crimes trial, however, Inouye was not charged with the deaths of any Canadian POWs, and was exculpated of responsibility for causing the deaths of four Hong Kong civilians by torture.

Histories which emphasize Inouye’s disloyalty focus only on his interactions with Canadian POWs and are factually inaccurate when it comes to his legal story.<sup>466</sup> More recent studies have touched upon the central importance of his ambiguous legal status, but tend to be

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*From the Fall of Hong Kong to the Defeat of Japan* (Toronto: Dundurn Group, 2002), 101-102. *The Royal Rifles in Hong Kong* (Sherbrooke: Hong Kong Veterans Association, 1980), 288 includes three quotations pointing to Inouye’s violent outbursts and his tendency to punish Canadians with a particular tenacity. One veteran notes that Inouye “murdered seven or eight Canadians in cold blood, attacked them shooting a gun or slashing them with a sword or beating them over the head with a rifle butt until they died,” *Royal Rifles*, 287. This is easily the most extreme allegation against Inouye, but does emphasize the remnants of bitterness that Inouye left with many of the POWs. Diary entries in the text also point to the beatings of Atkinson and Norris but do not mention Inouye by name.

<sup>464</sup> Roy and Granatstein, *Mutual Hostages*, x. Roy and Granatstein correctly note that Inouye’s circumstances posed problems for the DEA, which for a time considered the option of holding the trial in Canada, but opted not to, largely as a result of the “internal political situation” in postwar Canada. They also note that the trials were hampered with jurisdictional peculiarities, but claim that Inouye was “charged as a war criminal with twenty-seven counts of overt cruelty,” and presented “the soundest cases from the more than 200 affidavits filed about his activities,” which are both incorrect to varying degrees. Inouye’s war crimes trial only had three charges – his treason trial had twenty-seven – two of which related to the abuses of Canadian officers and one of Hong Kong civilians, and while the 200 affidavits were important in prompting the investigation initially, only eight affidavits were entered into evidence at the war crimes trial.

<sup>465</sup> Brian McKenna and Terrance McKenna, “Savage Christmas: Hong Kong, 1941,” *The Valour and the Horror* (Ottawa: National Film Board, 1991). The portions of the film dealing with Inouye and his subsequent trials are 57:16-60:07 and 94:36-96:00. On the debate over *The Valour and the Horror*, see also Graham Carr, “Rules of Engagement: Public History and the Drama of Legitimation,” *Canadian Historical Review* 86, no. 2 (June 2005): 317-354, and David Bercuson, ed., *The Valour and the Horror Revisited* (Montreal & Kingston: McGill-Queen’s University Press, 1994). Ominous music plays in the background each time Inouye’s image is shown and former POWs share their recollections of Inouye. Inouye’s nationality and zeal for beating Canadians is the main focus. The film notes jurisdictional problems surrounding the original war crimes trial, claiming “his conviction was overturned on the grounds Canada couldn’t try a Canadian citizen for war crimes.” The film is misleading as the narrator notes that Inouye had been found guilty of “beating Canadian soldiers to death” when that was not the charge.

<sup>466</sup> *Mutual Hostages* and “Savage Christmas” have already been mentioned, but similar problems arose in Weisbord and Mohr, *The Valour and the Horror*, 56, as they claim without evidence that Inouye “had slipped out of the camp a few days before liberation” and required tracking down. This presumably came from *The New Canadian*, 19 September 1945. Inouye had not worked in the POW camps since September 1943, and was detained in Hong Kong in the first batch of arrests of alleged war criminals and held in internment barracks in Kowloon. *Sydney Morning Herald*, 11 September 1945.

trivial and anecdotal – quickly noting the oddity of Inouye as a Canadian war criminal – or fail to tell the whole story.<sup>467</sup> The most significant work is by legal author Patrick Brode, who deals with the Inouye trials within a broader study dealing with the Canadian effort to prosecute war criminals from 1944 to 1948. Brode’s discussion of Inouye represents the most judicious work on the Kamloops Kid rooted in archival research.<sup>468</sup> Brode details the progression toward Inouye’s war crimes trial and the trial itself, and touches on the subsequent treason trial. The major weakness in Brode’s work (aside from the understandable brevity in which he deals with Inouye, given the scope of his book) is that he did not draw on documents from the Hong Kong Public Records Office on the treason trial or the *International Law Report* on Inouye’s Full Court appeal.

Japanese-Canadian historian-activist Roy Ito briefly reviews the function of both the war crimes and treason trials based on his observations as Court Monitor at Inouye’s war crimes trial and his analysis of the treason trial through English-language Hong Kong newspapers.<sup>469</sup> He adds significantly to the historiography by analysing the trials and Inouye’s character through the lens of the Canadian *Nisei*, providing context for the trial beyond the scope of the experiences of POWs by linking the emotions of the period to Japanese-Canadian internment. Ito notes a lack

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<sup>467</sup> Jonathan F. Vance, *Objects of Concern: Canadian Prisoners of War through the Twentieth Century* (Vancouver: University of British Columbia Press, 1994), 226, and Brereton Greenhous, “C” Force to Hong Kong: A Canadian Catastrophe, 1941-1945 (Toronto: Dundurn Press, 1997), 131. Greenhous poses the stirring proposition that after the failed war crimes trial, “Ottawa decided that as [Inouye] was Canadian-born, a charge of treason would be more appropriate,” and that the reason for the second trial was that “[p]erhaps someone wanted to make sure that the death sentence would not be commuted to imprisonment.” This statement is difficult both because it lacks evidence to maintain the point, and implies that shifting from a war crimes charge to a treason charge was a conscious decision by the Canadian government, and not the result of a petition by Inouye’s defence counsel and a non-confirmation of sentence when under review by the JAG Department of ALFSEA. Greenhous’ implied Ottawa-backed conspiracy for Inouye to be executed does nothing to further our understanding of the incident.

<sup>468</sup> Brode, *Casual Slaughters and Accidental Judgments*, 169-176. Brode’s work on Inouye remains the stalwart in the literature, cited in Charles Roland’s work on the medical conditions facing POWs in Hong Kong and Japan as “synopsised cogently.” Roland, *Long Night’s Journey into Day*, 372, note 52.

<sup>469</sup> Roy Ito, “Was it Justice?: Kanao Inouye,” in *Stories of My People* (Hamilton: S-20 & Nisei Veterans Association, 1994), 367. Ito’s role in Inouye’s trial was to “listen to the interpretation, correct errors and to be alert that the interpreter, usually a Japanese, was not giving undue assistance to those on trial.” See Roy Ito, “Was it Justice?” 356.

of connection between what went on in the trial and the lived experience of Japanese-Canadians at home. The notion that Inouye's treason was based on his holding of British – which, in this era included Canadian – citizenship is laughable in Ito's view, given the rampant racial discrimination in British Columbia as well as the evacuation and internment of Japanese-Canadians that began in 1942.<sup>470</sup> Ito argues that it was a sound decision to hold the treason trial in Hong Kong, as, had it been held in Canada, it would have been a “draining emotional experience for Canada, particularly for former Hong Kong prisoners and Japanese Canadians.” A domestic trial would have “exposed Japanese Canadians to further outbursts of terrible abuse, hatred, and threats painful to contemplate even from a distance of many years.”<sup>471</sup> Ito also contends that it was unlikely that a Canadian judge would have allocated the death sentence to Inouye.<sup>472</sup>

Ito considers Inouye's war crimes conviction to have been just, but suggests that the death sentence and the treason trial were both cases of victors' justice. He argues that the treason trial jury was made up of “whites and Chinese,” a Hong Kong “community that hated the Japanese Canadian.” Accordingly, Ito insists that “justice or the appearance of justice” was questionable.<sup>473</sup> Unfortunately, his study is littered with minor factual errors, overlooks the requirement of a special finding in the war crimes trial, misconstrues the original charges in an earlier work, and gives no context for why Inouye was brought to trial a second time.<sup>474</sup>

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<sup>470</sup> Ito, “Was it Justice?” 366.

<sup>471</sup> Roy Ito, *We Went to War: The Story of the Japanese Canadians who Served during the First and Second World Wars* (Stittsville, Ont.: Canada's Wings, Inc., 1984), 272.

<sup>472</sup> Ito, “Was it Justice?” 366.

<sup>473</sup> Ito, “Was it Justice?” 361, 365, 367.

<sup>474</sup> On the special finding see Inouye Trial, 148. For the original charges see Ito, *We Went to War*, 269. Ito claimed that in “May 1946 he appeared before the war crimes court charged with 27 overt acts of cruelty” when in fact Inouye was charged with three war crimes. The treason trial, held in April 1947 saw Inouye charged with 27 overt acts of treason. For the second trial, see Ito “Was it Justice?” 362-365. Ito also noted that that Inouye's defence lawyer opted not to appeal the sentence, but “brought to the attention of the army's judge advocate that his client

Misrepresentations of Inouye are problematic, particularly in terms of his legal story. As a portion of a *Beaver* survey of the worst Canadians, prominent Canadian historian David Bercuson chose Inouye as one of the ten most reprehensible. The entry describes Inouye's background: his birth and formative years in British Columbia, his transfer to Japan and role as a translator for the IJA. Inouye is framed as brutal and combative, abusing Canadian prisoners and "taunting them in perfect English." His actions are constructed as a form of payback for his childhood in Canada. The entry closes with the claim that:

Kanao was taken prisoner at the end of the war. Unlike many other Japanese camp guards, an international tribunal in Japan did not try him, because he claimed that he was a Canadian citizen. He was instead sent back to Canada, where he was tried for treason, found guilty and hanged.<sup>475</sup>

A careful scrutiny of Inouye's war crimes and high treason trial transcripts, as well as archival documentation in Ottawa, London, and Hong Kong, places Inouye's legal saga firmly in Hong Kong. Minimal attention was devoted to Inouye's abuse of Canadian POWs during his war crimes trial. The portion of Inouye's trial that dealt with his abuse of two Canadian officers only took a few hours of the first session and a fraction of Inouye's time on the stand. Aside from this, Inouye's legal saga had little Canadian component aside from the location of his birth and registration – and bumbling diplomatic communications. Although Inouye treated Canadian POWs with disdain, this had little bearing on his legal story. Bercuson's verdict on Inouye as an infamous Canadian villain is appropriate in many respects, but this does not diminish an historian's imperative to get the facts straight.<sup>476</sup>

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was a Canadian citizen and therefore could not be legally tried for war crimes" Ito, *We Went to War*, 270. The non-confirmation was actually the result of an appeal that emphasized Inouye's nationality among other defence claims.

<sup>475</sup> David Bercuson, "Inouye Kanao, the Kamloops Kid," *The Beaver*, August-September 2007, 33.

<sup>476</sup> Part of the problem of interpretation may be in relation to the vehemence, and lack of detail, with which some Canadian newspapers reported on the story. See for example, *Ottawa Journal*, 26 August 1947.

With respect to the concept of victors' justice, there was little overt interest among Canadian officialdom to deal with Inouye at all. War crimes investigators pursued his case within their mandate to track any case with a distinct Canadian interest, but their superiors in Ottawa were hesitant to push the issue beyond a war crimes trial. Domestic discussion of Inouye's fate was avoided outside of classified department-to-department correspondence. Given the domestic issues surrounding the internment of Japanese-Canadians and the post-war debate that followed,<sup>477</sup> the Canadian government wanted to keep their hands clean of the issue, so it was largely left to the British at Hong Kong to deal with this contentious question.

### **The Canadian Interest**

Inouye's actions were first raised in Ottawa circles in a memorandum from Under-Secretary of State for External Affairs Norman Robertson on 18 September 1945. Robertson noted that a British POW who served with the Hong Kong Volunteers provided information about Inouye's actions at Sham Shui Po, claiming that Inouye

went out of his way to be offensive towards the Canadian prisoners. He continually directed very foul and abusive language at them and used the slightest pretext to manhandle and slap them. He did not, however, behave in the same manner towards prisoners of other nationalities.<sup>478</sup>

This correspondence was forwarded to the Departments of Army, Immigration, and Justice.

In over two hundred Canadian affidavits Inouye's name (or his nicknames) became synonymous with "constant brutality" against Allied, and particularly Canadian, POWs.<sup>479</sup>

Affiants identified Inouye a regular perpetrator, but his role in the beating of two Canadian

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<sup>477</sup> See Patricia E. Roy, *The Triumph of Citizenship: The Japanese and Chinese in Canada, 1941-67* (Vancouver: University of British Columbia Press, 2007), chapters 1-3, 5.

<sup>478</sup> LAC, RG 25, Vol. 3824, File 8767-40C, N.A. Robertson, Manila to Secretary of State for External Affairs, 18 September 1945.

<sup>479</sup> Puddicombe fonds, Vol. 1-29, "War Crimes Case – INOUYE Kanao," Capt. F.V. Collison, No. 14 War Crimes Investigation Team, Hong Kong, to War Crimes Liaison Officer, H.Q. Land Forces Hong Kong, 7 May 1946.

officers, Major F.T. Atkinson of the Royal Rifles of Canada and Captain J.A. Norris of the Winnipeg Grenadiers, became the focal point and key piece of evidence given to Puddicombe to pursue.<sup>480</sup> Instructions from National Defence identified Inouye as “collaborating [sic] with the Japanese,” and, although there was still the possibility that he would be charged in civil court, his case was “considered to be within the policy laid down, i.e. ‘a most serious nature.’”<sup>481</sup>

Although various Ottawa departments knew they wanted to charge Inouye, they remained unsure how his nationality would affect the upcoming case. Defence officials noted that such actions by a British subject would constitute treason, but by an alien would be considered a “minor” war crime. They also opined that if Inouye was considered a Canadian, Canada would be a “suitable place for trial owing to the presence of hundreds of witnesses.”<sup>482</sup>

National Defence was aware as early as February 1946 that Inouye’s nationality could pose problems for how the case should be approached and for the jurisdiction of the British military courts. The deputy minister raised the question of how a “trial of a British subject by a Military Court sitting in a British Colony where Civil Courts function”<sup>483</sup> might operate, but the issue was not considered in depth. External Affairs suggested that it was “inadvisable to treat him merely as a minor war criminal” and pressed Justice for an opinion about whether Inouye had committed an offence against the Criminal Code and if they considered the “evidence against him sufficiently clear to warrant bringing him back to Canada to stand trial.”<sup>484</sup> Justice assessed that Inouye was guilty of treason as defined in the Criminal Code, but noted that there

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<sup>480</sup> LAC, RG 25, Vol. 3824, File 8767-40C, Basil Campbell, Deputy Minister (Army), Ottawa, to Under-Secretary of State for External Affairs, 19 February 1946.

<sup>481</sup> Puddicombe fonds, Vol. 1-3, Instructions re. War Trials, The Draft of 9 March 1946.

<sup>482</sup> LAC, RG 25, Vol. 3824, File 8767-40C, Basil Campbell, Deputy Minister (Army), Ottawa, to Under-Secretary of State for External Affairs, 19 February 1946.

<sup>483</sup> *Ibid.*

<sup>484</sup> LAC, RG 25, Vol. 3824, File 8767-40C, N.A. Robertson, Under-Secretary of State for External Affairs, Ottawa, to F.P. Varcoe, Deputy Minister of Justice, 2 March 1946.

would be difficulties based on the time period and location of the alleged offences.<sup>485</sup> Deputy Minister F.P. Varcoe advised that the “courts of the United Kingdom would have jurisdiction to try Inouye in the United Kingdom for an offence under the Treason Act 1351.”<sup>486</sup>

Canadian officials were aware of the problems that Inouye’s nationality would pose but did not make the hard decision required, preferring that the situation simply run its course. This generated further problems. In international law, individual responsibility for war crimes can only be applied to enemy combatants with foreign nationality. The framework of international law applies to individuals brought into custody by a state, making them amenable to the national law of that state. Conversely, a national of the state in the position of power cannot be a war criminal in the legal sense of the term, as their transgression falls under civil law.<sup>487</sup> This was the case with Inouye. Instead, a civil court had to make up for the practical limitations of a war crimes court, but only after the fact.

External Affairs began to move toward a stronger position on the question toward the end of March. Officials were inclined to bring Inouye to Canada under the Treachery Act, but never overcame their concerns about potential domestic political implications.<sup>488</sup> In a letter to the Justice department, Norman Robertson shared External Affairs’ opinion that it “would not seem

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<sup>485</sup> LAC, RG 25, Vol. 3824, File 8767-40C, F.P. Varcoe, Deputy Minister of Justice, Ottawa, to N.A. Robertson, Under-Secretary of State for External Affairs, 9 March 1946. Varcoe noted that proceedings could not be taken more than three years after the date of the alleged offence and that courts in Canada did not have the jurisdiction to pursue a charge committed outside of Canada. He did note that there was a possibility that Inouye could be tried under the Treachery Act (contravened Section 4; tried by virtue of Section 7 (3)), notwithstanding the location of the offence. See *Acts of the Parliament of the Dominion of Canada, Fifth Session of the 19<sup>th</sup> Parliament, 1939, 1940*, “4 George VI, Chap. 43, An Act respecting Treachery.”

<sup>486</sup> LAC, RG 25, Vol. 3824, File 8767-40C, F.P. Varcoe, Deputy Minister of Justice, Ottawa to N.A. Robertson, Under-Secretary of State for External Affairs, 9 March 1946. He explained that the Inouye situation suited the Treason Act by virtue of Chapter 2 of the Statutes of England (1543-4) 35 Henry VIII.

<sup>487</sup> L.C. Green, *Superior Orders in National and International Law* (Leyden, Netherlands: A.W. Sitjhoff International Publishing Company, 1976), 1-3.

<sup>488</sup> An example of this shift in position is in a note from E.R. Hopkins to the Deputy, when he noted that surely the Inouye question could be dealt with in a British War Crimes Court, but as Inouye was “primarily a Canadian problem ... he should be dealt with by us.” See LAC, RG 25, Vol. 3824, File 8767-40C, E.R. Hopkins, note for the Deputy, 22 March 1946.

desirable that he be dealt with as a minor war criminal,” nor was it appropriate for the British authorities to be asked to try him under the British Treason Act. External Affairs recommended that Inouye be brought to Canada. Robertson realised that “important questions of policy” were involved and that the decision would have to be made by Cabinet.<sup>489</sup> The Justice department reviewed the Army’s summary of evidence and Varcoe responded to Robertson’s letter, stating that based on the available evidence there was a *prima facie* case against Inouye and Cabinet should be advised to bring Inouye to Canada for trial.<sup>490</sup>

By mid-May, External Affairs crafted a proposal for the Acting Secretary of State promoting this view. Unable to ignore the resentment expressed by the returned POWs, External Affairs asserted “Inouye is a Canadian chargeable with a criminal offence under the Treachery Act of Canada and, in the absence of a good reason to the contrary, should probably be dealt with as such, rather than as a comparably minor war criminal.” Outside of obvious, manageable legal and diplomatic issues, the real issue of concern was domestic politics:

You will no doubt have in mind the possible effects of the implementation of these proposals on the internal political situation here, having special regard to the deportation, etc., of persons of Japanese race. While the maximum penalty for an offence against the Treachery Act is death, the possibility that a less severe punishment might be imposed (or Inouye acquitted) will also have to be considered. Moreover, it may be thought that in the view of Inouye’s racial extraction and his relatively unimportant position in the Japanese machine (he was ‘honorary corporal’) it might be preferable to have him dealt with by a British military court (in Hong Kong) as an ordinary war criminal.<sup>491</sup>

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<sup>489</sup> LAC, RG 25, Vol. 3824, File 8767-40C, N.A. Robertson, Under-Secretary of State for External Affairs, Ottawa, to Deputy Minister of Justice, 1 April 1946.

<sup>490</sup> LAC, RG 25, Vol. 3824, File 8767-40C, , Deputy Minister, Army, Ottawa to Deputy Minister of Justice, 12 April 1946 and F.P. Varcoe, Deputy Minister of Justice, Ottawa, to N.A. Robertson, Under-Secretary of State for External Affairs, 10 May 1946.

<sup>491</sup> LAC, RG 25, Vol. 3824, File 8767-40C, Memorandum for the Acting Secretary of State for External Affairs, 15 May 1946.



Department officials brought the issue to the attention of Acting-Secretary of State for External Affairs, Louis St. Laurent, advising him of the potential political issues at stake.<sup>492</sup>

The potential for increased political and social tension internally, combined with delays in communication and simple fence-sitting rendered this discussion too little too late. Cabinet finally discussed the Inouye question on 22 May 1946 and decided that “no exception be made in this case and that established procedures should not be departed from for trial in the Far East.”<sup>493</sup> This discussion was moot: Inouye’s war crimes trial began on the same morning, so Cabinet’s decision meant nothing outside the walls of parliament.

### **War Crimes Trial**

When Inouye stood trial at Hong Kong in May 1946, most of the focus had nothing to do with his alleged abuse of Canadian troops. The two charges that stemmed from an incident involving Canadians took up only a fraction of the time and evidence presented in the courtroom. All of the witnesses brought to the stand were there to provide information on the third charge levied against Inouye, which dealt with the torture and ill-treatment of civilians interrogated about an alleged spy ring in Japanese-occupied Hong Kong.

Inouye’s first two charges related to one incident that took place on 21 December 1942. The charges asserted that Inouye, while working at Sham Shui Po, had violated the laws and usages of war by assaulting two Canadian officers in front of Canadian POWs on parade.<sup>494</sup> On that morning, the charges asserted, no one came down to awaken two orderlies who were

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<sup>492</sup> LAC, RG 25, Vol. 3824, File 8767-40C, E.R. Hopkins, Note for the Acting Under Secretary of State for External Affairs, 15 May 1946. St. Laurent became Secretary of State for External Affairs in September 1946, and continued his role as Minister of Justice until December 1946.

<sup>493</sup> LAC, RG 2, Series A-5-a, Vol. 2638, Cabinet Conclusions, War crimes – Trial of a Canadian-born Japanese, 22 May 1946.

<sup>494</sup> Inouye Trial, Charge Sheet.

missing from Captain Norris's company. Therefore, Norris and his men arrived without a full roster. The discrepancy was brought to the attention of the camp staff. While a man from Norris's company went to the hospital to locate the missing POWs, an altercation took place between Norris and Inouye. Camp Commandant Sakoina and Inouye approached Norris in front of the parade of POWs and questioned him about the whereabouts of the missing POWs.

According to one affidavit:

Sakoina asked a few questions, which Inouye translated in a normal tone of voice. Inouye gradually became more and more excited and finally began asking questions which had not been asked first by the Camp Commandant. The questioning began with such things as 'Why are these men late?', 'Why did you not see that these men were on parade?'<sup>495</sup>

Interrogation quickly turned into abuse. Inouye began to berate Norris, and when Norris explained the procedure they had adopted for the medical orderlies, Inouye responded "You don't call your Company roll?" and struck Norris with an open hand to the face.<sup>496</sup>

According to Norris's affidavit, Inouye then closed his fist and struck him in the face more than fifteen or twenty times and put his foot behind the Grenadier's leg, tripping him to the ground. Inouye kicked at Norris's head and shoulder four or five times while he was on the ground, although Norris blocked the head kicks with his arm. Inouye then screamed for Norris to "stand up and take it like a man." When Norris stood back up, Inouye struck him repeatedly until his knees gave out. At this point Atkinson spoke out to Inouye, who changed his focus from Norris and kicked Atkinson in the knee with a pair of ammunition boots. Atkinson required a week of bed rest to recover from his injuries. Inouye was taken aside by Sakoina, while Norris

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<sup>495</sup> Inouye Trial, Exhibit M.

<sup>496</sup> Inouye Trial, Exhibit I.

was taken to the Medical Inspection room to be examined by Lieutenant Colonel John N.B. Crawford (RCAMC).<sup>497</sup>

Crawford later reported that he treated Norris for severe bleeding from the mouth, a laceration of the conjunctiva membrane on his left eye, a broken jaw, and various cuts and abrasions. When Norris filed his affidavit in Winnipeg in March 1946 his jaw was still giving him trouble. Sakoina and Inouye came to the medical inspection room shortly thereafter, with the Commandant meekly asking that Crawford do his best to save Norris's eye. Inouye offered an apology, which Norris did not accept.<sup>498</sup>

The portion of the trial devoted to the charges stemming from this incident took up only the beginning of the morning session of the opening day. Major Puddicombe, the prosecutor, took a straightforward approach to these charges, entering and reading aloud only eight affidavits illuminating the charge. In his opening address, he emphasized that the beating took place in front of the Canadian prisoners who had been brought out on parade. Puddicombe reminded the Court that the affidavits included details about other war crimes committed by Inouye which were outside the charges against him, portraying Inouye as a frequent abuser of Canadian POWs.<sup>499</sup>

On the stand, Inouye downplayed his role in the Norris beating and tried to plead superior orders, blaming the incident on Sakaino and attempting to pin the kicking of Norris on him. Inouye swore that he kicked neither man. Regarding Atkinson, Inouye stated:

[h]e was not kicked by me, he was kicked once by Lieut. Sakaino, sir. Another thing I would like to add is that Capt. Norris was slapped by Lieut. Sakaino and also by me. I did not kick him when he was down. When he was down I asked him to get up.<sup>500</sup>

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<sup>497</sup> Inouye Trial, Exhibit M, I, and J.

<sup>498</sup> Inouye Trial, 143 and Exhibit I and M.

<sup>499</sup> Inouye Trial, Exhibit F.

<sup>500</sup> Inouye Trial, 84.

Inouye's main tactic was to try to shift the blame and responsibility for the beatings to his superiors. If he defied Sakaino, he pleaded, he would have ended up in Stanley Gaol, which he equated to a death sentence.<sup>501</sup> Puddicombe countered this defence by citing the Yamashita case, noting that superior orders had been rendered an invalid excuse for war crimes, and that Inouye was not following orders but "acting off his own bat altogether."<sup>502</sup>

Puddicombe was correct in stating that superior orders had been found wanting as a defence for war crimes, but misused the Yamashita judgment. The Yamashita judgment did not deal directly with the question of superior orders, but rather, set a precedent for command responsibility, giving foundation judicially to the idea that a commanding officer must take reasonable and appropriate measures to ensure that subordinates are prevented from committing war crimes.<sup>503</sup> This is an example of law as a living organism, one which evolves and in this case can be misused. The Yamashita precedent was a major, but in this case ill-fitting, piece of the war crimes puzzle.<sup>504</sup>

Inouye also noted that POW Camp Commander Colonel Tokunaga had ordered that all POWs be treated as ordinary Japanese soldiers. In the ethos of the *Bushido* Code, the beating of a subordinate was normal practice. Inouye described Sham Shui Po as a place where beatings were common, although not at his hand. Furthermore, at the camp there was no differentiation

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<sup>501</sup> Inouye Trial, 84.

<sup>502</sup> Inouye Trial, 136.

<sup>503</sup> Gary D. Solis, "Obedience of Orders and the Law of War: Judicial Application in American Forums," *American University International Law Review* 15 (2000): 514. The Yamashita trial took place in Manila from October to December 1945. The decision had major implications for the way postwar trials took place and how responsibility for war crimes was considered. For more on the Yamashita trial, the American Supreme Court decision and the Yamashita precedent, see: Tim Maga, *Judgment at Tokyo: The Japanese War Crimes Trials* (Lexington: The University Press of Kentucky, 2001), 18-27; Richard L. Lael, *The Yamashita Precedent: War Crimes and Command Responsibility* (Wilmington, DE: Scholarly Resources, 1982); Taylor, *A Trial of Generals*; Reel, *The Case of General Yamashita*; and "Judicial Decisions, *in re Yamashita*," Supreme Court of the United States," *American Journal of International Law* 40, no. 2 (April 1946): 432-480.

<sup>504</sup> The Yamashita decision was the major precedent in the Pacific theatre and dominated legal discussions. The judges at the Hong Kong War Crimes Courts were made aware of the decision as is evidenced by the inclusion of a copy of the decision in Major J.T. Loranger's papers. See DHH, Loranger fonds, Series 3 –Trials of Japanese War Criminals, 16 – Gen. Tomoyuki Yamashita Trial.

between officers and men, so the beating of an officer was just as common as that of any other rank.<sup>505</sup>

Puddicombe emphasized in his closing address all that need be proven beyond a reasonable doubt was that Inouye was a member of the camp staff, was present on the date in the charges, and had assaulted Norris and Atkinson in full view of Canadian POWs. Although the affidavits varied in their reports of how many times Inouye struck Norris and Atkinson, Inouye had clearly abused both POWs in front of their men and had admitted to doing so.<sup>506</sup>

In response, defence counsel Lieutenant J.R. Haggan, Royal Engineers, tried to downplay the severity of the first two charges, claiming that had the beating not been delivered to men of superior rank, the charges never would have caught the attention of war crimes investigators – and would not have constituted a war crime.<sup>507</sup> Although international law and military tradition did not insist that an officer had to be treated the same as a common soldier, Inouye had to follow a standing order. Inouye was caught in a situation beyond his control. Haggan cited the 1944 edition of *Wheaton's International Law*, which stated that war crimes were not attributable to individuals and reiterated that POWs were to be treated in a manner equivalent to members of the capturing army.<sup>508</sup>

The defence of superior orders functioned as a mitigating circumstance for punishment rather than an exculpatory defence. Article 8 of the Nuremberg Charter and the 1944 edition of the British *Manual of Military Law* both stipulate that acting in response to a superior order that contravenes international law does not free an individual from responsibility for his actions.<sup>509</sup>

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<sup>505</sup> Inouye Trial, 129.

<sup>506</sup> Inouye Trial, 133.

<sup>507</sup> Inouye Trial, 144.

<sup>508</sup> Inouye Trial, 143.

<sup>509</sup> Lyal S. Sunga, *Individual Responsibility in International Law for Serious Human Rights Violations* (Dordrecht & Boston: Martinus Nijhoff Publishers, 1992), 55; and Pritchard, "Lessons from British Proceedings Against Japanese War Criminals," 188. Article 8 and the 1944 edition of *Manual of Military Law* both fly in the face of previously

Puddicombe's argument that the defence was irrelevant because Inouye acted independently of any alleged order was successful. The court found Inouye guilty of beating the officers.

### Charge 3

Although the Norris and Atkinson charges were the main reason Canada pursued Inouye, the third charge was the focal point of the trial and was considered the “infinitely more serious charge.”<sup>510</sup> A succession of witnesses illustrated Inouye's capacity for brutality and his active role in both interrogation and torture. Through witnesses, Puddicombe tried to demonstrate that, rather than simply taking orders, Inouye had taken the initiative. The defence, by contrast, suggested that Inouye was only following orders and found himself in a regrettable position: his *Nisei* heritage made him the whipping boy of the army at the POW camps and of the gendarmes while serving under them. Inouye pleaded that he had no involvement in many of the alleged tortures, claiming he was “just like a talking machine, interpreting the questions and answers.”<sup>511</sup> In cases where his involvement was clear, he tried to shift responsibility to his commander Moriyama, also identified as Sam Sun, claiming he was ordered to take part and had no choice but to comply.

Inouye had returned to Hong Kong after his March 1944 discharge, intending to reunite with his Chinese wife Ho Wai Ming. Instead, he ended up serving as an interpreter for the

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accepted concepts in British and American military manuals in use during the First World War and the inter-war period that promoted the view that soldiers acting under orders that violated the rules of warfare could not be considered or punished by the enemy as war criminals. See Lyal, *Individual Responsibility*, 55-56, and Pritchard, “Lessons from British Proceedings,” 118. Lyal contends that the inadmissibility of superior orders as a complete defence is necessary and just as without it, the “reasoning would nullify the concept of international criminal law altogether and no limits on the jurisdiction of the State with regard to crimes committed in war-time could be maintained.” A Canadian volume of the *Manual of Military Law* was reprinted and distributed in the Canadian military. Major Puddicombe referenced the Canadian version in some of his other prosecutions: see NA, WO 235/1015, Shoji Toshishige Trial, 110 and NA, WO, 235/1030, Tanaka Ryosaburo, Exhibit R1, 5, and *Extracts From Manual of Military Law, 1929*.

<sup>510</sup> Inouye Trial, 144.

<sup>511</sup> Inouye Trial, 101.

gendarmerie headquarters in Hong Kong between June 1944 and February 1945.<sup>512</sup> His involvement in a series of arrests, interrogations, and alleged tortures related to a spy ring caught the attention of war crimes investigators. He was charged with involvement in the ill-treatment resulting in death of four individuals, and with causing physical suffering to eleven other civilian residents of Hong Kong. The alleged incidents occurred at 67-69 Kimberley Road, Stanley Gaol, and other locations between 15 June and 13 November 1944.<sup>513</sup>

Nine individuals who had been arrested and abused by the gendarmerie were brought to the stand, in addition to a prison warden, two family members of the deceased, and a doctor who discussed the potential ramifications of several forms of torture. The essence of the story from the witnesses was generally uniform: most had been arrested by the gendarmes and brought to Kimberley Road for questioning. The majority were taken separately into the washroom upstairs for interrogation while others remained tied up downstairs. Inouye translated the questions from the gendarmes, but often resorted to what appeared to be his own questions. Many of the witnesses were subsequently given water torture: their faces were covered with a cloth and water poured into their mouths, or they were fully submerged in a bathtub.

The tortures did not end with the primary interrogation, however, as many of the witnesses were taken back down onto the main floor and hung from the rafters with their toes off the floor. Some of the most poignant testimony came from Mary Violet Power, the wife of a man who had died in prison after being tortured by Inouye and the gendarmes. Inouye and two

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<sup>512</sup> Inouye Trial, 85-86, 109-110.

<sup>513</sup> Inouye Trial, Charge Sheet. Several arrests were made in the interest of finding the leader of the spy ring, with particular interest in Rampal Ghilote and Mr. Power, who had subsequently died while in custody at Stanley Gaol. The two were considered by the gendarmerie to be the individuals in charge. The spy ring had been involved in sneaking British citizens out of Hong Kong and working with wireless radio sets, relaying information to BAAG officials in China. Suspects that were alleged to have been involved in the spy ring were brought to Kimberley Road, a civilian residence which had been commandeered by the gendarmes and was used to hold suspects and for interrogation purposes. The BAAG was active in southern China and attempted to liberate POWs from the Japanese at Hong Kong and gain military information. See Edwin Ride, *BAAG: Hong Kong Resistance, 1942-1945* (Oxford: Oxford University Press, 1981).

other gendarmes interrogated Power, trying to find out if her husband was a ringleader. They had predetermined the outcome. Inouye warned her: “If you tell me the truth, I won’t hurt you or anything. If you not [sic], I will make you suffer.”<sup>514</sup> She denied his role and was given water torture, while Inouye monitored her pulse. When she vomited, they stopped the torture. Power was taken and hung from the ceiling with her hands above her head, and was kicked and slapped. She was interrogated after hanging for two six-hour stints. She claimed that once, while she hung, Inouye burnt her face, cheeks and hands with a lit cigarette.<sup>515</sup>

Another witness, Rampal Ghilote, identified Inouye as “the chief torturer of my body and soul.”<sup>516</sup> Inouye tied him to a ladder and administered water torture at the Supreme Court building before taking him to Mr. Power’s residence. Ghilote was eventually held and tortured further at Kimberley Road and Stanley Gaol, where he was given water torture, beaten, kicked, and burnt with cigarettes. He described Inouye as the “leading spirit in torturing people,” while Moriyama was merely a “figurehead.”<sup>517</sup>

On the stand, Inouye attempted to divert responsibility for the tortures, claiming repeatedly that he played no participatory role, particularly in the torture of Mary Violet Power. When prodded both by Puddicombe and his defence lawyer, his definition of *involved* changed. Inouye claimed that he and the other interpreter “had no dealings” with Power but, in response to her testimony, Inouye first admitted that he had been in the room, then that he held her wrist to check her pulse, and finally that Moriyama forced his participation.<sup>518</sup> He claimed that he had no power to stop the torturers, and contradicted himself about his involvement. Furthermore,

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<sup>514</sup> Inouye Trial, 9.

<sup>515</sup> Inouye Trial, 9-10, 11-12.

<sup>516</sup> Inouye Trial, 16.

<sup>517</sup> Inouye Trial, 17.

<sup>518</sup> Inouye Trial, quotation on page 90, see also 113.



Inouye noted that he would rather die than abuse a woman and that abusing European women would have caused negative publicity for the Japanese in Hong Kong.<sup>519</sup>

Inouye's defending officer, Haggan, vehemently fought the portion of the charge which implicated Inouye in the deaths of the four named individuals. He conceded that Inouye had ill-treated some civilians, but argued that evidence used to support the allegation that Inouye's actions had resulted in death was not convincing. Furthermore, he contended that Inouye was only following orders:

What I will say is that the more acceptable and reasonable the witness, the less he attributes to Inouye and the more to Moriyama. It has become obvious in this Court that it is Moriyama who is to be held chiefly responsible for the physical suffering caused to the persons named in the charge, first as a result of his own actions, second as he was senior to Inouye who was at all times acting on his instructions.<sup>520</sup>

The defence argued that Moriyama should bear responsibility for the maltreatment committed.

The defence of superior orders did not succeed for the first two charges, nor did it stand up here.

Haggan also tried to use Inouye's role as an interpreter as a mitigating factor. He claimed Inouye interacted the most frequently with victims and that he became "a focus for the hatred with which the public regarded the Japanese." Inouye stayed fresh in the minds of individuals whilst others, "perhaps more cruel and less considerate," faded from memory.<sup>521</sup>

Haggan also tried to construct Inouye as a man hated by the Japanese military because of his *Nisei* status. As a second-generation Japanese born abroad, Inouye was "habitually kicked and abused at will."<sup>522</sup> The defendant and his counsel claimed that Inouye was never a soldier, overlooking the fact that he had been one previously, nor a gendarme, "but was one of the despised Nisei, forced to interpret to the haughty men of the Rising Sun a language they were too

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<sup>519</sup> Inouye Trial, 116.

<sup>520</sup> Inouye Trial, Exhibit R, 4

<sup>521</sup> Inouye Trial, Exhibit R, 5.

<sup>522</sup> Inouye Trial, Exhibit R, 5.

proud to learn and affected to regard as the incomprehensible babblings of sub-human creatures.”<sup>523</sup>

When the issue of Inouye’s nationality and his experiences in Canada arose, he claimed that he had a positive childhood in Canada and felt more at home there than in Japan. He had been given a good education and was something of a teacher’s pet. Inouye claimed that the Japanese disliked *Nisei* because they “had more Western ideas and ... would not listen to the small things that the Japanese always talked about.”<sup>524</sup> He thought that members of the military class in Japan were hypocritical and treated him poorly because he knew English too well.

The court accepted the prosecution’s evidence and found Inouye guilty of the third charge as well. It barred the portion of the charge that alleged his involvement had led to the death of four individuals. A special finding linked him only to maltreatment. Nevertheless, the sentence was execution, which was out of line with the findings of other cases with similar charges.<sup>525</sup> Lt. Col. Stewart, the President of the Court, curtly rebuked Inouye, focusing principally on his formative years in Canada:

Inouye Kanao, you have been found guilty of being concerned in many acts of ill-treatment. Some of these acts involved such wanton and barbarous cruelty that it was a mere accident of fate whether the victims survived or not. Your culpability is greatly aggravated by the fact that you were the guest of the Dominion of Canada in your youth and there you received kindness and free education which should have impressed on your mind the decent ways of civilised people and made it impossible for you to be concerned, directly or indirectly, in such an outrage against humanity. By your barbaric acts you have destroyed your right to live, and the unanimous

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<sup>523</sup> Inouye Trial, Exhibit R, 5.

<sup>524</sup> Inouye Trial, 81, 102.

<sup>525</sup> Of the twelve death sentences carried out against members of the *Kempeitai* (a term generally used interchangeably with gendarmerie) at the Hong Kong War Crimes Courts, each individual had been found guilty of killing one or multiple individuals outright, ill-treatment causing death, or having command responsibility for either. Most of the rest of the fifty *Kempeitai*-related individuals received prison sentences ranging from eighteen months to life for their roles in ill-treatment and torture. Two *Kempeitai* death sentences were not confirmed, Inouye’s based on nationality and that of Ito Junichi based on procedural irregularities. Ito was re-tried and executed. See NA, WO 235 and Hong Kong University Libraries Digital Initiatives “Snapshots of cases,” Hong Kong’s War Crimes Trials Collection, <http://hkwtc.lib.hku.hk/exhibits/show/hkwctc/documents> (accessed 5 April 2011).

sentence of this Court, which is subject to confirmation, is that you will suffer death by hanging. Remove the Accused from the Court. The Court is closed.<sup>526</sup>

### **Petition and Diplomatic Discussions**

Inouye submitted a petition against the verdict. Inouye attempted to explain that witnesses whom he wanted to call had not been made available, and emphasized that in the incidents with Norris and Atkinson he was simply following orders. He tried to dismiss or mitigate the evidence of most of the witnesses that spoke to his involvement with the gendarmerie, and emphasized volunteer work he had done in the past for war crimes investigating officers. Much of the document was disregarded, but the question of the jurisdiction of the trial was enough to overturn the sentence.<sup>527</sup> The reviewing officer in Singapore recommended a non-confirmation. This meant that Inouye was “in the position of not having been tried at all,” and could

accordingly be tried by the civil authorities in Hong Kong on charges under the Penal Code or he might be returned to Canada for trial there. In either event the matter will be one for the civil authorities to whom he should be handed over to without delay.<sup>528</sup>

While ALFSEA officials in Singapore dealt with Inouye’s petition, uncertainty reigned at the Canadian Detachments in Tokyo and Hong Kong and in government offices in Ottawa. On 3 July, Detachment head Oscar Orr notified National Defence that the review process had begun and that ALFSEA authorities might require input from the Canadian government, given that

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<sup>526</sup> Inouye Trial, 149.

<sup>527</sup> NA, WO 235/927, Petition Against the Finding and Sentence of a Military Court, Inouye Kanao, 6 June 1946. Regarding the right to petition against a finding see A.O. 81/1945, Regulations for the Trial of War Criminals, 18 June 1945, 5-6.

<sup>528</sup> NA, WO 235/927, Col. F.C.A. Kerin, DJAG, ALFSEA, to Commander, Land Forces Hong Kong, 14 November 1946. The signature of Kerin in the WO file is illegible, but a type-set copy of the communiqué confirms his name in LAC, RG 25, Vol. 3824, File 8767-40C.

Inouye was a Canadian citizen by birth.<sup>529</sup> National Defence, External Affairs, and Justice traded correspondence, ensuring that each department was aware of the circumstances. No coherent, inter-departmental plan appears to have developed in the summer of 1946, and discussions trailed off as ALFSEA handled the petition internally. The Canadian Detachment in Japan provided evidence to ALFSEA that Inouye was a Canadian-born citizen and “the view of the U.K. authorities is that the War Crimes Courts have no jurisdiction over British subjects, even though taken with arms.”<sup>530</sup>

The petition decision had the potential implication of landing Inouye in Canadian possession. This provoked the most spirited discussion of the issue in Ottawa. Once Orr confirmed that Inouye would most likely be held in Hong Kong if the verdict were quashed, National Defence officials suggested that, should the jurisdiction falter, Inouye should be held, buying time for further investigation into laying charges under another Act or Regulation. They would not allow him to escape justice.<sup>531</sup>

External Affairs officials’ detached position was that the Inouye question not be raised until it was more pressing. They recommended that he be held for thirty days if the sentence was not confirmed.<sup>532</sup> Internally, these officials recommended that the issue not be pressed or brought before Cabinet, hoping that the situation would not require making the decision whether to bring Inouye to Canada – which they hoped to avoid. Herbert Norman made the Canadian case to the British political representative in Tokyo, Alvary Gascoigne, on 13 November. If the

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<sup>529</sup> LAC, RG 25, Vol. 3824, File 8767-40C, Lt. Col. Oscar Orr, Tokyo, to Secretary, DND, 3 July 1946.

<sup>530</sup> LAC, RG 25, Vol. 3824, File 8767-40C, Lt. Col. Oscar Orr, Tokyo, to Secretary, DND, 14 October 1946.

<sup>531</sup> LAC, RG 25, Vol. 3824, File 8767-40C, Major-General E.G. Weeks, Adjutant-General to Oscar Orr and G.B. Puddicombe, 26 October 1946 and Oscar Orr to DND, Army, November 1946 and A. Ross, Deputy Minister, Army to Under-Secretary of State, DEA, 6 November 1946. National Defence contended that the External Affairs should determine policy on the matter and that National Defence would cooperate.

<sup>532</sup> LAC, RG 25, Vol. 3824, File 8767-40C, M.H. Wershof for Under Secretary of State for External Affairs to A. Ross, Deputy Minister of National Defence, Army, 8 November 1946, M.H. Wershof, Memorandum for the Deputy, 9 November 1946 and Secretary of State for External Affairs to Canadian Liaison Mission, Tokyo, 9 November 1946

jurisdiction failed, Norman hoped that Inouye could be dealt with in Hong Kong rather than in Canada. A Canadian trial would “of necessity be a weaker case since Inouye’s behaviour towards Canadian prisoners of war is a comparatively minor aspect of the charges against him.”<sup>533</sup>

Canadian officials revealed their hesitancy through Gascoigne, who contacted Sir Mark Aitcheson Young, the governor of Hong Kong, on 15 November 1946 to ascertain Inouye’s custody status and to get a sense of developments. He expressed the Canadian concern in the issue, noting that “their case would not be so good as any charge you might bring”<sup>534</sup> against Inouye in a Hong Kong civil trial. Young confirmed that ALFSEA had supported the defence challenge, but that Inouye’s release had not been ordered.<sup>535</sup>

In late November, ALFSEA pronounced the non-confirmation of the finding of the military tribunal. Assuming that the Photostat copy of Inouye’s birth certificate was authentic, there was “no doubt that Inouye was a Canadian subject,” which meant he was “not amenable to the jurisdiction of the War Crimes Court and his trial was invalid.”<sup>536</sup> The non-confirmation was made official on 22 November 1946.

With issues still unresolved, Canadian officials had not made a formal decision but continued to hope that the Hong Kong civil authorities would “dispose of [the] Inouye case so

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<sup>533</sup> LAC, RG 25, Vol. 3824, File 8767-40C, E.H. Norman to A.D.F. Gascoigne, 13 November 1946.

<sup>534</sup> PRO, HK, HKRS, 163-1-216, Alvary Gascoigne, United Kingdom Liaison Mission, Japan (UKLIM), Tokyo to Governor Mark Aitcheson Young, 15 November 1946. Gascoigne was assigned to Tokyo with the United Kingdom Liaison Mission in June 1946. The UKLM was intended to “behave more like a normal diplomatic mission” rather than the makeshift foreign office that had been constructed in Tokyo and Yokohama. Gascoigne held a position in Japan until 1951 and had served in the First World War before joining the British diplomatic service, holding posts in China (1920s) and Japan (1931-1934). See J.E. Hoare, *Embassies in the East: The Story of the British Embassies in Japan, China and Korea from 1859 to the Present* (Surrey, UK: Curzon Press, 1999), 158-159.

<sup>535</sup> PRO, HK, HKRS, 163-1-216, Governor Young to Alvary Gascoigne, UKLIM Tokyo, 19 November 1946.

<sup>536</sup> NA, WO 235/927, Col. F.C.A. Kerin, DJAG, ALFSEA to Commander, Land Forces, Hong Kong, 14 November 1946. The non-confirmation letter did note that there had been discussion that the birth certificate had been obtained fraudulently or that Inouye was a Japanese subject who attempted to falsify a Canadian birth record, but the author of the letter opined that “we should be quite unable to disprove the evidence of the Certificate itself.”

that further action by Canadian Government will be unnecessary.”<sup>537</sup> Some factions of the government were still not aware of the final decision on the Inouye petition.<sup>538</sup> At Secretary of State Louis St. Laurent’s direction, Norman advised Gascoigne that the Canadians had yet to decide how best to deal with Inouye in Canada, and Orr compiled a report so that External Affairs and National Defence could best come to terms with “the Canadian interest in the further handling of his case.”<sup>539</sup>

Orr expressed disappointment and frustration at the Inouye decision. He considered it “a snap judgment” and quipped to Puddicombe that he was interested “whether any qualified member of the bar had any part in making the decision to release Inouye, and also on what part of the regulations it was based.”<sup>540</sup> When Canadian officials learned that Inouye would be held in Hong Kong and charged with treason, Puddicombe recommended that solicitors be appointed to hold a watching brief over the proceedings so that Inouye did not evade justice.<sup>541</sup> Officials in Ottawa were disinclined to have substantial involvement, but deemed the situation “so complex and to an extent so obscure”<sup>542</sup> that they accepted the request. For the time being, Ottawa was relieved of any responsibility to act. Barring another failed trial, Inouye would not be coming back to Canada. The three interested departments agreed to take action if Inouye walked away from another trial: External and Defence investigated whether the Treachery Act or some other regulation could be applied, and Justice did not want any discussion, particularly by

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<sup>537</sup> LAC, RG 25, Vol. 3824, Vol. 8767-40C, Secretary of State for External Affairs to Canadian Liaison Mission, Tokyo, 21 December 1946.

<sup>538</sup> LAC, RG 25, Vol. 3824, Vol. 8767-40C, Secretary of State for External Affairs to Canadian Liaison Mission, Tokyo, 27 November 1946, and M.H. Wershof for Under Secretary of State for External Affairs to Deputy Minister of Justice, 5 December 1946.

<sup>539</sup> LAC, RG 25, Vol. 3824, Vol. 8767-40C, M.H. Wershof for Under Secretary of State for External Affairs to Deputy Minister of National Defence, Army, 5 December 1946.

<sup>540</sup> LAC, RG 25, Vol. 3824, Vol. 8767-40C, Lt. Col. Orr to Major G.B. Puddicombe, 5 December 1946.

<sup>541</sup> LAC, RG 25, Vol. 3824, Vol. 8767-40C, Major G.B. Puddicombe to Lt. Col. Orr, 7 December 1946.

<sup>542</sup> LAC, RG 25, Vol. 3824, Vol. 8767-40C, Deputy Minister, Army to Deputy Minister, Justice, 9 December 1946. Messrs Hastings and Company, Solicitors were brought in to monitor the case.

Cabinet, unless the civil trial failed.<sup>543</sup> Having a Hong Kong solicitor hold a watching brief seemed to be the most involvement Ottawa wanted to have. In the end, the British at Hong Kong cleaned up the mess, absolving Ottawa of direct legal involvement.

### **Civil Law in Hong Kong**

On 20 November, Henry Lonsdale, Crown Counsel at Hong Kong, sent a summary of the Inouye situation to the Attorney General, explaining the reason for the dismissal of the war crimes trial and laying out the situations that might apply if it turned out that Inouye was a Japanese subject, a British subject, or a dual national.<sup>544</sup> The legal staff at Hong Kong needed more information from ALFSEA to decide how they would proceed, particularly whether the term Canadian nationality was “used synonymously with British nationality,” if Inouye had taken out naturalisation papers, and who was responsible for quashing the sentence and on what grounds.<sup>545</sup> ALFSEA responded:

Subject has produced Photostat copy of certificate of registration of birth in Canada. This is prima facie evidence of Canadian nationality. Therefore Kanao is British subject of Canadian nationality unless Canadian authorities are successful in producing evidence of Japanese naturalisation papers having been taking out or a declaration of alienage having been made prior to war. Land forces Hong Kong have therefore been advised that the sentence of death should not be confirmed because British war crimes military courts have no jurisdiction over British subjects. As a result of this Inouye is in the position of not have been tried at all. ALFSEA cannot decide whether he can be tried by civil authorities in Hong Kong on charges under the penal code or returned to Canada for trial there. This is question to be settled by two gov[ernmen]ts concerned. In either case he must be released from British military custody.<sup>546</sup>

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<sup>543</sup> LAC, RG 25, Vol. 3824, Vol. 8767-40C, R.M. Macdonnell, Acting Under Secretary of State for External Affairs to Deputy Minister of Justice, 11 December 1946.

<sup>544</sup> PRO, HK, HKRS, 163-1-216, Crown Counsel Henry Lonsdale to Attorney General, Hong Kong, 20 November 1946. If Inouye was proved to be a Japanese subject, a treason charge would not stand; if he were a British subject, they could proceed; and if he were considered a dual national Lonsdale noted that a War Crimes Trial would be better suited, but “unfortunately, Military Courts are considered to have no jurisdiction in such cases.”

<sup>545</sup> PRO, HK, HKRS, 163-1-216, Governor, Hong Kong to ALFSEA, Singapore, 23 November 1946.

<sup>546</sup> PRO, HK, HKRS, 163-1-216, ALFSEA to Governor, Hong Kong, 30 November 1946.

News that Inouye would be charged with treason hit the press in Hong Kong on 27 November, which came as a surprise to the legal staff at the Colonial Secretariat office. On 2 December, the Governor's office contacted Gascoigne to inform him that Inouye was being charged with treason.<sup>547</sup>

## **Treason Trial**

In civil court, Inouye was indicted with a charge of high treason supported by twenty-seven overt acts, none of which related to his time at the POW camps. The evidence brought forth by the victims named in the charges emphasized the torture and atrocities he had committed, but the overall charge against him was for treason, not for war crimes. The details of the tortures were deemed "admissible as showing the means by which the prisoner effected his traitorous purpose."<sup>548</sup> The focus was on how those tortures aided and abetted the Japanese. The charge alleged that Inouye had owed allegiance to King George VI, and his actions between 1 June 1944 and 31 March 1945 constituted treason under the Treason Act of 1351. Inouye was arraigned and pleaded not guilty on 18 March 1947, and his trial began on 15 April 1947. Chief Justice Sir Henry Blackall presided over the case and the jury of seven. Inouye was represented by Charles Loseby and prosecuted by Henry Lonsdale.<sup>549</sup>

The prosecution opened by quoting Calvin's Case, claiming that Inouye was a natural born subject of the King.<sup>550</sup> Lonsdale raised the question of intent, and then summarized the

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<sup>547</sup> PRO, HK, HKRS, 163-1-216, Departmental marginalia, 30 November 1946, Governor, Hong Kong to UKLIM, Tokyo, 2 December 1946 and *Hong Kong Telegraph*, 27 November 1946 and *South China Morning Post*, 28 November 1946.

<sup>548</sup> PRO, HK, HKRS, 163-1-216, Chief Justice H.W. B. Blackall to Governor of Hong Kong, 22 July 1947.

<sup>549</sup> PRO, HK, HKRS, 163-1-216, Supreme Court of Hong Kong, Inouye Kanao Charge Sheet, 7 March 1947, Supreme Court of Hong Kong, *Rex v. Inouye Kanao, High Treason*, C.J. Blackall, Judge's Summing Up, 22 April 1947, 9 [hereafter Judge's Summing Up] and Supreme Court of Hong Kong, *Rex v. Inouye Kanao* [hereafter Inouye Treason Trial], 1.

<sup>550</sup> Calvin's Case dealt with the question of birthright citizenship and took place in 1608.



various overt acts laid out in the charge to the jury. He called both the prosecuting and defending officers from Inouye's war crimes trial to verify documentary evidence. Puddicombe confirmed that Inouye's birth certificate was a certified true copy that confirmed Inouye's birth in Kamloops on 24 May 1916 and the registration of the birth on 14 October 1927.<sup>551</sup> Inouye's original defence counsel, J.R. Haggan, confirmed the legitimacy of Inouye's petition from the war crimes trial, particularly the paragraph that claimed Canadian nationality and that asked that he be "tried under Canadian law by a competent civil court there."<sup>552</sup> Haggan understood that Inouye had always known his nationality and had always claimed to be Canadian.<sup>553</sup>

Over the second and third days of the trial, the prosecution called thirty-one more witnesses, the majority of whom had been arrested, interrogated, and tortured by Inouye and the gendarmerie. Several of the witnesses had taken the stand at Inouye's war crimes trial, including Rampal Ghilote and Mary Violet Power. Much the same story arose from the witnesses: Inouye had translated during their interrogations, had frequently questioned them directly, and had been very aggressive. Inouye also played a prominent role in various tortures, including water torture, airplane torture (which involved having the hands bound behind the back and hung from the ceiling by the wrists, pulling the arms and shoulders back), burning, beatings, and slapping.<sup>554</sup> Power's evidence, recounting Inouye's torture of her, was particularly poignant once again.<sup>555</sup> Local newspapers emphasized her testimony, with headlines and sub-headings reading "Hung Up and Burned" and "Woman's Face Burned."<sup>556</sup>

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<sup>551</sup> Inouye Treason Trial, 1 and *South China Morning Post*, 16 April 1947.

<sup>552</sup> Inouye Treason Trial, Exhibit B.

<sup>553</sup> Inouye Treason Trial, 2.

<sup>554</sup> Inouye Treason Trial, 4-14, as well as PRO, HK, HKRS, 163-1-216, Chief Justice H.W. B. Blackall to Governor of Hong Kong, 22 July 1947. Blackall notes that Inouye was implicated in the water torture of at least seven individuals, the burning of three, the suspension of six and the airplane torture of one. Inouye Trial, 73.

<sup>555</sup> Inouye Treason Trial, 6-7.

<sup>556</sup> *South China Morning Mail*, 18 April 1947.

The most striking new accusation of torture came from a trio of witnesses that Mr. Power had allegedly referred to as the “Three Musketeers.” Muhamad Yousif Khan, Mohamed Ashan, and Ahman Khan had been gathering intelligence for Mr. Power and the BAAG. The three were arrested, interned at Stanley Gaol, and given summary sentences by the Japanese. Inouye had taunted them and blew smoke up Ahsan’s nose and mouth while he was given the airplane torture.<sup>557</sup> On the day they were to be released after months of captivity, Inouye made them kneel facing Tokyo and told them they

were not wanted by Jap[anese] Government and were sentenced to death, but if we showed them the spy ring in H[ong] K[ong] we might be set free. We denied we knew a spy ring. Then he asked whether we wanted to be buried or burnt after our death. We kept quiet. He said we would be shot in the back because we were Indians and not like other spies. Then when he started beating us I said bury us. Eventually he made us sign a piece of paper and said we were released on parole. We were put in truck and brought to Sup[reme] C[our]t.<sup>558</sup>

The witnesses all described Inouye’s participation in the torture and interrogation, as well as his general role in the gendarmerie. Justice Blackall reminded the jury in his summation that, although cruelty and torture were not the focus of the charge, they made up a fair amount of the testimony because

the case for the Crown is that in order to carry out these acts by terrorizing His Majesty’s subjects and others in order to extract information from then [sic], so although he is not charged, although you have not to find him guilty or otherwise of torture, still these are material circumstances and that is why evidence is given about it.<sup>559</sup>

The defence did not cross-examine the witnesses because Inouye did not dispute the abuses and tortures. He fought the trial on the grounds that he did not owe allegiance to the King.

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<sup>557</sup> Inouye Treason Trial, 11.

<sup>558</sup> Inouye Treason Trial, 10-11. The story was corroborated by Mohamed Ahsan.

<sup>559</sup> Inouye Treason Trial, Judge’s Summing Up, 2. Outlining the case to the governor, Blackall noted that the defence “did not cross-examine these witnesses and although the prisoner denied some of the allegations when in the witness box, the evidence of his cruelties was overwhelming and showed him to be a callous and sadistic brute who well deserved his nickname of “Slap Happy.” PRO, HK, HKRS, 163-1-216, Chief Justice H.W.B. Blackall to Governor of Hong Kong, 22 July 1947.

Inouye's story on the stand was a complete reversal of his previous trial. This time, he claimed that he had always considered himself a Japanese national based on his parentage, his registration with the Japanese consul in Vancouver, as well as his recruitment into the IJA in March 1937 when he had sworn an oath to the Japanese Emperor. He insisted that he did not believe he had done anything wrong, given that he considered the English King the enemy. He did not dispute his Canadian birth, but noted that he was not treated like a Canadian. In Canada, he was denied the right to vote or hold public office, and faced racial prejudice. Conversely, Inouye claimed, in Japan, even though he was *Nisei*, he was treated as if he had been born and raised there. Inouye's theatrical and animated performance on the stand was another dramatic reversal from his previous trial.<sup>560</sup>

When cross-examined about why he had claimed Canadian citizenship in his petition and spoke so positively about Canada in his initial trial, Inouye claimed that he was advised to do so by his counsel. Haggan had told him the birth certificate "might help get [him] off," and advised him to say he was well treated in Canada. He then became somewhat vague about what he could and could not remember of his claims in the original trial.<sup>561</sup>

Inouye was aware of the brutal methods employed by the gendarmerie, and that their work would be counter to the British war effort when he joined. His defence relied on the notion that he never owed allegiance to the British, so his actions were irrelevant. He offered some explanations that sought to diminish his personal responsibility, noting that he only followed

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<sup>560</sup> Inouye Treason Trial, 14-17; *South China Morning Post*, 19 April 1947 and *The China Mail*, 19 April 1947. Inouye added flare and passion to his claim that he had bid his allegiance to Hirohito. Newspaper reports note that Blackall warned Inouye that there was "no need to be theatrical" and he apparently shouted "Long live the Emperor" and claimed that he owed his body and mind to the Emperor. Inouye's outbursts are not on record in the abbreviated trial transcript.

<sup>561</sup> Inouye Treason Trial, 15.

orders, never took questioning into his own hands, and had no authority to stop anyone in the gendarmes.<sup>562</sup>

In his summary, Judge Blackall reminded the jurists that the prosecution had to convince them beyond reasonable doubt that Inouye was guilty of treason. He would guide them on matters of law, but in matters of evidence it was up to them to decide what was true. He explained that the prosecution had to prove Inouye owed allegiance to the Crown at all material times and that he had adhered, aided, and comforted the King's enemies with intent.

Allegiance was a twofold issue. Blackall noted that “any person who is born within His Majesty's dominions, is a British subject irrespective of the nationality of his parents.”<sup>563</sup> The prosecution's evidence proved Inouye was born in British Columbia. Had Inouye divested himself of his British nationality? A naturally born British subject could take out naturalisation papers for another state—unless Britain was at war with that state. The case more pertinent to Inouye was that of a dual national. Although the defence failed to have an expert speak to the issue, Blackall advanced the assumption that Japan claimed anyone born of Japanese parents as a subject. A dual national, once of age, could “declare that he wishes to be a subject of that other country and if he makes that declaration properly and formally, then he ceases to be a British subject.”<sup>564</sup> The same stipulation still applied; nationality could not be shifted to a state at war with Britain. Inouye could have applied for a declaration of alienage when he came of age in 1937. He would not have been amenable to a treason trial, but his war crimes trial would not have faltered over the question of jurisdiction.

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<sup>562</sup> Inouye Treason Trial, 15-16. Inouye explained that the gendarmes were to stop espionage, but “not treacherously,” which meant they were to arrest individuals, “but not kill them right off or anything like that.”

<sup>563</sup> Inouye Treason Trial, Judge's Summing Up, 3.

<sup>564</sup> Inouye Treason Trial, Judge's Summing Up, 4.

The evidence put forth showed that Inouye had not taken no steps to end his British nationality. Yet, he claimed that he had always considered himself a Japanese subject. He travelled back to Canada twice on a Japanese passport, registered his birth with the Japanese consul in Vancouver after the death of his father, and was conscripted and served in the Japanese Army.<sup>565</sup> Blackall confirmed that Inouye was “a bit confused on that point” and noted that “joining the forces of any State does not have the affect of changing the nationality of a British subject.”<sup>566</sup>

Shifting to the second question of intent, Blackall explained to the jurors that “a person is assumed to intend the natural consequences of his acts,”<sup>567</sup> and that they had to decide between two basic circumstances. Inouye contended that he was doing nothing wrong by serving with the gendarmerie. Conversely, the idea persisted that Inouye had assisted the enemies of the King in a treasonous and treacherous way. Blackall raised the issue that Inouye came to Hong Kong and joined the gendarmerie voluntarily. Evidence showed that he could have left at any time, but thought he would have been disgraced if he left the gendarmes. In practical terms, “disgrace” would have amounted to a joke among his friends that he could not hold a job, rather than banishment from Hong Kong or some great dishonour. Blackall noted that a defence could be shown if an individual were compelled into service and participated only minimally and left as soon as possible. Inouye understood what he was getting into. The methods of the gendarmes were well known by the time he arrived, and he had already undergone water torture himself at the hands of the gendarmes in Japan.

Blackall reviewed the importance of each witness for the jurists before they retired. The jury foreman, J.K. Hadland, posed one final question: “Do you direct that he was definitely never

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<sup>565</sup> Inouye Treason Trial, 14, Exhibit F and C.

<sup>566</sup> Inouye Treason Trial, Judge’s Summing Up, 4-5.

<sup>567</sup> Inouye Treason Trial, Judge’s Summing Up, 6.

a Japanese subject?”<sup>568</sup> Blackall’s unequivocal response, “Yes,” opened up a minor hole for Inouye’s last appeal. The jury retired for fifteen minutes before announcing their guilty verdict.<sup>569</sup> Inouye was sentenced to death, removed from the courtroom, and taken back to Stanley Gaol.

### **Full Court Appeal**

Following his second death sentence, Inouye again petitioned for clemency. In the hope of either being re-tried or having his sentence mitigated, Inouye claimed he was a Japanese subject, as were his parents. Of all of his complaints, the most convincing was his assertion that “the Judge was wrong in law and misdirected the jury in directing them that the Appellant at all material times was a British subject.”<sup>570</sup>

Inouye was granted leave to appeal and presented his case to Justices Williams and Gould at the Hong Kong Supreme Court on 1 July 1947. The Full Court session was based on two alleged misdirections by Blackall: that he had directed the jury that Inouye was at all material times a British subject and, second, his response to the jury foreman’s question.<sup>571</sup> Loseby, Inouye’s defence lawyer, claimed that Inouye had always been a Japanese subject, never owing allegiance to the British Crown. He argued that Inouye and his parents were nothing more than Japanese aliens in Canada and that “being born in a British territory ... did not deprive a man of his Japanese nationality.”<sup>572</sup> The defence counsel claimed that Blackall had done a disservice to the Court, insofar as he had deemed that “it was his duty, a burden upon himself, to decide on

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<sup>568</sup> Inouye Treason Trial, Judge’s Summing Up, 17.

<sup>569</sup> Inouye Treason Trial, 19. Newspaper reports claim ten minutes, but the transcript says fifteen.

<sup>570</sup> PRO, HK, HKRS 163-1-216, In the Supreme Court of Hong Kong Criminal Procedure Ordinance 1899, Rex v. Inouye Kanao, Treason Case, Notice of Appeal, 25 April 1947. Inouye also noted missing documents, lack of support witnesses, and superior orders as mitigating circumstances.

<sup>571</sup> *Inouye Kanao v. The King* 14 *International Law Report*, 103.

<sup>572</sup> *South China Morning Post*, 2 July 1947.

that point” of Inouye’s nationality, rather than allowing the jury to decide based on evidence presented.<sup>573</sup> Loseby argued that the judge should have instructed the jury: “The Law on this question is before you: the facts are as given in the evidence. It is for you to make up your own mind what is to believe and what is not to believe on the subject.”<sup>574</sup>

Countering Loseby’s argument about nationality and allegiance, the prosecutor, Lonsdale, alluded to documentary evidence and Inouye’s oral testimony from the Treason Trial which established his birth in Canada and emphasized that he had made no effort, at any point, to divest himself of that allegiance borne out of birthright. Inouye had admitted this outright. Lonsdale asked the Court whether, “[s]ubject to a divesting of that nationality, can anyone do otherwise but accept that evidence?”<sup>575</sup>

Lonsdale countered that Blackall’s response needed to be interpreted alongside the evidence presented and left not a “shadow of a doubt that any jury of reasonable men, after listening to the evidence, could come to any other decision, question or no question to the judge.”<sup>576</sup> Although Japan had put forth a declaration in 1942 “making all Japanese subjects abroad subjects of Japan,” this was not a distinct, personal act. Most important, because these events took place during wartime, a change in allegiance could not take place.<sup>577</sup> Lonsdale noted that the “crux of the whole matter is election to abandon his British nationality.” Inouye had not

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<sup>573</sup> *The China Mail*, 2 July 1947.

<sup>574</sup> *The China Mail*, 2 July 1947. Loseby also tried to draw on the dissenting opinion of Lord Porter in the 1946 William Joyce treason trial, claiming that Blackall had been incorrect in his ruling and advice during the trial and that he followed the lead of Judge Tucker from the Joyce Trial. The Crown counsel, in his response, claimed that the Joyce case was not a reasonable comparison as Inouye had had the opportunity to defend himself on trial while Joyce had not, and that an appeal against misdirection “could only succeed where there had been a substantial miscarriage of justice” which he contended there had not been. See *South China Morning Post*, 2 July 1947

<sup>575</sup> *South China Morning Post*, 2 July 1947.

<sup>576</sup> *The China Mail*, 2 July 1947.

<sup>577</sup> *South China Morning Post*, 2 July 1947.

made the effort to divest himself, and there was “uncontradicted evidence of [Inouye’s] British origin of birth, conveying British nationality, and with it allegiance to the British Crown.”<sup>578</sup>

Justices Williams and Gould confirmed the treason trial conviction, dismissing Inouye’s appeal. They held that there had been no misdirection in the case, and that Blackall had made it clear to the jury that they were the sole judges of fact and that if they disagreed with anything he said, or any evidence in general, they could reject it. Blackall had explained to the jury that they needed to be convinced beyond any reasonable doubt that the accused was a person who owed allegiance to the Crown and that he aided the King’s enemies and had done so with intent. He had also clearly defined the law of allegiance, principally that a British national though birth needed to divest himself of his nationality and if he had not done so, he owed allegiance.

Viewed in relation to evidence, rather than in isolation, Blackall’s response to the jury’s question did not take the decision out of their hands, but informed them on nationality law as had been presented at the trial. For the third and final time, Inouye Kanao had to stand in the dock of a Hong Kong courtroom and receive a death sentence.<sup>579</sup>

## **Interim**

Inouye applied to the Hong Kong Courts of Justice for leave to appeal to the Privy Council of the United Kingdom but was rejected. The counsel was given time to review *Chung Chuk v. The King* (1930 A.C. 244) and the Appellate Court decided that it had no jurisdiction to grant leave to appeal and could not forward the matter onto the Privy Council.<sup>580</sup> Inouye

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<sup>578</sup> *South China Morning Post*, 2 July 1947.

<sup>579</sup> *Inouye Kanao v. The King* 14 *ILR* 104, 107 and Puddicombe fonds, Vol. 2-33, “Treason Trial: “Slap Happy” Appeal Dismissed,” 17-7-47. See also PRO, HK, HKRS 163-1-216, In the Supreme Court of Hong Kong Appellate Jurisdiction, Criminal Procedure Ordinances, 1899 to 1933, Inouye vs. The Crown, 16 July 1947.

<sup>580</sup> PRO, HK, HKRS 163-1-216, Supreme Court of Hong Kong Appellate Jurisdiction, Criminal Appeal No. 15 of 1947, Inouye Kanao and The Crown. See also Chief Justice, Hong Kong to Governor of Hong Kong, 11 August 1947 and Secretary of State for the Colonies, to Governor, Hong Kong, 6 August 1947.



petitioned the governor of Hong Kong and the King asking for clemency in August 1947. The governor and Colonial Secretariat's office rejected the petition because it contained "no matter which would necessitate a review of the decision already taken."<sup>581</sup> Inouye's claim that he was simply an interpreter had already been rejected at trial and the documents he submitted had already been reviewed. It had been proved that he was a British subject.

Inouye's execution was confirmed at Victoria on 19 August 1947 by the Colonial Secretary, D.M. MacDougall, and signed off on by Governor Alexander Grantham. As a result of his conviction at his civil trial, the upholding of his sentence by the Full Court under appeal, the dismissal of both his application for appeal to the Privy Council by the Full Court, and his appeal to the governor and King, MacDougall and Grantham authorized the "sentence into execution by causing the said INOUYE KANAO to be hanged by the neck until he is dead between the hours of five o'clock in the forenoon and six o'clock in the afternoon of Tuesday, the 26<sup>th</sup> August, 1947."<sup>582</sup> Inouye attempted again to stave off the inevitable with a last minute appeal, but it was to no avail. He was hanged at 7:05 AM on 26 August 1947.<sup>583</sup>

Historians have severely distorted Inouye's legal story. He is cast as an oddity, as Canada's war criminal, and is recalled bitterly in the memoirs of Hong Kong POWs. Inouye's actions as an interpreter in the POW camps and with the Gendarmerie certainly warrant such conclusions, and the portrayal of him as a disloyal Japanese-Canadian seeking revenge for a childhood scorned is appropriate. This construction, however, does not conform to the strict confines of his legal

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<sup>581</sup> PRO, HK, HKRS 163-1-216, Principal Assistant Colonial Secretary to Governor, 18 August 1947 and Colonial Secretary to Commissioner of Prisons, 19 August 1947 and Attorney General to Principal Assistant Colonial Secretary, 18 August 1947.

<sup>582</sup> PRO, HK, HKRS, 163-1-216, Warrant For Carrying Out Sentence of Death, Rex v. Inouye Kanao, D.M. MacDougall to Commissioner of Prisons, 19 August 1947.

<sup>583</sup> PRO, HK, HKRS, 163-1-216, Governor A.G. Grantham to The Right Honourable A. Creech Jones, M.P., 5 September 1947 and note from Harrison, Superintendent of Prisons, 27 August 1947. Grantham did forward along the last minute petition of 23 August 1947 when confirming the execution had been carried out.

story. Inouye's actions – comparable to many of the 5700 “minor” war criminals tried by the Allies in the Pacific – lost designation as war crimes because of his Canadian birth and status as a British subject. During a time of war, individuals face enormous burdens from the state regardless of their personal conceptions about allegiance. Singular state expectations placed an individual with multiple strains of nationality or allegiance in a position where rejection could amount to treason.

The combination of Inouye's actions and nationality, situated within a legal structure that placed tremendous emphasis on singular nationality, allowed “minor” war crimes to be treated as treason. Inouye's situation tested the mettle of a developing military legal system. When a jurisdictional technicality meant he might slip through the cracks, he was pursued (with more exertion by the British than the Canadians). In the absence of other options, prosecutors applied the British Treason Act of 1351 to his particular situation. Given the facts of his case, this charge reflected a deliberate attempt to pursue war crimes through other avenues rather than treason *per se*. His legal story also reflects law as a political instrument, with the Canadian government content to avoid the question as much as possible to avoid domestic political discord, and the British taking the opportunity to regain credibility in their colonial outpost.

Inouye's Canadian identity caused jurisdictional problems for the Hong Kong War Crimes Court and influenced the way the Canadian government responded to the issue. In particular, Inouye's dual identity posed problems within the courtroom. He was an individual who did not fit into Canadian or Japanese societies. He tried to paint himself as a victim on both sides: at his war crimes trial he presented his Canadian experience positively and his treatment in Japan brutally. Conversely, at his civil trial he asserted that he was picked on and derided in Canada, and welcomed with open arms in Japan. In one case he was a Japanese-Canadian: a

Canadian citizen and British subject. In the other, he was a Japanese citizen, faithful to the Emperor. His Canadian nationality provided grounds for his defence counsel to have his war crimes conviction quashed. His Japanese nationality did not provide sufficient cause to override the treason conviction. Nevertheless, his nationality posed – and poses – complications. His first prosecuting officer, George Puddicombe, doubted that Inouye was really a Canadian citizen at the time of the trial, as did the head of the Canadian Detachment almost forty years later.<sup>584</sup>

Regardless of Inouye's legal nationality, and his inability to fit into either society, his actions in Hong Kong were reprehensible. His defence of superior orders did not raise enough doubt in the eyes of the court to mitigate his sentence. Accordingly, he was executed. Nonetheless, Inouye's dual identity represents the Achilles heel of the Japanese-Canadian experience. The Canadian government was in an uncomfortable position. On one hand, Canada came out of the Second World War interested in assuming a broader, functional role in the international sphere. As a part of this, National Defence, backed by public support, became involved heavily in war crimes trials in Europe, the most high profile being that of Nazi general Kurt Meyer.<sup>585</sup> When it came to dealing with one of their own, a Japanese-Canadian, the Canadian government was reluctant to see the problems associated with war crimes trials land on home soil. Already dealing with fallout on either side of the debates about Japanese-Canadian internment and deportation, Ottawa officials found it undesirable to host a trial in Canada about citizenship and loyalty. Avoiding the problem altogether was not an option, as Hong Kong

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<sup>584</sup> On Puddicombe's idea that Inouye may not have been born in Canada see LAC, RG 25, Vol. 3824, 8767-40C, Major G.B. Puddicombe to D.A.A.G., nd. Puddicombe's opinion was influenced by the affidavit of A.W. Rance, HKVDC, who claimed that Inouye had told him that he was born in Tokyo and brought to Canada where he was raised. On the organization of British Columbia birth registrations, see Inouye Treason Trial, 2. Oscar Orr claimed in an interview with Charles Roland that he did not think Inouye was a British subject and that he thought he "was on one of those fake birth certificates." See HHS/FHS Archives, Dr. Charles Roland Research Materials, Interview with Mr. J. Oscar Fitzallen Orr, 23 April 1985.

<sup>585</sup> Although, unlike Meyer, there were not enough lingering doubts of innocence to prevent Inouye's execution. For the most extensive discussion of the Meyer trial, sentencing, and commutation see Brode, *Casual Slaughters and Accidental Judgements*, chapters five and six, as well as Lackenbauer and Madsen, eds., *Kurt Meyer on Trial*.

veterans demanded that Inouye be tried. In the end, a combination of fence-sitting and international cooperation with the British meant that the legal saga played out in Hong Kong rather than in Canada, allowing the Canadian government to evade political turmoil.

Getting Inouye's legal story correct is important. Arriving at a more complete view of the Japanese-Canadian experience is essential to a better understanding of domestic Canadian issues such as internment, deportation and the development of the 1947 Citizenship Act, or the experience of Canadian POWs in Hong Kong. In the past, historians and veterans have used Inouye to construct a *Nisei* bitter toward Canadians, looking for revenge. The Canadian component in Inouye's legal saga that did emerge exposed a Canadian government hesitant to get substantively involved. Questions of Canadian and British nationality allowed his saga to drag on. If historians want to mobilize Inouye as the prime counterexample to the narrative of a loyal Canadian *Nisei* that characterizes recent scholarship,<sup>586</sup> and if he is to serve as one of Canada's worst citizens, then they must, at the very least, get the facts straight.

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<sup>586</sup> Lyle Dick, "Sergeant Masumi Mitsui and the Japanese Canadian War Memorial," *Canadian Historical Review* 91, no. 3 (September 2010): 435-463. A contemporary editor of Japanese-Canadian newspaper *The New Canadian* noted in an editorial that Japanese-Canadians need "waste no sympathy on the account of Inouye and Kawakita. They should have known well the implications of their actions and if their penalty is death, it is well-deserved." The author noted that the real cause for concern to the readership of *The New Canadian* was what the misuse of these two examples could mean to the Japanese-Canadian community at large as "some unscrupulous politicians are not above exploiting these cases – representing them as typical of the Canadian and American Niseis and in this way stirring up racial hatred." *The New Canadian* did not hold a brief for Inouye's actions, but worried that one disloyal example may outweigh the abundance of examples of Japanese-Canadian loyalty and bravery. See *The New Canadian*, 28 June 1947. Kawakita Tomoya was a Japanese-American who had a similar case arise after being apprehended by the Federal Bureau of Investigation in California after having served as an interpreter in a POW camp at Ohasi, Japan. *The New Canadian* reported on all of the major points of Inouye's legal saga (arrest, war crimes trial, treason trial, petitions and execution) in a very detached manner. Although there were some factual irregularities in their reporting, it remains that the newspaper provided a basic outline of Inouye's legal saga that seems to have been overlooked generally.

## Chapter 6

### Japan – Crimes of Omission and Commission: POW Labour Camp Trials

The Yokohama War Crimes Trials were a far larger production than the Hong Kong War Crimes Courts, both in case volume and variety of charges. The Canadian Detachment's cases, however, homed in on a series of war crimes specific to the 'C' Force experience as a source of labour in Japan after January 1943. The nature of POW life dictated the content of the Canadian trials, which focused mainly on the brutalities related to exhaustive and dangerous working conditions and the individual yet widespread atrocities that played out in camps from Fukuoka in the south to Sendai in the north. The Canadian Yokohama Trials featured similar facets to the Camp Case in Hong Kong, but where Puddicombe emphasized the deaths of Canadians through the diphtheria epidemic and the execution of the escaped POWs, the Japanese trials related mainly to the death of 136 men and through starvation, exhaustion, and abuse in the camps and labour sites in Japan.

Those men faced brutalities and were put to work in perilous conditions while underfed and deprived of medical services. Camp commandants, guards, and labour foremen (although not unanimously) felt little sympathy for their plight, took pleasure in beating defenseless men, and sought to squeeze every last ounce of labour out of them. Ultimately, the trials were a successful vehicle for punishment, with guilty verdicts far outweighing acquittals. This reflected the rigorous pre-trial screening process requiring the Legal Section to direct its energies to the strongest cases as well, as the brutal nature of the crimes. The Yokohama Trials yielded more

than just punishment, however, and the review process ensured that sentences were neither arbitrary nor aberrant from other “minor” war crimes trials during the period.

As a didactic tool, the Yokohama trials illustrated the ease with which regular people (farmers, preachers, teachers) as well as career soldiers could overtly abuse and torture weakened and defenceless POWs. These men were supposed to have been afforded reasonable and humane treatment under international conventions and customary law. As Orr argued in a back-and-forth with Commission President Lt. Col. Francis G.J. Place in *USA vs. Uwamori*:

All we demand is the purpose of this argument is humane treatment. We will forget the Geneva Convention and stay with the Hague Convention that everybody is bound by. That says prisoners of war shall be treated humanely. Is that not inhumane treatment? In other words, is that not inhumane to make them work when they are sick?<sup>587</sup>

The pedagogical use of a trial, however, is limited by how the public perceives the entire structure – and the Japanese had mixed reactions.<sup>588</sup>

As an historical source, these trials provide a sense of war crimes law during an important transitional period. While the invasion trials at Hong Kong produced some of the strongest insights into operations during the Battle of Hong Kong, the records of the Canadian Yokohama War Crimes Trials provide researchers with a pool of resources to better understand the incarceration, maltreatment, medical, and labour histories of POWs under Japanese control. These sources range from individual affiant recollections about beatings to thorough in-trial discussions about workplace hazards. Cumulatively, these sources offer a thorough and cross-sectional picture of POW life, one recorded immediately following internment, without the aggrandizement often present in POW memoirs written decades later.

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<sup>587</sup> *USA vs Uwamori*, 68.

<sup>588</sup> See Ian Buruma, *The Wages of Guilt: Memories of War in Germany and Japan* (New York: Farrar Straus Giroux, 1994), particularly part three.

The prosecutors submitted specifications based on the evidence they found and the stories that emerged through reading affidavits and speaking with witnesses. Taken collectively, particularly through the use of common or joint trials, the specifications detail the cross-section of the illicit POW experience, from the extreme dangers of unsafe labour and violent beatings to the banal and languid killers through malnourishment, medical deficiencies, and poor living conditions. Although the Canadian experience varied from camp to camp, the atrocities the men faced were relatable from across Japan. The Japanese brought the men across from Hong Kong to work, and work they did. Even the strongest and most resolved was worn down eventually through labour, malnutrition, disease, violence, and humiliation.

### **Overview of Canadian Prosecutions**

Each of the three Canadians acted as chief prosecutors for trials based on their main investigative assignment: Oscar Orr for three Tokyo 3D trials involving five individuals; John Boland for two Niigata 5B trials implicating five individuals; and John Dickey for three Omine trials involving four defendants. Orr had the opportunity to act as prosecutor for two additional trials involving nine individuals from Sumidagawa, Oeyama, and Tanagawa POW camps. The SCAP Legal Section assigned Boland as assistant prosecutor for two trials involving eight individuals from the Sendai I and Tokyo I camps. Each Canadian prosecutor had the opportunity to utilize the common trial approach where their efforts encompassed the actions of a broad range of actors within the camp structure, as well as individual trials that were more traditional in approach. Boland and Orr both had the opportunity to participate in trials implicating as many as seven and eight defendants.

Each of the Canadian trials at Yokohama resulted from the transfer of Canadian POW labourers from Hong Kong to the Japanese home islands in four drafts.<sup>589</sup> Initially, 663 men were packed aboard the *Tatu Maru* or *Tatsuta Maru* on 19 January 1943. 150 of those men were taken to Omine Camp near Fukuoka on Kyushu for labour in a coal mine. The remaining 513 POWs were brought to Tokyo 3D for work at the Nippon Kokan Shipyards. From this site many of the men were distributed in 1945 to camps at Sumidagawa, Ohashi, and Sendai for work loading food, and in an iron and coal mine. This draft was accompanied by one officer, Captain J.A.G. Reid, who was brought to Tokyo 3D. The second draft left Hong Kong on 15 August 1943, when 376 POWs were shipped on the *Manryu Maru*, bound for Niigata, which is located on the northwest coast of Honshu. 300 of the men were interned at Niigata 5B and 15B where they served as labour in a coal mine as well as an iron mine, works and foundry. In 1945 many of the men were moved from Niigata to Toyama, north of Nagoya. The remaining 76 men on the second draft went to Oeyama where they worked at a nickel mine and refinery. The third draft shipped out on 15 December 1943 aboard the *Toyama Maru* and consisted of 98 men, 50 of whom were bound for Narumi Camp at Nagoya (and were later shifted to Toyama with the men from Niigata in 1945). The other 48 of the third draft went to Oeyama, joining the men from the second draft at Oeyama Camp. The final draft of 47 men shipped on 29 April 1944 aboard the *Naura Maru* to Sendai II to engage in coal mining.<sup>590</sup>

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<sup>589</sup> For more information on the reasons for drafting POWs and the process, see Roland, *Long Night's Journey into Day*, 207-224.

<sup>590</sup> See DHH, 593. (D8), Hong Kong, Notes on atrocities in Jap Prison Camps by Lt-Col O. Orr, W.C.I.S. 8 Jan 46, and Roland *Long Night's Journey into Day*, 211-214 for ship names.



Draft	Date	Men	Distribution	Labour
I – <i>Tatu Maru</i>	19 January 1943	663	150 – Omine	Coal mine
			513 – Tokyo 3D*	Shipyards
II – <i>Manryu Maru</i>	15 August 1943	376	300 – Niigata 5B, 15D	Coal yard, dock yard, iron foundry
			76 – Oeyama	Nickel mine and processing plant
III – <i>Toyama Maru</i>	15 December 1943	98	50 – Narumi**	Plants in Nagoya
			48 – Oeyama	Nickel mine and processing plant
IV – <i>Naura Maru</i>	29 April 1944	47	47 – Sendai II	Coal mine
*Redistribution	March 1945	500	50 – Sumidagawa 10B	Food loading
			250 – Ohashi 6B	Iron mine
			200 – Sendai I	Coal mine
**Redistribution	April 1945	40	40 – Toyama Camp	Foundry

Table 1 - Canadian Labour Drafts from Hong Kong to Japan

Overall, the POWs' experiences in Japan varied significantly in the labour they performed, the geographic and climate they faced, food and medicine availability in the camps, as well as individual differences in the people with whom they interacted. Some POWs were incarcerated with particularly brutal guards or camp commandants, while others maintained civil and even positive relationships with their captors. The relationships, and the actions of the Japanese, were not uniform.<sup>591</sup>

### Common Trial

The common (or joint) trial, frequently used at Yokohama and in war crimes programs more broadly, has garnered widespread criticism. Common trials at Yokohama streamlined the logistics of pursuing 996 alleged war criminals over only 319 trials. Their use prevented holding multiple trials with significant cross-over of incident and evidence. The common trials also yielded representative samples of camp life, facilitating specific discussion about a site along with intertwined evidence incriminating a broad cross-section of the camp staff. As a trove of

<sup>591</sup> More on this issue is discussed in chapter seven, particularly the actions of Uncle John Watanabe.

information, common trials are valuable as they covered issues of all facets of the camps, dealing with orders, actions, and responsibilities from all levels of authority. At the time, they allowed prosecutors to demonstrate common design to commit war crimes through participation and knowledge rather than design.<sup>592</sup>

The use of the common trial in this era applied to both the major and “minor” war crimes trials. This included the International Military Tribunals at Nuremberg and Tokyo, as well as American-operated trials in Germany (the Mauthausen Trial, for example, featured 61 defendants),<sup>593</sup> and the Japanese trials throughout the Pacific. Their use has been expanded beyond the military war crimes trials, including those run under national state jurisdiction – exemplified by the Auschwitz Trial of more than 20 defendants representing multiple tiers of the camp from 1963-1965<sup>594</sup> – as well as more recent international developments including their use to prove involvement in a joint criminal enterprise in the UN-backed International Criminal Tribunals for Rwanda and the Former Yugoslavia.

A main criticism of the common trial system is the notion that evidence against one individual may influence the perception of another. In these cases the Commission bore responsibility to differentiate and not let the actions of one cloud their judgment of another. The Camp Case at Hong Kong exemplifies the organizational concern. All five accused faced the first charge, while the second, fourth, fifth and sixth charges were only against Tokunaga and Saito. The third was against Tokunaga, Saito and Tanaka, the seventh, eighth, ninth and tenth

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<sup>592</sup> For example, in the selection of defendants for the American-run Mauthausen Trial in Germany, the prosecution charged 61 defendants ranging from the administration, the political department, the rank and file, through to civilian suppliers, aim to show that through common design each had played a role in furthering Mauthausen’s aims as an extermination site, if not through planning through their own recognition that “violence was a chief product of the camp system they helped to sustain.” Tomaz Jardin, *The Mauthausen Trial: American Military Justice in Germany* (Cambridge: Harvard University Press, 2012), 102.

<sup>593</sup> Jardin, *The Mauthausen Trial*, 115.

<sup>594</sup> Rebecca Wittmann, *Beyond Justice: The Auschwitz Trial* (Cambridge: Harvard University Press, 2005), 285-286.

were against Tokunaga alone, and the eleventh charge was against only Tanaka.<sup>595</sup> This type of approach posed organizational challenges, and part of the justification for Saito's subsequent commutation was that he had been considered in a charge that he had not been indicted with.

The common trial at Yokohama differed from the British system because it provided for an individual charge and specifications against each of the accused, rather than selectively linking the individuals on trial to a series of charges. The use of the specification system assisted with organization, but Commission members were confused at some points in the trials, although items were typically cleared up by the prosecution or defence. There were also rare occurrences, such as *USA vs. Yamanaka et al*, in which the trial functioned as a collective trial where all individuals were indicted on the same charge and specification. More commonly various individuals faced similar but individualized specifications. The common trials at Yokohama featured as few as two and as many as 46 defendants.<sup>596</sup>

One of the recurrent complaints of the defence counsel at Yokohama was that participating in common trials with a camp commander and his subordinate staff put them in an unethical position. These situations set the defendants off against each other. A subordinate in the camp could allege that he was ordered to commit atrocities against the POWs under the authority of the camp commandant. Conversely, the commandant might claim that he was unaware of the atrocities and had issued orders that the men treat the POWs fairly and not abuse them. The blame could be shifted up or down the chain of command as the situation allowed. This put the defendants in a compromised position, and also placed severe strains on the defence counsel. Although he was ultimately unsuccessful in his argument in *USA vs Yoshida et al*, defence counsel Thomas J. Duffy argued:

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<sup>595</sup> See Tokunaga et al Trial, Charge Sheet.

<sup>596</sup> Piccigallo, *The Japanese on Trial*, 86.

that at this time to permit the trial of these four men together is highly prejudicial because it forces counsel into the position of representing parties whose interest are adverse. That we know is contrary to all rules in the States and contrary to any ethics of the Bar. We do not feel that in a situation where a camp commandant is tried with any of his subordinates that on its face, it is apparent to all concerned that their interests are diametrically opposed to each other and for that reason, we request that the severance be granted.<sup>597</sup>

The President of the Commission, Canadian Thomas Moss, disallowed the motion, explaining that the Supreme Commander ordered the trials and the Commission would deal with any conflicts as they arose. The decision reflected the constraints facing the Yokohama Trials.

Moss explained that a North American or British juried courtroom would deal with the situation in a different way, but at the war crimes trials, there was little that could be done.<sup>598</sup>

Former defence counsel at Yokohama Robert W. Miller reiterated in a *Brooklyn Law Review* article that a motion for severance was “uniformly unsuccessful,”<sup>599</sup> as the courts had orders to carry out common trials.

Although the wording of the specifications was precise, the lawyers involved in the trial often treated them as parts of a greater whole. The Commission gave each specification individual consideration, but one gets the sense reading the trial transcripts that the aim of the prosecution tended to shift from following the specifications precisely to the presentation of a broader sense of the conditions and experiences at the camp. Dickey explained this notion in his opening statement during *USA vs Yanaru*:

Now the various instances of mistreatment of prisoners and the elements of neglect of their welfare which go to make up the substance of the charge of violating the Laws and Customs of War against this accused are of course charged under the individual

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<sup>597</sup> NARA, RG 331, SCAP, Legal Section, Prosecution Division, USA Versus Japanese War Criminals, Case File 1945-1949, UD 1321, Box 1607, Yoshida Case, No. 69, [hereafter *USA vs Yoshida et al*], 249.

<sup>598</sup> *USA vs Yoshida et al*, 252.

<sup>599</sup> Miller, “War Crimes Trials at Yokohama,” 200. Robert W. Miller acted as defence counsel in five of the Canadian prosecuted trials at Yokohama, served with the Federal Bureau of Investigation during the Second World War and as Dean of the College of Law at Syracuse University from 1967 until 1971. See R. Harvey Chappell Jr., “Robert W. Miller Retires As Dean Of The Syracuse University College Of Law,” *Insurance Counsel Journal* 38 (1971): 363.

specifications. However, in order to adequately appreciate the ordeals which the prisoners were subjected under him, it will be necessary to relate one after the other and to regard the entire picture as an integrated whole. It is to the end of establishing the guilt of the accused for the mistreatment of the prisoners and conditions which they endured which the evidence of the prosecution will be directed.<sup>600</sup>

While this was a pragmatic approach, it created uncertainty how much weight each specification received in sentencing. The trial regulations did not require a written judgment, which only compounds this problem.

### **Review of the Canadian Trials**

Lt. Col. Orr prosecuted three trials that stemmed from his investigations of the Tokyo 3D POW camp. The trial of Camp Commandant Uwamori Masao alleged that he had mistreated Canadian POWs directly, but focused mainly on his responsibility for compelling POWs to participate in directly in war labour, repairing and maintaining gunboats for the Japanese Navy. He also faced an extensive series of command responsibility specifications for allowing his subordinates to abuse POWs. Uwamori plead guilty and the Commission assessed him a three-year prison sentence.<sup>601</sup> In another individual trial, camp interpreter and guard Kondo Kanechi stood accused of beating three Canadians suspected of being involved in a clothing-trading scheme with civilians. Kondo ultimately plead guilty and claimed superior orders as a mitigating factor. Kondo had secured letters of support from various Allied POWs who claimed he had improved their lot at the camp. Orr noted in his opening address his impression from the

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<sup>600</sup> *USA vs Yanaru*, 8.

<sup>601</sup> *USA vs. Uwamori*. The sub-specifications Uwamori faced for command responsibility featured 82 specific instances of abuse against Canadian POWs.

evidence that Kondo had been rough with some of the POWs but had not caused permanent injury.<sup>602</sup> Kondo received a one year sentence.

In the exception rather than the rule in Yokohama common trials, Orr's prosecution of Yamanaka Toshitsugo, Shibata Teruo, and Baba Kensako featured one specification against the trio of civilian guards. The beating of Canadian POW Alexander Baraskiwich for turning in a pair of non-mended underwear was the central facet of the trial. Curiously, the trio only faced the single specification even though all three defendants were named in command responsibility sub-specifications in *USA vs Uwamori*. It is unclear why Orr did not draft additional specifications against the three guards to build a stronger and more complex case.<sup>603</sup> Yamanaka, Shibata, and Baba received prison sentences of four, five, and four and a half years respectively.

Taken collectively, the trials speak to the undesirable conditions at the Tokyo Camp and highlight the frequent and flippant use of violence as a disciplinary and retribution tool. The command responsibility portion of the trials revealed a camp system where beatings and humiliation were sanctioned and widely meted out.

One of the notable features of the Tokyo 3D trials was the oddity of two guilty pleas. A rare occurrence at Yokohama, they allowed for streamlined proceedings, but did not provide the accused with the safeguards of an expected lenient sentence as may have been the case in a regular American court. War crimes trials did not have traditional statutes to draw on, there were no maximum sentences for the crimes in question, and Commissions had "broad powers in determining the magnitude of a crimes and the sentence which could be imposed."<sup>604</sup> At

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<sup>602</sup> NARA, RG 331, SCAP, Legal Section, Prosecution Division, USA Versus Japanese War Criminals, Case File 1945-1949, UD 1321, Box. 1582, Kanechi Kondo Case, No. 115 [hereafter *USA vs. Kanechi Kondo*], 5.

<sup>603</sup> NARA, RG 331, SCAP, JAG, War Crimes Division, Records of Trial File, UD 1865, Box No. 9611, US vs Toshitsugo Yamanaka ET 2, Case Docket 60 [hereafter *USA vs. Yamanaka et al*].

<sup>604</sup> Eichelberger Papers, *Special Study of the Yokohama War Crimes Trials*, 14-15, see also Miller, "War Crimes Trials at Yokohama," 194.

Yokohama, death was the maximum legal sentence aligned with all trials. The guidelines as laid out in the regulations went as follows:

Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property or order its deliver to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.<sup>605</sup>

The guilty pleas initiated shortened proceedings and although nothing mandated it, the sentences levied against the accused were extremely lenient.

Boland's main assignment was a key priority of the Canadian Detachment.<sup>606</sup> The main camp was organized to supply labourers for the Rinko Coal Company, which was a branch of the Niigata Land and Sea Transport Company. The company divided the men up between the coal yard and the Maratsu dockyard. A small number of the men were transferred to another Niigata Camp, 15D and employed at an iron foundry. Boland was chief prosecutor for two Niigata trials: a common trial of four members of the camp staff, as well as that of a civilian guard who acted as a liaison between the camp and the coal site. Niigata produced two other trials that were listed on the Final Report appendix but were not prosecuted by Canadians.<sup>607</sup>

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<sup>605</sup> GHQ, SCAP, Regulations Governing the Trials of Accused War Criminals, 5 December 1945, 7-8.

<sup>606</sup> Puddicombe fonds, Vol. 1-3, War Crimes Investigation Section, NDHQ, "Notes of conversation with officers going to districts to assist AJAGs in preparation of depositions from repatriates," Ottawa, 8 January 1946, 3.

<sup>607</sup> There were two additional trials that were included in the War Crimes Investigation Section Final Report that named Canadian POWs in the specifications or used evidence provided by the Canadian Detachment. A statement by Robert Manchester was utilized in another trial that took place after Boland had wrapped up his business in Japan, but involved the bayonetting and killing of an American POW at Niigata by a group of civilian and military staff. Two of those individuals, Yokoyama "Wrestler" Kanzaburo and Uchida "Pete the Tramp" or "Cyclone Pete" Konemasu, were named on the Canadian appendix, see NARA, RG 331, SCAP, JAG, War Crimes Division, Records of Trial File, UD 1865, Box No. 9572, USA vs Tatsuro Fujita et 4, Case Docket 176. Another trial that took place after the Detachment had departed also used Canadian evidence and named some Canadians in a specification against Kojima "Whiskers" Ichisaku, who was to have beaten and forced labour upon American and Canadian POWs. The Canadians named in the specification had their names excluded from the guilty finding and Kojima was later acquitted. See NARA, RG 331, SCAP, Legal Section, Prosecution Division, USA Versus Japanese War Criminals, Case File 1945-1949, UD 1321, Box. 1640, USA vs. Yoshichiro Ebi et 6, Case Docket No. 314. Another individual given on the Canadian War Crimes Investigation Team Appendix for Yokohama is listed

*USA vs Matsato Yoshida et al* was the archetype of the common trial approach, implicating a cross-section of the camp staff including the commandant, a medical orderly, as well as two guards. Yoshida Matsato faced fourteen specifications; six related specifically to direct abuses of Canadians. The remainder emphasized his failure as camp commandant: neglecting to provide adequate shelter, clothing, heat, bathing facilities, medical attention and supplies, forcing POWs into arduous labour while ill, down to more specific incidents involving tying POWs outside in freezing weather, or urinating on POWs in lineups. The specifications against Takahashi Takeo focused on refusing hospitalization and medical treatment, but also had an element of physical violence. The guards, Sato “Satan” Katsuyasu and Okuda “Little Caesar” or “Slap Happy” Hyochi, faced 24 and 48 specifications respectively, 18 and 34 that were Canadian in scope. These uniformly involved beating POWs, often with sticks and other weapons. Sato was in charge of POWs working at the Rinko Coal docks and Okuda was in charge of POWs sent to the Shintetsu iron foundry.<sup>608</sup> Boland constructed an image of the camp as a place where the staff beat Canadian and American POWs regularly for minor breaches of expected conduct, forced them to work in brutal and dangerous conditions, compelled the sick to work, and denied the men basic medical, nutritional and living standards.

The trial was Boland’s most important and featured a lengthy list of Canadians in the specifications. Boland built a strong case, basing his approach on three former POW witnesses and 98 affidavits speaking to the conditions in the camp and the atrocities that had taken place there. The witnesses included Robert Manchester from the Canadian Detachment, Major

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as Camp Commandant at Niigata, but the trial transcript indicates that he was tried as Camp Commandant at Tokyo Area Prisoner of War Branch Camp Number One, Kawasaki, that of Takeuchi Hiroshi. This trial was largely completed by the time the Detachment arrived in Japan, having started on 28 March and wrapped up on 29 April 1946. There was no Canadian representation during the trial, and the specifications to the charge mainly dealt with American and British POWs, although there were general specifications against Allied POWs. It was a common trial of eight individuals. See RG 331, SCAP, JAG, War Crimes Division, Records of Trial File, UD 1865, Box No. 9495, *USA vs Hiroshi Takeuchi et 7*, Case Docket 17.

<sup>608</sup> *USA vs Yoshida et al*, 176.



William Stewart, the POW medical officer at Niigata, and Arthur Rance of the HKVDC who Boland had brought in from Hong Kong.

The Commission severed both Yoshida and Okuda from the trial after several months of proceedings. Medical officials at Sugamo Prison declared Yoshida insane and subsequently unfit for trial. He was removed permanently from the docket. The neuropsychiatric service at Sugamo noted a significant shift in Yoshida's behaviour; from receptive and cognizant during the beginning of the trial, to showing severe signs of depression, beating his cell door with his hands and head, being unaware of time and place and showing a "marked withdrawal from reality."<sup>609</sup> The medical staff at Sugamo held hope that that electroshock therapy could improve his state, but the SCAP Legal Section, in conjunction with the prosecution and defense, removed Yoshida from the trial. Unofficial sources reported that Yoshida committed suicide. An unknown but cynical reader noted in the margins of the transcript that Yoshida's suicide was sufficient retribution when contrasted with evidence that he taunted an American POW who had threatened to commit suicide.<sup>610</sup>

Okuda repeatedly missed trial sittings due to sickness, and his counsel eventually made a motion of severance. He was suffering from pleurisy with effusion, but with proper treatment could potentially return to trial after six weeks.<sup>611</sup> Rather than granting a full severance as with Yoshida, the Commission separated Okuda from the proceedings against Takahashi and Sato but ruled that evidence already presented could be used against him if he was brought back before the Commission. The law member noted that there was

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<sup>609</sup> *USA vs Yoshida et al*, Letter from Captain William Finzer (Medical Corps), Chief of NP Service, to Commanding Officer, Sugamo Prison, 23 January 1947, as recorded in Trial Transcript, 624-624A.

<sup>610</sup> *USA vs Yoshida et al*, marginal notes, 272.

<sup>611</sup> *USA vs Yoshida et al*, Letter from Captain William A. Leboy, Prison Surgeon, to Commanding Officer, Sugamo Prison, 25 January 1947, as recorded in Trial Transcript, 623.

no specific directive that an accused must be present during his trial, and while it seems to leave it open to the Commission to proceed with trial during the absence of the accused, nevertheless I do not think in this case it would meet the ends of justice to do so, particularly in his own behalf. The Commission does not think it would take advantage of its power, if it does have that power, of continuing the trial in his absence.<sup>612</sup>

Accordingly, Okuda's trial was held over until he was healthy enough to take the stand and participate in his defence. The proceedings against Takahashi and Sato closed on 11 February 1947, but the Commission reconvened on 13 March 1947 to carry on with proceedings against Okuda.<sup>613</sup> The defence proceeded with their case, calling new witnesses and recalling others. Each of Yoshida's subordinates aimed to downplay his own responsibility for the beatings by suggesting they were the result of superior orders. Although Yoshida was removed from the proceedings, this tactic reflects the extant concerns of the defence counsel. Okuda received a 33-year sentence, while Takahashi and Sato received 15 and 40-year sentences respectively.

The severance of Okuda, and to a degree Yoshida, demonstrates latitude for trial-by-trial modification so that each Commission could enact specific rules and procedures outside of the general regulations. Commission members, in this case Canadian Thomas Moss, had the opportunity to graft their own conceptions of justice onto the trials. Each of Yoshida's subordinates aimed to downplay his own responsibility for the beatings by suggesting they were the result of superior orders.

Boland's second Niigata prosecution was Hashimoto "Liverlips" Chogo, a civilian foreman with the Rinko Coal Company. The trial focused on allegations of beatings and torture

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<sup>612</sup> *USA vs Yoshida et al*, 629.

<sup>613</sup> *USA vs Yoshida et al*, 868. The Canadian Law Member on the trial, Thomas Moss, had returned to Canada during the break between the end of the first portion and the reconvenance against Okuda. Some of the clerical and reporting staff had also rolled over, but that was a more common occurrence than the alteration of a Commission. One of the defence counsel was also tied up with another case and could not participate in the closing of Okuda's case.

of POW labourers. As a liaison between the camp and company, part of Hashimoto's responsibilities included going to the camp to pick up the POWs and assigning them roles at the yard.<sup>614</sup> Boland relied almost entirely on affidavit evidence for the trial and characterised Hashimoto's punishments as wildly violent. Drawing on Canadian POW Victor Joseph Myatt's affidavit, Boland described the beating Hashimoto laid on Myatt "with fists, knocking him down, kicking him in the ribs, smashing him across the face with a stick, and otherwise abusing him."<sup>615</sup> Myatt had passed out trying to force a coal cart up a runway and Hashimoto threw water on him to revive him and then punched and kicked him, beating him across the face with a stick, injuring his nose, and leaving him unconscious. Hashimoto denied that he had ever beaten a POW and insisted that they liked him, noting that "they always told me that: you are the best."<sup>616</sup> Nevertheless, the Commission sentenced him to 15 years in Sugamo Prison.

Although the war crimes trials throughout the Pacific were largely a male show, with female participation limited to clerical and administrative roles, the case of Hashimoto was an exception. Miss E.C. Goode was counsel to the defence for the trial, working in partnership with Dr. Robert W. Miller, one of the most experienced defence lawyers at Yokohama. The trial record does not indicate exactly how much of a role she played in the trial aside from listing her in the appropriate locations in the record.<sup>617</sup> The *Winnipeg Free Press*, however, picked up on the anomaly of a female representative in the trial and noted that Hashimoto's "defence counsel is Miss Eleanor C. Goode, of New York, first woman lawyer to appear before a war crimes court

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<sup>614</sup> *USA vs Hashimoto*, 34.

<sup>615</sup> *USA vs Hashimoto*, Specification 1.

<sup>616</sup> *USA vs Hashimoto*, 38. Elsewhere in the trial, Hashimoto's defence style was similar, when facing questioning relating to the specification that he had beaten Canadian POW William Maltman with a stick and forced his hands into a fire pot, Hashimoto claimed that he had not beaten POWs and that he had attempted to warm Maltman beside the fire. See *USA vs Hashimoto*, 39.

<sup>617</sup> Trial transcripts sometimes named who from the prosecution or defence was speaking during specific circumstances in the courtroom, but often did not. Goode was the primary signature on the defence motion for modification of sentence for Hashimoto, giving the impression that she prepared the document and had Miller, her senior, sign off on it.

in Japan.”<sup>618</sup> Given the context of the period, it would have been incredibly brazen for a female lawyer to pick up, travel to Japan, and serve as a defence lawyer to alleged war criminals. It is unclear how involved Goode was in the trials, or how many other women had similar experiences in Pacific war crimes trials, but it does stand as an example that women played a role beyond support staff in the “minor” war crimes trials.<sup>619</sup>

## **Omine**

John Dickey’s three prosecutions collectively covered most of the period that Canadian POWs were detained at Omine. Although Omine was considered “one of the best run and most pleasant in which our lads were imprisoned,”<sup>620</sup> the POWs faced an environment of medical, nutritional, and housing privations, as well as frequent beatings and dangerous working conditions. Dickey prosecuted three Omine cases: a common trial of camp commandant Kaneko Takio and his second-in-command Uchida Teshiharu; that of another camp commandant, Yanaru Tetsutoshi; and one involving camp guard Fukami “Brown Bomber” Kazuo. Differing from Orr’s work on the Tokyo 3D camp, the labour use emphasized at Omine in *USA vs Kaneko et al* was not deemed direct war labour, but dealt with work in areas of the mine with dangerous levels of gas and with shoddy support materials that led to tunnel collapses.

POWs considered Kaneko to be “the main perpetrator of brutalities”<sup>621</sup> at Omine and the evidence against him, as well as his time on the stand, considerably overshadowed the co-accused, Uchida. Dickey successfully depicted Kaneko’s “persistent and deliberate policy of

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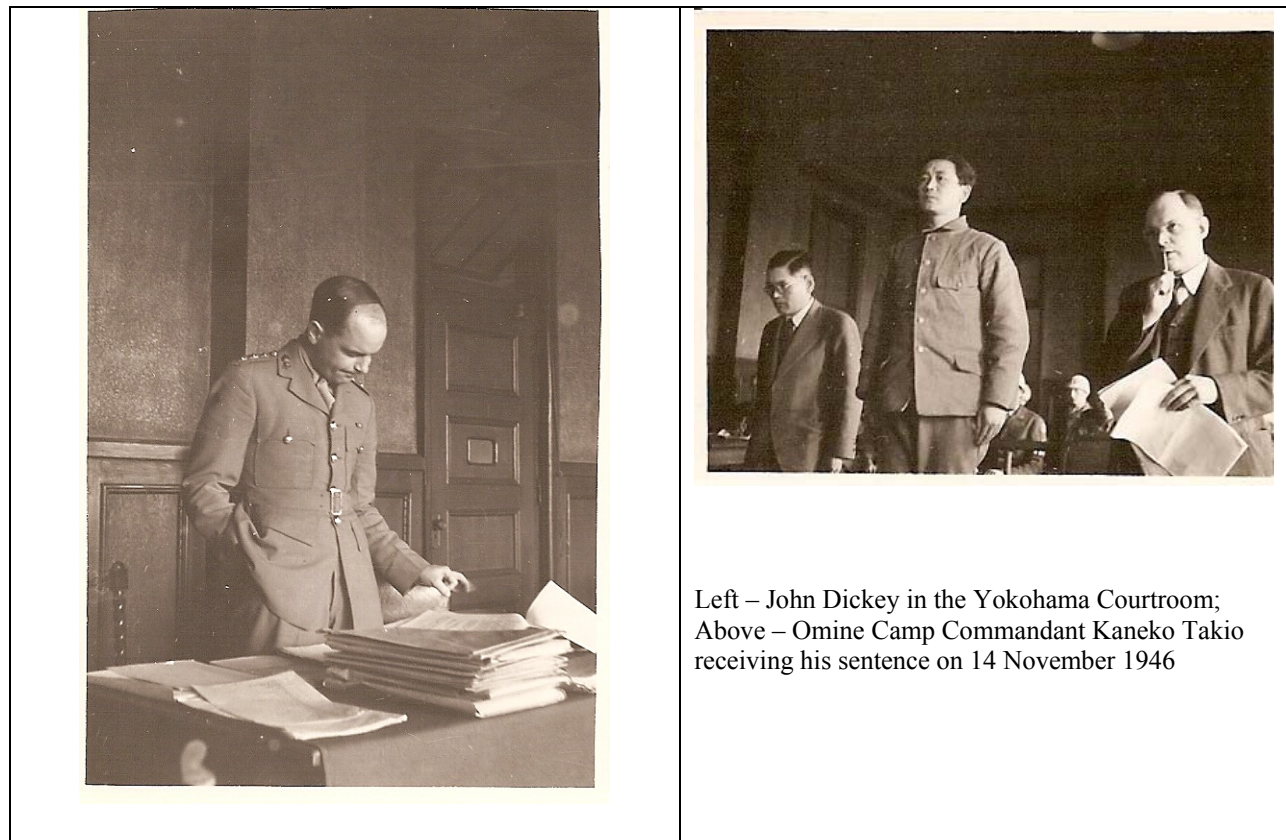
<sup>618</sup> *Winnipeg Free Press*, 15 February 1947.

<sup>619</sup> The Yokohama dock also acted as a space for women on rare occurrences. In April 1948 proceedings against Tsutsui Shigeko, an army nurse accused of participating in medical experiments against downed American fliers in 1945. See Piccigallo, *The Japanese on Trial*, 89.

<sup>620</sup> Dickey to Mrs. W.B. Wallace, 22 April 1946.

<sup>621</sup> AM, John Dickey Papers, John Dickey, “Prosecutions of Omine Camp Personnel,” Tokyo, Japan, 17 February 1947.

working prisoners who were sick and ill and physically unable to work”<sup>622</sup> and crafted a stirring image of beatings and slappings under his responsibility. Uchida was charged with several beatings, typically as punishment for items as minor as not saluting when he walked into a room. In the end, Kaneko received a 28 year sentence while Uchida received a 15 year term.



**Figure 14 – Courtroom snaps from the John Dickey Papers. (AM, The John Dickey Papers)**

The subsequent Omine trials were similar in content. The trial of Yanaru Tetsutoshi (the camp’s first commandant from 23 January until June 1943) emphasized many of the same issues and alleged that he had allowed his subordinates to beat POWs and forced sick POWs to work. Dickey alleged in his opening statement that the POWs under Yanaru referred to the period as his “reign of terror”<sup>623</sup> and, although he was directly responsible for few beatings, he bore the

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<sup>622</sup> *USA vs Kaneko et al*, 24.

<sup>623</sup> *USA vs Yanaru*, 8.

responsibility of ordering or inciting severe treatment of the POWs. The Commission sentenced him to 15 years imprisonment.

The final Omine trial was Dickey's last in Japan and his shortest, lasting only two days. Fukami Kazuo arrived at Omine only months before the Japanese surrender and his actions "earned him the reputation among the prisoners of being one of the most brutal Japanese with whom they had come in contact."<sup>624</sup> Dickey characterized him as "a dangerous man and one whom apparently all the prisoners had cause to fear."<sup>625</sup> In his brief trial he was found guilty of three of four specifications claiming that he had beaten, slapped, and tortured POWs, one of whom was confined to a canvas cast because of a back injury.<sup>626</sup> His defence counsel denied the severest allegations and admitted the slappings but sought to mitigate them as a function of camp discipline, such as aiming to prevent fires in the barracks due to violations of the smoking protocols.<sup>627</sup> Fukami was found guilty and received a ten year sentence.

### **Other Camps**

The Sumidagawa trial prosecuted by Oscar Orr (*USA vs Misukoshi et al*) dealt with the camp and labour site over a period of transition, the critical period taking place before the Canadians arrived in the camp. Among the accused were four civilian guards who worked at the Sumidagawa Yards as well as the camp commandants and other POW camp staff that came and went. The POWs were initially congregated in a camp on Omori Island and taken daily to their worksite at Sumidagawa. The men were later transferred to a camp closer to Sumidagawa in

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<sup>624</sup> AM, John Dickey Papers, John Dickey, "Prosecutions of Omine Camp Personnel," Tokyo, Japan, 17 February 1947.

<sup>625</sup> *USA vs Fukami*, 4.

<sup>626</sup> The POW was Canadian Ralph Forsberg, see *USA vs Fukami*, Exhibit 1, Affidavit of Ralph Forsberg.

<sup>627</sup> *USA vs Fukami*, 14.

July 1944. The Canadian contingent arrived at the camp after their transfer from Tokyo 3D in February 1945.

The content of the Sumidagawa Trial mirrored that of the other trials: a focus on the camp commandants and their withholding of medical supplies and hospitalization privileges, command responsibility specifications for allowing subordinates to beat prisoners, as well as allegations that both commandants did not take the proper precautions to protect POWs from Allied aerial bombardments. The rest of the defendants were implicated in the beating of Canadian, American, and British POWs at the Sumidagawa Yards or the camp. Where this trial fundamentally differed from the rest was in the severity of the sentences awarded and in the critical response from the reviewer, higher authorities, and Orr himself.

Most of the grievances that arose in the trial were comparable to the other trials prosecuted by the Canadians, and the finding and sentences for physical assault and general maltreatment proved severe. In an untested method during the trial, the defence counsel offered a POW witness an opportunity to opine on what sentences he believed the accused deserved. American Major Brice J. Martin grouped them according to severity, noting that one of the civilian employees had “no place in this court whatsoever.”<sup>628</sup> He believed that others owed a marginal debt to the American public while other guards had been vicious, dealing out “week in, week out, repetitious beating[s].” The final commandant, Sawazawa, was the most serious offender, “as much of a murderer...as if he had shot [sick POW Benjamin Neuman] him with a pistol.”<sup>629</sup>

No witness, POW or otherwise, had the right to set or unduly influence the sentence awarded by the military commissions, and the Commission made clear that this was an unusual

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<sup>628</sup> *USA vs Mizukoshi et al*, 138.

<sup>629</sup> *USA vs Mizukoshi et al*, 139.

tactic. This does reveal how strict the sentences awarded in the trial were in relation to other trials with similar specifications – and in the eyes of a POW interned under the accused. The power of Martin’s recommendations, however, rippled much further, arising in letters of support for the men after their sentencing, in the defence motion for alteration of sentence, and warranting comment in an article by one of the trial reviewers in *Brooklyn Law Review* about the Yokohama War Crimes Trials.<sup>630</sup>

<b>Accused</b>	<b>POW Martin’s Recommended Sentences</b>	<b>Actual Sentences Awarded by Commission</b>	<b>Reviewer Recommendations – Spurlock</b>	<b>JAG – Browne</b>
Takahashi Furanori	1-2 (or none) years	5 years	3 years	2 years
Nishikawa Yoshio	2 years	15 years	4 years	4 years
Fujita Shosaburo	2 years	10 years	6 years	10 years
Mizukoshi Saburo	2 years	30 years	10 years	20 years
Yui Kiyoshi	5 years	30 years	8 years	20 years
Suzuki Hikari	5 years	30 years	15 years	30 years
Kobayashi Sadaharu	12-15 years	30 years	20 years	30 years
Sasazawa Chuta	Life (or 25-30)	To Hang	Rehearing or 20 years	Life

**Table 2 – Recommended and actual sentences in *USA vs Mizukoshi et al.***

This trial is one of the strongest examples of the effectiveness of the review process. Takahashi received a five-year sentence. Fujita was to serve 10 and Nishikawa 15. Yui, Suzuki, Kobayashi, and camp commander Mizukoshi each received 30 years. Finally, camp commander Sasazawa was sentenced to hang.<sup>631</sup> Mizukoshi claimed after the trial that he took improper advice from his counsel and did not understand his rights. The trial reviewer noted substantial weaknesses and errors of interpretation in the trial record and commented on the validity of

<sup>630</sup> Miller, “War Crimes Trials at Yokohama,” 206.

<sup>631</sup> *USA vs Mizukoshi et al.*, 186-189.



claims in the dense clemency file.<sup>632</sup> Even Oscar Orr wrote in support of a sentence reduction – particularly the death sentence – exemplifying his genuine commitment to ideals of fairness and equality:

The marginally named were sentenced at Yokohama 3 Feb 47. I was chief prosecutor.

All the sentences seemed to be particularly severe, but the death sentence in the SAWAZAWA case is, in my opinion, greatly out of line and much too severe, having regard to like cases both here and in other theatres. I think that justice would be done by commutation.

A capital sentence could only be justified in connection with the death of Pte. Benjamin Neufeld. This was the gravest charge against SASAZAWA. It should be remembered that his failure, or in law his “omission”, to send Neufeld to the hospital is the gravamen of the charge. The prosecution never disputed the fact that up to a very short time before Neufeld’s death the accused had been advised by his own official Japanese doctor that Neufeld was not sick enough to be sent to the hospital. He would of course be justified in acting on this medical advice, but the prosecution alleged that shortly after receiving this advice Neufeld became much worse and that the accused still refused to send him to the hospital, although this time he did not consult the Japanese doctor. These last events all occurred in a relatively short space of time, perhaps not more than 24 hours. The accused acted like what he was, an old, long service junior officer, too hide bound to heed the advice of the Allied medical officer when it conflicted with that of his own medical adviser. While the treatment of Neufeld was callous and negligent, I think that it falls below capital crime level.

I was counsel for the prosecution in this case and also prepared it both here and in Canada. I am expressing my own views as a lawyer of experience. The fact that my opinion differs from that of a commission trying its first case should not be construed as, nor is it intended as criticism. I do think that my opinion is legally sound.

This letter is written in my capacity as chief prosecutor in this case and to express my personal opinion that the capital sentence is not justified and that the sentences in some of the other cases should receive review. My professional experience - - called to the Bar of British Columbia 1916, King’s Counsel. I have attended war crimes trials in Singapore, Hong Kong and Yokohama. I am now on leave from the post of City Prosecutor at Vancouver, B.C., where I have been either assistant of [sic] head of the department since 1920.<sup>633</sup>

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<sup>632</sup> Included in the trial clemency papers were several letters of support (that also noted Martin’s assessment of potential sentences), petitions, as well as lengthy motions for modification of sentences from the defence counsel. See NARA, RG 331, SCAP, Legal Section, Prosecution Division, USA Versus Japanese War Criminals, Case File 1945-1949, Box. 1582, Saburo Mizukoshi Case, No. 91, Part III Clemency Petitions.

<sup>633</sup> NARA, RG 331, Legal Section, Prosecution Division, USA Versus Japanese War Criminals, Case File 1945-1949, Box 1582, Saburo Mizukoshi Case, No. 91, Part III Clemency Petitions, Defence Motion for Modification of

In the end, five of the eight defendants received reductions in their sentences, including Sasazawa's death sentence, which the JAG officer reduced to life imprisonment. The reviewing officer recommended reductions to each of the defendants, but the JAG officer who had the final review landed in between the reviewer and the commission in his recommendations.

The Canadian Detachment provided evidence and kept watch over several Yokohama trials stemming from the Osaka area POW camp Oeyama,<sup>634</sup> but there was only one that featured Canadian prosecution: that of camp commander Hazama "The Pig" Kosaku.<sup>635</sup> The Japanese took 76 POWs from the second draft of Canadians and an additional 48 members of the third draft to the camp to provide labour in a nickel mine and refinery. For Orr, Hazama's trial required the presentation of two lines of prosecution: one focusing on his time at the Tanagawa

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Findings and Sentence as to Hasanori Takahashi, Lt. Col. O. Orr, Officer in Charge, Canadian War Crimes Liaison Detachment, Japanese Theatre, to Chief, Legal Section, GHQ, SCAP, Tokyo, 17 February 1947.

<sup>634</sup> Oeyama Camp had a significant legal saga aside from the Canadian trials playing out at Yokohama. The "Big Four" at Oeyama – a trio of British NCOs along with one Canadian who were assigned by the camp commander to help maintain discipline among the men – faced court martial charges for abuse and collaboration in 1946. Canadian CSM Marcus Tugby was tried between 18 March and 6 April 1946 and was acquitted of 11 of his 19 charges. British POW Sgt. J.H. Harvey was acquitted of 20 of 30 charges while RSM Deane was acquitted entirely. The fourth, Quartermaster E.C.H. Rogers, was "given an honorable acquittal" in Montreal. See LAC, RG 24, Vol. 8018, TOK-1-2-12-15, Major-General E.G. Weeks, Adjutant-General, Ottawa, to Lt. Col. Oscar Orr, Tokyo, 31 May 1946, attachment. See also *Winnipeg Free Press*, 2, 3, 4, 5, 6, 29 April and 29 June 1946 as well as Brode, *Casual Slaughters and Accidental Judgments*, 181-182 (although it includes a minor error claiming that Tugby was acquitted on 11/12 charges) and Roland, *Long Night's Journey into Day*, 228-229 on the Big Four in general. In a case remarkably similar to that of Inouye Kanao, Kawakita Tomyoa faced a treason trial in Southern California in 1948 after being identified by a former POW and pursued for several months by the Federal Bureau of Investigation. The United States District Court of Southern California found Kawakita guilty of eight of fourteen overt acts of treason and sentenced to death on 2 September 1948. Kawakita petitioned the finding and the United States Court of Appeals heard his case in 1951, as did the Supreme Court in 1952. Both held the previous finding. Through the continued efforts of his defence counsel Morris Lavine (as well as petitions from Japan) he eventually had his death sentence commuted by the Eisenhower administration in 1953 and was pardoned under the condition of perpetual exile in 1963 under President Kennedy. For Kawakita see Naoko Shibusawa, *America's Geisha Ally: Reimagining the Japanese Enemy* (Cambridge: Harvard University Press, 2006), 140-175 and Mark Sweeney, "Beyond the Limits of War Crimes Trials: American, British and Canadian Responses to Jurisdictional Failures in Pacific 'Minor' War Crimes Trials," Oral Presentation at the Harvard Graduate Student Conference on International History: Law & International History, Cambridge, Massachusetts, 14-15 March 2013.

<sup>635</sup> NARA, RG 331, SCAP, JAG, War Crimes Division, Records of Trial File, 1945-1949, UD 1865, Box No. 9687, Case # 143 - Kosaku Hazama.

Camp from 5 January until 21 August 1943 and secondly, his time as camp commandant at Oeyama from 1 May 1944 and 1 January 1945. The charges and specifications were consistent with the other camp commandants. Orr alleged his failure to provide food, medical, sanitary, and living conditions for the men, the misappropriation of Red Cross goods, and outlined specific incidents of his direct involvement in beatings of the men or his command responsibility for allowing his subordinates to carry out brutalities on the POWs. The latter half of the trial had significant Canadian interest, with specifications alleging that Hazawa had personally beaten Canadian POWs or was responsible for the mistreatment by guards under his command. Hazawa received a 15-year prison term.<sup>636</sup>

Boland also served as assistant in two cases against the staff at Sendai I camp.<sup>637</sup> The camp opened in 1943, and a group of 200 Canadians arrived in March 1945 to supplement labour in a coalmine.<sup>638</sup> The larger trial in which Boland was involved included seven members of the camp staff, from two former camp commandants through to guards and labour supervisors.<sup>639</sup> The trial focused on British POWs but the second camp commandant, Chisuwa Takeichi, faced Canadian specifications for allowing his subordinates to abuse Canadian POWs.<sup>640</sup> Boland also assisted in the trial of Tsuda “The Frog” Koju, a farmer before the war, who had charge of supplies at the camp as well as a guarding and gardening supervisory role. The POWs identified him as one of the more brutal guards at the camp and faced seven specifications that alleged he

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<sup>636</sup> *USA vs Hazawa*.

<sup>637</sup> NARA, RG 331, SCAP, JAG, War Crimes Division, Records of Trial File, Box No. 9611, *USA vs Koju Tsuda*, Case Docket 65, 5 [hereafter *USA vs Tsuda*].

<sup>638</sup> *USA vs Tsuda*, 5 as well as NARA, RG 331, SCAP, Legal Section, Administrative Division, Area Case File, 1945-1948, UD 1189, Box 955, File 16, SE-0, General Information re P.W. Camps in Sendai Area, Nakanishi Sadayoshi, Director of POW Information Bureau, Sendai POW Camp: Management of POW Labor in Prisoners of War Camps, and DHH, 593. (D8), Hong Kong, Notes on atrocities in Jap Prison Camps by Lt-Col O. Orr, W.C.I.S. 8 Jan 46.

<sup>639</sup> NARA, RG 331, SCAP, Legal Section, Prosecution Division, USA Versus Japanese War Criminals, Case File 1945-1949, Box 1582, Nichizawa et al Case, No. 46 [hereafter *USA vs Nichizawa et al*].

<sup>640</sup> Chisuwa was clearly the main Canadian concern in the trial, as the Detachment members referred to the trial as the Chisuwa Trial even though the trial was officially entered as the Nichizawa *et al* Trial. They also only entered Chisuwa’s information in the appendix to the WCIS Final Report.

had abused Canadian POWs. The *Winnipeg Free Press* was particularly interested in three specifications that involved Winnipeg residents.<sup>641</sup> Tsuda received a life sentence for his actions at the camp.

### **Common Threads**

The chart utilized by the staff of the Reviewing Branch divided the basic specifications into individual responsibility and command responsibility issues. Within these fell specifications that alleged the causing of death, contributing to death, beatings, withholding Red Cross parcels and miscellaneous atrocities. A further categorization dividing the specifications into action and inaction also facilitates deeper analysis.

By far the most common type of specification that the prosecution pursued related to the abuse of POWs. All of the Canadian cases featured abuse specifications, whether characterised by beatings with the fist, striking with an object, kicking, forcing a POW to kneel, or the contentious issue of slappings. The severity of the maltreatment ranged, but the prosecution typically highlighted incidents that either incapacitated an individual (who were often severely comprised to begin with) or that sought to humiliate a POW in front of their comrades. Beatings were so widespread in the camps and in the specifications that it is easy to overlook how important they were, and the severe impact they had on the physical and spiritual well-being of the men.

In many cases the lists of abuse specifications were lengthy. For example, the two guards in Boland's *USA vs Yoshida et al* faced 24 and 48 specifications respectively. It is important not to understate the significance of each specification when considered alongside so many others.

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<sup>641</sup> "Winnipeg Men Among Victims," *Winnipeg Free Press*, 30 July 1946, see also *Winnipeg Free Press*, 29 November 1946.

These individual abuses were not trivial. Among Sato Katsuyasu's lengthy list of incidents was one that involved him beating Canadian POW Calvin Pope by kicking him and jumping on his stomach. Another alleged that he punched, kicked "into insensibility," and stamped the bare feet of Canadian James Martin with hob nailed boots before compelling him to work. Yet another claimed that he used judo moves to throw Ernest Neal onto the floor and then proceeded to kick him and jump on his stomach.<sup>642</sup> Each of these specifications contained serious incidents, and taken together, reveal an individual who was quick to mete out violence as a form of punishment, motivation, and enjoyment.

In many cases, the specifications alleged that an individual, through use of force, had contributed to the death of a POW. This was one of the most challenging tasks the prosecutors faced – and one that they were rarely successful in proving. The 'contributing to the death of' specification often functioned in conjunction with an extreme incident of abuse, or attached to specifications of forced labour on sick POWs. The aim of the prosecution in these cases was to emphasise the severity of the action as a contributing factor to the death of an individual which typically occurred shortly after the incident. The defence counsel universally fought the wording, and the Commission rarely accepted it. Most findings required an altered wording. If the prosecution could prove that the accused had carried out the abuse but not that the action had caused death, the defendant could be found guilty of the alleged war crime, but relieved of the responsibility for causing or contributing to the death of a POW. As the Yokohama Trials did not offer a written or oral judgement, it is unclear how much impact these alterations had on the final sentencing. Unfortunately, a clear explanation was not required in sentencing and any explanatory comments were the exception rather than the rule.

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<sup>642</sup> *USA v Yoshida et al*, Charge and Specifications for Katsuyasu Sato.

Slappings as a form of corporal punishment were pervasive in the Imperial Japanese forces and the subject of considerable discussion during the trials. Defendants often openly admitted slapping, even while their defence approached the rest of the allegations with denial. Slappings were a significant component in the three Omine trials that Dickey prosecuted, both from an individual and command responsibility standpoint. During *USA vs Kaneko et al*, the defence asked Colonel Fukumoto Matsujiro, former commander of the Fukuoka main camp, to explain the use of slappings as a punishment in the IJA. His explanation situated their use as an option to save face and avoid using official channels:

If a soldier received an official punishment, and if it was announced he would be criticized, dishonorably, by the public, and it would be even reported to his home; and that would also have had an influence to his promotion and merit in the army; so though they are aware it is not good, they used to slap to remind him, and such manners were very hard to be stopped.<sup>643</sup>

In *USA vs Fukami*, the former Omine camp guard denied most of the allegations that alleged he had brutally beaten Allied POWs, but admitted the slappings as he did not originally consider them to be a misconduct. Fukami shouldered the blame, explaining that the camp commandant prohibited the mistreatment of POWs but that he considered slapping them the only way to prevent their disobedience or to prevent them from escaping and receiving further abuse from people outside of the camps. He explained why he had considered slapping an acceptable divergence from his orders (when he had claimed he did not beat prisoners with sticks because the commandant prohibited it):

it is a fact that I did hit some of the prisoners of war, but at that time I did not think that that was a bad thing to do. The reason for this is that it was a Japanese custom and I was educated in that manner in the Japanese army, so I did not think that that was a bad thing to do. I gave strict warnings to the prisoners of war in order to prevent any incidents from occurring and to carry out completely the regulations handed down by the camp commandant. In thinking the matter over at the present time I think that I do feel that it was a bad thing to do, that is, hitting the prisoners of war was a bad thing to

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<sup>643</sup> *USA vs Kaneko et al*, 293.

do, but at that time I did not feel this way. I feel that I hit them because it was unavoidable in preventing an incident from occurring.<sup>644</sup>

The Commissions did not waiver in their view that slappings were unacceptable. It is unclear how much weight they gave to this form of abuse alongside other incidents when it came down to sentencing.

### **Camp Commandants**

The specifications against the camp commandants in the Canadian trials absorbed the majority of the prosecution's efforts. The wide scope required the prosecution to cover an array of issues from the way the accused administered the camp to how they allocated resources to the POWs. The specifications covered the state of camp conditions, labour, the persistent use of violence, as well as any specific war crimes committed by the individual. Camp commandants in the Japanese system were responsible for the discipline and care of the POWs, maintenance of the camp (food, quarters, heat, rations), medical and hygiene care, as well as discipline and supervision of the guards and camp staff. It all added up to making the lives of the POWs miserable, not holding up to the quality of life that was expected, and resulted in sick, malnourished and dead POWs. Lt. Col. Orr summarized the responsibility issue cogently when the Commission President, Australian Lt. Col. Francis G.J. Place, pressed him on the organization of the case in *USA vs Uwamori*. Place queried "[y]ou are holding him for sins of omission rather than sins of commission?" Orr replied: "The whole case is a charge of failing to do and not what he did. That is what we say right there. You did a lot of things and some were good and we don't deny that." He elaborated that the responsibility for the well-being was on the shoulders of the commandant:

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<sup>644</sup> *USA vs Fukami*, 34.

If you are wearing the stars you must accept the responsibility that goes with them. You can't come into court and say you didn't know what your subordinates did. It is the same in your army. You can't say so and so made that mistake and I was commanding officer, but I didn't know anything about it – that is all it boils down to.<sup>645</sup>

Having two live witnesses as members of the Canadian Detachment – Manchester and Shepherd – paid dividends when the prosecutors sought to pin deplorable living conditions on the camp commandants. Both had suffered the brutalities of beatings, and Shepherd a stabbing by bayonet, but one of the real strengths the two POWs brought to the Detachment was the ability to substantiate claims about the conditions in which the POWs had to live. Affidavits pointed to specific incidents, and the POWs could speak to broader trends.

Both Dickey and Boland used their live witnesses to qualify the condition of the Canadians upon arrival at Omine and Niigata. Both suggested that although conditions had been bad in Hong Kong, the Japanese selected the fittest men for the drafts and they were in acceptable shape upon arrival in Japan. This tactic sought to set a standard against which to compare their treatment. The Commission accepted it, although the defence and some members chafed at it in both cases.<sup>646</sup> With this standard in place, the prosecution could proceed to allege that the obligation for care landed on the camp commandant, and that based on the sharp decline in their well-being, these commandants were responsible.

The witnesses described myriad issues about camp life. Shepherd described the conditions upon arrival at Omine:

We got to Omine, we found that there was a two story building enclosed by a twelve foot wooden fence. The building was of the usual Japanese construction of wood with the sliding doors and windows. It was very poor construction. The windows didn't fit properly and there were plenty of gaps where the window sashes were put onto the actual building. The place was infested with fleas which didn't make themselves

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<sup>645</sup> *USA vs Uwamori*, 68.

<sup>646</sup> In Dickey's case, the defence unsuccessfully objected the irrelevancy of the line of questioning, while in Boland's, the Commission respectfully suggested that Manchester was going into too much detail. See *USA vs Yanaru*, 10-11 and *USA vs Yoshida et al*, 172-173.



apparent until the warm weather came along. There was no heating system in the prisoners' room. There were mats on the floor, but no other furniture. Inside the main building was a kitchen which contained two large steam boilers and a small one and a tank for heating hot water. The dining hall would accommodate approximately 100 men, so we used to eat in two shifts. The guards' quarters and the staff quarters, also the main office were all inside this building. The latrines were the usual Japanese style, concrete pit covered over. Just inside the main gate of the fence was another wooden building which was the guardroom which contained a resting place for the guards off duty, a main room where the guard commander sat which was open at the front, and two confinement cells were built onto the end of the building.<sup>647</sup>

Similarly, Manchester was able to speak of housing issues at Niigata:

When we arrived at this camp, it was in a state of construction. The buildings were incomplete; there were no doors or windows on the buildings occupied by the prisoners of war. There was no cooking facilities in camp, no bathing facilities; one pump that was used for all purposes. The buildings were very flimsy as to the rafters and support on them, and it was common occurrence during heavy winds which blow constantly at this time of the year that the buildings would shake or sway, and they also swayed from the strain of the men, the number of men who were quartered in these various buildings. There was only one building in camp fully completed. That was the Japanese camp staff quarters and offices.<sup>648</sup>

Manchester went on to describe the events of the morning of 1 January 1944 when one of the POW buildings at Niigata collapsed, killing eight and injuring fifteen. Aside from housing conditions, the witnesses spoke to food, bathing, heating, and other living conditions.

POWs under the Japanese across the Pacific and Southeast Asia faced myriad medical deficiencies. Medical officers travelled out with each draft of Canadians and agitated for whatever supplies and permission to practice to keep the men alive. Boland secured POW medical officer Major William Muir Stewart, RAMC, to explain the state of medical care at Niigata 5B in *USA vs Yoshida*.<sup>649</sup> The camp officials tasked Stewart to reduce the size of the POW sick list. His testimony alluded to all levels of the camp hierarchy, but his medical

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<sup>647</sup> *USA vs Yanaru*, 12.

<sup>648</sup> *USA vs Yoshida et al*, 205.

<sup>649</sup> Stewart was not a Hong Kong POW, he was picked up by the German Navy in the Indian Ocean on 10 May 1942 and was taken to Yokohama and transferred to Japanese authority in August. He was initially held at Kawasaki 1B but was transferred to Niigata 5B on 30 October 1943. See *USA vs Yoshida et al*, 27.

critiques were particularly valuable. Stewart claimed the beatings and forced labour had adverse effects on the already compromised health of the POWs, as did returning to huts with leaky roofs at the end of work shifts and sleeping on wet mats with wet blankets.<sup>650</sup> The Canadians in the camp were in worse condition than the Americans who arrived later – and from less perilous conditions than Hong Kong. Stewart described the daily routine, rising at roughly six am for roll call and a meagre breakfast. Facilities were insufficient for washing dishes so they remained dirty. The men who were fit to work then dressed, and Stewart claimed he often saw Japanese guards (including Okuda and Sato) making rounds of the barracks and beating the men with sticks. Men who were officially on sick leave were bullied into work. The men were paraded at 7am and returned to the camp after working until 6:30 or 7pm.<sup>651</sup>

Stewart described the labour conditions as “heavy labor for fit personnel...and extremely exacting for those who were not fit, extremely arduous indeed.” In his medical opinion that labour “would produce an adverse effect, leading to further illness in some cases, eventually death.”<sup>652</sup> Stewart also claimed that Takahashi had refused medicines to him for the treatment of POWs and that his recommendations for health improvements in the camp were ignored.<sup>653</sup> The men were also underfed which, according to Stewart, led to hunger and consequently

loss of weight, a feeling of tiredness, weakness, increasing general debility which led to predisposition to infections, also led directly to diseases of malnutrition, beriberi, pellagra, this combination resulting in serious illness, in my opinion resulting some cases death.<sup>654</sup>

Boland submitted a death book which Stewart had maintained in the camp recording the cause of death in dozens of cases. Stewart treated many of the men for various ailments, many

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<sup>650</sup> *USA vs Yoshida et al*, 37.

<sup>651</sup> *USA vs Yoshida et al*, 39-40.

<sup>652</sup> *USA vs Yoshida et al*, 48.

<sup>653</sup> *USA vs Yoshida et al*, 42, 38.

<sup>654</sup> *USA vs Yoshida et al*, 47.

of which he believed could have been avoided. Dysentery was one of the main conditions, caused by contamination of the sole water source available to the men in the camp, plagued the men:

There was only one source of water which had been available for the man's [sic] use. This was in the bath house which I described, and the next building to it, the closest building to it, was a latrine which I saw myself overflowing. The overflow was running in all directions, and including the direction of the well. The men had no adequate washing facilities to keep their hands clean; no soap had been issued...certainly for the first two months while I was there; no facilities for washing eating utensils. Many of the eating utensils which the men used consisted of empty meat cans.... No toilet paper was issued for the first two months while I was there. This lack of toilet paper is a very serious matter. First, a man uses any paper he can get; newspaper, but there was none available. And then he uses books, notebooks; and then he is completely defeated after that, he has nothing else to use. It reacts very very badly on his general system, particularly as at this time I am thinking of, November, approximately 50 percent of the camp were suffering from diarrhea. These factors contribute to the spread of dysentery.<sup>655</sup>

Shepherd and Manchester also offered credible points on the use of POW labour. Both men held charge over groups of POW labourers: Shepherd in charge of one of the working groups at the Rinko coal docks, and Manchester in charge of one at the Omine mine.<sup>656</sup> Both observed the types of labour performed by the men, safety concerns, as well as the frequency with which the Japanese forced sick or injured men to work. Manchester described the process at Niigata where the Japanese made basic visual assessments of the men to determine whether they were fit for labour and explained that he had to lobby to the senior guard to alleviate men from work duty. The relief roster was typically small and many hobbled along to work, some fainting along the way. Although the POWs rarely received an official work exemption from the commandant or medical officer, labour supervisors in the mines and factories tended to be more sympathetic to

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<sup>655</sup> *USA vs Yoshida et al*, 60-61.

<sup>656</sup> *USA vs Yoshida et al*, 176. At Niigata, Canadian Warrant Officer Myatt was the senior NCO in charge of all the Rinko Coal workers, within this group, Manchester was in charge of group number three. The same system was in place at Omine, with a Warrant Officer in charge of the working party, and a NCO in charge of each four working parties within the section. *USA vs Yanaru*, 9.

plight of the men and often lightened their duties or let them sit-out. Shepherd described occasions where the mine supervisor allowed sick men to rest down in the mines during shifts.<sup>657</sup> The POW camps in Japan strictly abided by the rule that POWs had to work in order to be fed. The camp staff assigned sick POWs less strenuous tasks like gardening, but often put them on reduced rations. Depicting his own personal experience during the *USA vs Kaneko et al* trial, Shepherd noted:

The first occasion I was jammed between the cars, the steel cars that they used to carry the slag out of the mine with, and a timber holding up the cross braces on the ceiling. I evidently injured something in my stomach because I was passing blood for about ten days. I reported to Sergeant Ishida and he gave me stomach powder and told me to go back to work. I worked for about five days and then the Japanese foreman who was in charge of our party, being a very decent lad, allowed me to just sit around down in the mine for about the next five days, after which time things went back to normal. The second occasion I was bayoneted through the upper left arm by one of the Japanese guards. I was compelled to work during the whole time that was healing up.<sup>658</sup>

Manchester illuminated the brutal working conditions that his men faced working at the coal docks. Some men worked on an elevated trestle; others pushed tonne-and-a-half coal cars, shoveled coal alongside a barge onto a conveyor, or worked in the coal yard carrying baskets of coal to load onto train cars. The work was arduous, exacerbated by the poor diet and health of the men, and the job on the trestle was particularly perilous. Perched atop 25-foot high pillars, the men pushed rusted and inefficient train cars along a single rail track (affixed to “weather worn, and very rotten” wooden frames<sup>659</sup>) to carry a load of coal from the loading site at the barge to various dump locations around the yard. On top of the implicit dangers of weak POWs pushing carts on a high and exposed track, for the first ten days the guards forced the men to

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<sup>657</sup> *USA vs Yanaru*, 25 and *USA vs Kaneko et al*, 74.

<sup>658</sup> *USA vs Kaneko et al*, 74.

<sup>659</sup> *USA vs Yoshida et al*, 185.

work barefoot before providing them with grass sandals.<sup>660</sup> The work placed the men in harm's way constantly.

When asked if he had suffered any beatings at the hands of any of the accused, Manchester recalled that he had an argument at a worksite after the supervisor, Kojima, instructed him not to load train cars. One of the "coolie" foremen suggested that Manchester should be carrying baskets. When Manchester rebutted that he had other orders, the situation got heated. Sato (one of the accused in *USA vs Yoshida et al*) came over, sided with the foreman, handed Manchester a shovel, and told him to go level-off the coal cars. Manchester threw the shovel on the ground in response and Sato grabbed it, beat Manchester over the shoulders and back with it, and forced him to stand at attention while he beat him in the face with his fists and open hands. Sato then handed Manchester the shovel and told him to level off the cars, which he did.<sup>661</sup>

Mine safety was a serious concern in the Omine trials. Collapse and cave-in were constant concerns, but the levels of toxic gas in the mines received the most attention and debate in the courtroom. Dickey sought to show that under Kaneko's command, the POWs had been compelled to work in unsafe conditions. Shepherd's testimony was convincing, noting his injury from a faulty cart and describing the recurrent issue of mine officials sloppily patchworking a problem, such as rotted timbers in the mine, and then forgetting about it.<sup>662</sup> Dickey also emphasized lack of clothing during the winter months as a key concern for the men's health and safety. The defence vehemently fought the unsafe working conditions specification at the trial, and brought in an expert witness to review the ventilation and heating in the mine.<sup>663</sup> Kaneko claimed that the reason the men were underdressed resulted from their continued efforts to trade

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<sup>660</sup> *USA vs Yoshida et al*, 189.

<sup>661</sup> *USA vs Yoshida et al*, 224.

<sup>662</sup> *USA vs Kaneko et al*, 80.

<sup>663</sup> *USA vs Kaneko et al*, 264. The defence witness was mining engineer Terasaki Tadashi of the Furakawa Mining Company.

clothing to Korean mineworkers. Consequently, he banned them from wearing anything but fatigues to the mine.<sup>664</sup>

A final component involved the use of POWs in war related labour. The Geneva Convention expressly stated that belligerents could utilize POW labour, but it could have no direct connection to the operations of war.<sup>665</sup> Most the Canadian POW labour was directed towards domestic industry, but in a few circumstances they were compelled to engage in war work. Orr addressed the issue in *USA vs Uwamori* and aimed to show that Camp Commandant Uwamori Masao forced the Canadians at Tokyo 3D to assist in the construction, repair, and maintenance of Navy gunboats. Uwamori plead guilty to the charge, but sought to mitigate his involvement by claiming he thought the men were working on merchant marine ships rather than gunboats and that the labour was assigned by the War Ministry and beyond his control. All he could do was advocate on the POWs behalf for improved working conditions.<sup>666</sup>

The transgressions of the camp commandants were not limited to inaction, nor were the specifications against them. Their actions were often broad-reaching forms of abuse through policy and administration, but the commandants often took a direct role in abusing the men. Several faced specifications themselves for beating POWs. Others sought to embarrass, humiliate, or crush the spirits of the men. The specification against Niigata 5B commandant Yoshida Matsato, alleging that he had lined the men up and urinated on them, exemplified this.<sup>667</sup> There were instances of brutal punishments, both individual and collective, that either directly injured the men or wore them down in concert with the other privations to which they

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<sup>664</sup> *USA vs Kaneko et al*, 310.

<sup>665</sup> The convention noted that in “particular, it is forbidden to employ prisoners in the manufacture or transport of arms or munitions of any kind, or on the transport of material destined for combat units.” See Geneva Convention, 1929, Article 31.

<sup>666</sup> *USA vs Uwamori*, 140, 180.

<sup>667</sup> *USA vs Yoshida et al*, Yoshida Matsato, Specification 11.

were subjected. Another widely used (but challenging to prove) specification was the misappropriation and stealing of Red Cross parcels meant for the POWs.

One of the key issues the Canadian prosecutors pursued was the use of excessive discipline by camp commandants. Oscar Orr sought to emphasize the use of collective punishment – punishing the entire group of POWs for the actions of one or a few – in *USA vs Hazama*. Hazama forced the POWs at Tanagawa Camp to run excessive distances, stand at attention for prolonged periods, deprived them of meals, and beat and slapped the men *en masse*. These group punishments responded to minor infractions at morning roll call, to the misplacement of a book, and for gambling.<sup>668</sup>

In *USA vs Kaneko et al*, Dickey underscored the use of brutal punishment techniques against the POWs. He alleged several rash punishments (and interrogation techniques), including Kaneko’s ordering of Canadian William Galloway to sit in a partially covered, water-filled weapon pit and stand astride over a lit charcoal brazier as punishment for possessing a skeleton key.<sup>669</sup> Four specifications alleged that Kaneko ordered POWs confined in unheated cells in the Omine guardhouse in cold weather, insufficiently clothed. As punishment, the guards beat the men for various infractions, put them on reduced rations, and required them to return to work as soon as their punishment was over. One incident involved a group of prisoners gambling, another the possession of contraband maps, and in another – that spurred a particularly interesting conversation amongst the trial staff about what qualified as offensive terminology – Kaneko slapped a group of POWs after he found a notebook with the words “Jap Latrine” written on it. Kaneko took offence to the wording, which he had always heard aligned with

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<sup>668</sup> *USA vs. Hazama*, Charge sheet and Review page 13.

<sup>669</sup> *USA vs Kaneko et al*, 45-47. Shepherd described the brazier as “a small stove about the size of a five gallon can. This stove is open at the top. It burns briquettes made from coal dust which burn with a hot smokeless flame.” *USA vs Kaneko et al*, 45.

derogatory comments, and beat the men. One of the POWs tried (to no avail) to explain to Kaneko that it was an abbreviation. The ensuing discussion between Canadian Law Member Thomas Moss and the defence counsel reflected both the context of the time, and the perspective that the men took on the matter:

DEFENSE: If the Commission will take judicial notice of the fact that it is an insult to call a Japanese a Jap, I am willing to waive that particular witness. Frankly, from my own standpoint, I didn't realize that the word, Jap, was considered an insult, but in talking with Americans who have been over here and the Nisei here, they tell me that prior to the war the Japanese people considered it an insult to call them a Jap; and I think if the Commission will take judicial notice of that fact, that I can waive any witness for that particular point.

LAW MEMBER: Personally I have the same information. At any rate I think we can go so far as to say that we believe that Kaneko felt that there was some insult involved. I am speaking personally; how do the other members feel?

The members of the Commission replied in the affirmative.

DEFENSE: It was a new idea for me, and I was surprised at it.

LAW MEMBER: It isn't entirely new to me; and at any rate, as I say, we agree that Kaneko did rightfully or wrongfully feel he was being insulted. Actually in Canada it isn't used or considered to have any insulting or derogatory meaning; it's rather a familiar way of talking.

DEFENSE: It is in my section.

LAW MEMBER: We might call you a Yank. Of course you might feel insulted because you came from the south; or call an Irishman a Mick. It's rather the sort of thing that the other fellows said with a smile. As long as it's said with a smile, it's all right.<sup>670</sup>

The prosecution sought to identify the delivery and distribution of Red Cross parcels as another area in which camp commandants (and other camp officials) contributed to the deterioration of POW health and well-being. The Red Cross sent parcels to POW camps in Europe and across the Pacific with the aim of supplementing the diet and medical needs of the POWs. Delivery to European camps was a relative success while delivery in the Pacific,

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<sup>670</sup> *USA vs Kaneko et al*, 436.



particularly to Japan, proved nearly impossible. The original intention sought to allocate one parcel per-week, per-man but, between shipping issues and mismanagement once the parcels actually arrived at the camps, reality meant that POWs in Japan received marginal nutritional supplementation.<sup>671</sup> At the Yokohama War Crimes Trials, prosecutors aimed to show that the commandants or staff either stole parcels, or misappropriated and did not appropriately distribute the goods to the men.

Robert Manchester and Arthur Wesley Rance, HKVDC, both provided evidence in *USA vs Yoshida et al* that alleged Niigata 5B received three shipments of Red Cross goods. The first distribution was a half-tin of meat per man on Christmas Day 1943, drawn from the November 1943 delivery of Red Cross parcels. The second distribution equated to a half-parcel each in January 1944. The third shipment arrived in September 1944. Manchester purported that the camp staff took the remainder of the goods from the first shipment. The parcels were stored in the Japanese offices, and he saw some of the guards eating chocolate bars and drinking tea with condensed milk and sugar. Rance also testified that he had seen the four accused eating Red Cross food meant for the POWs.<sup>672</sup> Although he was later severed from the trial, Boland asserted that camp commandant Yoshida was responsible for allowing and participating in the withholding and diverting for personal use of the Red Cross goods. Rance recalled how the process unfolded:

They [the Red Cross parcels] arrived in camp in wooden cases. It was broken in by Sergeant Ito. The pressed paper packages again were opened by Sergeant Ito. They had never been opened before. The contents of the packages were then taken into the camp administration office and placed in a cupboard but from time to time, day to day, or

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<sup>671</sup> Japanese shipping rules prevented even neutral ships to enter Japanese waters, meaning that Red Cross parcels were stockpiled for distribution in Russian ports and transferred in rarely. For more on the Red Cross parcels generally, see F.F. Tisdall, *et al*, "Final Report on the Canadian Red Cross Food Parcels for Prisoners-Of-War," *Canadian Medical Association Journal* 60, no. 3 (March 1949): 279-286, and for the delivery and impact on Canadian POWs, see Roland, *Long Night's Journey into Day*, 197-199.

<sup>672</sup> *USA vs Yoshida et al*, 201-202, 264-265, 327.

evening by evening, as the occasion might be, I could see either parties with tins of condensed milk, corned beef, bars of chocolate, these Pascall candies, all those things all mixed up together. They were strewn all over the camp, also on various people's desks, and I have also gone at various times and seen them eating the contents of these packages. I remember one night when Yoshida asked me down to his office and he, himself, was eating the contents. This Japanese doctor by the name of Ozawa was there at that time. Yoshida told me the corned beef was rather delicious but he hoped we realized it was through the generosity and self-sacrifice of our people at home that we got this stuff.<sup>673</sup>

In the same trial, medical orderly Takahashi Takeo faced a specification alleging that he had unlawfully stolen, pilfered, misappropriated, withheld, and converted for his own use Red Cross and camp drugs, medicines, and supplies intended for the POWs. Rance accused Takahashi of taking a cut from the parcels each time they arrived in camp, and that he had seen him eating from them on multiple occasions.<sup>674</sup> When Takahashi took the stand, he denied having stolen Red Cross or camp medicines or goods meant for the POWs. He did admit that he received Red Cross foods from another camp official who told him “to eat it because it was my share”<sup>675</sup> – a “share” consisting of raisins, corned beef, butter, tobacco soap.<sup>676</sup> Takahashi was ultimately found guilty of this charge.

Command responsibility was a final area of commandant specifications that reaffirmed the environment of violence fostered in many camps. These series of sub-specifications showed that commandants permitted the commission of atrocities by their subordinates. In most cases, the prosecution rhymed off massive lists of beatings and tortures supported mainly by affidavit evidence. The tactic involved compiling evidence for as many incidents as possible to prove they took place during the period the accused commanded the camp. This constructed an image of a situation in which breaches of international law and common decency were normative,

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<sup>673</sup> *USA vs Yoshida et al*, 266.

<sup>674</sup> *USA vs Yoshida et al*, 327.

<sup>675</sup> *USA vs Yoshida et al*, 840.

<sup>676</sup> *USA vs Yoshida et al*, 839-840.

allowing the guards to run roughshod over the men. In some instances, the individual accused of actually committing the abuse faced a separate specification (whether in the same common trial, or in a separate individual trial), while in other cases the incident only received focus as a command responsibility charge.

The command responsibility specifications did not result in universal findings of guilt. For example, in the command responsibility portion of *USA vs Hazama*, the Tanagawa and Oeyama camp commandant faced two separate command responsibility specifications, one from each camp. The specifications claimed he failed to fulfil his duties to “control and restrain the members of his command and persons under his supervision and control, by permitting them to commit...atrocities and other offences”<sup>677</sup> against the POWs. Of the 71 separate sub-specifications that Lt. Col. Orr presented, he was only able to secure guilty findings for 62 (as well as the two main command responsibility specifications). Of those 62 findings, four required altered wording to exempt the causation of death or the inclusion of terms like “torture” and “abuse.”<sup>678</sup> The findings in this case represent the scrutiny that even the lengthy command responsibility sub-specifications received at Yokohama. Although the approach involved a documentary barrage, each charge received thorough examination and consideration.

Court proceedings chronicle injustices. Each of the Canadian Yokohama Trials stemmed from issues surrounding the mistreatment of Canadians at POW camps in Japan and the surrounding work sites, revealing the brutality of the camps as well as the drudgery of everyday life. The trials were reactionary and sought to punish those who exploited POW labour in direct – and unacceptable – ways. While the Tokyo Trial endeavoured to reprimand high level officials for

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<sup>677</sup> *USA vs Hazama*, Specification 9 and 25. Hazama faced nine sub-specifications from his time at Tanagawa and 62 from Oeyama.

<sup>678</sup> *USA vs Hazama*.

ordering and authorizing the exploitation and abuse of POWs and for not taking the proper steps to ensure they were protected under international conventions,<sup>679</sup> the Yokohama Trials targeted lower-ranking officials for specific incidents. The Canadian cases sought to assign responsibility to camp commandants for allowing the POWs under their care to perform for war-related labour, often under dangerous conditions, and for forcing sick and disabled POWs to work. They also prosecuted guards and site foremen for incidents of beatings on the job.

The trials dealt with widespread and obvious violations of international conventions and traditional laws and customs of war, but the outcomes were not foregone conclusions and the commissions altered procedures to ensure fairness. The case-by-case review process following the conclusion of each trial often served to reduce (sometimes drastically) the length of a sentence if it was deemed disproportionate from the evidence or anomalous from other similar cases. The structure of the charge and specifications at Yokohama allowed for a precise connecting of allegations to the individual accused during common trials and prevented the blurring of lines, as evidenced in the aftermath of the Camp Case when Medical Officer Saito had his sentence reduced because he had been considered alongside evidence to a charge in which he was not implicated.

Orr, Boland, and Dickey were relentless in preparation and in the courtroom as they sought to draw out the intricacies of POW life in the camps and in the mines, factories, and dockyards. The trial records contain irrefutable evidence of dangerous working conditions in which the Allied POWs were compelled to participate. War-related labour clearly breached international law, and the rigours of work assignments combined with starvation diets left the men physically weakened, immunocompromised, and mentally scarred. Their struggle, however, did not end there. The men faced battles at home, trying to reintegrate themselves into

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<sup>679</sup> Charges 54 and 55 of the Tokyo Trial dealt with the mistreatment of POWs.

Canadian society and confronting Veterans Affairs and various other government bodies for recompense. Doctors and psychologists misunderstood and dismissed many of the emotional and psychological wounds the men carried with them, impeding their claims to compensation. In the immediate aftermath of the war, little was known about parasitic disease and many so-called experts still dismissed post-traumatic stress disorder (PTSD) as ‘mental weakness.’

For decades after the war, POWs (through the Hong Kong Veterans Association) lobbied the Canadian government for medical and pension improvements and sought compensation from the Japanese government for their labours. Their request was denied as it counteracted the terms of the San Francisco Peace Treaty (signed in 1951 and came into force in 1952). In 1998 Jean Chrétien’s government paid \$24 000 in compensation to each surviving POW or their widow, but the HKVA insisted that the source of the funds should have been Japanese government. On 8 December 2011, Japanese parliamentary vice-minister for foreign affairs Kato Toshiyuki finally offered an apology on behalf of the Japanese government to the Canadian POWs for their treatment and exploitation as labour during the Second World War.<sup>680</sup> The apology, which came too late for deceased POWs, gave Canadians an opportunity to reflect on the struggle of the prisoners and their families, reaffirming the lesson that wars do not end on the battlefield. The results and implications intersect with lives long after the official conflict is over.

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<sup>680</sup> *Globe and Mail*, 8 December 2011, *Winnipeg Free Press*, 8 December 2011.

## Chapter 7

### **Reaching Beyond Their Mandates: Additional Roles in Japan and Hong Kong**

During their assignments in Japan and Hong Kong, the members of the Canadian Detachment took advantage of opportunities both inside and outside of the courtroom. As Canadian representatives on the ground, they functioned as a pseudo-diplomatic delegation, representing Canadian interests in non-military matters. These well-educated and intelligent men embraced additional assignments, legal and otherwise. They dined, attended shows, and chatted with higher-ranking military personnel. The younger members of the Detachment proved most outgoing, seizing the chance to visit sites around Japan and collecting photos and mementos that they could show their loved ones back home. They were also keen to mingle with other occupation personnel (male and female) at the various establishments operated by SCAP. The non-legal components of the trip serve as a poignant reminder that these men were more than just their vocations, and endured all the highs and lows, the excitement and homesickness, that came along with international service.

The members of the Canadian Detachment were focused, professional, and motivated. When tasked with trials to prosecute, cases to investigate, or other assignments, they approached them with vigour; particularly for a group of individuals isolated on the other side of the world from any sense of normalcy or familiarity. When progress was being made toward a case going to trial, work became all-encompassing. Dickey wrote many of his letters during breaks in the evening while he and Boland pored over files at the office in the humid Tokyo evenings, returning to ensure they completed the days' work, especially as the overbearing heat diminished

daytime productivity. Conversely, when trial delays developed as they often did and opportunities arose for additional work, the Canadians were quick to embrace them. In some cases, this meant extra prosecutions or other trial-related duties, in others the men had the chance to assist in the organization of the reburial of Canadians in proper military cemeteries or helped ease the arrival of repatriated Japanese-Canadians. This chapter highlights some of these additional tasks, illustrating the ambitious nature of the men and affirms Yuki Takatori's notion that the personalities and character traits of the Canadians participating in these trials allowed them to exercise significant practical influence.<sup>681</sup>

While in Japan and Hong Kong, the men had ample opportunities to travel, socialize, and network as a part of the American and British occupation forces. Official and pleasure travel, as well as exchanges with other occupation personnel through plays, shows, sports, and dances formed part of the larger occupation environment. The assignment at its core was isolating, separating the men from their loved ones. It also forced an intensive mixing of military ranks as well as civilian bureaucrats from various national backgrounds. This environment accentuated homesickness and loneliness, but also stimulated the sharing of ideas by individuals from disparate backgrounds. Someone of relatively low rank could rub elbows with the brass beside a public pool, over dinner, or after a tennis match. Participation in these trials was a boon for professional experience, as was the opportunity to explore and meet people inaccessible to most junior lawyers in civilian life. These experiences, viewed in conjunction with additional roles reveal that legal service in the Asian theatre produced much more than a strictly legal experience for Detachment members.

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<sup>681</sup> Takatori, "Justice Tempered by Realpolitik," 148. See also Yuki Takatori, "Canada and the Tokyo War Crimes Trial," *Australasian Canadian Studies* 30, no. 1-2 (2012): 124.

## Japan

Because of scheduling difficulties and a build-up of cases, the members of the main Detachment in Japan appeared in the courtroom much later than Puddicombe in Hong Kong. With this ‘free time,’ the members found themselves acting in a secondary role as first representatives of Canada abroad. While the average middle-ranking American or Australian officer in Japan fit neatly into their role within a much larger occupation force, Canadian officers were expected to branch out and fill the diplomatic role whenever it arose. Whether it meant being a first point of reference for repatriated Japanese-Canadians at the docks, stepping in as Canadian representative at a dinner, making inquiries into the whereabouts of Canadian nationals, or attending various ceremonies, the Detachment members were able to step outside their expected roles to put a face for the flag in Japan.

One of these diplomatic roles involved trying to ease the strain felt by repatriated Japanese-Canadians when they arrived in Japan, many for the first time. Orr downplayed his involvement in the repatriation, situating it as just another of his auxiliary responsibilities:

Incidentally, one of the jobs I did for Ottawa when I was there – nothing to do with the army – but they were sending back [to Japan] at their own request thousand [sic] of Japanese [-Canadian] citizens who who [sic] had been moved from the coast or anywhere they wanted them to go, they were fed up and they wanted to go home. I was asked to meet them, which I did. I met the ships that came in and did whatever I could to make their return smooth, you know. That was all, but I sometimes had to go myself, sometimes I sent one of my officers, that was it.<sup>682</sup>

Although Orr’s comments indicate an indifferent attitude, archival evidence suggests he downplayed his role. He and the Detachment members helped repatriates make the

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<sup>682</sup> HHS/FHS Archives, Dr. Charles Roland Research Materials, Charles Roland interview with J.O.F.H. Orr, 23 April 1985, 5. For literature on the repatriation of Japanese-Canadians see Ken Adachi, *The Enemy that Never Was: A History of the Japanese Canadians* (Toronto: McClelland and Stewart Limited, 1976), 317-319, Ann Gomer Sunahara, *The Politics of Racism: The Uprooting of Japanese Canadians during the Second World War* (Toronto: James Lorimer & Company, 1981), especially chapter six and seven, as well as Pamela Sugiman, “Passing Time, Moving Memories: Interpreting Wartime Narratives of Japanese Canadian Women,” *Histoire sociale/Social History* 38, no. 73 (2004): 51-79 .



uncomfortable transition, and Orr advocated on their behalf for matters of finance, transportation, and in securing their personal effects.

On the Canadian side of the Pacific, the Department of Labour coordinated the “voluntary repatriation” (deportation) of 3964 Japanese-Canadians.<sup>683</sup> Beginning in May 1946, five shipments of Japanese-Canadians departed for Japan. This was the downsized version of the Ian Mackenzie-promoted and Mackenzie King-pursued attempt to deport Japanese-Canadians deemed disloyal as well as those who volunteered to leave Canada. When protests from Japanese-Canadians, the Co-operative Commonwealth Federation, and the Cooperative Committee on Japanese Canadians managed to cause enough stir to carry the issue to the Supreme Court of Canada, the federal Cabinet changed its tactics. A resettlement scheme replaced the broader repatriation movement, but a substantial group of voluntary repatriates embarked for Japan nonetheless. Although the Department of Labour report implies that there was no coercion involved in the original survey or the actual repatriation, historian Ann Gomer Sunahara notes that most departed because they lacked other options.<sup>684</sup>

As a useful happenstance of the Detachments’ assignment in Japan rather than a well-orchestrated plan, the Department of Labour deputized a member of the Detachment to receive the repatriates at the dockside rather than having the Canadian government blindly shove them to

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<sup>683</sup> Canada. Department of Labour. *Report of the Department of Labour on the Re-Establishment of Japanese in Canada, 1944-1946* (Ottawa: Department of Labour, 1947), 15. This report is cited in Sunahara, *The Politics of Racism*, 143 but the report is cited directly here as there is a minor but unexplained discrepancy her book. The repatriates departed Vancouver in the following numbers: 31 May 1946, *SS Marine Angel*, 668; 16 June 1946, *SS General Meigs*, 1106; 2 August 1946, *SS General Meigs*, 1377; 2 October 1946, *SS Marine Falcon*, 523; 24 December 1946, *SS Marine Falcon*, 290. Of the repatriates, 34% were Japanese nationals, 15% naturalized Canadians, and 51% Canadian born. Of the Canadian born, 18% were older than 16 while 33% of the total were dependent children. According to Adachi, there was supposed to be an additional shipment out of San Francisco on 3 October 1947, but the Department of Labour decided that individuals would have to cover their own travel expenses. Adachi, *The Enemy that Never Was*, 318.

<sup>684</sup> Sunahara, *The Politics of Racism*, 144.

Japan with no guidance upon arrival.<sup>685</sup> The Detachment members who assisted the repatriates exceeded the parameters of their assignment. According to Orr's reports to National Defence and the Department of Labour, he assisted with the reception of all five drafts of Japanese-Canadians that arrived between June 1946 and January 1947. The assignment involved receiving and reporting on the arrival of the Japanese-Canadians, but Orr's efforts extended much further. His comments offer deeper insight into the situation facing the repatriates during the journey and in the ensuing weeks and months. Orr had orders to report to Ottawa that the repatriates had arrived, to provide details of the voyage including the well-being of the passengers (which typically included at least one childbirth), and to confirm that he had made an effort to ensure their financial arrangements had been satisfied. Orr worked with the group leaders to ensure could be accounted for, that everyone made it from the landing site at Uruga on Tokyo Bay to the temporary camps at Kurihama, and from there had secured rail transport to their final destinations. Over time, repatriates turned to Orr to communicate with Ottawa or to confirm the status of their citizenship.<sup>686</sup> An explanation for Orr's ongoing efforts may stem from the fact that among the first repatriates he encountered were 20 passengers whom he knew by name from Vancouver, including his mechanic.<sup>687</sup>

The two most involved portions of the job involved sorting out missing, damaged, or lost luggage, and assisting the repatriates to secure their transferred funds upon arrival. Recurrent

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<sup>685</sup> LAC, RG 24, Vol. 8019, TOK 1-10, Lt. Col. Williams for Major-General E.G. Weeks, Adjutant General, Department of National Defence, Ottawa, to Lt. Col. J.O.F.H. Orr, Tokyo, 27 April 1946. The order actually deputized Major Puddicombe as liaison officer, but his assignment in Hong Kong clearly prevented this from taking place. Correspondence between Orr and DND over the next month sorted that he could delegate the responsibility. See LAC, RG 24, Vol. 8019, TOK 1-10, Lt. Col. Oscar Orr, Tokyo, to Secretary, Department of National Defence, Ottawa, 27 May 1947 and National Defence Council HQS, Ottawa, to CINCAFPAC for Lt. Col. Oscar Orr, C.O. Justice MacDougal [sic], 3 June 1946.

<sup>686</sup> See for example LAC, RG 24, Vol. 8019, TOK 1-10, E. Yoshikuni, Akasaka, to Lt. Col Oscar Orr, Tokyo, 9 July 1946. Initially Orr had few answers for nationality questions and requested more information from Ottawa on the status of the repatriates and noted that Dr. Norman was due to arrive shortly with the Canadian Diplomatic Mission and could provide answers.

<sup>687</sup> Dickey to Mrs. W.B. Wallace, 19 June 1946.

baggage problems often required multiple trips to the port to confer with authorities. Owners could normally secure their luggage and boxes shortly after disembarking, but on occasion crates went missing, including one incident where Japanese dockworkers dropped some of the goods into the harbour.<sup>688</sup> Orr traded correspondence with several families after they had departed the Tokyo area and made efforts to ensure they received their possessions.

The redistribution of the repatriates' finances was more complicated, and the system in place posed serious challenges for those trying to settle into a new life. Orr could do little to alter the situation. He found it frustrating and felt compelled to complain to officials in Ottawa. Each repatriate arrived with two forms (CT-JAP-1; CT-JAP-2), the first designating the amount of Canadian dollars the Canadian government had transferred to the American government on behalf of the repatriate. This total was supposed to be dispersed in yen upon arrival. The second form represented the assessed value that each individual was to receive in the conversion of surrendered assets into cash upon their embarkation. This amount was to be transferred to the repatriate through the Canadian Office of the Custodian of Enemy Property, and would be converted into cash and recovered through a repatriation grant transferred through Washington to Japan.<sup>689</sup>

As with many programs of this kind, this policy laid out a process in theory but practical realities did little to serve its recipients. In his first report, Orr noted that the repatriates understood the arrangements that were in place but were shocked that the assigned rate of exchange was a fraction of what was on offer in the local market. Empathizing with their plight, Orr noted that this would pose serious challenges given the prices for essential foodstuffs.<sup>690</sup>

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<sup>688</sup> LAC, RG 24, Vol. 8019, TOK 1-10, Lt. Col. Orr, Tokyo, to Minister of Labour, Ottawa, 19 August 1946.

<sup>689</sup> LAC, RG 24, Vol. 8019, TOK 1-10, Deputy Minister, BCOF, to SCAP, Canadian War Crimes, 28 May 1946.

<sup>690</sup> LAC, RG 24, Vol. 8019, TOK 1-10, Report on Arrival of Japanese Repatriates from Canada, affixed to Lt. Col. Oscar Orr, Tokyo, to Secretary, Department of National Defence, Ottawa, 20 June 1946. Orr noted that the given

Orr's frustration with the system increased during the assignment and through correspondence with repatriates trying to situate themselves in Japan. In response to an enquiry about the luggage of an individual who had decided at the last moment to remain in Canada, Orr offered a tangential yet telling critique of the situation:

This man may consider himself very fortunate that he decided not to repatriate, and if he never recovers his baggage he will still be a great deal better off than those have returned. In this connection I think that proper representation should be made to someone to protect any future repatriates from having the greater part of their money taken from them by either the American Government or the Japanese Government by way of exchange and banking regulations, the plain fact of the matter being that the money with which the Japanese repatriate leaves Canada shrinks in transmission to a small fraction of its real value, then on top of this, all except 1,000 yen per head is placed in a frozen bank account by the Japanese Government, this latter expression meaning that while the depositor gets the bank book showing a credit, he cannot withdraw money except at a specified monthly rate, this specified monthly rate being considerably less than what is required to live on, and I am not sure whether they are allowed to draw it out in addition to any money they may be earning.<sup>691</sup>

Clearly, Orr took a stake in the plight of the repatriates beyond checking them in at the dock and reporting to Ottawa.

Beyond acting as a stabilising and comforting focus for the repatriates upon arrival in an unfamiliar land, Orr's largest contribution to the improvement of their status came in improvements he recommended following the arrival of the *Marine Angel*. In his report to Ottawa he asked that:

- 1) Passengers be *pushed* to pack their possessions more securely as the dockworkers tended to be roughshod while unloading. The larger group should also be supplied with hammers and nails to repair damaged boxes.
- 2) That passengers bring with them as much food as possible in response to the limited availability of food in Japan.
- 3) That the passenger list be forwarded to Japan ahead of the repatriates to make the finance situation more straightforward.

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rate was 13 ½ yen per dollar which is less than 1/3 of going rates. He cited bread prices of 2 yen 10 sen per loaf and second rate rice going for about 2 yen 10 sen.

<sup>691</sup> LAC, RG 24, Vol. 8019, TOK 1-10, Lt. Col. Oscar Orr, Tokyo, to Secretary, Department of National Defence, Ottawa, 17 December 1946.

- 4) That arrangements be made to allow repatriates to send a message back to Canada upon arrival, as there was no method for civilian communication between the two countries. (This was in response to requests from passengers and Orr noted that the Detachment would be willing to help facilitate this if permissible).
- 5) That a clear statement on the status of Canadian born *Nisei* be made, so people could have a clear understanding.<sup>692</sup>

Orr's description of the newcomers to Japan and their confusion and frustration spoke to the uncertainty of the situation. Orr had a clear sense that the repatriates were in a bad situation, one in which many of the younger repatriates had little to grasp or look forward to – particularly as they had yet to experience the desolation and destruction in Japan.<sup>693</sup>

Although the central mandate of the Detachment was specific to Canadian issues in Hong Kong and Japan, the legal officers were also expected to take steps to protect “the Canadian interest in adjacent areas such as the Philippines and Dutch East Indies.”<sup>694</sup> This included the murder of three Canadian civilians in the Philippines and the execution of two RCAF Warrant Officers near a prison camp in Batavia. Unfortunately, the amount of energy expended in investigating these cases did not reap the rewards that Orr envisaged, as all remained unsolved.

The Detachment's superiors in Ottawa expressed particular interest in the case of two RCAF pilots whom the Japanese captured near Jakarta (then known as Batavia) in 1942. RCAF members had first found themselves in action over Malaya (then British Malaya and specifically Singapore) in January 1942. As the Japanese overtook the airspace above Singapore, RCAF pilots pulled back to Indonesia (then the Dutch East Indies, and in particular Sumatra and Java), which fell in February and March. The battle for Malaya and the East Indies was a disaster and

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<sup>692</sup> LAC, RG 24, Vol. 8019, TOK 1-10, Report on Arrival of Japanese Repatriates from Canada, affixed to Lt. Col. Oscar Orr, Tokyo, to Secretary, Department of National Defence, Ottawa, 20 June 1946

<sup>693</sup> Dickey to Mrs. W.B. Wallace, 19 June and 28 June 1946, and LAC, RG 24, Vol. 8019, TOK 1-10, Report on Arrival of Japanese Repatriates from Canada, affixed to Lt. Col. Oscar Orr, Tokyo, to Secretary, Department of National Defence, Ottawa, 20 June 1946. Both Dickey and Orr noted how disconnected the young seemed and how unhappy they appeared, Orr also noted that many of them were unable to handle the food upon arrival.

<sup>694</sup> Puddicombe fonds, Vol. 1-3, Major-General E.G. Weeks, Ottawa, to Officer in Charge, Cdn War Crimes Liaison Detachment, Japanese Theatre, 12 March 1946..

the Japanese took 28 RCAF members POW between January and April 1942.<sup>695</sup> The Detachment was interested in the circumstances around two pilots interned in Glodok camp near Jakarta. The Japanese executed two Canadian warrant officers, Howard P. Low and Russell C. Smith, as well as RAF officer H.H. Siddell in the spring of 1942. The case was considered one of “extreme importance, because it was the only incident outside of Hong Kong where Canadians were executed.”<sup>696</sup>

Orr’s investigation orders required a change in approach given that the location was far outside the American zone of occupation. The No. 1 Australian War Crimes Detachment had already made a partial assessment, having recovered the bodies of the executed aviators. On one of the more horrific stories of the Allied war crimes programs, however, the investigation team was ambushed and killed in the field in Java. The story, as understood by the Canadians, was that a group of “natives”<sup>697</sup> ambushed the investigators, which threw the RCAF case into limbo.<sup>698</sup>

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<sup>695</sup> T.W. Melnyk, *Canadian Flying Operations in South East Asia 1941-1945* (Ottawa: Department of National Defence, Directorate of History, 1976), 9, 12-17. A brief recollection of Low and Smith is also available in Robert H. Farquharson, *For Your Tomorrow: Canadians and the Burma Campaign, 1941-1945* (Victoria: Trafford Publishing, 2004), 36.

<sup>696</sup> LAC, RG 24, Vol. 8018, TOK-1-2-12-3, Lt.-Col. Oscar Orr, Tokyo, to British Division, 1 May 1947.

<sup>697</sup> W.P. McClelland, “War Crimes Trials: Criminals Brought to Justice,” *Canadian Army Journal* 1, 3 (June 1947): 20.

<sup>698</sup> The killing of the Australian war crimes investigators was a mysterious situation that took place in the midst of a complex political context. On 17 April 1946, Australian Squadron Leader F.G. Birchall, Captain Alistair Mackenzie and Flight Lieutenant Hector McDonald were ambushed and shot on the roadside at Buitenzore, about 35 miles south of Jakarta (another officer was injured, but escaped). Indonesian authorities immediately released an apology to Australia and sought to apprehend the suspected murderers. Five individuals were arrested, two Japanese and three Indonesians. Shortly before the prisoners were to be transferred to British authorities for interrogation, the two Japanese prisoners committed suicide, causing concern in the Dutch camp about an Indonesian cover up. See *Sydney Morning Herald*, 22 January 1947 and Australian Government, Department of Foreign Affairs and Trade, , Historical Documents, <http://www.dfat.gov.au/publications/historical/au/publications/historical/> (accessed 16 January 2013), Volume 10, Document 9. Australian Judge R.C. Kirby was despatched to investigate and worked with Indonesian Prime Minister Sutan Sjahrir, who was keen to maintain positive relations with Australia. The pair agreed that either a British military court or an Australian trial would be the optimal solution (as the political situation would not permit an Indonesian trial, nor would a trial with Dutch officials be accepted by the Indonesians). Sjahrir’s staff provided Kirby with reports, but the political unease on the ground limited his own investigative work to Jakarta. Uncertainty remains about the status of the remaining prisoners, but they were released around the time that Sjahrir was kidnapped. Kirby returned to Australia to pursue a posting with the

British authorities (No. 3 WCIT) overtook the war crimes investigation after the Australians had confirmed there were no Australians among the remains. Complicating the matter, the Australians had reinterred the bodies and misidentified at least one.<sup>699</sup> Orr had a personal interest in this investigation as the father of one of the victims was a “fellow townsman”<sup>700</sup> and would surely want to know that Orr had done all he could to complete the investigation. Orr repeatedly contacted ALFSEA, offering to travel to Singapore to contribute to the investigation.<sup>701</sup> The British response promised a forthcoming report, and noted that Orr’s presence would offer little given the political instability in the region.

Orr later received notification that several accused war criminals from Glodok were held at Sugamo Prison. The men were due for transfer from Tokyo to Singapore, so Orr went to Sugamo the following day to gather whatever information he could. Assisted by other members of the Detachment, he took statements from several of the prisoners and forwarded them to officials in Singapore. The Detachment departed from Japan before any inroads were made, but Orr had done all he could do within a frustrating tri-jurisdictional military bureaucracy, to ensure

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U.N.O. Good Office Committee and was relieved by B.T. Ballard as Australian representative in Indonesia. Kirby was scant on public information on the matter, and it is unclear if the perpetrators were recaptured or brought to trial. The investigation took place under extremely unstable conditions in the midst of a national revolution. Although problems cropped up in war crimes trials investigations all over a relatively stable Allied occupied Pacific, conditions in Indonesia were far more complex. Aside from initial comments from Orr and McClemont, this story is based on correspondence from Kirby and other officials of the Australian Government as well as newspaper reports. See in particular, Australian Government, Department of Foreign Affairs and Trade, Publications, Historical Documents, Volume 9, Documents 299, 311, and 320 as well as Volume 10, Documents 9, 31, and 42. For newspaper reports on the incident and investigation please see *Sydney Morning Herald*, 22 April 1946, 7, 21, 23 May 1946, 22 January 1947, *Canberra Times*, 20, 23 April 1946, 21, 23, 24 May 1946, 2 August 1946, *The Argus*, 24 April 1946, 22, 23 May 1946, and *The West Australian*, 2 August 1946.

<sup>699</sup> LAC, RG 24, Vol. 8018, TOK-1-2-12-3, Lt. Col. Oscar Orr, Hong Kong to Secretary, NDHQ, Ottawa, 18 May 1946 and Lt. Col. R.B. (*illegible*), ALFSEA, Singapore to Lt. Col. Oscar Orr, Tokyo, 31 May 1946.

<sup>700</sup> LAC, RG 24, Vol. 8018, TOK 1-2-12-3, Lt. Col. Oscar Orr, Tokyo, to Secretary, Department of National Defence, Ottawa, 30 September 1946. WO Low was the son of Walter and Amy Low of Vancouver. See Commonwealth War Graves database, see Commonwealth War Graves Commission, Casualty Details, <http://www.cwgc.org/find-war-dead/casualty/2170892/LOW,%20HOWARD%20PILMORE> (accessed 3 January 2013).

<sup>701</sup> LAC, RG 24, Vol. 8018, TOK 1-2-12-3, Lt. Col. Oscar Orr, Tokyo, to Headquarters, ALFSEA, Singapore, 8 July 1946.

that the case went forward. According to the list of names Orr collected, only one – Major Mizoe Hachizo – appears to have faced a war crimes trial.<sup>702</sup>

The Detachment's additional investigative work also included inquiring into the death of three Canadian missionaries: two priests killed in the Philippines in August 1942, and a Catholic brother murdered while a patient at an overrun Philippine hospital in February 1945. Similar to the RCAF cases, Orr and his team cast widely and worked with several American investigative teams to gather evidence and goad authorities to press for trial. Progress was marginal, however, particularly in comparison to their work on cases that were within short travelling distance.

During the frantic days following the Japanese invasion of the Philippines, two Canadian priests, fathers' Leo Poirier and Omer LeBlanc, left Santa Cruz, and travelled across the province of Mindano for Cotabato and Midsayap. The Japanese offered them safe passage to an internment camp in Davao City, which they accepted. While being held at a church, two local women came to visit Poirier. The women reportedly kissed his hand – a local custom – which enraged the Japanese guards who slapped the women and sent them away. They discovered LeBlanc missing and ordered both priests to a nearby house where they were beaten with palm boards and then killed with a sword. The bodies were presumably dumped in the Pagalungan River.<sup>703</sup>

The American investigation was slow to initiate, but authorities packaged together an investigative file for review in Ottawa. Investigators in the region found nothing tangible and dropped the case in the spring of 1946. DND authorities approved the decision.<sup>704</sup> Nevertheless,

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<sup>702</sup> NA, WO 235/1082. The other names given to Orr were Major-General Takashima Tatshuiko, Lt. Col. Kitamura Yoshifuto, Lt. Kamibayashi Akira, Lt. Kawai Takeo, and WO Onida Norichiyo. The British tried Mizoe between 22 August 1947 and 25 January 1948 in Singapore. It is currently unclear what he was charged with or the result of his trial..

<sup>703</sup> LAC, RG 24, Vol. 8019, TOK-4-1, Lt. Col. Oscar Orr, Tokyo, to Major Checket, 17 April 1946.

<sup>704</sup> LAC, RG 24, Vol. 8019, TOK-4-1, Major-General E.G. Weeks, Ottawa, to Officer in Charge, Cdn War Crimes Liaison Detachment, Tokyo, 13 June 1946.



Orr continued to push for information and queried the head of the Legal Section's Investigation Section.<sup>705</sup> Months later, the case showed signs of resuscitation. In a report from the Legal Section, Osaka Branch, in February 1947, investigators noted having interrogated 1<sup>st</sup> Lt. Fukunaga Kiyozo, the former Commanding Officer of the Pikdit Independent Garrison (where the priests were headed), who acknowledged that two men under his command had admitted that while he was away they killed the two priests. Nishikawa Tatsuzo and Miura Takeo admitted to Kiyozo that they had tortured and executed the men because they considered them to be spies.<sup>706</sup>

Following the report, Orr continued to push the Philippines branch for information but had limited success.<sup>707</sup> By the time the Detachment departed Japan, it had contributed to a substantial case against Nishikawa and Miura, but neither had been apprehended. Orr expected that if they were, American authorities would carry forth a prosecution.<sup>708</sup> Inquiries into the NARA war crimes databases return no files for either, suggesting that neither were tried.

The Detachment's investigation surrounding the murder of Brother Lucien Lafarriere was even less fruitful. Orr corresponded regularly with the Manila branch of the Legal Section, trying to piece together a picture of what happened to Lafarriere in his last moments. The story that Orr gathered described Lafarriere's death in a frantic scene in which Japanese Marines murdered 21 civilians as they overran the National Psychopathic Hospital, Mandaluyong, Rizal, Philippines. According to the investigation report, a crew of nearly 40 marines took the hospital in search of guerrilla fighters. Lafarriere was among the patients that the marines took outside and lined up while they searched the hospital. The following day the Japanese returned and

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<sup>705</sup> LAC, RG 24, Vol. 8019, TOK-4-1, Lt. Col. Oscar Orr, Tokyo, to Head of Investigation Division, Tokyo, 30 November 1946.

<sup>706</sup> LAC, RG 24, Vol. 8019, TOK-4-1, Report of Investigation Division, Legal Section, GHQ SCAP, Osaka Branch, Mr. Roy Yoshida, Hideto, ONO, Tatsuzo NISHIKAWA, 12 February 1947.

<sup>707</sup> LAC, RG 24, Vol. 8019, TOK-4-1, Lt. Col. Oscar Orr, Tokyo, to Philippine Division, Tokyo, 14 May 1947.

<sup>708</sup> McClemont, Final Report.

cleared the hospital, dividing the patients and staff by gender. Lafarriere and the other men had their hands bound and were marched to a nearby warehouse. Their captors blindfolded and marched them away in pairs to the edge of a cliff. They were fed rice and “forced to remove their clothes, then bayoneted, shot, or both, and thrown over the edge of the cliff.”<sup>709</sup>

Lafarriere’s was among the seventeen bodies found at the base of the cliff the following day.

The Niigata Branch of the Legal Section furnished that version of the story to the Detachment after interrogating Toshio Endo, a suspect who denied any involvement in Lafarriere’s death. The Niigata Branch provided photographs and a report, but authorities released him from Sugamo after one week and he returned home to Niigata. The Detachment reported the case to DND as unfinished business in the Detachment’s Final Report, and no record of a trial appears in American archival holdings.<sup>710</sup>

## **Hong Kong**

The Canadian sub-Detachment in Hong Kong had less time for involvement in other war crimes trials, in military or diplomatic work, or in entertainment. Puddicombe found himself thrust into the courtroom much quicker than his colleagues in Japan and spent his first weeks interrogating alleged war criminals and visiting sites before his first trial started on 22 May 1946. Geographically, his situation lent itself to more frequent site visitation as he had the whole of Hong Kong and Kowloon literally in front of him. The main Detachment did not settle into a regular routine of investigative work until much later, did not get any of their trials before the courts until 5 September 1946, and faced more complicated travel regiments for field

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<sup>709</sup> LAC, RG 24, Vol. 8019, TOK-4-1, Report of Investigation Division, Legal Section, GHQ, SCAP, John J. Marshall, 1<sup>st</sup> Lt. Toshio ENDO, 14 March 1947.

<sup>710</sup> There is a 201 file on Endo showing that he was a person of interest to the American authorities, but it does not appear that he was brought to trial. See NARA, RG 331, UD 1340, 1906 (3), 201 File, Toshio Endo/Indo/Ando.

investigative work.<sup>711</sup> The sub-Detachment made its main contribution inside the courtroom by taking on non-Canadian cases. The members were, however, involved in investigative projects to support the main Detachment in its casework and to respond to inquiries from Ottawa.

Puddicombe and Loranger expended considerable energy taking on additional cases with no clear ‘Canadian interest.’ Puddicombe accepted assignments from his superiors and prosecuted two additional trials involving five individuals. Major Loranger also sat on eight trials, implicating fifteen individuals, with no Canadian component. These trials – like the majority that took place in Hong Kong – dealt with members of the *Kempeitai*. Both legal officers took the assignments seriously, but Puddicombe separated the trials administratively from his main assignment as Canadian representative. For example, he opted not to have a copy of the transcript of evidence made in one of the trials because “the trial had no special interest for the Canadian section.”<sup>712</sup> In another piece of correspondence with the WCIT, Puddicombe noted that in his role as Canadian representative, he did not have concern in the policy decisions, but as assigned prosecutor, expressed serious concerns about the structure of the charges in the upcoming case.<sup>713</sup> He framed his involvement in both as a legal, rather than a “Canadian,” responsibility.

Unlike his thorough preparation for the Canadian cases, Puddicombe did not have a great deal of time before he prosecuted his extra cases. British authorities “warned” him just days ahead of the trial, the WCIT provided him with an abstract of evidence, and he was given a

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<sup>711</sup> Arthur Hogg’s personal experiences outside of his assistance to Puddicombe are unclear, but much of his time was spent hospitalized for health reasons.

<sup>712</sup> Puddicombe fonds, Vol. 1-29, Major G.B. Puddicombe, Hong Kong to Lt. Col. Orr, Tokyo, 12 June 1946. The transcript in question was from the common trial of Hanada, Kurasawa, Sano, and Sakamoto. Puddicombe also noted that his decision not to copy the transcript was also the result of Hogg’s recent hospitalization.

<sup>713</sup> Puddicombe fonds, 2-5, Major G.B. Puddicombe, Hong Kong to Lt. Col. F.C. Minshull-Ford, WCIT, Hong Kong, 6 July 1946.

chance to meet with the witnesses leading up to the trial (or the day before it, as in the of the Matsunobu trial). Both trials were similar in scope and outcome.

The first extra trial was a common trial of four members of the *Kempeitai*: Kurasawa Hideo, Sano Toshiharu, Hanada Zenji, and Sakamoto Isoji. All four faced a charge alleging that, as members of the Special Intelligence Team, they had maltreated seven Chinese civilians at the *Kempeitai* Headquarters in July and August 1945. The four men faced a brief trial, sitting nine times in May and June 1946, and listened to the men they had interrogated for alleged espionage. The trial evolved into a spirited battle between Puddicombe and Scottish defence council, Captain J.F. Reilly, whose approach bordered on venomous at times. Puddicombe sought to prove that the four men had been employed by the *Kempeitai*, that the maltreatment took place during the period between 20 July and 18 August 1945 at the HQ, and that the four accused had inflicted the maltreatment on the victims.<sup>714</sup> Kurasawa, Sano, and Hanada faced evidence that they had beaten, water tortured, implemented aeroplane torture, and burnt several of the witnesses. The court found them guilty and awarded three, eights, and six year sentences respectively. Evidence was not strong enough to convict Sakamoto and the court subsequently acquitted him.

The subsequent trial of *Kempeitai* Sergeant Major Matsunobu Shigeru was originally set to begin in May 1946, but the WCIU uncovered additional information about the deaths of two civilians from Matsunobu's water torture. Although ALFSEA officials were hesitant to move forward with a new case summary that included the water torture allegations, Puddicombe argued that the case had merit and that they should push forward. He made it clear that as the Canadian representative in Hong Kong he did not have a substantial concern in the decision-

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<sup>714</sup> NA, WO 235/895, Trial of Sgt Hanada Zenji, L/Cpl Sano Toshiharu, W.O. Kurosawa Hideo, and Sjt Sakamoto Isoji, 189.

making around what went to trial and what did not, but that given his role as prosecutor in the case, he believed that the evidence was strong enough to warrant a trial.<sup>715</sup> Matsunobu's trial went forward with it included, and he was charged with the maltreatment of nine Hong Kong civilians (eight Chinese and one Swede) through beatings, suspension from the thumbs or wrists, and the use of water torture. Puddicombe maintained in his opening statement, however, that the nine individuals outlined in the charge were non-restrictive and that his actions against others should also be considered and allow the court to draw "its own inferences."<sup>716</sup> The trial outlined the abuses Matsunobu dealt out to local civilians accused of subterfuge, and he denied the allegations. The court found him guilty and imposed an eight-year sentence, which the reviewer considered "a very lenient one, considering the brutal and systematic ill-treatment meted out by the accused."<sup>717</sup>

Puddicombe offered significant support for the main Detachment. If a witness, document, or affidavit was in Hong Kong, the Puddicombe and Hogg were quick to provide what they could. While Dickey was developing his Omine cases, he ran into challenges investigating the death of Winnipeg Grenadier Private D. Chaboyer. Chaboyer had struck a guard at the Omine mine and allegedly had been executed following a Japanese court martial. Dickey only had hearsay evidence from Shepherd, but he found out that a Hong Kong Volunteer,

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<sup>715</sup> For Puddicombe's comments see: Puddicombe fonds, 2-5, Major G.B. Puddicombe, Hong Kong to Lt. Col. F.C. Minshull-Ford, WCIT, Hong Kong, 6 July 1946. Puddicombe was adamant that in the trials of Canadian concern, if similar hesitancy was shown to pursue charges "with capital offences" that he would request himself to be recalled and withhold any Canadian evidence that would have been provided. See also Colonel (*illegible*), Legal Staff for DJAG, ALFSEA, Singapore, to HQ, Land Forces, Hong Kong, 27 June 1946. Relating to the gathering of new evidence see Lt. Col. F.C. Minshull-Ford, Hong Kong to War Crimes Legal Section, ALFSEA, Singapore, 16 June 1946 and "Report on Investigation of a War Crime," June 1946.

<sup>716</sup> NA, WO 235/894, Trial of Matsunobu Shigeru, 3. This appears to have been Puddicombe's method of striking at the more serious allegations of Matsunobu's actions causing death.

<sup>717</sup> NA, WO 235/894, Trial of Matsunobu, Lt. Col. D.A. Wright, AJAG, Land Forces, Hong Kong to Commander, Land Forces, Hong Kong, 19 August 1946.

Staff Sergeant Hugh Peter Lim, had been with Chaboyer's work party and witnessed the incident. Dickey gathered intelligence on Lim from the POW Information Bureau and forwarded Puddicombe an address, requesting that he attempt to contact Lim and obtain an affidavit, as well as anything else deemed important from his time at Omine.<sup>718</sup>

Puddicombe sought assistance from Tse Dickuan of the WCIT as well as the Hong Kong police, who had no success with the address Dickey provided.<sup>719</sup> Puddicombe published a notice in a local newspaper and made contact with Lim the following day. He collected a statement from Lim about the incident in the mine, in which Lim claimed that the guard struck Chaboyer first – the result of a miscommunication – but Chaboyer knocked him down with a punch which, upon return to the camp, led to his court martial. In Lim's opinion, however, Chaboyer's sentence likely resulted from the guard accusing him of resisting work rather than striking him – a charge that was akin to mutiny, and the Canadians had been warned that they would be shot for it.<sup>720</sup> The affidavit, while providing insight into the last portions of Chaboyer's life, was not used as evidence nor in the specifications in Dickey's Omine cases.<sup>721</sup>

Puddicombe also committed considerable time in arranging the travel and salary logistics to send Arthur Rance, HKVCD, to Tokyo as a witness for Boland's Niigata *USA vs Yoshida et al* case. He took care of substantial correspondence with Rance's employers, and committed his entire staff for two days to prepare a statement from Rance for the men in Tokyo.<sup>722</sup> Rance first appeared on the stand at Yokohama on 3 January 1947.<sup>723</sup>

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<sup>718</sup> LAC, RG 24, Vol. 8018, TOK-1-4, Captain J.H. Dickey, Tokyo to Major G.B. Puddicombe, Hong Kong, 7 August 1946.

<sup>719</sup> Puddicombe fonds, Vol. 1-21, Handwritten note, Major G.B. Puddicombe, to Tse Dickuan, 17 August 1946, and Major G.B. Puddicombe, Hong Kong to Lt. Col. Orr, Tokyo, 20 August 1947.

<sup>720</sup> Puddicombe fonds, Vol. 1-21, Major G.B. Puddicombe, Hong Kong to Lt. Col. Oscar Orr, 20 August 1946, as well as included press clipping, and affidavits provided by Lim.

<sup>721</sup> See various charge sheets: *USA vs Kaneko et al*, *USA vs Yanaru*, and *USA vs Fukami*.

<sup>722</sup> See Puddicombe fonds, Vol. 1-1, 8-9 July 1946, as well as various correspondence in Puddicombe fonds, Vol. 2-20 and LAC, RG 24, Vol. 8019, TOK-1-2-13-8. Rance's testimony can be found beginning at page 252 in the

Puddicombe received occasional orders from the main Detachment and his British superiors to utilise his well-developed investigation skills for fact-finding. He approached the tasks like a war crimes investigation and succeeded. The results of Puddicombe's assignments reflected the intertwined nature of the Allied and civilian experience under the Japanese occupation. His search for the individuals that helped save a wounded Grenadier intertwined with an effort to acknowledge a Japanese interpreter for helping sick POWs during the occupation. In another case, Puddicombe helped a soldier track down his family in China.

During his first visit to Hong Kong in May 1946, Oscar Orr received an affidavit from the British Minor War Crimes Unit that mentioned Winnipeg Grenadier Private Frederick W. Herity. In March 1943, Ramon Muniz Lavallo, Argentine Republic Consul to Hong Kong, relayed information he had gathered at St. Teresa's Hospital in Kowloon pertaining to Herity's medical situation. Herity asked Lavallo to let his family know that he had lost a leg during the fighting at Hong Kong but was safe. The Japanese took Herity to a residence in Kowloon and, after realizing he was a British soldier, abandoned him with no supplies, leaving him to bleed on the floor for 24 hours. They then moved him to Lasalle College and left him on a concrete floor for six days with only a little rice and water each day. His leg wound got worse. A 'Eurasian' nurse by the name of Luisa apparently discovered him at Lasalle and alerted the staff at St. Theresa's. There, Irish priest G.L. Kennedy pleaded with the Japanese to let him take Herity to the hospital. The Japanese acquiesced and sentries brought Herity in. The gangrene on his leg

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Yoshida Case: NARA, RG 331, SCAP, Legal Section, Prosecution Division, USA Versus Japanese War Criminals, Case File 1945-1949, UD 1321, Box. 1607, Yoshida Case, No. 69.

<sup>723</sup> *USA vs Yoshida et al*, 252.

required an amputation. When Herity regained some mobility, the Japanese denied him crutches. Lavalley met Herity at the hospital after the surgery and purchased a bamboo set for him.<sup>724</sup>

Orr conducted some additional research while in Hong Kong and interviewed Sister Theresa from the hospital who confirmed Lavalley's story with few alterations. She had explained that St. Teresa's received evacuation orders to make room for Japanese troops. None arrived and the doctors brought Herity in after Kennedy secured permission. A Chinese doctor performed the surgery, but she did not know anything about the nurse who supposedly found Herity and brought him in. She noted she had checked in on Herity at Sham Shui Po following capitulation.<sup>725</sup> Orr recommended that the Canadian government consider sending an expression of gratitude to Lavalley for purchasing the crutches and Kennedy for securing transfer to St. Teresa's. He assigned Puddicombe to gather information on the Chinese doctor who performed the surgery and the Nurse Luisa who no one could identify.<sup>726</sup>

Orr gave Puddicombe further orders on the Herity question (a second request before he ever received the initial) and he quickly set to work, spending three days travelling to the different sites, interviewing nurses, doctors, nuns, and the registrar at the Hong Kong Medical HQ to gather information. He approached the question as though it were a war crimes investigation: two nurses questioned why he was interested and noted that Herity had had nothing but praise for the Japanese. Puddicombe gathered a more complete story: Herity was

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<sup>724</sup> LAC, RG 24, Vol. 8018, TOK-1-2-11, Lt. Col. Orr, Tokyo to Secretary, Department of National Defence, 27 May 1946. Lavalley noted that he had spoken with Herity, the operating doctor and Luisa to understand the story as reported.

<sup>725</sup> LAC, RG 24, Vol. 8018, TOK-1-2-11, Lt. Col. Orr, Tokyo to Secretary, Department of National Defence, 27 May 1946.

<sup>726</sup> LAC, RG 24, Vol. 8018, TOK-1-2-11, Lt. Col. Orr, Tokyo to Secretary, Department of National Defence, 27 May 1946. In his notes, Orr scribbled that thanks were due to Lavalley, Kennedy, Luisa and those at St. Teresa's. He had managed to track down addresses for Lavalley in Turkey and Kennedy in Ireland. The Department of External Affairs sent letters of appreciation to both Lavalley and Kennedy. Puddicombe fonds, Vol. 2-19, Major-General E.G. Weeks, Adjutant-General, DND, Ottawa to Brigadier R.O.G. Morton, HQ, Military District No. 10, Winnipeg, 21 September 1946.



stranded on the battlefield for several days and was lucky enough to be picked up by a Japanese patrol and taken to North Point. He was then taken to Lasalle College Hospital where the medical staff did everything possible to preserve his leg. When the British doctors decided that they could not save it, they appealed to St. Teresa's because a surgeon there, Dr. Ross Wong, was highly regarded. The St. Teresa's staff took him in and spent several days trying to salvage his leg until the making the decision to amputate. Wong successfully completed the surgery and Herity made a strong recovery.

None of the individuals with whom Puddicombe spoke could positively identify Nurse Luisa or how she fit the picture. When Puddicombe made his report, he identified Wong as the surgeon, and noted that he did not attempt contact with him in Canton, assuming he could not add new perspective. Puddicombe confirmed that St. Teresa's was a charitable organization that would surely benefit from a monetary donation, which was warranted. "These Sisters certainly did all in their power to help Herity," he wrote, "and it is within the bounds of reason to suppose that he is alive today due to the ministering carried out by these ladies and Dr. Ross Wong."<sup>727</sup>

In another assignment, National Defence forwarded Puddicombe a request from Canadian Army member Chow Gim who was trying to locate his wife and child, both of whom had been in Hong Kong when the Japanese invaded. (Gim and his Toronto-born wife Evan Gum Fong Chow married in Hong Kong in 1935, and their son Kenneth was born the following year.) He had already sent requests to the *South China Morning Mail* and *Kung Sheung Daily News* asking anyone with information about his family to contact Major Puddicombe.<sup>728</sup> Officials in

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<sup>727</sup> Puddicombe fonds, Vol. 1-27, Major G.B. Puddicombe, Hong Kong to Lt. Col. Orr, Tokyo, 17 July 1946. For other identified correspondence, see Puddicombe fonds, Vol. 1-27, Lt. Col. Orr, Tokyo to Major G.B. Puddicombe, Hong Kong, 28 June 1946 and Major G.B. Puddicombe, Hong Kong to Lt. Col. Orr, Tokyo, 12 July 1946 and 7 August 1946.

<sup>728</sup> See *South China Morning Mail*, 25 February 1947 and *Kung Sheung Daily News*, 25 February 1947 as enclosed in Puddicombe fonds, Vol. 1-22.

Ottawa sent Orr information about Lee Koon Lan, a banker who had contacted Chow.

Puddicombe met with him and found out that he had helped Chow's family before they departed for mainland China in September 1942. He had heard nothing from them since.<sup>729</sup>

Unfortunately, Puddicombe was about to leave Hong Kong and he transferred the file to Lt. Charles Low, Canadian Intelligence Corps, who requested the Chinese characters for Chow and his wife's name for circulation.<sup>730</sup>

In another assignment, Puddicombe had the opportunity to gather information about a Japanese interpreter who had taken great risk to assist Allied POWs. During a speech in Vancouver, a Canadian padre who had been a Hong Kong POW noted one Japanese civilian in Hong Kong who deserved special praise. John K. "Uncle John" Watanabe had "spent many hours comforting the sick and wounded Canadian soldiers in prison hospitals then one day lost his whole family when the Allies bombed Hiroshima." Reverend Dr. Uriah Laite exclaimed to the Vancouver Rotarians that "[e]ven after this, he continued to sit on the beds of our boys and talk with them, continued to contravene the orders of his superior Japanese officers and bring parcels of food and comforts."<sup>731</sup>

Major Puddicombe spoke with Boris Pascoe (whose daughter worked with the POWs during the occupation) and noted that the "Dominion of Canada owes Watanabi a deep depth of gratitude" as he "was instrumental in bringing some small relief to Canadian patients in Bowen Road Hospital."<sup>732</sup> Pascoe offered the names of Canadian POWs whom he thought could attest to Watanabe's qualities, which Puddicombe promptly forwarded to Orr. Puddicombe suggested

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<sup>729</sup> Puddicombe fonds, Vol. 1-22, Major G.B. Puddicombe, Hong Kong to Secretary, Army HQ, Ottawa, 26 February 1947.

<sup>730</sup> Puddicombe fonds, Vol. 1-22, Major G.B. Puddicombe, Hong Kong to Secretary, Army HQ, Ottawa, 26 February 1947.

<sup>731</sup> *The New Canadian*, 21 June 1947.

<sup>732</sup> Puddicombe fonds, Vol. 2-19, Major G.B. Puddicombe, Hong Kong, to Lt. Col. Oscar Orr, Tokyo, 12 June 1946.

that if Watanabe had been as helpful as Pascoe claimed, that the Canadians could make an offer of gratitude to a man who was now “living on charity in Kowloon.”<sup>733</sup> He suggested that Watanabe be employed as an interpreter outside of the courtroom – and that the Regimental Associations might be interested in making a contribution.

Watanabe Kiyoshi was a Lutheran minister who had studied in the United States at the Gettysburg Seminary from 1937-1939 where he picked up the ‘John’ moniker. A proud Japanese national, Watanabe but was uncomfortable with the growing militarism he saw upon his return to Japan. The IJA conscripted him and sent him to Hong Kong in February 1942 where he served as an interpreter at Sham Shui Po POW Camp. Watanabe struggled to reconcile his duties to Japan with his Christian beliefs in humanity – juxtaposed against the brutal inhumanity with which the Japanese treated the POWs. These conflicting ideals frequently placed him in the disciplinary sights of Colonel Tokunaga and Sham Shui Po commandant Lt. Sakaino. Watanabe gained the trust Middlesex Reverend Captain H.L.O. Davies and covertly aided the POWs by working with Director of Medical Services for Hong Kong Sir Selwyn Selwyn-Clark. With great risk he regularly snuck additional medical supplies into the camp helping to offset the diphtheria outbreak. Watanabe secured a transfer to the camp hospital, where he encountered the Canadian POWs. He spent time comforting the hospitalized POWs after the Gendarmerie arrested Dr. Selwyn-Clarke and the flow of medicine ceased. In a brutally painful turn of events, Watanabe eventually lost his family in the atomic bombing of Hiroshima.<sup>734</sup>

Following Puddicombe’s recommendation, Major-General Weeks sent a letter to Canadian Brigadier R.O.G. Morton, asking his opinion on the matter and noting that the

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<sup>733</sup> Puddicombe fonds, Vol. 2-19, Major G.B. Puddicombe, Hong Kong, to Lt. Col. Oscar Orr, Tokyo, 12 June 1946.

<sup>734</sup> For more on Watanabe, see Liam Nolan, *Small Man of Nanataki* (London: Peter Davies, 1966).

Regimental Associations, along with protocol, would have far less trouble making a gesture than Department of National Defence.<sup>735</sup> The Royal Rifles of Canada opted to donate \$100 to be distributed, at Orr's discretion, to Watanabe, Patricia Pascoe, and Nurse Luisa (if she could be located).<sup>736</sup> Orr suggested that a portion of the gift be given to Pascoe as a wedding gift as she had just married a British officer. The balance of the money could be given to Watanabe, who by then had travelled to Japan and was employed at the same billet as Orr with the British Commonwealth Forces in their library in Tokyo.<sup>737</sup> Puddicombe concurred with Orr's correspondence, adding only that he thought the portion earmarked for Pascoe would be better suited as a RRC engraved souvenir rather than a monetary gift which would likely be passed on to a local charity.<sup>738</sup>

Influenced by the complications surrounding giving cash to a Japanese civilian, Orr recommended they present Watanabe with an engraved pocket watch. He also sought special permission to provide him with a shirt and shoes.<sup>739</sup> Before finally departing Japan, Orr sent a message to Dr. Herbert Norman, head of the Canadian diplomatic mission, asking him to ensure the delivery of the watch could be taken care of if the Detachment did not receive the gift before they departed. He ensured him that the funds were in place and that someone at Empire House could fully apprise him of the details.<sup>740</sup> Eleven months passed between Puddicombe's initial conversation with Boris Pascoe and when Orr left instructions for Norman. This reflects not

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<sup>735</sup> Puddicombe fonds, Vol. 2-19, Major-General E.G. Weeks, Ottawa, to Brigadier R.O.G. Morton, Winnipeg, 21 September 1946. The Winnipeg Grenadiers decided not to make a donation.

<sup>736</sup> LAC, RG 24, Vol. 8018, TOK-1-2-5 Vol. 2, Major W.P. McClellmont, Ottawa, to Officer in Charge, Canadian War Crimes Liaison Detachment, Tokyo, 28 December 1946.

<sup>737</sup> LAC, RG 24, Vol. 8018, TOK-1-2-5, Vol. 2, Lt. Col. Oscar Orr, Tokyo, to Secretary, Department of National Defence, Ottawa, 9 January 1947.

<sup>738</sup> Puddicombe fonds, Vol. 2-19, Major G.B. Puddicombe, Hong Kong, to Lt. Col. Oscar Orr, Tokyo, 16 January 1947.

<sup>739</sup> LAC, RG 24, Vol. 8018, TOK-1-2-11, Lt. Col. Oscar Orr, Tokyo, to Dr. E.H. Norman, Tokyo, 14 May 1947. Special permission was required to give Japanese nationals any goods from British or American sources. Orr suggested that if they were to try to give Watanabe something it should be purchased in Canada.

<sup>740</sup> LAC, RG 24, Vol. 8018, TOK-1-2-11, Lt. Col. Oscar Orr, Tokyo, to Dr. E.H. Norman, Tokyo, 14 May 1947.

only the challenging bureaucratic channels the Detachment faced from Ottawa to Hong Kong and to Tokyo as well as the complicated interactions between occupation personnel and Japanese civilians, no matter what their relationships.

The recovery of Canada's war dead in the Pacific region took place on the periphery of the Hong Kong and Japan Detachments work. Lt. Col. John A. Bailie, a former 'C' Company Winnipeg Grenadier who served in Hong Kong and spent the balance of the war as a POW, led the program.<sup>741</sup> During captivity, Bailie maintained a cache of information about Canadian casualties and upon liberation submitted it as the first clear report to Canadian authorities. The understanding of what had happened to the Hong Kong and Japan POWs was murky throughout the war, thanks to little communication from Japanese authorities about the survival and well-being of Canadian troops. Canada did not have representation in the Pacific at the beginning of the graves research. Allied War Graves Units tended to Canadian interests in Hong Kong and China until an officer arrived to represent Canada. DND officials selected Bailie as he had already laid the groundwork. He arrived in Yokohama on 25 September 1946.<sup>742</sup>

As with many other wartime and postwar issues in the Pacific theatre, Canadians had little input in the development of policy and planning for the Commonwealth War Graves program, and sought involvement as an afterthought. Canadian interests in the Pacific rested on the shoulders of Bailie, as the Canadian war graves effort in Europe tied up significant manpower, while the American, Australian, and British programs in the Pacific were large and firmly established. Bailie drew on the members of the Canadian Detachment in both locations. Reflective of the limited interest of the Canadian government in the region, Bailie's monumental

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<sup>741</sup> *Winnipeg Free Press*, 18 September 1946.

<sup>742</sup> DHH, 593.013 (D10), Report of CDN War Graves – Pacific Theatre, d 1947.

accomplishments had far more to do with his commitment to the preservation of his comrades' memory and his own personal character traits than any organized, focused plan emanating from Ottawa.

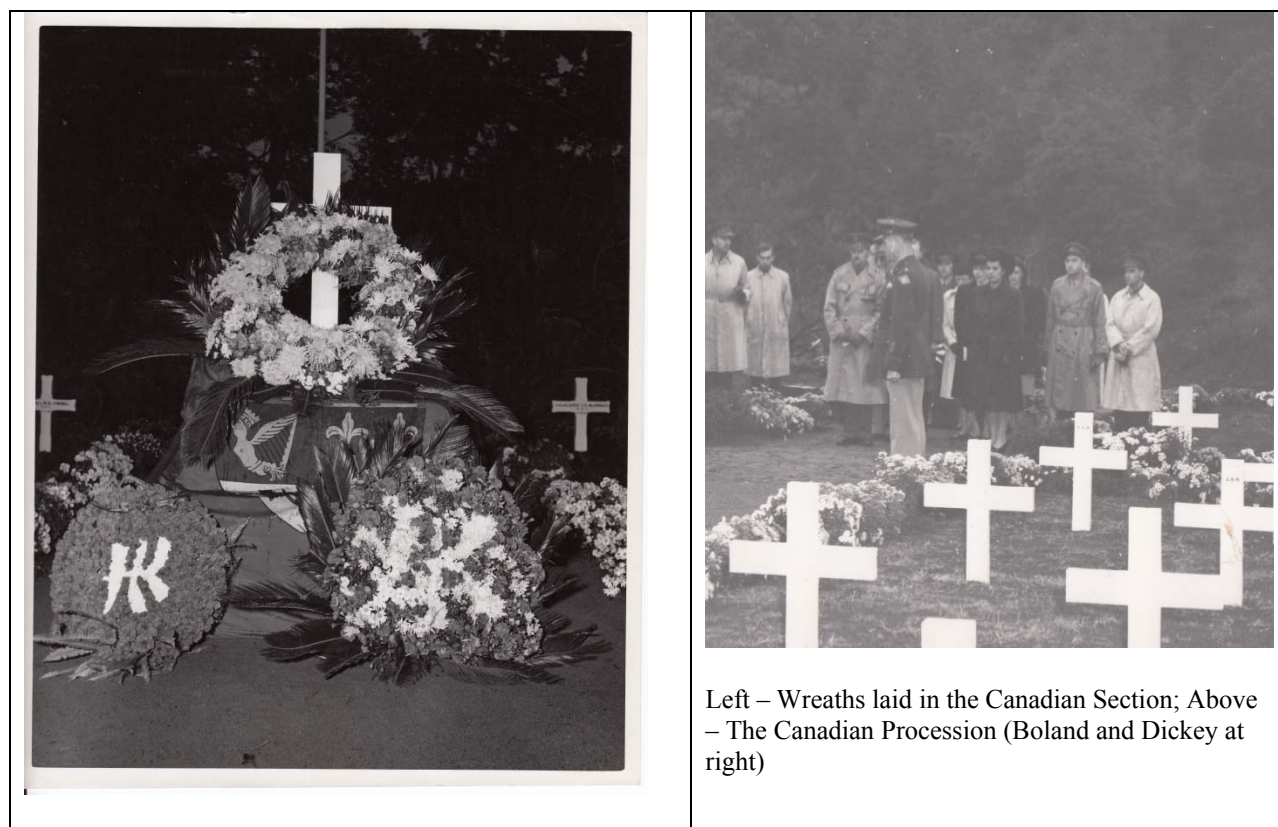
Bailie's contributions to the preservation of the Canadian war graves are beyond the scope of this study, but he was tasked with an important project that was broad in scope and he managed it impressively. The Australians and British oversaw Commonwealth War Grave work in the Pacific: the Australian program encompassed the South Pacific, Japan, Northern China, Korea, and Manchuria; and British authorities oversaw Burma, Malaya, Indo-China, the East Indies and Southern China. This division of territory put Bailie in conjunction with both parties. His role involved drawn out investigative work, advocacy, and door banging. His efforts involved a straightforward venture in Japan helping prepare for the re-internment of Canadians at the Yokohama Military Cemetery, and a much more onerous and less successful effort in Hong Kong, locating and concentrating Canadian remains for burial at the slowly constructed Sai Wan Military Cemetery.

His initial term in Japan was straightforward. The POWs who died in Japan were accounted for. Their deaths were typically reported to the POW Information Bureau in Tokyo, noted in POW diaries, and their remains buried near the camp sites. By the time Bailie arrived in Japan, American occupation soldiers had recovered and brought all of the Canadian remains to the United States Air Force Mausoleum in Yokohama. Bailie had orders to look for 139 individuals and could account for 137.<sup>743</sup> Before he returned to Canada, he was able to account for another of the missing bodies which was recovered and reburied with those of his comrades after having been mistakenly shipped to Borneo. The reburial service took place at the British Commonwealth War Cemetery, a sprawling ground of 60 acres that had been a "Young Peoples

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<sup>743</sup> The numbers comprised of 135 individuals from Army and two from the Navy.

Park” and held a shared space for Canadian and New Zealand troops. Bailie organized a dual-denominational service, attended by the entire Canadian Detachment and Canadian Legation. Dickey described the service as “carried out in quite inclement weather in the p.m.. There was quite a good attendance in spite of some rain and much mud.”<sup>744</sup> Irene Norman, wife of Canadian Liaison Mission head Dr. Herbert Norman, laid a wreath on behalf of the next of kin of the reburied personnel. Senior officer present and Canadian representative on the IMTFE prosecution, Brigadier H.G. Nolan, laid one on behalf of Canadians resident in Japan and Bailie, as the only Hong Kong veteran present at the ceremony, laid one on behalf of the reinterred “C” Force members.



**Figure 15 - The Canadian Reburial Ceremony, British Commonwealth War Cemetery, 6 November 1946. (DHH 593.013 (D14))**

<sup>744</sup> Dickey to Mrs. W.B. Wallace, 7 November 1946.

Bailie's efforts in Hong Kong were far more challenging. Most Canadian casualties had been sustained there, and the sudden and violent campaign meant that typical burial and recovery practices did not occur. The Japanese destroyed documentation at the end of the war and often removed identity discs that were ill suited to the climate (and frequently deteriorated beyond recognition). Bailie reported slow progress concentrating the Canadian bodies, and even more delays in the construction of Sai Wan Military Cemetery.<sup>745</sup> Bailie was able to account for 293 of an estimated 419 war dead at Hong Kong. Although frustrated, he understood that his options were limited to track down any of the remaining 126.<sup>746</sup>

In June 1947 the Sai Wan Military Cemetery was ready to receive Canadian remains, and the official ceremony in the Canadian section took place on Dominion Day in 1947. Similar to the Yokohama ceremony, Bailie prepared a dual-denominational service met with pouring rain; over three inches fell during the ceremony. Mrs. Noble, the wife of the Canadian Trade Commissioner, laid the wreath, while D.M. MacDougall laid one representing the people and government of Hong Kong. Bailie's time in the Pacific meant that the responsibility for reburying Canadians was not simply left to Canada's allies without input.<sup>747</sup>

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<sup>745</sup> DHH, 593.013 (D10), Report on Canadian War Graves, Pacific Theatre, Major J.A. Bailie, 1947, as well as DHH, 593.009 (D6), C Force Cemeteries, Hong Kong & Yokohama. When Bailie arrived in Hong Kong work on the cemetery had not begun. The organizing staff ignored his recommendations on an alternate location, and the process took longer than projected, largely the result of problematic rock and a collapsed retaining wall.

<sup>746</sup> In another personal reflection on the death of Canadians in Hong Kong, Puddicombe made mention several times upon his return to Canada of the small memorial cross his sub-Detachment laid at King's Park on 24 August 1946 commemorating the execution of Payne, Berzenski, Adam, and Ellis. Nineteen Canadians remained buried at Stanley Military Cemetery, the rest interred at Sai Wan

<sup>747</sup> DHH, 593.013 (D10), Report on Canadian War Graves, Pacific Theatre, Major J.A. Bailie, 1947. During the significant delays in his work, Bailie was able to serve as a prosecution witness in two of Puddicombe's cases, the Camp Case and that of Major-General Shoji. See Tokunaga et al Trial, 238 and Shoji Trial, 67.



## Personal Experiences

The occupation of Japan and the various other postwar military installations throughout the Pacific offered unique personal interactions and social opportunities to participants. For the Canadians, the occupation of Japan offered the concomitant benefits of personal connections and travel prospects. The Detachment members had the chance to attend major and “minor” war crimes trials, network with high-ranking occupation officials, travel to a variety of foreign locales, and attend plays, films, and other events in a search for some sense of normalcy in what was an exciting, yet periodically harrowing experience. The experience beyond their official orders involved a mixture of exploration and excitement, and homesickness and frustration.

The additional tasks taken on by the Detachment members are far easier to reconstruct than the social and personal experiences they encountered during their time in Japan and Hong Kong. The members maintained files reporting on their assignments, but little remains speaking to their broader occupation experiences. Dickey’s letters are a rich and colourful source, providing unmatched insight into day-to-day matters. While they speak to a great deal of his travel, friendships made, and activities partaken, they are letters to his mother – and thus somewhat reserved.<sup>748</sup>

Boland and Dickey appear to have been the most active Detachment members in terms of going out and looking for opportunities to socialize and travel.<sup>749</sup> The two younger officers tended to spend a lot of their non-working time together, Dickey noting that Boland was “quite

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<sup>748</sup> A similar archival treasure has not emerged from any of the other men. Information can be gleaned from official Detachment papers, but little aside from who the men were interacting with appears.

<sup>749</sup> Dickey and Boland were very active socially. In almost all of Dickey’s letters he noted the names of plays or movies he and Boland had attended, or dinners, dances and other social engagements that he planned to go to.

companionable and easy work with.”<sup>750</sup> They travelled together, dined and went to shows, attended each other’s trials, played tennis, and spent time touring around Tokyo together.<sup>751</sup>

One of the unique opportunities afforded to the Detachment members was the chance to sit in on other trials that were taking place concurrently. All of the men observed other trials at Yokohama and Hong Kong, particularly before they personally began their prosecutions. When Orr was in Hong Kong he sat in on the opening day of the Inouye trial and observed Puddicombe’s opening statement. The second time he was in Hong Kong he and Puddicombe attended the trial of Yabuki Rikie (who had one partial Canadian charge against him involving the abuse of T.C. Monaghan), prosecuted by Major D.G. McGregor of the Black Watch. Puddicombe also attended the opening of the trial of Sergeant Matsuda Kenichi – another McGregor case. Puddicombe kept notes on the dates and result of the Inouye treason trial sessions, and served as a witness at the beginning of the trial.<sup>752</sup>

Days after their arrival in Japan, Dickey described his opportunity to travel to Yokohama and observe the function of the court. This certainly assisted in his preparation for trial, and he noted that it

was very interesting and instructive and gave me some idea of what the prosecutions we will be involved in will be like. I was most impressed by the quality of the Commissions. They are comprised to 6 judges ranging from full colonel to capt. They seemed to be very much on their toes and don’t let the prosecution or defence get away with much.... One thing that is remarkable is the extremely capable and active defence that is being put up in all the cases so far. I get the sense that the prosecution people here resent the tactics that are being employed in some instances. I will withhold judgment until I can observe more closely myself.<sup>753</sup>

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<sup>750</sup> Dickey to Mrs. W.B. Wallace, 30 June 1946.

<sup>751</sup> Dickey to Mrs. W.B. Wallace, 27 October 1946 and 23 November 1946. Orr’s position required the most official travel, including two trips to Hong Kong, and another to Singapore. He otherwise appears to have been less inclined to be too adventurous. He tended to enjoy simple conversation, as Dickey noted pithily that he had been chatting with him at the Shiba Park Pool but introduced him and left “him with a rather dull but quite important Australian,” who “both seemed quite happy” with the arrangement. Dickey to Mrs. W.B. Wallace, 30 June 1946.

<sup>752</sup> Most of this information is gleaned from the sub-Detachment logbook. See Puddicombe fonds, Vol. 1-1.

<sup>753</sup> Dickey to Mrs. W.B. Wallace, 18 April 1946. Dickey’s tone changed (much as it had in many other facets) as time passed. He brought a colleague to a trial in August 1946 to show him how things operated. Dickey noted that

The main Detachment members also had the opportunity to work beside and socialize with members of the International Prosecution Section and to attend sessions of the Tokyo Trial. Dickey attended sittings at the former War Ministry Office and made reports on the progress and excitement surrounding the opening of the tribunal.<sup>754</sup> His initial comments focused on the grandiose design of the trials, as well as defence challenges to the jurisdiction of the court. Dickey described some of the legal details of the court to his mother, but the crux of his initial commentary about the IMTFE was in describing incidents between Okawa Shumei and Tōjō Hideki:

from all accounts it was quite a show. The real [*pièce de résistance*] of the first day was the incident in which one of Tojo's neurotic co-defendants began to hit him over the head in the midst of the afternoon session. Tojo is extremely unpopular and the rest of the accused refuse to a man even to speak to him. The lad that did the slappings putting on a good show of insanity at least. He entered the Court room yesterday with his shirt tail hanging out the back and eventually pulled it out all the way round. He acted up all morning and was finally removed after his attack on Tojo. He may well prove to be the smartest of the lot if he can manage to get himself certified as insane.<sup>755</sup>

Dickey astutely predicted that Tokyo would “be a more protracted trial than Nuremberg,” and the trials lasted from 3 May 1946 until the judgement on 12 November 1948. Dickey conveyed a naïve sense of what was to come when he noted that: “[t]hank heavens we are dealing with the so

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the scene was “dull and discouraging” and that the trial had been dragging on much longer than expected with little sign of wrapping up. See Dickey to Mrs. W.B. Wallace, 8 August 1946.

<sup>754</sup> Throughout his letters Dickey, with excitement, made mention of the upper crust of the legal and military world with whom he was getting to meet and dine. Some examples include both Stuart McDougall and Henry Nolan, the Canadian representatives at the IMTFE, Sir William Webb, with whom Dickey would take part in the Feast of Christ the King ceremony in July, as well as General Robert Eichelberger, head of the American Eighth Army, and Col. Blackstock, Chief of the SCAP Prosecution Section.

<sup>755</sup> Dickey to Mrs. W.B. Wallace, 4 May 1946. Dickey’s commentary proved correct, as Okawa, typically defined as an ‘ultranationalist propagandist,’ was declared unfit for trial as a result of his actions in court, and underwent psychiatric treatment. Okawa was released from treatment in 1948, a free man. See Brackman, *The Other Nuremberg*, 410-411, Minear, *Victors’ Justice*, 4-5, 25, 31, and Piccigallo, *The Japanese on Trial*, 21.

called Minor War Criminals and can get ahead without too much obstruction.”<sup>756</sup> Some of the “minor” war crimes trials, however, also dragged on much longer than expected.

Dickey had mixed first impressions after his first session at the Tokyo Trial on 13 May 1946. As an onlooker, Dickey showed intrigue in the atmosphere, but carried “well founded doubts as to the fundamental effectiveness of the whole thing.” He saw humour in the trials chief figures donning sunglasses, remarking that it served “to enhance the Holleywoodian [sic] atmosphere.”<sup>757</sup> His overall impression of the trial was negative: he found the defence arguments more convincing than the prosecution, some of the early decisions of the bench discomfoting, and chief prosecutor Joseph Keenan underwhelming. Dickey bleakly stated that the “fate of the motion is a foregone conclusion and that is the sad aspect of the picture,”<sup>758</sup> and conveyed displeasure in how quickly the tribunal dismissed defence motions, “without giving reasons though they were promised for later on.” He noted his thought that the actions were “an attempt to justify rather than establish its validity.”<sup>759</sup>

Dickey continued to attend Tokyo Trial sessions when time permitted, and arranged for two female United Service Organizations performers to attend as well. The two Americans, whom Dickey met while in Fukuoka, attended sessions of the Yamashita and Homma trials on 25 June 1945, and were glad to “have had a look at the three big war trials in the Far East.” Dickey then took them out for dinner and then an evening out at the Yuraku lounge, the former Canadian billet. The girls claimed to have enjoyed “just about the most civilized entertainment they have had since coming to Japan.”<sup>760</sup> The subject matter of Dickey’s final trip to the Tokyo Trial offered more personal interest than the basic intrigue of such a public spectacle. On 16

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<sup>756</sup> For both quotes see Dickey to Mrs. W.B. Wallace, 4 May 1946.

<sup>757</sup> Dickey to Mrs. W.B. Wallace, 13 May 1946.

<sup>758</sup> Dickey to Mrs. W.B. Wallace, 13 May 1946.

<sup>759</sup> Dickey to Mrs. W.B. Wallace, 17-18 May 1946.

<sup>760</sup> Dickey to Mrs. W.B. Wallace, 25 June 1946.

December 1946, the prosecution brought the treatment of POWs into the spotlight, giving their exploitation and abuse legal treatment at the Class 'A' level where he and his colleagues had focused on the "minor" perpetrators. Adding to Dickey's interest in the sessions, his new colleague Australian Alan Mansfield gave the opening address in the POW portion of the case and some of his friends from the Canadian legation were more actively involved in that section of the trial.<sup>761</sup>

Attending other "minor" war crimes trials and the Tokyo Trial allowed for a broader perspective on the general war crimes trials program, thus influencing how the Canadians prepared their cases. Although the Canadians were kept abreast of the various trials and results that were taking place internationally through correspondence with DND, actually viewing the proceedings of these trials gave the men more substantive legal experience.

Colonel Moss provided an excellent connection for the young lawyers, inviting Dickey to dine with him at the Canadian Legation where he resided alongside the international prosecutors for the Tokyo Trial and, initially the judges before they moved to the Imperial Hotel.<sup>762</sup> During one dinner, Dickey found himself between Canadian prosecutor Brigadier Nolan and British prosecutor Arthur Comyns Carr. A typically humble character, Dickey questioned why he was "accorded the place on honour I can't imagine but it at least gave me two very interesting men to listen to while I occupied myself with the food."<sup>763</sup> Dickey had numerous invites to Canadian Legation dinners, which put him at the table with Moss and Nolan as well as Tokyo Trial judge E. Stuart McDougall, diplomat Herbert Norman, and other members of the Canadian Division.

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<sup>761</sup> Dickey to Mrs. W.B. Wallace, 15 December 1946.

<sup>762</sup> Dickey to Mrs. W.B. Wallace, 12 May 1946.

<sup>763</sup> Dickey to Mrs. W.B. Wallace, 12 May 1946. Dickey noted that the dinner also featured two Indian prosecutors, two Swiss diplomats and a Canadian artist named Lamontine who had been painting portraits of important Japanese individuals before the war and had been kept in semi-internment throughout the war.

Elsewhere, Dickey's social calendar continued to fill. He received dinner invitations from the head of the SCAP Prosecution Section, Colonel Leo Blackstock; Paul van Bergon and Captain Pritchard of the Legal Section; the head of the Australian Division, Colonel Gossett; as well as the Australian representative on the prosecution at the Tokyo Trial, Alan Mansfield.

Dickey was the sole Canadian invited to Blackstock's birthday party:

[t]o-morrow night I am going to a birthday party for Col. Blackstock the head of the Prosecution section. It is a bit difficult as I am the only member of the Cdn. Div. included. Jack [Boland] only heard of it to-day and seemed quite surprised that he had not been asked and a bit hurt – Col. Orr does not know of it yet so his reaction is not known. I will none the less enjoy the party I assure you but I hope no feelings will be badly hurt.<sup>764</sup>

Dickey must have made a good impression because it resulted in several subsequent meal invites from Blackstock.<sup>765</sup>



**Figure 16 - Dickey and Colonel Blackstock, head of the SCAP Prosecution Section, in front of the Yokohama District Courthouse. (AM, John Dickey Papers)**

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<sup>764</sup> Dickey to Mrs. W.B. Wallace, 30 October 1946.

<sup>765</sup> Dickey to Mrs. W.B. Wallace, 4 December 1946, 12 January 1947. Dickey had the opportunity to have lunch and dinner meetings with Blackstock, including dinners at the Grand Hotel and Dai Iti Hotel.

Dickey's connection to the Sacred Heart Convent also meant that he served as a canopy bearer alongside the Tokyo Trial president, Australian Sir William Webb, at the procession for the Feast of Christ the King. Following the event, Dickey had the opportunity to chat over tea with Webb, and eventually received a drive back to his quarters with Brigadier General Patrick Tansey, the Chief of the Civil Property Custodian who advised SCAP on the settlement of property and goods claims in Japan.<sup>766</sup> Throughout his time in Japan, Dickey regularly visited the Sacred Heart Convent, trying to assist them in securing goods and sending mail, helping with events, and making a donation before returning to Canada.

Dickey made a strong impression on high ranking individuals from various countries, a skill that served him well as a Member of Parliament and a member of the Canadian delegation to the United Nations after the war. His easy-going personality and strong keen intelligence opened up doors for him while in Japan, allowing him to dine and socialize with some of the more prominent figures in the occupation.

Dickey keenly embraced travel opportunities, particularly when the Detachment's assignment hit roadblocks during the summer of 1946. He tacked a weekend trip to resort-town Beppu onto his investigative trip to Omine with Lloyd Graham (of Brigadier Nolan's staff). He also took two weekend trips to Miyanoshita, well known for its hot springs. The aim with both trips was to get a bit of rest and have a "good lazy time."<sup>767</sup> Two Australian officers joined him on the first trip, while he spent the second trip with American friends.<sup>768</sup> Dickey also attempted to ascend Mount Fuji – a trip filled with wrong turns, torrential rain, and poor timing. After

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<sup>766</sup> Dickey to Mrs. W.B. Wallace, 28 October 1946. For Tansey, see Takemae Eiji, *The Allied Occupation of Japan* (New York: Continuum International Publishing Group, 2003), 196.

<sup>767</sup> Dickey to Mrs. W.B. Wallace, 19 August 1946.

<sup>768</sup> Dickey to Mrs. W.B. Wallace, 19 August and 23 September 1946.

missing out their chance to begin their climb on the first evening, torrid rain delayed his group the following day:

Conditions were far from good and we could only get the jeep about half as high as we should have. The climbing was very tough and Martha Campbell delayed us considerably on the lower levels where we should have made good time. The result was that I reached the lowest station on the 7<sup>th</sup> level about 8000' up at 11.45 p.m. and had to wait till 12.30 for the rest of the party to catch up. They all decided to stop there for the night but I pushed on another 1000' or so to the top of the 7<sup>th</sup> with the hope of getting to the top by morning. Our original plan was to get there by about 11 p.m. rest for 2 or 3 hrs and then make the top by dawn. Actually I got there at about 1.30 A.M. and really needed a couple of hours rest. That brought it right along to sunrise which I saw from the 7<sup>th</sup> Station. It was the most beautiful sunrise I have ever seen and made the whole trip worthwhile by itself.<sup>769</sup>

Shortly before returning to Canada, Dickey also highlight several days touring Kyoto and “seeing some of the sights of Japan that must be seen if a visit is to be called complete” with Brigadier Nolan and New Zealand prosecutor Ronald Quilliam.<sup>770</sup>

The experience of travelling to Japan following the end of the Second World War marked Dickey for life. As an unassuming undergraduate student working on a course-related volunteer term at the Army Museum in Halifax I had the opportunity to meet Eleanor Joyce Dickey. Standing outside the garrison building at the Citadel in the gloomy overcast of a typical Nova Scotian winter, she handed me a plastic container of black and white photos. She bore a proud grin and remarked: “My husband took these. He was a prosecutor at the Japanese war crimes trials.”

His wife spoke so proudly of that accomplishment, one that took place more than a decade before they were married. Dickey's role in the trials held a place of honour throughout his life. The assignment retained pride of place on his *curriculum vitae* to his dying day and was

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<sup>769</sup> Dickey to Mrs. W.B. Wallace, 14 August 1946.

<sup>770</sup> Dickey to Mrs. W.B. Wallace, 6 and 8 February 1947. They toured Shinto and Buddhist sites as well as a silk factory, the home of a potter and a cable car trip up Mount Hiei.



a primary point of discussion in any media report featuring his name. One editorialist went as far to characterize Dickey's experience as demonstrating "the beginnings of a lifelong capacity for hard work and detail."<sup>771</sup> Dickey was an emerging lawyer when he went to Japan, but he returned buoyed with self-confidence as a lawyer, debater, and diplomat. He had expanded his prosecutorial portfolio, and bore the unmistakable influences of interacting with and observing the breadth of the legal, military, and political cast of characters involved in the Allied occupation of Japan. Bearing the legal lessons he had learned overseas, he quickly immersed himself back in the Halifax legal sphere with McInnes, Cooper and Robertson after returning home. Having honed his debating skills and experienced international service, he entered federal politics and won a seat in the House of Commons in the 1947 by-election. Dickey represented Halifax as a Liberal MP for ten years, travelling as a member of the Canadian delegation to the United Nations fifth General Assembly in 1950. He served as parliamentary assistant to the Minister of Defence Production and was a member of eight different standing committees during his tenure as an MP.<sup>772</sup> After his political career, Dickey was a mainstay in Nova Scotian courtrooms, "a gentlemanly bulldog" who went on to serve as counsel for Nova Scotia Pulp Limited and later became president of the branch of Stora. He married Eleanor Joyce Carney in 1959 and was remembered as a consummate family and community man. He always remembered his experiences as a war crimes prosecutor in Japan – formative experiences that shaped him as a Canadian, as a lawyer, and as a man.

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<sup>771</sup> *The Chronicle Herald*, 30 April 1996.

<sup>772</sup> Dickey's great-great grandfather was a father of Confederation and his grandfather was Minister of Justice and National Defence.

## Chapter 8

### **“Uninformed and possibly indifferent”? Canadian Newspaper Coverage of Japanese “Minor” War Crimes Trials**

The “minor” war crimes trials prosecuted by the Canadian Detachment in Yokohama and Hong Kong had profound importance to surviving POWs as well as the families and communities of those who perished under the Japanese. Although the “minor” trials did not receive the level of publication and prominence of the ‘big ticket’ war crimes trials like Nuremberg or Tokyo, Canadian authorities targeted local newspapers from the hometowns of the ‘C’ Force POWs to communicate information about the trials. Local editors took interest in the trials, using ownership language to discuss victims, witnesses, and participants and thus reaffirming their readers’ attachment to the trials and the POWs.

Local media interest, particularly in Winnipeg and the Eastern Townships of Quebec, conflicts with Brode’s notion that “the Canadian public was uninformed and possibly indifferent to the fact that justice was slowly being handed down in the Far East.”<sup>773</sup> A systematic review of regional newspapers, which afforded the Canadian public the opportunity to understand and engage with the “minor” war crimes trials in the Pacific, reveals this assessment as incorrect or misguided. Newspapers made trial information available, particularly in the hometowns of POWs, and regionalism and the local lens influenced the direction and flow of information. The editors’ linguistic choices also reflected a sense of ownership of the victims, suggesting their importance in the community. The racialized and bitter language pertaining to the accused often did more to promote concepts of ‘victors’ or retributive justice than the actual proceedings of the

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<sup>773</sup> Brode, *Casual Slaughters and Accidental Judgments*, 191.

trials themselves. SCAP occupation officials, the Canadian Detachment and the Department of National Defence made disseminating trial information a priority, targeting specific cities and towns with a projected interest in specific trials.

Although national, regional and local newspapers covered “minor” war crimes trials, reporting transpired in an uneven and haphazard manner. Smaller publications, particularly in the home communities of the Winnipeg Grenadiers and Royal Rifles of Canada, provided regular updates on trial proceedings. Communities with a direct and intimate connection to the trials – Winnipeg, Manitoba and Sherbrooke, Quebec – support the point. Since its formation in 1908, the Winnipeg Grenadiers was comprised of soldiers from the city.<sup>774</sup> The Royal Rifles of Canada drew from a broader base, but a significant portion of its soldiers came from the Eastern Townships, particularly Compton and Richmond counties.<sup>775</sup> Accordingly, the Hong Kong POWs who had lived, worked, and toiled with the alleged war criminals and had lost comrades named in the charges, had an intimate interest in the trials – as did their families, and friends.<sup>776</sup>

### ***The Winnipeg Free Press and Sherbrooke Daily Record***

Newspaper coverage in these two regions demonstrates a localized public that understood and had investment in the trials. A systematic review of *The Winnipeg Free Press*<sup>777</sup> and *The*

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<sup>774</sup> Roy St. George Stubbs, *Men in Khaki: Four Regiments of Manitoba* (Toronto: The Ryerson Press, 1941), 22.

<sup>775</sup> DHH, 86/360, Edson Warner, “The Eastern Townships and Hong Kong, 1941-1945,” Term Paper Presented to Professor R. Burns, 7 April 1983, Bishop’s University, 1-7.

<sup>776</sup> This issue of regional variance in war crimes reporting arose elsewhere during the period as Priestman notes that the trial of Kurt Meyer was publicized more frequently in Nova Scotia than other locations as many of his victims were from the North Nova Highlanders. See Karen Priestman, “The Kurt Meyer Case: The Press and the Canadian Public’s Response to Canada’s First War Crimes Trial” (master’s cognate essay, Wilfrid Laurier University, 2003), 11.

<sup>777</sup> *The Winnipeg Free Press* was the most widely distributed newspaper in the city of Winnipeg and in the province of Manitoba more generally. Edited by Victor Siften, the *Free Press* had a Liberal orientation and was published six days a week. Based on 1941 census figures, Winnipeg’s population was 217 994 and the *Winnipeg Free Press* had annual distribution rates of 88 113, 86 127 and 92 664 for 1946-1948 respectively. J. Percy J. Johnson, ed., *N.W. Ayer & Son’s Directory: Newspapers and Periodicals, 1946* (Philadelphia: N.W. Ayer & Son, Inc., 1946). See also

*Sherbrooke Daily Record*<sup>778</sup> reveals a flood of content about the trials that implicated local victims or featured local witnesses. I surveyed these two newspapers for headlines and articles related to the “minor” war crimes trials from April 1946 to May 1947, as well as spotlighting important dates outside of that window (including the execution of Inouye Kanao and the announcement of the commutation of the sentences of Tokunaga and Saito in August 1947). The *Winnipeg Free Press* published 63 articles specific to Pacific “minor” war crimes trials, with many appearing on the front page.<sup>779</sup> The *Sherbrooke Daily Record* published 14, but analyzed specific trials in great detail.<sup>780</sup>

These returns reflect a directed effort from the Canadian Detachment and officials from the Department of National Defence to provide content to the impacted communities about the “minor” trials. The volume of articles that made it to press suggests the editors at the *Winnipeg Free Press* and *Sherbrooke Daily Record* considered the substance valuable and of relevant interest to their readership. Understanding exactly what the articles meant to the readers requires more intensive research. The corollary that can be drawn is that as a result of the efforts of officials in Japan and Ottawa to deliver the content of the trials, and that of the editors to publish that information, Canadians had the opportunity to engage with the “minor” trials rather than being ‘uninformed and possibly indifferent.’

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versions for 1947 and 1948. The 1948 version of the *Ayer & Son’s Directory* provides a population of 221 960 for the city of Winnipeg.

<sup>778</sup> The *Sherbrooke Daily Record* was the most widely distributed English language newspaper in the Eastern Townships region. The 1941 population figures for Sherbrooke were 35 651 and the *Sherbrooke Daily Record* distribution numbers for 1946 and 1947 were 9283 and 9318. The paper had an independent slant and was edited by J.K. Flaherty. See Johnson, ed., *N.W. Ayer & Son’s Directory* (1946 and 1947).

<sup>779</sup> The *Winnipeg Free Press* stayed in tune with developments even after the Detachment wrapped up business in the Pacific, the paper published four articles in August 1947 dealing with follow up issues including the commutation of Tokunaga and Saito’s sentences and confirming the eventual execution of Inouye Kanao.

<sup>780</sup> A possible explanation for the quantity of articles in the *Free Press* compared to the *Daily Record* is that recruitment (original members and as well as late additions) for the Grenadiers was centered in Winnipeg, while the Royal Rifles drew from the Eastern Townships, Quebec City, Gaspé and Northern New Brunswick. See Roland, *Long Night’s Journey into Day*, 8.

The articles had three main topical focuses: war crimes trials with accused that the POWs knew; trials where the deceased or other victims were named; and trials where a local person was acting as a witness or their affidavit was being used in evidence. In the *Sherbrooke Daily Record* if the trials were not published on the front page, they were often highlighted in “The City Page” section of the paper on the second folio, indicating their local interest and importance. The *Winnipeg Free Press* frequently highlighted the trials on the front page, but from time to time tucked reports into the back pages as well.

### **Hometown papers take ownership**

A prevalent theme in the trial reporting involved paying homage to local victims. When an individual from either region was named in charges at Yokohama or Hong Kong, editors saw fit to identify the victims, with great personal detail. They offered names and home addresses, or if the POW had died, printed their parents’ names and addresses. Headlines constructed the proceedings in direct relation to the community, making the city indivisible from the trials. The name of the victims’ city or village or origin connected the readership to the outrage committed by the Japanese rather than the individual themselves:

- Winnipeg Men Among Victims<sup>781</sup>
- Japs Accused of Mistreating Foxwarren Man<sup>782</sup>
- Accuse 7 Japs of Cruelty to Manitobans<sup>783</sup>
- Japs Sentenced For Cruelty To Manitobans<sup>784</sup>
- exceptionally brutal treatment of Canadian prisoners-of-war – many of them members of the Winnipeg Grenadiers<sup>785</sup>
- Jap Prison Guards Are Now On Trial For Deaths Of P.O.W.’s, Includes Three From E.T. Area<sup>786</sup>

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<sup>781</sup> *Winnipeg Free Press*, 30 July 1946.

<sup>782</sup> *Winnipeg Free Press*, 19 July 1946.

<sup>783</sup> *Winnipeg Free Press*, 12 February 1947.

<sup>784</sup> *Winnipeg Free Press*, 29 May 1947.

<sup>785</sup> *Winnipeg Free Press*, 28 October 1946.

<sup>786</sup> *Sherbrooke Daily Record*, 26 October 1947.

-Death of E.T. Soldier In Jap Prison Camp Is Told At Trial.<sup>787</sup>

In cases where multiple victims had been subjected to war crimes, editors listed the names verbatim. One example went as far as to report the names of more than sixty Manitobans who were “among the Allied prisoners-of-war figuring in the charges against a Japanese, Kosaku Hazama.”<sup>788</sup>

After emphasizing the town and victim, the articles offered details about the atrocities. One *Winnipeg Free Press* article described the beating POW Alexander Baraskiwich received for turning in a pair of torn underwear. This specification was a part of *USA vs Yamanaka et al* (prosecuted by Oscar Orr), and the article recounted the beating and medical treatment Baraskiwich required, as well as the dates of his POW status, liberation and discharge from the Army.<sup>789</sup> When reporting on *USA vs Takahashi Takeo* (prosecuted by Jack Boland), the *Sherbrooke Daily Record* noted the circumstances around the death of Bury, Quebec POW E.C. Henderson, who had died as a result of complications from dysentery aggravated by Takahashi’s unwillingness to provide him with medicine at Niigata 5B POW Camp.<sup>790</sup> The *Winnipeg Free Press* also identified the four escaped and murdered POWs identified in the Hong Kong Camp Case (prosecuted by Puddicombe) as Winnipeggers, and recounted their harrowing story.<sup>791</sup>

Local witnesses also received treatment in possessive terms. Both regions had a witness that received detailed promotion. Grenadier and Winnipeg resident Robert Manchester was frequently the subject of *Free Press* articles and had his photograph published on two occasions. Headlines laid claim to Manchester, boasting “Winnipegger Testifies”<sup>792</sup> and “Winnipeg Man

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<sup>787</sup> *Sherbrooke Daily Record*, 14 January 1947.

<sup>788</sup> *Winnipeg Free Press*, 24 February 1947.

<sup>789</sup> *Winnipeg Free Press*, 19 July 1946.

<sup>790</sup> *Sherbrooke Daily Record*, 14 January 1947.

<sup>791</sup> *Winnipeg Free Press*, 19 December 1946.

<sup>792</sup> *Winnipeg Free Press*, 10 October 1946.

Chief Witness Against Japs.”<sup>793</sup> Articles built up his character, noting his survival at Hong Kong, his role in the Niigata Camp case, and gave cursory information, including his role in the honor guard for the King and Queen’s Canadian visit in 1939 and the home addresses of his parents and wife.<sup>794</sup> Upon return home, Manchester was interviewed by the *Free Press*, and gave his opinion on the trials progress, that the Japanese were generally cooperating with occupation forces, and how glad he was to be back in Winnipeg after seven months abroad.<sup>795</sup>

In the Eastern Townships Dr. Martin Banfill, RCAMC, was the witness of focus. Banfill was a professor at McGill and travelled to Hong Kong to serve as a witness of the Salesian Mission Massacre in the trial of Tanaka Ryosaburo. When announcing that Banfill was off to Hong Kong, the *Daily Record* emphasized his former residency in East Angus and Cookshire, both small towns near Sherbrooke. Similar to the manner Manchester was discussed, the *Daily Record* emphasized Banfill’s upcoming role in the trials, but allotted the majority of space to his background, including his education, employment, and familial links to the region.<sup>796</sup>

The use of possessive language also occurred in articles that commented on the postwar lives of the POWs themselves. The *Winnipeg Free Press* gave prominence to local surviving POWs, noting what awards they were being given,<sup>797</sup> where they were headed for education (one Grenadier, Captain Dave Golden, received a Rhodes scholarship in 1940 but had to wait until

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<sup>793</sup> *Winnipeg Free Press*, 28 October 1946.

<sup>794</sup> *Winnipeg Free Press*, 28 October 1946.

<sup>795</sup> *Winnipeg Free Press*, 2 November 1946. The *Free Press* also noted that former Winnipeg resident Lt. Col. John N.B. Crawford had travelled out of Ottawa to Hong Kong to stand as a medical witness. Crawford had been in Hong Kong as a member of the RCAMC. Upon returning to Canada, Crawford visited Winnipeg and gave an interview about his experiences. See *Winnipeg Free Press*, 5 October 1946, 18 October 1946, 18 December 1946.

<sup>796</sup> *Sherbrooke Daily Record*, 18 March 1947 and 10 April 1947. Information being used in trials from local residents’ affidavits was also enough to warrant laying of claim in both newspapers. The fact that affidavits from Crawford and Private James Fowler, both of Winnipeg were submitted in the trial of Tanaka Ryosaburo was enough to warrant a front page line that “Winnipeggers Testify At Hong Kong Trial.” See *Winnipeg Free Press*, 8 April 1947. Fowler and Crawford’s affidavits were entered as Exhibits Y and Z respectively in the Tanaka Ryosaburo Trial, see NA, WO 235/1030, Tanaka Ryosaburo Trial, Exhibits Y and Z.

<sup>797</sup> *Winnipeg Free Press*, 2 April, 10 June 1946.

1946 to travel to Oxford<sup>798</sup>), the sad story of former POW Edward Skwarok in a rail yard accident,<sup>799</sup> church speaking tours,<sup>800</sup> commemoration of the Canadian cemetery in Yokohama,<sup>801</sup> and Lt. Col. J.N.B. Crawford travelling to Geneva to sit in on the conference on sick and wounded and POWs.<sup>802</sup>

Beyond the current and future endeavours of the POWs, articles asked the readership to reflect on the experiences of the local POWs in Hong Kong and Japan, and on the uplifting moments like the surrender of Japan and return of their boys. A front page piece published on 14 August 1946 entitled “Winnipeg Remembers Year Ago,” noted that “[j]ust one year ago today, Winnipeggers enjoyed the biggest celebration of their lives, as rumour became fact, and war with Japan was at an end.”<sup>803</sup> The author noted Portage and Main “filled with seething, cheering masses of humanity,” but also on a more sombre note reminded readers that beyond the revelers were “Winnipeg homes...strangely quiet, with curtains drawn, while mothers and wives wept silently over photographs of smiling boys in uniforms. Let us not forget those boys in the days to come.”<sup>804</sup> A particularly poignant piece was published over four editions in December 1946 under the lead title of “We Were At Hong Kong.” The article narrator, Art Bennett, managed to go to war, spend four years in POW camps, see Nagasaki before and after its’ decimation by atomic bomb, and return to Winnipeg to marry a former classmate and celebrate his 20<sup>th</sup> birthday. Bennett was selected to share his story as he was deemed to have been the youngest of the ‘C’ Force troops (enlisted at 15) and that his experience during the Battle of Hong Kong, in

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<sup>798</sup> *Winnipeg Free Press*, 11 September 1946.

<sup>799</sup> *Winnipeg Free Press*, 1 November 1946. The article notes Skwarok as Edward, while *Canadian Prisoners of War and Missing Personnel in the Far East* (Ottawa: King’s Printer, 1943) (Corrected as to 18 September 1945) lists him as Leonard E Skwarok.

<sup>800</sup> *Winnipeg Free Press*, 11 November 1946.

<sup>801</sup> *Winnipeg Free Press*, 7 January 1947.

<sup>802</sup> *Winnipeg Free Press*, 27 March 1947.

<sup>803</sup> *Winnipeg Free Press*, 14 August 1946.

<sup>804</sup> *Winnipeg Free Press*, 14 August 1946.



the Hong Kong POW Camps and at the Omine POW Camp and mine were considered “typical and representative.”<sup>805</sup>

The content and wording of the trial and POW articles suggests that the staff at the *Winnipeg Free Press* and *Sherbrooke Daily Record* sought to offer their readership a means of reflecting on the turmoil the ‘C’ Force POWs faced throughout the war years. In this way, the newspaper served as a source of information for the community to come to terms with the plight of the Hong Kong POWs and acted as a forum for commemoration for those who had not made it home.

The third category of “minor” war crimes trial articles were ones that former POWs would have had great interest in as they dealt specifically with the alleged war criminals. Most of these articles offered brief notes and provided context for the trial including the name of the accused, the location of the camp, and the nature of the crimes. The callousness and brutality of the alleged crimes were central to the articles.<sup>806</sup> One interesting counter-example noted an individual who “inserted a ‘white page’ ...into the black record of Japanese atrocities and brutalities at Allied prisoner of war camps.”<sup>807</sup> The article explained that during a trial at Yokohama one particular camp commandant was heralded as improving the food and living conditions for the Allied POWs at Hakodate substantially.

The articles presented the accused and their crimes through a more racialized and vengeance-based lens than is evident in the trial transcripts or the recollections of actual participants. This has gone further in promoting a victors’ justice perspective than the trials themselves. The efforts of the Canadian Detachment and the actual function of the “minor” war

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<sup>805</sup> *Winnipeg Free Press*, 19 December 1946 as well as 20, 21 and 22 December 1946. The titles of the three follow-up articles included: “Grim Christmas Battle,” “Prisoner in Jap Mine,” and Day of POW Liberation.”

<sup>806</sup> *Winnipeg Free Press*, 15 November 1946, 8 January 1947, 15 April 1947, 25 April 1947.

<sup>807</sup> *Winnipeg Free Press*, 5 November 1946.

crimes trials stand against notions of victors' justice, newspaper reports provide one explanation for why some of those ideas linger. Although they were provided with the practical information about the trials (charges, victims, witnesses, results), the newspaper editors tended to take it upon themselves to add racialized language and in some cases, a more vindictive tenor to the trials. This language went a long way to show the newspapers readership that something was being done as a result of the plight of the Hong Kong POWs, but did little to advance the understanding that justice was being served in a balanced and rigorous manner.

With much of the emphasis on local victims in regional newspapers, prominence was necessarily shifted from presenting the trials on their own terms (in a neutral light) and highlighting their legalistic merits, to focusing solely on the victims. Thus, giving the reader the sense that the result of the trial mattered more in its relation to meting retribution in the name of the victim and their community than ensuring justice in the name of international law. While the trials themselves, in the context of the time, strove to provide even-handed justice, the interest of the newspaper reporters was more on showing the brutality of the actions and less on the courts, which may be one of the reasons why this 'victor's justice' legacy remains. If one only had newspaper reports to rely on, the "minor" war crimes trials surely would look as though most any Japanese accused was brutal in action and quickly served a variety of prison sentences. The subtleties and nuances of the courts were overlooked, as were the safeguards that ensured fairness whether they be written in the rules of procedure for the trials or implemented based on the legal ideals of the commissions themselves. Even when issues like acquittals and commutation of sentences arose, they were presented more as a shock and framed in a negative way.

Newspapers frequently misreported the findings of “minor” war crimes trials, erring on the side of severity, presumably as much out of sensationalism as out of misinformation. It was extremely hard for a prosecutor to get a specification to stick that alleged a war criminal had ‘contributed to’ the death of a POW through beatings, torture or other mistreatments. One example of this came in an article that noted Hashimoto Chogo had been sentenced to “15 years imprisonment for contributing to the deaths of two Canadian prisoners-of-war, G. R. MacLaughlin of Hamiota, Man., and Gerald Sneddin, Toronto.”<sup>808</sup> This had been alleged in specifications two and three against Chogo, but when the commission announced the finding in his trial, he was not found guilty of contributing to the death of the two men, only for abusing them.<sup>809</sup> A murder case was one thing, and proving death in those instances was more straightforward. If common sense or compassion made it clear that a violent beating had played a significant contributing role in the death one week later of an already physical compromised POW, proving that direct corollary was a herculean task, and rarely proved successful. More often, prosecutors had to settle with abridged findings that linked the defendant with the beating, but not the contribution to death. This important distinction often lost its message and was reported incorrectly. Certainly the original specification had a more galvanizing and attention garnering message than did the altered one, and the subtle difference had a more abrupt and meaningful connotation in a legal document than in a newspaper where the nuance meant less. This misreporting nonetheless provided a misleading and multi-faceted message.

Where racism did not appear to be an overwhelming, characterising feature of the “minor” war crimes trials in which the Canadians participated, some of the newspaper publications certainly left a lasting impression of the accused in a less than positive light. While

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<sup>808</sup> *Winnipeg Free Press*, 24 February 1947.

<sup>809</sup> *USA vs Hashimoto*, 42.

the term “Jap” was used freely and loosely,<sup>810</sup> featuring in almost every headline, other depictions and generalizations put the Japanese in a negative light. Descriptions of the brutal actions of the accused were common, but not unwarranted. Characterizations of the Japanese as “savage,”<sup>811</sup> “brutal,”<sup>812</sup> “antagonistic,”<sup>813</sup> “ruthless,”<sup>814</sup> and running “a veritable slave or punishment camp where mistreatment of prisoners was a practice”<sup>815</sup> left a pejorative legacy in print. If the trials functioned in a transitional environment that worked toward re-building relations with Japan, the newspaper reports remained fixated on the ‘us versus them’ dichotomy that was pervasive during the Pacific War.<sup>816</sup>

Beyond the regional perspectives in Winnipeg and Sherbrooke, the question begs how the Japanese-Canadian press grappled with the trials? Providing a voice for Japanese-Canadians during a period when it had been all but silence and dispossessed, *The New Canadian* offered a forum for community concerns and one which appears to have had some help from wartime Canadian censors during a period when most officials in Ottawa were unwilling to cede to Japanese-Canadian needs.<sup>817</sup> The publication showed little interest in the Pacific “minor” war crimes trials generally. There were no articles or public interest pieces on the trials generally or specifically, aside from that of Inouye Kanao.

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<sup>810</sup> Although the use of “Jap” was widespread, there was some sense that the term was offensive. The issue was noted judicially at the trial of Kaneko Takeo and Uchida Toshiharu, but was clearly understood from a Western perspective. See above at 239-240 and *USA vs Kaneko et al*, 436.

<sup>811</sup> *Winnipeg Free Press*, 21 November 1946.

<sup>812</sup> *Winnipeg Free Press*, 4 January 1947 and *Sherbrooke Daily Record*, 14 January 1947.

<sup>813</sup> *Winnipeg Free Press*, 4 January 1947.

<sup>814</sup> *Sherbrooke Daily Record*, 14 February 1947.

<sup>815</sup> *Winnipeg Free Press*, 8 January 1947.

<sup>816</sup> For a thorough discussion of the racially motivated character of the Pacific War see John Dower, *War Without Mercy: Race & Power in the Pacific War* (New York: Pantheon Books, 1986).

<sup>817</sup> Mark Bourrie, *The Fog of War: Censorship of Canada’s Media in World War Two* (Vancouver: Douglas & McIntyre Publishers, 2011), 13.

*The New Canadian* published nine articles about Inouye that followed the general narrative of his legal saga. The paper in no way held a brief for Inouye and considered him a “Nisei Traitor.”<sup>818</sup> The articles noted he was a British Columbian-born Japanese-Canadian, but followed much the same line as did the other Canadian newspapers in reporting on his legal story. His capture, war crimes trial, assignment of a treason trial, death sentence, execution date as well as a brief follow-up article quoting Puddicombe were all reported to the Japanese-Canadian community.<sup>819</sup> *The New Canadian* distanced itself (and its readership) from the image of the “disloyal” *Nisei* and condemned Inouye’s (and Kawakita Tomoya’s) actions in connection to potential implications for the vast number of “loyal” *Nisei* in Canada. In an editorial, Kasey Oyama noted that:

We need waste no sympathy on the account of Inouye and Kawakita. They should have known well the implication of their actions and if their penalty is death, it is well-deserved. What causes us concern, however is the fact that some unscrupulous politicians are not above exploiting these cases – representing them as typical of the Canadian and American *Niseis* and in this way stirring up racial hatred.<sup>820</sup>

### **Distribution of Information**

While it is clear that content was made available to regional newspaper editors who decided what to publish, the efforts of officials in the Japan and in Ottawa ensured that the trials received this publicity. Disseminating information about the trials was a key priority of the occupation authorities who administered the trials, the members of the Canadian Detachment, as well as officials from DND. Correspondence in any form was slow and challenging from Tokyo to Ottawa, but there was a great deal of continuity in the data supplied for newspaper reports. As

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<sup>818</sup> *The New Canadian*, 6 September 1947.

<sup>819</sup> See *The New Canadian*, 19 September 1945, 8 June 1946, 11 January, 22 March, 26 April, 3 May, 21 June and 28 June 1947.

<sup>820</sup> *The New Canadian*, 28 June 1947.

a rule, the WCIS in Ottawa believed that “the maximum amount of publicity should be given to the progress being made in Japan and Hong Kong,” and Orr promoted this view, “not only for the benefit of the general public but more particularly for the benefit of the returned Prisoners of War.” Responding to a decision to suppress information for release, a WCIS official expressed the instructive motivation behind the press releases, noting that “[i]t is nearly a year since our men returned from the Far East – the public has almost forgotten about it, and if war crimes trials are to be of any value the public consciousness of them should be kept alive.”<sup>821</sup>

This intention to publicize the trials for the good of the POWs and to further the didactic goals of the trials gave officials the opportunity to exercise some amount of control over what information was released. Newspapers and other forms of mass media are imperfect gauges of public opinion and do not necessarily provide an accurate measure of what issues matter to their audience. It has been argued that “mass media...reflect[s] not a world out there, but the practices of those having the power to determine the experience of others.”<sup>822</sup> In the case of reports on “minor” war crimes trials in Japan and Hong Kong this distribution of information was two-tiered. Reports came from the Canadian Detachment lawyers, either through the SCAP Occupation Public Relations office direct to Canadian newspapers, or they travelled from the lawyers through DND for distribution.

Initially, the Canadians working at the Yokohama War Crimes Trials packaged together the results of their trials or pertinent information about them – charges, Canadians named, specific camps – and forwarded it to the SCAP Public Relations officer with recommendations

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<sup>821</sup> LAC, RG 24, Vol. 2892, HQS 8959-9-4 Part 3, Lt. Col. M.J. Griffin, Adm WCIS, Ottawa, to D ADM, Ottawa, 30 July 1946.

<sup>822</sup> Harvey Molotch and Marilyn Lester, “News as purposive behaviour: On the strategic use of routine events, accidents, and scandals,” *American Sociological Review* 39, no. 1 (February 1974): 101-112 as cited in Roberto Franzosi, “The Press as a Source of Socio-Historical Data: Issues in the Methodology of Data Collection from Newspapers,” *Historical Methods* 20, no. 1 (Winter 1987): 6.

of the Canadian provinces or cities the stories be received with interest. SCAP forwarded the information “direct to the home town papers where they would likely be of interest, such as in cases involving Winnipeg Grenadiers direct to the Winnipeg Free Press and Tribune, etc.” From there, it was up to the editors of local newspapers to make information available to their readership. The Detachment also forwarded summaries of trials to the Secretary of National Defence and specifically the WCIS with similar information for distribute through their own channels. The summaries identified an individual or camp staff, explained what the charges were, if any Canadians were implicated as victims and the results of the trial. They also offered suggestions as to where the information would be best communicated.<sup>823</sup>

One example of how the first method functioned – and surprisingly, how promptly it functioned given the general delays in correspondence typically faced by the Detachment – is illustrated in a communication from Oscar Orr to the SCAP Legal Section Public Relations Officer in Tokyo. On 22 October 1946 Orr forwarded information from a report that mentioned Earl Jacobson of Vancouver to the Public Relations Office and noted that it would be well served if communicated to the *Vancouver Province*, the *Vancouver Sun*, and the *News Herald*. The following day Otto G.L. Schaler, Chief of Public Relations Division, confirmed that the information had been packaged and sent to those newspapers. The *Vancouver Sun* ran an article about the trial on 24 October 1946 headlined “Jap Who Beat Vancouver Man Faces Trial,” while the *Vancouver News Herald* ran one the following day titled “Jap On Trial For War Crimes, Beat

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<sup>823</sup> LAC, RG 24, Vol. 8018, TOK 1-2-1, Lt. Col. Oscar Orr, Tokyo to Secretary, Department of National Defence, Ottawa, 31 May 1946. In this particular piece of correspondence, Orr notes that a conviction and sentence of ten years imprisonment had recently been awarded against Ichiba Tokuichi of Oeyama Camp and that he was acquitted of the murder of an American POW but found guilty of abuse and torture. Orr recommended that as Canadian depositions had been used in the trial and that Grant and O’Conner had been implicated, the information should be communicated to the press in Manitoba. Ichiba was tried in conjunction with four other individuals. See Yokohama Case No. 14. Another example of a trial with Canadian interest but as prosecuted and defended by Americans was that of Fujii Sannojo who had been found guilty of beating Winnipeg Grenadier, Pte James W. Hallbert. Lt. Col. Oscar Orr, Tokyo, to Secretary, Department of National Defence, Ottawa, 13 November 1946.

City Vet.”<sup>824</sup> The papers reported that Jacobson had been overwhelmed by fumes from a sulphur blast furnace he was operating at Sendai I camp, and was attacked by a guard wielding a shovel. Jacobson tried to defend himself and was given solitary confinement by the Camp Commandant Inaki Makoto. Orr offered information relating to another trial about three individuals who had been tried separately and contended that it would be of “great interest to Canadians in general, and in particular, Canadians served by” newspapers in Ottawa, Winnipeg, Montreal, Quebec and London.<sup>825</sup> The public relations officer then forwarded the materials from Tokyo to specific newspapers in Canada with the intention that the editor would recognize the local interest in the story and publish it.<sup>826</sup>

National Defence remained hesitant about this method of communication, worrying that the SCAP Public Relations officer communicating directly with Canadian regional newspapers may cause some friction with their American colleagues. The DND Public Relations Office was averse to “stealing their thunder”<sup>827</sup> and wanted to ensure that no news reports made it to press without first confirming that the American authorities had already released the information. DND requested in June 1946 that the Detachment begin working with the Public Relations Officers in Japan to forward the information to Ottawa first for confirmation that it had been

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<sup>824</sup> See RG 24, Vol. 8019, TOK 1-2-5-3, communications between Lt. Col. Oscar Orr, Tokyo and Otto G.L. Schaler, Chief, Public Relations Division, 22, 23 October 1946. For newspapers see *Vancouver Sun*, 24 October 1946 and *Vancouver News Herald*, 25 October 1946. Jacobson appears to have been a Canadian Merchant Seaman. See Puddicombe fonds, Vol. 1-11.

<sup>825</sup> LAC, RG 24, Vol. 8019, TOK 1-2-5-3, Lt. Col. Oscar Orr, Tokyo, to Public Relations Officer, Legal Section, SCAP, nd. Orr recommends the *Ottawa Citizen and Ottawa Journal* for Ottawa, the *Winnipeg Free Press* and *Winnipeg Tribune* for Winnipeg, the *Montreal Star* and *La Presse* for Montreal, the *Quebec Chronicle* and *L’Action Catholique* for Quebec and the *London Free Press* for London.

<sup>826</sup> The SCAP Legal Section Public Relations Office was very keen to know what material they forwarded out was actually getting published in Canadian, Australian, Chinese, English and American newspapers. They were forbidden by a War Department directive to request articles from news agencies so in June 1946 they sent a general request to all foreign departments to forward any articles relating to the Legal Section to the Public Relations Office. See LAC, RG 24, Vol. 8019, TOK 1-2-5-3, Executive Officer, SCAP Legal Section, Public Relations Office, Tokyo to All Divisions, 20 June 1946.

<sup>827</sup> LAC, RG 24, Vol. 8018, TOK 1-2-1, Major-General E.G. Weeks, Adjutant General, Department of National Defence, Ottawa, to Lt. Col. Oscar Orr, Tokyo, 17 June 1946.



released by Public Relations at HQ SCAP before it being disseminated to the Canadian public.<sup>828</sup> Officials in Ottawa, ever hesitant to upset their southern neighbours delayed several articles on trials that had taken place without Canadian representation as they lacked the resources to fully monitor what was being published in the American newspapers and did not want the Canadian news media running the stories first.<sup>829</sup> Communications still continued through both routes throughout the period while the Canadian Detachment was in the Pacific.

It is less clear how the majority of information was passed from Hong Kong to Canadian newspapers. There were instances where Orr forwarded information relating to trials in Hong Kong to the Public Relations Officer. Orr forwarded the charge sheet and abstract of evidence for the Shoji trial to the Public Relations Office in March 1947, and the result of the Inouye Supreme Court verdict in April 1947.<sup>830</sup> How much information came directly from Puddicombe to the Canadian press or to DND is unclear.

Two other ways that the Detachment was able to directly disseminate information about the trials took place in theatre and after returning to Canada. The Detachment in Japan provided content to SCAP through monthly summaries for publication in a broader series, and also through post-trial reports that each lawyer submitted to the Prosecution Division. After returning to Canada the members of the Canadian Detachment were given the opportunity to share their stories through lectures and other speaking opportunities. Although these mediums did not have

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<sup>828</sup> LAC, RG 24, Vol. 8018, TOK 1-2-1, Major-General E.G. Weeks, Adjutant General, Department of National Defence, Ottawa, to Lt. Col. Oscar Orr, Tokyo, 17 June 1946.

<sup>829</sup> LAC, RG 24, Vol. 8018, TOK-1-2-5, Lt. Gen. M.J. Griffin, Ottawa, Department of National Defence, to Lt. Col. Oscar Orr, Tokyo, Despatch No 7, nd. Griffin asked Orr to speak with the SCAP Public Relations officers or press representatives to see if there was a better way to keep an eye on the situation.

<sup>830</sup> RG 24, Vol. 8019, TOK 1-2-5-3, Lt. Col. Oscar Orr to Public Relations Office, 12 March 1947 and Lt. Col. Oscar Orr to Public Relations Office, 25 April 1947.

the distribution figures that newspapers did, they provided more detailed content to individuals that had interest in the trials, particularly government officials, veterans, and law students.

The Detachment was required to fill out monthly summary reports and submit them to Legal Section to be reported to SCAP. These monthly summaries were amalgamated and published as a month summary, *Non-Military Activities in Japan and Korea* by General Headquarters (GHQ), SCAP, which integrated reports from political, economic, social sectors of the occupation staff.<sup>831</sup> SCAP officials asked for narrative summaries providing information on their involvement in the investigation, apprehension, and prosecution of war criminals as well as data related to the trials of war criminals.<sup>832</sup> The information for these reports also contributed to the writing of “Historical Monographs” by the SCAP staff that summarize the efforts by occupation authorities to re-make Japan economically, politically and socially after the end of the Pacific War.<sup>833</sup> Although less widely available, the post-trial reports furnished by the prosecution also added to the institutional records of the trials.<sup>834</sup>

Such a novel topic, participating in war crimes trials in far off lands, created several speaking opportunities to the Detachment members upon their return to Canada. Puddicombe and Dickey provide the clearest picture due to Puddicombe’s avid record keeping and Dickey’s propensity to letter-write. They had the opportunity to speak with business and political personalities, emerging legal minds, as well as veterans at local Legions. En route to Ottawa, Dickey made a stop at the UBC Law School to check in with George Curtis. While there he was

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<sup>831</sup> LAC, RG 24, Vol. 8019, TOK 1-2-5-3, Supreme Commander for the Allied Powers, Check Sheet, Report for Monthly Summation, August 1946. See also GHQ, SCAP, *Summation Non-Military Activities in Japan and Korea*. These were published monthly for 36 months beginning in September 1945.

<sup>832</sup> LAC, RG 24, Vol. 8019, TOK 1-2-5-3, Supreme Commander for the Allied Powers, Check Sheet, Report for Monthly Summation, August 1946.

<sup>833</sup> For the trials see in particular SCAP, *Trials of Class “B” and Class “C” War Criminals* (Monograph #5, History of the Non-military Activities of the Occupation of Japan).

<sup>834</sup> AM, Dickey Papers, Folder 5.0, Trial of Takio Kaneko and Teshiharu Uchida, nd., and Report on Trial of Tetsutoshi Yanaru, 24 January 1947.

afforded the opportunity to speak to class of law students about the trials, of which he noted that “no one had the nerve to leave so it could have been worse.”<sup>835</sup> After returning to Halifax, Dickey also spoke to the Halifax Commercial Club at a luncheon entitled “Experiences in Japan.”<sup>836</sup>

Puddicombe’s speaking engagements were more extensive. After arriving home in Montreal, he was invited to speak to Legion Branches, as well as the Rotary Club and Progress Club of Montreal. His speeches overviewed his experience and when in front of a Legion crowd, tended to deal with the military aspects of the Hong Kong saga in more detail. Puddicombe clearly took every opportunity to speak about his experience and revelled in the spotlight. In an address to the Ottawa Legion in 1951 he summed up his speaking experiences in his usual self-deprecating yet factual way:

Comrades, when Colonel Losland wrote me last month suggesting that I address you on the subject of War Crimes Trials in the Far East, I accepted with the same variety of alacrity that any old gaffer does when given the chance to tell his thread bare stories to what the ... gentry term “a captive audience.” For it is now five years past since the Canadians War Crimes Liaison Section, Japanese Theatre, set out for the Far East. It is nearly four years since its return. What I will discourse on tonight has been told man, many times, so often, in fact, that now I feel obliged to apologize when I mention that odyssey to Tokyo and Hong Kong. And my apologies are not always accepted. I have become a bore and, like all bores, love to find a fresh audience who, I hope, will be polite.<sup>837</sup>

Whether it was over drinks at the local Legion hall, in a law school classroom as a special interest subject, as a snippet in a metropolitan newspaper in Toronto, or in a tribute piece on the newsstand down the block from the childhood home of a fallen Hong Kong POW, Canadians had the opportunity to familiarize themselves with the “minor” war crimes trials in the Pacific.

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<sup>835</sup> Dickey to Mrs. W.B. Wallace, 10 March 1947.

<sup>836</sup> NSARM, MG 20, Commercial Club Fonds, Vol. 92, Luncheon Programmes, 1934-1956, 3 April 1947.

<sup>837</sup> Puddicombe fonds, Vol. 2-31, Address to Ottawa Branch, Canadian Legion, B.E.S.L., 14 May 1951.

Citizens in communities with the strongest connections to the POWs had access to the most frequent updates while the trials proceeded. The Canadian Detachment and DND made a concerted effort to publicize the trials generally and to disseminate content to local newspapers in areas with personal connections to victims of the alleged perpetrators. Although Brode may be correct that no collective national awareness existed about these trials, interests and passions varied regionally. POWs and Canadians with community and familial relationships to those implicated in the trials had the opportunity to engage with the proceedings through regular newspaper publications.

## Conclusion

Riding along in a Canadian Pacific Railway car from Vancouver to Calgary in March 1947, Major Dickey jotted some notes to his mother, mainly highlighting the family friends that he had visited along his rail trip home.<sup>838</sup> Dickey, the first of the lawyers to return to Canada, dutifully made his promised stops to pass along messages to the families of his network of colleagues due to arrive back in May. He spent time with Oscar Orr's wife in Vancouver, checked in on Henry Nolan's wife, and passed along messages to Lloyd Graham's fiancée and parents in Calgary.<sup>839</sup> He cared for Colonel Moss, whose ill-health continued, until they parted ways in San Francisco. Dickey also carried out Orr's final order, bringing Detachment member Arthur Hogg back with him, which almost delayed the men from departing Yokohama in the first place.<sup>840</sup>

While soaking in the "famous C.P. view of the Canadian Rockies" by train,<sup>841</sup> Dickey reflected on what had been an incredible and exhausting legal and personal experience in Japan. Overcoming his homesickness as he returned to Canadian soil, he could look back on his accomplishments with a sense of pride – and eventually nostalgia, given the weight he accorded his wartime service on his impressive *curriculum vitae* for the rest of his life.<sup>842</sup>

The Canadian Detachment's experience in Hong Kong and Japan was marked by extensive preparation and commitment to detail. These were overarching themes in Dickey's letters home and represent the larger experience of the men. All four lawyers sought to build the

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<sup>838</sup> Dickey to Mrs. W.B. Wallace, 10 March 1947.

<sup>839</sup> Dickey to Mrs. W.B. Wallace, 5, 9, 10, 14 March 1947.

<sup>840</sup> Dickey to Mrs. W.B. Wallace, 5 March 1947.

<sup>841</sup> Dickey to Mrs. W.B. Wallace, 10 March 1947.

<sup>842</sup> *The Mail-Star*, 11 February 1985, *The Chronicle Herald*, 29, 30 April 1996.

most thorough cases they could based the evidence available to them. As the Shoji Trial and the aftermath of the Inouye and Camp Case Trials demonstrated, outcomes were not predetermined. Sentences often erred on the side of caution rather than stringency. Although structural safeguards like maximum sentences were not built into “minor” war crimes trials (as they were in regular criminal cases), the judges supplanted their own ideas about justice and fairness onto the trials.

The energies expended by the Canadian Detachment members investigating, preparing, and prosecuting alleged war criminals, as well as the varied outcomes of the Hong Kong and Yokohama trials, defy crude consignment as simple victors’ justice. Certainly the trials had weaknesses – translation and the loose rules of evidence being but two – but they provided a response to war crimes that the international community would have been remiss to not provide. As historian Chris Madsen observes, military law and justice are pragmatic, situational, and reactionary, while civil law is idealistic and deliberate in its foundation.<sup>843</sup> The “minor” trials were borne out of the need for a measured and timely response to war crimes, and suited this purpose in the aftermath of the Second World War.

If one needs to situate the trials on some type of ‘fairness’ scale, as most commentators have been wont to do, then they fall between the misuse of Minear’s victors’ justice paradigm and Piccigallo’s decidedly favorable assertion that the “minor” trials universally upheld Allied ideals about justice and fairness.<sup>844</sup> The victors’ justice critiques are vanquished in light of the due process given to the accused, and the genuine efforts expended by the participants. These were not show trials. Nor were they infallible. The “minor” trials had problems and did not always offer the accused the ideal set of safeguards.

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<sup>843</sup> Chris Madsen, *Another Kind of Justice: Canadian Military Law from Confederation to Somalia* (Vancouver: University of British Columbia Press, 1999), 3-8.

<sup>844</sup> Piccigallo, *The Japanese on Trial*, 209-215.

The efforts of the Canadians explored in this study raise more questions about the planning and motivations at the helm of the trials. If they offered the accused due process, what did that due process serve? What did military law do in the long and short term? If the trials were not a case of victors' justice, to what degree were they retributive? To what extent did they serve as a didactic tool (both for the Japanese public and the international community more broadly)? Were they an instrument to ease the conscience of the Allies or to alleviate the tensions from veterans? Were they a stopgap measure, the result of a lack of faith in the potential for a nation to try their own war criminals?<sup>845</sup> No matter the motivation, whether it be judicial, retributive, performative, pedagogical, or consolational, the trials offered a framework that could have been used and improved upon in response to war crimes throughout the twentieth century, but instead gathered dust in file boxes.

If we view these trials as a starting point or a precedent for deterring war crimes (or for seeking justice when they have occurred), then their legacy is scant. The “minor” trials have fallen almost entirely into historical oblivion since the end of the Pacific War. At the same time, international war crimes courts have been in development, especially following the Vietnam War, inter-cultural clashes in the Balkans and Africa, in the development of an international criminal court in the 1990s, and involving issues around Guantanamo Bay. The processes of the “minor” trials have been ignored meaning that lessons learned from the trials could have been applied to the development of stronger institutions before they were needed again.<sup>846</sup> If the legal

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<sup>845</sup> These questions were heavily influenced by the conversations that took place at the Harvard Graduate Student Conference on International History: Law and International History, in Cambridge, Mass., on 14-15 March 2013. In particular, my thinking was informed by faculty respondent Dr. Christopher Capozzola and the members of the plenary panel.

<sup>846</sup> Pritchard, “Lessons from British Proceedings Against Japanese War Criminals,” and R. John Pritchard, “The Parameters of Justice: The Evolution of British Civil and Military Perspectives on War Crimes Trials and Their Legal Context (1942-1956),” in *International Humanitarian Law: Origins, Challenges and Prospects: Volume 3: Prospects*, ed. John Carey, R. John Pritchard, William V. Dunlop (Ardsley, New York: Transnational Publishers, 2006): 277-326.

community has missed the mark, there is promise in the emergence of academic works “re-discovering” the trials, including Suzannah Linton’s work on Hong Kong, R. John Pritchard’s recent additions to the British perspective, and this study focusing on the Canadian contribution.<sup>847</sup>

From a diplomatic perspective, the Canadian government remained hesitant and detached. When they wanted to yield influence they did not have the weight to secure it. When federal officials hoped to avoid domestic discord, they deferred to the British. The Canadian government sought involvement in the “minor” trials in an attempt to pursue justice for incidents that had directly harmed Canadian nationals. Lacking an occupation force, they had to rely on British and American authority and subsequently participated in the Tokyo Trial, thus shifting focus from Canadian nationals to larger politicized issues. When British officials nullified Inouye Kanao’s war crimes trial, the Canadian government opted to delay and avoid the question until the British offered a solution that kept Inouye far from Canadian soil. Conversely, when British authorities commuted Tokunaga and Saito’s sentences without referencing Canadian concerns, the Canadians had no power to influence the outcome – or to secure a comprehensive explanation.

The Canadians on the ground in Hong Kong and Japan were far more influential than their limited mandate would indicate. Puddicombe in particular prosecuted a lion’s share of the Allied cases in Hong Kong, and overrepresented Canadian interest in the invasion trials in light of the far larger numbers of British and Indian troops that fought in the battle. Beyond their orders to pursue specific Canadian cases, the Canadians served as pseudo-diplomats, meeting the repatriated Japanese-Canadians upon arrival in Japan, took on additional prosecutorial and

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<sup>847</sup> Linton, “Re-Discovering the War Crimes Trials in Hong Kong”; Pritchard, “The Parameters of Justice”; and the forthcoming study by Lorie Charlesworth, *The ‘Minor’ War Crimes Trials: A Socio-Legal Investigation of Victims’ Justice* (New York: Routledge, 2014).



investigative work, and immersed themselves as fully in the occupation atmosphere as time allowed. While the Canadian government sought to avoid over-extending itself, the members of the Canadian Detachment thrived on the experience, immersing themselves in their assignment and taking on additional tasks.

The trials and investigations reflected an evolving legal process. The men responded to the investigative challenges at the prisons and in the field, gathering the best sources they could to craft their cases. They worked with diverse groups of legal practitioners, sharing evidence and ideas, and crafted their cases in concert with the expectations of British and American authorities. Each trial posed specific challenges, even when the content was similar. Judges and defence counsels held different legal ideals and presented distinct counter-arguments. The trials reflected a learning process that required continual adjustments, from the first sessions in the spring of 1946 until Orr and Puddicombe tipped their caps respectively in April and May 1947.

To those Canadians who read about the verdicts and atrocities over coffee in Winnipeg, or the surviving POWs who filed affidavits recollecting their years of turmoil under the Japanese, the war crimes trials convened across the Pacific were relevant. For those who travelled to Hong Kong or Japan to serve as witnesses or prosecutors, the trials held obvious importance. Although a shift in focus has left us with a far better understanding of Canada's role in the Tokyo Trial, these "minor" trials were Canada's original intention: a direct response to war crimes committed against Canadian nationals. The Hong Kong War Crimes Courts and Yokohama War Crimes Trials have not had a lasting impact on international legal procedure, but are an important source of evidence in military and legal history. To the Canadians named in the specifications, whether they survived the ordeal or died at the hands of the Japanese, these "minor" war crimes trials were anything but minor.

### Appendix 1 – Trials Prosecuted by Major Puddicombe

Trial Type	Trial Reference	Trial Dates	Location	Accused	Position	Findin g	Final Sentence
Battle	235/1015		Hong Kong	Shoji Toshishige	Major-General; Commanding Officer 230 <sup>th</sup>	Not Guilty	Acquitted
Battle	235/1030		Hong Kong	Tanaka Ryosaburo	Major-General; Commanding Officer 229 <sup>th</sup>	Guilty	20 Years
POW (Camp Case)	235/1012		Hong Kong POW Camps	Tokunaga Isao	Colonel; In charge of all POWs in Hong Kong	Guilty	To Hang/Life
				Saito Shunkichi	Captain; Medical Officer for POW Camps	Guilty	To Hang/20 Years
				Tanaka Hitochi	Lieutenant; Chief of Intelligence, Camp Adjutant	Guilty	3 Years
				Tsutada Itsuo	Interpreter; Camp Staff	Guilty	2 Years
				Harada Jotaro	Sergeant; Camp Staff	Guilty	1 Year
POW	235/982		Hong Kong POW Camps/ <i>Lisbon Maru</i>	Niimori Genechiro	Civilian Interpreter	Guilty	15 Years
POW	235/927		Hong Kong POW Camps/ <i>Kempeitai</i>	Inouye Kanao	Civilian Interpreter	Guilty	To Hang (Not Confirmed)
<i>Kempeitai</i>	235/894		<i>Kempeitai</i>	Matsunobu Shigeru	Non-Commissioned Officer	Guilty	8 Years
<i>Kempeitai</i>	235/895		<i>Kempeitai</i>	Kurasawa Hideo	Warrant Officer; in charge of intelligence team	Guilty	6 Years
				Sano Toshiharu	Sergeant; Guard	Guilty	8 Years
				Hanada Zenji	Lance Corporal	Guilty	3 Years
				Sakamoto Isoji	Sergeant; Administration	Not Guilty	Acquitted

**Appendix 2 – Yokohama Trials Prosecuted by Lt. Col. Orr, Major Boland, and Major Dickey**

<b>Prosecutor</b>	<b>Docket No.</b>	<b>Trial Dates</b>	<b>POW Camp</b>	<b>Accused</b>	<b>Position</b>	<b>Finding</b>	<b>Final Sentence</b>
Orr	60	4-11 December 1946	Tokyo 3D	Yamanaka Toshitsugo	Civilian Guard	Guilty	4 years
				Shibata Teruo	Civilian Guard	Guilty	5 years
				Baba Kensako	Civilian Guard	Guilty	4 ½ years
Orr	91	27 January – 3 February 1947	Sumidagawa	Mizukoshi Saburo	Captain; Camp Commandant	Guilty	20 years
				Sasazawa Chuta	Captain; Camp Commandant	Guilty	Life
				Kobayashi Sadaharu	Sergeant (Camp)	Guilty	30 years
				Takahashi Hasanori	Civilian Guard (Freight Yard)	Guilty	2 years
				Fujita Shoshaburo	Civilian Guard (Freight Yard)	Guilty	10 years
				Yui Kiyoshi	Civilian Guard (Freight Yard)	Guilty	20 years
				Suzuki Hikari	Civilian Guard (Freight Yard)	Guilty	30 years
				Nishikawa Yoshio*	Civilian Guard (Freight Yard)	Guilty	4 years
Orr	115	23-24 December 1946	Tokyo 3D	Kondo Kanechi	Interpreter	Guilty	1 year
Orr	133	14-23 April 1947	Tokyo 3D, 10D, 14B	Uwamori Masao	Camp Commander Tokyo Area	Guilty	3 years
Orr	143	3 February – 19 March 1947	Oeyama and Tanagawa	Hazama Kosaku	Camp Commandant	Guilty	15 years
Boland	69	25 September 1946 – 11 February 1947	Niigata 5B	Yoshida Matsato	Camp Commandant	Severed from trial	-
				Sato Katsuyasu	Civilian Guard	Guilty	40 years
				Okuda Hyochi	Civilian Guard	Guilty	33 years

				Takahashi Takeo	Medical Orderly	Guilty	15 years
Boland	139	12-17 February 1947	Niigata	Hashimoto Chogo	Civilian Guard	Guilty	15 years
Boland (AP)	65	18 September – 27 November 1946	Sendai 1	Tsuda Koju	Civilian Guard	Guilty	Life
Boland (AP)	46	12 August – 1 November 1946	Sendai 1 and Tokyo 1	Chisuwa Takeichi	Lieutenant; Camp Commandant	Guilty	Life
			Tokyo 1	Nichizawa Masao	Lieutenant; Camp Commandant	Guilty	To Hang
			Tokyo 1	Kawamura Hiroshi	Private 1 <sup>st</sup> Class	Guilty	30 years
			Tokyo 1	Yamada Yoshitami	Sergeant	Guilty	15 years
			Tokyo 1	Kambe Hatsuaki	Civilian Guard	Guilty	40 years
			Tokyo 1	Shishido Shonosuke	Civilian Guard	Guilty	30 years
			Tokyo 1	Ikeda Sukenobu	Civilian Employee	Guilty	25 years
Dickey	76	5 September – 14 November 1946	Omine	Kaneko Takio	Camp Commandant	Guilty	28 years
				Uchida Teshiharu	Officer, Second-in-command	Guilty	15 years
Dickey	84	16 September 1946 – 23 January 1947	Omine	Yanaru Tetsutoshi	Camp Commandant	Guilty	15 years
Dickey	97	11-12 February 1947	Omine	Fukami Kazuo	Civilian Guard	Guilty	10 years

**Appendix 3a – “Appendix “B” – Hong Kong” from Final Report, War Crimes Investigation Section, 30 August 1947**

<b>Name</b>	<b>Camp</b>	<b>Employment</b>	<b>Sentence</b>
Genechiro NIIMORI	Hong Kong	Civilian Interpreter	15 years
HARADA	Hong Kong	Lt Camp Commandant	1 year
Kanao INOUE (The Kamloops Kid)	Hong Kong	Interpreter	To hang (Not confirmed, and later tried for treason. Guilty and hung 25 Aug 47)
Shunkich SAITO	Bowen Road Hospital	Medical Officer	To hang
Toshishige SHOJII	Hong Kong	Alleged OC Troops	Dismissed
T TANAKA	Hong Kong	Camp Adjutant	3 years
Isao TOKUNAGA	Hong Kong	Col i/c All PW in Hong Kong	To hang
I TSUTADA	Hong Kong	Interpreter	2 years
Rikie YABUKI	Hong Kong	Kempetai (SS)	10 years
Rysobura [sic] TANAKA	Hong Kong	Maj-Gen OC Troops	20 years

**Appendix 3b – “Appendix “A” – Japan” from Final Report, War Crimes Investigation Section, 30 August 1947**

<b>Name</b>	<b>Camp</b>	<b>Employment</b>	<b>Sentence</b>
Shigeo AKAMATSU	Oeyama	Sjt i/c Gen Admin	25 years
Kensaku BABA	Tokyo 3 “D”	Civilian guard	4 ½ years
Takeichi CHISUWA	Sendai 1	Lt Camp Commandant	To Hang
Hiroshi FUJII	Omori HQ Shinagawa Hospital	Lt (doctor)	12 years
Sannojo FUJII (Pop)	Ohasi	Civilian guard	5 years
Shosaburo FUJITA (Piston Fist)	Sumidagawa	Civilian guard	10 years
Kazuo FUKAMI (Brown Bomber)	Omine	Civilian guard	10 years
Chogo HASHIMOTO (Liverlips)	Niigata	Civilian guard	15 years
Kosaku HAZAMA (The Pig)	Oeyama	Lt Camp Commandant	15 years
Nobuo HOMA	Ohashi	Supply Sgt	15 years
Hiroji HONDA	Sendai 2	Lt Camp Commandant	20 years
Tokuichi ICHIBA	Oeyama	Sjt	30 years
Takio KANEKO	Omine	Lt Camp Commandant	28 years
Yashusi KIMURA (Horse Face)	Tokyo 3 “D”	Civilian	5 years
Isomi KINDAICHI	Ohasi	Civilian	12 years
Sadaharu KOBAYASHI	Sumidagawa	Sergt-Major	30 years
Kinichi KONDO	Tokyo 3 “D”	Pte Interpreter	1 year
Kinichi KONDO	Oeyama	Medical Orderly	12 years
Saburo MIZUKOSHI	Sumidagawa	Lt Camp Commandant	Life
Tomoki NAKAMURA	Tokyo 3 “D” and Niigata 15 “D”	Lt Camp Commandant	12 years
Masonobu NARIKAWA (Gammy Hand)	Oeyama and Tanagawa	Civilian guard	40 years
Yoshio NISHIKAWA (The Rabbit)	Sumidagawa	Civilian guard	15 years
Miyoroku OKADA	Narumi	Lt Camp Commandant	30 years
Hyoichi OKUDA (Little Caesar) (Slap Happy)	Niigata	Civilian guard	33 years
Yuhichi SAKAMOTO	Fukuoka 1 and 12	Lt Camp Commandant	Life
Chuta SASAZAWA (The Monkey)	Sumidagawa	Capt Camp Commandant	To hang
Katsuyasu SATO (Satan)	Niigata 5 “B”	Senior Veterans guard	40 years

Terue SHIBATA	Tokyo 3 (D)	Civilian guard	5 years
Hikari SUZUKI (Glass eye)	Sumidagawa	Civilian guard	30 years
Furanori TAKAHASHI	Sumidagawa	Civilian guard	5 years
Takeo TAKAHASHI	Niigata	Medical Orderly	15 years
Hiroshi TAKEUCHI	Niigata	Lt Camp Commandant	20 years
Fusao TOYAMA (Speedo)	Narumi	Sjt	30 years
Kojue TSUDA (The Frog)	Sendai I	Civilian guard	Life
Teshiharu UCHIDA	Omine	Sjt 2 i/c	15 years
Masao UWAMORI	Tokyo 3“D” 10“D” 14“B”	Capt Camp Commandant	3 years
Toshitsugo YAMANAKA	Tokyo 3 “D”	Civilian guard	4 years
Tetsutoshi Yanaru	Omine	Lt Camp Commandant	15 years
Hideo YASUTAKE	Fukuoka 2	Civilian guard	12 years
Kiyoshi YUI (Cisco Kid)	Sumidagawa	Civilian guard	30 years
Miki TARODOCHI	Oeyama	Sjt	1 year
Sukenobu IKEDA	Tokyo 1	-	25 years
Hatsuaki KAMBE	Tokyo 1	-	Life
Hiroshi KAWAMURA	Tokyo 1	-	To hang
Masao NICHIZAWA	Tokyo 1	-	To hang
Shonusuke SHISHIDO	Tokyo 1	-	30 years
Yoshitami YAMADA	Tokyo 1	-	15 years
Ichisaku KOJIMA (Whiskers)	Niigata	Sup Rinko Coal Mine	Acquitted
Kanzaburo YOKOYAMA (Wrestler)	Niigata	Veterans guard	4 years
Konemasu UCHIDA (Pete the Tramp) (Cyclone Pete)	Niigata	Sjt	4 years

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