

MINUTE PAPER

SUBJECT: TRIAL OF JAPANESE WAR CRIMINALS : REAR ADMIRAL K. HAMANAKA,
COMMANDER M. TAKASAKI.

D. P. W. & I (for Confirming Authority).

I have read through the proceedings of the trial convened under the War Crimes Act for the joint trial of the above two officers, when the Court found Baron Takasaki not guilty but Rear Admiral Hamanaka guilty and sentenced him to death with a recommendation to mercy.

2. I have also read the petition of Rear Admiral Hamanaka against the finding and sentence of the Court.

3. These two officers were charged with murder in that they in or about the month of June 1945, unlawfully ordered and caused to be carried out, the execution of two Australian prisoners of war.

4. This trial links up with that of Lt. Yunomura who was the officer in charge of the party that carried out the execution of these prisoners of war on an execution order signed by Rear Admiral Hamanaka and who was condemned to death by a court-martial. I reported upon Lt. Yunomura's case on 16th January, 1946 and advised that the sentence of death should not be confirmed but I understand that in spite of that advice, the sentence has been confirmed and it is proposed to execute the Lieutenant.

5. The conduct of the present Court was not altogether satisfactory from the fact that both officers were defended by the same defending officer who was placed in an almost impossible position because the two defendants in giving evidence were directly contradicting each other, Rear Admiral Hamanaka stating that he was persuaded to consent to the order for the execution by Baron Takasaki and Baron Takasaki denying that he knew anything about it until after it was all over.

6. Rear Admiral Hamanaka's evidence was supported by that of three other Japanese witnesses but presumably this conflict of evidence was sufficient to leave a doubt in the mind of the Court and as stated above, the Court found the Baron not guilty. Incidentally, the Baron had been educated in England and had taken a B.A. at ~~the~~ Cambridge University.

7. Rear Admiral Hamanaka testified that he had regretfully consented to the execution as he had received orders from higher command that all airmen prisoners of war who had been bombing towns in the East Indies should be executed without trial. The Court in sentencing the Rear Admiral to death added a rider recommending the Admiral to mercy.

8. In his petition, the Admiral raises the question of jurisdiction of the Court, and as previously advised, in my opinion the Court had jurisdiction to conduct the trial. The Court was properly constituted and there is evidence to support the finding and sentence of death, which may legally be confirmed.

9. The Admiral's past history and the evidence of his efforts to prevent further fighting and blood-shed after the signing of the capitulation give ground for the recommendation of the Court to mercy and I can see no reason why that recommendation should not be given effect to.

10. I would point out however, that the Rear Admiral is much more responsible for the execution of these two prisoners

war than Lt. Yuncura. The Admiral signed the order for execution and all that Lt. Yuncura did was to carry out this written order of his superior officer. I would suggest that if the recommendation of the Court for mercy is to be considered by the confirming authority, it would be unjust that Rear Admiral Hamanaka should escape the death penalty while Lt. Yuncura, who I think has not committed a crime, should suffer such penalty and therefore that if Rear Admiral Hamanaka is not to be executed, the sentence on Lt. Yuncura should be reconsidered.

11. I would suggest the confirming authority should personally read the petition of the Admiral.

Thomas Lubens

11.2.46.

JUDGE ADVOCATE GENERAL.