

An Unjust Execution:
A Case Study of Inouye Kanao, the Kamloops Kid

by

Kyla Fitzgerald

B.A., University of Victoria, 2014

A Thesis Submitted in Partial Fulfillment of the
Requirements for the Degree of

MASTER OF ARTS

in the Department of History

© Kyla Fitzgerald, 2020
University of Victoria

All rights reserved. This thesis may not be reproduced in whole or in part,
by photocopy or other means, without the permission of the author.

An Unjust Execution:

A Case Study of Inouye Kanao, the Kamloops Kid

by

Kyla Fitzgerald
B.A., University of Victoria, 2014

Supervisory Committee

Dr. John Price, Co-Supervisor
Department of History

Dr. Lynne Marks, Co-Supervisor
Department of History

Abstract

This thesis examines the legal case of Inouye Kanao, a second-generation Japanese Canadian who was executed for high treason in August 1947 in Hong Kong. In this thesis, I trace not only Inouye's legal case, but also his early life, the broader political context, diplomatic correspondence, and other war crimes cases. By employing race-thinking and Critical Race Theory as theoretical frameworks, I consider the role of race and racism and aim to better understand its influence on Inouye's legal case. In doing so, this thesis challenges previous narratives and misinformation about Inouye. I conclude that racism was a significant factor that affected all aspects of Inouye's case, resulting in an unjust execution that did not reflect the crimes. Ultimately, Inouye was executed not because of his actions but because he was racialized as a treacherous and cruel Japanese Canadian.

Table of Contents

Supervisory Committee	ii
Abstract.....	iii
Table of Contents.....	iv
Acknowledgements.....	v
Introduction.....	1
Chapter 1: Setting the Stage.....	21
Chapter 2: Inouye and the Hong Kong “Minor” War Crimes Trials.....	46
Chapter 3: Inouye’s Appeal and the Treason Trial.....	90
Conclusion	120
Bibliography	133

Acknowledgements

I would like to express my gratitude to my supervisory committee. To Dr. John Price for his ongoing patience, insights, and most importantly, for introducing me to the story of Inouye Kanao during my undergraduate studies. To Dr. Lynne Marks for her support and thoughtful feedback as a second reader.

I would like to thank the Department of History, Faculty of Graduate Studies, and the *Landscapes of Injustice Project* for their generous financial support and invaluable opportunities. In particular, I would like to thank Heather Waterlander for her guidance and office chats.

Finally, I would like to acknowledge my family and friends. To my parents, Naomi and Mickey, for their love, compassion, and care. To Eban for his words of encouragement and always being by my side. To Sadie, Shika, Erin and Cole, Bazzi, Joel, Phil and his family, Jose and Susan, and Charlotte for their friendship, flexibility, enthusiasm, and willingness to listen throughout this time.

Introduction

This thesis project began nearly ten years ago in a Japanese history class during my second year of university. Struggling to settle on an essay topic, my professor suggested I write about Kanao Inouye,¹ also known as the Kamloops Kid, a Japanese Canadian man executed for war crimes and treason in Hong Kong after the Second World War. As I began my research, I learned about Inouye's early life in Canada, his alleged mistreatment of Canadian prisoners of war (POW) and Hong Kong civilians, and his subsequent trials. I was captivated. I was struck by Inouye's story, the inconsistencies of the trials and law, as well as the severity of the sentencing. Inouye's identity as a dual national, Japanese Canadian, also resonated with me. I shared the same dual nationality as Inouye and was about to make a formal declaration about whether I would choose to become either a Japanese or Canadian citizen, as per Japanese citizenship laws. I understood some of the struggles with allegiance to two countries expressed in Inouye's story. Since then, I have been committed to understanding and raising awareness of Inouye's story in history, arguably one of the more unique and complex cases to emerge from World War II. This thesis is an attempt to do so.

Kanao Inouye was born on 24 May 1916 in Kamloops, British Columbia. His parents, Mikuma Asada and Tadashi "Tow" Inouye were *Issei* or first-generation immigrants from Japan, who had five children with Kanao being the youngest and only son. After graduation, Inouye moved to Tokyo in 1936 to study Japanese and Agriculture; however, he withdrew from his studies due to health problems. In 1942, Inouye began serving as an interpreter for the Japanese

¹ In this thesis, I present Inouye's name using both the Japanese name order of surname, given name (Inouye Kanao) and the Western name order of first name, last name (Kanao Inouye), as it appears in both forms in the archival material, and to reflect Inouye's dual nationality.

Imperial Army in Hong Kong at the Sham Shui Po prisoner of war camp, which included captured Canadian soldiers. At Sham Shui Po, Inouye held a reputation for being a cruel and unpredictable camp official, especially towards the Canadian POWs. According to Canadian POWs, he would allegedly yell, slap, and beat soldiers claiming that it was in retaliation for the racial prejudice he faced back in Canada. After being discharged in 1944, Inouye returned to Japan but went back to Hong Kong shortly after to act as an interpreter for the Kempeitai, the military police for the Japanese Army. At the time, the Kempeitai led counter-espionage interrogations of suspected Hong Kong civilians. There, Inouye allegedly participated in the maltreatment and beatings of Hong Kong civilians, including water torture, whippings, and cigarette burns.

At the end of the war, Inouye was arrested and tried for war crimes in May 1946. Led by the British Military Tribunal, the trial's primary focus was Inouye's ill-treatment of the Hong Kong civilians during his second round of service. The prosecution claimed that Inouye led and actively participated in the mistreatment of at least nine individuals and was responsible for the deaths of four detained civilians. In his defence, Inouye denied active involvement in the ill-treatment of the civilians, claiming that he was merely acting as an interpreter. Inouye argued that he was only following his superiors' orders, and if he failed to do so, the outcome would have been severe punishment. The Court found Inouye guilty of committing war crimes with a special finding that he did not contribute to the deaths of the Hong Kong civilians based on a lack of evidence. The Court still sentenced Inouye to death by hanging.

Inouye petitioned the guilty verdict, arguing that not only was his sentence unduly severe, given the crimes and evidence but also that the military tribunal had no right to charge him because he was a British subject through Canadian birth. Inouye submitted a copy of his birth

certificate as proof and successfully overturned his sentence. This decision meant that Inouye was in the position of never being tried at all and would be released. Diplomatic uncertainty ensued with British and Canadian officials grappling with how to deal with Inouye's case. Ottawa eventually settled on minimal involvement in hopes that British officials in Hong Kong would deal with Inouye. Conversely, in Hong Kong, Canadian prosecutors were eager to see Inouye executed for his alleged crimes, seeking assistance from Hong Kong officials to build another case. These efforts resulted in a second trial in 1947. This time, British authorities charged Inouye with high treason in a civil court under the British Treason Act of 1351, based on him being a British subject.

Similar to the war crimes tribunal, the treason trial focused on Inouye's alleged crimes during his interrogations of Hong Kong civilians. The prosecution accused Inouye of aiding and abetting the Japanese Army while being a Canadian born, British subject, using Inouye's birth certificate as primary evidence. Inouye contended that he was always Japanese and never a British subject. Inouye claimed that his childhood in Canada was difficult, and he frequently encountered racial prejudice, which prompted his return to Japan after graduation. Despite Inouye's arguments, the Court found Inouye guilty of high treason and sentenced him to death by hanging. Subsequent petitions contesting the Court's verdict were unsuccessful, and Inouye was executed on 26 August 1947.

Reactions and interpretations of Inouye's alleged crimes and trials since his execution ranged from sympathy to contempt. For example, Roy Ito, a Japanese Canadian veteran who served as a court monitor for Inouye's war crimes trial, questioned the fairness and severity of Inouye's sentencing. In his book, *Stories of My People*, Ito contemplated whether Inouye's case

was an example of “Victor’s Justice” when other Japanese soldiers received lighter sentences for even harsher crimes.²

Others have reacted with disdain towards Inouye and his actions and have used his story as an example and evidence of a disloyal Japanese Canadian who committed crimes against Canadian soldiers during the Second World War. For instance, David Bercuson, a military historian at the University of Calgary, chose Inouye as one of the top ten worst Canadians in *The Beaver Magazine*’s 2007 issue. He described Inouye as someone who “took particular relish in beating and otherwise maltreating the prisoners.”³ More recently, Brad Hunter has reproduced Bercuson's perspective in a 2018 article for the *Toronto Sun*, “KAMLOOPS KID: Treason treated with rope,” in which Hunter portrays Inouye as a “fanatic” who “committed a litany of horrors on Allied prisoners of war.”⁴ Hunter stated that Inouye's execution is "instructive" for how Canada should treat Islamic extremists, proclaiming that "the Allies had moral clarity about what to do with traitors and war criminals."⁵ Sensationalized pieces about Inouye, such as Bercuson's and Hunter's articles, are often rife with factual errors, omissions, and anti-Japanese sentiment that not only obscure facts but also distort our understanding of Inouye's case.⁶ Consequently, the portrayal of Inouye as a disloyal Japanese Canadian, fueled by rage and

² Roy Ito, *Stories of My People: A Japanese Canadian Journal* (Hamilton, On: Promark, 1994), 356.

³ David Bercuson, Michael Bliss, Graham Broad, Margaret Conrad, et al., "Canada's Hall of Infamy," *The Beaver* 47, no. 4 (Aug/Sept 2007): 31.

⁴ Brad Hunter, “KAMLOOPS KID: Treason treated with rope,” *Toronto Sun*, November 4, 2018, 1.

⁵ Ibid.

⁶ Kathleen, E Tsuji, “Three Eras of Citizen-Rights in Canada: An Interpretation of the Relationship Between Citizen-Rights and Executive Power,” MA Thesis, University of Victoria, 2013, 129.

revenge, continues even today. However, a closer reading of Inouye's case reveals a much more complicated and multilayered story.

In this thesis, I address Inouye's legal story and seek to understand what occurred. Inouye may have been guilty of war crimes; however, I argue that his death sentence by hanging was unduly severe given the nature of his crimes and that racism and revenge significantly influenced Inouye's trials and their outcomes. My intention is not to dismiss Inouye's actions or invalidate POWs and Hong Kong civilians' experiences, but rather to show that Inouye was both a perpetrator of abuse and a victim of abuse and racism. Ultimately, Inouye was executed not because of his actions as an interpreter for the Imperial Japanese Army and Kempeitai, but because he was racialized as a vindictive Japanese Canadian. Scholars have never adequately addressed the influence of racism in Inouye's legal story; yet, it is present in all aspects of the case from the diplomatic correspondence, and the trials, to the sentencing.

Historiography

To date, historical literature on Inouye's legal story is sparse. Initially, most historical work focused primarily on Inouye's interaction with Canadian POWs at the Sham Shui Po prisoner of war camp. These pieces are merely brief paragraphs drawn from anecdotes and limited sources.⁷ As government and archival sources have become more readily available, scholars have made more comprehensive and critical analyses of Inouye and his case. Japanese Canadian historian and veteran, Roy Ito was the first to write about Inouye and the trials. Ito was a *Nisei*, a second-generation Japanese Canadian, born in British Columbia. He and his family

⁷ Granatstein et al., *Mutual Hostages: Canadians and Japanese During the Second World War* (Toronto: University of Toronto Press, 1992).; Bercuson et al., "Canada's Hall of Infamy." *The Beaver* 87 (2007).

were forcibly moved to a sugar beet farm in Alberta and eventually relocated to Kaslo, British Columbia. Ito later enlisted and served as a sergeant with the Canadian Intelligence Corps in India and South East Asia. Ito published two books that detailed the stories of Japanese Canadians who served during the First and Second World Wars. As a court monitor for Inouye's war crimes trial, Ito's accounts and analysis of Inouye's trials made a significant impact on the historiography about Inouye. These accounts focus on both the war crimes and treason trials, not just Inouye's interaction with Canadian POWs.

In the first book, *We Went to War*, published in 1984, Ito summarizes both trials and argues that the sentencing was too severe.⁸ Ito admits that his first reaction to Inouye was one of intense dislike, but when Inouye received the death sentence, Ito was "shocked and genuinely sorry" for him.⁹ Ito concludes that trying Inouye in Hong Kong was the right decision, but if he were tried on Canadian soil, the sentence would have been less severe than the death sentence. Ito suggests, however, that a trial in Canada would have "exposed Japanese Canadians to further outbursts of terrible abuse, hatred, and threat."¹⁰

In 1994, Ito published *Stories of My People*, where he shares his memories of the trials and grapples with his conflicted emotions of seeing a fellow Nisei tried for war crimes.¹¹ Ito further builds on his argument from his first book that Inouye's sentence was too severe. Ito supports Inouye's guilty verdict but contends that the sentence was unjust, and Inouye was

⁸ 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, 1984).

⁹ *Ibid.*, 270.

¹⁰ *Ibid.*

¹¹ Ito, *Stories of My People*.

ultimately a victim of Victor's Justice. To support his argument, Ito presents a list of other Canadian and Japanese soldiers guilty of war crimes who received lighter sentences. In particular, Ito highlights Japanese American Tomoyo Kawakita, who committed similar crimes as Inouye, but received a lighter sentence.¹² What is more, Ito's Japanese Canadian lens contribute a valuable perspective, situating Inouye's trials in a broader political context. Ito connects the events of Inouye's trials to the uprooting and internment of Japanese Canadians in Canada. As a Nisei who endured the uprooting and internment in the Slocan Valley, Ito found it ironic that the basis of Inouye's treason trial was his British citizenship, given the uprooting, internment, and general racial prejudice towards Japanese Canadians in British Columbia.¹³

Jack Granatstein and Patricia Roy's *Mutual Hostages: Canadians and Japanese during the Second World War*, published in 1992, was the first major scholarly work on Inouye.¹⁴ Their scholarship validated the memories and experiences of Canadian POWs and established Inouye's "infamous" reputation in Canadian history. Granatstein and Roy based their treatment of Inouye on 200 affidavits submitted by Canadian soldiers that mentioned Inouye; they did not acknowledge Ito's contribution. Using these materials uncritically, Granatstein and Roy detail Inouye's alleged maltreatment towards Canadian soldiers, concluding that Inouye was a cruel and vindictive camp official responsible for "several deaths and beatings."¹⁵ Although *Mutual Hostages* was one of the first pieces to draw attention to Inouye, the selective use of affidavits as the sole source presents an incomplete narrative of Inouye's story and misrepresents the facts of

¹² Ibid, 362-7.

¹³ Ibid, 367.

¹⁴ Granatstein et al., *Mutual Hostages: Canadians and Japanese During the Second World War* (Toronto: University of Toronto Press, 1992).

¹⁵ Ibid, 73.

the case. Granatstein and Roy only address Inouye's war crimes trial and not his treason trial. This omission leaves readers with the impression that Inouye was executed for war crimes, not treason, as found in court documents. Their most notable error is the assertion that Inouye was responsible for "several deaths" of Canadian POWs. Court documents indicate that their statement is incorrect. Court transcripts of the war crimes trial reveal that the British War Crimes Trial Court never charged Inouye or found him responsible for the deaths of Canadian POWs, nor was he found responsible for the deaths of four Hong Kong civilians. Granatstein and Roy's arguments were taken up in *The Beaver Magazine's* 2007 article, "Canada's Hall of Infamy," in which Canadian military historian David Bercuson contributed a short piece about Inouye as one of the top ten worst Canadians of all time.¹⁶ Bercuson focuses on Inouye's maltreatment of Canadian POWs, calling Inouye a "leading death camp torturer."¹⁷ Similar to Granatstein and Roy, Bercuson makes several factual errors and misrepresentations in his article: He incorrectly states Inouye's birth date, the location of the treason trial being in Canada instead of Hong Kong, and disregards Inouye's dual nationality. Ultimately, Bercuson's article lacks sufficient research to detail Inouye's story accurately and perpetuates misinformation and Inouye's "infamous" legacy in Canadian history.

In *Casual Slaughters and Accidental Judgements: Canadian War Crimes Prosecutions, 1944-1948*, lawyer and legal historian Patrick Brode presents the first comprehensive and detached treatment of Inouye's case.¹⁸ In the chapter, "The Japanese Imperial Army," Brode

¹⁶ Bercuson et al., "Canada's Hall of Infamy," *The Beaver* 87 (2007).

¹⁷ Ibid.

¹⁸ Patrick Brode, *Casual Slaughters and Accidental Judgments: Canadian War Crimes Prosecutions, 1944-1948* (Toronto: University of Toronto Press, 1997).

provides an overview of Inouye's life before his position as an interpreter, followed by an examination of both trials in Hong Kong. Although lacking in critical analysis, Brode's chapter presents a counter-narrative to previous literature that portrayed him as disloyal or guilty of murder. Similar to Ito, Brode underlines the inconsistencies with trial sentencing during the time. He, too, notes other trials and sentencing of camp officials from the same camp as Inouye. These men also beat POWs, but they only received prison terms, not death sentences. Brode concludes that a "death sentence in the absence of finding of murder seemed unduly harsh."¹⁹ Brode's use of the affidavits in addition to court transcripts and files further strengthens his analysis of Inouye's case.

More recent scholarship has begun to push past simple retellings and provide a more critical analysis of Inouye's trials and legal story. In 2013, Mark Sweeney completed his Ph. D. dissertation, "The Canadian War Crimes Liaison Detachment – Far East and the Prosecution of Japanese "Minor" War Crimes," which dedicated a chapter to Inouye's trials.²⁰ Sweeney later published this chapter as an article entitled, "A 'Guest of the Dominion of Canada': Nationality and the War Crimes and Treason Trials of Inouye Kanao, 1946-1947."²¹ Sweeney's article provides the most comprehensive overview of Inouye's legal story to date. Sweeney examines Inouye's case through the lens of nationality, positing that Inouye's dual nationality was a significant issue for a "legal structure that placed tremendous emphasis on singular

¹⁹ Ibid, 174.

²⁰ Mark Sweeney, "The Canadian War Crimes Liaison Detachment – Far East and the Prosecution of Japanese "Minor" War Crimes," (PhD diss, University of Waterloo, 2013).

²¹ Mark Sweeney, "A 'Guest of the Dominion of Canada': Nationality and the War Crimes and Treason Trials of Inouye Kanao, 1946-1947," *Journal of Historical Biography* 14, no. 1 (2013): 1-46.

nationality.”²² Not only did his dual nationality challenge the Hong Kong War Crimes Court jurisdiction and a developing military legal system, but it also revealed the Canadian Government's reluctance to deal with war crimes of their own on home soil. Furthermore, Sweeney argues that Inouye's identity and trials reveal Canada's problems confronting issues of citizenship and loyalty during a time of political turmoil. Sweeney concludes that Canada's “fence-sitting” and international cooperation with the British allowed Canada to evade any further political upheaval and attention.

In Kathleen Tsuji's MA thesis, “Three Eras of Citizen-Rights in Canada: An Interpretation of the Relationship Between Citizen-Rights and Executive Power,” she examines Inouye's legal story through a personal and sociological perspective.²³ Tsuji employed the case study method to evaluate and interpret three unique Canadian cases considered in the state of exception: Kanao Inouye, Omar Kadhur, and Maher Arar. Tsuji is the great-niece of Inouye, who has personally experienced the effects of Inouye's legacy and was keen on understanding her great uncle's history, which her family rarely discussed. In her thesis, Tsuji analyses the relationship between sovereign power and citizen-rights in the state of exception in Canada. In her analysis of Inouye, Tsuji argues that Inouye's dual citizenship challenged the “hegemonic authority that British law claims over all subjects/citizens by virtue of their birth in Canada,” which placed him in a “state of exception.”²⁴ Because of this state of exception, Inouye's right to a fair trial, including the presumption of innocence and hearing by an independent and impartial

²² Ibid, 31-2.

²³ Kathleen, E Tsuji, “Three Eras of Citizen-Rights in Canada: An Interpretation of the Relationship Between Citizen-Rights and Executive Power,” MA Thesis, University of Victoria, 2013.

²⁴ Ibid, 125.

trial, was not recognized. Therefore, Inouye's citizen-rights as a British/Canadian subject were violated. Tsuji asserts that this violation of citizen-rights is a crucial context in which Inouye's trials need to be situated in when examining Inouye's legal story. Moreover, Tsuji raises the issue of Inouye's representation in previous literature, postulating that pieces such as David Bercuson's Beaver article, are a "vessel of anti-Japanese sentiment."²⁵ Tsuji's thesis and insight are essential contributions to the historiography on Inouye because of her Japanese Canadian lens and her sociological perspective.

As evident in this brief review, the historiography about Inouye is limited, understudied, and not without its issues. While there has been some advancement in the analysis of Inouye's case in recent years, there is still much to be examined. One issue that merits further research is the role of racism and its influence on Inouye's case. Granatstein, Roy, and Bercuson overlook the issue of racism completely. While Brode acknowledges that racist attitudes towards the Japanese were out of control at the beginning of his chapter, he does not carry the issue forward in his remaining coverage of Inouye. Sweeney also touches on the rampant racism against the Japanese and Japanese Canadians but does not integrate it into the rest of his analysis. Racist attitudes against the Asian communities were widespread before, during, and after the Second World War, and to overlook these attitudes as a defining issue in Inouye's case is a fault in both pieces. Tsuji does raise the question of anti-Japanese sentiment in previous work about Inouye, but it is not the primary focus of her analysis.

Thus, the aim of this thesis is twofold: First, it is to contribute to the limited historiography on Inouye and second, to build and expand on the counter-narrative that challenges current misrepresentations and misinformation of Inouye that persist. In doing so, I

²⁵ Ibid, 129.

hope to bring to light an essential piece of history that has remained on the margins of World War II and Japanese Canadian history.

Theory

This thesis uses Hannah Arendt's notion of race-thinking and Critical Race Theory as the theoretical framework for the study. German political thinker Hannah Arendt defined race-thinking as a mode of thought that divided the world between the deserving and undeserving according to descent.²⁶ According to Arendt, race-thinking transformed from an obscure "free opinion" to racism through the rise of imperialism and the "scramble for Africa," thus becoming a political instrument and dangerous ideology.²⁷ The result of such change, as noted by feminist scholar Sherene Razack, is that "racism's presence is not simply to be found in the racial hostility some individuals bear towards others, not of their race, but also in the ideas that the state must protect itself from those who do not share its values, ideals of beauty and middle-class virtues."²⁸

The notion of race-thinking is also applicable in other contexts, such as the law. Razack contends that "when race thinking unites with bureaucracy [...] it loses its standing as prejudice and becomes instead an organizing principle."²⁹ Razack further notes that embedding race-thinking into the law and bureaucracy allows those in power to disguise actions such as discrimination or violence against those deemed different and inferior as the law itself and justify

²⁶ Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace, 1951), 161.; Sherene Razack, *Casting Out: The Eviction from Western Law and Politics* (Toronto: University of Toronto Press, 2008), 30.

²⁷ Arendt, *The Origins of Totalitarianism*, 206.

²⁸ Razack, *Casting Out*, 10.

²⁹ *Ibid*, 11.

these policies as protective and necessary for the state.³⁰ Thus, these laws act as a tool to control, correct, and discipline different groups and individuals. The belief in “protecting the state and the future of the nation” from those of different backgrounds and races was a distinctive feature of the Second World War, as seen in events such as the uprooting and internment of Japanese Canadians.³¹

Race-thinking is a critical lens through which to understand Inouye’s case, especially when examining Canada and Britain’s approach to Inouye’s trials. Race-thinking, combined with the law and bureaucracy, elucidates how Canadian and British officials used the law to blindly pursue and ultimately execute Inouye to serve their interests. In the eyes of Canadian and British officials, Inouye and his identity as a Japanese Canadian was a perceived threat to the state. They believed that his execution was necessary to “protect” both Canada and Britain in the future.

In addition to race-thinking, Critical Race Theory (CRT) is useful to understand how the law and racism shaped Inouye’s case. Critical Race Theory asserts that race is engrained in the fabric of society and that the law continually acts to institute and reify social and racial inequality for the benefit of the elite economic and political interests.³² CRT views race as a social construct; it is not based on any biological or genetic fact, but rather, “races are categories that society invents, manipulates or retires when convenient.”³³ In Canadian history, legal scholars

³⁰ Ibid.

³¹ Laura Madokoro, Francine McKenzie and David Meren, eds. *Dominion of Race: Rethinking Canada’s International History* (Vancouver; Toronto: UBC Press, 2017), 163.

³² Derrick Bell, “Who’s Afraid of Critical Race Theory,” *University of Illinois Law Review* no. 4 (1995), 901.

³³ Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (New York; London: New York University Press, 2012), 9.

James Walker and Constance Backhouse argue that the legal system has been “profoundly implicated” in Canada’s racist history, playing a dominant role in creating and preserving racial discrimination.³⁴ Backhouse states that racism is not only individual actors from time to time that reinforce certain racial hierarchies, but it is also important to recognize that racism permeates institutional systems and law that fosters inequality of racialized groups.³⁵ Beyond its central principle, CRT also has two important tenets: The first concerns racialization and its consequences. Critical race scholars strive to highlight and understand how dominant societies racialize different groups at different times in response to shifting needs. The second tenet is the importance of intersectionality. CRT asserts that “no person has a single, easily stated, unitary identity [...] Everyone has potentially conflicting, overlapping identities, loyalties, and allegiances”.³⁶

Anti-racist and critical race scholar Timothy Stanley builds upon these perspectives and states that racism was essential in Canada’s state formation and social relations. Stanley argues that racism is not a “singular phenomenon,” but instead that there are multiple forms of racisms (institutional, economic, symbolic), and there have been different kinds of racisms throughout history.³⁷ For example, a person could be racist towards another individual in one situation and may not exhibit racism towards another in a different location. Stanley further argues that it is racialization, not race, at work in racisms. These racializations, produced, for example, through

³⁴ Constance Backhouse, *Colour-coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: University of Toronto Press, 1999), 10.

³⁵ *Ibid*, 13.

³⁶ Delgado and Stefancic, *Critical Race Theory*, 10.

³⁷ Timothy Stanley, “Bringing Anti-Racism into Historical Explanation: The Chinese Students’ Strike of 1922-3 Revisited,” *Journal of the Canadian Historical Association* 13, no.1: 143-144.

discourse, organize and lead to exclusions that have negative consequences for excluded individuals and groups.³⁸ Stanley states that these racialized exclusions take many forms:

They can be material: exclusions from particular territories, spaces, institutions from access to social wealth, material goods, and services; or from life itself. They can be social: exclusions from particular social statuses, or networks or institutional roles; or from access to political rights. They can be symbolic: exclusion from being represented in particular way or exclusion from having one's self-representations engaged or taken seriously.³⁹

Stanley points out that these racialized and excluded groups are often also excluded in historical literature.

For Inouye's case, Critical Race Theory is another useful lens in understanding how British and Canadian authorities racialized Inouye in both courts that shaped the trials' outcomes. Furthermore, the principle of intersectionality highlights Inouye's Nisei background and the situations that made him different from other Japanese Canadians during the Second World War. Although Inouye shared some similar experiences with other Japanese Canadians before the war, his wartime experiences are different, given that he was in Japan and Hong Kong serving with the Japanese Army.

While CRT provides a valuable theoretical framework for this study, it is important to note that CRT does not address all issues related to Inouye's case, namely the complexities of dual nationality. As a dual national (Japanese and Canadian), Inouye was viewed as a "flawed" subject that challenged a racist legal system whose laws favoured a singular nationality and allegiance, especially during wartime. Nevertheless, Critical Race Theory brings attention to the stories and experiences of Japanese Canadians, such as Inouye, that remain unknown.

³⁸ Timothy Stanley, *Contesting White Supremacy* (Vancouver; Toronto: UBC Press, 2011), 7-12.

³⁹ *Ibid*, 10.

Sources

My primary sources are documents retrieved from Library and Archives Canada in Ottawa, the National Archives in Kew Gardens, England, and the Public Records Office in Hong Kong. These documents comprise of court transcripts and records of Inouye's war crimes and high treason trials, diplomatic correspondence between the Department of External Affairs and Hong Kong civil authorities, prosecutors and lawyers, and personal records from Canadian prosecutor, G.B. Puddicombe. I also use newspapers of the time, such as the *China Mail*, *South China Morning Post*, and the *Vancouver Sun*.

I have also supplemented my primary sources with relevant secondary literature. Resources and literature about war crimes are extensive, but the following scholarship was of particular use to this thesis in providing relevant historical background, insight, and context for Inouye's case. *Hong Kong War Crimes Trials*, by Suzannah Linton, a legal scholar at the University of Hong Kong, is the first comprehensive and in-depth assessment of the Hong Kong trials.⁴⁰ Linton seeks to "rediscover" the trials and initially created an extensive digital collection, making trial documents available to researchers and examining specific aspects of the trials. *Hong Kong War Crimes Trials* covers many aspects of the trials, including an overview of the law and procedures, the prisoner of war camp trials, the plea of superior orders, and the overall strengths and weaknesses of the trials. Linton argues that the Hong Kong trials were a way for the British to boost their prestige after "[their] humiliation at the hands of Japan."⁴¹ Compared to Nuremberg and the Tokyo Trials, the proceedings of the Hong Kong trials were summary in

⁴⁰ Suzannah Linton, *Hong Kong's War Crimes Trials* (Oxford, United Kingdom: Oxford University Press, 2013).

⁴¹ *Ibid*, 3.

nature and inexpensive, which resulted in verdicts without reasoned decisions. Furthermore, she argues that British officials relied heavily on British sources due to the lack of resources and precedent and overlooked due process in the interest of “promoting speed and efficiency in bringing Japanese war criminals to justice.”⁴² Ultimately, the Hong Kong trials, as observed by legal scholar Alexander Zahar, were “under-resourced, relatively hasty, and a form of hypocritical ‘victor’s justice.’”⁴³ *Hong Kong War Crimes Trials* is an essential resource in providing the necessary context and broader issues at play that may have impacted Inouye’s case.

Utsumi Aiko's scholarship on the Japanese Army's POW policies and the Korean Imperial soldiers are valuable resources for understanding various issues related to POWs and the Japanese Army. In "Korean 'Imperial Soldiers': Remembering Colonialism and Crimes against Allied POWs," Utsumi sheds light on Korean soldiers mobilized for the Japanese Army, many of whom served to guard POWs.⁴⁴ Utsumi uses the Korean Imperial soldiers as an example of those victimized by the Japanese Army and colonialism, which was never adequately addressed in the war crimes trials. After the war, Allied powers charged these Korean soldiers as Japanese nationals for war crimes. However, the Japanese Government excluded Korean soldiers from government relief programs because they were no longer Japanese nationals. Utsumi notes that the Japanese Government has not paid any “compensation or apologized to

⁴² Ibid, 40.

⁴³ Ibid, 68-9.

⁴⁴ Aiko Utsumi, “Korean “Imperial Soldiers”: Remembering Colonialism and Crimes against Allied POWs,” in *Perilous Memories*, ed. T. Fujitani, Geoffrey M. White, and Lisa Yoneyama (Durham and London: Duke University Press, 2001): 199-217.

those formerly colonized people who have been branded as war criminals and who are held in public contempt for having been ‘pro Japanese’ traitors.”⁴⁵

In “Japan’s World War II POW Policy: Indifference and Irresponsibility,” Utsumi shifts her focus to the Japanese Army’s policy and approach to POWs during the Second World War.⁴⁶ Utsumi argues that although the Japanese Army’s ill-treatment of POWs was considered a significant issue in the Allied powers’ eyes, the Japanese Government and Army viewed the POW problem as insignificant or of no concern.⁴⁷ Japan had not ratified the 1929 Geneva Convention relative to the Treatment of Prisoners of War and treated international law lightly. Consequently, the Japanese Army and its officials did not correctly address or take POW matters seriously. Many of the soldiers and civilian aides who oversaw POWs knew nothing of the 1929 Geneva Convention and had little understanding or sense of having committed a war crime. Japanese Army officials administered POW camps under Japanese domestic regulations for the handling of prisoners. Beatings and other punishments were common and widespread throughout the POW camps. As Utsumi notes, “the person who beat a prisoner had been trained by being beaten to the point where beating was taken for granted.”⁴⁸ Utsumi concludes that at the end of the war, those at the bottom of the Japanese Army system, who carried out the beatings, were judged harshly for their actions. At the same time, officials higher up in the POW administration avoided harsh punishments.⁴⁹

⁴⁵ Ibid, 214.

⁴⁶ Aiko Utsumi, “Japan’s World War II POW Policy: Indifference and Irresponsibility,” *The Asia-Pacific Journal* 3, no. 5 (May 19, 2005): 1-4.

⁴⁷ Ibid, 2-3.

⁴⁸ Ibid, 3.

⁴⁹ Ibid, 4.

Utsumi's literature on the Japanese Army and its soldiers are essential resources for this thesis. Utsumi's chapter on Korean Imperial soldiers sheds light on how other soldiers in the Japanese Army were treated after the war. In understanding the experiences of Korean Imperial soldiers, clear parallels can be drawn between the Korean soldiers and Inouye. Moreover, Utsumi's article on the Japanese Army's approach to POWs provides valuable insight into the inner working of the Army and helps contextualize Inouye's wartime experiences and actions while serving as an interpreter.

Finally, John Price's scholarship on race and war crimes in his book, *Orienting Canada: Race, Empire, and the Transpacific*, draws attention to the inconsistencies in sentencing in the military justice system.⁵⁰ Price examines Canadian soldiers who committed war crimes in Korea to illustrate how race was a major factor in war crimes and trial sentencing. Canadian soldiers committed many crimes against Korean civilians, such as rape and shootings. Price argues that the Canadian soldiers' contempt and racist views of the Korean people as inferior motivated many of their crimes.⁵¹ Approximately sixty Canadians were convicted of war crimes for their actions, yet nearly all of those convicted were released and exonerated upon their return to Canada. Price contends that the release and exoneration of Canadian soldiers "reflect a structural problem of racism in the upper echelons of the National Defence establishment."⁵² This continual release and exoneration of Canadian soldiers in comparison to the verdicts and punishments of Japanese and Korean Imperial soldiers, such as Inouye, emphasizes the gross disparity between the sentencing for war crimes. While Allied countries were keen to try and

⁵⁰ John Price, *Orienting Canada: Race, Empire and the Transpacific* (Vancouver: UBC Press, 2011).

⁵¹ *Ibid*, 267.

⁵² *Ibid*, 265-6.

convict countries such as Japan and their army for war crimes, especially for crimes against Allied POWs, Price shows that the Allies did not always do the same for their soldiers.

Organization of Study

This study includes this introduction, three chapters, and a conclusion. Chapter one provides background information on Inouye's early life and experiences, the formation of the Hong Kong war crimes trials, and Canada's involvement in the trials, and the prosecution of Inouye. Chapter two examines the legal proceedings of Inouye's Hong Kong war crimes trial. This chapter also examines Inouye's sentence and considers whether his punishment was too severe compared to other Japanese army interpreters charged in the same court. Chapter three discusses the events following Inouye's war crimes trial. I argue that in response to Inouye's trial appeal, Canadian prosecutors Oscar Orr and Puddicombe collaborated and intervened in Inouye's legal case to ensure he would not evade punishment. This chapter also provides an overview of the treason trial proceedings. The conclusion provides a summary of each chapter as well as final thoughts and analysis. This thesis will contribute to our broader understanding of the multitude of experiences during the Second World War. Furthermore, it will contribute to the understanding of postwar racism both in Canadian and international history.

Chapter 1

Setting the Stage: Inouye, Canada, and War Crimes

Most of the literature on Inouye focuses on his supposed persona as a “vindictive” Japanese Canadian, his alleged ill-treatment of Canadian soldiers, and the war crimes trial.⁵³ Portrayals of Inouye, describing him as a “torturer,” “cruel,” and “vindictive” may have had some basis in reality, but I suggest they also reflected stereotypical racializations that I believe were an important element in determining the outcome of Inouye's case. The language used to describe Inouye is synonymous with the language used to stereotype and demonize Japanese, particularly during the war. Historian John Dower noted that Western Allies viewed the Japanese as belonging to an inferior race whose behaviour was barbaric and savage.⁵⁴ These portrayals have contributed to and perpetuate Inouye’s persona as a savage and cruel Japanese, even as recently as 2018.⁵⁵ Too often, such characterizations purposefully erase much of Inouye’s story, eliminating his existence as a son, a brother, a husband, and, importantly, as a Japanese Canadian obliged to join the Imperial Japanese Army and Kempeitai. Tracing Inouye’s life and the historical context of the times is essential if we are to understand the trajectory that led him into the Imperial Japanese Army, his actions in the camps, his future trials and ultimate execution.

⁵³ See David Bercuson, Michael Bliss, Graham Broad, Margaret Conrad, et al., "Canada's Hall of Infamy," *The Beaver* 47, no. 4 (Aug/Sept 2007): 31.; Brad Hunter, “KAMLOOPS KID: Treason treated with rope,” *Toronto Sun*, November 4, 2018, 1.; Granatstein et al., *Mutual Hostages: Canadians and Japanese During the Second World War* (Toronto: University of Toronto Press, 1992).; Patrick Brode, *Casual Slaughters and Accidental Judgments: Canadian War Crimes Prosecutions, 1944-1948* (Toronto: University of Toronto Press, 1997).

⁵⁴ John Dower, *War Without Mercy: Race and Power In the Pacific War* (New York: Pantheon Books, 1987), 12.

⁵⁵ Brad Hunter, “KAMLOOPS KID: Treason treated with rope,” *Toronto Sun*, November 4, 2018, 1.

Furthermore, a close reading of the times reveals how Canada's domestic politics and stance on war crimes influenced the extent to which they were involved in Inouye's case. In this chapter, I outline the history of anti-Japanese racism in British Columbia, Inouye's early life, his participation in the Japanese military, and Canada's policies regarding war crimes, with particular reference to Inouye's case.

History of Anti-Japanese Racism in British Columbia

Anti-Japanese sentiments and attitudes had been present long before the Second World War, particularly in British Columbia. The Japanese had faced racism since the first Japanese pioneers arrived in Canada in the late 1800s. Initially, the Japanese were viewed as more "desirable" than the Chinese immigrants; however, these attitudes quickly changed as immigration increased.

Racism towards the Japanese intensified as more Japanese entered the workforce. Chinese and Japanese labourers worked longer hours and received lower wages, which upset white workers who argued that Asian immigrants undermined living standards.⁵⁶ However, implementing equal pay was inconceivable because white Canadians viewed Asian immigrants as inferior and believed that they deserved to be paid less.⁵⁷ Many white Canadians responded in protest to Asian immigration through legal discrimination or violence, such as the 1907 anti-Asian riot in Vancouver.

White Canadians also believed that the Japanese were incapable of assimilating into Canadian society and were a threat to white Christian values. As legal scholar, Ann Gomer

⁵⁶ Ann Gomer Sunahara, *The Politics of Racism* (Toronto: James Lorimer & Company, 1981), 7.

⁵⁷ *Ibid.*

Sunahara notes: “Assuming that only a racially homogenous society could be stable, racists argued that the Asian was genetically incapable of commitment to the Canadian way of life and to British values and institutions.”⁵⁸ Cultural and social institutions, established mainly in response to anti-Asian discrimination, such as Japanese language schools, socials, and economic and religious institutions, were evidence of their alleged inability to assimilate. Japanese individuals who professed their loyalty to Canada or made an effort to adopt Canadian practices and ways of life were viewed with suspicion and possible agents for the Japanese government.⁵⁹ Since the Japanese appearance was not like that of white Canadians, it was assumed that they did not feel or think like other Canadians.⁶⁰

As Japan's status as a global military power grew throughout the 1920s and 1930s, racist lies about the Japanese and Japanese Canadians proliferated. Many white Canadians argued that Japanese Canadians were a part of a larger conspiracy headed by the Japanese government to colonize British Columbia. They believed that an interracial war was inevitable, with the Japanese acting as the lead aggressor.⁶¹ White Canadians cited the Japanese Canadians concentrated settlement patterns along the west coast as evidence that a Japanese "invasion" was imminent.⁶²

The bombing of Pearl Harbor by the Imperial Japanese Air Force on 7 December 1941 sparked even more hostility against Japanese Canadians, especially those living on the west

⁵⁸ Ibid.

⁵⁹ Ibid, 8.

⁶⁰ Ibid.

⁶¹ Ken Adachi, *The Enemy That Never Was: A History of the Japanese Canadians* (Toronto: McClelland and Stewart, 1976), 179.

⁶² Ibid, 181.

coast. White Canadians viewed Japanese Canadians with high suspicion and accused them of acting as a fifth column of spies and saboteurs for Japan.⁶³ Anti-Japanese propaganda fanned the flames of unsubstantiated terror leading white Canadians to demand that action be taken to address the “Japanese problem” and “protect” the coast.⁶⁴ Soon after, the federal government implemented a series of measures that targeted over 22,000 Japanese Canadians, the majority of whom were Canadian-born. Under the pretense of "national security," and despite the Royal Canadian Mounted Police finding no evidence of a military threat, the federal government put into effect policies that forcibly uprooted, detained, dispossessed, and exiled Japanese Canadians from British Columbia. At the end of the war, the government gave Japanese Canadians the ultimatum of either moving east of the Rockies or "repatriate" to Japan.⁶⁵ By 1946, the federal government deported 4,000 Japanese Canadians to a war-torn Japan.⁶⁶ As a result, families and loved ones were separated, communities decimated, and the traumatic effects of the internment permeated future generations.

Who was Inouye?

On 18 September 1945, P.G.R. Campbell in Manila wrote to the Secretary of State for External Affairs in Ottawa to bring to attention the ill-treatment of Canadian soldiers in Hong Kong by a “Canadian-born Japanese” named Inouye Kanao. Campbell learned of Inouye’s

⁶³ Sunahara, *The Politics of Racism*, 8.

⁶⁴ Adachi, *The Enemy That Never Was*, 179.

⁶⁵ Roy Miki and Cassandra Kobayashi, *Justice in Our Time: Japanese Canadian Redress Settlement* (Vancouver: Talonbooks, 1991), 49.

⁶⁶ *Ibid.*

actions after meeting Sergeant Rance, a liberated British POW who served with the Hong Kong Volunteer Brigade. Campbell reported that Rance said:

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.⁶⁷

Rance also provided Campbell with a physical description of Inouye:

Weight 145 pounds, height 5'9", lank black hair, greasy appearance, thick lips, extremely bloodshot eyes, wears glasses sometimes; walks with pronounced stoop and quick mincing steps; given to gesturing abruptly with hands; hollow-chested; chain smoker and fingers very nicotine-stained; mole on left of chin.⁶⁸

Campbell's memo to Ottawa reinforces a sinister portrait of Inouye. Inouye's actions towards Canadian soldiers were reprehensible, and Rance's description of Inouye conjured a creature-like image reminiscent of the racist images used to describe the Japanese as vermin and apes, thus suggesting their sub-human status.⁶⁹ Rance's description provides insight into how Allied personnel perceived Inouye at the time, but little else.

To have a more comprehensive understanding of Inouye and his legal case, it is essential to look beyond his wartime persona to his early life. Who was Inouye? How did he arrive in Hong Kong to work as an interpreter for the Japanese Imperial Army? While there is a significant amount of information and archival material about Inouye's legal case, sources about his life are limited. There are very few personal and family documents available, and thus much of what is known is acquired from government and military documents gathered by British and

⁶⁷ LAC, RG 25, Vol. 3824, File 8767-40C, P.G.R. Campbell, Manila, to Secretary of State for External Affairs, Ottawa, 18 September 1945.

⁶⁸ Ibid.

⁶⁹ Dower, *War Without Mercy*, 145.

Canadian officials. Nevertheless, these documents offer an important glimpse into who Inouye was, his family history, and how he arrived in Hong Kong to serve with the Japanese Imperial Army and the Kempeitai.

Inouye Kanao was born on 24 May 1916 in Kamloops, British Columbia. He was a *Nisei*, a second-generation Japanese Canadian; his parents Tadashi "Tow" Inouye and Mikuma Inouye were *Issei*, first-generation immigrants from Japan. His father, Tadashi "Tow" Inouye, was born on 16 October 1883 in Yokohama, Japan and immigrated to Canada in 1905, where he worked at the Arrow Lakes Lumber Company in Kamloops, British Columbia until 1916.⁷⁰ In July 1916, Tadashi enlisted and served overseas with the 131st Battalion, New Westminster Regiment during World War I and was awarded the Military Medal for "bravery in the field."⁷¹ After the war, Tadashi ran a successful import/export business and became a naturalized Canadian citizen in 1920.⁷²

Less is known about Inouye's mother, Mikuma. She was born in 1881 in Kanazawa city, wed Tadashi in 1907, and moved to Canada in 1908.⁷³ Mikuma's father, Tokutaro Inoue, was a well-established figure in Japan. He was the President of the Keio Electric Tramway Company in Tokyo, a member of Japan's Parliament and House of Peers, and director of Meiji and Nippon

⁷⁰ LAC, RG 25, Vol. 3824, File 8767-40C, Annexure "A," Inouye Kanao, Personal Details of Inouye Kanao, Japanese Civilian Interpreter, Interned at Stanley Gaol, Hong Kong, October 1945.; Kathleen E. Tsuji, "Three Eras of Citizen-Rights in Canada: An Interpretation of the Relationship Between Citizen-Rights and Executive Power," (MA thesis, University of Victoria, 2013), 102.

⁷¹ Ibid.

⁷² LAC, RG 25, Vol. 3824, File 8767-40C, Annexure "A," Inouye Kanao, Personal Details of Inouye Kanao, Japanese Civilian Interpreter, Interned at Stanley Gaol, Hong Kong, October 1945.

⁷³ LAC, RG 25, Vol. 3824, File 8767-40C, Annexure "B," Major A.M. Carstairs, Notes from Interrogation of Inouye Kanao by Major A.M. Carstairs on 10th December 1945, 10 December 1945.

universities.⁷⁴ Tokutaro was financially well-off and would send his daughter and her family an annual allowance of 2000 yen (almost 7,300,000 yen in today's value), which afforded the family financial stability.⁷⁵ Together, Mikuma and Tadashi had five children: Easter, Susan, Martha, Ruth, and Kanao, the youngest and only son.

Although born in Kamloops, Inouye spent most of his adolescence in Vancouver. Initially, the family moved to Haney, the downtown core of Maple Ridge, and Inouye began to attend Port Haney Elementary School in 1922.⁷⁶ In 1926, Tadashi fell ill and passed away during a family trip to Japan.⁷⁷ After the family returned to Canada, Kanao, his mother, and sisters moved to Vancouver, where he attended Seymour School. As a young student, Inouye was known as the teacher's pet.⁷⁸ He would often stay after school and help tidy the classroom and desk. He also enjoyed playing sports with his peers, including rugby, football, and baseball, which was his favourite.⁷⁹ From 1929 to 1932, Inouye attended Templeton Junior High School and then went to Vancouver Technical High School, graduating in June 1936. In August 1936, upon his mother's advice, Inouye left his family behind and sailed to Japan to study Japanese at Waseda University in Tokyo.⁸⁰ However, life in Tokyo was not always easy. Because he was a

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ LAC, RG 25, Vol. 3824, File 8767-40C, Annexure "A," Inouye Kanao, Personal Details of Inouye Kanao, Japanese Civilian Interpreter, Interned at Stanley Gaol, Hong Kong, October 1945.

⁷⁷ LAC, RG 25, Vol. 3824, File 8767-40C, Annexure "B," Major A.M. Carstairs, Notes from Interrogation of Inouye Kanao by Major A.M. Carstairs on 10th December 1945, 10 December 1945.

⁷⁸ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, 103.

⁷⁹ Ibid.

⁸⁰ LAC, RG 25, Vol. 3824, File 8767-40C, Annexure "B," Major A.M. Carstairs, Notes from Interrogation of Inouye Kanao by Major A.M. Carstairs on 10th December 1945, 10 December 1945.

Nisei, Japanese nationals perceived Inouye as an outsider. Inouye recalled not always feeling welcome in Japan:

...Like going to schools. We used to go together with other overseas boys – Niseis – and they always came around and asked us what we fellows were doing in Japan because we were not wanted there. You know English too much, you know too much about things...they did not like the people knowing any other language than their own.⁸¹

Inouye further explained that many Japanese people viewed Inouye and other Niseis suspiciously “because they [Niseis] had more Western ideas and they would not listen to the small things that the Japanese always talked about.”⁸² This discrimination eventually culminated in the Kempeitai arresting Inouye due to his friendship with another Nisei, who was a reporter for an American newspaper. The Kempeitai put Inouye into a cell, questioned him, and administered water torture.⁸³ Consequently, Inouye developed pleurisy and was hospitalized for six months. He withdrew from Waseda University in 1940 due to poor health.⁸⁴ Out of fear of causing more trouble, Inouye never told his family about his encounter with the Kempeitai.⁸⁵ Inouye moved in with his grandfather, Tokutaro, shortly afterward and enrolled at AIKO Agricultural School; however, lingering lung problems from the water torture forced Inouye to withdraw from his studies once again.⁸⁶

⁸¹ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, 81.

⁸² Ibid.

⁸³ LAC, RG 25, Vol. 3824, File 8767-40C, Annexure "A," Inouye Kanao, Personal Details of Inouye Kanao, Japanese Civilian Interpreter, Interned at Stanley Gaol, Hong Kong, October 1945.

⁸⁴ Ibid.

⁸⁵ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, 106-7.

⁸⁶ LAC, RG 25, Vol. 3824, File 8767-40C, Annexure "A," Inouye Kanao, Personal Details of Inouye Kanao, Japanese Civilian Interpreter, Interned at Stanley Gaol, Hong Kong, October 1945.

Inouye's service with the Imperial Japanese Army began in May 1942. According to the war crimes trial transcript, Inouye stated that in February 1942, all Niseis had to register their name, address, and occupations. Three months later, Japanese officials called Inouye to the War Office in Tokyo and assigned him a job as an interpreter based on his ability to speak English. Inouye remained at the Army headquarters until November 1942 when Japanese officials transferred him to the Sham Shui Po prisoner of war camp.⁸⁷ Here, Inouye's alleged brutality led him to become known as "Slap Happy" and the "Kamloops Kid": a sadistic camp official who targeted Canadian POWs according to POW testimonies.

In the same year, while stationed in Hong Kong, Inouye met his future wife, Ho Wai Ming. Born in 1907, Ming was Shanghai-Chinese and one-time secretary to Mr. Strellet, the District Attorney for the US Supreme Court for China in Shanghai.⁸⁸ Inouye met Ming in Kowloon, Hong Kong, at a café that she operated called Sakura.⁸⁹ They moved in together soon after and lived together during the rest of his posting in Hong Kong. In September 1943, Inouye was then transferred to Singapore and worked at the Osaka 4th Division's headquarters until 28 March 1944 when he was discharged on account of bad health.⁹⁰ He returned to Japan and served

⁸⁷ LAC, RG 25, Vol. 3824, File 8767-40C, Annexure "A," Inouye Kanao, Personal Details of Inouye Kanao, Japanese Civilian Interpreter, Interned at Stanley Gaol, Hong Kong, October 1945.

⁸⁸ LAC, RG 25, Vol. 3824, File 8767-40C, Annexure "C," Inouye Kanao, Special Branch, Hong Kong Police.

⁸⁹ Ibid.

⁹⁰ LAC, RG 25, Vol. 3824, File 8767-40C, Annexure "A," Inouye Kanao, Personal Details of Inouye Kanao, Japanese Civilian Interpreter, Interned at Stanley Gaol, Hong Kong, October 1945.

as a clerk for steelworks conglomerate, IWAI & Co. in Kobe.⁹¹ In June 1944, Inouye transferred to the Hong Kong branch of the firm to reunite with Ming.⁹²

Inouye's work with the Kempeitai began shortly after. At Stanley Jail, Inouye acted as an interpreter for the Kempeitai, who were interrogating Hong Kong civilians for suspected ties to a British spy ring. Inouye left the Kempeitai in February 1945 and began work as a clerk for Kuwada & Co.⁹³ He remained at his post until his arrest in Kowloon later that year. After his arrest in 1945, Inouye remained in custody in Hong Kong awaiting trial. British authorities deemed Inouye's ill-treatment of Canadian soldiers and Hong Kong civilian residents under the category of "minor" war crimes. He would be tried in the Hong Kong War Crimes Tribunal in May 1946.

Canada and War Crimes

When it came to addressing war crimes matters during the Second World War, Canada initially had little interest in participating. However, by 1942, Allied measures to prosecute war crimes began when representatives of Allied countries met in London that January to discuss punishment for war crimes.⁹⁴ Later that year, Allied nations created the United Nations War Crimes Commission (UNWCC) to investigate allegations of war crimes. Initially, Canada was reluctant to join the UNWCC. Officials believed there was no legal basis for an international war

⁹¹ Ibid.; Tsuji, "Three Eras of Citizen-Rights in Canada," 103.

⁹² NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, 110.

⁹³ Ibid.

⁹⁴ Price, *Orienteering Canada*, 150.

crimes tribunal, and they thought that the UNWCC was unlikely to be effective.⁹⁵ The issue of war crimes, expressed External Affairs officer Marcel Cadieux, was of no “great importance”: “We have a moral interest in seeing that rules of international law are respected and that this question is ably used as a political weapon, but clearly our policy should be one of moderation.”⁹⁶ Canada eventually joined the UNWCC in the fall of 1943. Still, it asserted that their role would be limited to advising on technical matters, and participation would be limited to matters of Canadian concern.⁹⁷

The federal government sought to remain in the background for war crime matters; however, even before the war ended, returning Canadian soldiers and POWs began pressuring Ottawa to seek retribution for the atrocities and hardships they endured abroad. Canadian officials subsequently established the Canadian War Crimes Advisory Committee (CWCAC) in November 1943 to examine the evidence related to war crimes against Canadian nationals.⁹⁸ In addition, the Committee advised and helped solidify Cabinet’s stance on war crimes prosecution. CWCAC member, E.R. Hopkins, explained the country’s position 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.

⁹⁵ Brode, *Casual Slaughters and Accidental Judgements*, 31.

⁹⁶ *Ibid.*

⁹⁷ Sweeney, “The Canadian War Crimes Liaison Detachment,” 34.

⁹⁸ Brode, *Casual Slaughters and Accidental Judgements*, 32.

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.⁹⁹

Hopkins' report reveals Canada's reticence to commit fully to war crimes prosecutions. Canada would be involved in war crimes matters to appease its citizens and Allied partners but limited its participation to cases related directly to Canadian soldiers. Furthermore, as Sweeney observes, Hopkins' opinion that Canadian POWs received appropriate treatment reveals his narrow focus on the European theatre and overlooks the experiences of Canadian soldiers in places such as Hong Kong.¹⁰⁰

By 1945, efforts to investigate war crimes against Canadian soldiers and civilians increased. On 4 June 1945, Defence officials created the No. 1 War Crimes Investigation Unit at the Canadian Army Headquarters in London, England. Under the command of Lieutenant Bruce J.S. MacDonald, the unit investigated all cases "reported against Canadian nationals and members of Canadian Armed Forces and to prepare cases for trial in which sufficient evidence is available."¹⁰¹ Four months later, the War Crimes Investigation Section (WCIS), a sub-unit of the No. 1 War Crimes Investigation Unit, was set up in October 1945 to provide support. The WCIS's primary function was to question returning soldiers and POWs and gather evidence.

⁹⁹ 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, quoted in Sweeney, "The Canadian War Crimes Liaison Detachment - Far East and the Prosecution of Japanese "Minor" War Crimes," 35.

¹⁰⁰ Ibid.

¹⁰¹ Brode, *Casual Slaughters and Accidental Judgements*, 28.

Furthermore, the WCIS was responsible for investigating war crimes against the Canadian soldiers and civilians in the Pacific Theatre and assist in the preparation of trials. By 1946, the WCIS produced a list of 58 Japanese individuals against whom they intended to pursue war crimes charges.

Given the evidence of atrocities against Canadian soldiers and POWs, Hopkins sent a memorandum to Prime Minister McKenzie. He advised that Ottawa send Canadian representatives to Tokyo and Hong Kong to assist Britain and the United States in seeking punishment of Japanese individuals accused of war crimes against Canadian soldiers and civilians.¹⁰² Despite their initial hesitations, Cabinet accepted and approved Hopkins' recommendations on 16 January 1946: Canada would participate in the war crimes prosecutions to seek punishment of Japanese individuals accused of atrocities only against Canadian nationals or members of the Canadian armed forces. However, the ability to seek justice for Canadian POWs was complicated because Canada did not have jurisdiction to prosecute war crimes since they did not have an occupation force in the "Far East."¹⁰³ For this reason, Canada had to obtain permission and seek arrangements with the United States and Britain before sending representatives abroad. Britain agreed to Ottawa's request to participate in trial proceedings. In contrast, the United States responded that if Canada wanted to participate, they must provide a judge and prosecutor for the Tokyo Tribunal. Ottawa agreed to the United States' condition.

¹⁰² LAC, Puddicombe Fonds, Vol. 1-12, "Canadian Army War Crimes Liaison Detachment Hong Kong Local Administration," Memorandum for the Prime Minister: Far Eastern War Crimes – Trials of Lesser Criminals, 12 January 1946.

¹⁰³ Ibid.

They appointed E. Stuart McDougall as a Canadian member of the International Military Tribunal for the Far East with Harold Nolan acting as associate prosecutor.¹⁰⁴

On 19 January 1946, General Douglas MacArthur issued a special proclamation that ordered the establishment of the International Military Tribunal for the Far East, also known as the Tokyo Tribunal. On the same day, MacArthur also approved the charter governing the trials. Under the Tokyo Tribunal, there were three categories for war crimes: A-Class, which constituted of "crimes against peace," including military leaders and politicians who had instigated war against Allied Powers and bore ultimate responsibility for various war crimes committed by their forces.¹⁰⁵ B-Class crimes comprised of "conventional war crimes," which comprised of those committed by soldiers in the field against enemy soldiers or civilians of enemy countries.¹⁰⁶ And C-Class: "crimes against humanity," which encompassed crimes against civilians of any nationality.¹⁰⁷ The tribunal for the A-Class crimes, also known as "major" war crimes, was held in Tokyo. Tribunals for B and C Class crimes, also known as "minor" war crimes, were held in 49 locations throughout the Asia-Pacific region, including Singapore, Rabaul, Manila, Hong Kong, and Yokohama.¹⁰⁸

On 11 April 1946, Ottawa sent a separate legal team known as the Canadian War Crimes Liaison Detachment to Tokyo and Hong Kong. Lieutenant-Colonel Oscar Orr led the

¹⁰⁴ Price, *Orienting Canada*, 151.

¹⁰⁵ Toshiyuki Tanaka, *Hidden Horrors: Japanese War Crimes in World War II* (Boulder, Colo.: Westview Press, 1996), 1-2.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*, 2.

Detachment as chief prosecutor, and Major G.B. Puddicombe acted as Orr's second in command. Both of them had established legal careers and had served in World War I. Oscar Orr, Chief Canadian Prosecutor for the team, was originally from Saskatchewan and spent his early childhood in Ontario.¹⁰⁹ He moved to New Westminster in 1908, where he articulated as a student at a local law firm. At the outbreak of World War I, Orr joined the Navy but transferred to the 29th Battalion (Vancouver Regiment) three months later on 9 November 1914.¹¹⁰ While in France, Orr was severely wounded and returned to Vancouver, where he practiced law at a private firm until 1928. He then joined the city's prosecutor's office and was appointed the head of the department in 1931.¹¹¹ Orr rejoined his old regiment at the judge advocate general's office in June 1940. In 1945, Orr was posted to Japan to act as Chief Canadian prosecutor for the Tokyo Tribunals, assisting in war crimes trials under all three categories (A, B, and C).

Maj. George Beverley (G.B.) Puddicombe was originally from Ottawa, Ontario and studied law at McGill University. After serving in World War I, Puddicombe worked for a firm in Montreal. He enlisted for active service at the outbreak of World War II, joining the Victoria Rifles of Canada as a Paymaster and then moved up in rank to Major.¹¹² In June 1943, Puddicombe was posted to the Directorate of Organization at the National Defense Headquarters in Ottawa. Later that year, he served as President of Courts-Martial in Petawawa, Ontario.¹¹³ As

¹⁰⁹ "James Oscar Fitzallen Harley Orr: Soldier and Common Law Officer of Justice," *The Advocate* 51, no. 2 (March 1993), 270.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*, 275-6.

¹¹² Yuma Totani, "The Prisoner of War Trials Camp," in *Hong Kong's War Crimes Trials*, ed. Suzannah Linton (Oxford, United Kingdom: Oxford University Press, 2013), 75.

¹¹³ Sweeney, "The Canadian War Crimes Liaison Detachment," 47.

Orr's second-in-command, Puddicombe was the Canadian representative in Hong Kong and was responsible for helping prosecute B and C Class war crimes trials. He left for Tokyo on 7 April 1946 and eventually travelled to Hong Kong, arriving on 28 April 1946. Captain J.H. Dickey, Captain J.D.C. Boland, A.S. Hogg, R. Manchester, H.B. Shepherd, and R.W. Martin comprised the remaining detachment members.¹¹⁴

The Detachment's main branch (Orr, Dickey, Boland, Manchester, Shepherd, and Martin) was in Tokyo under the American legal team who oversaw the Yokohama War Crimes Trial. A sub-detachment (Puddicombe and Hogg) went to Hong Kong to work with the British, who oversaw the Hong Kong War Crimes Trials. According to their agreement with the United Kingdom and the United States, the Canadian War Crimes Liaison Detachment would have the following powers and duties:

- (i) to assist in the collection and collation of further evidence of atrocities against Canadians;
- (ii) to assist in providing the United States or United Kingdom authorities with such available evidence from Canadian sources as may be considered of value to them;
- (iii) to request the United States or United Kingdom military authorities to convene military courts under their respective regulations, for the trial of particular persons within their jurisdiction against whom, in the opinion of the appropriate Canadian Military representative, a prima facie case of a war crime against a Canadian has been established;
- (iv) to assist in the prosecution of Canadian cases of so authorized by the appropriate United States or United Kingdom authorities;
- (v) to act in general liaison with the United States and the United Kingdom war crimes offices in the Far East.¹¹⁵

In addition to those duties, Canadian military representatives had the authority to request US and UK authorities to try:

¹¹⁴ LAC, Puddicombe Fonds, Vol. 1-29, 8 March 1946.

¹¹⁵ LAC, Puddicombe Fonds, Vol. 1-29, E.G. Weeks, Major-General, Adjutant-General, Department of National Defence to Officer in Charge, Canadian War Crimes Liaison Detachment, Japanese Theatre, 12 March 1946.

- (a) persons charged with or suspected of having committed a violation of the laws and usages of war;
- (b) who 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.¹¹⁶

To help guide their war crimes prosecutions, the Detachment used the WCIS' list and evidence that identified 58 Japanese individuals who allegedly committed war crimes against Canadian soldiers and civilians. Inouye was one of the 58 individuals identified for his alleged ill-treatment against Canadian soldiers Captain Norris and Major Atkinson.¹¹⁷

Canadian Interest in Inouye's Case

Five months after P.G.R. Campbell's memo from September 1945 regarding Inouye's actions, Deputy Minister (Army) Basil Campbell sent a letter to the Under Secretary of State for External Affairs outlining the evidence the WCIS collected on Inouye.¹¹⁸ The WCIS, responsible for investigating war crimes against Canadian soldiers in the Pacific theatre, gathered approximately two hundred affidavits that mentioned Inouye's alleged ill-treatment towards Canadian POWs at the Sham Shui Po Camp. A large number of these affidavits detailed Inouye's "severe and brutal public beating" of two Canadian officers, Maj. F.T. Atkinson, and Capt. J.A. Norris of the Winnipeg Grenadiers. However, Campbell raised doubts about the severity of the incident's effects, writing "it is doubtful whether the beating could have caused permanent

¹¹⁶ Ibid.

¹¹⁷ LAC, Puddicombe Fonds, Vol. 1-29, Lt. Col. Oscar Orr, Canadian War Crimes Liaison Detachment to The Secretary, National Defence Headquarters, Ottawa, 2 May 1946.

¹¹⁸ LAC, RG 25, Vol. 3824, File 8767-40C, Deputy Minister (Army) to Under-Secretary of State for External Affairs, 19 February 1946.

physical injury."¹¹⁹ Furthermore, Campbell drew attention to Inouye's dual nationality, particularly his Canadian citizenship, and was unsure of how this would affect prosecuting Inouye: "Conduct of this sort by a British subject is treason; the same conduct by an alien is a minor war crime."¹²⁰ To try Inouye, Campbell suggested that Canada would be a suitable place to try Inouye "owing to the hundreds of witnesses," but also advised that officials look into trying a "British subject by a Military Court sitting in a British Colony where Civil courts function."¹²¹

Several Ottawa officials expressed interest in charging Inouye but did not acknowledge or look in-depth into Inouye's dual nationality and the issue of a British subject being tried in a Military Court. Instead, officials in the Department of National Defence and External Affairs began to inquire how they might prosecute Inouye in Canada. External Affairs officials noted that Inouye would be guilty of treason within the Criminal Code, and if this were correct, "it would be inadvisable to treat him merely as a minor war criminal."¹²² Deputy Minister Varcoe of the Department of National Defence confirmed that Inouye was guilty of treason under the Criminal Code. However, Varcoe did not think they could charge Inouye because too much time had passed since the first offence to pursue the charges, nor did the courts in Canada have the jurisdiction to charge an offence committed outside of the country.¹²³ However, Varcoe also

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² LAC, RG 25, Vol. 3824, File 8767-40C, Under-Secretary of State for External Affairs to Deputy Minister of Justice, 2 March 1946.

¹²³ LAC, RG 25, Vol. 3824, File 8767-40C, Deputy Minister Varcoe to Under-Secretary of State for External Affairs, 9 March 1946.

noted that Britain had the jurisdiction to try Inouye for an offence under the Treason Act 1351, chapter 2 of the Statutes of England.¹²⁴ Alternatively, Varcoe indicated that Inouye contravened the provisions of Section 4 of the Treachery Act, Chapter 43 of the Statutes of 1940 and could be tried in Canada.¹²⁵ The Treachery Act 1940 was an Act of Parliament of the United Kingdom enacted during the Second World War on 23 May 1940 and applied to all Dominions and Colonies under British rule. As Varcoe pointed out, Inouye contravened Section 4 of the Act, which concerned with “Acts done with intent to assist the enemy.”¹²⁶

By the end of March 1946, External Affairs agreed that Inouye should be brought to Canada to stand trial under the Treachery Act. Although Britain had jurisdiction to try Inouye for treason, External Affairs viewed Inouye as “primarily a Canadian problem.”¹²⁷ “If [Inouye] is to be dealt with at all,” External Affairs official E.R. Hopkins wrote, “he should be dealt with by us.”¹²⁸ Hopkins asked the Department of Justice to examine the evidence available “in order to determine whether a prima facie case could be established against Inouye.”¹²⁹ If the evidence was sufficient to support a charge under the Treachery Act, Hopkins wrote, “a recommendation might go to Cabinet that Inouye be brought to Canada to stand trial.”¹³⁰

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ “Criminal Law Additions and Alterations: The Treachery Act, 1940,” *The Journal of Criminal Law* 4, no. 3, 1940.

¹²⁷ LAC, RG 25, Vol. 3824, File 8767-40C, E.R. Hopkins to Deputy, 22 March 1946.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

On 12 April 1946, the Deputy Minister (Army) notified Ottawa officials that Inouye was imprisoned in Hong Kong awaiting trial as a war criminal. However, the Deputy Minister (Army) pointed out that any plan to bring Inouye to Canada to stand trial might involve a conflict with the British authorities as “he may already be held on trial as other trials have commenced.”¹³¹ The following month, Deputy Minister of Justice Varcoe provided an update to External Affairs’ request regarding Inouye and the Treachery Act. Varcoe believed that the evidence “would support a prima facie case to justify charges being laid against Inouye under the Treachery Act.”¹³² Varcoe acknowledged that he was not “fully apprised” of the procedure required to bring Inouye to Canada. Still, he believed that officials would have to submit an application to British authorities first.¹³³

Although Canadian officials appeared to be ready to bring Inouye back to Canada, broader political issues were on the mind of some. On 15 May 1946, the lawyer for External Affairs, E.R. Hopkins wrote a memo to the minister: “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.”¹³⁴ Hopkins was referring to the deportation of Japanese Canadians that elicited major opposition from civil rights groups.¹³⁵ The deportation of Japanese Canadians was the last phase of the uprooting and

¹³¹ LAC, RG 25, Vol. 3824, File 8767-40C, Deputy Minister (Army) to Deputy Minister of Justice, 12 April 1946.

¹³² LAC, RG 25, Vol. 3824, File 8767-40C, Deputy Minister Varcoe to Under-Secretary of State for External Affairs, Ottawa, 10 May 1946.

¹³³ Ibid.

¹³⁴ LAC, RG 25, Vol. 3824, File 8767-40C, E.R. Hopkins to Secretary of State for External Affairs, 15 May 1946.

¹³⁵ For more information, see Stephanie Bangarth, *Voices Raised in Protest: Defending Citizens of Japanese Ancestry in North America, 1942-49* (Vancouver; Toronto: UBC Press, 2008).

internment that begun in 1941. On 15 December 1945, Japanese Canadians were given a choice to either move east of the Rockies or be "repatriated" to Japan.¹³⁶ In 1946, the federal government deported 4,000 Japanese Canadians to a decimated Japan. The remaining internees were not permitted to return to the coast until 1949. In fact, Inouye's mother and four sisters who remained in Vancouver when Inouye left, were uprooted and interned during the war while Inouye was in Hong Kong. When the federal government presented the ultimatum of either being deported or going east of the Rockies, Inouye's family moved east.

In addition to his concerns about domestic political issues, Hopkins raised the issue of the possible outcome of Inouye's trial if charged in Canada:

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 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.¹³⁷

Despite these issues, Hopkins still believed that officials should bring Inouye back to Canada.

"Inouye is a Canadian chargeable with a criminal offense under the Treachery Act of Canada," Hopkins wrote, "and, in the absence of good reason to the contrary, he should probably be dealt with as such, rather than as a comparatively minor war criminal."¹³⁸ The Department of Justice drafted a proposal shortly after, and the Minister of Justice presented it to Cabinet on 22 May 1946. Louis St. Laurent highlighted the evidence of war crimes against Canadian prisoners and believed that there were sufficient witnesses in Canada to establish Inouye's guilt under the

¹³⁶ Ibid, 49.

¹³⁷ LAC, RG 25, Vol. 3824, File 8767-40C, E.R. Hopkins to Secretary of State for External Affairs, 15 May 1946.

¹³⁸ Ibid.

Treachery Act.¹³⁹ St. Laurent further suggested that there would be advantages in having the trial take place in Canada, “in view of the notoriety of the alleged offenses and the fact that the accused was a Canadian citizen.”¹⁴⁰ After discussing the “trial of a Canadian born Japanese,” Cabinet rejected the ministerial recommendation and instead decided that “no exception be made in this case and that established procedures should not be departed from for trial in the Far East.”¹⁴¹ In other words, Cabinet rejected the Department of Justice's proposal, and Inouye would remain in Hong Kong to be tried as a war criminal. By this time, however, their decision was inconsequential, as Inouye’s war crimes trial had begun that morning. Six months later, in a letter to the Under-Secretary of State for External Affairs, Deputy Minister A. Ross provided some insight into the Cabinet’s decision:

Cabinet considered the possibility of laying charges of treason or treachery against [Inouye]...After due consideration of the problem and in view of the fact that the trial by Court-Martial was already underway in Hong Kong, it was decided to allow the trial to proceed and to initiate no other action in this country at that time.¹⁴²

The rejection of the Department of Justice’s recommendation is noteworthy. The Canadian government had come under pressure for its continued maltreatment of Japanese Canadians. As E.R. Hopkins noted in his letter to the Secretary of State for External Affairs, the “internal political situation,” referring to the forced uprooting, internment, and deportation of Japanese Canadians, was a concern regarding bringing Inouye to Canada. Inouye's presence and profile as

¹³⁹ LAC, RG 25, Vol. 3824, File 8767-40C, Memorandum from Minister of Justice and Attorney General of Canada, 24 May 1946.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² LAC, RG 25, Vol. 3824, File 8767-40C, A. Ross, Deputy Minister to Under-Secretary of State, External Affairs, 6 November 1946.

a Japanese Canadian could have caused political turmoil and sparked public upset and backlash. Japanese Canadian historian and veteran, Roy Ito, echoed these concerns and suggested that Inouye's trial would elicit a strong public response: "Holding the Inouye trial in Canada would have been a draining and emotional experience for Canada, particularly for former Hong Kong prisoners and Japanese Canadians."¹⁴³ Moreover, Ito postulates that Inouye's trial would have drawn attention to the federal government's treatment of Japanese Canadians, leading to further tension.¹⁴⁴ Thus, having Inouye tried in Hong Kong allowed the federal government to avoid possible political turmoil while appeasing the returned Canadian soldiers who demanded retribution for the abuse they endured abroad.

What is more, the Cabinet's stance on prosecuting war crimes was another factor in deciding whether to bring Inouye back to Canada. Canada was reticent to commit fully to war crimes matters and had little interest in participating in war crimes trials. Cabinet doubted the efficacy of the International Military Tribunal and considered war crimes matters of "no great importance." Eventually, Cabinet agreed to limit their involvement in prosecuting only specific incidents of war crimes committed against Canadian soldiers and civilians. The establishment of the Canadian War Crimes Liaison Detachment assisted in the prosecution of Canadian cases in the war crimes trials, which fulfilled the responsibility to seek justice on behalf of returning soldiers and protected Canadian interests abroad. The Cabinet's decision to not intervene in Inouye's case could have also been partially based on the fact that there were already established resources and teams overseas working to prosecute war crimes. Allowing Inouye's trial to continue in Hong Kong likely meant minimal additional efforts and resources on the Canadian government's side

¹⁴³ Ito, *Stories of My People*, 366.

¹⁴⁴ Ibid.

while the Court Martial and the already established Canadian Detachment team handled Inouye's case. The Canadian Detachment had already arrived in Hong Kong in April 1946, a month before the Cabinet's decision, and they had identified Inouye on their list of individuals to prosecute. It is likely the Cabinet believed that keeping Inouye in Hong Kong to be tried as a war criminal allowed Canada to maintain limited involvement in war crime matters, while the Canadian Detachment handled Inouye's case without causing any further disturbance.

Conclusions

Tracing Inouye's life, Canada's stance in war crime matters, and their decision regarding Inouye's case provides some groundwork for better understanding the origins and determination of Inouye's war crimes trial in Hong Kong. Sources on Inouye's life, particularly his family and early life, are limited; therefore, our understanding of who Inouye was as a person remains minimal. However, giving space to what we do know about Inouye's life reveals that he was more than just a "war criminal" and challenges previous racist portrayals. In many ways, Inouye was an ordinary person in extraordinary circumstances.¹⁴⁵ Inouye was a son of Japanese immigrants who had a relatively comfortable upbringing in British Columbia. His pursuit of higher education took him to Japan, where he struggled to fit in with his Japanese peers due to his Nisei identity. This escalated to a terrible encounter with the Kempeitai, which resulted in long-term health issues and withdrawal from university studies. The Imperial Japanese Army eventually recruited Inouye as an interpreter in the prisoner of war camps in Hong Kong. Working in these camps placed him face-to-face with Canadian POWs, and his mistreatment of these men led to his "infamous" reputation. During his post, Inouye also met his future wife, Ho

¹⁴⁵ Tanaka, *Hidden Horrors*, xv.

Wai Ming. Inouye was discharged and moved back to Japan but returned to Hong Kong to reunite with Ming. Returning to Hong Kong led to Inouye's involvement with the Kempeitai as a civilian interpreter to assist in anti-espionage efforts. Upon Japan's surrender at the end of the war, Allied authorities arrested Inouye and held him in custody to stand trial for war crimes in Hong Kong.

When Canadian officials in Ottawa heard about Inouye and his actions against Canadian soldiers, they believed that it was inappropriate to charge him "merely as a minor war criminal." Officials were aware of Inouye's Canadian citizenship early on but did not investigate in depth the possible problems it could pose. Instead, the Department of National Defence and Department of External Affairs focused their efforts on bringing Inouye back to Canada to stand trial and gathered evidence to justify charges under the Treachery Act. However, Cabinet was less eager and interested in charging Inouye in Canada. When the Minister of Justice presented their proposal to try Inouye in Canada, Cabinet rejected the proposal and concluded that Canada would not interfere in Inouye's Hong Kong war crimes trial.

Ultimately, while Justice officials believed there existed a legal basis for charging Inouye on home soil, bringing Inouye back to Canada presented Cabinet with potential challenges to their political agenda. Thus, the decision not to interfere in Inouye's trial in Hong Kong was a deliberate decision to avoid political complications at home. Efforts to prosecute Inouye for war crimes were left in the hands of British authorities, and Canadian legal representatives would continue to work within the framework of the Hong Kong War Crimes Tribunal.

Chapter 2:

Inouye and the Hong Kong “Minor” War Crimes Trials: Race, Power, and War Crimes

Inouye Kanao was tried for war crimes in colonial Hong Kong from 22-27 May 1946, found guilty on three charges, and sentenced to death on the trial's final day. Inouye's war crimes trial is arguably the most well-known aspect of Inouye's legal story. Past assessments of Inouye's war crimes trial range from historians suggesting that Inouye was a victim of "Victor's Justice" to others claiming Inouye's guilty verdict and death sentence were justified and deserved.¹⁴⁶ However, these assessments have overlooked an essential element in Inouye's war crimes trial – the role and influence of racism that I suggest had a significant bearing on Inouye's trial, particularly on sentencing.

As historian John Dower has argued, race and racism were important factors during the Second World War: "It exposed raw prejudices and was fueled by racial pride, arrogance, and rage on many sides."¹⁴⁷ According to Dower, in the United States and Britain, the Japanese were more hated than the Germans before as well as after Pearl Harbor.¹⁴⁸ The Western Allies saw

¹⁴⁶ See Granatstein et al., *Mutual Hostages: Canadians and Japanese During the Second World War* (Toronto: University of Toronto Press, 1992).; David Bercuson, Michael Bliss, Graham Broad, Margaret Conrad, et al., "Canada's Hall of Infamy," *The Beaver* 47, no. 4 (Aug/Sept 2007): 31.; Roy Ito, *Stories of My People: A Japanese Canadian Journal* (Hamilton, On: Promark, 1994).; Mark Sweeney, "The Canadian War Crimes Liaison Detachment – Far East and the Prosecution of Japanese “Minor” War Crimes,” (PhD diss, University of Waterloo, 2013); Mark Sweeney, “A ‘Guest of the Dominion of Canada’: Nationality and the War Crimes and Treason Trials of Inouye Kanao, 1946-1947,” *Journal of Historical Biography* 14, no. 1 (2013): 1-46.; Kathleen, E Tsuji, “Three Eras of Citizen-Rights in Canada: An Interpretation of the Relationship Between Citizen-Rights and Executive Power,” MA Thesis, University of Victoria, 2013.

¹⁴⁷ Dower, *War Without Mercy*, 4.

¹⁴⁸ *Ibid*, 29.

Japan as a "racial menace," which drew from the yellow peril sentiments that, in the past, had been mainly directed against the Chinese.¹⁴⁹ Throughout the war, the Western Allies produced text and imagery to express their racist beliefs and contempt for the Japanese. They frequently emphasized the Japanese as "subhuman," using images of apes and vermin to convey this.

Furthermore, they portrayed the Japanese as inherently inferior who "had to be understood in terms of primitivism, childishness, and collective mental and emotional deficiency."¹⁵⁰

Furthermore, the Western Allies saw the Japanese soldiers as savage and barbaric. The Imperial Japanese Army's actions in China, Southeast Asia, and their treatment of Allied POWs were considered undeniable evidence of their true barbaric nature and threat to the Allied powers.¹⁵¹ In this chapter, I trace the important events that led to Inouye's war crimes trial and the subsequent trial proceedings. Through this process, I attempt to identify and assess the role and influence of racism. A close reading of the evidence reveals a complicated case of race, politics, and power, which sheds not only new light on how we understand Inouye's legal case but also challenges past interpretations.

The Hong Kong War Crimes Trials

Inouye's war crimes trial was one of the dozens convened as part of what has become known as the Hong Kong War Crimes Trials held from 28 March 1946 to 20 December 1948. The British military courts were established in Europe and Asia under the authority of a Royal Warrant issued on 18 June 1945 and were a part of the larger initiative of war crimes

¹⁴⁹ Ibid, 31.

¹⁵⁰ Ibid, 30.

¹⁵¹ Ibid, 38.

prosecutions that Allied leaders agreed to before the end of the Second World War.¹⁵² In total, there were four military courts established in Hong Kong. These courts attended to cases from Hong Kong, Kowloon and the New Territories, as well as from Formosa (Taiwan), China, Japan and the High Seas. The International Military Tribunal in Tokyo concentrated on "major" A class war crimes, prosecuting those responsible for organized brutality and the design and the execution of plans for acts of aggression. In contrast, the Hong Kong trials concentrated on "minor," or B/C class war crimes and criminals who were "alleged to have committed war crimes on a relatively small scale such as killing without justification, torture, other forms of ill-treatment causing the infliction of bodily harm and withholding sufficient food, water, and medical care."¹⁵³ The majority of the "minor" war crimes concerned the torture, beating or execution of small numbers of victims in isolated incidents. Torture linked to interrogation (water torture, electric torture, throwing the victim through the air blindfolded, beatings, and burnings) was commonly charged.¹⁵⁴ By July 1946, the Allies had captured 10,000 Japanese in Hong Kong; of those 10,000, 236 were held as suspects of war crimes. Over time, some of these men were repatriated or moved to Japan or other parts of Asia, which left 123 men to be prosecuted. The Hong Kong war crimes trials consisted of 46 trials: 44 of those trials had sentences imposed against 108 individuals, of whom 86 were sent to prison, there were 14 acquittals and 21 executions. Many of the trials concluded before the Nuremberg International Military Tribunal ended in October 1946.

¹⁵² Alexander Zahar, "Trial Procedure at the British Military Courts, Hong Kong, 1946-1948," in *Hong Kong's War Crimes Trials*, ed. Suzannah Linton (Oxford, United Kingdom: Oxford University Press, 2013), 13.

¹⁵³ *Ibid*, 21.

¹⁵⁴ *Ibid*.

Preparing the Case Against Inouye

As previously mentioned, Cabinet sent the Canadian War Crimes Liaison Detachment to Japan and Hong Kong to assist Allied forces in the prosecution of war crimes. Lt.-Col. Oscar Orr was the Chief Canadian Prosecutor and head of the Detachment. Even before he left Ottawa, Orr wrote to the Deputy Judge Advocate General explaining why he felt a particular approach was needed for Japanese war crimes:

The suggestion that only crimes involving death and permanent disabilities to Canadians are to be charged against the Japanese is somewhat disturbing. Such a decision was no doubt proper in the case of the European theatre, but it is not appropriate to the Eastern. The cases are not on "all fours." European cases consist for the most part of murder or attempts to murder. Victims in the latter case usually suffered several wounds from warlike weapons.

The Germans, as far as Canadians were concerned, are not reported to have made any attempt to humiliate or ridicule the captives any more than the usual amenities considered by both sides as part of the fortunes of war. The Germans were dealing with another white race. The Japanese, on the other hand, in the vast majority of cases submitted our men to over three years of constant brutality and beating. This was practiced in many cases on men already far gone with nutritional and other disorders, yet it is only in the odd case anyone claims to have suffered a permanent disability. Many of the dead are said to have been beaten at dates shortly prior to their decease. Many deaths listed as due to malnutrition, and disease may have been accelerated by brutality and humiliation, while in the case of the living who have stood this treatment, the true results will be hard to analyze for many years. The mental result is painfully apparent to the layman in many cases. ¹⁵⁵

Orr's letter reveals his racist beliefs, which resonate with John Dower's argument that the Japanese were hated more than the Germans. He felt that the crimes committed against Canadians involved a 'race' war on the part of the Japanese that involved humiliation or ridicule against white Allied soldiers. Orr's letter also reveals that he had put a target on Inouye's back from the beginning and was determined to see him prosecuted. At the end of the letter, Orr

¹⁵⁵ "War Crimes," Lt.-Col. Oscar Orr to Deputy Judge Advocate General, 22 December 1945.

identified Inouye as one of the Japanese whose wartime actions intended to humiliate and brutalize Canadians, describing him as someone who "had a hatred against Canadians who took special delight in beating them."¹⁵⁶ This portrayal of Inouye and Japanese soldiers as vindictive and cruel compared to the Germans, members of the 'white race,' is also shared by the judge and court members on Inouye's forthcoming tribunal.

Orr and five other members of the prosecution team (Dickey, Boland, Manchester, Shepherd, and Martin) went to Japan to prosecute trials in Tokyo and Yokohama while Puddicombe and Hogg went to Hong Kong. To help carry out their work, the Detachment brought with them the affidavits of Canadian POWs as well as instructions from Ottawa. The affidavits were collected by the War Crimes Investigation Section in Ottawa and were the foundation for the trial cases. Once the team arrived, the detachment members joined the British and American prosecution teams and began work immediately. Orr had forwarded a list of proposed cases for Puddicombe to pursue while in Hong Kong, which included Inouye Kanao.¹⁵⁷ Along with the affidavits from Ottawa, Puddicombe also had access to trial documents compiled by the War Crimes Investigation Team (WCIT). The WCIT, under Lieutenant-Colonel Ford, comprised a large team of administrative, legal, investigative officers, and staff of stenographers.¹⁵⁸ The team questioned residents for information, followed up on leads, questioned alleged war criminals, and collected documentation.¹⁵⁹ In addition, the WCIT advertised incidents or of individuals in newspapers such as the *South China Morning Post* and

¹⁵⁶ Ibid.

¹⁵⁷ LAC, Puddicombe fonds, Vol. 1-29, 2 May 1946.

¹⁵⁸ Sweeney, "The Canadian War Crimes Liaison Detachment," 69.

¹⁵⁹ Ibid.

China Mail, asking locals with pertinent information to come forward.¹⁶⁰ Once the WCIT went through all the information, they drafted suggested charges and briefed the Allied Land Forces South East Asia (ALFSEA) War Crimes Branch in Singapore. ALFSEA then reviewed the information, approved the briefs and sent them back to Hong Kong to set up for trial. For the first month in Hong Kong, Puddicombe and Hogg spent much of their time interrogating prisoners at Stanley Prison, inspecting POW camps, attending other trials, interviewing locals, and communicating with Ottawa.¹⁶¹ During his time in Hong Kong, Puddicombe took part in seven trials involving 14 individuals, one of whom was Inouye Kanao.

Inouye's War Crimes Trial

The war crimes trial of Inouye Kanao began on 22 May 1946 in a warehouse in Hong Kong. Lieutenant-Colonel J.C. Stewart, Department of the JAG India, acted as the President of the Court. The members of the Court were Major M.I. Ormsby of the West Yorkshire Regiment and Captain B.N. Kaul of the Frontier Force Regiment. Maj. G.B. Puddicombe led the prosecution, and court-appointed Lieutenant J.R. Haggan of the Royal Engineers led the Defence. The charges against Inouye were as follows:

1. Committing a war crime in that he at Hong Kong on or about December 21, 1942, when an interpreter on the prisoners of war camp staff at the Shamshuipo Camp, in violation of the laws and usages of war did assault Capt. J.A. Norris of the Winnipeg Grenadiers, Canadian Army, by beating him in full view of the Canadian prisoners of war whilst they were drawn up on parade;
2. Committing a war crime, in that he at Hong Kong on or about December 21, 1942, when an interpreter on the prisoners of war camp staff at Shamshuipo Camp, in violation of the laws and usages of war, did assault Major F.T. Atkinson, Royal Rifles of Canada, Canadian Army, by kicking him in full view of the Canadian prisoners of war whilst they were drawn up on parade;

¹⁶⁰ Ibid.

¹⁶¹ Ibid, 70.

3. Committing a war crime in that he at Hong Kong between June 15, 1944, and November 30, 1944, when a member of the staff of the Japanese Gendarmie Headquarters, in violation of the laws and usages of war, was concerned in the ill-treatment of civilian residents of Hong Kong under arrest at 67-69 Kimberley Road, Stanley Gaol and other places, resulting in the death of Mr. Power, Ip Kam-Wing, So Shing-hon and Enrique Lee, and in physical sufferings to others of the said persons in particular to Mrs. M.V. Power, Mr. R.P. Ghilote, Dr. V.N. Atienza, Mr. A.E.P. Guest, Mr. A. Madar, Mr. G. Sang, Mr. W. Lawrence, Mohd Yousif Khan, Lai Chak-po, Lam Sing and Wong Sui-poy.¹⁶²

Inouye pleaded "Not Guilty" to all three charges.

Prosecution

In his opening address, Puddicombe argued that Inouye was not just a civilian interpreter, but an active member of the Imperial Japanese Army and the Kempeitai, who was primarily responsible for the ill-treatment of Canadian POW soldiers and Hong Kong civilian residents. Puddicombe built his case on the assumption that Inouye was first and foremost a Japanese national who shared the same racial heritage as the enemy. Puddicombe wanted to demonstrate that Inouye's alleged crimes were synonymous with the cruel and vicious tactics of the Imperial Japanese Army and the Kempeitai. Puddicombe began by addressing the first two charges. He argued that Inouye assaulted and publicly humiliated two Canadian Officers, Capt. J.A. Norris and Maj. F.T. Atkinson, in full view of the Canadian prisoners while drawn up on parade.¹⁶³ As evidence, Puddicombe read aloud eight affidavits submitted by Canadian soldiers, which described the alleged incident.¹⁶⁴ According to the affidavits, the incident occurred on 21

¹⁶² NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, Charge Sheet.

¹⁶³ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, Exhibit F, Opening address.

¹⁶⁴ The affidavits that Puddicombe read aloud were: Lieutenant Frank Gavan Power; S.G. Stoddard; John Alexander Norris; Major F.T. Atkinson; Lieutenant Colonel William James Home; George Trist; Lieutenant Colonel John N.B. Crawford; and Private Clayton Ausmundson.

December 1942 at the Sham Shui Po POW camp during a routine roll-call. On that day, two men were missing from Capt. Norris' Company roll-call. The two men were hospital orderlies in the medical inspection room who were asleep during the call. No one came to awaken the orderlies, and as a result, they missed the main count. The camp staff was notified of the discrepancy, and a runner was sent immediately to locate the missing men to re-join the parade. During this time, Camp Commandant Sakaino and Inouye, acting as Sakaino's interpreter, arrived at the parade. They approached Capt. Norris in front of the rest of the parade and questioned him about who was responsible for the missing men. According to Norris, the incident escalated from there:

He then asked me why I hadn't called the names of these two men and I told him that they were absent at the time of our Company parade but that they were usually released from [h]ospital in time to get to the battalion parade. [Inouye] then remarked, "You don't call your Company roll?" and struck me with his open hand which knocked off my hat and sunglasses. Then he closed his hand and hit me on the face with the inside part of his clenched fist many times. After about 15 or 20 blows he put his foot behind my leg and pushed me over. Then he kicked I believe at my head but the blows landed on my shoulder, probably four or five times. He said "Stand up and take it like a man." I stood up. He continued to strike me in the face. After some time my knees caved in and I fell down.¹⁶⁵

Atkinson then called out to Inouye in protest. Inouye shifted his attention to Atkinson and said, "So your officers don't call their roll?" and proceeded to allegedly kick Atkinson in the knee.¹⁶⁶

Norris and Atkinson were eventually taken to the medical inspection room to be examined by Lieutenant-Colonel John N.B. Crawford. According to Crawford, Norris' mouth was bleeding; he had a laceration on the conjunctive tissue covering the left eyeball and a fracture on the left side of his jaw along with several cuts and bruises. While Crawford was attending Norris's injuries, Sakaino, accompanied by Inouye, came to the medical inspection room. Sakaino asked Crawford

¹⁶⁵ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, Exhibit I, Affidavit of Capt. John Alexander Norris.

¹⁶⁶ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, Exhibit J, Affidavit of Major F.T. Atkinson.

if Norris was badly injured, and Crawford replied that Norris' eye might be seriously damaged. Sakaino then told Crawford to do his best to save Norris' eye. Afterward, Inouye approached Norris to apologize for losing his temper. Norris did not accept Inouye's apology. Norris' eye healed; however, in his affidavit, he wrote that his jaw "still gives him some annoyance."¹⁶⁷ Maj. Atkinson required one week of bed rest to recover from his injuries. There were no witnesses present in court to testify in person for the first two charges, which prevented Haggan from having the opportunity to cross-examine the witnesses on behalf of the defence.

Puddicombe opening the list of charges with the alleged assault of Capt. Norris and Maj. Atkinson was of strategic importance for the prosecution. The Canadian War Crimes Investigation Section, responsible for investigating war crimes against Canadian soldiers in the Pacific theatre, collected approximately two hundred affidavits that mentioned or described Inouye's alleged ill-treatment towards the Canadian POWs at the Sham Shui Po Camp. These affidavits not only detailed the alleged assault of Capt. Norris and Maj. Atkinson but also other incidents of supposed ill-treatment towards Canadian POWs. However, Puddicombe chose only the alleged assault of Norris and Atkinson to put forward before a military court, and this decision was undoubtedly strategic. In the eyes of military officials, Inouye's alleged assault was a serious offence not only for the act itself but also because it was a racial transgression. For two white officers to be allegedly assaulted by a low-ranking Japanese soldier, who was seen as inferior, in front of their men would have been considered profoundly humiliating and a contravention of the conceptions of military order and civilized conduct of war as outlined in the Geneva Conventions. From Puddicombe's point of view, Inouye's alleged offence was not just assaulting two officers, but also for upending the "natural" racial hierarchy. Puddicombe chose

¹⁶⁷ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, Exhibit I, Affidavit of Capt. John Alexander Norris.

this incident to put forward in court to highlight Inouye's racial transgression for a high-ranking military audience. As the Hong Kong war crimes trials were held in military courts, all court members would have recognized the severity of the issue. Furthermore, Puddicombe reading aloud the Canadian soldiers' affidavits inevitably evoked the racist sentiments that circulated in the court without explicitly mentioning them.



Photo of Inouye Kanao (far right) with two other members of the Imperial Japanese Army. 28 October 1945, National Archives, War Office, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, Exhibit A.

Although the charges concerning the two Canadian soldiers were the reason for Puddicombe's involvement in Inouye's trial, the time spent on these two charges was relatively short and only took up the morning of the 22nd. The trial's primary focus was the third charge, which Puddicombe considered "infinitely more serious."¹⁶⁸ Charge number three concerned Inouye's employment with the Kempeitai. At the time, the Kempeitai in Hong Kong were

¹⁶⁸ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, Exhibit F, Opening address.

conducting anti-espionage work, investigating people suspected of spying and using radio transmitters. Inouye acted as an interpreter for the Kempeitai when suspects were arrested and taken to Kimberley Road Station for questioning before moving them to Stanley Prison. Puddicombe argued that Inouye took a “major active part” in the ill-treatment of various Hong Kong civilian residents.¹⁶⁹ He further argued that four of the civilian residents in custody, Mr. Power, Ip Kam Wing, So Shing-hon, and Enrique Lee, died as a result of this ill-treatment. Puddicombe called thirteen witnesses to testify to illustrate Inouye’s alleged active involvement with the Kempeitai and his brutal tactics. Of those thirteen witnesses, nine alleged that they physically suffered at the hands of Inouye. According to the court transcripts, the Kempeitai arrested the witnesses and took them to Kimberley Road for interrogation with Inouye acting as the interpreter. These interrogations often escalated to water torture and other forms of ill-treatment, such as slapping, whipping, and beating.

The witnesses testified that Inouye went beyond his duties as an interpreter and actively took part and, at times, led the ill-treatment. For example, Lam Sik, a wireless operator with Cables and Wireless, Ltd, testified that Inouye slapped him and participated in giving him the water torture. Another witness, Mary Violet Power, wife of Mr. Power, who allegedly died due to the ill-treatment he received while in custody, testified that she met Inouye the first day she was in custody. She recalled, "Inouye was the interpreter with the other two Japanese. He said, "If you tell me the truth, I won't hurt you or anything. If not, I will make you suffer."¹⁷⁰ She testified that Inouye actively participated in her ill-treatment. Rampal Ghilote, a civil government worker, accused Inouye as “...the chief torturer of my body and soul” who kicked, slapped and

¹⁶⁹ Ibid.

¹⁷⁰ Ibid, 9.

gave him the water torture.¹⁷¹ Ghilote claimed that Inouye actively led the ill-treatment at Kimberley Road, stating, "[Inouye] was the leading spirit in torturing people. Moriyama [Inouye's superior] was only the figurehead. All interrogations and tortures were done by this man alone."¹⁷²

Dr. V.N. Atienza, Gonzalo Sang, Mohammed Yousif Khan, and A. Madar provided similar testimonies that Inouye slapped, kicked, and beat them at Kimberley Road. The remaining witnesses that Puddicombe called to the stand included: a prison warden; two family members of the deceased, the widow of So Shing-hon and the brother of Ip Kam Wing, and a medical practitioner who testified on the effects of water torture, hanging by the arms, cigarette burns, and beriberi. Puddicombe asked the medical practitioner, J.W. Anderson if water torture could lead to death. Anderson responded that death was possible but unlikely, as the outcome depended on the individual's health.¹⁷³

Defence lawyer, Lt. J.R. Haggan, then cross-examined Puddicombe's witnesses. Haggan attempted to establish two main points: First, that lead commander Moriyama, not Inouye, was the one in charge of the interrogations and that Inouye primarily served as an interpreter; and second, that the lasting physical effects as a result of the ill-treatment were less than what Puddicombe presented. For instance, Haggan asked Rampal Ghilote, who was present during his interrogation. Ghilote responded that Moriyama, Inouye, another Japanese member, and an "Indian" were present and confirmed that Inouye translated the questions and answers to Moriyama. Haggan also asked Ghilote if anyone else whipped him besides Inouye. Ghilote

¹⁷¹ Ibid, 16.

¹⁷² Ibid, 17.

¹⁷³ Ibid, 67.

replied that Moriyama had also beaten him during the interrogation. During the cross-examination of Mary Violet Power, Haggan questioned Power on who was in charge of her interrogation. She responded that Moriyama and another Japanese man with a mustache were in charge.¹⁷⁴ Power identified Inouye as an "interpreter for the Japanese"¹⁷⁵ Power also admitted that the two Japanese men had also kicked and slapped her when Inouye was not present. Gonzalo Sang also confirmed Inouye's role as an interpreter during his questioning. Sang stated that Moriyama, Inouye, and a Chinese interpreter, George Wong, were present during his interrogation. Sang explained that Inouye would ask a question to Wong, Wong would then pose the question to Sang. Wong would then interpret Sang's answer to Inouye, who would translate to Moriyama.

The cross-examination of Dr. V.N. Atienza also confirmed that Inouye was not in charge. Atienza stated that he was arrested by two Japanese men who were not Inouye. Atienza believed that these two Japanese men were in charge of the Kempeitai. According to Atienza, at least one of the Japanese men and Inouye were present during his interrogation. Although Atienza claimed Inouye took the initiative in asking questions, he stated that the other Japanese men also tortured him. When Haggan asked Atienza: "For whom did you suffer most of the torture – the Japanese or the accused?" Atienza replied, "From the Japanese."¹⁷⁶ Lam Sik also confirmed during his cross-examination that two other Japanese members who were not present at the trial beat him in addition to Inouye.

¹⁷⁴ Ibid, 14.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid, 39.

Haggan also questioned certain witnesses about the lasting physical effects of their ill-treatment. For example, Haggan asked Mary Violet Power if she still had any marks from Inouye's cigarette burns. Power replied that she did not. Haggan also questioned Rampal Ghilote, who had mentioned that he had on handcuffs when he was hung up. In his original testimony, Ghilote stated that the handcuffs were so tight that they cut into his wrists. Haggan asked Ghilote if he bled to which Ghilote replied, "No." Finally, Hagan cross-examined J.W. Anderson regarding specific ill-treatment tactics and their possible long-term effects. In his questioning, Anderson maintained that there was no direct correlation between water torture and death. Haggan also asked Anderson if he believed that being up by the arms was "bound" to cause permanent paralysis to which Anderson replied, "No."¹⁷⁷

Haggan's questioning did not necessarily absolve Inouye from the allegations against him. Nevertheless, it did challenge the narrative Puddicombe presented that Inouye led the interrogations and showed that Inouye was not the only person involved in the alleged ill-treatment. Moreover, Haggan's questions about the long-term effects of the alleged ill-treatment tried to emphasize the "minor" nature of Inouye's alleged actions. While Puddicombe argued that Inouye's alleged actions were so severe that they contributed to extensive bodily harm and death, Haggan tried to prove that this was not the case. Haggan's cross-examination of the witnesses suggested that while ill-treatment may have occurred, it was not so severe that it caused permanent physical effects or even death.

¹⁷⁷ Ibid, 79.

Defence

On 25 May 1946, Lt. Haggan presented the defence's case. On all three charges, Haggan stated that Inouye's involvement in the ill-treatment of several people is plausible; however, Inouye was only following his superiors' orders. For the first two charges that pertained to the alleged public beatings of Capt. J.A. Norris and Maj. F.T. Atkinson, Haggan contended that Inouye was acting on the orders of Camp Commandant, Lt. Sakaino. Haggan noted the variation in the affidavits and pointed out that the statements provided by Lieutenant Power, Colonel Trist, and Colonel Crawford confirmed that Inouye was following the orders of Lt. Sakaino.¹⁷⁸

With regards to charge number three, Haggan argued that, once again, Inouye was only following his superior, Commander Moriyama, and Moriyama was chiefly responsible for the physical sufferings of the people listed in the charges.¹⁷⁹ Moreover, Haggan challenged the aspect of the charge that alleged that Inouye was concerned in the ill-treatment that resulted in the deaths of Mr. Power, So Shing-hon, Ip Kam Wing, and Enrique Lee. Haggan argued that Inouye could not be held responsible for the four deaths, as there was insufficient evidence tying Inouye to the deaths. Haggan pointed out that one of Inouye's nicknames in Hong Kong was "Slap-Happy" and any ill-treatment that Inouye might have been involved in would have been considered "petty tyrannies" rather than any acts of "fierce violence."¹⁸⁰ "The ruthless torturer," Haggan noted, "is not likely to be nicknamed 'Slap-Happy.'"¹⁸¹

¹⁷⁸ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, Exhibit R, Opening Address.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

Finally, Haggan emphasized that Inouye was never a soldier or a member of the Imperial Japanese Army or the Kempeitai; he was only an interpreter. His ability to speak English likely made a more significant impression on the POWs and Hong Kong residents than the Japanese soldiers and the Kempeitai; therefore, this made Inouye a scapegoat. At the same time, his superiors avoided being held responsible for ill-treatment.¹⁸² His Nisei background placed him in a difficult position while working for the Kempeitai, who treated him with disdain and as their whipping boy, forced to comply with whatever orders given:

Inouye was an interpreter and therefore dealt more directly with the English speaking persons in charge than any other Japanese. It is, therefore obvious that he would become a focus for the hatred with which the public regarded the Japanese; at least he is an obvious person to remain in people's minds after their recollections of others, perhaps more cruel and less considerate, have faded. How Inouye was hated and despised by the Military Japanese as a Nisei, that is to say, the second generation born abroad. Habitually kicked and abused at will, once again appear in his evidence. Inouye was never a Gendarme, he was never a soldier, but was one of the despised Nisei, forced to interpret to the haughty men of the Rising Sun, a language they were too proud to learn and affected to regard as the incomprehensible babblings of sub-human creatures.¹⁸³

Although Haggan acted as Inouye's defence, his remarks reveal his racist perceptions of the Japanese Army. Haggan assumed that the Japanese Army also viewed Allied soldiers through a hierarchal racial lens where the Japanese saw themselves as superior and the Allied soldiers as "sub-human creatures." Haggan's remarks are further evidence of an underlying racist world view circulating within Inouye's trial.

Inouye's Testimony

Haggan called Inouye to the stand for questioning. Haggan sought to show that Inouye had no major involvement in the alleged ill-treatment: Inouye only served as a civilian interpreter

¹⁸² Ibid.

¹⁸³ Ibid.

who followed the orders of his superiors in charge. Haggan's questioning presented a different account of Inouye, who struggled to fit in because of his Nisei background and was also a victim of the Imperial Japanese Army and the Kempeitai. Inouye's testimony is also where we see several mitigating factors that should have been considered in the sentencing. These include Inouye's water torture from the Kempeitai, Inouye being coerced into joining the Kempeitai, and Inouye being the sole defence witness.

Inouye's testimony began with his childhood. Inouye stated that he was born in Kamloops, British Columbia and treated very well in Canada.¹⁸⁴ He had a good childhood and was liked by his peers; however, when Inouye moved to Japan after graduation, he received the opposite treatment that he received in Canada.¹⁸⁵ Inouye explained that the poor treatment he received in Japan was because he was a Nisei. According to Inouye, the Japanese disliked the Nisei because they spoke English and held different interests and ideals. Inouye stated that his Nisei identity, and friendship with another Nisei reporter, led to the Kempeitai arresting Inouye and giving him water torture. Inouye explained that the Kempeitai viewed Inouye and other Niseis suspiciously due to their ties to other countries. Inouye developed pleurisy as a result of the water torture and left university to recuperate in a sanitarium. He never told his grandfather the truth of what happened for fear of causing any trouble. As previously mentioned, Inouye's grandfather Tokutaro Inouye was a well-known figure in Japan who owned a major tramway and was a member of Japan's parliament. Inouye later explained that he withheld what happened from his grandfather because he worried that the truth would lead to an investigation into the incident and involve the Kempeitai again. Inouye also explained that he did not tell the truth

¹⁸⁴ Ibid, 81.

¹⁸⁵ Ibid, 103.

because he did not want to upset his grandfather for getting into trouble. Inouye stated that if his grandfather found out, Tokutaro would have given him a "bawling out...for being so foolish"¹⁸⁶ Inouye claimed that he was unhappy in Japan and wanted to return to Canada, but his relatives told him to wait until he completed his education.¹⁸⁷

Haggan then asked Inouye about how he became involved with the Imperial Japanese Army. Inouye's response revealed that he did not actively seek to join the Imperial Japanese Army. According to Inouye, the Japanese Army conscripted him as an interpreter in 1942. He explained that while recuperating in the sanitarium after being tortured, all Niseis in Japan had to register their names, addresses, and occupations. This was in February 1942. In May 1942, officials called Inouye to the War Office in Tokyo and assigned him a job as an interpreter:

"They told me that I was to go to Hong Kong. They looked at me and just gave me a medical examination and said O.K. 'Maybe a change of climate will do you good...' I told them that I had been sick and they said it did not matter because it was not a strenuous job."¹⁸⁸ Inouye travelled to Hong Kong shortly after. When Inouye arrived in Hong Kong, Inouye's superiors made their expectations very clear:

...we were introduced to Lieutenant Naku, Lieutenant Warada, Colonel Tokunaga and Lieutenant Tarada [who] told us that it was a mistake we came there, because we were considered as parrots... That is we had no will of our own and he said we would learn later on the war how we would be treated.¹⁸⁹

¹⁸⁶ Ibid, 106.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid, 110.

¹⁸⁹ Ibid, 82.

Inouye claimed that the Japanese Army treated him poorly and viewed him with suspicion. Inouye explained that the soldiers frequently kicked and abused him because he was a Nisei and that "my father had the [Military Medal] in the last war, and they did not trust me... They were always suspicious thinking I would give information outside to somebody, or to help other people around."¹⁹⁰ Inouye claimed that he tried to give his resignation to be discharged, but the adjutant would not allow him.¹⁹¹

With regards to the first two charges concerning Capt. Norris and Maj. Atkinson, Inouye claimed that he was following Lt. Sakaino's orders. Inouye explained that when Lt. Sakaino learned that two men were missing from the parade, he became angry because he thought the men had escaped the camp. When Sakaino and Inouye approached Norris, Sakaino told Inouye to ask who was responsible for the men. Norris responded that they could not take responsibility for their men to which Sakaino said if they could not take responsibility then "would [Norris] rather go to [jail] for six months or get slapped."¹⁹² Sakaino then ordered Inouye to slap Norris. Inouye denied kicking Atkinson, claiming that Sakaino was responsible for the majority of the beatings:

He was not kicked by me, he was kicked once by Lieutenant 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. Why should I? I am not the man to kick him when he was down. When he was down, I asked him to get up.¹⁹³

¹⁹⁰ Ibid, 82.

¹⁹¹ Ibid.

¹⁹² Ibid, 83.

¹⁹³ Ibid, 84.

Inouye explained that beatings such as these were considered standard. According to Inouye, Col. Tokunaga gave out orders that officers or prisoners of war should be treated as ordinary Japanese soldiers. This order was standing, Inouye explained and applied to all ranks of the Imperial Japanese Army. Inouye stated that he had to follow orders or face serious consequences: "If I had not done that I would have gone to Stanley for six months, that would mean death."¹⁹⁴

When addressing his work with the Kempeitai and the allegations listed in the third charge, Inouye denied being involved in any of the ill-treatment of the Hong Kong civilian residents and stated that he only interpreted for his superiors, who led the interrogations. According to the court transcripts, Inouye, once again, was not actively seeking to join the Kempeitai. After his post at the Sham Shui Po camp, Inouye went to Singapore and transferred to the 4th division Headquarters in Osaka, where he was discharged on 28 March 1944 on account of bad health. Inouye began working for an import-export company in Kobe, Japan. He soon transferred to the Hong Kong branch of the company to reunite with his wife, Ho Wai Ming. When Inouye arrived in Hong Kong, authorities told him that he could not disembark from the ship. Inouye's former superior, Col. Tokunaga, had intervened and prevented Inouye's landing. According to Inouye, Tokunaga did not want Inouye around for fear that Inouye would reveal that Tokunaga was pilfering Red Cross packages.¹⁹⁵ Thus, Tokunaga gave Inouye an ultimatum: Be deported back to Japan or work with the Kempeitai. Inouye agreed to work for the Kempeitai

¹⁹⁴ Ibid.

¹⁹⁵ Ibid, 86.

so that he could be with his wife.¹⁹⁶ Inouye contended that he never became a member of the Kempeitai and that his role was to be a temporary interpreter.¹⁹⁷

According to the court transcript, when Inouye began working for the Kempeitai, Major Shiozawa, who was in charge of the Special Branch, ordered him to interpret for Moriyama, a Sergeant in the Kempeitai:

Moriyama took charge and I was the interpreter. He did all the torturing and I was just like a talking machine, interpreting the questions and answers [...] I was just like a machine which speaks. If he asked me to ask a question, I just did it. I did not ask any questions on my own and translated every word asked.¹⁹⁸

For many of the cases, Inouye denied being involved in the interrogations at all. For those interrogations that he was present, Inouye repeatedly claimed that he only interpreted and had no role in the ill-treatment of the Hong Kong civilian residents whatsoever. Inouye asserted that Moriyama and Shigematsu, a Warrant Officer and second-in-charge of the Special Branch, led the interrogations and were responsible for the ill-treatment.

Inouye also denied being present or involved with the ill-treatment and deaths of the four Hong Kong civilian residents, Mr. Power, Ip Kam Wing, and So Shing-hon, repeating that Moriyama was responsible. Inouye stated that he was present for the interrogation of Wong Pui but had no participatory role in the ill-treatment. During the cross-examination, Puddicombe asked Inouye if he ever attempted to intervene or stop the ill-treatment as it was happening. Inouye replied that he did not approve the tactics used against the Hong Kong civilians, but he had no authority to stop the ill-treatment because of his role as an interpreter: "I could not stop

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid, 110.

them, sir... I had no power at all. I was only an interpreter, sir. They would not listen to interpreters, sir."¹⁹⁹ Similar to his defence for charges one and two, Inouye claimed he had no choice but to follow the Kempeitai's orders. Inouye explained that he would have been punished or imprisoned if he disobeyed or refused to follow orders.²⁰⁰ Inouye emphasized that he was never a member of the Kempeitai, only a temporary interpreter forced to follow his superiors' orders:

...When I was in the Gendarmerie Headquarters acting as interpreter during all these interrogations [Moriyama] asked a question and when I got the answer "NO" [Moriyama] got very furious about it. I was asked to put the question again and when the man continued to answer no, [Moriyama] got furious and took him out and gave him a beating or water torture. When I was interpreter at Headquarters I did not have a rank. When there was no interpreting to do, I acted as teaboy or sent round to buy cigarettes, run to the canteen or shine shoes. If I did not do that they would kick me around.²⁰¹

Inouye's testimony challenged the prosecution's narrative that he was an active member and aggressor of the Imperial Japanese Army and the Kempeitai. Instead, Inouye's account indicated a more complicated story of an individual whose life path and wartime experiences were shaped by his Nisei background.

After Inouye's testimony, Puddicombe and members of the court questioned Inouye. In the cross-examination, Puddicombe endeavoured to disprove Inouye's testimony and show that even though Inouye was born and raised in Canada, he was first and foremost a Japanese national. Puddicombe believed that there were no excuses for Inouye's behaviour and that Inouye's actions towards the POWs and Hong Kong civilian residents reflected the true nature of "evil" Japanese. One strategy Puddicombe employed to illustrate this point was Inouye's

¹⁹⁹ Ibid, 132.

²⁰⁰ Ibid, 131.

²⁰¹ Ibid, 101.

upbringing in Canada to highlight Inouye's true nature. Before the trial, there were rumours from POWs that when Inouye lived in British Columbia, he frequently faced anti-Japanese sentiment from white Canadians.²⁰² He allegedly left Canada in part due to the racist treatment he received and hoped to start a new life in Japan. According to the POWs, Inouye joined the Imperial Japanese Army and abused POWs to "merely settle old scores."²⁰³ Puddicombe was aware that there was anti-Japanese sentiment in Canada, and Inouye could use his negative experiences in Canada as part of his defence. During the trial, Puddicombe was prepared to challenge these reasons in Court and prove them to be false. He wanted to illustrate that Canada was benevolent and treated Inouye fairly. Puddicombe began his questioning about Inouye's upbringing, education, and friendships in Canada:

Q: What was the nature of Seymore School. Was it what you and I in Canada would call a public school?

A: Yes, a public school.

Q: Did you pay fees for you education?

A: No.

Q: So you were given a free education?

A: Yes.

...

Q: Universally throughout your education what was the treatment you received from these ladies and gentlemen?

A: I was called the teacher's pet when I was in public school.

Q: So the teachers showed you a lot of favours, I suppose?

A: Yes.

...

Q: What about your relations with other kinds in school? Did you play games with them?

A: Yes, Rugby, Football, Indoor Baseball, especially baseball.

Q: You had quite good friends among the kids.

A: Yes.

Q: Were they all Japanese?

A: No, most of them were Scots and Irishmen.

Q: What about your social life, did you go see the youngsters that you played with in their homes?

²⁰² Ito, *Stories of My People*, 356.

²⁰³ Ibid.

A: Yes.

Q: Were you welcomed there?

A: Yes.

Q: In fact would it be right to say that you were given in your school days the same general consideration as any other youngster?

A: Yes.²⁰⁴

Puddicombe used Inouye's education and peers as evidence that white Canadians treated him equally, suggesting that Inouye had a positive upbringing in Canada. Not only did Inouye's peers welcome him, but also Inouye received a free education, which should have taught him the culture and civilized ways of Canada. Consequently, Puddicombe's questioning of Inouye portrayed Inouye as someone who disdained the generosity he received in Canada, making Inouye's alleged crimes, particularly the ill-treatment of Canadian POWs, appear more despicable.

Puddicombe also had other plans to discredit a possible defence that Inouye had negative experiences in Canada. Puddicombe turned to Roy Ito, a Japanese Canadian who served as the Court Monitor for the trial to challenge Inouye's testimony. According to Ito, Puddicombe approached him before the trial proceedings one day and said:

“Sergeant, I may need your help. If Inouye claims he was mistreated in Canada, I am going to put you on the stand.” Taken aback, I said, “What do you intend to ask?” The officer said, “I'm going to ask you what you have on your sleeve” indicating my three stripes. In Major Puddicombe's eyes, the three stripes of a non-commissioned officer was evidence enough that I was treated fairly and equally in Canada.²⁰⁵

As Ito notes, Puddicombe wanted to challenge and deny any mistreatment of Japanese Canadians in Canada and use Ito as an example in court that Japanese Canadians, or Niseis, were treated fairly and equally. However, as Ito recalled, it was evident that "The officer from Montreal had

²⁰⁴ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, 103.

²⁰⁵ Ito, *Stories of My People*, 357.

little knowledge of the terrible injustice done to Japanese Canadians before during, and after the war."²⁰⁶ The injustice against the Japanese and Japanese Canadians that Ito referred to had been an ongoing issue since the influx of Japanese immigrants to Canada in the late 1800s. This injustice included rampant anti-Japanese sentiment, particularly in British Columbia, resulting in anti-Asian riots, episodes of violence and harassment, and racist policies such as Japanese Canadians being denied the right to vote or serving in the Canadian Army during the First World War. By the Second World War, injustice against Japanese and Japanese Canadians worsened with the internment of over 22,000 Japanese Canadians. From 1942 to 1945, Japanese Canadians also were banned from enlisting in the Canadian forces. In 1945, the Canadian War Cabinet reluctantly agreed to allow Japanese Canadians to enlist. The enlistment was limited for linguistic purposes only, such as interpretation and translation. Ito was one of the Japanese Canadians who enlisted and was surprised by Puddicombe's request to question him if needed. However, Ito stated that if asked, "Were Japanese Canadians treated fairly?" Ito would have told the truth, and his reply "would not have been to [Puddicombe's] liking."²⁰⁷ Ito's account demonstrates Puddicombe's intention to further racialize Inouye as a Japanese with little morals and civility. Conversely, Ito can be seen as an example of a Nisei who was civil and loyal to Canada and, at the same time, juxtapose Inouye as a Nisei who turned his back against Canada and mistreated POWs in Hong Kong.

Puddicombe also tried to show that Inouye was dishonest, and his testimony was not to be trusted. He questioned Inouye about his decision to withhold the truth of his water torture

²⁰⁶ Ibid.

²⁰⁷ Ibid.

incident from his grandfather. This was an opportunity to spin Inouye's shame and fear of angering his grandfather as proof that he was dishonest. For example:

Q: Did you complain to your grandfather about this torture?

A: I could not.

Q: Did he know that you had been tortured?

A: No.

Q: Did he know that you were not well?

A: Yes.

Q: Did he have you physically examined?

A: Yes.

Q: What was the diagnosis?

A: Pleurisy.

Q: Was any reason given for you having pleurisy?

A: He asked me if I had done any strenuous work and I told him I knocked myself in baseball.

Q: Was that true?

A: No.

...

Q: Did you tell lies at times

A: No.

Q: Did you tell a lie to the doctor about the injury to your back?

A: I had to.²⁰⁸

Puddicombe's intention might have been to discredit Inouye's character, but it also showed his lack of empathy towards Inouye. Had Puddicombe known how the Japanese feared the Kempeitai as a dreaded military police, he would have understood why Inouye did not want to tell his grandfather about the Kempeitai administering water torture.²⁰⁹

President of the Court, J.C. Stewart, also questioned Inouye. Similar to Puddicombe, the President's questions of Inouye revealed that he viewed Inouye's alleged actions as a reflection of those of the Japanese Army even though he was born in Canada. Stewart continued to make these distinctions between Inouye and the Allies:

Q: Are you a Christian?

²⁰⁸ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, 106-107.

²⁰⁹ Saburo Ienaga, *The Pacific War 1931-1945* (Tokyo: Iwanami Shoten, 1968), 178.

A: Yes, sir. I was baptized, sir.
Q: As a child in Canada did you receive religious instructions?
A: Yes, sir.
Q: For how long?
A: Till I was 16, sir.
Q: Would you like to tell the Court that your conduct in the gendarmerie has been consistent with the principles of Christianity?
A: No, sir.
Q: In what respect have you fallen short of these principles?
A: Because I could not order the other people how to behave. That was beyond my power, sir.
Q: In what respects have you fallen short?
A: To stop the ill-treatment, sir.
Q: Did you ever try to stop the ill-treatment?
A: That was beyond my power, sir.
Q: Did you ever try to stop the ill-treatment?
A: Yes, sir.
Q: Did you ever try to prevent such atrocities?
A: That was beyond my power, sir.²¹⁰

Stewart's questioning of Inouye's values intended to demonstrate that Inouye's actions did not uphold "Christian values," a thinly veiled term that, in reality, signified white, Christian Canadian and British values. By Inouye admitting that his actions and behaviour were not "consistent with the principles of Christianity," or white values, it was implied that Inouye's actions were in line with the Japanese Army's cruel nature, not a "true Canadian."

At the end of Inouye's testimony, Haggan stepped forward to say that Inouye wished to call specific individuals to give evidence on his behalf. The list of defence witnesses requested, of which there were seven, included Lt. Sakaino and Warden Officer Shigematsu. Haggan explained to the President that he sent a letter to Land Forces Headquarters on 18 May 1946 requesting that they find and secure the defence witnesses, but he never received a response. Haggan stated that he believed Inouye had been "severely prejudiced through not having the

²¹⁰ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, 130.

assistance of these witnesses.”²¹¹ Haggan had brought copies of his letter of request to Land Forces and the witness list to trial. President Stewart stated that he would accept Haggan's documents as evidence but declared that the court would not wait for witnesses to be located, and trial proceedings would continue. Consequently, Stewart's decision meant that Inouye was the sole defence witness for the trial against the prosecution's sixteen witnesses. Haggan finally received a response from Land Forces on the last day of the trial, 27 May 1946. Land Forces claimed that they made every effort to locate the witnesses requested; however, they wrote that there was “no trace of any of them can be found, and no records are available of their possible whereabouts.” Land Forces stated that the trial would continue without the witnesses as per ALFSEA instructions. Therefore, the trials “shall not be delayed by waiting for witnesses to be traced and brought to the place of trial.”²¹²

Closing Address

In his closing address, Puddicombe summarized the evidence and witness testimonies presented against Inouye. For charges one and two, Puddicombe stated that it was first necessary to prove that Inouye was attached to the prisoners of war camp staff.²¹³ Puddicombe highlighted the evidence found in Inouye's testimony when Inouye said that he was "conscripted" and later "discharged" when he completed his employment. Puddicombe argued that these two terms used together were of "great importance" and prove that he was a member of the camp staff; thus, he

²¹¹ Ibid, 132.

²¹² NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, Exhibit U.

²¹³ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, 135.

was a member of the armed forces.²¹⁴ Puddicombe acknowledged that there were "some slight variations" in the affidavits of the number of times Inouye struck Capt. Norris or whether or not Inouye was under the orders of Lt. Sakaino. Still, Puddicombe asserted that there was sufficient evidence that there was a full parade of Canadian POWs that they were drawn up when this assault took place and that Inouye "struck Captain Norris; ... he admits that he did."²¹⁵

Puddicombe presented a similar argument with the alleged assault of Maj. Atkinson: There may have been some variation in how many times Maj. Atkinson was kicked, but there is "no doubt" that Atkinson was kicked at least once.²¹⁶ In response to the defence's plea of superior orders for the first two charges, Puddicombe referred to the judgement in the Yamashita case, which dismissed the plea of superior orders as an invalid excuse for war crimes and that Inouye was not acting on the orders of Sakaino, but on his "own bat altogether."²¹⁷

For the final charge, Puddicombe re-asserted the prosecution's position that Inouye was more than just "concerned" in the ill-treatment, but rather actively participated in the ill-treatment and interrogations of the Hong Kong civilians. Puddicombe addressed Inouye's testimony drawing specific attention to the contradictions in Inouye's involvement with Mrs. Power's interrogation and Inouye not telling his grandfather about his water torture incident with the Kempeitai. Puddicombe argued that these two instances demonstrated that Inouye was

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid, 136.

²¹⁷ Ibid.

dishonest and could not be believed whatsoever.²¹⁸ Therefore, Puddicombe argued, if Inouye could not tell the truth in these instances, his testimony could not be trusted either.

Haggan began his closing address by citing Wheaton's International Law, which stated that war crimes "are not attributable to individuals" and that prisoners of war were to be treated the same as members of the Army, which holds them.²¹⁹ For charges one and two, Haggan maintained that Inouye could not be held responsible in any considerable measure for his actions on that occasion, as he was only acting on orders of his superior, Lieutenant Sakaino. Furthermore, Haggan argued that it was doubtful whether Inouye's actions constituted a war crime. If the person Inouye had assaulted had been another rank, Haggan pointed out that it would not have constituted a war crime or even noticed by the War Crimes Investigation Unit.²²⁰ In other words, if Inouye had assaulted someone of a lower rank, Inouye would not have been charged for this incident. Therefore, it was not the actions alone that was the issue, but *who* was involved that mattered. Haggan's statement supports the notion that Puddicombe likely chose these alleged assaults to present in front of a military audience because the men involved were high-ranking officers. In the eyes of Allied forces, it was a serious matter for a low-ranking individual, especially a low-ranking Japanese, to publicly humiliate a high-ranking officer. Haggan asserted that Inouye was never a member of the Imperial Japanese Army or the Kempeitai, but rather a "Japanese locally conscripted as an interpreter."²²¹ His job was to interpret.

²¹⁸ Ibid, 142.

²¹⁹ Ibid, 143.

²²⁰ Ibid, 144.

²²¹ Ibid.

Regarding the final charge, Haggan focused on fighting the portion of the alleged charge concerning the deaths of four Hong Kong civilians. Haggan repeated that Inouye was only a civilian interpreter, and the four civilians were never arrested or in the custody of Inouye. Haggan asserted that the person responsible for the civilian's custody must be responsible for their deaths, which was Moriyama. Additionally, Haggan noted that the deaths might have resulted from another torture entirely, of which there is no record.²²² Haggan argued that there was insufficient evidence to implicate Inouye to the deaths, pointing out that the majority of evidence was hearsay and provided mainly by Rampal Ghilote. Haggan also emphasized that the Court must consider the Japanese Army conduct and culture, stating that slapping was second nature to the Japanese:

...slapping a person is second nature to the Japanese. They do it to their own people and it is done in the Japanese Army and many of us have seen this in Hong Kong. Japanese soldiers who are slapped think nothing of it but we have to draw the line somewhere. If the slapping of [A.] Madar is to be part of the charge against Inouye then every Japanese whoever came to China should be before this Court or some Court as a war criminal.²²³

Haggan concluded that Inouye could not be the man held primarily responsible; he was only acting on orders. He asked the Court to remember the nature of the Japanese system and how “little opportunity there is for one caught in the wheel to revolt against the machine.”²²⁴

After Haggan's closing address, the Court closed at 17:45 to deliberate. After only 15 minutes, the Court resumed and gave their verdict. Despite Haggan's arguments, the Court members accepted Puddicombe's evidence. They found Inouye guilty on all three charges of committing war crimes with a special finding that Inouye's actions did not contribute to the

²²² Ibid.

²²³ Ibid, 145.

²²⁴ Ibid, 148.

deaths of Mr. Power, Ip Kam Wing, So Shing-hon, and Enrique Lee. In the end, President Stewart sentenced Inouye to death by hanging:

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 could have impressed on your mind the decent ways of civilized 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 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.²²⁵

Inouye was found guilty of three charges of ill-treatment with a special finding that he was not responsible for the deaths of the four Hong Kong civilian residents. Nevertheless, President Stewart still sentenced Inouye to death by hanging.

A Fair Trial?

In his final sentencing, President Stewart asserted that Inouye's Japanese Canadian roots "greatly aggravated" his culpability. This becomes clearer when we contrast Inouye's sentence with those of other accused Hong Kong war criminals. There was a total of 46 war crimes trials against 123 individuals in Hong Kong. For those where the British military tribunal found a person guilty of ill-treatment or physical sufferings of individuals such as POWs or Hong Kong civilian residents, they typically received a sentence of 18 months to 15 years imprisonment.²²⁶ There were 27 accused individuals who initially were charged with actions that caused or contributed to the death(s) of POWs or Hong Kong civilian residents but were later absolved of

²²⁵ Ibid, 149.

²²⁶ Suzannah Linton, "Snapshot of cases," Hong Kong's War Crimes Trial Collection, <http://hkwctc.lib.hku.hk/exhibits/show/hkwctc/documents/listing>. See WO235/892 Niimori Genichiro.

any responsibility of causing death. These individuals who were found not responsible for causing death did not receive a death sentence and served term imprisonment.²²⁷ For instance, Niimori Genichiro, a civilian who was the Chief interpreter to the POW Camp Staff in Hong Kong, was tried for seven charges of war crimes for beating, kicking, and threatening prisoners of war and causing the death of at least one POW. Niimori was found guilty of six charges and absolved of any responsibility for the death of the POW. The Court sentenced Niimori to 15 years imprisonment.²²⁸ When comparing Niimori and Inouye's war crimes charges and their positions as civilian interpreters, it seems that such a sentence would have been more appropriate in Inouye's case.

In cases where the British Military Tribunal imposed the death sentence, the individual was found guilty of causing deaths or unlawful killings. For example, Colonel Noma Kennosuke, Commanding Officer of the Kempeitai, was sentenced to death by hanging for the ill-treatment of civilian residents, resulting in several deaths.²²⁹ However, when we carefully examine the 24 death sentences, including Inouye's case, Inouye was the only accused individual to be expressly exonerated of causing injuries leading to death and still received the death sentence. Furthermore, Inouye was the only civilian sentenced to death; all other individuals sentenced to death were high-ranking members of the Imperial Japanese Army or Kempeitai.

²²⁷ Suzannah Linton, "Snapshot of cases," Hong Kong War Crimes Trial Collection, <http://hkwctc.lib.hku.hk/exhibits/show/hkwctc/documents/listing>.

²²⁸ Suzannah Linton, "WO235/892, Snapshot of cases," Hong Kong's War Crimes Trial Collection, <https://hkwctc.lib.hku.hk/exhibits/show/hkwctc/documents/item/47>.

²²⁹ Suzannah Linton, "WO235/999, Snapshot of cases" Hong Kong's War Crimes Trial Collection, <https://hkwctc.lib.hku.hk/exhibits/show/hkwctc/documents/item/59>.

Sentencing in the Hong Kong war crimes trials was inconsistent.²³⁰ Even in cases where accused individuals were found guilty of causing or contributing to death, the death sentence was not always the outcome. There were 34 accused individuals the British court found guilty of being concerned in or contributing to the death or killing of civilian residents and/or POWs, and none received the death sentence. Instead, these individuals typically received term imprisonments. The most notable examples are Col. Tokunaga, the lead Commandant of the Sham Shui Po camp and Capt. Saito, the lead Medical Officer. These individuals were tried for over a hundred deaths of British and Canadian POWs. The Court found both men guilty and sentenced them to death; however, authorities eventually commuted their sentences to life imprisonment and 20 years in jail.²³¹ It is also important to note that Moriyama, a sergeant in the Kempeitai and Inouye's superior during his time at Stanley prison, was never tried for war crimes.²³²

Comparing Inouye's sentencing to other Hong Kong trials underscores the severity of Inouye's sentence. Other Japanese soldiers who committed similar crimes received lighter sentences than Inouye. Furthermore, other high-ranking Japanese officials who were found guilty of the deaths of hundreds were initially sentenced to death but then had their sentences commuted to life imprisonment. Leniency, as seen in the other trials, did not come into play in Inouye's trial, and one must raise a question of why. Examining the other sentences also highlights that Inouye's sentence was severe not only because he was a Japanese national like the

²³⁰ Suzannah Linton, "Rediscovering the War Crimes Trials in Hong Kong, 1946-48," *Melbourne Journal of International Law* 13, no. 1(June 2012): 62.

²³¹ Suzannah Linton, "WO235/1012, Snapshot of cases," Hong Kong War Crimes Trials Collection," <http://hkwctc.lib.hku.hk/exhibits/show/hkwctc/documents/item/61>.

²³² Ito, *Stories of My People*, 361.

other soldiers, but because of his Nisei background. Inouye's upbringing and relationship to Canada was a deciding factor in his sentence. In Stewart's eyes, Inouye had the opportunity to denounce his backwards and barbaric culture and assimilate into a civilized one, meaning white and British culture. Inouye supposedly failed to uphold these civilized ways, and for that, Stewart believed Inouye deserved a harsher sentence than others.

Court members and the prosecution racialized Inouye as a Japanese national whose actions reflected those of an inferior, barbaric, and cruel race. At the same time, the prosecution and the President of the Court used Inouye's Nisei background and upbringing in Canada against him. By doing so, they attempted to illustrate Inouye's failure to adopt the culture and morals of white Canada even when he was given the opportunity. Like Stewart, they condemned Inouye for not becoming civilized and for not turning his back on Japanese culture, which they deemed inferior. In addition to Inouye's alleged war crimes, the President of the Court considered Inouye's "failure" as a reason to give him a maximum sentence.

Inouye's trial also reveals many points that should have been considered mitigating factors that could have supported a more lenient sentence. These factors include: Inouye being found not responsible for the deaths of four Hong Kong civilian residents; his water torture by the Kempeitai; being coerced into working for the Kempeitai; being denied the right to present witnesses in his own defence; and the court's failure to take into account the violent culture of the Imperial Japanese Army. The members of the Court, however, chose to disregard these points as mitigating factors and instead focused on Inouye's supposed inability to become civilized.

Among the potential mitigating factors and circumstances, the most important is that Inouye was absolved of any responsibility of contributing to the deaths of Hong Kong civilian residents. Generally, this would have exempted Inouye from the death penalty based upon the

outcomes of the other war crimes cases in which no deaths resulted from the abuse. However, President Stewart conceived a new rationale – that Inouye should have known better because of his exposure to Christianity and equal treatment in Canada; instead, he had betrayed the "hospitality" of Canada.

Another potential mitigating factor was Inouye's own experience as a victim of torture at the hands of the Kempeitai. As noted in court transcripts, just after Inouye arrived in Japan, the Kempeitai targeted, arrested, and tortured him because of his Nisei background. This incident with the Kempeitai left Inouye with serious long-term health issues and affected his ability to attend university and lead a normal life. His health problems were such that even the Japanese army rejected him after he had been conscripted. The court members and Puddicombe did not take into account during the sentencing the episode of torture and its consequences on Inouye's health, or the verbal and physical abuse Inouye faced afterwards.

The circumstances by which Inouye began to work for the Kempeitai during the war are also important to note. According to court transcripts, the Imperial Japanese Army discharged Inouye from service due to persistent health issues from the water torture. Inouye returned to Japan but later travelled to Hong Kong to reunite with his wife. However, Col. Tokunaga blocked Inouye from disembarking because Inouye allegedly had compromising information about him. Tokunaga gave Inouye an ultimatum: either return to Japan or work for the Kempeitai if he wanted to stay in Hong Kong. Inouye agreed to stay and work for the Kempeitai so that he could be with his wife. Thus, Tokunaga coerced Inouye into working for the same group that tortured him when he first arrived in Japan. Inouye's account challenged Puddicombe's suggestion that he actively sought to join the Kempeitai. The members of the court should have

considered these incidents of torture, abuse, and being coerced into working for the Kempeitai as mitigating factors against his sentencing.

In his testimony, Inouye stated that when he first began his post as an interpreter, his superiors and fellow soldiers frequently kicked and beat him due to his Nisei background. When he started his position at the Sham Shui Po camp, Inouye stated that Camp Commander, Col. Tokunaga, had an order that all POWs be treated as ordinary Japanese soldiers. If he defied orders, Inouye would be beaten and sent to Stanley prison. According to Inouye, working for the Imperial Japanese Army and the Kempeitai was a matter of survival, particularly in light of his chronic ill health; to disobey his superiors would have resulted in extreme punishment and death.

Based on the court transcripts, Inouye did not have any of his requested defence witnesses present, leaving Inouye as the sole defence witness for the war crimes trial. Land Forces claimed that they could not locate the witnesses, and as per ALFSEA's instructions, the trials would not be delayed by waiting for witnesses to be located and brought to the place of the trial.²³³ As a result, Inouye was left without anyone to support or corroborate his testimony. One must ask why President Stewart and the court members did not take into consideration the unavailability of the defence witnesses when arriving at their verdict and in sentencing Inouye. Stewart's decision to continue the trial without the requested witnesses suggested that the President was more concerned with the trial's expediency than assuring that the court proceedings were fair.

What is more, the cultural bonds and affinity between the Allied legal counsel seemed to compromise Inouye's trial. In his closing address, Haggan appears to give an outright

²³³ NA, WO, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, "Reference your JR/CD of 18 May 1946," Col. IC Adm, Land Forces, Hong Kong to Lieut. J.R. Haggan, RE, 27 May 1946.

endorsement of Puddicombe's arguments. He applauded Puddicombe's "masterly manner" in his pursuit of the prosecution: "I say that sincerely. It was masterly. He is the voice of Canada, the voice of common sense, the voice of constructive thoughts."²³⁴ Although Haggan was responsible for Inouye's defence, he revealed his colonial mentality and bias towards the Allies. Haggan sees the Allies as knowledgeable and trustworthy, unlike the Japanese. Haggan's endorsement of Puddicombe as a voice of reason undermined the defence and Inouye's testimony. This admiration and open support for Puddicombe may have been rooted in racism. For example, in an earlier trial, Haggan expressed the view: "The President and the Members of the Court are fully aware that the Japanese have not got the advantages of the upbringing, the idealism and the education of the right kind that we have."²³⁵ This paternal approach idealized the British as progressive and viewed the Japanese as culturally immature, who lacked the education and knowledge to be 'civilized.'

Prejudice, Power, and the Court

As described earlier, Stewart interrogated Inouye directly, asserting that he had failed to live up to Christian teachings he had received in Canada. These were deeply held racialized beliefs that have been well documented by scholar, Alexander Zahar. Stewart expressed these beliefs in two separate sentences that he handed down before Inouye's trial:

Lieutenant Kishi, the unanimous sentence of this Court which is subject to confirmation is that you will suffer death by hanging. The Court has taken into consideration the fact that you belong to a black race from which little or no decency is expected, but by no conceivable standard of conduct is there any excuse for what you did.

²³⁴ Ibid, 147.

²³⁵ Zahar, "Trial Procedure at the British Military Courts, Hong Kong, 1946-1948," 66.

Lieutenant Matsumoto, the unanimous sentence of this Court which is subject to confirmation is that you will suffer death by hanging. The Court has taken into account that you belong to an evil race from which little decency is expected, but not according to any possible standard of conduct is there any justification for what you did.²³⁶

The idea that the Japanese were a "black race from which little or no decency is expected," is steeped in prewar racisms that continued to hold sway in Stewart's world. Stewart dwelled not on Inouye's alleged actions, but rather his inability to uphold Christian values. Stewart used Inouye's Nisei background as an aggravating factor, holding him to a different standard due to his upbringing in Canada. Stewart concluded that Inouye's free education, Christian upbringing, and the kindness from his peers should have taught Inouye to behave in a civilized manner above that of the Japanese soldiers. In Stewart's eyes, Inouye reverted to his barbaric origins. Inouye's conduct and actions were a deliberate choice to turn his back on his civilized upbringing and a betrayal to Canada, who showed kindness towards Inouye. Because of this failure, in addition to Inouye's alleged actions, Stewart believed that Inouye was guilty and deserved death sentence.

Stewart was not the only judge affected by such views. Although one cannot fully understand what transpired during the court members' deliberation, some evidence exists suggesting that another court member, Maj. M.I. Ormsby shared Stewart's views. In a 2011 interview with Suzannah Linton, Maj. M.I. Ormsby, one of the three court members in the Inouye trial, defended the belief in British superiority: "...this business of a lawful order, for instance. The Japanese do not know about such things. Ridiculous. How the hell does a Japanese know what that means? The Japanese peasant class, how do they know the difference between a lawful order and an unlawful order?"²³⁷ Ormsby's comment also disclosed his opinion that the

²³⁶ Ibid, 67.

²³⁷ Suzannah Linton & HKU Libraries, "Interview of Major Murray I. Ormsby, HKWCT Project, 21 July and 4 August 2011," Hong Kong's War Crimes Trials Collection

Japanese were intellectually inferior and had little understanding of the law when it came to war. Similar to Stewart's remarks, Ormsby believed that the Japanese could not "be expected to know better" and implied that he also viewed them as primitive.

As discussed in this chapter, Maj. G.B. Puddicombe went beyond the facts of the alleged crimes. He exaggerated Inouye's role in the ill-treatment of Canadian POWs and the deaths of Hong Kong civilian residents. Puddicombe refused to consider any possibility that Inouye had also been a victim of torture, indicting him for betraying his Canadian upbringing, and regarding him as purposefully cruel and intent on brutalizing and humiliating POWs. Puddicombe's arguments appeared to have influenced the court members in their final decision, so much so that they were reflected in Stewart's sentencing.

Furthermore, Inouye's war crimes trial exposes the Allies' unwillingness to recognize and consider the culture of the Imperial Japanese Army and their mentality towards POWs. Japan did not ratify the 1929 Geneva Convention relative to the Treatment of Prisoners of War, and the Japanese Army and the Kempeitai treated international law lightly or disregarded it completely.²³⁸ Therefore, prisoner of war camps were administered under Japanese domestic policies in handling POWs, meaning POWs would be treated as ordinary Japanese soldiers.²³⁹ The non-commissioned officers, soldiers, and civilian aides were not aware of the 1929 Geneva Convention or international law. Beatings in the camps were rampant and commonplace not only towards the prisoners but also towards their soldiers. Officers in charge frequently beat their

<http://hkwctc.lib.hku.hk/exhibits/show/hkwctc/accountsoftrials/oral.>; Zahar, "Trial Procedure at the British Military Courts, Hong Kong, 1946-1948," 66.

²³⁸ Utsumi, "Japan's World War II POW Policy: Indifference and Irresponsibility," 3.

²³⁹ Ibid.

subordinates for many reasons, such as not acting on orders or treating prisoners too gently. As beatings were an everyday matter, there was little understanding or awareness that the Army's treatment of POWs was considered abuse or even a war crime.²⁴⁰

Moreover, Utsumi Aiko has indicated that the Military Tribunal failed to take into consideration questions of race as it affected minorities of the Japanese empire. Similar to Inouye, a racialized minority (Nisei), many of the low-ranking soldiers and civilian aides were Korean men, recruited and forced to assimilate into the Imperial Japanese Army.²⁴¹ They were responsible for overseeing and guarding labouring POWs. Many were obliged to carry out abuses on the orders of their superiors and were subsequently arrested based on POW and civilian resident affidavits and testimonies. These soldiers and civilian aides were the obvious and inevitable targets of the POWs' resentment since they saw them daily, unlike the high-ranking officials who ordered the abuses.²⁴² The Allies viewed these low-ranking soldiers and civilian aides, who beat these POWs and individuals, as wholly responsible for the crimes. Consequently, high-ranking officials and administrative personnel were not always held accountable for their roles and actions during the war.²⁴³ The Japanese soldiers on trial repeatedly explained how the Imperial Japanese Army and Kempeitai held a different conception of war and the status of the enemy, which high-ranking officials imposed from the top as a matter of policy discipline.²⁴⁴ However, the Allied forces racialized the Japanese Army by

²⁴⁰ Ibid.

²⁴¹ Utsumi, "Korean "Imperial Soldiers," 207.

²⁴² Ibid, 211.

²⁴³ Utsumi, "Japan's World War II POW Policy," 4.

²⁴⁴ Zahar, "Trial Procedure at the British Military Courts, Hong Kong, 1946-1948," 42.

interpreting their approach as barbaric and criminal. Accordingly, the British, being in a position of power of overseeing the Hong Kong trials as well as holding racist attitudes, rejected their explanations and punished the Japanese soldiers for their acts.

This sense of injustice against the Japanese as well as Korean soldiers was widespread throughout the trials, including Inouye's. Inouye's war crimes trial is an example of a low-ranking civilian aide held entirely responsible for the ill-treatment and torture of Canadian POWs and Hong Kong civilian residents while Inouye's superiors, such as Cmdr. Moriyama and Lt. Sakaino, avoided any charges. Western Allies arrested Inouye based on Canada POW soldiers' affidavits and testimonies of Hong Kong civilian residents. They accused Inouye of going beyond his duties as an interpreter and argued that he was wholly responsible for their ill-treatment and torture. Inouye argued that he was never responsible for the ill-treatment and was only following his superiors' orders.

Conclusions

Past historical assessment of Inouye's Hong Kong war crimes trial from historians such as Roy, Granatstein, Bercuson, and Sweeney, have argued that Inouye received a fair trial. Many have either endorsed or accepted without question the sentence of death by hanging as an appropriate outcome for Inouye's wartime actions.²⁴⁵ However, in this chapter, I have argued that although Inouye may have been guilty of ill-treatment, the trial itself and Inouye's death

²⁴⁵ See Granatstein et al., *Mutual Hostages: Canadians and Japanese During the Second World War* (Toronto: University of Toronto Press, 1992).; David Bercuson, Michael Bliss, Graham Broad, Margaret Conrad, et al., "Canada's Hall of Infamy," *The Beaver* 47, no. 4 (Aug/Sept 2007): 31.; Mark Sweeney, "The Canadian War Crimes Liaison Detachment – Far East and the Prosecution of Japanese "Minor" War Crimes," (PhD diss, University of Waterloo, 2013); Mark Sweeney, "A 'Guest of the Dominion of Canada': Nationality and the War Crimes and Treason Trials of Inouye Kanao, 1946-1947," *Journal of Historical Biography* 14, no. 1 (2013).

sentence was unduly severe. I suggest that racism must be considered as a factor that gave rise to this exceptional treatment of Inouye during the war crimes trial. Race thinking and racism were circulating among the court members of the Hong Kong trials and the Canadian War Crimes Liaison Detachment. Scholars such as Suzannah Linton, Alexander Zahar, and Utusmi Aiko have noted the presence of racist views held by officials involved in the war crimes trials. Court members demonized the Japanese and viewed them as intellectually inferior, barbaric, and cruel. Even though Inouye was born in Canada, Canadian prosecutors Orr, Puddicombe, and the other court members racialized Inouye as a vindictive and cruel Japanese national whose alleged crimes reflected the cruel and barbaric nature of the Imperial Japanese Army. During the trial, Puddicombe tried to make it clear from the beginning that Inouye was not merely a civilian interpreter, but an active member of the Imperial Japanese Army and the Kempeitai, insisting that Inouye was a Japanese national. According to Puddicombe, Inouye's alleged crimes revealed his "true" nature synonymous with the behaviours of the enemy.

In his defence, Inouye denied being an active member and argued that he was only a civilian interpreter who followed the orders of his superiors; however, President Stewart rejected Inouye's defence, found him guilty, and sentenced him to death. Stewart also racialized Inouye as a Japanese national who described Inouye's alleged actions as "wanton" and "barbaric." Stewart held Inouye to a different standard due to Inouye's upbringing in Canada. He admonished Inouye for not behaving in a civilized manner despite receiving free education, a Christian training, and kindness from his peers in Canada. Stewart stated that Inouye's upbringing should have taught him to "know better" than other Japanese soldiers and avoid such crimes.

In determining the sentencing, Stewart and the other court members ignored critical mitigating circumstances such as Inouye's past water torture incident and being coerced into

working with the Kempeitai. Stewart was also unwilling to wait for Inouye's defence witnesses, thus leaving Inouye as the only defence witness for the trial. Lastly, the court did not see Inouye's absolution of any responsibility for the deaths of the Hong Kong civilian residents as grounds for a lighter sentence. Instead, the court member's racist beliefs made them more fixated on Inouye's Nisei background and upbringing in Canada and their desire to punish him as quickly as possible.

Inouye's Nisei background put him in an impossible position where he could never find acceptance in his life. The Japanese viewed Inouye with suspicion because of his Canadian upbringing and even targeted and tortured him because he was a Nisei. Meanwhile, Canadian and British officials did not see Inouye as a Canadian despite being born in Kamloops and racialized Inouye as a vindictive Japanese national. In this trial, we see that Japanese, Canadian, and British officials all rejected and punished Inouye because of his background.

Chapter 3:

Inouye's Appeal and the Treason Trial: Race, Punishment, and the Law

On 1 June 1946, four days after the war crimes trial ended, Inouye submitted a petition to ALFSEA appealing the Military Court's finding and sentence. The petition, which was prepared by Inouye and his defence lawyer Lt. J.R. Haggan, challenged both the verdict related to the war crimes' charges levied against Inouye and the death sentence handed down by the Court. Regarding the first two charges, alleging that Inouye publicly beat Canadian POWs, Capt. J.A. Norris and Maj. F.T. Atkinson, Inouye's petition contended that Inouye "acted on direct orders," as evidenced from the affidavits of Lt. Power, Col. Trist, and Col. Crawford.²⁴⁶ Regarding the third charge, which alleged that Inouye was actively involved in the ill-treatment of Hong Kong civilian residents, the petition denied that Inouye had any significant involvement in the interrogations. Further, it claimed that any involvement was directly related to orders from his Cmdr. Moriyama. Inouye's petition stated that to disobey the orders "would have been tantamount to suicide on [Inouye's] part."²⁴⁷

The petition also argued that Inouye's death sentence was unduly severe and unjustified in light of the evidence. The petition indicated that of the eight individuals that he was found guilty of ill-treatment, seven were still alive, and six witnesses could not give evidence of the lasting effects of the ill-treatment on their health.²⁴⁸ Furthermore, the petition pointed out that

²⁴⁶ NA, WO 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, Petition Against the Finding and Sentence of a Military Court, Inouye Kanao, 6 June 1946.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

Inouye was found not responsible for contributing to the deaths of the four Hong Kong civilian residents. Inouye's petition also raised President Stewart's final comment regarding his having been a "guest of the Dominion of Canada" in sentencing. Stewart attached considerable weight to Inouye's connection to Canada in imposing the death sentence. Inouye's petition stated that his early life in Canada was "irrelevant to the case, and is not acceptable as grounds for increasing the penalty."²⁴⁹ The final argument made in the petition claimed that Inouye was a Canadian subject and that the Military Courts had no jurisdiction to try British subjects.²⁵⁰ To support this claim, Inouye attached a copy of his birth certificate, which indicated that he was born in British Columbia, Canada.

Based upon the birth certificate, ALFSEA accepted Inouye's petition and recommended a non-confirmation of the proceedings based on this technicality. If upheld, this recommendation meant that ALFSEA would be obliged to overturn Inouye's war crimes trial and release him from Military custody, leaving him in a "position of not having been tried at all." ALFSEA would eventually officially overturn his war crimes trial and sentence, but Inouye would remain incarcerated even though his war crimes case was to be dismissed.

In this chapter, I examine the events following the submission of Inouye's petition appealing his war crimes conviction. This period is a frequently overlooked and underdeveloped segment of Inouye's case. In the past, scholars have provided little detail or omitted what occurred after Inouye's trials, only remarking on Inouye's execution.²⁵¹ As a result, readers often

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ See David Bercuson, Michael Bliss, Graham Broad, Margaret Conrad, et al., "Canada's Hall of Infamy," *The Beaver* 47, no. 4 (Aug/Sept 2007): 31.; Brad Hunter, "KAMLOOPS KID: Treason treated with rope," *Toronto Sun*, November 4, 2018, 1.; Granatstein et al., *Mutual Hostages: Canadians and Japanese During the Second World War* (Toronto: University of Toronto Press, 1992).

misinterpret Inouye's legal story, erroneously concluding that Inouye was executed for war crimes, specifically for his ill-treatment of Canadian POWs. However, this is far from what transpired.

In the first half of this chapter, I discuss Canadian prosecutors Orr and Puddicombe's reaction to Inouye's appeal and subsequent role in Inouye's continued detention and the eventual decision to try Inouye again – this time for high treason in Hong Kong. The second half of the chapter examines Inouye's treason trial that culminated in a guilty verdict and the death sentence. Examining this second phase of Inouye's case provides a fuller account of his legal story and illustrates how Canadian prosecutors, Oscar Orr and G.B. Puddicombe, were determined to see Inouye executed. They made every effort to orchestrate and implement a plan to have Inouye charged with high treason, which carried a mandatory death sentence. Orr and Puddicombe received cooperation at the highest levels of the British government. They used their positions and power as Allied lawyers to reach out to other government officials, including the Canadian Head of Mission in Japan, E.H. Norman and the British crown counsel in Hong Kong, Henry Lonsdale, to build their case and successfully convince Hong Kong authorities to press charges of high treason against Inouye. Such actions exceeded their responsibility as members of the Canadian War Crimes Liaison Detachment, who were directed only to assist UK and US authorities in the prosecution of Canadian war crimes cases where a "prima facie case of a war crime against a Canadian has been established." Inouye's treason charge and trial were based on Inouye's involvement with the Kempeitai and alleged ill-treatment of Hong Kong civilians. The charge of high treason had nothing to do with his alleged war crimes against Canadian POWs. Nevertheless, Orr and Puddicombe went above and beyond their defined roles and devised a scheme to ensure that Inouye would be charged and executed through any means

possible. While it may appear that Orr and Puddicombe were simply pursuing a war criminal to ensure that he would not go unpunished, Orr and Puddicombe's relentless efforts were a continued expression of their racial hatred towards Inouye, whose Canadian citizenship had been doubted from the beginning.

Working their way backwards, Orr and Puddicombe worked to find a crime that would guarantee a punishment of death. In the end, Orr and Puddicombe used Inouye's petition and admission that he was a British subject against him to build a new case to charge Inouye with high treason. I conclude that the treason trial and Inouye's execution were a direct result of Orr and Puddicombe's particular agenda. Inouye, on the other hand, faced another unfair trial. His desperate attempts to save his life did not stand a chance against a racist system that conspired to punish Inouye with death.

News of Inouye's Petition

While ALFSEA addressed Inouye's petition, news of his appeal created uncertainty for the Canadian War Crimes Liaison Detachment Team in Hong Kong and Tokyo. At the time, Orr was still stationed in Tokyo, assisting American officials with war crimes prosecutions. Puddicombe continued to work in Hong Kong, assisting the British with "minor" war crimes. The possibility of Inouye being free based on his being a British subject was deeply insulting to Orr and Puddicombe, and in the months following the news of the petition, they became obsessed with seeing Inouye punished and executed for his alleged crimes. As seen in chapter two, Orr was determined to see Inouye charged as early as 1945 – he had singled Inouye out as a vindictive and cruel Japanese who humiliated and ridiculed Canadian POWs.²⁵² Inouye's claim

²⁵² "War Crimes," Lt.-Col. Oscar Orr to Deputy Judge Advocate General, 22 December 1945.

that he was a British subject when the war crimes trial had suggested that he was not, I believe, was a significant issue for Orr and especially for Puddicombe. Orr and Puddicombe likely saw the petition as Inouye committing another racial transgression. The fact that a Japanese would attempt to claim British status was anathema to both men.

Orr and Puddicombe learned of Inouye's appeal at the beginning of July 1946. Both men questioned the validity of the birth certificate that Inouye submitted to ALFSEA; however, Puddicombe was particularly suspicious of Inouye's claim that he was a British subject. In a letter to Orr, Puddicombe wrote that a copy of a birth certificate was no "conclusive proof of birth in that locality" or that he was a Canadian subject.²⁵³ Furthermore, Puddicombe noted that Arthur Rance's affidavit indicated that Inouye told Rance that he was born in Tokyo, Japan. Rance's affidavit, Puddicombe wrote, was the "only other evidence available here exclusive of Inouye's own statement in his trial concerning his family in Tokyo."²⁵⁴ Puddicombe's suspicions about Inouye's claim that he was a British subject and doubts about the validity of the birth certificate reflected Puddicombe's continued racialization of Inouye as a Japanese national and disregard of his Nisei background. Puddicombe knew Inouye was born in Canada, but he still viewed Inouye as a foreigner first. Upset with Inouye's claim of being a British subject, and faced with the possibility of his release, Puddicombe wrote to Orr, noting the prospect of charging Inouye in Canada under the Treachery Act but concluded that this option was not sufficient and "should be avoided at all costs." Puddicombe explained that "offenses under the Act are not punishable by death," and he believed that Inouye "certainly deserves nothing less

²⁵³ LAC, RG 25, Vol. 3824, File 8767-40C, G.B. Puddicombe to Oscar Orr, 9 July 1946.

²⁵⁴ Ibid.

than a hanging."²⁵⁵ It is clear that Puddicombe was not going to be satisfied with anything less than a maximum sentence of death - he needed to find a crime to fit his desired punishment for Inouye. Driven by his racist desire to have Inouye executed, Puddicombe recommended that steps needed to be taken immediately and that inquiries should be made in Tokyo to confirm Inouye's nationality to determine how to proceed with charging Inouye. Puddicombe would begin looking into Inouye's nationality by investigating the validity of the birth certificate. If they could confirm that Inouye was born in Japan, Puddicombe asserted that "there should be no further question of his nationality or, for that matter, citizenship."²⁵⁶ In response to Puddicombe's letter, Orr suggested that Inouye may carry the status of a "dual-national" if his birth was registered at the Japanese Consulate and that they should look to Ottawa for advice.²⁵⁷

On 14 October 1946, Orr notified officials in Ottawa about Inouye's petition and evidence that he was a British subject, and that the War Crimes Tribunal had no jurisdiction over a British subject. Orr admitted that he was unsure of how to move forward but would continue to investigate the case with the information provided.²⁵⁸ Orr's update to Ottawa on Inouye's case spread uncertainty among Canadian officials in the Department of Justice, External Affairs, and National Defence, who were equally unsure how to deal with Inouye. Deputy Minister of National Defence, A. Ross, wrote to External Affairs expressing his concerns about what would happen if Inouye's finding and trial were quashed. Ross wrote that "there would be a distinct possibility that Kanao Inouye might be released from custody, with the further possibility that he

²⁵⁵ Ibid.

²⁵⁶ LAC, RG 25, Vol. 3824, File 8767-40C, G.B. Puddicombe to DAAG, July 1946.

²⁵⁷ LAC, RG 25, Vol. 3824, File 8767-40C, Oscar Orr to G.B. Puddicombe, 4 September 1946.

²⁵⁸ LAC, RG 25, Vol. 3824, File 8767-40C, Lt. Col. Oscar Orr, Tokyo to Secretary, DND, 14 October 1946.

might disappear entirely."²⁵⁹ Despite these concerns, Ross admitted that the Canadian government's position on Inouye's situation was "indefinite"; therefore, Ross advised that Ottawa send instructions to Hong Kong authorities to call for continued custody of Inouye to provide time for further investigation and a decision regarding appropriate charges.²⁶⁰ According to Ross, continued custody of Inouye would also "ensure against the possibility of this war criminal escaping punishment for his crimes."²⁶¹ Under Secretary of State of External Affairs, M.H. Wershof agreed that steps should be taken to continue Inouye's custody if ALFSEA overturned his war crimes trial so that they would be able to investigate Inouye's case further. Wershof recommended consulting with the Department of Justice and the UK authorities but stated that External Affairs would not present Inouye's case to Cabinet until more information was confirmed.²⁶² Wershof sent a telegram to the Canadian Mission in Tokyo on 9 November 1946 to assure the continued custody of Inouye. Wershof requested that steps be taken to communicate with the detaining powers that Inouye be kept in custody for a minimum of 30 days to allow Ottawa officials to decide whether they should bring Inouye back to Canada.²⁶³

While Ottawa officials worked to extend the custody of Inouye, Orr and Puddicombe continued to work on Inouye's case and agreed that the ideal outcome was for Inouye to remain in Hong Kong to be charged. In a letter to Puddicombe sent on 29 October 1946, Orr proposed

²⁵⁹ LAC, RG 25, Vol. 3824, File 8767-40C, A. Ross, Deputy Minister, Army to Under-Secretary of State, DEA, 6 November 1946.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² LAC, RG 25, Vol. 3824, File 8767-40C, M.H. Wershof, Under Secretary of State for External Affairs to Deputy Minister, DND (Army), 8 November 1946.

²⁶³ LAC, RG 25, Vol. 3824, File 8767-40C, Secretary of State for External Affairs to Canadian Liaison Mission, Tokyo, 9 November 1946.

that authorities charge Inouye with high treason. Orr believed that the most effective and definitive course of action to retry Inouye would be to use his alleged ill-treatment against Hong Kong civilian residents to support a charge of high treason under the Treason Act of 1351.²⁶⁴ The Treason Act of 1351 carried a mandatory death sentence; therefore, if Inouye were charged and found guilty of treason, he would be executed. Orr further stated that a Canadian trial was "entirely unnecessary" and "if the finding is quashed [Inouye] will be tried in the civil courts in Hong Kong."²⁶⁵

Also, Orr expressed his doubts to Puddicombe about using the Canadian case, which concerned the alleged public assault of Canadian soldiers, Maj. Atkinson and Capt. Norris, to charge Inouye. He wrote, "My impression is that the Canadian case, if relying on evidence of Prisoners of War, would be trifling indeed compared to the case you [Puddicombe] presented dealing with his conduct in the [Kempeitai]."²⁶⁶ Puddicombe agreed that Inouye's Canadian charges were "relatively unimportant" and supported Orr's recommendation that Inouye "will undoubtedly be held in Hong Kong for civil trial if the War Crimes Trial were quashed."²⁶⁷ Here, Orr and Puddicombe's correspondence is noteworthy: they both admitted that the charges related to the alleged assault of two Canadian officers contributing to Inouye's first death sentence were not as severe as Puddicombe argued in the trial. This admission also supports the notion that Inouye's war crimes trial sentencing was harsh given, as Orr and Puddicombe admitted, the minor nature of the crimes.

²⁶⁴ In this case, a civil court refers to a court that was not concerned with military, criminal, or religious matters.

²⁶⁵ LAC, RG 25, Vol. 3824, File 8767-40C, Oscar Orr to G.B. Puddicombe, 29 October 1946.

²⁶⁶ Ibid.

²⁶⁷ LAC, RG 25, Vol. 3824, File 8767-40C, G.B. Puddicombe to Oscar Orr, November 8, 1946.

Days later, efforts to extend the custody of Inouye and pursue treason charges were underway. On 13 November 1946, E.H. Norman, Canadian diplomat and head of the Canadian Liaison Mission in Japan, wrote to Alvary Gascoigne, the British Political Representative to Tokyo, to make the Canadian case and secure Inouye's custody. Norman explained that the Canadian government instructed Norman to request that Inouye be kept in custody for a minimum of 30 days to give officials time to decide Inouye's case. Norman wrote that he also spoke with Orr, who believed that civil authorities in Hong Kong would likely charge and try Inouye with high treason, "since the most serious case against Inouye comes from his treatment of civilians interned in Hong Kong."²⁶⁸ Norman wrote that having Inouye sent back to Canada for trial should be a last resort because the lead Canadian prosecutor, Oscar Orr, felt that a Canadian case "would be a weaker case since Inouye's behavior towards Canadian prisoners of war is a comparatively *minor* aspect of the charges against him. (Emphasis added.)"²⁶⁹ Norman then suggested that the Hong Kong civil authorities could initiate the strongest case against Inouye; however, the Canadian mission "has not received any official correspondence that such actions are being considered."²⁷⁰

On 14 November 1946, ALFSEA overturned Inouye's war crimes trial. ALFSEA's reviewing officer, Colonel Kerin wrote to Land Forces, Hong Kong that: "Assuming the Certificate of Registration of Birth is authentic as it would appear to be from the Photostat copy [...] there is no doubt that Inouye is a Canadian subject. Such being the case, he is not amenable

²⁶⁸ LAC, RG 25, Vol. 3824, File 8767-40C, E.H. Norman to A.D.F. Gascoigne, 13 November 1946.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

to the jurisdiction of a War Crimes Court and his trial was invalid.”²⁷¹ The result of ALFSEA’s decision meant that officially Inouye was in a position of not having been tried at all.²⁷² If authorities wished, they could prepare a different case against Inouye, given his “new” status as a British subject. Kerin noted that although there were suggestions that Inouye obtained the certificate fraudulently, or that he was a Japanese national utilizing a false document, in Kerin’s opinion, ALFSEA would be unable to disprove the evidence of the certificate itself. Accordingly, Kerin suggested that Inouye be handed over to civil authorities in Hong Kong on charges under the penal (criminal) code or that he might be returned to Canada for trial. Kerin advised that in either event, “the matter will be one for the civil authorities to whom [Inouye] should be handed over without delay.”²⁷³

On 15 November 1946, after receiving Norman’s request, Gascoigne reached out to the Governor of Hong Kong, Sir Mark Aitcheson Young, to inquire about Inouye's custody and communicated the Canadian government's position on Inouye's case. In light of ALFSEA's decision, Gascoigne stated that the Canadian government remained hesitant to become significantly involved in Inouye's case and echoed Orr’s sentiments that pursuing the Canadian charges was undesirable. He explained that Ottawa would wish only to charge Inouye as a last resort, as officials expressed concern that a Canadian case “would not be so good as any charge

²⁷¹ NA, WO 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, Col. F.C.A. Kerin, DJAG, ALFSEA to Commander, Land Forces Hong Kong, 14 November 1946.

²⁷² *Law Reports of Trials of War Criminals* (n1) vol I 105-10.

²⁷³ NA, WO 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong, Col. F.C.A. Kerin, DJAG, ALFSEA to Commander, Land Forces Hong Kong, 14 November 1946.

[Hong Kong authorities] might bring.”²⁷⁴ Young responded that ALFSEA had supported the defence challenge, but that Inouye’s release had not been ordered.²⁷⁵

Along with Allied officials, Puddicombe and Orr enlisted other legal counsels to persuade Hong Kong authorities to charge Inouye with treason. Puddicombe consulted with Henry Lonsdale, Crown Counsel, in Hong Kong. Lonsdale also wrote to the Governor of Hong Kong to provide a summary of Inouye's situation and evidence and recommend a charge of high treason. Lonsdale outlined the subsequent legal steps that could be taken based on the information regarding Inouye's nationality. If Inouye was a Japanese subject, civil authorities had no right to charge him; however, if he was a British subject or even a dual national, authorities could proceed with high treason or a charge under the defence regulations.²⁷⁶ Lonsdale advised that the best course of action would be to take Inouye into custody upon relinquishment of custody of the military and charge him with high treason based specifically on his status as a British subject.²⁷⁷ Lonsdale also recommended that Inouye be promptly brought before a Magistrate and that a case file be prepared immediately.

Governor Young agreed to investigate the possibility of pressing charges of high treason against Inouye. Governor Young wrote to ALFSEA on 23 November 1946 to obtain information before proceeding. Young sought to discover who quashed the war crimes sentence, whether

²⁷⁴ PRO, HK, HKRS, 163-1-216, Alvary Gascoigne, United Kingdom Liaison Mission, Japan (UKLIM), Tokyo to Governor Mark Aitcheson Young, 15 November 1946.

²⁷⁵ PRO, HK, HKRS, 163-1-216, Governor Young to Alvary Gascoigne, UKLIM Tokyo, 19 November 1946.

²⁷⁶ PRO, HK, HKRS, 163-1-216, Crown Counsel Henry Lonsdale to Attorney General, Hong Kong, 20 November 1946.

²⁷⁷ Ibid.

Canadian nationality was synonymous with British nationality, and whether Inouye took out naturalization papers or a declaration of alienage before the war.²⁷⁸ ALFSEA responded with the following:

Subject has produced Photostat copy of certificate of registration of birth in Canada. This is prima facie evidence of Canadian nationality. Therefore [Inouye] is a British Subject of Canadian Nationality unless Canadian authorities are successful in producing evidence of Japanese Naturalisation papers having been taken out or declaration of alienage having been made prior to war. Land forces HK have therefore been advised that the sentence of death should not be confirmed because British War Crimes Military Courts have no jurisdiction over British subject [...] 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 a question to be settled by two governments concerned. In either case he must be released from British Military Custody.²⁷⁹

Nearly five months had passed since the petition was filed, and despite ALFSEA's response, Inouye remained in custody. By early December, Governor Young informed Gascoigne that Hong Kong authorities were formally charging Inouye under the Treason Act of 1351.²⁸⁰ Orr and Puddicombe's plan to keep Inouye in Hong Kong and have him charged with high treason had been successful.

With a new trial underway, Orr wrote to Ottawa officials to provide an update on Inouye's case. Orr wrote that Canadian involvement was unnecessary for the upcoming trial, but he strongly recommended that officials needed to consider the Canadian interest in Inouye's case.²⁸¹ Orr raised the possibility that if Inouye changed his claim that he was a Japanese subject during the trial, and it was accepted, it would result in his freedom unless "instant action is taken

²⁷⁸ PRO, HK, HKRS, 163-1-216, Governor, Hong Kong to ALFSEA, Singapore, 23 November 1946.

²⁷⁹ PRO, HK, HKRS, 163-1-216, ALFSEA to Governor, Hong Kong, 30 November 1946.

²⁸⁰ PRO, HK, HKRS, 163-1-216, Departmental marginalia, 30 November 1946, Governor, Hong Kong to UKLIM, Tokyo, 2 December 1946.

²⁸¹ LAC, RG 25, Vol. 3824, File 8767-40C, Oscar Orr to DND, Army, November 1946.

to arrest him in Canada.”²⁸² Ottawa acknowledged that it was in Canada's interest to ensure Inouye did not go unpunished. Once again, they expressed a more detached position: Pending the outcome of the trial proceedings, no action would be taken to bring Inouye to Canada for trial.²⁸³ Puddicombe recommended appointing solicitors to hold a “watching brief,” meaning that they would watch the trial on behalf of the Canadian government to ensure that Inouye would not evade punishment if the treason trial were unsuccessful.²⁸⁴ Messrs Hastings & Co., solicitors were hired shortly after.

Puddicombe continued to investigate Inouye's nationality. On the question of Inouye's Japanese nationality, the British Consulate in Tokyo confirmed that they had no record of any declaration by Kanao Inouye affecting his nationality. Katsube, Chief of Liaison to General Headquarters, was asked to look into the Japanese census register for Inouye. Katsube replied that the census register of Inouye was burnt, and a copy was no longer available.²⁸⁵ He further added that there was no record of Inouye being born in Japan- it appeared that he was born in Canada, along with his other siblings. Finally, Katsube confirmed that there was no record that Inouye renounced his Canadian nationality.²⁸⁶

Meanwhile, Messrs Hastings & Co. wrote to Puddicombe, confirming that Inouye had signed his petition claiming to be a British subject.²⁸⁷ This petition, the solicitors noted, could be

²⁸² Ibid.

²⁸³ LAC, RG 25, Vol. 3824, Vol. 8767-40C, Secretary of State for External Affairs to Canadian Liaison Mission, Tokyo, 21 December 1946.

²⁸⁴ LAC, RG 25, Vol. 3824, Vol. 8767-40C, Major Puddicombe, 7 December 1946.

²⁸⁵ PRO, HK, HKRS, 163-1-216, Katsube, Chief of Liaison Section, Central Liaison Office to General HQ of Supreme Commander for the Allied Powers, 25 January 1947.

²⁸⁶ Ibid.

²⁸⁷ PRO, HK, HKRS, 163-1-216, Hastings & Co. to G.B. Puddicombe, 1 February 1947.

considered formal evidence in charging Inouye with high treason.²⁸⁸ Regarding the possibility of Canada having any jurisdiction to charge Inouye, Hastings confirmed from authorities that the Canadian Courts had *no* jurisdiction to try treason committed abroad.²⁸⁹ Crown counsel Lonsdale also confirmed that Canada would not have jurisdiction in Inouye's case if the courts found Inouye to be of Japanese nationality.²⁹⁰ He believed that there would be no basis for extradition from Hong Kong because Inouye, if a Japanese subject, would not have committed any offence under Canadian Law.²⁹¹

With a final confirmation that Inouye claimed to be a British subject, authorities proceeded to charge Inouye. On 7 March 1947, Inouye was charged with High Treason under the Treason Act 1351, 25 Edward III, Statute 5, Chapter 2.²⁹² The details of the allegations stated that from 1 June 1944 to 31 March 1945, Inouye aided and assisted the Japanese in Hong Kong while owing allegiance to the King. The charge was supported by 28 alleged acts that focused on Inouye's supposed abuse towards Hong Kong civilians detained in Stanley prison to illustrate how Inouye abetted the Japanese. None of these allegations were associated with Inouye's treatment of Canadian soldiers in the Sham Shui Po prisoner of war camp. The punishment under the Act, if found guilty, was death. Inouye was arraigned on 18 March 1947 and pleaded not guilty.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ PRO, HK, HKRS, 163-1-216, Henry Lonsdale, Crown Counsel to G.B. Puddicombe, 1 February 1947.

²⁹¹ Ibid.

²⁹² PRO, HK, HKRS, 163-1-216, Supreme Court of Hong Kong, Inouye Kanao Charge Sheet, 7 March 1947, Supreme Court of Hong Kong.

Orr and Puddicombe were successful in having Hong Kong authorities charge Inouye with high treason. Inouye's racial identity and nationality continued to be a contentious issue after the war crimes trials. Inouye's petition, particularly his claim that he was a British subject, set Orr and Puddicombe on an incessant mission to have Inouye executed. Orr and Puddicombe's obsession, grounded in racist beliefs about Inouye's identity and the nature of his crimes, drove the two prosecutors to go above and beyond their primary duties. They exercised their power as Allied government lawyers to access a network of officials for their purposes. In the end, Orr and Puddicombe used Inouye's petition and claim as a British subject to come up with a perfect crime of high treason to achieve their ultimate goal of punishing Inouye once and for all. All this time, Inouye remained in custody with only a court-appointed lawyer and himself to change his fate.

Inouye's Treason Trial

The treason trial took place from 15 to 22 April 1947 at the Hong Kong Supreme Court. Chief Justice Sir Henry Blackall presided over the court along with seven jurors. The crown counsel of Hong Kong, Henry Lonsdale, led the prosecution while Charles Loseby, a court-appointed lawyer, served as defence counsel. The treason trial's focus was ultimately on Inouye's identity and allegiance. Lonsdale argued that Inouye had been a Canadian/British subject at all material times and owed allegiance to the King, using Inouye's copy of his birth certificate as proof. Also, he argued that Inouye's work with the Kempeitai was illustrative of the treasonous act. In his defence, Inouye did not deny that he was born in Canada, but he shifted his argument that he was never a British subject, but a Japanese citizen based on his heritage and military work. In his summing up, Judge Henry Blackall pointed to Inouye's birth certificate and war

crimes petition as evidence that Inouye was a British subject via Canadian birth. While Blackall acknowledged Inouye's dual nationality, he noted that Inouye never made a formal declaration of alienage when he came of age and, therefore, still owed allegiance to the King.

Similar to the war crimes trial, the treason trial was not without its issues. In this section, I contend that Inouye faced significant disadvantages and bias throughout the trial that resulted in a trial leaning heavily in favour of the prosecution. For instance, there were serious disparities in the resources available between the prosecution and the defence. Prosecutor Henry Lonsdale had access to extensive resources to build the case, such as the evidence gathered by the War Crimes Investigation Team as well as assistance from Puddicombe and Orr. Conversely, Inouye struggled to acquire essential documents and secure witnesses to provide evidence on his behalf. Consequently, Inouye was once again the sole defence witness during the trial. The defence put forward a different argument than that of the war crimes petition. During the trial, Loseby stated that after consulting with Inouye, Inouye would change his defence that he owed allegiance to the Japanese Emperor at all material times. In other words, Inouye claimed that he was a Japanese subject – not a British subject. Although it may seem that Inouye's change in his defence strategy was duplicitous, Inouye rejecting his British citizenship and proclaiming that he was a Japanese subject was a possible reflection of Inouye's desperate attempt to avoid execution, which he only narrowly managed to avoid in his war crimes trial. Finally, it is essential to note the bias of the judge and jury. The judge's summation of the evidence, as I will demonstrate, suggested a bias towards the prosecution and appeared to have influenced the jury's decision-making and a guilty verdict. The jury consisted of four white and three Chinese

members.²⁹³ Their attitudes towards the Japanese and Inouye were likely negative, fueled by raw hatred and rage as a result of recent wartime events. As Roy Ito pointed out, “Kanao Inouye was well-known in Hong Kong as the Canadian who had worked for the dreaded military police [Kempeitai]. He was hated.”²⁹⁴

Prosecution’s Arguments and Inouye’s Defence

The court proceedings began with lead prosecutor Henry Lonsdale presenting Calvin's Case of 1608 as evidence that Inouye was a natural-born subject of the King. Calvin's case stated that a person born within the King's domain owes allegiance to the Sovereign; therefore, a person's status was decided at birth and based upon the place of birth. Lonsdale concluded by reading aloud each allegation of high treason to show Inouye’s intent to aid and abet the Japanese.

Lonsdale called 33 witnesses to testify on various topics related to Inouye's nationality and alleged ill-treatment. The first five witnesses presented evidence indicating that Inouye was a British subject via Canadian birth and that his decision to join the Kempeitai was voluntary.²⁹⁵ These witnesses included not only Maj. G.B. Puddicombe but also Lt. J.R. Haggan, Inouye’s former defence lawyer. Lonsdale using legal members from Inouye’s war crimes trial as witnesses against Inouye was significant. As the former prosecutor and defence counsel for

²⁹³ Documents do not indicate whether these members were Allied members or civilians. Jury members were Nam Sen Soo, F.S. Elarte, J.K. Hadland, Tsang Wah Shin, R.B Anderton, Pak Lien Wong, and N.C. Begley.

²⁹⁴ Ito, *Stories of My People*, 362.

²⁹⁵ The first five witnesses were: Major G.B. Puddicombe, Officer in charge of the Canadian War Crimes Liaison Section Hong Kong Detachment; Lt. J.R. Haggan, Staff Captain Legal at Land Forces Headquarters Hong Kong; Percy Lowe, Sub. Inspector Hong Kong Police; Matsuda Kimichiba, Japanese Interpreter for the Supreme Court; Shiozawa Kunio, Japanese Army Officer detained in Stanley.

Inouye's war crimes trial, Puddicombe and Haggan had insider knowledge from Inouye's previous trial, which was arguably an unfair advantage for the prosecution. Their connection to Inouye and their positions as government-appointed lawyers contributed to their perceived credibility as witnesses. This was a considerable disadvantage to Inouye and his defence.

The remaining witnesses testified against Inouye regarding his interrogations for the Kempeitai. Many of these witnesses were Hong Kong civilians and had provided testimonies at Inouye's war crimes trial.²⁹⁶ Similar to the first trial, these testimonies detailed the interrogations with Inouye, which included allegations of water torture, beatings, being tied up and hanging from the ceiling, and cigarette burns on the face and body. The purpose of these testimonies was to illustrate how Inouye allegedly aided and abetted the Japanese, not to highlight the ill-treatment of the Hong Kong civilians. Nonetheless, their testimonies, as a consequence, still reinforced the image of Inouye's "barbaric" nature for the jury.

Inouye then took the stand for his defence. Unlike the prosecution, who called 33 witnesses, Inouye was, once again, the sole defence witness. The witnesses that Inouye requested to testify on his behalf were not present for the trial. It is unclear whether authorities took any steps to secure the witnesses beforehand. Inouye's defence was different from his war crimes trial and contradicted much of what he claimed in his previous defence. This time Inouye asserted that he was always a Japanese subject – not a British subject, as his petition had indicated. Inouye claimed that he always considered himself Japanese based on his family's heritage, as

²⁹⁶ The remaining witnesses were: Mary Violet Power, Ho Fook Sang, Gonzalo Sang, Maria Olmos Lee, Vincente Nicholas Atienza, Kwong Kam Sui, Leung Hing Ling, Albert Edward Peveril Guest, Ame Madar, Frank Charles Whitfield, William Cecil Low, Muhamed Yussuf Khan, Mohamed Ahsan, Wilfred Mariott Lawrence, Lai Chak Po, Dev. Saran Das, Chen Wai Mui, William Chang, Felizerto Augesdo Sequiera, Joyce Hansfield Yip, Lam Sik, Wong King Chuen, Lau Mau, Wong Chung, Wong Yan Sang, Lai Ching Fan, Rampal Ghilote, James Thompson Mackensie.

both of his parents were born in Japan.²⁹⁷ This change in defence was likely a reaction to Inouye being aware that the deck was stacked against him, as already seen with the prosecution's witnesses; therefore, his change in defence was a last desperate effort to avoid the death sentence. If Inouye could convince the jury that he was a Japanese subject, the treason charge would no longer be valid.

In his previous defence, Inouye claimed that he was treated very well in Canada, but this time he claimed that he was not treated well and left for Japan, where he felt welcomed. According to the transcript, Inouye acknowledged that he always knew that he was born in Canada; however, Inouye insisted that he was incredibly unhappy, and was not treated as a Canadian in any way.²⁹⁸ Judge Blackall asked Inouye if he ever tried to get rid of his Canadian citizenship, to which Inouye replied that he did not make any inquiries because he always thought of himself as a Japanese subject.²⁹⁹ Blackall then raised the issue of his statements provided in his war crimes trial petition that he was a British subject. Inouye contended that his defence lawyer, J.R. Haggan had prepared the statement and presented it to him, suggesting that the document "might help [Inouye] get off."³⁰⁰ Inouye thought the death sentence was too harsh and hoped that signing the petition would reverse the sentence.³⁰¹

Much the same as the war crimes trial, Inouye and his defence counsel struggled to acquire essential documents to help his case and challenge the prosecution's argument that he

²⁹⁷ PRO, HK, HKRS, 163-1-216, Supreme Court of Hong Kong, Rex v. Inouye Kanao, 14.

²⁹⁸ Ibid, 15.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ PRO, HK, HKRS, 163-1-216, Supreme Court of Hong Kong, Rex v. Inouye Kanao, 17.

was a British subject. Although he had signed the petition, Inouye asserted that his Japanese registration and ID cards were proof of his naturalization and that he was a Japanese subject.³⁰² However, these documents were left behind when he was arrested, and the defence was still waiting to hear back from Japanese authorities about obtaining copies. Inouye's challenge to secure his ID and paperwork, while the prosecution had copies of Inouye's petition and birth certificate as evidence, is another example of the disadvantages he faced in the treason trial.

Inouye also referenced his military career as proof that he was a Japanese subject. He stated that he had to swear an oath of allegiance to the Japanese Emperor before he began his service.³⁰³ Inouye also tried to convince the jury that he joined the Kempeitai of his own volition. Inouye claimed that he travelled to Hong Kong in 1944, intending to join the Kempeitai and knew that the branch was principally devoted to anti-espionage work. His responsibilities were to assist in countering British agents and collecting information.³⁰⁴ Inouye claimed that he had no control of the Kempeitai but only carried out their orders. Inouye maintained that he acted only as an interpreter and, unless ordered to take part in beatings, took no action of his own accord.³⁰⁵

Throughout his defence, Inouye would proclaim his allegiance to the Japanese Emperor. These proclamations, described by court monitor Roy Ito as "melodramatic," occurred a few times during the court proceedings.³⁰⁶ For example, Lonsdale asked Inouye about the Kempeitai's use of water torture on him in 1940. Inouye refused to answer, stating that it was a

³⁰² Ibid.

³⁰³ Ibid, 15.

³⁰⁴ Ibid, 16.

³⁰⁵ Ibid.

³⁰⁶ Ito, *We Went to War*, 270.

personal matter and had nothing to do with the court.³⁰⁷ Sir Henry Blackall told Inouye that he was now in a British Court and must answer the question. Inouye admitted that the incident had occurred, and then in a sudden outburst, Inouye said, "My body is the Japanese Emperor's body – my mind and my body belonged to the Japanese Emperor and he could do what he liked with it."³⁰⁸ Later on, Inouye explained his reasons for returning to Hong Kong in 1944 when he came to attention, clicked his heels, bowed and said in Japanese, "Long Live the Emperor!"³⁰⁹ Blackall then turned to Inouye and said that there was no need to indulge in theatricals in court.³¹⁰ Since Inouye was the sole defence witness, his outbursts may be interpreted as a desperate act in support of his defence that he was a Japanese subject. Inouye was likely willing to do anything, including these dramatic proclamations, to convince the jury that he was Japanese. Resuming his testimony, Inouye asserted that he never made a declaration of alienage. He always considered himself a Japanese subject, "When a Japanese returns to Japan he is automatically a Japanese subject unless naturalized. I considered that I was not also a British subject."³¹¹

Judge's Summing Up

On 22 April 1947, the last day of the trial, Judge Henry Blackall addressed the jury that he would summarize the evidence and guide them on matters of the law.³¹² However, Blackall's

³⁰⁷ "His Body is the "Emperor's Body,"" *China Mail*, April 19, 1947.

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.*

³¹⁰ *Ibid.*

³¹¹ PRO, HK, HKRS, 163-1-216, Supreme Court of Hong Kong, *Rex v. Inouye Kanao*, 16.

³¹² PRO, HK, HKRS, 163-1-216, Supreme Court of Hong Kong, *Rex v. Inouye Kanao*, Judge's Summing up, 2.

summary of evidence and “guidance” of the law directed the jury to conclude that Inouye was a British subject at all material times, which suggested that Inouye was guilty of high treason. Blackall began his summary by stating that for the jury to find Inouye guilty of high treason, the prosecution had to convince the jury beyond a reasonable doubt on two matters. The first, that Inouye was a person “who owed allegiance to the Crown, to his Majesty, at the material dates”; and second, that Inouye “adhered to and aided and comforted the King’s enemies and that he intended to do so.”³¹³ Regarding the first matter of Inouye’s allegiance to the Crown, Judge Blackall indicated, “any person who is born within His Majesty’s dominions is a British subject irrespective of the nationality of his parents.”³¹⁴ In this case, Lonsdale presented evidence of a birth certificate that showed that Inouye was born in British Columbia, and Inouye did not dispute this. Therefore, Blackall noted, that this made Inouye a natural-born British subject.³¹⁵ Blackall then posed the question of whether Inouye had divested himself of his British nationality. He stated that a natural-born British subject could take out naturalization papers in another state; however, one could not change their nationality to that of a “state with which His Majesty is at war.”³¹⁶

Nevertheless, the primary issue to consider was that Inouye was a dual national. Blackall acknowledged the view that Japan claimed anybody who was born of Japanese parents, in any part of the world, as its subject.³¹⁷ If a person wished to be a subject of another country, they

³¹³ Ibid.

³¹⁴ Ibid, 3.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ Ibid, 4.

could make a formal declaration of alienage once they came of age and cease to be a British subject.³¹⁸ However, the same rule applied: one could not make the declaration of alienage and change one's nationality with a state at war with Britain. Blackall noted that Inouye had the opportunity to make such a declaration when he came of age in 1937, and this opportunity ended when the war began. Nevertheless, there was no evidence that Inouye made any effort to change his nationality.³¹⁹

Additionally, joining another State's forces did not have the effect of changing the nationality of a British subject.³²⁰ Although Inouye, ostensibly, believed himself to be solely a Japanese subject, Blackall asserted that it did not matter what Inouye thought he was. When deciding if someone is a British subject or not, one must follow "what the law is and not what the particular individual believe[d] it to be."³²¹ Thus, according to Blackall, Inouye was a natural-born British subject and remained so at "all material times."³²²

To the other matter, the jurors had to decide if Inouye was carrying out his duty with the Kempeitai "honestly," meaning that he was conscripted or if Inouye intended to assist the Japanese willingly. Inouye claimed that he did not believe he was doing anything wrong when he joined the Kempeitai in Hong Kong; however, the prosecution argued that Inouye had assisted the Japanese in a treasonous and treacherous way. Blackall pointed out the evidence that Inouye had joined the Kempeitai voluntarily. What is more, Blackall called to attention to Inouye's

³¹⁸ Ibid.

³¹⁹ Ibid, 4-5.

³²⁰ Ibid, 5.

³²¹ Ibid.

³²² Ibid.

testimony that he was badly treated in Canada, suggesting that Inouye's decision to join was fueled by him "nursing a grievance against the Anglo-Saxon race."³²³ Blackall's remark that Inouye was nursing a grievance against the Anglo-Saxon race implied that Inouye's motivation to join the Kempeitai was racism and revenge. Blackall's remark further indicates that he likely viewed Inouye's alleged act of treason as a racial transgression, where Inouye "betrayed" the British (white) empire and joined the inferior and barbaric Japanese. Blackall's suggestion that Inouye's motivation to join the Kempeitai was racism and revenge indicates that race and racism were still circulating within the minds of the court members and trial, similar to the war crimes trial. Blackall stated that if Inouye was conscripted, the defence could have shown that Inouye was under compulsion the entire time he assisted, completing only what he was obliged to do and stopped serving at the earliest opportunity possible.³²⁴

Blackall then summarized the witness testimonies highlighting the key pieces of evidence for the jury.³²⁵ Blackall reminded them that although Inouye was not charged with torture, as that would fall under a war crimes charge, the prosecution argued that in order to carry out his traitorous acts of adhering to the King's enemies, Inouye carried out these acts by "terrorizing His Majesty's subjects and others" to extract information from them.³²⁶ Once again, Blackall summarizing the witness testimonies may have been used as evidence to demonstrate Inouye's treacherous acts, but doing so reinforced the image of Inouye as an evil Japanese character for the jury. Blackall concluded by emphasizing the importance of evidence that "...no man,

³²³ Ibid.

³²⁴ Ibid, 8.

³²⁵ Ibid, 11-15.

³²⁶ Ibid, 15-16.

whatever he may be, [could] be convicted of a crime unless the evidence satisfies the jury beyond all reasonable doubt,” and therefore, Inouye should be convicted “upon evidence and evidence alone.”³²⁷ The jury foreman raised one final question to Blackall: "Do you direct that he was definitely never a Japanese subject?" to which he answered, "Yes."³²⁸

In many ways, Judge Blackall's summing up was the final nail in the coffin for Inouye's treason trial. The jury retired at 11:45 am and returned fifteen minutes later with a unanimous guilty verdict. Inouye was found guilty of high treason and sentenced to death – the mandatory, and only, penalty for high treason. Authorities removed Inouye from the court and returned him to prison.

Appeal

On 25 April 1947, Inouye, with his defence lawyer Charles Loseby, submitted a petition to the Governor of Hong Kong to be retried and have his sentence mitigated. Among the reasons for the petition included Inouye arguing that he was a Japanese subject, as were his parents, all the witnesses that he applied for were not present to provide evidence on Inouye's behalf, and all actions committed were acted on the orders of his superior officers.³²⁹ Therefore, Inouye argued that the sentence was "too heavy" since he only acted as a civilian interpreter.³³⁰ Finally, Inouye's

³²⁷ Ibid.

³²⁸ Ibid, 17.

³²⁹ 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.

³³⁰ Ibid.

last point of the petition asserted 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."³³¹

The Court granted Inouye leave to appeal his case on 1 July 1947 at the Supreme Court to Justices Williams and Gould. The Full Court session addressed only two of Inouye's claims, omitting his contention that his witnesses were not permitted to testify and that the sentence was inappropriate. Instead, the justices only examined the claim that Judge Blackall was "wrong in law in misdirecting the jury that [Inouye] at all material times was a British subject and was never a Japanese subject.³³² Secondly, Judge Blackall was wrong in law in "withdrawing from the jury the issue whether at all material times [Inouye] owed allegiance to the King."³³³

Charles Loseby, representing Inouye, again argued that Inouye was a Japanese subject who owed allegiance to the Japanese Emperor because Inouye's parents were "Japanese aliens in Canada."³³⁴ Furthermore, Loseby noted that there was no evidence that Inouye renounced his Japanese nationality; he remained Japanese "unless and until [Inouye] formally renounced that nationality."³³⁵ Therefore, Loseby argued, the only issue before the Court was that the judge misdirected the jury in his summing up that Inouye was a British-born subject and remained so at all material times. When the foreman asked the judge whether Inouye was a British subject and Blackall replied, "Yes," Loseby argued that this question and answer withdrew the issue from the

³³¹ "Appeal By "Slap Happy,"" *China Mail*, July 2, 1947.

³³² *Ibid.*

³³³ *Ibid.*

³³⁴ "Slap Happy Appeal," *South China Morning Post*, July 2, 1947, 4.

³³⁵ "Appeal By "Slap Happy,"" *China Mail*, July 2, 1947.

jury. As Chief Justice presiding over the court, Blackall was supposed to only guide the jury; however, he essentially endorsed the prosecution's argument and directed the jury that Inouye was a British subject by replying 'yes.' Blackall also made a similar statement on two other occasions during his summary. He indirectly stated that Inouye was a British subject because he was born within His Majesty's dominions and because the British law did not allow an individual to change their nationality to that of an enemy country. "There was no doubt in mind," stated Loseby, "that the trial judge had deemed it his duty, to burden upon himself to decide on this point."³³⁶ Loseby stated that the appropriate answer the judge should have given was to tell the jury: "The law on this question is before you: the facts are given in the evidence, it is for you to make up your own mind what to believe and what not to believe on the subject."³³⁷

Henry Lonsdale, representing the Crown, countered the defence's argument by pointing to Judge Blackall's summing up, which stated that in deciding whether or not a man is a British subject, "you have to go by what the law is and not what the particular individual believed him to be."³³⁸ "Even if he believed himself to be a Japanese subject," said Lonsdale, "that would not operate to make him one."³³⁹ Thus, there was no doubt that Inouye was a natural-born British subject and remained so at all material times. Lonsdale pointed to the evidence produced in court indicating Inouye's place of birth and his admission that he was born in Canada.³⁴⁰ Moreover,

³³⁶ Ibid.

³³⁷ Ibid.

³³⁸ Ibid.

³³⁹ "Slap Happy Appeal," *South China Morning Post*, July 2, 1947, 4.

³⁴⁰ Ibid.

Lonsdale added that Inouye never made any declaration of alienage since May 1937 when Inouye came of age.³⁴¹ Lonsdale said that a person of dual nationality should, on coming of age, make a declaration divesting himself of one of his nationalities - ignorance of the law on this point did not relieve Inouye.³⁴² Lonsdale continued that although the Japanese government made a declaration in 1942, making all Japanese abroad subjects of Japan, Lonsdale argued that this was not an act on the part of Inouye.³⁴³ This argument seems to contradict Blackall's summary in which Blackall maintained that the law should be the guiding factor to determine the nationality of an individual. Turning to the allegation that Blackall misdirected the jury, Lonsdale argued that Blackall's answer must be contextualized with the evidence and summing up. Lonsdale stated that there "could not be 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."³⁴⁴

Justices Williams and Gould confirmed Inouye's high treason sentence and dismissed the appeal. They concluded that there was no misdirection in the case, and Blackall supposedly made it clear to the jury that they were the sole judges, and if they disagreed with anything said, the jury could reject it.³⁴⁵ Justices Williams and Gould officially rejected Inouye's appeal and confirmed his treason sentence of death by hanging.³⁴⁶ On 18 July 1947, Inouye appealed to the

³⁴¹ "Appeal By "Slap Happy,"" *China Mail*, July 2, 1947.

³⁴² *Ibid.*

³⁴³ "Slap Happy Appeal," *South China Morning Post*, July 2, 1947, 4.

³⁴⁴ "Appeal By "Slap Happy,"" *China Mail*, July 2, 1947.

³⁴⁵ *Inouye Kanao v. The King* 14 *International Law Report*, 104.

³⁴⁶ *Ibid.*, 104, 107.

Full Court for leave to appeal to the Privy Council against his conviction and sentence for treason and was rejected. The Court reviewed the application and raised the question of jurisdiction. Referring to *Chung Chuk v. The King* (1930), they concluded that the Court had no jurisdiction to grant leave and forward the matter onto the Privy Council.³⁴⁷

Inouye then wrote to the governor of Hong Kong to appeal for clemency to have his death by hanging be commuted to a term of imprisonment. Inouye argued that his role was limited only to interpretation, and he never went beyond those duties. The governor rejected Inouye's petition on the basis that it "contains no matter which would necessitate review of the decision already taken regarding the sentence of death imposed on the Petitioner."³⁴⁸ Inouye's desperate attempts to save his own life were not successful. Unlike the Prosecution, Inouye did not have a team of experts working on his behalf, but most of all, it was a futile attempt trying to convince the prosecution who had already made up their mind before the treason trial had even started.

On 19 August 1947, Colonial Secretary D.M. MacDougall confirmed Inouye's execution, which was then signed by Governor Alexander Grantham. 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 26th August, 1947."³⁴⁹ Inouye submitted one last appeal to the King to

³⁴⁷ PRO, HK, HKRS 163-1-216, Supreme Court of Hong Kong Appellate Jurisdiction, Criminal Appeal No. 15 of 1947, Inouye Kanao and The Crown.

³⁴⁸ 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.

³⁴⁹ Ibid.

postpone his execution without success. Inouye Kanao was hanged at 7:05 am on 26 August 1947.³⁵⁰

³⁵⁰ 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.

Conclusion

The dominant narrative about Inouye Kanao presented him as a treacherous and cruel Japanese who revelled in targeting, beating, and humiliating POWs. While some historians such as Roy Ito and Kathleen Tsuji strived to challenge this perception, the majority of those who have written about Inouye have accepted and perpetuated these misrepresentations. However, I believe that there is sufficient evidence to challenge this narrative and persuade readers to reconsider and see Inouye, and his case, through a new perspective. Again, understanding Inouye's case from a different perspective does not deny Inouye's conduct towards the POWs and Hong Kong civilians but allows us to see that Inouye was both a victim of abuse and racism and a victimizer of others during the war. Inouye might have been guilty of war crimes; however, I argue here that his sentence of death by hanging was unduly severe given the nature of his crimes and that racism and revenge significantly influenced Inouye's trials and their outcomes. Throughout this thesis, I illustrate how racism was pervasive throughout Inouye's legal story, which affected all aspects of his case, including the war crimes trial and the decision to try him for treason that carried a mandatory death sentence. By situating Inouye's story within broader political and social circumstances, both in Canada and internationally, I provide a clearer context for the two trials and for the ultimate decision to execute Inouye.

As discussed at the beginning of this thesis, I employed race-thinking and Critical Race Theory to help frame and interpret Inouye's legal story. Timothy Stanley's work regarding racisms, racializations, and exclusions help elucidate the role and influence racisms had on Inouye's case. As Stanley argued, racialization is at work in racisms, and these racializations lead

to exclusions that have negative consequences on excluded individuals and groups.³⁵¹ These exclusions can be material, social, and symbolic such as exclusions from material goods, service, networks, access to political rights, and life itself.

From the beginning, Canadian and British authorities racialized Inouye as a treacherous Japanese and approached the legal proceedings through this racist lens. Consequently, as a racialized individual, Inouye faced many exclusions during his war crimes trial until his execution. In the war crimes trial, the prosecution argued that Inouye acted on his own accord and was solely responsible for the alleged beatings of Canadian POWs and ill-treatment of Hong Kong civilian residents. The defence countered by denying major involvement in the allegations, arguing that Inouye was only following his superiors' orders. Race thinking and racism circulated among the members of the court, including Inouye's defence lawyer. The court members were aware that Inouye was born in Canada, but they viewed and treated Inouye as a treacherous Japanese national. Prosecutor Maj. G.B. Puddicombe presented Inouye to the court as a vindictive and cruel Japanese, and his alleged crimes as racial transgressions intended to humiliate and brutalize.

President Stewart's final comments further illustrate these notions. Stewart used Inouye's Nisei background and upbringing in Canada as grounds that Inouye was deserving of the death sentence. Stewart admonished Inouye for his inability to learn "civilized" ways and become Canadian: Inouye received a Christian upbringing and kindness in Canada; therefore, he should have known better than become involved with the Imperial Japanese Army and Kempeitai. Ultimately, Stewart punished Inouye for his failure to turn his back on his Japanese self and

³⁵¹ Stanley, *Contesting White Supremacy*, 7-12.

exhibit his loyalty and service exclusively to Canada, as many Asian Canadians and immigrants were expected to do. Stewart's comments reflected the broader perspective court members held about Inouye and his Nisei background: even though he was Canadian by birth, court members saw Inouye as a racially unassimilable individual – someone "genetically incapable of committing to Canadian and British values..."³⁵²

Throughout the trial, Inouye faced several racialized exclusions that contributed to his guilty verdict and death sentence. Inouye and his defence struggled to acquire witnesses to testify on his behalf. President Stewart was unwilling to wait for the witnesses to be secured, leaving Inouye the sole defence witness for the trial. Furthermore, members of the court did not consider several other potential mitigating circumstances that should have led to a lesser sentence. These include the fact that Inouye was a victim of torture by the Kempeitai and, most notably, Inouye being exonerated of causing the deaths of four Hong Kong civilian residents. Despite this, President Stewart still sentenced Inouye to death. Stewart's unwillingness to wait for Inouye's witnesses excluded Inouye from presenting potentially vital evidence to support his defence. The same can be said for the court's disregard of several mitigating circumstances that provided relevant context to Inouye and his crimes that should have resulted in a lighter sentence.

Contrasting Inouye's trial sentence to other Hong Kong cases reveals major inconsistencies in sentencing and underscores the comparatively harsh treatment and sentence Inouye received. Other members of the Imperial Japanese Army and the Kempeitai, who committed similar crimes to Inouye, received lighter sentences. Conversely, senior members found guilty for the deaths of hundreds had their sentences eventually commuted to life or term

³⁵² Sunahara, *The Politics of Racism*, 7

imprisonment. In all the Hong Kong war crimes trials, Inouye was the only accused to be sentenced to death who was found *not* responsible for causing or contributing to deaths. Those who were more culpable, such as Inouye's superior, Moriyama, remain unpunished.

The events following the war crimes trial saw the continued racialization and pursuit of Inouye by Canadian prosecutors Oscar Orr and G.B. Puddicombe. On 1 June 1946, Inouye submitted a petition contesting the finding and sentencing of the war crimes trial. The petition not only overturned his trial, but Inouye's declaration of being a Canadian challenged the powers of the Military Tribunal. Orr and Puddicombe's response to the petition reinforced the notion that they racialized Inouye as a treacherous Japanese. The two Canadian prosecutors viewed Inouye's success in overturning his war crimes trial as another racial transgression. The fact that a treacherous Japanese such as Inouye, would claim British status and possibly evade punishment, was deeply offensive to Orr and Puddicombe. They believed that they needed to do everything in their power to see Inouye charged and executed for his crimes. Going above and beyond their duties and responsibilities as Canadian prosecutors, Orr and Puddicombe conspired to use Inouye's claim of British status against him and pursue Inouye with high treason. Orr decided on the Treason Act of 1351, which he believed was the best course of action to pursue, punish, and execute Inouye. When examining this period, it becomes clear that Orr and Puddicombe's sole goal was to have Inouye executed, and to that end, they set out to find a crime that fit the desired punishment. Orr and Puddicombe recognized that Inouye's alleged ill-treatment of Canadian POWs was comparatively weaker than his interrogations of Hong Kong civilian residents, which they considered a more "serious offence" that would result in a stronger case. In turn, this disclosed Orr and Puddicombe's recognition that the charges regarding Canadian POWs were not as serious as presented in the war crimes trial. Therefore, this confirms that Inouye's war crimes

sentence was unduly severe and did not reflect the nature of the crimes. Through their positions and power as government-appointed lawyers, Orr and Puddicombe used their networks and resources to push their case forward and convince authorities to charge Inouye with treason. The treason trial was a direct result of Orr and Puddicombe's racist determination to see Inouye executed.

Orr and Puddicombe's continued racialization of Inouye after the war crimes trial resulted in further exclusions that ranged from material to social. Orr and Puddicombe's actions led Inouye to be tried in a Court under the power of the British authorities who, as previously seen, held racist beliefs and colonial attitudes towards the Japanese. What is more, Orr, Puddicombe, and Lonsdale had access to various resources to build their case against Inouye, including the evidence collected by the war crimes investigation teams, as well as assistance from Allied government officials and legal counsel. Meanwhile, Inouye remained in custody with virtually no access to resources while officials built a case against him. When the treason trial began, Inouye only had a court-appointed lawyer and struggled to acquire essential documents and witnesses to provide evidence for his defence. Consequently, Inouye was, once again, the sole defence witness for his trial.

During the treason trial, Prosecutor Henry Lonsdale argued that Inouye was a British subject at all material times and owed allegiance to the King; therefore, Inouye's work with the Kempeitai was a treasonous act. In his defence, Inouye did not deny that he was born in Canada but argued that he was a Japanese citizen based on his heritage and military work. In his summing up, Judge Henry Blackall pointed out Inouye's birth certificate and war crimes trial petition as evidence that Inouye was a Canadian subject. Furthermore, Blackall acknowledged

Inouye's dual nationality but stated that Inouye never made a formal declaration of alienage when he came of age and, therefore, still owed allegiance to the King.

Inouye claiming to be a Japanese subject and rejecting his British status was not so much an opportunist or duplicitous strategy, but Inouye was exercising what little agency he had to try to save his life and avoid execution, which he had narrowly managed to avoid before. In the eyes of the British court, it did not matter what Inouye believed, nor was his defence of following the orders of superior officers sufficient to overturn the treason conviction.

Judge Blackall's summing up was another major disadvantage for Inouye. Blackall clearly advocated for the prosecution's arguments and openly stated that he believed Inouye was a British subject. Blackall's summing up also suggested that he viewed Inouye and his alleged crime of treason through a racial lens. It is also important to note the composition of the jury. The trial jurors consisted of seven members, four of whom were white and the remaining three being Chinese, which may have influenced the guilty verdict.

The result of this racist process was Inouye's execution - the most significant exclusion. The Military Tribunal, Canadian authorities, and British Court denied Inouye the right to live based on crimes that government officials had acknowledged were minor. Inouye was not charged and executed for his role and actions as an interpreter; he was executed because Allied officials racialized Inouye as a treacherous Japanese. Inouye being executed as a British subject is ironic given that a few years earlier in 1941, the Canadian government deemed Japanese Canadians as enemy aliens and stripped them of their rights as Canadian citizens. This included Inouye's immediate family (mother and four sisters) who remained in Canada during the Second World War.

Orr and Puddicombe's unwavering pursuit of Inouye, successful charge of high treason, and execution is also an example of Sherene Razack's contention about race thinking and the law. As Razack observed, when race thinking is embedded in the law, it allows those in power to disguise actions that are, in fact, discrimination against those deemed different as the law itself and justify these policies as protective and necessary for the state.³⁵³ In Inouye's case, Orr and Puddicombe's race thinking, combined with the law, allowed them to pursue and ultimately have the British court sentence Inouye to death for relatively "minor" crimes under the guise of justice and protection of the state. Orr and Puddicombe saw Inouye as a threat to (white) Canadian values and the larger state. Moreover, the events following Inouye's war crimes trial illustrate how the law is used as a political instrument to control and punish those deemed different and inferior. As seen in chapter three, the Treason Act of 1351 was used to charge and punish Inouye for his alleged war crimes and petition, not treason by its true definition.

When Inouye was tried for war crimes and later for high treason, he was up against a racist legal system that represented and reinforced the interests of white Allied members, as well as geopolitical issues that would influence his case. The Canadian government was reticent about charging war crimes. They equivocated pursuing Inouye, as they held concerns about how a trial in Canada would be received given the domestic political situation of the Japanese Canadian internment. Accordingly, Cabinet hoped that Canadian and Allied authorities in Hong Kong would handle the case. Britain, who had their own racist and colonial attitudes, saw the trials as an opportunity to demonstrate their power and establish prestige to rebuild their postwar

³⁵³ Razack, *Casting Out*, 11.

empire.³⁵⁴ The Court's decision to sentence Inouye to death not once, but twice is an example of this. As Canadian prosecutors, Orr and Puddicombe acted to protect the Canadian interest abroad. They injected their anti-Japanese views into their legal work and trials, which compelled them to blindly pursue Inouye until he was executed. Ultimately, Inouye's death sentence did not reflect the severity of his crimes – it indicated the intense hatred and racism the Allied members had towards Inouye as a Japanese.

Inouye's case exemplifies how the racist legal system could not understand the dilemma of being a Nisei. This system was unsympathetic to the unique pressures and expectations that Niseis, and dual nationals, faced. These pressures were likely heightened during the war, given numerous countries' notion of a singular identity. For example, Inouye was initially punished because he failed to become a Canadian. Later on, Inouye claimed that he followed his Japanese superiors' orders to show his allegiance and survive the war. The British legal system ignored any pleas or explanations that provided valuable insight and context to the accused individuals and their crimes and punished them based on racist and arbitrary standards.

In *Stories of My People*, Roy Ito wrote about two other Nisei who were charged with treason after World War II. Iva Ikuko Toguri, also known as "Tokyo Rose," and Tomoya "Meatball" Kawakita were two Japanese Americans charged with treason for working with the Japanese. Toguri's treason trial was held from 5 July to 29 September 1949 in San Francisco. The jury found Toguri guilty, and the judge gave her a ten-year prison sentence as well as a \$10,000 fine. On 17 January 1977, Toguri won a full presidential pardon with the assistance of

³⁵⁴ Linton, "Rediscovering the War Crimes Trials in Hong Kong, 1946-48," 9.; H. Hirofumi, "British War Crimes Trials of Japanese," *Nature-People-Society: Science and the Humanities of Kanto Gakuin University* 31 (2001), 1.

the Japanese Americans Citizens League and prominent Japanese Americans, Senator S.I. Hayakawa, Governor Ariyoshi and Representative Spark Matsunaga of Hawaii.³⁵⁵

Tomoya "Meatball" Kawakita was charged with thirteen counts of treason based on his ill-treatment of POWs.³⁵⁶ The jury found Kawakita guilty of committing eight acts of treasonable brutality against American prisoners in Oeyama. US authorities sentenced Kawakita to death; however, on 2 November 1953, President Eisenhower commuted the sentence to life imprisonment. Ten years later, on 24 October 1963, President Kennedy ordered the release of Kawakita on the condition that he leave the US and never return.³⁵⁷

Allied authorities found Inouye, Toguri, and Kawakita guilty of treason. Contrasting the three trials further highlights the flaws in Inouye's case, raising the question as to whether Inouye's trials received due process. Toguri and Kawakita's trials were three months in duration, while Inouye's treason trial lasted only five days. Furthermore, Toguri's trial had over forty witnesses present to testify on her behalf, whereas Inouye could not secure any requested witnesses or documentation, resulting in him being his only defence witness.³⁵⁸ The outcomes of Toguri and Kawakita's trials differed significantly from that of Inouye. Toguri, whose treason trial crimes were arguably less serious, received a full presidential pardon. Kawakita, whose crimes share similarities with Inouye, had his sentence commuted and was eventually released by two presidents. This begs the question that if Inouye's crimes were considered so serious, why

³⁵⁵ Ito, *Stories of My People*, 366.

³⁵⁶ Ibid, 366-367.

³⁵⁷ Ibid.

³⁵⁸ Ibid, 366.

were two presidents willing to order the sentence's commutation and eventual release of Kawakita, who committed similar crimes to Inouye? Why did British authorities not consider something similar?

Canada's Worst Canadian?

Historians have misrepresented Inouye's story and perpetuated a mythologized image of the "infamous Kamloops Kid." Some of these historical treatments have continued to racialize Inouye as a treacherous and vindictive Japanese. David Bercuson's *Beaver* article, which identified Inouye as one of Canada's worst Canadians, is of particular note. Bercuson's reasoning for choosing Inouye exhibits clear racist and anti-Japanese sentiments. His description of Inouye as a "leading death camp torturer" who "took particular relish in beating and otherwise maltreating the prisoners" reflects the same language Chief Prosecutor Orr used to describe Inouye in 1945 as well as the racist belief that the Japanese were a part of a race war intended to humiliate and brutalize white Allied soldiers.³⁵⁹

If Bercuson wanted to write about Canada's worst Canadians, there are other cases that would merit this title. Historians Patrick Brode, Roy Ito, and John Price have documented Canadian war crimes, subsequent prosecutions, or lack thereof. Canadian soldiers also committed war crimes and violations of war; however, these crimes were largely ignored, and those who were convicted, typically received lenient sentences. Brode indicates that Canadian

³⁵⁹ Bercuson et al., "Canada's Hall of Infamy." *The Beaver* 87 (2007).; "War Crimes," Lt.-Col. Oscar Orr to Deputy Judge Advocate General, 22 December 1945.

soldiers engaged in acts of rape, killings in cold blood, and murders of POWs, but these cases were ignored and rarely prosecuted.³⁶⁰ Brode and Ito have also pointed to the torture and murder of Somali teenager, Shidane Abukar Arone by Canadian soldiers on 16 March 1993. The Canadian soldiers were charged and convicted, but they received sentences ranging from short term imprisonment to full acquittals.³⁶¹

According to John Price, Canadian soldiers committed many crimes against Korean civilians during the Korean War. However, of the approximately sixty cases that resulted in trials and convictions, many soldiers were released upon their return to Canada.³⁶² Price details the case of Glen Beck, Alan Davis, and Donald Gibson of the Princess Patricia Regiment. After a period of partying, the three soldiers wandered away from their camp and came across a farmhouse where they encountered a farmer, South Korean soldiers, and two women. The Canadian soldiers proceeded to harass, beat, and rape the women. When the South Korean soldiers tried to intervene, they were beaten at gunpoint. Afterwards, Beck threw a grenade into the farmhouse, and as the soldiers left, they fired their weapons into the building. Beck, Davis, and Gibson were eventually court-martialled in the fall of 1951. Judges found Beck guilty of manslaughter and sentenced him to life imprisonment, while Davis and Gibson were found guilty of attempted rape and sentenced to short term imprisonment.³⁶³ The soldiers returned to Canada to serve their sentences; however, Beck was released, and Davis and Gibson had their sentences

³⁶⁰ Brode, *Casual Slaughters and Accidental Judgments*, 218-224.

³⁶¹ Ito, *Stories of My People*, 362.; Brode, *Casual Slaughters and Accidental Judgments*, 227-228.

³⁶² For more information on Canadian war crimes against Korean civilians, see Price, *Orienting Canada*, 257-272.

³⁶³ *Ibid*, 264.

set aside.³⁶⁴ This problematic pattern of releasing Canadian soldiers once they returned to Canada, Price argues, "casts doubt on the integrity of the military justice system," and "reflected a structural problem of racism in the upper echelons of the National Defence establishment."³⁶⁵ Moreover, Canadian journalists Pierre Burton and Bill Boss pointed out that many of the crimes committed against Korean civilians reflected the broader issue of systemic racism within the Canadian military.³⁶⁶ Boss reported that Canadian soldiers viewed Korean civilians as inferior and with contempt, similar to the anti-Japanese racism discussed in this thesis.³⁶⁷

The crimes described above are only a few examples of crimes committed by other Canadian soldiers. These examples reveal Bercuson's prejudice, but they also highlight the racist double standard in how we remember the past. Excluding these soldiers' crimes, as historians such as Bercuson has done, perpetuates our unwillingness to hold Allied soldiers accountable in history. Consequently, history is distorted, harmful and racist stereotypes persist and lead to negative consequences for groups such as Asian Canadians.

Prevailing racist notions made it easier to see Inouye as the "Kamloops Kid," a treacherous and vindictive Japanese, rather than looking beyond the persona and seeking to understand him and his case. This thesis challenges previous notions of Inouye's legal story and reveals a much more complicated story. After Inouye's execution, his body was never returned to Japan. Nevertheless, his family in Japan engraved Inouye's name onto their family gravestone – a

³⁶⁴ Ibid, 265.

³⁶⁵ Ibid, 265-6.

³⁶⁶ Ibid, 266-267.

³⁶⁷ "Correspondent Raps Integration of Army," *Vancouver Sun*, 7 September 1951, found in Price, *Orienteering Canada*, 267.

common practice to show someone existed and never forgotten. This family grave still stands today in Atsugi, Kanagawa, Japan.³⁶⁸ Inouye's story is an important piece of history that deserves to be remembered beyond the "Kamloops Kid" persona. Inouye Kanao's story is an example of the lesser-known Japanese Canadian wartime experiences – of someone else who also faced injustice because of his heritage. Furthermore, his case illustrates how deeply flawed the legal system can be. Examining and understanding Inouye's case demonstrates how racism permeated institutional systems and laws that defended white power, privilege, and wealth while fostering the inequality of racialized individuals and groups.³⁶⁹ His case raises important questions about the true nature of war crimes, how they are prosecuted and charged, and whether the punishment always reflects the crime. In the end, Inouye's story is worth more than being used for political purposes; rather, it reminds us to think critically about how we remember, understand, and record the past.

³⁶⁸ Iida Takashi, *Sagami jinkokki: Atsugi, Aikō no rekishi o irodotta hyakunin* (Atsugi-shi: Shimin Kawarabansha, 2000), 157.

³⁶⁹ Backhouse, *Colour-coded*, 13.

Bibliography

Primary Sources

Archives consulted

Government Records Service, The Government of the Hong Kong Special Administrative Region, Public Records Office, Kowloon

Hong Kong Records Series, 163-1-216, General Correspondence Files, WAR
CRIMINALS – INOUYE KANAO

Library and Archives Canada, Ottawa

George B. Puddicombe Fonds, MG 30, E567 / R10740-0 8-E.

Record Group 25, Records of the Department of External Affairs, War Crimes Trial of Inouye, Kanao, the Kamloops Kid General File 1945/09/18 – 1949/06/02.

Record Group 25, Records of the Department of External Affairs, Inouye, Kanao
Security Report.

Record Group 150, Records of the Military of the Overseas Military Forces of Canada.

The National Archives, Kew

War Office Papers, 235/927, Defendant: Inouye Kanao Place of Trial: Hong Kong.

Newspapers

The Canberra Times 1946

China Mail 1946, 1947

Globe & Mail 1946

Los Angeles Times 2002

New York Times 2006

Ottawa Citizen 1946

South China Morning Post 1946, 1947

Toronto Sun 2018

Vancouver Sun 1945, 1947

Secondary Sources

Adachi, Ken. *The Enemy That Never Was*. Toronto, ON: McLelland & Stewart, 1991.

Allister, W. *Where Life and Death Hold Hands*. Toronto: Stoddart Publishing Co., 1989.

Arendt, Hannah. *The Origins of Totalitarianism*. New York: Harcourt, Brace, 1951.

- Backhouse, Constance. *Colour-Coded: A Legal History of Racism in Canada, 1900-1950*. Toronto: Osgoode Society for Canadian Legal History/University of Toronto Press, 2001.
- Bangarth, Stephanie D. *Voices Raised in Protest: Defending Citizens of Japanese Ancestry in North America, 1942-49*. Vancouver; Toronto: UBC Press, 2008.
- Bell, Derrick. "Who's Afraid of Critical Race Theory." *University of Illinois Law Review* no.4 (1995): page 893-910.
- Bercuson, David, Michael Bliss, Graham Broad, and Margaret Conrad. "Canada's Hall of Infamy." *The Beaver* 87 (2007): 31-37.
- Brode, Patrick. "Canada's war criminal Kanao Inouye." *Esprit de Corps*.
http://findarticles.com/p/articles/mi_6972/is_2_10/ai_n28128732/?tag=content;coll.
- . *Casual Slaughters and Accidental Judgments: Canadian War Crimes Prosecutions, 1944 - 1948*. Toronto: University of Toronto Press, 1997.
- Cambon, Kenneth. *Guest of Hirohito*. Vancouver: PW Press, 1990.
- Chang, Maria, Hsia. "Victor's Justice and Japan's Amnesia: the Tokyo War Crimes Trial Reconsidered." *East Asia: An International Quarterly* 19, no. 4 (2001): 55-85.
- Dancocks, Daniel G. *In Enemy Hands: Canadian Prisoners of War 1939-45*. Edmonton: Hurtig Publishers, 1983.
- Delgado, Richard and Jean Stefancic. *Critical Race Theory: An Introduction*. New York; London: New York University Press, 2012.
- Dower, John. *War Without Mercy: Race & Power in the Pacific War*. W.W. Norton & Company, 1986.
- Endacott, G.B. *Hong Kong Eclipse*. Hong Kong: Oxford University Press, 1978.
- Fu, Hualing, Carole Peterson and Simon N. M. Young. *National Security and Fundamental Freedoms: Hong Kong's Article 23 Under Scrutiny*. Hong Kong: Hong Kong University Press, 2005.
- Fujitani, T., Geoffrey M. White, and Lisa Yoneyama, eds. *Perilous Memories: The Asian-Pacific War(s)*. Durham, North Carolina: Duke University Press, 2001.
- Garneau, Grant S. *The Royal Rifles of Canada in Hong Kong, 1941-1945*. Sawyerville, Quebec: Hong Kong Veterans' Association of Canada, Quebec-Maritimes Branch, 1980.

- Hirofumi, H. "British War Crimes Trials of Japanese." *Nature-People-Society: Science and the Humanities of Kanto Gakuin University* 31 (2001).
<http://www32.ocn.ne.jp/~modernh/eng08.html>.
- Ienaga, Saburo. *The Pacific War 1931-1945*. Tokyo: Iwanami Shoten, 1968.
- Iida, Takashi. *Sagami jinkokki: Atsugi, Aikō no rekishi o irodotta hyakunin*. Atsugi-shi: Shimin Kawarabansha, 2000.
- Inouye Kanao v. The King 14 *International Law Report*, 1947, 103-106.
- Ito, Roy. *Stories of My People: A Japanese Canadian Journal*. Hamilton, On: Promark, 1994.
- Ito, Roy. *We Went to War: The Story of the Japanese Canadians who served during the First and Second World Wars*. Stittsville, Ont: Canada's Wings, 1984.
- McIntosh, Dave. *Hell On Earth: Aging Faster, Dying Sooner- Canadian Prisoners of the Japanese During World War II*. Ontario: McGraw-Hill Ryerson, 1997.
- Lindsay, Oliver. *The Battle for Hong Kong 1941-1945: Hostage to Fortune*. Montreal & Kingston: McGill-Queen's University Press, 2005.
- Linton, Suzannah. *Hong Kong's War Crimes Trials*. Oxford, United Kingdom: Oxford University Press, 2013.
- . "Rediscovering the War Crimes Trials in Hong Kong, 1946-48." *Melbourne Journal of International Law* 13, no. 1 (June 2012): 1-65.
- Madakoro, Laura, Francine McKenzie and David Meren, eds. *Dominion of Race: Rethinking Canada's International History*. Vancouver; Toronto: UBC Press, 2017.
- Miki, Roy and Cassandra Kobayashi. *Justice in Our Time: Japanese Canadian Redress Settlement*. Vancouver: Talonbooks, 1991.
- No author. "Criminal Law Additions and Alterations: The Treachery Act, 1940," *The Journal of Criminal Law* 4, no. 3, 1940.
- No author. "James Oscar Fitzallen Harley Orr: Soldier and Common Law Officer of Justice," *The Advocate* 51, no. 2 (March 1993): 270.
- Piccigallo, Philip R. *The Japanese on Trial, Allied War Crimes Operations in the East, 1945-1951*. Austin: University of Texas Press, 1979.
- Price, John. *Orienting Canada: Race, Empire, and the Transpacific*. Vancouver, UBC Press, 2011.

- Pritchard, R. John. "The Nature and Significance of British Post-War Trials of Japanese War Criminals, 1945-1948." *Proceedings of the British Association for Japanese Studies* 2 (1977): 189-219.
- . "The Historical Experience of British War Crimes Courts in the Far East, 1946-1948." *International Relations* 6, 311(1978): 311-328.
- Pritchard, R. John. "Lessons from British Proceedings against Japanese War Criminals." *The Human Rights Review* 3, no. 2 (1978): 104-121.
- Razack, Sherene. *Casting Out: The Eviction from Western Law and Politics*. Toronto: University of Toronto Press, 2008.
- Roland, Charles G. *Long Night's Journey Into Day: Prisoners of War in Hong Kong and Japan, 1941-1945*. Waterloo, ON: Wilfred Laurier University Press, 2001.
- Roy, Patricia, J.L. Granatstein, Masako Lino, and Hiroko Takamura. *Mutual Hostages: Canadians and Japanese During the Second World War*. Toronto: University of Toronto Press, 1992.
- Shibusawa, Naoko. "Femininity, Race and Treachery: How 'Tokyo Rose' Became a Traitor to the United States after the Second World War." *Gender & History* Vol. 22, No.1 (April 2010): 169-188.
- Stanley, Timothy J. "Bringing Anti-Racism into Historical Explanation: The Chinese Students' Strike of 1922-3 Revisited." *Journal of the Canadian Historical Association* 13, no.1, 141-165.
- . *Contesting White Supremacy: School Segregation, Anti-Racism, and the Making of Chinese Canadians*. Vancouver; Toronto: UBC Press, 2011.
- Sunahara, Ann Gomer. *The Politics of Racism*. Toronto: James Lorimer & Company, 1981.
- Sweeney, Mark. "A 'Guest of the Dominion of Canada': Nationality and the War Crimes and Treason Trials of Inouye Kanao, 1946-1947." *Journal of Historical Biography* 14, no. 1 (2013): 1-46.
- Takashi, Iida. *Sagami jinkokki: Atsugi, Aikō no rekishi o irodotta hyakunin*. Atsugi-shi: Shimin Kawarabansha, 2000.
- Tanaka, Toshiyuki. *Hidden Horrors: Japanese War Crimes in World War II*. Boulder, Colo.: Westview Press, 1996.
- Utsumi, Aiko. "Japan's World War II POW Policy: Indifference and Irresponsibility." *The Asia Pacific Journal* 3, no. 5 (May 19, 2005): 1-4.

Utsumi, Aiko, Ikemi Nakamura, and Gil Heong-yun. "Lee Hak Rae, the Korean Connection and "Japanese" War Crimes on the Burma- Thai Railway." *The Asia Pacific Journal* 5, no. 8 (August 2007): 1-9.

Vance, Jonathan F. *Objects of Concern: Canadian Prisoners of War Through The Twentieth Century*. Vancouver: UBC Press, 1994.

Vincent, Carl. *No Reason Why: The Canadian Hong Kong Tragedy- an Examination*. Belleville, Ont.: Inelligener, 1981.

Websites

Linton, Suzannah, and Hong Kong University Libraries. "Hong Kong War Crimes Trials Collection: HKU Libraries Digital Initiatives." Hong Kong University. <http://hkwctc.lib.hku.hk/exhibits/show/hkwctc/home>

Thesis/Dissertations

Sweeney, Mark. "The Canadian War Crimes Liaison Detachment – Far East and the Prosecution of Japanese "Minor" War Crimes." PhD diss, University of Waterloo, 2013.

Tsuji, Kathleen, E. "Three Eras of Citizen-Rights in Canada: An Interpretation of the Relationship Between Citizen-Rights and Executive Power." MA Thesis, University of Victoria, 2013.