

SITTING IN JUDGMENT

Myron C. Cramer's Experiences in the Trials of German Saboteurs and Japanese War Leaders



By Fred L. Borch

Thirty years after 29-year-old Myron C. Cramer enlisted in the Army as a cavalry private in the Washington National Guard, he reached the pinnacle of his career on December 1, 1941, as he exchanged his colonel's eagles for the two-star rank of major general as Judge Advocate General of the Army.

One week later, America was plunged into World War II. For the rest of that war, Cramer served as the top lawyer in the Army. In 1942 he made history when, in concert with U.S. Attorney General Francis Biddle, he prosecuted German U-boat saboteurs at a military commission, becoming the first Judge Advocate General since the Civil War to prosecute at this type of tribunal.

At the end of the war, 63-year-old Cramer retired to private practice in Washington, D.C.; he no doubt believed that his years in uniform were over and he could expect his life to be more tranquil, if not uneventful. But this was not to be, for in 1946 Cramer made history again when he was called out of retirement and donned his uniform to serve as the sole American judge on the 11-nation war crimes tribunal in Tokyo, Japan. For the next two and a half years, Cramer decided the guilt of Japanese wartime political leaders, becoming the only Army lawyer in history to sit as a judge on an international military tribunal.

decided that he liked soldiering—and life in the Army—better than lawyering in Tacoma. Even while he was on active duty in France, he had applied for a Regular Army appointment in the Judge Advocate General's Department.

Bureaucracies move slowly, however, and Cramer had to wait until July 1920 before his application was processed and he was invited to appear personally before a board of officers in San Francisco. The board was impressed with Cramer and, in recommending him for an appointment as a judge advocate major, made the following "general estimate" of him: "tact, appearance, intelligence, manner, personality well above average; a high class man; impressed the board very favorably; well educated and will be of great value to the service; quiet, unassuming and a polished gentlemen; law brief submitted by candidate show him well qualified professionally."

The Judge Advocate General's Department concurred and offered Cramer a commission as a Regular Army major. After accepting this appointment, Cramer served in a variety of assignments and locations over the next 20 years. He did a two-year assignment with the Third and Fourth Divisions, taught as a law professor at West Point, and graduated from the two-year Command and General Staff College at Fort Leavenworth, Kansas. Although Cramer had volunteered for duty in China, he was instead sent to Manila in 1934, where he served as the top Army lawyer in the Philippine Department for three years. Cramer's records show that his strength as an attorney



was contract law, particularly in the area of negotiating Army procurement contracts. This explains why he had a total of eight years (from 1930 to 1934 and 1937 to 1941) in Washington, D.C., as chief of the Contract Division. Having amassed an outstanding record as an Army lawyer, Colonel Cramer was selected to be the Army's top lawyer in 1941.

Trial of the German U-boat Saboteurs

Little more than six months into his job, Cramer found himself working alongside U.S. Attorney General Francis Biddle in an extraordinarily high-profile criminal matter: the trial by military commission of German U-boat saboteurs.

In June 1942, eight German-born agents, all of whom had previously resided in the United States and spoke English, traveled across the Atlantic by U-boat. Four landed on Long Island, N.Y., and four came ashore in Florida. All had been trained as saboteurs and had brought with them dynamite, fuses, and \$180,000 cash (about \$2.3 million in today's money). The Germans had secret instructions showing the locations of U.S. aluminum and magnesium production facilities, electric power plants, bridges, tunnels, and other infrastructure important to America's war effort, and they intended to wreak havoc through sabotage.

Myron Cramer (right) stands with his predecessor, Maj. Gen. Allen W. Gullion, after Cramer's promotion to Judge Advocate General of the Army on December 1, 1941.



Above: George John Dasch, leader of the captured saboteurs.

Above left: Attorney General Nicholas Biddle questions FBI agent Lenman at the trial of Nazi saboteurs on July 9, 1942, with Myron Cramer seated at center of panel.

After the Germans arrived in the United States, however, one of their leaders, George Dasch, turned himself in to the Federal Bureau of Investigation and, as a result, the FBI was able to quickly apprehend the other men.

At first the government intended to try the men in U.S. District Court. The Roosevelt administration soon decided, however, that this forum was ill-advised because a civilian trial would be open to the public, and this would undermine the desired impression that brilliant detective work by federal law enforcement agents had exposed the saboteurs' plans. After all, newspapers and radios were loudly trumpeting the FBI's remarkable success, and there was good reason to believe this would cease were the truth to be revealed: that the plot had been discovered only because one of the saboteurs had turned himself into the authorities and then exposed his compatriots.

Because the government did not want Hitler to know how easy it had been for Germans to land on U.S. shores—and to deter any such future sabotage operations—Secretary of War Henry L. Stimson and Attorney General Biddle decided that a military commission—which could be closed to the public—was the best course of action. The fact that the German Reich had secretly landed its agents in civilian guise on U.S. soil was an act of war, and the planned sabotage constituted a violation of the laws of war. While there was some disagreement among lawyers in the Roosevelt administration, the majority view was that these facts meant that a trial by military commission was both lawful and proper.

But there was another reason, and perhaps the most important reason, to try the German saboteurs by military commission—and it was Myron Cramer who first raised it. On June 28, 1942, Cramer wrote to Secretary Stimson that a civilian court was the wrong forum for the German saboteurs because “the maximum permissible punishment . . . would be less than is desirable to impose.” As Cramer explained, this was because the Federal rules of evidence would make it difficult to obtain a conviction for sabotage (a 30-year offense) in U.S. District Court, making it likely that the men might only be convicted of conspiracy (a three-year offense). A trial by military commission, however, was not bound by federal procedural or evidentiary rules, and there was no limitation on any sentence that could be imposed, including the death penalty.

When Stimson met with Biddle the next day, the two officials agreed that trial in a civilian court was ill-advised and that a military commission would best meet the needs of the government. Based on their recommendations, President Roosevelt established the military commission by pro-

Judge Advocate General Myron C. Cramer (right) expressed his support for war crimes trials for European war criminals in a November 22, 1944, memo to Assistant Secretary of War John McCloy. He urged an international tribunal with “a verbatim record of oral evidence and of documents,” a record that would constitute “a convincing proof of guilt . . . preserved in such form that the record of trial can be widely distributed.”

clamation on July 2, 1942, and also issued an executive order appointing Biddle and Cramer as co-prosecutors. That same order selected four major generals and three brigadier generals to serve as the seven-member panel to decide guilt and determine an appropriate sentence. Finally, the order appointed military defense counsel to represent the accused Germans.

Matters moved quickly for Cramer since he and Biddle began presenting evidence to the tribunal on July 8. Preliminary arguments and the taking of testimony took 16 days—an average of two days for each accused. The military commission completed its work on August 1, when it found all eight defendants guilty of “attempting to commit sabotage, espionage, and other hostile acts” and “conspiracy” to commit these same offenses. Cramer and Biddle argued that the Germans must be sentenced to death, and the commission agreed. Roosevelt approved the death sentence for six of the eight men, and those six were electrocuted on August 8, 1942. The other two were imprisoned and later deported to Germany after the war. The U.S. Supreme Court later upheld the jurisdiction of the military commission, and the lawfulness of its proceedings, in the case of *Ex parte Quirin*, which continues to be cited with approval by today’s Supreme Court.

Cramer’s work as co-prosecutor was praised by his superior as “historic evidence of his legal



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ability and sound judgment.” He and Biddle had successfully completed the first military commission convened by a President and had achieved the best possible results for the government.

Cramer continued to serve as the top Army lawyer for the rest of World War II. It was a challenging job to have in an Army that had transitioned from peace to war and grown to 8 million men and women. When Cramer retired on December 1, 1945, after four years as the Judge Advocate General, he was lauded at the highest levels for his “consummate legal skills” and his organizational abilities in running a legal operation that had grown from 190 uniformed lawyers in 1941 to more than 2,160 judge advocates in 1945 and had offices located throughout the world.

Tokyo War Crimes Trial

After retiring on December 1, 1945, Cramer and his wife settled in Washington, D.C., and he began to build a civilian law practice. No doubt he believed that tranquility would be the norm in his life. But in

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MEMORANDUM for the Assistant Secretary of War.

Subject: Trial of European War Criminals.

1. The G-1 plan, first presented at the conference held in your office on 27 September, has been the subject of continuous study and discussion since that time.
2. I agree, first, that there must be a trial of the arch-criminals before an international tribunal, full and complete, with a verbatim record of oral evidence and of documents. I feel quite sure that the world cannot afford to dispose of the war guilt by compelling the vanquished nations to make an admission of guilt, as it did in article 231 of the Versailles Treaty in 1919. There must be convincing proof of guilt, which should be presented in such form that the record of trial can be widely distributed.

The foregoing, the full-dress international trial of the arch-criminals, I may call Stage A of the proceedings. All concerned, it is fair to say, agree that there must be such a trial. I likewise agree as to what I may call the Stage C trials, individual proceedings against identifiable criminals before the military or civilian courts of the injured nations. As you are aware, there have been a good many conferences recently touching the proposed trial of the U. S. military commission of the Bulgarians who mistreated American aviators.

My only substantial qualification refers to Stage B, the trial of the individual Nazis not identified as perpetrators of war crimes, but simply as members of Nazi organizations who have already been in court at stage A.

Par. 9d of the G-1 paper states, referring to Stage A,

"d. The judgment should adjudicate:

"(2) That every member of the Government and organizations on trial is guilty of the same offense. Such adjudication of guilt would require no proof that the individuals affected participated in any overt act other than membership in the conspiracy.

"e. Thereafter, every member of the mentioned government organizations would be subject to arrest, trial and punishment



Left: The prosecution at the Tokyo trial presented maps as evidence during the opening session on June 13, 1946. Center: The 28 Japanese military and civilian defendants, May 14, 1946. Right: Prosecution attorney Mei addresses the tribunal on January 14, 1948. The defendants, all wartime leaders in Japan, were charged with not only “crimes against peace” but also “crimes against humanity.”

June 1946, Cramer learned that John P. Higgins, chief justice of the Massachusetts supreme court, who had been appointed as the American judge for the upcoming Tokyo War Crimes Trial, had abruptly resigned. This was embarrassing, as the trial was under way (having started in May), and Higgins had been hearing evidence in Tokyo for two months. In this emergency situation, and with little time to fill this vacancy, the War Department asked Cramer if he would consent to being recalled to active duty to take this important judgeship. Cramer agreed, and his appointment as the lone American judge on the “International Military Tribunal, Far East” was personally approved by U.S. Attorney General Tom C. Clark and Supreme Commander for the Allied Powers General of the Army Douglas MacArthur.

Cramer’s military records show that he was recalled to active duty on July 10, 1946, left Washington, D.C., by air five days later, and arrived in Tokyo on July 20. He took his seat on the tribunal two days later, on July 22, 1946. In a January 1947 memorandum, Cramer wrote that the War Department initially believed “the trial would only last six months” and that the proceedings “would be over by Christmas” 1946. Since Christmas had passed, however, and it was January, Cramer now predicted that “it will likely be the 4th of July [1947] before the case is finished.” Even that estimate proved wrong, as the Tokyo War Crimes Trial would consume a total of two and a half years before reaching a verdict in November 1948.

The International Military Tribunal of the

Far East, or Tokyo War Crimes Trial, as it is more commonly known, was the Pacific counterpart to the war crimes trials held in Nuremberg from November 1945 to October 1946. Cramer and his 10 fellow judges (from Australia, Canada, China, France, Great Britain, India, the Netherlands, New Zealand, the Philippines, and the Soviet Union) sat in judgment on 28 Japanese military and civilian leaders. Most of the defendants were military, the best known being Tojo Hideki, an Army general and Japan’s political and military leader (he served as prime minister from 1941 to 1944). But civilian leaders also were on trial, such as Hirota Koki, a career diplomat, who was charged with failing to prevent Japanese atrocities in Nanking, China, during a six-week period starting in mid-December 1937. Notably missing from the list of defendants, however, was the Japanese emperor, Hirohito, whom many observers expected would be tried for war crimes as well.

Just as at Nuremberg, the chief purpose of the Tokyo trial was to hold high-level political and military leaders accountable for the waging of a brutal, aggressive war that had taken the lives of millions of innocent men, women, and children. Consequently, the defendants—all of whom had been wartime leaders in Japan—were charged with “crimes against peace,” which was defined as conspiring to wage, and waging, an “aggressive war” in contravention of “international law, treaties, agreements or assurances.” But the Japanese also were accused of having committed “crimes against humanity” and “war crimes,” and as a result, the judges heard hor-

rific evidence of murder, extermination, enslavement, deportation, and other inhuman acts committed by Japanese troops.

It soon was obvious that the voluminous evidence—which ultimately consisted of thousands of pages of documents and testimony from 419 witnesses—had to be organized for the Tokyo tribunal’s use. In the division of labor that followed, Cramer took on the task of preparing a dossier on Japanese “war crimes committed by the Japanese Armed Forces in territories occupied by them.”

Cramer and his assistant, Army lawyer Lt. Col. Howard H. Hasting, gathered and organized evidence of war crimes presented to the tribunal by the prosecution. Their work, contained in a two-volume “Brief of Evidence of Conventional War Crimes and Atrocities” records how Japanese soldiers murdered Chinese civilians as early as August 1932, when villagers in Pingdingshan were ordered “to assemble along a ditch and kneel; machine guns were then mounted behind the victims and used to mow them down; those not killed by the machine guns were bayoneted.” Considerable evidence was collected relating to the Rape of Nanking in 1937, with Cramer showing that some 30,000 Chinese soldiers “who had laid down their arms and surrendered . . . were machine gunned and bayoneted to death and their corpses burned with kerosene” and that Japanese soldiers had “raged like savages” in brutally raping thousands of Chinese women. Cramer ultimately concluded that between 260,000 and 300,000



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INTERROGATION OF
 General Hideki TOJO

Time: 3 April 1946, 1035-1210 hours.

at Sugamo Prison, Tokyo, Japan.

by: General Hideki TOJO
 John E. Beebe, Jr., Lt Col, GWS, GNG,
 AFPAO, Interrogator
 Yale Maxon, Commander, USNR, Interpreter
 Miss Myrtle B. Mills, Stenographer

by: Lt Col Beebe.

Tojo Hideki, an Army general and Japan's political and military leader, testified on January 7, 1948.

Chinese civilians had been massacred by the Japanese army in Nanking and that this "organized wholesale murder of civilian men was conducted apparently with the sanction of [Japanese] Army authorities."

Evidence of Japanese war crimes against Allied prisoners of war was particularly disturbing to Cramer, given that he had spent his life in uniform. He compiled evidence of Americans and Filipinos "tortured, shot and bayoneted" while on the Bataan Death March and proof of the "starvation, torture and neglect" of Americans taken prisoner at Corregidor. Lesser-known war crimes also were included in the compilation. For example, pages from the diary of a Japanese soldier captured in New Guinea recorded the March 1943 murder of an American flight officer. He "was made to kneel on the bank of a bomb crater filled with water" and then beheaded by a Japanese officer wielding his "favorite sword." Cramer's work showed that war crimes committed against prisoners of war were routine; one exhibit referenced in Cramer's compilation recorded that "a party of 123 Australian soldiers . . . were divided into small groups of ten or twelve . . . marched into the jungle and murdered by decapitation and shooting."

Cramer's "Brief of Evidence" contains hundreds of similar war crimes perpetrated by Japanese personnel and was made part of the official Tokyo War Crimes Trial record when the 11-member tribunal rendered its verdict. That came in November 1948, when 25 of the defendants were found guilty of at least one crime, including conspiracy, waging an

al, I am interested in the policies of the Japanese government in regard to the use of chemical warfare at the time the war commenced between Japan and the United States.

A Of course, we did research in chemical warfare in a defensive sense and took precautions in the same spirit, but the use of it was forbidden and if it had been used, it would have been disastrous for Japan. There were three reasons against it. One was international law, which Japan had to follow; the second point was that America was many times more powerful in industrial strength than Japan; the third point is that Japan was an island country and if it were used, it would be very unfortunate for her. For these reasons, I made tremendous fuss about this and absolutely forbade its use, so I prohibited it, both from the standpoint of policy and strategy. The High Command often said they wanted to use it, but I always prevented it because of the points that I have mentioned. I think even now that it was a good thing that I prevented its use.

Q When was this decision made?

Above: An April 1948 interrogation of Tojo in Sugamo Prison, Tokyo, queried him on Japanese research in and use of chemical warfare, which he claimed the High Command wanted to use. Below: The tribunal transcript includes a portion of an interrogation of Tojo on February 1946 in which he detailed the planning of the Pearl Harbor attack, stating that the foreign minister knew of the day set for the attack.

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1 Conference had approved it, the gist of it was given
 2 to the Cabinet by the Foreign Minister, after which
 3 they approved it. In any case, if my memory is
 4 correct, I do not believe that the text was distributed
 5 to all the members of the Cabinet.

6 "Q After TOGO and the two Chiefs of Staff
 7 had decided that 1:00 P.M., 7 December 1941, Wash-
 8 ington time, was to be the time for the delivery of
 9 the final note, this fact was reported to and ap-
 10 proved by the Liaison Conference, was it not?

11 "A No. The Liaison Conference, which I was,
 12 you might say, head of, delegated to the two Chiefs
 13 of Staff and the Foreign Minister the task of setting
 14 a time prior to the attack. The three-man com-
 15 mittee did not report back to the Liaison Con-
 16 ference. I don't remember that the three-man com-
 17 mittee reported back to the Liaison Conference on
 18 the time. I am reporting to you the facts, but the
 19 results of those facts are my responsibility.

20 "(p. 3)

21 "Q Did the Foreign Minister know of the time
 22 and the day set for the attack? /Referring to the
 23 Pearl Harbor attack./

24 "A Yes, the Foreign Minister knew it, too.
 25 The President of the Planning Board also knew."



Hirota Koki, prime minister (1936–1937) and foreign minister (1941–1944), was charged with failing to prevent Japanese atrocities in Nanking, China. The charge against him of “criminal negligence” established a precedent that a civilian may be accountable for war crimes even though he was not in the military chain of command.

aggressive war, and ordering, authorizing, and permitting atrocities. Seven of the Japanese defendants were sentenced to be hanged, and the remainder received sentences to imprisonment ranging from seven years to life.

Eight of eleven judges concurred fully in the majority opinion, including Cramer. He had, in fact, played a key role in authoring this important opinion, because he was the chairman of the drafting committee. But it had been hard going: Cramer and his committee had spent seven months hammering out a final opinion acceptable to the majority. Two of the three dissenting judges did not quarrel with the overall result (the French judge, for example, dissented because Emperor Hirohito had not been indicted). Only one judge, from India, dissented completely from verdict, chiefly because he believed that aggressive war and the other crimes charged were not a part of international law.

Cramer’s participation at Tokyo made him an integral part of legal history, for this war crimes trial provided part of the foundation for the international humanitarian law that exists today. The decision in Hirota’s case is illustrative. A civilian, professional bureaucrat, and a member of the cabinet, Hirota’s inaction when informed about Japanese war crimes perpetrated against Chinese civilians in the rape of Nanking caused Cramer and his fellow

judges to find him “derelict in the performance of his duties in not insisting . . . that immediate action be taken to put an end to the atrocities.” As Cramer and his fellow judges saw it, Hirota’s “inaction amounted to criminal negligence” under international law and consequently he not only was guilty as charged but merited the ultimate penalty: death by hanging.

This was an important legal result because it established that a civilian may be accountable for war crimes even though he was not in the military chain of command. The importance of Hirota has been lasting; the International Criminal Tribunal for Rwanda (ICTR) cited the Hirota decision in issuing its September 1998 judgment against a former Rwandan mayor, Jean-Paul Akayesu, finding

him guilty of genocide, incitement to commit genocide, and crimes against humanity.

Life after the Army

When Cramer retired a second time on March 31, 1949, he was 67 years old and had been soldiering for more than 38 years. He almost certainly looked forward to a more tranquil future at his home on Fordham Road NW in Washington, D.C. Cramer had once told his wife that he believed he had been “allotted . . . three score and ten years,” so he may have thought he had but a few years to live. But he was wrong and continued to live a vigorous life until passing away on March 25, 1966, at age 84. **P**

NOTE ON SOURCES

Myron Cramer’s Official Military Personnel File is preserved in the National Personnel Records Center in St. Louis, Missouri. Details on Cramer’s career as a soldier and his role in the U-boat saboteur military commission comes from this file and a speech he gave to the Washington State Bar Association in September 1942 (reprinted in *Washington Law Review & State Bar Journal* 17: 247–255 [1942]).

Cramer’s memorandum advising that a military commission was the best forum at which to prosecute the German captives is located in the German Saboteurs file, Records of the Office of the Secretary of War, Record Group (RG) 107, National Archives at College Park, Maryland (NACP). The record of trial is located in Court Martial Case File 334178, Records of the Office of the Judge Advocate General, RG 153, NACP. The Supreme Court decision in the case *Ex parte Quirin* was published in United States Supreme Court Reports 317: 1 (1942).

Photographs relating to the investigation, capture, and trial of the U-boat saboteurs are located in Administrative History, Records of the Federal Bureau of Investigation, RG 65, NACP. The historical archives maintained at the Judge Advocate General’s Legal Center and School, Charlottesville, Virginia, has a copy of the “Brief” prepared by Cramer and Hasting.

Much of the background material on the German U-boat saboteurs is to be found in Louis Fisher, *Nazi Saboteurs on Trial: A Military Tribunal and American Law* (Lawrence: University Press of Kansas, 2003). This is the best secondary source on the trial.

Primary materials on the Tokyo War Crimes Trial are in various locations. Records of the War Crimes Branch, in Records of the Judge Advocate General (Army), RG 153, NACP, contain general administrative information relating to Pacific war crimes. Special War Problems Division Subject Files, in General Records of the Department of State, RG 59, NACP, contain many reports on the mistreatment of American prisoners of war in Japanese camps. Records of the Legal Section, in General Records of General Headquarters, Supreme Commander for the Allied Powers Operational, RG 331, NACP, contain specific information about the abuses suffered by U.S. military personnel, including a large number of questionnaires completed by former prisoners detailing their mistreatment. The best published primary source on the trial is R. John Pritchard and Sonia M. Zaidé, eds., *The Tokyo War Crimes Trial*, 22 vols. (New York: Garland Press, 1981–1987).

Details on Cramer’s role in the Tokyo tribunal comes from his St. Louis military personnel file.

The best general source on Japanese war crimes in World War II is Philip R. Piccigallo, *The Japanese on Trial* (Austin: University of Texas Press, 1979). For more details on Hirota and Nanking, see Iris Chang, *The Rape of Nanking: The Forgotten Holocaust of World War II* (New York: Basic Books, 1997). Researchers interested in Japanese war crimes also should consult Edward Drea et al., *Researching Japanese War Crimes Records: Introductory Essays* (Washington, D.C.: NARA, 2006). This last resource was produced by the Interagency Working Group, Nazi War Crimes and Japanese Imperial Government Records.



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