From Morotai to Manus: The Australian War Crimes Trials of the Japanese, 1945–1951 and the Australian Legal Profession

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After World War II, Australia joined the Allied nations in responding to the allegations of shocking war crimes having been committed by the Axis Powers. In relation to the Pacific theatre of the war, Australia participated in the International Military Tribunal for the Far East held in Tokyo from 1946–1948. Australian Military Courts also convened 300 war crimes trials of accused Japanese in various locations pursuant to the War Crimes Act 1945 (Cth). This article provides a brief overview of the legal framework and context of the military court trials. Many members of the Australian legal community served in the Australian Army Legal Corps during the war. After the war, some of them were posted to serve at the trials, as prosecuting and defending officers, as judges-advocate or reviewing officers and, very occasionally, as court members. This article briefly examines three prominent members of the Australian legal community who dealt with atrocities committed on Ambon: John Myles Williams (NSW), Alexander Davies Mackay (WA) and Kenneth Russell Townley (Qld). The military service of these and many other legal officers at the trials is not well known and much remains to be discovered about how their service intertwined with or affected their civilian legal or judicial careers.

The Australian Trials

Australians became aware of alleged Japanese atrocities only a few months into the war against Japan in early 1942. In April that year, military personnel who had escaped from the Japanese occupation of New Britain told "horror" stories to the press about "acts of ferocity" by Japanese towards surrendered Australians.[1] These included accounts of the "shocking" and "cold-blooded" massacre of prisoners of war at Tol plantation, which had taken place in January 1942.[2] The Australian Army's Court of Inquiry in May 1942 into the landing of Japanese Forces in that area found that a massacre at Tol had been established "beyond all possible doubt" and that "[n]o excuse whatever existed for this outrage", which was a "clear" and "most flagrant" breach of international law.[3] The Court of Inquiry also pointed out that the evidence that prisoners of war then being held by the Japanese in New Britain were being "reasonably well treated" was "meagre".[4]

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[1] As characterised in letter from Mr EG Bonney, Chief Publicity Censor to Brig EG Knox, Director-General of Public Relations, Department of the Army, explaining the "Background to Censorship Policy with Regard to Enemy Atrocities", 3 December 1942, National Archives of Australia (NAA): A11663, PA33.

[2] See, eg, "Jap Atrocities against Australians", *News* (Adelaide), 7 April 1942, 3; "AIF Massacre. Survivor's Story. Wholesale Murder. 125 Men Die; 2 Escape", *West Australian* (Perth), 10 April 1942, 5.

[3] Proceedings of the Court of Inquiry with Reference to Landing of Japanese Forces in New Britain, Timor and Ambon, 23, Australian War Memorial (AWM): AWM226, 1/1.

[4] Proceedings of the Court of Inquiry, n 3, 24.

While the Australian Government and the Army were responsive to allegations of Japanese atrocities like the Tol massacre during the war, the censorship regulations imposed on the press regarding the publication of atrocity stories meant that the public was less informed, both about the atrocities that were occurring and what the government and military forces were doing in response.[5] The effect of wartime censorship on the public was obliterated in September 1945, when lurid headlines and accounts of Japanese wartime atrocities were splashed across the front pages of newspapers all over the country. Detailed accounts by returning Australian prisoners of war of gross ill-treatment and outright murders intensified the impact of the reporting. The government was under intense pressure to quickly take action against accused Japanese war criminals. Although a number of mechanisms by which trials could be held, including requesting the King to issue a Royal Warrant (as he had already done in June 1945 for the United Kingdom[6]) were considered, the government decided that it was "preferable" that Australian military courts be established under legislation.[7]

A War Crimes Bill was drafted extremely fast – possibly within a few days – in late September 1945 by the Attorney-General's Department, without much consultation with other departments or the military forces.[8] On 4 October 1945, the *War Crimes Act 1945* – "An Act to Provide for the Trial and Punishment of War Criminals" – passed both the House of Representatives and Senate, with bipartisan support and without amendment. Although the constitutional validity of the legislation was not challenged at the time, Tim McCormack persuasively argues that it would be "inconceivable" that the High Court of Australia would not have found that Parliament was competent under the defence power to pass the Act.[9]

Unlike modern, exhaustive legislative drafting practices, the *War Crimes Act 1945* comprised a preamble and 14 generally worded sections, which broadly described the purpose of the Act; created and vested powers in relation to the trials in the Governor-General (including a regulation-making power) and provided for the delegation of those powers; set out the jurisdiction and application of the Act; provided for the arrest of persons suspected of war crimes; defined certain terms, including "war crime"; set out the laws and rule of evidence applicable for the trials; and provided for certain punishments. Notably, the Act allowed for trials to be convened in relation to war crimes "committed in any place whatsoever, whether within or beyond Australia", although it was limited to the war commencing in 1939.[10] Twenty-two regulations were also made under the Act.[11] Regulation 20 sought to encompass any issue that was not specifically legislatively addressed, by instructing "[i]n any case not provided for in these Regulations such course will be adopted as appears best calculated to do justice".[12]

Although legislatively based, the overall legal and procedural framework for the Australian military courts was not that dissimilar from that provided for British military courts by the Royal Warrant. Most notable was the modified rule of evidence provided for in s 9(1) of the Act, akin to that in the Royal Warrant, which read:

> At any hearing before a military court the court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to

[5] See *Press Censorship Order 1939* (Cth) O 3(vi), issued pursuant to *National Security (General) Regulations 1939* (Cth) r 16.

[6] Royal Warrant, Army Order No 81, 18 June 1945. A copy of the Royal Warrant can be seen in NAA: A472, W28681.

[7] Commonwealth, *Parliamentary Debates*, House of Representatives, 4 October 1945, 6510 (John Beasley). For an unattributed report on the Royal Warrant undertaken to consider the legislative "action necessary" to institute war crimes trials by Australia, which considered various alternatives, see "Royal Warrant and Regulations for the Trial of War Criminals: Action Necessary to Constitute Australian War Crimes Courts", nd, NAA: A472, W28681.

[8] For the A-G's Department files developing the Bill, see NAA: A2863, 1945/48; and A472, W28681.

[9] For a memorandum on jurisdiction, see Director of Prisoners of War and Internees, "Jurisdiction of Australian Military Courts", 21 November 1947, NAA: MP742/1, 336/1/1452. On jurisdiction, see Tim McCormack, "Jurisdiction of the Australian Military Courts 1945–51" in Georgina Fitzpatrick, Timothy McCormack and Narrelle Morris (eds), *Australia's War Crimes Trials 1945-51* (Brill Nijhoff, 2016) 101.

[10] *War Crimes Act 1945* (Cth) s 3.

[11] These were the 20 regulations contained in the (as made) *Regulations for the Trial of War Criminals 1945* (Cth), together with regs 8A and 11A, which were made in early 1946.

[12] *Regulations for the Trial of War Criminals 1945* (Cth) r 20.

> the court to be of assistance in proving or disproving the charge, notwithstanding that the statement or document would not be admissible in evidence before a field general court-martial.[13]

Although r 11 made it the military court's duty to judge the weight to be attached to any evidence admitted under s 9(1) which would otherwise not be admissible,[14] the relaxed rule of evidence proved controversial, both then and now, as it did allow, for instance, written evidence to be tendered instead of a witness giving evidence in person and for hearsay evidence to be heard orally or tendered in writing. This meant that, in many cases, the defence could not cross-examine on crucial aspects or, sometimes, the entirety of the prosecution case. Section 9(1) did not, therefore, accord with expectations of procedure in ordinary criminal trials in the common law at the time.

Sir William Flood Webb, then Chief Justice of Queensland and Australia's War Crimes Commissioner (1943–1946), was involved in the drafting of this rule of evidence for the United Kingdom and Australia. Webb pointed out that the procedural requirements of war crimes trials under international law at the time required merely a "fair trial" and he saw no need for Australia to improve on those requirements for the benefit of accused Japanese war criminals. Moreover, he observed that, if the technical rules of evidence applied, the prospects of convicting many suspects would be "very remote".[15] The drafting of s 9(1) was, therefore, a practical decision based on the fact that if the technical rules did apply, very few trials would have been convened or, if convened, successful in achieving convictions. As legal officer Lt Col Benjamin Dunn, who served at the Morotai trials, pointed out in his brief analysis of the Act for the *Australian Law Journal* in March 1946, the "task of obtaining complete evidence according to the rules of British criminal courts would be impossible in many cases and impracticable in most".[16] Indeed, far too many Allied victims or witnesses to atrocities were missing or dead, or were in no physical or mental condition to return to forward areas to give evidence in person. Moreover, the wealth of original German documents freely detailing atrocities simply did not exist in Japan or in Japanese-occupied areas, either because they were never created or had been deliberately destroyed by the Japanese in accordance with orders at the point of surrender.

Researchers new to the trials sometimes assume that the (limited) Act and (similarly limited) regulations are the entirety of the law that governed the trials. However, subject to the Act and the regulations, the provisions of the Army Act and the Rules of Procedure relating to field general courts martial also applied to the war crimes trials.[17] Indeed, in practice, a great deal of both substantive and the procedural law applied in the trials came straight from Australian military law. Australian military law at the time imported international law regulating the recourse to and use of force by States in armed conflict, including the *Hague Convention Concerning the Laws and Customs of War on Land of 1907* and the *Geneva Convention Relative to the Treatment of Prisoners of War of 1929*. Criminal law obviously had a role to play, and the most frequently-cited text in the trials was, in fact, the 1943 edition of *Archbold's Pleading, Evidence and Practice in Criminal Cases*.[18] Common law was often referred to for assistance, such as the 1925 case of *Ghosh v King-Emperor*, which was cited in relation to situations where a killing was done by several persons and it could not be known by whose hand the life was taken.[19]

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[13] *War Crimes Act 1945* (Cth) s 9(1).

[14] *Regulations for the Trial of War Criminals 1945* (Cth) r 11.

[15] Letter from Sir William Webb to FM Forde, Minister for the Army, 8 January 1946, NAA: MP742/1, 336/1/980.

[16] Ben J Dunn, "Trial of War Criminals" (1946) 19 ALJ 359, 361. Dunn served as the Deputy Director of Legal Services for the Morotai Force and wrote the legal reviews for eight trials held at Morotai.

[17] See *War Crimes Act* 1945 s 10. Commonwealth, *Parliamentary Debates,* House of Representatives, 4 October 1945, 6511 (John Beasley). The Army Act and Rules of Procedure can be found in the Australian edition of the *Manual of Military Law 1941* (Commonwealth Government Printer, 1941).

[18] John Frederick Archbold, *Archbold's Pleading, Evidence and Practice in Criminal Cases* (Sweet and Maxwell, 31st ed, 1943).

[19] *Ghosh v King-Emperor* (1925) 41 TLR 27. For application of this case, see, eg, the Hong Kong HK5 trial, in which three Japanese were prosecuted for killing an Australian and a Dutch prisoner of war. The prisoners of war had gas grenades thrown at them before they were bayonetted: see the trial proceedings in NAA: A471, 81637.

A few short weeks after the passage of the Act, the first trial commenced at Morotai on 29 November 1945. Eventually, 300 trials were convened in the period 1945–1951 at Morotai, Wewak, Labuan, Rabaul, Darwin, Singapore, Hong Kong and Manus Island.[20]

TABLE 1. Key statistics on the Australian trials, compiled by the author

Location	No of Trials	No of Accused Tried	No of Charges Laid	Convictions on Charges	Acquittals on Charges	No Finding Made
Morotai	25	140	147	82	65	0
Wewak	2	2	4	2	2	0
Labuan	16	145	173	145	28	0
Rabaul	190	309	490	348	140	2
Darwin	3	20	35	16	19	0
Singapore	25	62	96	61	12	23
Hong Kong	13	42	53	46	7	0
Manus Island	26	92	142	77	65	0
Total	300	812†	1,140	777	338	25

† This table is the number of separate individuals who were charged, not the number of persons accused (including duplicates), which was 952.

While the Act provided by means of its definition of "war crime" for the prosecution of those accused of being involved in planning, preparing, initiating or waging aggressive war; in practice, only conventional war crimes were prosecuted, including the ill-treatment, murder or massacre of prisoners of war, civilian internees or local peoples. Crimes against peace in the Pacific theatre were principally dealt with at the International Military Tribunal for the Far East (1946–1948) over which Sir William Flood Webb presided. Moreover, as a result of international agreement, certain crimes committed were not prosecuted by Australia: war crimes committed against Australian prisoners of war held in Japan and in Korea, for example, were prosecuted by the United States at their military commission trials at Yokohama. However, Australian legal officers posted in Japan investigated, prosecuted and sat on the Bench of some of those American military trials.[21]

Although the public rhetoric in Australia about pursuing and punishing war criminals was fiery, especially after the avalanche of press stories about atrocities in September 1945, the vehemence did not translate, as it could have, into a deeply flawed, unfair and unjust process. Rather, the military courts generally operated in accordance within the well-established jurisdiction of conventional war crimes; the legal and procedural framework was stable and relatively consistently applied over time; the military courts generally operated with due regard for fairness, justice and accountability; and trial personnel (including those legal officers ordered to defend the accused) were dedicated and hard-working in mostly difficult and remote tropical conditions. Moreover, as suggested by the conviction rate of 68.16%, the military courts were not simply an imprimatur over a process for rubber-stamping convictions and sentences.[22] At the final trials at Manus Island in 1950–1951, where the cases on the trial list had been chosen partially

[20] This figure of 300 trials includes several trials which were convened but then dissolved before a finding was made. There was no deliberate plan for the total number of trials to reach the round number of 300. In fact, the Australian Army's own statistics at that time did not include convened but dissolved trials, hence the figure for the number of trials was usually given as 296 trials. See, eg, the chart "Statistics of Australian War Crimes Trials", compiled in February 1953 in NAA: A1838, 3103/10/13/2 Pt 6.

[21] In one large American military trial conducted at Yokohama in June 1946, for instance, the Bench of seven included four Australian officers. The accused were prosecuted by Maj Douglas Malcolm Campbell, who had also served as a defending officer at the Morotai trials. He later became The Hon Justice Campbell of the Supreme Court of Queensland (1965–1985) <https://www.sclqld.org.au/judicial-papers/judicial-profiles/profiles/dmcampbell>.

[22] When calculated as a percentage of the number of convictions compared to charges laid.

for the probability that they would result in convictions, the conviction rate was even lower: 54.22%. In short, apart from a few outliers of which criticism can be made, and was at the time, the Australian trials were generally as procedurally fair and just as they could be for military war crimes trials held in those conditions and under the circumstances of that period, including values and expectations then held by the Australian community.

Of the 812 accused Japanese at the trials, 137 were (after conviction and confirmation of the finding and sentence) executed by hanging or shooting.[23] This was the first time that the Australian Army had had to execute convicts. Although the Army generally adopted procedures from the United Kingdom, carrying out executions was a task that proved challenging on many levels, including for the military personnel who had to carry them out.[24] Many more war criminals were sentenced to terms of imprisonment, which were served in the Australian War Criminals Compounds at Rabaul (1945–1949) and on Manus Island (1949–1953) and, finally, in Sugamo Prison in Japan (1953–1957).[25]

Although criticisms can be made of the rule of evidence, and the omission of an independent post-trial review process,[26] and of a few outlier trials, there are two regrettable characteristics of the trials overall, both of which relate to present day legal and historical utility of the trials, rather than their fairness. The first such characteristic was that the military courts, like the field general courts martial on which they were based, did not give written reasons for decisions. This lack does not mean that the trials have no precedential value, as was suggested in a review in 1967 when the reviewer concluded that "no judgment[s]" meant that the "usefulness of any of these cases for research into international law is dubious".[27] Rather, the lack of written reasons elevates the trial proceedings themselves to a position of unusual importance as legal records. Extracting precedent is thus time consuming, as researchers have to pore over sometimes hundreds or thousands of pages of transcript and exhibits (focusing particularly on the prosecuting and defending officers' addresses and the legal advices of judges-advocate, reviewing officers and the Judge-Advocate General) in order to appreciate what the law was said to be and how it appears to have been applied to the facts. Only very occasionally can further archival material be located that either clarifies some aspect of a trial or the actual reasoning of the military court.[28]

The second such characteristic is that the confirming officers similarly did not record their reasons for confirming, or refusing to confirm, findings and sentences when finalising the trial proceedings. For instance, Lt Gen Vernon Ashton Hobert Sturdee, the Acting Commander-in-Chief of the Army (December 1945–February 1946) and then Chief of General Staff (March 1946–April 1950), dealt with the majority of trials held in 1945–1950. However, Lt Gen Sturdee generally wrote nothing more than confirmed or not confirmed, as the case may be, and his name and the date on such proceedings. Even worse: if Sturdee recorded his thoughts on the trials that he oversaw in diaries or notes, then these were probably destroyed when he burned his private papers in 1951, allegedly commenting "I have done the

[23] This the number of actual persons executed, as a number of convicted war criminals received more than one death sentence. Two war criminals who were sentenced to death but died before executions could be carried out are not included in this figure.

[24] On the death sentences, see Georgina Fitzpatrick, "Death Sentences, Japanese War Criminals and the Australian Military" in Georgina Fitzpatrick, Timothy McCormack and Narrelle Morris (eds), *Australia's War Crimes Trials 1945-51* (Brill Nijhoff, 2016) 326–370.

[25] On the compounds, see Narrelle Morris, "The Australian War Criminals Compounds at Rabaul and on Manus Island, 1945-53" in Georgina Fitzpatrick, Timothy McCormack and Narrelle Morris (eds), *Australia's War Crimes Trials 1945-51* (Brill Nijhoff, 2016) 689–731.

[26] The regulations provided for a post-trial petition process whereby a convicted could submit a written petition against the findings and/or sentence within 14 days of the end of the trial to the confirming authority. In practice, the Judge-Advocate General usually reviewed petitions in concert with the trial proceedings and usually commented upon them. The requirements were not interpreted strictly. Petitions were routinely accepted from defence counsel, family and friends of the convicted and other interested parties, and were accepted on occasion years after the end of the trial. However, this process was not an independent appellate review. See *Regulations for the Trial of War Criminals 1945* (Cth) r 17.

[27] Lyndel V Prott, "Release of Records of Japanese War Crimes Trials", 5 April 1967, 13, NAA: A432, 1967/2152.

[28] See, eg, the report written by Maj Gen John Stewart Whitelaw CBE, the President of the military courts that presided over the trials of three senior Japanese officers at Rabaul (including Gen Imamura Hitoshi), which discussed, among other issues, on what matters the military courts had been satisfied beyond reasonable doubt, NAA: MP742/1, 336/1/1247 Pt 1.

job. It is over".[29] The end of the trials that same year coincidentally marked the start of fading of public knowledge of the trials (although not the well-known prisoner of war experience under Japan), probably aided along by the fact that the trial proceedings were closed to public access until 1975. In these circumstances, it is probably not surprising, but very regrettable, that no one seems to have interviewed Sturdee about the trials before he died in 1966.

Our book *Australia's War Crimes Trials 1945-51* has already started the process of making the Australian trials more accessible to practitioners, scholars and the public.[30] The book is a precursor to *Australia's Post-World War II Crimes Trials of the Japanese: A Systematic and Comprehensive Law Reports Series*, which consists of reports on each of the 300 trials. The research and writing for the law reports series has revealed striking evolutions in legal practices and procedures and opinions about national and international law, together with inconsistencies in approach from time to time, many of which remain to be explored in depth. Moreover, although a number of members of the Australian legal community served at the trials, their service is not well known and much remains to be discovered about how their service intertwined with or affected their civilian legal or judicial careers.

The Legal Profession

Members of the Australian legal profession served by the dozens in the Australian war crimes trials, as prosecuting and defending officers, judges-advocate or reviewing officers and, very occasionally, as court members. Many but not all were officers of the Australian Army Legal Corps (AALC).[31] In pleasing serendipity, the Law Book Company, publisher of the *Australian Law Journal*, showed its support during the war of such "legal men on active service", including law students, by forwarding copies of the journal free of charge.[32]

By World War II, the Australian legal community had already firmly established a tradition of military service during war.[33] This part now turns to three "legal men"[34] who played key roles *after* the war at the trials: John Myles Williams (NSW), Alexander Davies Mackay (WA) and Kenneth Russell Townley (Qld). Among the reasons to focus on these three is the connecting lines that can be drawn between them relating to war crimes committed on the island of Ambon, the site of some of the earliest and ongoing atrocities, and their prosecutions at Morotai and Manus Island. Williams was the principal war crimes investigator on Ambon in late 1945. Williams, supported by Mackay, then prosecuted Ambon-related war crimes at Morotai in one of the most controversial trials. Townley was also at Morotai during this period, where he served as a judge-advocate and as a reviewing officer. Although the Morotai trials were completed by mid-February 1946, one significant Ambon case was not prosecuted there, as it had not yet been "cracked" by investigators. This case concerned the Laha massacre where, after Japanese Forces invaded Ambon, several hundred Australian and other Allied prisoners of war were murdered at the Laha airfield in February 1942. Mackay eventually prosecuted two cases relating to the Laha massacre at the Manus Island trials in 1950–1951 over which Townley, by now a justice of the Supreme Court of

[29] Reported in James Wood, "Sturdee, Sir Vernon Ashton Hobart (1890–1966)", Australian Dictionary of Biography, National Centre of Biography, Australian National University <http://adb.anu.edu.au/biography/sturdee-sir-vernon-ashton-hobart-11798/text21107>.

[30] Georgina Fitzpatrick, Timothy McCormack and Narrelle Morris (eds), *Australia's War Crimes Trials 1945-51* (Brill Nijhoff, 2016). See also Narrelle Morris, *Japanese War Crimes in the Pacific: Australia's Investigations and Prosecutions* (National Archives of Australia, 2019) <http://guides.naa.gov.au/jpn/index.aspx>

[31] For a history of the AALC, see Bruce Oswald and Jim Waddell (eds), *Justice in Arms: Military Lawyers in the Australian Army's First Hundred Years* (Big Sky Publishing, 2014).

[32] University of Sydney Law School Comforts Fund, *Legal Digest* (The Fund, 1941–1945) 3. One assumes that the publisher would today similarly support legal women on active duty.

[33] See, eg, Tony Cunneen, "Solicitors in World War One" (2008) 46 Law Soc J (NSW) 26 <http://www.forbessociety.org.au/wordpress/wp-content/uploads/2013/03/ww1solicitors.pdf; Tony Cunneen, "'Judge's Sons Make the Final Sacrifice": The Story of the Australian Judicial Community in the First World War" (2017) 91 ALJ 302; Tony Cunneen, "Doing Their Bit: New South Wales Barristers in the Second World War" forthcoming <http://www.forbessociety.org.au/wordpress/wp-content/uploads/2013/03/ww2.pdf>.

[34] No women served in legal roles at the trials, although many of the court reporters were women.

Queensland, presided. Both Mackay's and Townley's service at the trials was particularly notable. While Mackay does not hold the record for the most number of trials served at overall by a member of the legal profession,[35] he probably holds the record for serving at the most trial locations (Morotai, Singapore, Hong Kong and Manus Island) and for the longest, more or less continuous period of service at the trials (1946–51). Moreover, Townley was the only sitting judge to serve directly at the Australian trials.[36]

John Myles Williams

John Myles Williams was born in Newcastle (NSW) on 3 August 1915 to Edwin Thomas Williams and Annie Williams. He was educated at Newcastle Boys' High School and St Ignatius' College. He graduated from the University of Sydney with arts and law degrees. He was admitted to the New South Wales Bar on 26 July 1940. While his name first appears in the *NSW Law Almanac* in 1941, he is on the list of non-practising barristers for 1941–1943 due to his military service.[37] In 1944, however, Williams' name appears on the practising barrister's list, giving his address as 142 Phillip Street, Sydney, although his name retained the dagger mark indicating that he was on war service.[38]

Williams had joined the Citizen Military Forces (CMF) in July 1940, the same month of his admission, and was appointed to the rank of acting corporal. He was appointed a probationary lieutenant in April 1941 before he volunteered for service with the Australian Military Forces (AMF) in November 1942.[39] By then ranked as lieutenant, Williams was posted to the Torres Straits Force and stationed on Thursday Island from May 1943 to March 1944. While there, Capt Alan Campbell Abbott, a fellow Sydney law graduate wrote, hopefully tongue-in-cheek, that "John Williams continues to be an integral part of the monotony here".[40] In May 1944, Williams undertook a course at the LHQ School of Military Law, receiving 64% on the written examination and 73% on the practical examination.[41] His chief instructor commented that Williams had "good personal qualities and on closer acquaintance will be well received". He also remarked that Williams had "considerable ability as a lawyer, is a diligent worker and would be a useful officer on a HQ dealing with legal problems and court-martial work".[42]

Williams was promoted to captain and was attached to the AALC on 10 June 1944. He was posted to Morotai Force as a war crimes investigating officer and, later, as a prosecuting officer. Williams spent the immediate postwar on Ambon where, as the principal war crimes investigator, he had about four months to gather evidence before Ambon was handed back to the Netherlands, its colonial power. His letters reveal that this was a difficult and arduous task, compounded by the instinct of the Japanese detained in the area to deny or conceal that certain atrocities had occurred. Williams observed that:

> The toughest nut to crack was the Laha executions [of Australian prisoners of war]. Among the Japanese whom we interrogated there was at first a complete conspiracy of silence, but we found one man who finally gave a pretty full account of the first series of executions early in Feb [19]42.[43]

[35] This would be awarded to Captain Lyston Arthur Chisholm (Vic), who served in various roles at 63 trials at Rabaul in 1946–1947.

[36] The Judge-Advocate General during this period, William B Simpson, who reviewed most of the trial proceedings, was also the sole judge of the Supreme Court of the Australian Capital Territory. He was not, therefore, on the ground at any trial location. See Jolyon Horner, "Simpson, William Ballantyne (1894–1966)", Australian Dictionary of Biography, National Centre of Biography, Australian National University, <http://adb.anu.edu.au/biography/simpson-william-ballantyne-11700/text20911>.

[37] *New South Wales Law Almanac for 1941* (Government Printer, 1941) 77.

[38] *New South Wales Law Almanac for 1944* (Government Printer, 1944) 73.

[39] For Williams' service record, see NAA: B883, NX105339.

[40] Capt AC Abbott, remark reprinted in University of Sydney Law School Comforts Fund, n 32, 138.

[41] AMF Courses of Instruction Confidential Report, 22 May 1944, NAA: B883, NX105339.

[42] AMF Courses of Instruction Confidential Report, n 41.

[43] Letter from John Myles Williams to Capt John Charles Van Nooten, 21 February 1946 in *Papers of John Myles Williams*, State Library of New South Wales, MLMSS 5426, Box 3, Folder 3. Capt Van Nooten had been a prisoner of war on Ambon and gave evidence at a number of the Morotai trials about their treatment.

At the end of January 1946, Williams was awarded a Commander in Chief's Commendation Card for service in directing investigations into Japanese atrocities.[44]

It was probably a natural segue for Williams from investigator to prosecutor when trials began relating to war crimes committed on Ambon. Although Williams only served as a prosecuting officer at two trials, both of the trials are (in)famous. His first trial – which commenced on Ambon on 2 January 1946 and then transferred mid-trial to Morotai – was of 91 Japanese accused of committing war crimes against Australian and Dutch prisoners of war held in the Tan Toey (Tan Tui) camp on Ambon.[45] Williams, supported by Mackay, seemingly dealt as best as he could with this trial. Not only did the prosecution have to organise and present evidence against 91 individuals, several of them bore the same surnames: two of the accused were named Fujiwara, two were named Haraguchi, three were named Ikeda, two were named Tanaka and three were named Yamamoto. Complicating matters, often the written evidence by former prisoners of war held in the camp did not identify an accused by name but by the nickname(s) that they had given him. The pair named Fujiwara was known, for instance, as Horse Face No 1 and Horse Face No 2. In all the circumstances – the hasty investigation, the number of accused, the mid-trial transfer of location and the logistics of organising and presenting evidence – the prosecuting officers did reasonably well to achieve 40 convictions. Three of those convicted were sentenced to death and the others to terms of between 1–20 years' imprisonment.

In what seems a bit peculiar today, Williams soon received heartfelt thank-you letters from the Japanese involved. The Japanese legal defence team wrote to Williams somewhat quaintly in English, for example, that:

> [W]e, the legal staffs despatched to Morotai from the Japanese Military Force in Ceram, wish to express our thanks for all you have done for us. It seems to be only yesterday that we met you for the first time in Ambon, but it is, in fact, nearly six months. During this period, you have always helped and devoured us greatly with not only legal matters, but other business including even private matters. Especially your kindness since moving to Morotai is very much appreciated. … Even very experienced Japanese lawyers from Tokyo did not know how to appreciate your acute, fair and logical prosecution. They unanimously told that they had never seen such excellent prosecutor even at any international trials. Nevertheless, all the accused as well as legal staffs from Ambon have been relying only upon you. How strongly all the Japanese from Ambon every day have been reassured by you since reaching Morotai cannot be expressed precisely by our limited vocabularies. At all times we could do our jobs to the full because we have been always feeling that we were headed by Captain Williams of the Legal Section. … When we reconsider the things by changing mutual positions, we are not quite certain whether we could favour the defeated with such kindness. In addition to thanks for your kindness, we think we have learned much from you. If we are allowed to say so, we would like to say that we have seen a true British gentlemanship from you. … We hope you good luck and good health in future and all of us will never forget your kindness you have shown us during these six months.[46]

Such sentiments, which were by no means delivered to Williams alone, demonstrate the integrity with which legal officers at the trials operated.

When the Judge-Advocate General, William Ballantyne Simpson, received the "mass" Ambon-Morotai trial proceedings for his legal review, he was scathing of the convening officer's decision to try jointly so many accused. He recorded at the start of his 26-page review:

> [A] most emphatic protest against the administrative system that asks a Court to try such a number at once or expects the reviewing or confirming authority to be able to do justice to all the accused.[47]

He reported that he had spent six full days reviewing the trial proceedings and the petitions of those convicted and was "far from satisfied" that he had not overlooked, through "sheer inability to remember

[44] This award was typically for bravery and distinguished service which did not reach the level of an official commendation, such as a mention in dispatches, and thus did not entitle the recipient to wear any distinguishing motif.

[45] This trial is known as Morotai M45, see the trial proceedings in NAA: A471, 81709 Pts 1–7.

[46] Peculiarities of expression in the original: joint letter from Akira Kobayashi, Dr S Tamura, Capt K Kagiyama, Navy Lt F Suzuki, Sub Lt M Kudoh and CS Y Kanehiro to Williams, 1 March 1946 in *Papers of John Myles Williams*, n 43, Box 3, Folder 3.

[47] Judge-Advocate General, "Trial of Captain Shirozu Wadami, Japanese Navy, and Others", NAA: A471, 81709 Pt 1.

some cogent detail of the trial", something that was in favour of an accused.[48] Unfortunately, this particular trial has since served to stigmatise Australia as the convenor of mass war crimes trials in this period. Philip Piccigallo, who published in 1979 the first (and for decades the only) book on Allied minor war crimes trials in the Pacific theatre, observed, for example, that Australian military courts "commonly" held mass trials,[49] which impression has lingered. However, this trial was the only "mass" trial. In fact, 285 of the 300 trials had nine or fewer accused and only three trials (this one included) had more than 20 accused.

TABLE 2. Ranges of accused tried in the same trial compiled by the author

Ranges of Accused Tried in the Same Trial	No of Trials
1–9	285
10–19	12
20–29	1
30–39	0
40–49	1
50–59	0
60–69	0
70–79	0
80–89	0
90–99	1

Williams' second trial as a prosecuting officer commenced on 25 February 1946, when he prosecuted (with a sigh of relief, one is sure) only three Japanese of murdering four Australian prisoners of war on Ambon in August 1944.[50] One of the accused was Lt Katayama Hideo, an English-speaking Christian who appears to be a sad demonstration that even the most moral can be corrupted by war and that, often, they are punished while their corruptors walk free. Katayama passed on the execution order for the prisoners of war and participated in the execution, firmly believing that they had been tried and sentenced to death by a Japanese military court martial. At trial, however, the local senior legal officer denied that there had been any courts martial at all. A likely issuer of the execution order, Baron Cdr Takasaki Masamitsu, was acquitted at his own trial on a different charge[51] and never retried, even though the totality of the evidence connecting him to various war crimes that later emerged in 1946–1947 was substantial. Katayama was convicted and sentenced to death but, required as a witness at forthcoming trials, he was transported to and spent a substantial period in the Rabaul War Criminals Compound. During this period, Katayama was abundantly helpful and useful to the administration of the Rabaul compound as an interpreter, thereby impressing upon many Australians with whom he came into contact the general decency of his character and the depth of his religious belief. Australian officers in the area tried in vain to have his sentence commuted to one of imprisonment, especially given the delay, but were denied. Katayama was executed on 23 October 1947.

After Williams' military service finished in May 1946, he returned to his legal practice in Newcastle. However, the *Law Almanac* gives his address in the period of 1946–1947 as 142 Phillip Street, Sydney,

[48] Judge-Advocate General, n 47.

[49] Philip Piccigallo, *The Japanese on Trial: Allied War Crimes Operations in the East, 1945-1951* (University of Texas Press, 1979) 129.

[50] This trial is known as Morotai M43, see NAA: A471, 80918.

[51] For the trial proceedings, see NAA: A471, 80773. Takasaki was also tried by the Dutch for war crimes but was acquitted in that trial. See Paul Taucher, "Escape from Justice: The Failed Prosecutions of Baron Takasaki Masamitsu" (2019) *War in History.*

that is Chalfont Chambers, and then as 182 Phillip Street, Sydney, that is Denman Chambers.[52] This is probably because he served briefly as associate to McTiernan J on the High Court of Australia from May to September 1946. That same year, he co-founded, with Joe Braun, the Newcastle Bar, which was the first provincial Bar in the State.[53] By 1949, the *Law Almanac* finally records him as practising in Newcastle, first at 27 King Street, then at 16 King Street and then at 16 Church Street.[54] Although centred in Newcastle, he practised into the north and north-west of the State and in Sydney.[55] His practice was initially most in tenancy but expanded to include commercial law and personal injury.[56] He gained a reputation as a "skilful cross-examiner and as an astute and meticulous advocate".[57] In 1956, Williams took Chambers in Sydney, again on Phillip Street, although the *Law Almanac* still recorded him as being in Newcastle.[58] He took silk in 1961.

Williams was appointed on 12 February 1964 as a member of the Workers' Compensation Commission of New South Wales to fill the sudden vacancy caused by the death of Judge Rainbow. Upon his appointment, the *Australian Bar Gazette* described the new judge as a "quiet man, courteous and apparently diffident, but with a thoughtful depth which would make him a useful addition to any bench".[59] When the Commission was abolished in 1984, Williams transferred to its successor, the Compensation Court of New South Wales until he retired in 1985.

After retirement, Williams took up study again at his old alma mater. In a minor thesis entitled "Australia's War Crimes Trials 1945-51: National Sentiment, Australian Ethos, their Historical Genesis, and Impact on the Trials", Williams was critical of the "mass" trial which he had prosecuted:

> Collective trials of this size are altogether undesirable because of the risks of a miscarriage of justice in acquittals and convictions, apart from the risk of their aborting for some reason.[60]

It is interesting to speculate whether his observation that miscarriages of justice can go both ways in mass trials was spurred by the high number of acquittals (51 of the 90 accused prosecuted) in that trial. Moreover, whatever Williams had thought about Katayama when he prosecuted him in 1946, he now regarded Katayama's trial and execution as an example of a "great injustice".[61] It is Katayama's trial that loosely served as a basis for the 1990 film *Blood Oath*, starring Bryan Brown as the prosecuting officer. Williams' son, Brian A. Williams, was a scriptwriter and producer, undoubtedly why Williams gave the cast and crew a speech about his war crimes experiences during filming in Queensland in August 1989.[62]

Williams died on 29 January 1994 and was buried at Macquarie Park Cemetery in Sydney. His former colleague on the Compensation Court, Judge O'Meally, wrote in an obituary that Williams' career had been "distinguished by its intellectual erudition combined with a broad empathy for the lives of working men and women".[63]

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[52] *New South Wales Law Almanac for 1946* (Government Printer, 1946) 68; *New South Wales Law Almanac for 1947* (Government Printer, 1947) 70.

[53] John O'Meally, "Erudite Judge of Workers' Rights", *The Australian*, 7 February 1994, 13.

[54] *New South Wales Law Almanac for 1949* (Government Printer, 1949) 70; *New South Wales Law Almanac for 1954* (Government Printer, 1954) 81; *New South Wales Law Almanac for 1955* (Government Printer, 1955) 83.

[55] O'Meally, n 53.

[56] O'Meally, n 53.

[57] O'Meally, n 53.

[58] See, eg, *New South Wales Law Almanac for 1957* (Government Printer, 1957) 87.

[59] "Appointments and Retirements" (1964) 1(2) Aust Bar Gazette, 22.

[60] John Myles Williams, "Australia's War Crimes Trials 1945-51: National Sentiment, Australian Ethos, their Historical Genesis, and Impact on the Trials" (Unpublished thesis, University of Sydney, 1988) 13 in *Papers of John Myles Williams*, n 43, Box 3, Folder 7.

[61] Williams, n 60, 34.

[62] For a copy of his speech, see *Papers of John Myles Williams*, n 43, Box 3, Folder 8. For an informed analysis of how much the film diverged from the reality of the trial, see Hank Nelson, "Blood Oath: A Reel History" (1991) 24 Aust Hist Stud 429.

[63] O'Meally, n 53.

Alexander Davies Mackay

William's assistant on the "mass" Ambon-Morotai trial was Capt Alexander Davies Mackay. Mackay was born in Claremont (WA) on 9 September 1909 to Alexander McRae Mackay and Fannie Mackay (née Davies). Little is known about Mackay's early life, education or his articled clerkship in Perth. Mackay passed his final second half law examinations set by the Barristers' Board in May 1932.[64] He was admitted to practise as a barrister and solicitor of the Supreme Court of Western Australia on 19 July 1932[65] and he first practised as a solicitor from Warwick House on St Georges Tce, Perth.[66] By 1936–1937, however, he was one of only two solicitors practising in the regional town of Cue.[67] The WA *Law Almanac* still listed him as practising in Cue from 1943–1949 but with the note "with A.I.F." against his name.[68]

Mackay enlisted in March 1942. He had a variety of initial postings, including to an artillery unit, and was promoted to sergeant in April 1943. He attended the LHQ School of Military Law in November 1944 (some months after Williams), although his service record notes that he was "not qualified". Notwithstanding this notation, the meaning of which is unclear, Mackay was transferred to the AALC in August 1945 and commissioned as a lieutenant in August 1945 and then promoted to temporary captain in December 1945. Any doubts about his legal abilities, should they have been held, must have rapidly diminished.

Mackay was first sent to Ambon and then to Morotai in late 1945, where he served as prosecuting officer at three of the Morotai trials,[69] including the "mass" trial. He was sole prosecuting officer for his other two trials, which concerned the murders of prisoners of war on Ambon. His conviction rate was high. In those two trials, he secured findings of guilty against nine of 12 accused; six of those nine were eventually executed by shooting. Mackay also served at Morotai as a reviewing officer on the trial of Katayama, which Williams had prosecuted.[70] Mackay advised that he had considered the trial proceedings and had concluded that the Court was properly convened and constituted and had jurisdiction to try the accused. In his opinion, there was evidence upon which the Court could find the accused guilty and that the sentences to death by shooting were lawful.[71]

After the Morotai trials, Mackay confirmed in the rank of captain and posted to the Australian trials at Singapore. Mackay served as a prosecuting officer at 10 of the 25 Singapore trials.[72] These trials mostly concerned war crimes committed against Allied prisoners of war on the Thai-Burma Railway. Of particular note, Mackay assisted Maj Hubert H Beven to prosecute perhaps the most significant Singapore trial: that of Lt Col Nagatomo Yoshitada, who commanded the No 3 Prisoner of War Group constructing the railway in 1942–1943, and 14 other officers and guards.[73] The significance of this trial, and the level of attention paid to prosecuting Nagatomo and his co-accused, is demonstrated by the fact that it ran from 24 July to 16 September 1946, during which more than 260 exhibits were tendered. Mackay helped to secure convictions against 13 of the 15 accused Japanese and eight were sentenced to death by hanging. At the end of 1946, Mackay was promoted to temporary major. In 1947 at Singapore, Mackay prosecuted the only Australian trial concerning the ill-treatment of Allied prisoners of war on

[64] "Law Exams", *Daily News* (Perth), 18 May 1932, 6.

[65] "The Law Courts. To-day's List", *West Australian* (Perth), 19 July 1932, 8.

[66] *Government Gazette of Western Australia*, No 44, 9 September 1932, 1392.

[67] *Law Almanac for 1937* (Government Printer, 1936) 35, 39.

[68] See, eg, *Law Almanac for 1943* (Government Printer, 1943) 19.

[69] Mackay served as a prosecuting officer at the Morotai M39, M41 and M45 trials. For his service record, see NAA: B883, WX16132.

[70] This was the Morotai M43 trial.

[71] Capt A Mackay, Legal Officer, to Comd Morotai Force, "Trial of Japanese War Criminals" NAA: A471, 80918.

[72] Mackay served at the Singapore S3, S11, S12, S14, S17, S22, S23, S24, S26 and S29 trials.

[73] Interestingly, Nagatomo was one of the few Japanese war criminals listed by Australia before the United Nations War Crimes Commission to come before an Australian military court.

the high seas, which are colloquially known as "hell ship" cases. Mackay's "hell ship" was the SS *Rashin Maru*, which sailed from Singapore to Moji, Japan, between July and September 1944 with about 1,050 Allied prisoners of war on board, including about 900 Australians. He secured a conviction against both accused Japanese, who were sentenced to six years and 3.5 years' of imprisonment respectively.

Somewhat unexpectedly, but showing his versatility, Mackay served once as the President of a Military Court at Singapore, where he presided over the re-trial of civilian guard Hayashi Eishun.[74] Hayashi had earlier been convicted and sentenced to death at Singapore for ill-treating a prisoner of war by violently kicking him, which led to his death. However, the confirming authority refused confirmation of the original trial's finding and sentence, based on what the Judge-Advocate General had described as a "grave irregularity", which may have resulted in a miscarriage of justice. Maj Beven, the prosecuting officer, had not tendered an affidavit at trial (which was clearly described in the abstract of evidence) that suggested that the victim had actually been shot and killed by someone else in the jungle. The defence was thus forced to tender this affidavit, which also included some prejudicial evidence about Hayashi's character and behaviour towards prisoners of war. Although it subsequently transpired that the victim shared the name surname as the prisoner of war shot in the jungle, and thus the affidavit did not tend to exculpate Hayashi from involvement in the victim's death, the prosecuting officer had made a key error in failing to tender it. A re-trial of Hayashi was ordered, over which Mackay presided. The accused was found guilty and again sentenced to death by hanging. This time, the finding and sentence were confirmed and the convicted was executed.

By 1948, Mackay has been posted to the Australian trials at Hong Kong, where he was again serving as a prosecuting officer. He prosecuted the Kavieng massacre trial, which involved the massacre of 23 Australian civilian internees. He also assisted with the prosecution of the Hainan Island trial, another very lengthy trial of 17 accused than ran from 5 January through to 22 June 1948. Almost immediately after that trial, Mackay was assigned to the Australian Division, General Headquarters, Supreme Commander Allied Powers in Tokyo. It was expected that he would prosecute Japanese defendants before the United States' trials in Yokohama,[75] although he seems to have only done general military legal work and some war crimes investigation work while in Japan.

In 1950, back at his rank of captain, Mackay was posted to the trials on Manus Island, where he formed part of a team of experienced war crimes prosecutors who had also served at the other trial locations. A civilian barrister, Mr CV Rooney QC from New South Wales, was also dispatched to Manus Island but after a few trials in the tropical conditions, he suffered the onset of asthma and soon returned to Australia. Press reports on Mackay going into the Manus Island trials were flattering. He was described, for example, as a "Perth barrister, who is regarded as the 'iron man' of the military prosecution" who had "brought more enemy war criminals to the gallows than he cares to remember".[76] Moreover, he had "established himself as a brilliant prosecutor in war crimes trials at Morotai and elsewhere".[77] Mackay prosecuted eight cases at Manus Island before President Townley, including two trials relating to the Laha massacre on Ambon, which Williams had earlier worked so hard to break.[78]

Mackay appears to have maintained his practising certificate throughout his war service.[79] After the Manus trials, he left the Army in 1951. Mackay returned to his practice as a country solicitor, working for the firm of Haynes, Robinson, Seymour & Mackay, which serviced the regional towns of Albany and Mount Barker, at least until 1973.[80] On his retirement, a satirical newspaper article reported that Mackay

[74] This was the Singapore S27 trial, see NAA: A471, 81659.

[75] "War Crimes Prosecutor", *Daily Mercury* (Mackay, Qld), 31 July 1948, 1.

[76] "Last Big War Trials Begin: 92 Japanese Arraigned", *Newcastle Sun*, 5 June 1950, 1.

[77] "Jap War Captives Stage Mock Court Trial", *Mail* (Adelaide), 3 June 1950, 4.

[78] Mackay served at the Manus Island LN1, LN5, LN6, LN7, LN12, LN14, LN18 and LN24 trials. The Laha massacre trials are LN12 and LN24.

[79] See, eg, *Law Almanac for 1950* (Government Printer, 1950) 36; *Law Almanac for 1951* (Government Printer, 1951) 38; *Law Almanac for 1952* (Government Printer, 1951) 33.

[80] See, eg, *Law Almanac for 1953* (Government Printer, 1952) 32, 40.

was "charged" in the "Southern Circus Court" at Albany with being 10 pounds overweight and deserting the court without just cause. He pleaded guilty and was sentenced by Magistrate McGuire to hard labour throughout his retirement. Mackay advised the Magistrate that his plans for retirement were to grow roses and go fishing.[81] Mackay died on 30 December 1978 and was buried in Allambie Park Cemetery in Albany.

Kenneth Russell Townley

Kenneth Russell Townley was born on 23 March 1902 in Herberton (Qld) to Henry Noel Townley, a solicitor, and Charlotte Mary Townley (née O'Connell). He was educated at St Joseph's College in Nudgee. He was 14 years old when his father, then in his late forties, enlisted to serve in World War I.[82] In 1918, Townley was awarded a senior certificate in English, German, Latin, Maths and Physics and qualified for a fifth-year extension scholarship for secondary school.[83] In 1920, then 18 years old, he won one of the 20 State scholarships on offer to the University of Queensland.[84] As there was not yet a law faculty at the university, he would have studied principally in the faculty of arts but does not seem to have graduated with a degree. Townley initially worked as a teacher at Toowoomba Grammar Preparatory School.[85]

Townley became the associate to Justice RJ Douglas in Townsville in 1924 while studying for admission to the Bar. He was admitted as a barrister of the Supreme Court of Queensland on 8 June 1928. Welcoming him to the profession on behalf of a Bench that included Justice William Flood Webb, Chief Justice James William Blair said Townley was a "member of an old and highly respected family".[86] The *Catholic Press* took the opportunity to point out that there were now four Catholic barristers at the Bar in Queensland.[87]

Townley took up practice in Union Chambers on Denham Street in Townsville, where his practice seems largely to have been in criminal law. Certainly, his briefs included a number from the Queensland Public Defender.[88] He also did some matrimonial law. BH McPherson describes him as "soon proving himself a capable lawyer and a persuasive advocate".[89] Townley's practice and reputation may have been growing but his adherence to certain legal requirements was not impeccable: he was repeatedly fined in 1931, 1933, 1934, 1937 and again in 1938, for failing to provide his income tax returns.[90] On the last occasion in 1938, the Police Magistrate, CD O'Brien, was advised that Townley had been previously fined and had twice disregarded court orders. It was "obvious", Magistrate O'Brien observed, "that the penalties imposed on this man have had no effect on him".[91] He then imposed a £40 pound fine plus costs. It is an unusual blemish on Townley's public record.

Townley's war-related work began in 1940, when he was appointed as a member of the Aliens Tribunals (Northern Tribunal, Queensland), pursuant to the *National Security (Aliens Control) Regulations 1939* (Cth). His former judge, RJ Douglas, chaired the Northern Tribunal.[92] Townley was also reportedly a

[81] Ric Turner, "Retiring Lawyer Faces 'Charges'", unknown newspaper clipping held in Mackay file in custody of the author.

[82] For HN Townley's service record, see NAA: B2455, TOWNLEY HENRY NOEL.

[83] "University Examinations", *The Week* (Brisbane), 3 January 1919, 26.

[84] "Scholarships to the University", *Brisbane Courier*, 27 December 1920, 6.

[85] In fact, the school's name after 1920, which is when Townley was likely on staff, was The Church of England Preparatory School: *The Toowoomba Preparatory School: Making a Century* (The Toowoomba Preparatory School, 2011) 23.

[86] "Barrister Admitted", *Telegraph* (Brisbane), 8 June 1928, 2.

[87] "Townsville", *Catholic Press*, 21 June 1928, 44.

[88] Judge MJ Shanahan, "100 Years of the Public Defender in Queensland" [2016] Qld Judicial Schol 28 <http://kirra.austlii.edu.au/au/journals/QldJSchol/2016/28.pdf>.

[89] BH McPherson, *Supreme Court of Queensland, 1959-1960: History, Jurisdiction, Procedure* (Butterworths, 1989) 384.

[90] "Income Tax Breaches", *Brisbane Courier*, 25 September 1931, 14; "No Tax Returns", *Brisbane Courier*, 23 June 1933, 17; "Ten Fined for Income Tax Act Breaches", *Telegraph* (Brisbane), 12 June 1934, 19; "Income Tax Cases", *The Courier-Mail* (Brisbane), 14 July 1937, 12; "No Tax Returns", *The Courier-Mail* (Brisbane), 1 July 1938, 9.

[91] "£40 Fine for Tax Breach", *Telegraph* (Brisbane), 1 July 1938, 19.

[92] *Commonwealth*, Gazette No 250, 12 December 1940, 2694.

"keen member" of the Volunteer Defence Corps in Townsville.[93] In December 1941 Townley enlisted as a private in the AIF.[94] He was discharged only two months later due to hypertension but immediately re-enlisted in the Australian Army, where he was assigned to the AALC.

At Morotai, Townley neither prosecuted nor defended but served as the judge advocate advising the (usually) non-legally trained Bench in six trials.[95] He drew some press notoriety after the first trial, during which he had observed in court that the Act creating the jurisdiction "appeared to have been born in haste and conceived in confusion", which was a fairly accurate assessment.[96] Townley's work at Morotai was highly regarded. Williams wrote in 1988, for instance, that it was Townley's "model" summings up to the Bench which "guided so many other JAs [judges advocate] as to their style of approach".[97] Later, as acting Deputy Director of Legal Services for the Morotai area, Townley served as the reviewing officer for a further eight trials.[98]

After the end of the Morotai trials, Townley returned to Queensland in April 1946 but shifted his base to Brisbane, where he resumed practice at the Bar. When Justice EA Douglas died in 1947, Townley's name was suggested as a possible replacement on the Supreme Court Bench. The speculation was several years premature. On 21 July 1949, Townley was appointed an acting judge to assist the court during the serious illness of Justice Brennan. A few weeks later, the Brisbane *Truth* named Townley as the week's "prominent personality", describing him as a "[s]erious-minded chap, [whose] only hobby is occasional Bay trip, [and] fishing".[99] The *Truth* may have been tipped off in advance: a permanent appointment as a judge was announced the day after this accolade, on 8 August 1949. However, Townley soon accepted appointment as the President of the Australian Military Court for the Manus Island trials. As some of the Japanese to be prosecuted were very senior in rank, Townley was promoted to the temporary rank of brigadier.

Townley presided over all 26 trials held at Manus Island from May 1950 to April 1951, where his associate was a young law student, Gerard Brennan, later Chief Justice of the High Court of Australia.[100] The trials ranged geographically over crimes committed in Burma, Malaya, Borneo, Java and New Guinea and on Timor and Ambon. Most related to the murder or massacre of prisoners of war and had been selected on the basis of criteria that included the probability of producing convictions. Japanese Navy officers and men who had organised and taken part in the Laha massacre on Ambon were finally tried in two trials, one held in October 1950 and the other in March 1951.[101] Mackay, prosecuting the second trial, observed that it must have been a "scene of grisly carnage" at Laha that night in February 1942, when "innocent" prisoners of war were executed every two to three minutes "under the most revolting circumstances". He emphasised that "revenge was obviously the motive" and, because of that, the executions had been carried out in a manner so as to increase the suffering of the waiting prisoners of war.[102] In the first trial, three of the six accused were found guilty and were sentenced to death by hanging, life imprisonment and

[93] "Personal", *Townsville Daily Bulletin*, 1 January 1942, 2.

[94] For Townley's service record, see NAA: B883, QX24868.

[95] Townley served at the Morotai M6, M7, M8, M9, M12 and M13 trials as a judge-advocate.

[96] This is known as the Morotai M9 trial, see NAA: A471, 80718. See "Strong Criticism of War Crimes Act", *Examiner* (Launceston), 11 December 1945, 5. Townley did not, however, make the other claim reported in this newspaper report, which was that the jurisdictional provisions of the act had been "crafted without any conception of reality".

[97] Williams, n 60, 20.

[98] Townley further served at the M20, M23, M26, M27, M31, M32, M38 and M39 trials as the reviewing officer.

[99] "Peeps through Some Keyholes", *Truth* (Brisbane), 7 August 1949, 9.

[100] For his reminiscences of this service, see Sir Gerard Brennan, "Foreword" in Yuki Tanaka, Tim McCormack and Gerry Simpson (eds), *Beyond Victors' Justice? The Contemporary Relevance of the Tokyo War Crimes Trial* (Martinus Nijhoff, 2011) xi–xv. Michael Carrel's oral history interview with Brennan is digitised and online at the Australian War Memorial: <https://www.awm.gov.au/collection/C1072320>. Brennan appears to be mistaken in his recollection that trials went on in Townley's absence in early 1951, when he went to Townsville for medical treatment. Townley did travel to Townsville in January 1951 but no trials were held in December 1950 or January 1951.

[101] The Laha massacre trials are Manus Island LN12 and LN24. For the trial proceedings, see NAA: A471, 81952 and 81967.

[102] Prosecution's closing address, 1–2, NAA: A471, 81967.

10 years' imprisonment. However, the confirming authority mitigated the death and life imprisonment sentences to life imprisonment and 20 years' imprisonment respectively. In the second trial, two of the three accused were found guilty and were sentenced to death by hanging and life imprisonment. Those sentences were confirmed. Lt Tsuaki Takahiko was executed in June 1951 in the final executions carried out by Australia after World War II.

Townley's performance at the Manus Island trials was highly regarded. Maj George Dickinson, the Australian legal officer assisting the defence, stated in 1952 that it was "good thing for Australia" that Townley presided over the trials, as he was an "able and experienced" legal practitioner and judge.[103] Reminiscing in 2004, Brennan described Townley as a "fine barrister and an extremely competent judge", whose appointment to the Manus Island trials was "extraordinarily fortunate". In Brennan's opinion, Townley's "exceptional" performance was "regrettably … never satisfactorily acknowledged in Australia" and that Townley was due "greater recognition, publicly" for the "extra-ordinary high quality of work that he did there in difficult circumstances over many months".[104]

After the trials, Townley relinquished his temporary rank and was transferred to the Reserve of Officers (AALC).[105] He returned to the Supreme Court of Queensland. He had a few extra-judicial appointments thereafter, as chairman of the Central Sugar Cane Prices Board (1956–1962) and as royal commissioner for the Inquiry into Dealings with Crown Land (1956). The stressful nature of the latter inquiry into corruption affected Townley's health and a protracted period of illness ensued. He did not resume his place on the Bench until late 1957. He eventually retired as a result of ill health on 5 July 1962, at the age of 60. According to Brennan, Townley had suffered "something of a cerebral incident" and chose to retire "much to the distress of the profession, who regarded him as one of the best of the Queensland Supreme Court judges of the time".[106] Townley died on 28 August 1981 and was buried at Nudgee Cemetery.

Conclusion

While demobilisation of service personnel out of the military forces was fairly rapid in 1945–1946, many AALC officers were retained past than their release dates, due to the imperative to "provide an adequate number of officers to act as prosecutor, defending officer and judge-advocate respectively at the [war crimes] trials".[107] In the circumstances, their consequent rigorous adherence to duty, both to the Army and to the law, and even when they had to defend the enemy, was highly commendable. Yet, service at the Australian trials often barely rates a mention in the otherwise detailed obituaries of some legal practitioners and judges. While Sir William Webb, Lt Gen Vernon Sturdee and Justice William Simpson have entries in the *Australian Dictionary of National Biography*, even such a prominent legal figure to the trials (and to the judiciary in Queensland) as Townley does not. How and the extent to which service at the trials affected members of the Australian legal community remains largely unknown and, with the extended passage of time, almost impossible to ascertain. But, for many, it must have been significant. Service at the trials obviously affected Williams, who decided to spend some of his twilight years writing about war crimes, instead of any other legal issue or, indeed, of undertaking the usual pastimes of retirement. And for Mackay, he was not career military but his overall war service of nine years must have significantly disrupted his legal career. Perhaps he was content with being a country solicitor but his lengthy absence from the profession and return at the age of 42 perhaps meant that further opportunities were not available to him.

[103] George Dickinson, "Japanese War Trials" (1952) 24(2) Aust Quart 69, 71.

[104] Michael Carrel's oral history interview with Brennan, n 100.

[105] Commonwealth *Government Gazette*, No 61, 16 August 1951, 2097.

[106] Michael Carrel's oral history interview with Brennan, n 100.

[107] Memo from Advanced HQ AMF 5 Dec 1945 forwarding unsigned copy AHQ Melb memo 150418 of 22 Nov 1945 on AALC – Release of Personnel, held in held in *Papers of John Myles Williams*, n 43, Box 1, Folder 1.