

FIFTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Monday, December 1, 1947.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy.
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major Andrew I. Lyman, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the fourth day of the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

The defense began.

Mr. Hideo Kuwata, a counsel for the accused, read a written opening statement in Japanese, appended hereto marked "T."

An interpreter read a translation in English, appended hereto marked "U."

Mr. Takami Karasawa, a counsel for the accused, read a written request for judicial notice in Japanese, appended hereto marked "V."

An interpreter read an English translation of the request for judicial notice as follows:

1. Article 61, Articles for the Government of the United States Navy: "Limitation of trials: offenses in general.--No person shall be tried by court martial or otherwise punished for any offense, except as provided in the following article, which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself, or of some other manifest impediment he shall not have been amenable to justice within that period. (R.S., sect. 1684, art. 61; Feb. 25, 1895 c. 128, 28 Stat. 680)."

2. The fact that Palau Islands were mandated to Japan on 17 February 1920 and occupied until 2 September 1945.

3. The Fifth Amendment to the Constitution of the United States:

"AMENDMENT V--CAPITAL CRIMES; DUE PROCESS.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

4. Articles 60 and 63, Geneva Convention, 27 July 1929:

"Article 60. At the opening of a judicial proceeding directed against a prisoner of war the detaining power shall advise the representative of the protecting power thereof as soon as possible and always before the date set for the opening of the trial...."

"Article 63. Sentence may be pronounced against a prisoner of war only by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining power."

5. The fact that neither Italy nor Bulgaria have ratified the Hague Convention of 1907.

6. Articles of War 25 and 38:

"Sec. 1496. Depositions: when admissible (Article 25.) A duly authenticated deposition taken upon reasonable notice to the opposite party may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or a military board, if such deposition be taken when the witness resides, is found, or is about to go beyond the State, Territory, or district in which the court, commission, or board is ordered to sit or beyond the distance of one hundred miles from the place of trial or hearing, or when it appears to the satisfaction of the court, commission, board, or appointing authority that the witness, by reason of age, sickness, bodily infirmity, imprisonment, or other reasonable cause, is unable to appear and testify in person at the place of trial or hearing; Provided, That testimony by deposition may be adduced for the defense in capital cases. (June 4, 1920, c. 227, subchapter II, section 1, 41 Stat. 792.)"

"Sec. 1509. President may prescribe rules (article 38). The President may, by regulations, which he may modify from time to time, prescribe the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals, which regulations shall, in so far as he shall deem practicable, apply the rules of evidence generally recognized in the trial of criminal cases in the district courts of the United States: Provided, That nothing contrary to or inconsistent with these articles shall be so prescribed: Provided further, That all rules made in pursuance of this article shall be laid before the Congress annually. (June 4, 1920, c. 227, subchapter II, Section 1, 41 Stat. 794.)"

7. Section 454, Naval Courts and Boards:

"454. Limitation when a deposition is used. -- In any case where a deposition is used in evidence by the prosecution by reason of the fact that oral testimony can not be obtained, as authorized by article 68, A.G.N., the maximum punishment which may be imposed shall not extend to death or to imprisonment or confinement for more than one year."

"Also, as a matter of policy, where a deposition has been used by the prosecution in the trial of a commissioned or warrant officer, the maximum punishment adjudged should not extend to dismissal.

"These limitations apply to all cases, whether or not the trial is for an offence for which a limitation is otherwise prescribed. Where a deposition does not enter into proof of all the specifications, the limitation applies only to those specifications into which it enters."

8. Regulations governing Military Life (November 8, 1943, Army ordinance No. 16).

"General Principle.

5. Military discipline is the life-blood of the military forces, therefore military discipline must always be promoted in the military forces. The proof of military discipline being promoted is exemplified in that the superiors and the subordinates lay the true principle of the military force in their hearts regardless of time or place, that military duty is executed with zeal and that orders are carried out without fail. Obedience is an essential factor in order to maintain military discipline; therefore it is vital that superiors are obeyed with heart and soul, and that their orders are implicitly carried out so as to have it become a habit. And then, obedience should flow out of the spirit of loyalty and fostered to the extent that even under the densest showers of bullets one sacrifices his life for his country and obeys the command of his superior most faithfully. And in order to realize the foregoing, the superiors themselves must obey orders and set an example of obedience.

"Chapter II. Obedience.

"No. 9. The obedience of a subordinate to one's immediate superior must in all occasions be most strict.

"No. 10. The way of obedience must be adhered to between the senior superiors in direct line or those who are not in the relation of command and the newly appointed subordinates as far as their duties allow.

"No. 11. Orders must be obeyed respectfully and carried out immediately. On any occasion, to argue upon its propriety or to question its cause, reason and the like is not allowed. When the newly received orders and the previous ones vary, patiently state this and request instruction.

"No. 12. To express to the superiors with a sincere feeling of assisting ones superior points which one is fully convinced will benefit the armed forces is the duty of all military personnel, particularly the officer. In expressing this, however, it is imperative that it is done in an orderly manner. Moreover, even if one differs in opinion with the matters already decided by the superior, one must efface oneself and endeavour to promote the intention of the superior with heart and soul.

9. Japanese Army Criminal Code, Chapter 4, Crimes of resisting Orders.

"Article 57. One who resists the superior officer's orders or who is not subordinate to them, shall be condemned to such penalties as follows:

1. In the face of the enemy, he shall be condemned to death or a life term or above ten years confinement.

2. In war times or in an area under martial law, from above one year to ten years' confinement.

3. In other cases, under five years' confinement."

The judge advocate objected to the commission taking judicial notice of items eight and nine as stated in the request of the accused.

The commission was cleared.

The commission was opened and all parties to the trial entered. The commission announced that it would take judicial notice of all items with the exceptions of items eight and nine.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.
A. Tanaka, Masao, first lieutenant, Imperial Japanese Army Reserve.
2. Q. If you recognize the accused, state their names and former ranks.

The witness correctly identified all of the accused with the exception of *of Jk* Tsuchiya, Naohiko, whom he was unable to identify.

Examined by the accused:

3. Q. When did you enter the Japanese army?
A. I was conscripted into the army on July 29, 1941.
4. Q. Have you had duty on Palau Islands?
A. I have.
5. Q. To what unit did you belong?
A. Koichi Anti-aircraft Unit.
6. Q. Please explain your post.
A. Company Commander of the Third Company of the Koichi Unit.
7. Q. Did you see a prisoner around May of 1945?
A. I did.
8. Q. Where did you see this prisoner?
A. Naval Cemetery at Koror.
9. Q. Explain to the commission how you came to see this prisoner at this naval cemetery.
A. Around 6 o'clock in the morning on the day of the execution, a runner from the headquarters came to me and relayed an order to dig a grave at the Naval Cemetery. I did not know the reason for it and I did not think the runner would know the reason, so I did not ask him. I changed my clothes and went to the headquarters. When I went to the headquarters, I did not meet an officer, but I met one non-commissioned officer who was doing the work of an adjutant, working in the office, so I asked this non-commissioned officer and he told me a prisoner was to be executed by the orders of Commanding Officer Inoue, and the commanding officer had ordered that the execution would take place at 0900, "so have Tanaka go to the scene with his men." This non-commissioned officer said that he would not give any further orders concerning this because he had already told me.

10. Q. What happened then?

A. Around 8:30 I had all my men who were not on duty go to the scene and about ten minutes after we arrived, Katsuyama and his men came to the scene, not in formation but dispersed. About five minutes after this the men of the headquarters and commanding officer of the headquarters and the prisoner came.

11. Q. After the prisoner came, what happened?

A. After the prisoner came with the commanding officer, Katsuyama took the command of the men at the scene and saluted Koichi. After this Koichi made a speech to all of us who were assembled there.

12. Q. What did he say in this speech?

A. As it was a long time ago, I do not remember word for word of this speech, but the general meaning was as follows: "The prisoner is to be cut by the orders of Division Commander Inoue. By this, each unit and men should bolster their spirit and fight courageously."

The witness was duly warned.

The commission then, at 10:20 a.m., took a recess until 10:55 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Tanaka, Masao, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

13. Q. What happened after this speech was given?

A. After this speech the men were dismissed and all the officers gathered near the prisoner. At that time Captain Koichi said to Onose to tell the prisoner that he was going to be executed by orders. Onose said something to the prisoner in English and I suppose he told the prisoner what Captain Koichi told Onose to say.

14. Q. Then what happened?

A. We put the men around at the grave and the officers and the prisoner went to the grave. I saw them go and then went back to my barracks to get some cigarettes. As the barracks was about fifty meters from this scene, I came back about five or ten minutes later and the execution was already performed.

15. Q. What did you see when you came to the scene again?

A. When I arrived at the scene the second time the execution was over and the prisoner was lying prone in the hole. As it is a custom in Japan for the person closest to the deceased to throw earth on the grave first, by hand or by shovel, first Captain Koichi threw three shovels of earth on the grave and then the other officers followed suit and we buried the prisoner.

16. Q. What happened after you finished throwing earth on the grave?

A. Katsuyama placed a rock about one and one-half feet in diameter on the grave as a temporary grave mark. Then we put the bottle and dishes on the grave; and also in the bottle we placed flowers. We also placed a candle and we sprinkled water on the grave and on the rock, and then under the command of Katsuyama everybody at the scene saluted the grave. JK

17. Q. Did you place any inscription on the grave marker?

A. After everyone saluted the grave to console the deceased, the men were dispersed and then Captain Koichi said to me to have a cross made by the Tanaka Unit and later clean the grave. I went back to the barracks with my men and ordered two soldiers who were carpenters to make the cross. As I did not know the name of this prisoner I had a soldier with the best handwriting write on the cross: "The grave of an American officer flyer." And then we placed the cross on the grave and we cleaned the grave. JK

18. Q. Before this prisoner was executed, did you talk to anyone about the prisoner?

A. About two or three days before this, when I met Captain Koichi, Captain Koichi said to me, "I received a telephone call from the Doi Unit telling me that the division headquarters will send a prisoner to the Koichi Unit and that they want the prisoner cut by them. What do you think about this? At that time Colonel Doi said that he had refused this but asked me, Captain Koichi, if I did not want to do so. I refused." At this time Captain Koichi asked me what I thought about it. I said to Captain Koichi, "I approve your opinion. It is best to refuse."

19. Q. Other than the above, do you know anything else about this prisoner?

A. Before I became adjutant to Koichi in June, when I put the cross on the grave and I had grass placed over the grave, but when I became adjutant Captain Koichi ordered me to get a long grass. It is a Korean grass which was at the school ground, so I had this long grass planted on the grave. After this I know that Captain Koichi visited the grave two or three times without being seen by anyone. He tried to conceal the fact that he visited the grave. He did not tell me this but I know about it. I also know that Katsuyama visited the grave. On the first of September when we went from Koror to Babelthuap, I was ordered again by Captain Koichi to clean the grave, so I went and cleaned the grave and placed some flowers on the grave. At this time, I know that he, Captain Koichi, went to visit the grave, also. After that, as I went to Babelthuap, I did not know what happened.

20. Q. What was the general reputation of Captain Koichi?

A. He was very good to his men and he was very kindhearted. While I was in the army, that is five years, I did not see a kindhearted officer like Koichi. I could not believe that Captain Koichi was an officer who graduated from the academy. I cannot state right off at present but he did not strike his men or make them do hard work. He was very quiet and a very warmhearted person.

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 11:25 a.m., adjourned until 9 a.m., tomorrow, Tuesday, December 2, 1947.

SIXTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Tuesday, December 2, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major Andrew I. Lyman, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Stewart R. Smith, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the fifth day of the trial was read and
approved.

No witnesses not otherwise connected with the trial were present.

Koichi, Hiroe, one of the accused, was, at his own request, duly sworn
as a witness in his own behalf.

Examined by the judge advocate:

1. Q. Are you an accused in this case?
A. Yes.

Examined by the accused:

2. Q. When did you enter the Japanese Army?
A. I entered the military academy in November, 1938, and was graduated from
that academy on July 17, 1941.
3. Q. Did you ever serve on Koror Island, Palau Islands?
A. Yes.
4. Q. From when to when did you serve on Koror Island?
A. I served on Koror from November 1944 until the end of the war.
5. Q. What was your rank at this time?
A. First I was a first lieutenant and in the middle of March 1945 I was
promoted to the rank of captain.
6. Q. What was your duty while you were serving at Koror?
A. I was a commanding officer of the Provisional Anti-aircraft Unit attached
to the 14th Division.
7. Q. Did you see any prisoner while you were serving on Koror?
A. Yes, I did.

8. Q. When did you see this prisoner?
A. I recall it being in the middle of May, 1945.
9. Q. Do you recall the name of this prisoner?
A. I do. His name is Kaufman, second lieutenant, army aviator.
10. Q. Do you know what happened to this prisoner?
A. I do.
11. Q. What happened to him?
A. He was finally executed.
12. Q. Do you know how he came to be executed?
A. I do.
13. Q. Please explain to the commission how he came to be executed.
A. I shall explain. About half a month prior to the middle of May, 1945, my position was destroyed by the American air raids. Therefore my positions and my men sustained great damage. At this time I was ordering on one hand to repair the destroyed position and on the other hand I was making operational plans for the future. Just at this time, Colonel Doi called me on the phone and relayed me the following message; he said, "The division headquarters wants to have your unit execute the aviator which the Katsuyama Unit had shot down in the previous battle. I, Doi, am opposed to it but what do you think about this?"
14. Q. When you were asked about your opinion by Colonel Doi, what did you reply to this?
A. I said to him, "The spirit of the men would not be bolstered by killing one prisoner. An opposite phenomena might be caused by this and the spirit will be lowered. Moreover, it is a pity to kill a non-resisting prisoner and if we do this we will lose all sense of responsibility. It is not worth doing. Moreover, we are still fighting and there is no time and we cannot tell when there is going to be a big air raid and we have no time. I want you to refuse this definitely for me." This is what I relayed to Colonel Doi.
15. Q. What did you do then?
A. Colonel Doi then said to me, "I definitely agree with you and I will definitely refuse this for you."
16. Q. What did you do then?
A. A short time elapsed, about one day, and during this period I recall receiving one or two telephone calls from Colonel Doi to the same effect. And each time I told Doi my reasons and asked him to definitely refuse this to headquarters.
17. Q. What did you do then?
A. Each time Colonel Doi said that he would relay definitely my refusal to headquarters and then there was a last phone call in which Colonel Doi relayed the following message: "I relayed your definite opposition to the headquarters without fail but the headquarters are still insisting upon delivering the prisoner and having him executed. They are saying that they will have Katsuyama do it. Relay this to Katsuyama."
18. Q. Did you relay what you heard from Doi to Katsuyama?
A. I immediately called Katsuyama by phone and relayed to Katsuyama the orders of the division.

19. Q. What was Katsuyama's answer to this?

A. Katsuyama said that he was definitely against it and wanted it to be refused.

20. Q. Did you relay to anyone that Katsuyama was against it?

A. Yes, I did. I told Colonel Doi that Katsuyama and also I were against it and wanted this to be relayed to headquarters without fail.

21. Q. What did you do then?

A. Just at this time I had received orders from Staff Officer Nakagawa of division headquarters to come over to headquarters to discuss matters concerning the repairing of the position and also about operation plans.

22. Q. Then what?

A. Just before leaving for the division headquarters, I told Katsuyama that if there was any talk raised concerning the prisoner I will refuse it. Katsuyama asked me to have it done for him.

23. Q. You have testified that you received two or three calls from Doi. How much time elapsed between the first phone call you received from Doi and the last phone call?

A. I do not recall it very definitely but it was two or three days.

24. Q. Did you go to division headquarters?

A. I did.

25. Q. What happened when you got to division headquarters?

A. I immediately went into conference with Staff Officer Nakagawa concerning operations. After this conference was over, Nakagawa said to me, "You shall come with me to the division commander and explain to him about the battle condition, the condition of damage, and also about the plans of the division which I have just explained to you." I accompanied Nakagawa and then went.

26. Q. What did you do then?

A. Just before going in front of the division commander, Nakagawa said to me, "When you go before the division commander you must not express your opinion concerning the plans of the division which I have indicated to you in the conference. You must not express your opinion. The division commander, once he has decided upon a point, is not a man to change it." He repeatedly cautioned me about this.

27. Q. What happened when you went in front of this division commander?

A. Staff Officer Nakagawa and I went in front of the division commander and I was told to explain about the battle condition, the damage of the position and also about the future battle plans drawn up by the division. Just when I got to explain about the damage sustained by the Katsuyama Unit, the division commander asked me about the spirit of the Katsuyama Unit. I replied to him, saying that the spirit was bolstered and it was very excellent. The division commander still seemed to be worried about this and he said, "The prisoner that Katsuyama shot down the other day will be delivered to you in order to bolster the morale of the anti-aircraft unit. Have Katsuyama execute him."

28. Q. When the division commander gave you this order to have the prisoner executed, did he give you any further instructions?

A. Yes, he did. He said to me, "Perform this execution right in the middle of the Katsuyama position and have many men assembled and return the belongings of the prisoner to him when executing." Besides this he gave me other detailed cautions but I have forgotten them.

29. Q. With regard to the prisoner's belongings, did the division commander give you any other instructions?

A. Yes, he did. As I did not clearly get the last words of the commanding officer, I asked him to repeat it and he said, "I want you to return the prisoner's belongings to him and I don't want you to take it yourself." I replied to this, "I just asked you this because I didn't quite get you the first time, and I didn't mean I was going to take it."

30. Q. When you were ordered to perform this execution by the division commander, did you say anything to this?

A. I was thinking to refuse this. My thoughts were to definitely oppose this but when I was told this face to face by the supreme commander of Palau I, then being just a captain and in front of him just like a child, could not oppose this anymore. Furthermore, I had known before that the division commander, Inoue, was a man that once he said something would never change his decision and, moreover, he said this in spite of his knowing that Katsuyama and I had opposed this from time to time. In spite of all this, he told me this so I could not refuse this any longer.

31. Q. Then you did not say anything?

A. I did not.

32. Q. When the prisoner was delivered to you, did the commanding officer say anything else besides the execution?

A. I do not understand what the counsel means.

33. Q. When the commanding officer ordered you to execute the prisoner, did he give you any other order besides this execution order?

A. He just gave me orders to execute the prisoner.

34. Q. Did the commanding general order you to keep the prisoner in safe custody?

A. No, he did not. He just ordered me to kill the prisoner.

35. Q. When the commander gave you this order, did Staff Officer Nakagawa hear this too?

A. Yes, he was right beside me and listening. Whether he was listening to this particular point or not I do not know.

36. Q. What happened then?

A. Then we withdrew.

37. Q. Then what?

A. Just at this time when I withdrew from the room, I was in sort of a ~~dash~~ *dash* and I remember saying the following to Staff Officer Nakagawa, "The higher people, it seems to me, have no eye for looking into the future." To this Nakagawa replied to me, "I understand your feeling very well. I agree with you," and he showed a very sympathetic attitude. I have confidence in the character of Nakagawa. *JK*

38. Q. What do you mean when you say, "the higher people have no eye to look into the future?"

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

The commission then, at 10:08 a.m., took a recess until 10:30 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Koichi, Hiroe, the witness under examination when the recess was taken entered. He was warned that the oath previously taken was still binding, and continued his testimony. *JK*

(Examination continued).

39. Q. After you withdrew from the presence of the division commander, what did you do then?

A. I returned to the pier at Babelthuap Island.

40. Q. What happened there?

A. While I was waiting for the boat that night at the pier, I met Second Lieutenant Onose and Sergeant Major Tsuchiya escorting a prisoner.

41. Q. Then what?

A. Then we boarded a motor boat and then returned to my unit at Koror and came back to my quarters.

42. Q. What happened after you returned to your quarters?

A. I then called up Katsuyama by phone.

43. Q. What did you say in this phone call?

A. I relayed the order of the division commander and told him that the execution would take place at 7 o'clock the next morning at the cemetery on the hill.

44. Q. At this time, did you tell Katsuyama that Katsuyama was going to do the execution?

A. Yes, I did.

45. Q. What did Katsuyama say to this?

A. He said, "As it is the strict order of the division commander, it cannot be helped."

46. Q. Did Katsuyama come to your quarters that night?

A. He did not.

47. Q. What happened then?

A. Then I went to bed.

48. Q. Then what happened?

A. The next morning I went to the cemetery on the hill. *JK*

49. Q. What happened on this hill?

A. At the cemetery, all the men were assembled and were waiting for me.

50. Q. And then what?

A. The men saluted me. Then I relayed the substance of the orders of the division commander and then I told the men that the prisoner was going to be executed by the order of the division commander. I also said to them to comply with the wishes of the commanding general and work with all your might and exert every effort in battle.

51. Q. Then what?

A. Then I thought that it would not be proper to execute the prisoner without telling him the reason so I told Second Lieutenant Onose to tell the prisoner about it.

52. Q. What happened then?

A. Then I had the prisoner led to the hole which had been already dug and had him sit. Then I had Katsuyama execute the prisoner. Just before this, the prisoner was given a cigarette and was also blindfolded. JK

53. Q. What happened after this?

A. After fixing the corpse of the prisoner, I, first of all, covered two or three spades of earth. After that the officers covered earth in order of their seniority, then the men covered it up and on top of the earth a stone was placed. Flowers were offered and a cup of water. I do not know whether it was a candle or some sort of incense, but this was offered.

54. Q. Then what?

A. After this we fixed the grave so it resembled the other graves that were nearby and with my command I had all the men there offer a silent prayer.

55. Q. Then what?

A. After the silent prayer was offered, the ceremony was concluded in a very orderly manner. I later had First Lieutenant Tanaka make a grave marker and erect it. JK

56. Q. Did First Lieutenant Tanaka carry out your orders?

A. Yes, he did. The next day when I and an orderly, who I had carry a bunch of flowers, visited the grave I found a cross - a grave marker - erected there. On the face of this grave marker it was written, "The grave of an American officer airman."

57. Q. You testified that you ordered Katsuyama to execute. Did you order anyone besides Katsuyama to execute?

A. No.

58. Q. Was Onose your direct subordinate?

A. No, Onose was not my subordinate.

59. Q. How about Tsuchiya?

A. Tsuchiya also was not my subordinate.

60. Q. Did you, at any time, order Tsuchiya or Onose to do the execution?

A. No, I did not order Tsuchiya or Onose to execute.

Cross-examined by the judge advocate:

61. Q. In the cemetery at the scene of the execution, were you the senior officer present?

A. Yes.

62. Q. Did you actually tell Katsuyama when to execute the prisoner?

A. Yes, I did. The next morning at 7 o'clock.

63. Q. At the scene, did you tell him when to use his sword on the prisoner?

A. Yes, I did.

64. Q. At the scene did anyone show Katsuyama how to use his sword?

A. Onose showed Katsuyama.

The accused moved that this answer be stricken on the ground that the accused was testifying against a co-defendant.

The judge advocate replied.

The commission announced that the motion was denied.

65. Q. When was it decided that Katsuyama was to carry out this execution?

A. When I was in the presence of the division commander it was decided that Katsuyama was to carry out the execution.

66. Q. Isn't it a fact that you, yourself, decided that Katsuyama was to carry out this execution?

A. No.

67. Q. Isn't it a fact that before you went to headquarters, you conferred with Katsuyama concerning the execution and he told you that he would carry out the execution?

A. No.

68. Q. Do you recall, on August 19, 1947, having written down something contrary to what you have just testified to?

A. Do you mean conflicting with what I have just testified?

69. Q. Yes.

A. There is no contradiction.

70. Q. Is this statement in your own handwriting? (The judge advocate produced a document written in Japanese.)

A. Yes, it is.

71. Q. Do you recall writing down in that statement the following,

"Therefore, I consulted with my nearby adjutant and Katsuyama, bore in mind just in case this could not be refused if the decision was already made by the higher authority, that informed them, 'I'll do my best asking Commander Doi to refuse this matter. However, if it was ordered, what would you do?' Then Katsuyama said 'If it was decided to be an order I, as the last assigned company commander, will carry out.' Therefore, I bore the worst in my mind I asked Commander Doi to refuse this matter to the utmost to the Division headquarters." Do you recall having written that statement in your own handwriting?

A. In the first statement I wrote this. I wrote this, but this is a mistake.

72. Q. Other than Katsuyama, did you ever request any of your other subordinate officers to carry out this execution?

A. No. Absolutely not.

73. Q. Do you recall having made a telephone call to Lieutenant Haneishi and asking him to carry out the execution?

This question was objected to by the accused on the grounds that it was irrelevant, immaterial, and beyond the scope of the direct examination.

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. There is no such fact.

74. Q. Do you recall having made this request to Lieutenant Haneishi and being refused by him because he was on a different island from Koror?

This question was objected to by the accused on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. There is no such thing.

75. Q. Was Lieutenant Haneishi a subordinate of yours?

A. Yes.

76. Q. Was he serving under your command in May of 1945?

A. Yes.

77. Q. Now, you said that the men assembled at the cemetery. Who assembled these men at the cemetery?

A. First Lieutenant Tanaka assembled them. I recall it being First Lieutenant Tanaka but there was a sergeant major in place of Tanaka and I have another recollection that it was this sergeant major. My recollection is very faint and I cannot say this definitely. JX

78. Q. At any time, when you were in the presence of General Inoue, did you tell him you were opposed to carrying out the execution of this prisoner? JX

A. I did not oppose it in the presence of the general.

Reexamined by the accused:

79. Q. You replied in the cross-examination that it was Onose who showed Katsuyama how to cut. Wasn't it that Onose coached Katsuyama about his foot- ing? JX

This question was objected to by the judge advocate on the ground that it was leading.

The accused withdrew the question.

80. Q. Describe what Onose actually showed Katsuyama at the scene.

A. Katsuyama was far back from the prisoner so Onose instructed him to go closer to him so that he would not fail in cutting.

81. Q. You testified that when you received the order to execute from the division commander you did not refuse. Why did you not refuse?

A. When I, who had at that time just become a captain and was looked upon as a child, had come face to face with a person who had this big title of Supreme Commander of Palau, I had the intention to oppose it all the way but when I came face to face with him I was not able to say it. Moreover the commanding general knew that Katsuyama and I opposed this by the phone call I made to Doi and in spite of his knowing this he ordered me. Furthermore, the commanding general, once he had made a decision on a matter was a man to have this order carried out. This was his principle so I was afraid to oppose to him and I had my face down and was not able to say anything.

82. Q. You were just shown by the judge advocate a statement you said you had written in August and you testified that it was a mistake and that there was an error in this. How did you come to write this statement?

A. When I wrote this two and one-half years had already elapsed from the time of the incident and I had almost forgot then about it. Then I was told by the investigators that I, on my own, had Katsuyama do it and then I was also told that this was done with my will. I had no recollection of this and my will had not at any time figured in this incident. Therefore, my recollection concerning the incident at that time was bad and I was suddenly asked this so I thought of stating that all the company commanders had assembled and decided on this and this is how my first statement was made.

83. Q. You have testified that it was the order of the division commander to have Katsuyama do it. Why didn't you write in the statement that it was the order of the commanding general to do it?

A. I did not want to say that I had received orders from the division commander. I wanted to conceal it and I wanted to write the statement in as brief a manner as I could so I just wrote anti-aircraft unit. After finding out that I had to write everything that I had to write, it was very difficult for me, but I stated that it was the order of the commanding general.

84. Q. Was it the general's orders that Katsuyama do the execution?

A. Yes.

85. Q. Although you were the senior officer at the scene of the execution, could you have stopped the execution?

A. No, I could not.

86. Q. Could you refuse to carry out the general's orders to execute the prisoner?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

87. Q. Did you actually and personally behead the prisoner?

A. Do you mean that I, myself, took the sword?

88. Q. Yes.

A. No, I did not.

89. Q. This statement of August 19, 1947, under what circumstances were you required to write the statement?

A. I was requested to come to the Meiji Building and I went there and then suddenly the investigator told me to write the truth of this incident. I was requested to write this in a very short time so I did not have enough time to make it all inclusive.

The commission then, at 11:30 a.m., took a recess until 2 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Koichi, Hiroe, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Reexamination continued.)

90. Q. After you had finished this statement of August 19th did you ever verify it? Was it read back to you and verified by you?

A. No, it was not.

91. Q. Who was present when you wrote this statement?

A. Investigator Yokoi was present.

92. Q. Did you ever order Lieutenant Haneishi to execute this prisoner?

A. No, I did not.

93. Q. Did he execute the prisoner?

A. No, he did not.

94. Q. This sergeant major you think might have assembled your men that day, was this Tsuchiya?

A. No, it was not Tsuchiya.

The judge advocate did not desire to recross-examine this witness.

The commission did not desire to examine this witness.

The witness made the following statement:

I would like to add the things that came out during the conversation with the investigator. I never asked Haneishi or Tanaka their opinion if

they wanted to execute, nor did I request Katsuyama on my own if he wanted to execute. In order to comply with the wishes of the division commander that the division commander wanted as many men assembled as possible, I phoned Haneishi when I came back from escorting the prisoner. Haneishi replied saying that he refused and was busy. I just relayed to him the wishes of the division commander. When I was investigated there seems to have been a misunderstanding because of the order of division commander was to bolster the morale, but we, from the first up to the end, faced this with humane feelings. That is all.

The witness resumed his status as accused.

Tsuchiya, Naohiko, an accused, was, at his own request, duly sworn as a witness in his own behalf.

Examined by the judge advocate:

1. Q. Are you an accused in this case?
- A. Yes.

Examined by the accused:

2. Q. Were you ever stationed with the Japanese army in the Palau Islands?
- A. Yes.
3. Q. Where were you stationed in the Palau Islands and during what period of time?
- A. I was attached to the intelligence section of the staff of the 14th Division. From April of 1944 to November I served on Koror and from that time on I served at Babelthuap.
4. Q. Were you ever demobilized?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

5. Q. In April and May of 1945 where were you attached and with what organization?
- A. I was attached as a clerk with the intelligence section of the staff of the 14th Division.
6. Q. What were your duties with this intelligence section?
- A. It was chiefly clerical.
7. Q. Did you have any other duties?
- A. When the officers of the intelligence section went out on trips, turns were taken to accompany them.
8. Q. Who took turns to accompany the officers?
- A. The non-commissioned officers of the intelligence section.
9. Q. How many non-commissioned officers were there?
- A. There were three.

10. Q. What was the state of your health in April and May of 1945?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

A. From March I was taken by malnutrition and in April and May this condition was in progress. I was excused from part of my duty by an officer but I still had my ordinary duty. This was because at that time there was a shortage of non-commissioned officers.

11. Q. Did you still have to go out on these outside jobs with the officers?

A. Yes.

12. Q. In April and May of 1945 were you given a special assignment in connection with a prisoner of war?

A. Yes.

13. Q. What was this special assignment?

A. On about May 23, 1945, Onose came out of the intelligence staff officer Yajima's room and he said to me, "It's your turn to go out, isn't it, Tsuchiya? Won't you go to Koror for escorting prisoner Kaufman?" As Koror was not a jungle like Babelthup, I thought it was good for my health and though the period of this trip would be very short I thought the fresh sea air would do me very good and I was very glad to go with him. Without being armed, myself, Shimojo, and Onose went to staff officer Yajima's room and Yajima handed over to Onose the prisoner's watch, wallet, necklace, ring, and such things. At this time Onose repeated the order which he had received. It was first to safely escort the prisoner to Koror, second to return the belongings to the prisoner without fail, and third to confirm his execution. This was the first time that I learned about Kaufman's execution and I was very surprised but I accepted to go because the order was already given.

13. Q. This prisoner Kaufman - had you known about him before you came to Yajima's office with Lieutenant Onose?

A. Yes, I did. I knew about it by reading the interrogation report of the prisoner.

15. Q. You mentioned Shimojo. Who is this Shimojo that you mentioned?

A. Shimojo was a photographer attached to the intelligence section.

16. Q. Do you know who told him to go with Lieutenant Onose to Yajima's office?

A. I do not know who ordered him but when I went to Staff Officer Yajima's room he was with us.

17. Q. Were you three the only ones who went to Yajima's room that day?

A. At that time, yes; only three of us went.

18. Q. At that time did you hear Yajima say or give these instructions that you have just testified to?

A. No, I did not hear from Yajima. I heard it when Onose repeated it.

19. Q. Onose repeated the instructions that he had received from Yajima. Is that the story?

A. Yes.

20. Q. Did Yajima give you any instructions?

A. No, I did not receive any specific instructions from him.

21. Q. Did he give Shimojo any instructions?

A. While I was present there he did not give instructions to Shimojo.

22. Q. Was Onose the only one he talked to?

A. Yes.

23. Q. When you heard this prisoner that you were going to escort was to be executed, did you still want to go on this mission?

A. At this time a very unpleasant feeling came over me but since the order was already out I obeyed it.

24. Q. Where did Lieutenant Onose go to get his prisoner, Kaufman?

A. Accompanied by myself and Shimojo, he went to the Kempeitai to get the prisoner.

25. Q. At the Kempeitai, who was the prisoner turned over to?

A. Second Lieutenant Asano of the Kempeitai handed over the prisoner to Second Lieutenant Onose.

26. Q. Then what happened?

A. There one armed assistant Kempei, who was a leading private who was attached to us, held the rope which was attached to Kaufman and from there Onose, Shimojo, myself, and this assistant Kempei and the prisoner went to Gaspan Pier.

27. Q. What did you do there?

A. Prior to this, enroute to this Gaspan Harbor, Onose handed me over the watch, the ring and wallet which contained many things, and said that Yajima told him to return these belongings to him without fail and I am to return them. Don't return them to him because they would be stolen but return them at the last minute.

28. Q. What happened then?

A. Onose then got some dried biscuits from the Gaspan field storage house and gave it to Kaufman and from there we went to Nekken Pier.

29. Q. What did you do there?

A. When we got there I saw a captain who had his ears bandaged and from this conversation this captain had with Onose I learned he was Captain Koichi. Captain Koichi had with him an orderly.

30. Q. How long did you stay on this pier?

A. I think about two hours.

31. Q. Then what happened?

A. Just before it got dark a motor boat came and Koichi, his orderly, Onose, Shimojo, the assistant Kempei, Kaufman, myself and some other soldiers whose unit I do not know got aboard this boat.

32. Q. When did you arrive at Koror?
A. It was around midnight when we reached Koror.
33. Q. What happened when you reached Koror?
A. At the Koror pier non-commissioned officers of the Koichi Unit met us. From there we went to the headquarters of the Koichi Unit and after about one hour arrived there.
34. Q. What happened to the prisoner?
A. At the headquarters the prisoner was handed over by the Kempei to the non-commissioned officers of the Koichi Unit and I think he was taken to an air raid shelter.
35. Q. Who handed the prisoner over?
A. Onose did.
36. Q. Are you sure you didn't hand him over?
A. No, it was not me.
37. Q. Then what happened after Lieutenant Onose handed this prisoner over to the Koichi guards?
A. From there we went to the front of Captain Koichi's quarters. Food was brought over and Captain Koichi and some of his non-commissioned officers were discussing the time and the place regarding the execution.
38. Q. Did you take part in this conversation?
A. No, I did not. gk
39. Q. Did any of the enlisted men take part in it?
A. The persons who took part in the conversation were Koichi and a non-commissioned officer or non-commissioned officers of the Koichi headquarters. The rest did not take part in it.
40. Q. After the meal, what did you do?
A. Just before we had the meal the Kempei went to the Kempei detachment at Koror; he left us and went there. After having the meal, Shimojo and myself left and went to an air raid shelter which was about one kilometer away from this place and slept there.
41. Q. Where was the prisoner?
A. I do not know where he was but probably he was in an air raid shelter.
42. Q. What did you do the next morning?
A. The next morning when I went to the naval cemetery I saw Kaufman sitting down.
43. Q. Why did you go to this naval cemetery?
A. The day before the execution I was told by Onose to return Kaufman's belongings at the last minute, so I carried his orders out accordingly.
44. Q. Why didn't you return them to him the night before?
A. If I had returned these belongings to him the night before, as this prisoner was helpless, these belongings might have been stolen from him. gk
45. Q. What did you see when you arrived at the cemetery that morning?
A. I saw fifty to sixty men assembling and I saw a first lieutenant with his ears bandaged.

46. Q. At that time did you know who this first lieutenant was?

A. No, I did not know.

47. Q. What about the prisoner, Kaufman? What was being done to him?

A. Kaufman was sitting down and Onose was giving Kaufman a cigarette. At this time I said to Onose, "I will return these belongings to him" and he said, "Yes, return them." So I returned the necklace, the watch and the wallet which included many things. At this time Shimojo took one picture of this.

48. Q. Did these many things include a necklace with a cross?

A. No, I did not see such a thing.

49. Q. What happened then?

A. One man of the anti-aircraft unit took hold of the rope which was tied to Kaufman and pushing the crowd that was gathered there, he left this place and right behind the prisoner Shimojo followed.

50. Q. After you had given Kaufman his personal belongings, what did you do? *JK*

A. I stayed at that spot and saw Kaufman being led away.

51. Q. Did you see Kaufman executed?

A. Yes, I did.

52. Q. Did you take part in the execution?

A. No, I did not.

53. Q. How far away were you when Kaufman was executed?

A. I was about fifteen meters away.

54. Q. Did you take any pictures of the execution?

A. No, I did not.

55. Q. Did you see anyone taking any pictures while the execution was going on?

A. Yes, I saw Shimojo take pictures. *JK*

56. Q. When did you leave?

A. After the execution was over I thought about his belongings being returned without fail so I went over and looked at his corpse and saw that his watch was attached to him and that his belongings were buried and presently after this the body was buried. Just at this time Shimojo had finished taking pictures and was rolling his film.

57. Q. When did you leave this scene?

A. After offering a silent prayer to Kaufman's spirit, I left the scene.

58. Q. Did you go alone?

A. I went with Onose.

59. Q. Where did you go with Onose?

A. With Onose I went to Katsuyama Unit and there looked over the anti-aircraft position and had a meal and spent about four hours in all at this Katsuyama Unit.

60. Q. When did you return to division headquarters?

A. The night of the same day.

61. Q. Did you return with the same group to division headquarters as had left the division headquarters?

A. No, Shimojo in the evening of that day parted from us and took a different action. He returned to division headquarters the ^{next} day after we went back. gmc

62. Q. While you were at the scene of the execution did you aid in any way the execution of this prisoner?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness and invaded the province of the commission.

The accused did not reply.

The commission announced that the objection was not sustained.

A. No.

63. Q. Did you have any intention of killing the prisoner?

A. No, I absolutely did not.

64. Q. How long had you been in the army?

A. I was in the army from January of 1939 until the end of the war.

65. Q. What kind of duty have you had in the army?

A. I had chiefly clerical duties.

66. Q. During all the time that you have been in the army, have you ever killed a man in combat?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused did not reply.

The commission announced that the objection was sustained.

The commission then, at 3:05 p.m., took a recess until 3:30 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Tsuchiya, Naohiko, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

Cross-examined by the judge advocate:

67. Q. Who was the first person to talk to you about this trip to Koror regarding Kaufman?

A. Second Lieutenant Onose.

68. Q. And what did he say to you?

A. "It is your turn to take a trip, isn't it, Tsuchiya? Will you go to Koror to escort Kaufman? Koror is not like Babelthuap which is heavily jungled."

69. Q. Do you mean he asked you to accompany him rather than ordering you to accompany him?

A. No, he did not request as he was my senior in the sense of rank. It was more than half an order.

70. Q. Was Onose always in the habit of speaking to you so politely?

A. Yes.

71. Q. After you had received this polite order from Onose, what did you understand your duties to be?

A. I just thought that it was to send Kaufman to Koror.

72. Q. Did you understand that you were to be a guard?

A. Yes, I did understand it to mean a guard.

73. Q. When did you first learn that Kaufman was to be executed?

A. When I went into staff officer Yajima's room and there Onose repeated the orders. That is the first time I knew about it.

74. Q. Then you knew before you left this room that you were to guard Kaufman until he was executed. Is that correct?

A. I do not understand the question.

75. Q. You knew before you left Babelthuap that you were to be a member of an execution party. Is that correct?

A. I did not know.

76. Q. Why not? You learned from Lieutenant Onose that you were to be a guard and you learned from Lieutenant Onose that Kaufman was to be executed. Why didn't you know that you were to be a member of an execution party?

A. I replied I did not know because I did not receive any orders to execute the prisoner. I was told by Onose of the three duties, one to escort the prisoner, two to return his belongings, and three to confirm his death.

77. Q. When you were told by Onose to confirm the prisoner's death, what did you understand that to mean?

A. I understood that the prisoner, Kaufman, was to be executed.

78. Q. And you knew before you left Babelthuap that you were escorting a prisoner on the way to his death. Isn't that true?

A. I understood that Kaufman was going to be executed at Koror.

79. Q. And you were taking him there for that purpose, were you not?

A. Yes.

Reexamined by the accused:

80. Q. When you say that you were taking the prisoner to Koror to be executed, what do you mean by that?

A. Onose took me because of this duty, so I understood Onose's duty as such.

81. Q. Since you were not a part of the command of Koichi and not subject to his orders, would you have executed the prisoner if Koichi had ordered you to that day?

This question was objected to by the judge advocate on the ground that it was irrelevant, immaterial, and purely speculative.

The accused replied.

The commission announced that the objection was sustained.

82. Q. Did this Kempei from division headquarters that accompanied the prisoner take any part in the execution?

A. No, he did not.

83. Q. Now, after Lieutenant Onose had turned this prisoner, Kaufman, over to the Koichi guards, did your duty as a guard cease at that time?

This question was objected to by the judge advocate on the ground that it was beyond the scope of the cross-examination and called for an opinion of the witness.

The accused replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. Yes.

84. Q. Now, did you still have any other duty as far as this prisoner was concerned?

A. Yes.

85. Q. And what was this duty?

A. That was to return Kaufman's belongings to him without fail.

86. Q. Is that why you went to the scene of the execution?

A. Yes.

The judge advocate did not desire to recross-examine this witness.

The commission did not desire to examine this witness.

The witness made the following statement:

Concerning the point where Onose taught how to cut, there seemed to have been a question and so I would like to state all I know about this. First Kaufman was made to sit down at the spot of the execution with his back towards the sun. Shimojo wanted to take a picture of this and as the light was com-

ing directly he wanted the position of Kaufman changed. The position of Kaufman was changed so he would face the sun and then he was made to sit down. First Katsuyama's footing was firm, but as the position was changed he was not prepared so Onose coached him about his footing.

The witness resumed his status as an accused.

Commander Martin E. Carlson, a counsel for the accused, requested that the commission adjourn until 9 a.m., Thursday, December 4, 1947, to await the arrival of further defense witnesses.

The commission announced that the request was granted.

The commission then, at 3:55 p.m., adjourned until 9 a.m., Thursday, December 4, 1947.

SEVENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Thursday, December 4, 1947.

The commission met at 9 a. m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major Andrew I. Lyman, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the sixth day of the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, counsel for the accused, requested that the commission recess until 2 p. m. in order to allow the defense time to interview the witnesses who had arrived from Japan this morning.

The commission announced that the request was granted.

The commission then, at 9:15 a. m., took a recess until 2 p. m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.
A. Nakagawa, Kiyoshi, colonel, Imperial Japanese Army.
2. Q. If you recognize the accused, state their names and former ranks.

The witness correctly identified each of the accused.

Examined by the accused:

3. Q. Have you ever served in the Japanese army at Palau?
A. Yes.
4. Q. What was the length of time that you served?
A. From 4 April 1944 to 26 February 1946.
5. Q. In what unit did you serve at Palau?
A. The Fourteenth Division headquarters.
6. Q. What was your duty at Fourteenth Division headquarters?
A. Officer in charge of operations.
7. Q. While you were serving at Palau, did you ever see a prisoner?
A. No.
8. Q. Then do you know anything pertaining to a prisoner?
A. I have heard about it.
9. Q. When was this?
A. I recall that it was around the middle of May 1945.
10. Q. Around this time did you call the accused, Koichi, to the headquarters?
A. Yes.
11. Q. For what reason did you call him?
A. The Koichi Provisional Anti-aircraft Unit was bombed by the American planes and was greatly damaged. The headquarters planned to make a new operation and this new plan was studied, and, to get the opinion of Koichi and to find out the extent of the damage, Koichi was called to headquarters. Captain Koichi was called to headquarters to report the extent of the damage and to talk over the future operations and the reporting of his preparations and also at this time the Commanding General's new plan was made known to Captain Koichi so he would understand it.
12. Q. Did you take Captain Koichi to the Commanding General?
A. To have Koichi report directly to the Commanding General, I went along with him to the Commanding General. JK
13. Q. Were you present during the time the Commanding General and Koichi were talking?
A. Yes.
14. Q. During this time did the Commanding General say anything about a prisoner?
A. I recall that there was an order to execute a prisoner.
15. Q. To whom was this order given?
A. I recall that it was the Katsuyama Unit which sustained the greatest damage by the bombing and was the unit that shot down the B-24.
16. Q. Was this order passed on to Koichi?
A. I recall that it was.

17. Q. When the Commanding General gave this order, did he say the reason why the execution was to be performed?

A. I recall that it was for bolstering the morale.

18. Q. Before you took Koichi to the Commanding General did you say anything to Koichi?

A. I recall saying to him, "As the plans for the use of the anti-aircraft unit are already settled by the headquarters and the Commanding General, if he once gave out an order he will not change it, and on this point he is very strict. Your opinion is very good but I think it is better if you thought it over and I think it better if you will not tell this to the Commanding General."

19. Q. Did Koichi say anything to the Commanding General when he received the order to execute?

A. I recall that he did not say anything.

20. Q. Was there any circumstance as to why he was not able to say anything?

This question was objected to by the judge advocate on the ground that it was leading and called for an opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

21. Q. What was Koichi's attitude when he received the orders of the Commanding General?

A. His attitude was one of respect.

22. Q. Was this the first time that you heard about this execution?

A. I recall that it was two or three days before but I am not sure of this.

23. Q. From whom did you hear of this two or three days before?

A. I recall that it was from Staff Officer Yajima.

24. Q. At that time, what did Yajima say?

A. I recall that he said that the Commanding General decided to do this.

25. Q. Did you hear who was to perform this?

A. I recall that I heard that it was a plan to have the anti-aircraft unit at Koror Island perform it.

26. Q. Is the Koror Anti-aircraft Unit the Koichi Unit?

A. Yes.

27. Q. Did you hear what Koichi's opinion was about this execution?

This question was objected to by the judge advocate on the ground that it called for hearsay.

The accused withdrew the question.

28. Q. Did you hear what Koichi's opinion was as to this?

A. I recall that I heard it from Staff Officer Yajima.

29. Q. When did you hear this?

A. I recall that it was before the execution.

30. Q. How much time before?

A. I recall that it was about two or three days.

31. Q. What was Koichi's opinion?

This question was objected to by the judge advocate on the ground that it called for hearsay.

The accused withdrew the question.

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness. JK

The witness made the following statement:

As this is an old memory, I would like to say that I am not very clear on the dates and what happened at that time.

The witness ~~was~~ duly warned and withdrew. JK

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.

A. Watanabe, Toshio, captain, Imperial Japanese Army.

2. Q. If you recognize the accused, state their names and former ranks?

A. Captain Koichi, Second Lieutenant Onose, Second Lieutenant Katsuyama, and Sergeant Major Tsuchiya.

Examined by the accused:

3. Q. Have you ever served with the Japanese army at Palau?

A. I have.

4. Q. During what period of time was this?

A. From April 1944 to December 1945.

5. Q. With what unit did you serve?

A. Fourteenth Division Headquarters.

6. Q. On what island was this Fourteenth Division situated?

A. It was on Koror Island and also Babelthup Island.

7. Q. Of these two, on which island did you serve?

A. I served on both of these islands.

8. Q. What was your duty at this headquarters?

A. I served as an intelligence officer under Staff Officer Yajima.

9. Q. While you were serving at Palau did you ever see a prisoner?

A. I did.

10. Q. Do you know the name of this prisoner?

A. Second Lieutenant Kaufman.

11. Q. When was this?

A. It was around the beginning of May 1945.

12. Q. Do you know what happened to Second Lieutenant Kaufman after that?

A. He was executed.

13. Q. Do you know how Second Lieutenant Kaufman came to be executed?

A. I do.

14. Q. Please explain to the commission concerning this?

A. Second Lieutenant Kaufman parachuted from his plane and was captured at Koror. He was sent to Babelthuap. Lieutenant General Inoue ordered the Koror Defense Unit to execute the prisoner in order to bolster the morale of the anti-aircraft unit. Yajima, by orders of Lieutenant General Inoue, telephoned Doi about this but Doi refused this. Therefore, Inoue again ordered the Koror Defense Unit as to this execution and finally had him executed at the Katsuyama Unit.

15. Q. By what means did you come to know what you have stated before?

A. I learned about this from the substance of the telephone call made by Staff Officer Yajima to Doi.

16. Q. How many times did Yajima call Doi in regard to the execution?

A. As I remember, there were two.

17. Q. You just testified that this prisoner was executed at Koror. Was this prisoner brought to Koror?

A. Yes.

18. Q. Who brought this prisoner to Koror?

A. From the intelligence section Second Lieutenant Onose, Sergeant Major Tsuchiya, and Shimojo went along.

19. Q. How did Onose come to take the prisoner to Koror?

A. By orders of Staff Officer Yajima.

20. Q. Do you know what order was given to Onose by Yajima?

A. I recall that he said to escort Second Lieutenant Kaufman to Koror.

21. Q. At this time, how many officers were attached to the intelligence section?

A. Three.

22. Q. Do you know why Onose was selected to go from among these three?

A. The duties of Onose were not very urgent and could be left for two or three days, so he was selected to go.

23. Q. Do you mean that he was selected because of his duties?

A. Yes.

24. Q. Do you know why Tsuchiya was selected?

A. At that time, Sergeant Major Tsuchiya was in poor health and as Babelthuap was heavily jungled and unhealthy, whenever there was a duty to go out the NCO's took turns to go out and get the sun so that they might protect their health. Just at this time I recall it was Tsuchiya's turn. I do not know any other reason why he went along.

25. Q. You have just testified that Onose received orders from Yajima to escort the prisoner to Koror. How long a time elapsed from the time he received the order until the time he left for Koror?

A. It was the same day and I think it was about three or four hours later.

26. Q. From the time you first heard Yajima call Doi on the telephone about this prisoner until the time he left for Koror, how much time elapsed?

A. I recall that it was about two days.

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The defense rested.

Commander Martin E. Carlson, a counsel for the accused, made a motion for a directed acquittal in the case of Onose, Ichiro.

The judge advocate replied.

The commission announced that the motion was denied.

Commander Martin E. Carlson, a counsel for the accused, made a motion for a directed acquittal in the case of Tsuchiya, Naohiko.

The judge advocate replied.

The commission announced that the motion was denied.

The accused, Koichi, Hiroe, read a written statement, in Japanese, in his defense, appended marked "W."

An interpreter read an English translation of the statement of the accused, Koichi, Hiroe, appended marked "X."

The commission then, at 3:25 p.m., took a recess until 3:40 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The accused, Katsuyama, Tetsuji, read a written statement, in Japanese, in his defense, appended, marked "Y."

An interpreter read an English translation of the statement of the accused, Katsuyama, Tetsuji, appended, marked "Z."

The accused, Onose, Ichiro, read a written statement, in Japanese, in his defense, appended, marked "AA."

An interpreter read an English translation of the statement of the accused, Onose, Ichiro, appended, marked "BB."

The accused, Tsuchiya, Naohiko, read a written statement, in Japanese, in his defense, appended, marked "CC."

An interpreter read an English translation of the statement of the accused, Tsuchiya, Naohiko, appended, marked "DD."

The commission then, at 4:35 p.m., adjourned until 9 a.m., tomorrow, Friday, December 5, 1947.

EIGHTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, December 5, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major Andrew I. Lyman, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenry, U. S. Navy, judge advocates.
Stewart R. Smith, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the seventh day of the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

The judge advocate read a written opening argument, appended marked "EE."

An interpreter read a Japanese translation of the judge advocate's opening argument.

Mr. Takami Karasawa, a counsel for the accused, began reading a written argument, appended marked "FF."

An interpreter read an English translation of this portion of Mr. Karasawa's argument, appended marked "GG."

The commission then, at 10:15 a.m., took a recess until 10:40 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Mr. Takami Karasawa, a counsel for the accused, completed reading the written argument, appended marked "FF."

The commission then, at 11:20 a.m., took a recess until 2:05 p.m., at which time it reconvened. *JK*

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

An interpreter read an English translation of the final portion of Mr. Takami Karasawa's argument, appended marked "QG."

Commander Martin E. Carlson, a counsel for the accused, read a written argument, appended marked "HH."

The commission then, at 3:05 p.m., took a recess until 3:25 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The judge advocate read his written closing argument, appended marked "II."

An interpreter read a Japanese translation of the judge advocate's closing argument.

The trial was finished.

The commission was cleared.

The judge advocate was recalled and directed to record the following findings:

As to the accused, Koichi, Hiroe:

The specification of the first charge proved in part, proved except the words "and TSUCHIYA, Naohiko, then a sergeant major, IJA," which words are not proved.

And that the accused, Koichi, Hiroe, is of the first charge guilty.

The first specification of the second charge proved in part, proved except the words "TSUCHIYA, Naohiko, then a sergeant major, IJA," which words are not proved.

The second specification of the second charge proved.

And that the accused, Koichi, Hiroe, is of the second charge guilty.

As to the accused, Katsuyama, Tetsuji:

The specification of the first charge proved in part, proved except the words "and TSUCHIYA, Naohiko, then a sergeant major, IJA," which words are not proved.

And that the accused, Katsuyama, Tetsuji, is of the first charge guilty.

As to the accused, Onose, Ichiro:

The specification of the first charge proved in part, "proved except the words "and TSUCHIYA, Naohiko, then a sergeant major, IJA," which words are not proved.

And that the accused, Onose, Ichiro, is of the first charge guilty.

As to the accused, Tsuchiya, Naohiko:

The specification of the first charge not proved.

And that the accused, Tsuchiya, Naohiko, is of the first charge not guilty; and the commission does therefore acquit the said Tsuchiya, Naohiko, of the first charge.

Tsuchiya, Naohiko, was excused from further attendance before this commission.

The commission was opened and all parties to the trial entered.

No witnesses not otherwise connected with the trial were present.

The commission announced its findings.

The commission then, at 4:40 p.m., adjourned until 9 a.m., tomorrow, Saturday, December 6, 1947.

NINTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
Saturday, December 6, 1947.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United
States Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major Andrew I. Lyman, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

The record of proceedings of the eighth day of the trial was read and
approved.

No witnesses not otherwise connected with the trial were present.

A witness for the defense as to matters in mitigation entered and was
duly sworn.

Examined by the judge advocate:

1. Q. ^State your name.
A. Kuwata, Hideo.

Examined by the accused:

2. Q. Are you a defense counsel in this case?
A. Yes.
3. Q. Have you some documents which you want to introduce as evidence at
this time?
A. Yes.
4. Q. What kind of documents are these?
A. These are documents in mitigation for these accused.
5. Q. Do you wish to introduce these documents as evidence in mitigation?
A. Yes.
6. Q. For whom do you wish to introduce these documents?
A. I wish to introduce these documents for Koichi, Katsuyama, and Onose.

7. Q. Are these documents written in Japanese?
A. Yes, they are written in Japanese but are already translated in English.

8. Q. Did you read these documents?
A. Yes.

9. Q. What did you find out as a result of reading these documents?
A. These documents were written by their superiors or colleagues or other persons while they were serving in the Japanese army and I find out that these were suitable to show their character.

10. Q. Have the judge advocates had access to these documents?
A. They have not, so I wish to show them to them, now.

The witness produced fourteen documents in Japanese in mitigation and they were submitted to the judge advocates and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 10" through "Exhibit 23."

The witness produced fourteen documents, the English translations of "Exhibit 10" through "Exhibit 23" in behalf of the accused in mitigation and they were submitted to the judge advocate and to the commission, and by the accused offered in evidence for the purpose of being read into the record in mitigation. There being no objection the documents were so received and are appended marked "Exhibit 10(a)" through "Exhibit 23(a)."

11. Q. Please refer to these documents and read them.
A. I have five documents for Koichi, five documents for Katsuyama and four for Onose. As the substance of some of these are repetitious, I wish to read just three for Koichi, three for Katsuyama, and three for Onose, but I wish to waive the reading of the documents in Japanese and just have them read in English.

An interpreter read "Exhibit 10(a)," "Exhibit 11(a)," "Exhibit 12(a)," "Exhibit 15(a)," "Exhibit 16(a)," "Exhibit 17(a)," "Exhibit 20(a)," "Exhibit 21(a)," and "Exhibit 22(a)."

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as counsel for the accused.

The commission was cleared.

The judge advocates were recalled and directed to record the sentences of the commission as follows:

The Commission, therefore, sentences him, Koichi, Hiroe, to be confined for a period of twenty-five (25) years.

The Commission, therefore, sentences him, Katsuyama, Katsuji, to be confined for a period of twenty-five (25) years.

The Commission, therefore, sentences him, Anase, Ichiro, to be confined for a period of twenty-five (25) years.

Arthur G. Robinson
Arthur G. Robinson,
Rear Admiral, U. S. Navy, President.

Henry K. Roscoe
Henry K. Roscoe,
Lieutenant Colonel, Coast Artillery Corps, United States Army, Member.

Victor J. Garbarino
Victor J. Garbarino,
Lieutenant Colonel, Coast Artillery Corps, United States Army, Member.

Bradner W. Lee, junior
Bradner W. Lee, junior,
Lieutenant Commander, U. S. Naval Reserve, Member.

Andrew L. Lyman
Andrew L. Lyman,
Major, U. S. Marine Corps, Member.

Joseph A. Regan
Joseph A. Regan,
Lieutenant Commander, U. S. Navy, Judge Advocate.

James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy, Judge Advocate.

The commission was opened. All parties to the trial entered.

The commission then read and pronounced the sentences to the accused.

The commission, having no more cases before it, adjourned to await the action of the convening authority.

Arthur G. Robinson
ARTHUR G. ROBINSON,
Rear Admiral, U. S. Navy, President.

Joseph A. Regan
JOSEPH A. REGAN,
Lieutenant Commander, U. S. Navy, Judge Advocate.

James P. Kenny
JAMES P. KENNY,
Lieutenant, U. S. Navy, Judge Advocate.

KOICHI, HIROE et al.

(24 NOV 1947)

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PART 3 OF 4

0505

OPENING STATEMENT FOR THE PROSECUTION

Delivered by

Lieutenant Commander Joseph A. Regan

24 November 1947.

In May of 1945, the Palau Islands were under heavy air attack by the American Army Air Forces. On one of the many raids, a B-24 was hit by Japanese anti-aircraft fire from a battery located on Koror Island. Only one of the crew members was able to parachute to safety. Actually, the term safety is improper, for while the survivor, Wallace J. Kaufman, second lieutenant, U. S. Army, landed safely, he did not survive his treatment in the hands of his Japanese captors.

Kaufman was taken into custody by the Japanese unit on Koror. He was questioned at the headquarters there and then sent to the 14th Division headquarters on Babelthuap Island. Kaufman again was questioned, this time by Lieutenant Colonel Yajima, the intelligence officer, and a report of this interrogation was made to Colonel Tada, chief of staff, and to Lieutenant General Inouye, the commanding officer of the 14th Division. Just how long Kaufman was kept a prisoner on Babelthuap is uncertain, but in any event sometime in the latter part of May, General Inouye ordered his execution. This order was given to Lieutenant Colonel Yajima with instructions that the Koichi Anti-Aircraft Unit on Koror was to carry out the execution. This unit was, at that time, commanded by Captain Koichi, IJA, one of the accused in this case. The island of Koror was under the general command of Colonel Doi, IJA. Yajima called Doi on the telephone and asked him to make the arrangements. Doi refused, but he did call Koichi to advise him what was planned at headquarters. The next day, or a few days later, Koichi was at the 14th Division Headquarters on Babelthuap, presumably to confer with one of the staff officers. Inouye heard of his presence and had him summoned. General Inouye directly ordered Koichi to have Kaufman executed.

In the meantime, Yajima was making arrangements to have Kaufman transported from Babelthuap to Koror. Lieutenant Onose was ordered by Yajima to secure the prisoner and to deliver him to the Koichi Anti-aircraft unit at Koror. Onose asked that he be permitted to take Sergeant Major Tsuchiya along to guard the prisoner, and he also requested that a photographer by the name of Shimojo be permitted to go along in order to take pictures of the execution. Yajima acceded to both of these requests, but having been told by General Inouye that he wished to see Onose before he departed, Yajima ordered Onose and Tsuchiya to report to the General. This they did and Onose was told by Inouye that if the officers of the anti-aircraft unit failed to decapitate the prisoner in front of a large group of subordinates "you will carry out the execution." For some strange reason Inouye had decided that the beheading of the captive Kaufman would raise the morale of the anti-aircraft unit which apparently had suffered greatly as a result of the air raids. Onose and Tsuchiya went to the Kempetai where Second Lieutenant Kaufman was being detained. They secured Kaufman and took him to the pier to await the boat to Koror. At this pier, sometime during the afternoon, they were joined by Koichi and they boarded the vessel. Later that night

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they arrived at Koror and Kaufman was placed in an air raid shelter to await the morning. At Koichi's headquarters a conference was held. It was attended by Koichi, Onose, Katsuyama, Tsuchiya, and Shimojo. There was discussed the time and place for the execution of Kaufman. It was decided that Kaufman was to be executed the following morning at the naval cemetery, a few meters distant from Koichi's headquarters. The following morning, Kaufman was taken from the air raid shelter to the scene of the execution where his grave had already been dug. Many of the men of the Koichi Anti-aircraft Unit gathered to witness the execution. When all preparations had been made, Koichi appeared upon the scene and Katsuyama, his subordinate, who had already been designated as the actual executioner, drew his sword. Apparently Katsuyama was not an expert swordsman, for from his stance it was evident to Onose that he was not going about it in the proper fashion and Onose instructed him as to how to place his feet and how to best swing his sword. Katsuyama followed the instructions of Onose and brought his sword down, almost completely severing the head from the body of Kaufman. While this was going on, Shimojo, was taking pictures. The body tumbled into the grave and was buried by the orders to Katsuyama.

After the execution, Onose, Tsuchiya, and Shimojo returned to Babelthuap where Shimojo immediately developed his pictures and turned them over to the intelligence. Onose and Tsuchiya reported back to Yajima and informed him that the execution had taken place. In a subsequent conversation Onose admitted that Katsuyama was clumsy and that he, Onose, had had to instruct him.

The facts of the case are simple and the facts are that these four accused each contributed to the murder of Kaufman.

Respectfully,

Joseph A. Regan
Joseph A. Regan

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0507

OBJECTION TO THE COMMISSION TAKING JUDICIAL
NOTICE.

Delivered by
Commander Martin E. Carlson.

24 November 1947

The defense objects to the court taking judicial notice of the Potsdam Declaration of July 26, 1945 and particularly paragraph 10. First on the grounds that neither the commission or the defense have been furnished with a certified, an official, or otherwise trustworthy copy of this declaration as is required by section 309, Naval Courts and Boards.

We move that when such a copy is furnished the commission, that it be made an official part of this trial.

We object to the commission taking judicial notice of the Potsdam Declaration unless there is a showing and proof made that Japan agreed to be bound and accepted this Potsdam Declaration.

We object to the Potsdam Declaration particularly paragraph 10 which reads in part that "stern justice shall be meted out to all war criminals" because these four accused are not war criminals simply because they have been charged with a war crime.

We do not object to that sentence of paragraph 10 which reads: "Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights, shall be established" and do ask that the prosecution be required to comply with that provision particularly as regards to the arrest and confinement of persons without due process of law.

We move that the judge advocate be required to prove that this Potsdam Declaration is in force, show how it is applicable in this case, relevant to the issues here being tried, material to the issues in question and how these four accused are bound by this Potsdam Declaration.

We object that the Potsdam Declaration is immaterial and irrelevant.

We object to the commission taking judicial notice of the Geneva Prisoner of War Convention of July 27, 1929 unless the prosecution can show that Japan ratified this convention and that these four accused are bound by it.

We move that the court take judicial notice that Japan did not ratify or formally ever adhered to this convention. We call the commission's attention to the Foreword by the War Department technical manual TM 27-25, which contains the statement "Japan has not ratified or formally adhered to the Prisoners of War Convention." Legally therefore Japan as a nation is not bound by the convention.

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We challenge the judge advocate to show how and by what provision of this convention these four accused are bound.

We object to the Geneva Prisoners of War Convention as being immaterial and irrelevant and that these four accused are not bound by this convention.

We object to the court taking judicial notice that Palau Islands is part of the territory under command of Commander Marianas and that Koror is one of the islands of the Palau group.

By our plea to the jurisdiction and our plea in bar we put in issue the question whether Palau is under the command of Commander Marianas. We hold it is not common knowledge but that it is a legal and strategual question which the judge advocate must prove.

We ask that the commission take judicial notice that Palau Island was not under the command of Commander Marianas May 24, 1945 at the time the offense was committed.

Before the court take judicial that Palau Islands are now under the command of Commander Marianas we move that the judge advocate be required to offer proof that it is.

We also object to the court taking judicial notice of the Hague Convention of October 18, 1907 particularly article 23(c) because the Hague Convention provided that shall be binding upon any of the belligerents in that war are parties to it. Neither Italy or Bulgaria has ratified the Hague 1907 Conventions and Japan is therefore not bound by these Hague Conventions of 1907.

Even the United States took advantage of this provision and under section 1 circular No. 136 War Department May 7, 1942 stated impart "The Hague Declaration number XIV October 18, 1907 prohibiting the discharge of projectiles and explosives from balloons (HD XIV) is not binding and will not be observed."

Isn't it strange that the judge advocates in order to prove their case now ask that the commission take judicial notice of a convention which the United States War Department in a written circular number 136, dated May 7, 1942 said was not binding upon the United States.

We move that the judge advocates be required to prove this convention and that it was in force, that Japan is bound by it, and that these four accused are bound by it particularly article 23(c), show how it is applicable in this case and relevant to the issues in question.

We object to the Hague Convention of October 18, 1907 as immaterial and irrelevant.

We move that the commission not take judicial notice of it.

Respectfully,

Martin E. Carlson
Martin E. Carlson,
Commander, USNR.

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0509

OBJECTION TO THE INTRODUCTION OF DOCUMENTS OFFERED INTO
EVIDENCE BY THE JUDGE ADVOCATES.

Delivered by
Commander Martin E. Carlson, U.S.N.R.

Objection to the documents said to be the statements of Koichi, Hiroe, former Captain, IJA; Katsuyama, Tetsuji, former First Lieutenant, IJA; Onose, Ichiro, former Second Lieutenant, IJA; and Tsuchiya, Naohiko, former Sergeant Major, IJA.

The accused object to the introduction into evidence of the documents purporting to be the statements of the accused because to admit these documents into evidence is strictly at variance with Section 734, Naval Courts and Boards, the 5th and 6th Amendments, and the rules of evidence particularly the rule prohibiting hearsay testimony.

The witness, Commander Ogden, has testified that he is the legal custodian of these documents. He testified he was ordered to investigate war crimes and interrogated suspects at the stockade at Guam. But he further testified that these statements, the documents purporting to be written by the accused Koichi, Katsuyama, Onose and Tsuchiya, were not even written in his presence. He maintains that the witness, Commander Ogden, is not competent as a witness to testify regarding these documents which are said to contain the statements of the accused. There is a presumption that a witness is competent to testify regarding matters at issue, but in this case the witness has stated that the statements were not made or written in his presence. He has by his own testimony admitted to being incompetent to testify as to whether or not these statements were made under threat, intimidation, promise of reward, voluntarily, or that they, the accused, were told they did not have to answer incriminating questions. Since the witness, Commander Ogden, is incompetent to testify regarding these matters, we hold that the judge advocate still has the burden of proof and must prove that these documents being offered into evidence are regular, that the documents were written by the accused, that the accused were warned that they were parties defendants, that they were notified of the gist of the evidence that tends to implicate them, that they were instructed they would be and were accorded the rights of accused before a court martial, namely the right to be present, to have counsel, to challenge members, to introduce and cross-examine witnesses, to introduce new matter pertinent to the inquiry, to testify or declare in their own behalf at their own request, and to make statements and arguments. The judge advocate has not proved that these statements were made voluntarily or that they are the truth. He has only proved that he took each of the accused one at a time out of solitary confinement and had them sign a statement as to the statement signed at Sugamo Prison, thereby trying to incorporate an unsworn statement into another and later statement. It isn't proper. They must be told they have the right to refuse to answer incriminating questions.

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0510

Nowhere in these documents does there appear anything to indicate that these safeguards guaranteed by the Constitution of the United States were ever accorded to these accused whose alleged statements are sought to be introduced.

To allow these documents to be introduced into evidence will be most prejudicial to the substantive rights of the accused. They will be made to testify against themselves.

C.M.O. 1, 1940, p. 72, lays down the rule: "A general court martial received in evidence, over the objection of the accused, extracts from the testimony of the accused before a Board of Investigation. The accused appeared before the Board of Investigation as an interested party. The record did not show that he took the stand at his own request, but did show that he was sworn and allowed to testify at length after it was apparent that he was involved to such an extent that an accusation against him could be implied although he was not made a defendant until he concluded his testimony. It follows therefore that his testimony before the Board of Investigation could have no evidential value in the instant case, and it should have been excluded by the court."

We further object because these documents do not show on the face that they were given voluntarily and that the accused, Koichi, Katsuyama, Onose, and Tsuchiya, waived all the rights of a defendant.

We object to the translation of the second paragraph of Tsuchiya's statement. It is translated: "about 8 o'clock the next morning we took Kaufman and went to the vicinity of the graveyard." It should be translated: "around 8 o'clock the next morning Kaufman was brought to the vicinity of the cemetery."

The date on this statement is September 8, 1947, but there is no place shown where the documents were made and signed. The original document was made at Sugamo Prison, Tokyo, but there has been added as part of the document a page, a sworn statement of Tsuchiya, dated November 8, 1947.

We hold that the judge advocate still has the burden of proof and must show by competent witness that these documents are regular and that the 5th and 6th Amendments of the Constitution of the United States of America and Section 734, Naval Courts and Boards have not been violated. He must show that the documents contain the truth.

Tsuchiya was an enlisted man in the Japanese Army. He was regularly demobilized on November 8, 1945. Then as a civilian living at his home, he was one day (October 15, 1947) suddenly arrested without a warrant and thrown into Sugamo Prison, a prison in Tokyo being run by the United States Army of Occupation, and kept there four days. Here he was held under arrest without a warrant or without charges ever being preferred against him. Prior to being put in Sugamo Prison

"P (2)"

0511

he was required to write a statement at the Meiji Building on September 8, 1947, which is now being offered into evidence by the prosecution. But this isn't the document that Tsuchiya wrote in Tokyo, because in addition the judge advocates have had added an additional page, a page on which there is a statement to the effect that Tsuchiya swears that the attached statement is the truth. This second statement was made by Tsuchiya while he was being held in solitary confinement at Guam, still without charges being preferred against him and having been taken from Japan to Guam without any extradition papers. It was a statement requested by a commander of the U.S. Navy of a civilian who had once been an enlisted man in the Japanese Army. Is it likely that he would refuse or even dare to refuse to sign whatever he was told to sign?

I would like to read to you what Wigmore says on present police practices and beliefs. I quote from Section 851a, Supplement to Wigmore on Evidence, Vol. 3, 1947, Pocket Supplement by Richmond Rucker: "851a. Confessions: Present Police Practices and Beliefs. Recent inquiries, however, in well-informed quarters give the impression that the whole attitude of the police personnel to the use of confessions needs a thorough and frank but sympathetic investigation, by an authoritative body, with committees from both parties exchanging facts and views in personal meetings. It is believed that the following statements of fact are correct, at least for hundreds of cities and in large classes of cases:¹ (1) The use of physical beating-up, in variant degrees of brutality, not only is practiced, but is deemed justifiable, on the ground of necessity. The necessity is said to exist chiefly in the cases of notorious gangsters and syndicated rascals, where direct testimony or adequate circumstantial evidence is not expected to be available; and that the practice is said to be limited to such cases. (2) The use of false pretences, deceiving the suspect into believing that silence will no longer avail, is habitually used, and is deemed justifiable. By "false pretences" is meant such assertions as "Your pal has told us the whole story and blames you, so you might as well tell your story and refute him if you can"; or "We have just found the goods where you hid them, and we have a complete case; so you may as well come clean"; the foregoing assertions being false. This frank justification of habitual use of falsities, where a person deemed guilty has been arrested, leads one to infer that a false denial of having used brutality, when inquiry is made at the trial, would also be deemed justifiable, for mutual protection, by the participants. (4) The use of the foregoing methods, when candidly justified, is placed on the ground that in many cases it would be impossible to obtain other evidence of any sort sufficient to take the case to a jury, and that therefore a confession is indispensable, if such persons are to be brought to justice at all. This doctrine approximates almost exactly the legal rule, obtaining in the Middle Ages in Continental law down to the time of the Code Napoleon, that no person could be condemned until he had confessed; which of course led to the lawful and habitual use of torture to complete the final formality. A police belief that a confession is indispensable, and that it is

"P (3)"

05 12

therefore obtainable by the above methods, naturally tends to a laxity in searching thoroughly for other evidence.

To the extent that the above practices and beliefs will be found to exist among police personnel generally, a thorough inquiry into the needs and possibilities of reform seems indicated. Such an inquiry, however, should be conducted by authorized committees representing both the police and the judiciary authorities, and with candid and sympathetic attitude; for these beliefs and practices have arisen naturally from the environment, and the police, as the enemies of crime and as a body of men devoting themselves at constant personal risk to the protection of the community, are entitled to the highest respect and consideration.

Meanwhile, until these unwholesome conditions are found to show improvement, so that both brutality and falsities may be presumed to be the rare exception rather than the habit, a Rule of Court of the following tenor would help to discourage the practices and perhaps to modify the beliefs:

Rule of Court: Confessions made to a Police or Prosecuting Officer. 'A confession made to a police or prosecuting officer, whether the confessing person is or is not under arrest or detention, will be receivable in evidence, to a grand jury or at a trial, on the following conditions only: '1. The interview at which the alleged confession was made must be recorded on a sound film,² the recording showing the place, the date and hour, the names of every person present, and all statements made by any person present. '2. The film must be annexed to a certificate, bearing the signatures of all persons present (except the arrested person), stating that the film is the whole of a film taken at the place and on the day and hour recorded and in their presence. '3. A copy of the film, with a similar certificate, must have been delivered to the accused or to his attorney, as shown by a receipt; and another copy must have been deposited in the custody of an incorporated bank in the county, subject to delivery to the Court on demand; and the film-copy presented in court must bear a notary's certificate of oath made by one of the persons present that the film offered in evidence is the identical film taken at the purporting place and time.'

These provisions may seem radical. But the impression given, from information received, is that the lack of scruple candidly shown in the use of these above practices, justified as they are on the ground of the necessity bringing villains to justice, calls for the above restrictions, in aid of the innocent and in discouragement of morally untenable methods...."

Does the prosecution bring into court the persons who were present when Tsuchiya made the statement at Tokyo, Japan? No, they do not. (In Sec. 833, Supplement to Wigmore on Evidence, Vol. 3, the case of People vs. Goldblott, 383 Ill. 176 49 N.G. 2d 36 (Murder confession involuntary) Fullin J., 41 "Goldblatt was subjected to ex-

"P (4)"

tensive interrogation day and night for nearly three days. He was not permitted to see relatives or friends and had no lawyer with whom he could consult...no warrant had been issued for his arrest, and he was not taken before any magistrate for examination until after a habeas corpus writ had been obtained in his behalf.")

After Tsuchiya had been arrested without any warrant, was he ever allowed to see relatives or friends or consult with a lawyer? No.

He has been in solitary confinement ever since. Not until November 10, 1947 was he notified why he was held and served with the charges and specifications. Two days prior he was asked to sign a verification. He did and we object on the grounds he was forced to sign it.

(The case of People vs. Cope, 345 Ill. 278, 178 N.G. 95, laid down the rule that "All persons present at the time the confession was made" must be called. Have the prosecution called all persons who were present when the "confession" was signed? They have not. They haven't even called a single person who was present or have they proved who was present. Those "confessions" and we object to the use of the word confession because not a single statement is a confession, were all made and signed at Tokyo, at Sugamo Prison. How they were secured we will never know because the prosecution haven't seen fit to call any witnesses who were present when they were written and signed.

Quoting again from Vol. 3, Wigmore on Evidence, Sec. 860, p. 342: "The original English rule was that the prosecution (offering the confession) must show that it was made voluntarily, i.e., without any improper inducement from the person receiving the confession, and this rule is accepted in most American jurisdictions." 1783 Thompson's case. 1 Leach Cr. L., 3rd ed., 328 semble, Hotham, B.; 185 R v Warringham v. Den. Cr. C. 447, Parke B.; 1893, R. v. Thompson, 2 Q.B. 12, 18.
Ireland: 1924 State v. Treanor (1924) 2 Jr. Rep. 193;
Canada: R v Picariello, (1923) 1 D.L.R. 979 Alta; (cited ante 839);
1934 R v. Ressmussen, (1935) 1 D.L.R. 237 Alta. (preceding cases not cited.);
1935 Nearkudonis v The King, (1935) 3 D.L. R 424, Dom.

Particularly note U.S. Fed: 1883, Kopt v. Utch, 110 U.S. 574, 587, 28 L. Ed. 262, 4 Sup. 202, Harlan, J.;
Ill. 1924 People v. Spranger 314 Ill. 602, 145 NE 706; 1926, People v. Fox, 319 Ill. 606, 150 NE 347; 1929 People v. Frugoli, 334 Ill. 324, 166 NE 129.

California 1899, People v. Castro, 125 Cal. 521, 58 Pac. 133.
Minn. 1937 State v. Nelson 199 Minn. 86, 271 NW 114.
Missouri 1913 State v. Thomas, 250 Mo. 189, 157 SW 330 (for a confession taken in writing and signed while under arrest.)

"P (5)"

Virginia 1870 Thompson's Case, 20 Gratt. 731:

"Moreover, on the principle of P. 18, ante, if a confession is admitted as voluntary but afterwards the evidence seems to show that it was not voluntary, the objection to it must be renewed, i.e., by motion to strike out."

Mass. 1934, Brown v. State, 173 Mass. 542, 158 So 339, 173 Mass. 542 161 So 465:

"The view has also found representatives that the prosecution must, not merely in the above circumstances, but in all cases, show the absence of an inducement from anyone else and not merely from the person receiving the confession."

Citing 1876 State v. Jervey, 28. La., Ann. 925 (that the prosecution must negative compulsion, not only of B., but of anyone else); 1920 People v. Abedosa, 53 P.I. 788.

We object because Commander Ogden is testifying as to hearsay. He can only testify as to what the interpreter told him. The prosecution would have the Commission believe that Commander Ogden is qualified as a witness and yet he only knows what he is testifying to through the hearsay of the interpreter. The prosecution must call the interpreter, Mr. Frederick Savory in this instance. We quote section 812, Vol. 3, Wigmore on Evidence, page 227: "A person conversing with a third person through an interpreter is not qualified to testify to the other person's statements, because he knows them only through the hearsay of the interpreter. Ordinarily, therefore, the third person's words cannot be proved by anyone except the interpreter himself."

We object because the interpreter, Mr. Savory, was not sworn.

We object because these statements are not confessions. Wigmore on Evidence, Vol. 3, Sec. 821, Confessions: "A confession is an acknowledgment in express words, by the accused in a criminal case, of the truth of the guilty fact charged or of some essential part of it."

Respectfully,

Martin Emilius Carlson
Martin Emilius Carlson
Commander, U. S. N. R.

"P (6)"

05 15

PLEA IN ABATEMENT

Delivered by
Martin E. Carlson.

May it please the Commission:

All of the accused hereby make this plea in abatement in order to bring to the attention of the Commission the fact that the affidavit of Koichi, Hiroe; Katsuyama, Tetsuji; Onose, Ichiro; and Tsuchiya, Naohiko, introduced into evidence by the judge advocate to prove the controverted facts material to the issue, cannot be and affidavits are not admissible as to controverted facts material to the issue, that is records of court cannot be proved by affidavit.

We cite the following cases in support of our contention:
Ala. Pukering vs Townsend, 118 Ala. 351, 23 S. 703; Ark. Western Union Tel. Co. vs Gillis, 89 Ark. 483, 117 SW 749, 131 Am. SR 115; Ge. Nraples vs Hoggard, 58 Ga. 315; Ill. Murphy vs Schoch, 135 Ill. A. 550; Fankelstein vs Schilling 135 Ill. A 543; Austin State Bank vs Morrison, 133 Ill. A 339; Hume etc. Mfg. Co. vs Caldwell, 35 Ill. A. 492 /aff 136 Ill. 163, 26 N.E. 599 /; Quinn Vs Rawson, 5 Ill. A. 130; Ind. Ohio etc., R Co. vs Levy, 134 Ind. 343, 32 N.E. 815, 34 N.E. 20; Kan. Johnston vs Johnston, 44 Kan. 666, 24 P. 1098; Ky. May vs Williams, 109 Ky 682, 60 S.W. 525, 22 Ky. L. 1328; Phoenix Ins. Co. vs Lawrence, 4 Metc. 81 Am. D. 521; Newton vs West, 3 Metc. 24; Telbot vs. Pierce, 14 B. Mon 158; Morton vs Sanders, 2 JJ Marsh 192, 19 Am D. 128; Mo. Patterson vs Fagan, 38 Mo. 70; N. J. Staley vs South Jersey Realty Co. (Sup) 90 A. 1042; Peer vs Bloxham, 82 N.J. L. 288, 81 A. 659; Baldwin vs Flegg, 43 N.J. L 495; Cooper vs Galbraith, 24 N.J. L 219; Lummis vs Stratten, 2 N.J. L. 245; Layton vs Coopa, 2 N.J. L 62; Pullen vs Pullen, 46 N.J. Eq. 318, 20 A. 393; Clutch vs Clutch, 1 N.J. Eq. 474; N.Y. Inre Eldridge, 82 N.Y. 161, 37 Am R.558; Okl. Watkins vs Grieser, 11 Okl. 302, 66 P. 332; Pa. Hoer vs Hulvey, 1 Burn 145; Sturgeon vs Vaugh, 2 Yeates 476; Plaukuron vs Cove, 2 Yeates 370; Lally vs Kitzmiller, 1 Yeates 28; S.C. McBride vs Floyd, 188 C.L. 209; Texas, Henke vs Keller 50 Tex Co. A. 533, 110, S.W. 783; Wash. Graham vs Smart, 42 Wash 205, 84 P. 824; W.Va. Harold vs Crag 59 W.Va. 353, 53 S.E. 466; Peterson vs Ankrom, 25 W.Va. 56; Tennant vs Divine, 24 W.Va. 387; Ind. Kellog vs Sutherland, 38 Ind. 154; Pa. Smith vs Weaver, 41 Pa. Super 253, 256.

The judge advocate may correct this procedure by refraining from bringing into evidence affidavits to prove the records of the court or this Commission that is to prove the controverted facts material to the issue.

All of the accused pray that these affidavits of KOICHI, Hiroe; KATSUYAMA, Tetsuji; ONOSE, Ichiro; and TSUCHIYA, Naohiko, be stricken from the record and prays of judgment of the charges and specifications and prays that the charges and specifications be quashed.

Respectfully

Martin E. Carlson
Martin E. Carlson,
Commander, USNR.

05 16

PLEA FOR DIRECTED ACQUITTAL

in the case of

ONOSE, Ichiro

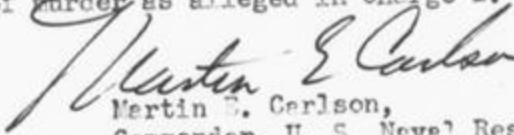
The accused ONOSE, Ichiro, makes a motion for a directed acquittal.

There has been no evidence offered by the prosecution to prove the criminal intent of Onose, which is required in order to prove the accused guilty of the charge of murder.

Nor has there been any evidence offered by the prosecution that he did assault, strike, kill, and cause to be killed by beheading with a sword one Wallace F. Kaufman.

No evidence has been offered by the prosecution to show that Onose directly participated in the alleged execution.

The accused Onose, Ichiro, prays that the Commission direct an acquittal as to the charge and specification of murder as alleged in Charge I.


Martin E. Carlson,
Commander, U. S. Naval Reserve,
Counsel for the Defense.

"R"

0517

PLEA FOR DIRECTED ACQUITTAL

in the case of

TSUCHIYA, Naohiko

The accused TSUCHIYA, Naohiko, makes a motion for a directed acquittal.

Tsuchiya was ordered to accompany a commissioned officer who had been ordered to escort a prisoner from 14th Division Headquarters to the anti-aircraft unit at Koror. This was a legal order and Tsuchiya, not knowing for what purpose Kaufman was being sent to Koror until after he heard the escort officer Onose receive his orders from the Staff Intelligence Officer, Yajima, accompanied his superior officer Onose as he had been lawfully ordered to do.

The prosecution has not proved that Tsuchiya was ever ordered to execute Kaufman or that Tsuchiya participated directly or indirectly in the execution.

All that he did was to hand over to the condemned man, Kaufman, his personal belongings as he had been ordered to do.

Surely the prosecution do not contend that this constitutes murder on the part of Tsuchiya?

The accused Tsuchiya prays that the Commission direct an acquittal as to the charge and specification of murder.

Martin E. Carlson
Martin E. Carlson,
Commander, U. S. Naval Reserve,
Counsel for the Defense.

"S"

05 18

Opening Statement

"丁"

冒頭陳述

昭和二十二年十二月一日

弁護人 秋田日出夫

検事側が主張し且つ立証セント努メタ本件犯罪事実、要旨ハ昭和二十年五月二十四日頃、はうお諸島こーる島、海軍基地ニ於テ臨前夜被告小野瀬一郎、土屋直孝、下條軍属及ビ補助憲兵一名ニ依リはべるこーる島憲兵隊ヨリこーる島ニ護送サレテ来リ未空軍俘虜 Kaufman 少尉ヲ被告小市廣榮、部下タル被告勝山哲爾が斬首シタト云フコトデアツテ、之ニ依リ被告等ハ孰モ謀殺ノ罪ニ問ハレタルノデアル。成程幸爾トシテ叙上ノ事実ヲ告ゲラレタ人ニハ、被告等殊ニ被告小市及同勝山が謀殺罪ニ問ハレルモノ亦已ムヲ得ヌ所トセラレルデアラウ。

因ヨリ弁護側ニ於テモ前述ノ日時、場所ニ於テ同題ノ俘虜 Kaufman 少尉が被告勝山、小市ニ依リ処刑セラレタト云フ事実ヲ争ハウトスルモノデハナシ。唯被告等が其ノ弁護、爲メ主張セントスル所ハ右 Kaufman 少尉、処刑ハ全ク被告等、最高上官タル井上司令官ノ命令ニ因ルモノデアツテ、被告等ハ此ノ処刑ニ對シ終始反対ノ意見ヲ表明シ其ノ力、及ブ限リ之ヲ阻止ニ努メタルノデアルが断乎タル司令官ノ決意ト上命ト從フ不勤、鉄則トシ、之ヲ違反ニ對シテハ最高死刑ノ嚴罰ヲ以テ臨ム日本軍律ノ重壓ニ抗シ得ズ意ナラズモ此ノ処刑ヲ

"T (1)"

執行スルノ旨ナキニ至ツタト云フ事実デアル。

尤ツ被告小市ハ事件ノ数日前ヨリ教次ニ亙リニ守備隊長土井大佐ヨリ士氣昂揚、馮 Kaufman ナ尉ヲ處刑スベキ旨、井上司令官ノ意圖ヲ傳ヘラレタノデアルガ其ノ都度軍ナル一俘虜、處刑ハ部隊ノ士氣昂揚ニ何等資スルモニ非ズ等ノ理由ヲ以テ、之ヲ執行ヲ拒否シ続ケテ來タデアツテ、土井大佐亦被告小市ノ意圖ヲ諒トシ、之ヲ司令部ニ傳達シタノデアル。

被告小市ハ司令部作戰參謀中川中佐ノ要求ニ依リ敵機、空爆ニ因ル陣地及ビ人員ノ被害状況、陣地復旧、進捗状況ノ報告竝ニ將來ニ於ケル防空作戰計畫ノ打合、目的ヲ以テ事件ノ前日司令部ニ出頭シタノデアルガ出發、際モ司令部ニ於テ談一度ニ俘虜、處刑ニ及ベバ斷固ニ之ヲ拒絶スベキ強固ノ決意ヲ藏シテ中タノデアル。然ルニ司令部ニ於ケル身態ハ被告ノ豫期ニ反シ井上司令官直接ノ命令デアツタノデアル。而モ井上司令官ノ俘虜處刑ノ決意ハ既ニ牢固トシ拔クベカラザルモノト如クデアツタ。茲ニ於テ被告小市ハ更ニ反對意見ヲ表明スルモ所詮其ノ甲斐ナカルベキヲ思ヒ、井上司令官ノ嚴命ニ服従シタノデアル。

之迄俘虜、處刑ニ反對シ続ケテ來タ被告小市モ一たび上官ノ命令ニ服従シタ以上ハ迅速確實ニ之ヲ執行スルコトガ上官ノ意圖ニ副フ所以デアリ。又自己ノ嚴格ニ統制下秩序を整然トシ嚴肅裡ニ執行スルコトガ俘虜ニ對スル武人トシテノ

○ ○ ○ ○ ○
禮儀ナトテ、帰隊後諸般準備を整へ豫定如ク嚴肅
裡ニ處刑執行ヲ終ヘタデアル。又處刑後ニ於テ墓ヲ作り
香華ヲ手向ケ一同黙禱ヲ捧ゲテ俘虜冥福ヲ祈ルト共ニ、
後直々ニ墓標ヲ建て展墓スル等俘虜英靈ニ對シテ能ク限リ、
禮ヲ盡シ被告小野瀨ヲシテ此旨司令部ニ報告セシメタノデ
アル。叙上、事實ハ被告小市自ラ証人台ニ立ツテ之ヲ証言スル
共ニ被告カ井上司令官命令ヲ受ケタ状況ハ當時席ヲ同じ
ウシテ具ニ之ヲ聴取セル中川中佐ガ、又處刑執行前後、現
場、状況ハ目撃者一人タル証人田中正雄ガ之ヲ証言スルデ
アラウ。

次ニ被告勝山ハ被告小市ガ司令部ニ出發スルニ先之チ
被告小市ニ招ケル。同被告ヨリ被告勝山ヲシテ處刑ヲ実行セシ
ムベキ前、井上司令官、意圖ヲ傳ヘラレタガ、其ノ不當ナル所以ヲ
述ベテ断乎之ヲ拒否シ告ル。被告小市ニ依頼シタ。被告
小市又亦之ニ同意シタノデアル。然ルニ翌晚深更司令部ヨリ
帰隊セル被告小市ヨリ電話ニテ「飽ク迄勝山ヲシテ處刑セシ
メヨ」ト司令官、命令ヲ傳ヘラレ。今ハ全クモヒナシトシテ之ニ服
従シタルモ、之ハ全ク被告、意圖スル所デハナク上官、命令
抗難、全クモヒナシテ此等ニ出デタノデアル。這般事情ハ
被告小市ガ証人台ニ立ツテ之ヲ証言スルデアラウ。

次ニ被告小野瀨一郎ハ直屬上官タル情報參謀矢島
中佐ヨリ Kaufman 少尉、Kolor へ護送、其所持品ノ返

還及Kaufman少尉処刑確認ナル三ツノ任務ヲ授ケラレ。
被告土屋及心下條軍屬ヲ従ヘテ事件。前日Kaufman少尉ヲ
護送シテKoror=赴キ所定ノ任務ヲ果シテ司令部=歸リ、上司=
其首報告シタデアルガ、被告小野瀬、所為ハ唯ソレ丈=止マリ
Kaufman少尉、處刑=ハ全ク周知シテ居ラヌノデアル。随テ
彼ハ謀殺罪ヲ犯シテ居ラヌノデアル。此事實ハ、彼ノ同僚ハ
渡邊利夫或ハJulius浜野が証人台=立ツテ証言スルデ
アラウ。

次=被告土屋直孝ハ前述、如ク矢島參謀、命ヲ承ケタ
被告小野瀬ヨリ彼ト共=Koror=同行スベキ旨ノ命ヲ承ケテ
之=隨行シ、被告小野瀬ノ任務、一部タルKaufman少尉
ノ所持品ヲ返還シ、処刑、直前其、現場デ実行シタデアルガ、
彼ハ檢事側証人矢島ニ証言シテ居ル様=全ク被告小野
瀬、補助者=過ギナイデアツテ、而モ彼が同行ヲ命ゼラレタノモ
偶、當日彼が出張ノ順番=當ツテ中外出テ全ク偶也、事由=
基クモノデアル。斯クハ如ク彼ハKaufman少尉、処刑=ハ何
等干与スル所ナク、随テ斷ジテ謀殺罪ヲ犯シタモ、デハナイ。
被告土屋自ラ自己ヲ=証人台=立ツテ之ヲ証言スルデアラウ。

最後=才=迄訴=於テ被告ハ市ハ戦争ノ法規ニ=慣習
違反トシテ職務怠慢=付テ問責セラレタルガ、彼=ハ職務
怠慢=問責セラレベキ何等ノ理由モナイ。俘虜保管責任ハ
はらお最高指揮官タル井上司令官=ニソアレ。一介ノ高射

砲隊長タルニ過ギテ被告小市ニハ斬ジテナイデア。而モ被告
小市ハ其ノ井上司令官ノ命令ニ依テ俘虜、処刑ヲ執行シタデ
アツテ井上司令官ノ命令ヲ拒否スベキ義務。国際法上
高射砲隊ニ過ギザル被告小市ニ謀セラレテハ居ラヌデア
ル。サレバ俘虜保護義務違反ニ対スル責任ハ処刑ヲ命ジタ
井上司令官ニコソ内ハルベキデアツタ。之ヲ被告小市ニ内ラ
ハ当ラザルモ甚ダシト謂フベキデア。 (終)

飯田日出史

OPENING STATEMENT FOR THE DEFENSE

Delivered by KUNATA, Hideo, on 1 December 1947.

The gist of the facts which the prosecution has alleged and endeavored to prove in the present case is that on or about 24 May 1945, the accused KATSUYAMA, Tetsuji who was a subordinate of the accused KOICHI, Hiroe, decapitated at the naval cemetery situated on Koror Island, Palau Islands, an American prisoner, Second Lieutenant Kaufman who had been escorted the night before to Koror Island from the Kompeitai on Babelthump Island by the accused ONOSE, Ichiro, the accused TSUCHIYA, Naohiko, Gunsoku SHIMOJO and an assistant Kompei (M.P.) Undoubtedly, to a person who is suddenly told of the above facts, it would sound only natural that those accused, particularly the accused KOICHI and KATSUYAMA are charged with murder. Needless to say, the defense does not in any way intend to take issue with the Judge Advocate concerning the fact that the prisoner, Second Lieutenant Kaufman was decapitated at the above mentioned place and time, by the hands of the accused KATSUYAMA. However, the point to be asserted and proved by the accused in their defense is that the execution of Second Lieutenant Kaufman was solely attributable to the order of Commanding Officer Inoue, the highest superior officer of these accused, and though these accused expressed opposed opinions throughout and exerted every effort with all the resources at their command to stop the execution, they had to carry it out against their will, unable to counter the stubborn will of the Commander and oppression of the military regulations of the Japanese Armed Forces imposed upon them, the essence of which lay in superior orders and obedience thereto by the subordinates and stern punishment amounting to the capital sentence which could be meted out for the violation of these iron-clad rules.

Several days prior to this incident, the accused KOICHI was relayed by Colonel DOI by phone several times the intention of the Commanding Officer Inoue to execute Second Lieutenant Kaufman to bolster the spirit of the men. The accused KOICHI, however, had refused to have this execution performed from the beginning because the execution of a single prisoner would not in anyway contribute to a raise in the morale of the unit. Colonel DOI also agreed with the opinion of the accused KOICHI and relayed it to the division headquarters.

When the accused KOICHI, on request of operation staff officer, Lieutenant Colonel NAKAGATA of the division headquarters, went to headquarters the day before the incident to report on the condition of damages to positions and men sustained by the bombings of enemy planes, and conditions of progress made in repairing the positions and to discuss future anti-air battle plans, he proceeded to headquarters with a firm determination to refuse, if the execution of the prisoner should be mentioned at the division headquarters. But the state of affairs was not as he had expected, and he was directly given orders by the Commander INOUE. Furthermore, the decision of the Commanding Officer INOUE to have the prisoner executed seemed already decisive and irrevocable. Here, the accused KOICHI, realizing that it would be of no avail to express his opposition, acceded to the stern order of Commanding Officer INOUE. The accused KOICHI who had continuously opposed the execution of the prisoner up to this time, thought that since he had once acceded to the order of his superior, to carry it out expeditiously and precisely was to comply with the wishes of the commanding officer, and to conduct this in an orderly and solemn manner under his control was courtesy due the prisoner as a soldier. Upon returning to his unit, the accused KOICHI made the arrangements and carried out the execution in such a solemn manner as he had planned. Moreover, after the execution was over, he had a grave made, offered incense and flowers, and with the rest offering a silent prayer, prayed for the prisoner's peaceful

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repose. He did everything possible to comply with the honors due the soul of the deceased prisoner. He then had the accused ONOSE report about this to division headquarters. The accused KOICHI will take the stand in his own behalf and testify to the above facts. In order to corroborate the testimony of the accused KOICHI, Lieutenant Colonel NAKAGAWA who was with KOICHI will testify to the circumstances under which the accused received the orders from Commander INOUE; and an eye-witness TANAKA, Masao will testify to the circumstances surrounding the actual scene of the execution.

Next, the accused KATSUYAMA was called by the accused KOICHI prior to his departure to division headquarters, and was relayed the intention of Commanding Officer INOUE to have him execute the prisoner. KATSUYAMA stated the impropriety of the plan and requested the accused KOICHI to refuse it firmly for him. KOICHI agreed to this. But, late the next night the accused KATSUYAMA was relayed the orders of the division headquarters by KOICHI through the phone, orders which insisted upon KATSUYAMA's performance of the execution of the prisoner. As KATSUYAMA could not help this, he obeyed and carried it out. This was anything but what the accused KATSUYAMA intended. He unavoidable took this step because he could not resist superior orders. The circumstances surrounding this fact will be testified to by the accused KOICHI when he takes the stand.

The accused ONOSE received three specific duties -- to escort Second Lieutenant Kaufman to Koror, to return his belongings, and to confirm the execution of Second Lieutenant Kaufman -- from his immediate superior intelligence staff officer, Lieutenant Colonel YAJIMA. On the day before the execution, accompanied by the accused TSUCHIYA and gunsoku SHIMOJO, he escorted Kaufman to Koror. Completing his designated mission he returned to the division headquarters and reported it to his superiors. This was the whole of ONOSE's actions and he did not in any way take part in the execution. As regards this, ONOSE's colleagues WATANABE, Toshio or HAMANO, Julius will take the stand and testify.

As regards the accused TSUCHIYA, upon receiving the above mentioned orders or staff officer YAJIMA from the accused ONOSE, he accompanied ONOSE to Koror. TSUCHIYA carried out a part of ONOSE's duty of returning Kaufman's belongings at the scene just before the execution, but he was only ONOSE's assistant as has been testified by prosecution witness YAJIMA. Moreover, the reason why he was selected to go along was because it so happened that it was his regular turn to go out on a trip that day, and was sheer coincidence. Therefore, he took no part in the execution and definitely did not commit murder. The accused TSUCHIYA will take the stand on his own behalf and testify to this.

Lastly, in Charge II, the accused KOICHI is charged with neglect of duty as violating the law and customs of war. There are, however, no grounds on which to charge him with neglect of duty. The responsibility for the custody of the prisoner lies in the Supreme Commander of Palau, Commanding Officer INOUE and cannot devolve upon the accused KOICHI who was only a commander of the anti-aircraft unit. Moreover, the accused KOICHI carried out this execution of the prisoner in accordance with the order of Commanding Officer INOUE and no duty under international law is imposed upon the commander of the anti-aircraft unit, the accused KOICHI, to refuse the order of Commander INOUE. Therefore, the responsibility of violating the duty of keeping custody of the prisoner should be placed upon the Commanding Officer INOUE who gave the order.

to execute the prisoner, and to charge the accused KOICHI with it would be far from the point.

Respectfully,

Hideo Kuwata.

I hereby certify the above to be a true and complete of the original "Opening Statement For The Defense" consisting of three (3) typewritten pages, to the best of my ability.

Respectfully,

Eugene E. Kerrick, Jr.
EUGENE E. KERRICK, Jr.,
Lieutenant, USNR.,
Interpreter.

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Inducement
notes

"V"

公知、事實等採甲、申立

昭和22年12月1日

弁護人 唐澤高美

以下、公知事實並顯著たる事實、立證ヲ要セズニテ証據
トシテ 御採甲 願ヒ度イ

一、アメリカ合衆國海軍々政條例第61條

裁判、制限。一般、犯罪

如何ナル人ト雖モ次、條文ニ規定セラルル場合ヲ除ケハ
裁判又ハ処罰、命令發布前二年以前ニ犯罪セル如何ナル
犯罪ニ對シテモ軍法會議ニヨリ裁判セラル又ハ他ノ方法
ニヨリ罰セラルヘキナリ。但シ不在若クハ他ノ障害ニヨリ
同期間内裁判ニ服シ得ナカシ場合ハ此ノ限リナシ

二、パラオ諸島ガ 1920年12月17日ヨリ 1945年9月2日迄
日本、委任統治下ニアツタコト

三、アメリカ合衆國憲法修正第5條

死刑、正當ナルヲ就

何人モ大陪審員、申告又ハ起訴ニヨリニアラザレバ死刑
或ハ自由刑ヲ科セラルル犯罪、責ヲ負ハシアルコトナリ
但シ陸海軍ニ隊又ハ戰時若クハ公共ノ危険ニ際シ
現ニ服役セル民兵、向ニ起リタル事件ニ就テハ此ノ限リ
ニセラズ。何人モ同一罪過ニツキテ再度生命身體ノ

危殆ニ臨ミラルハ外ナ。又何人ト雖モ刑事ニ
於テ自己ニ不利ナル証人ノ地位ニ立ツヲ強制セラルル
ナリ。又正當ナル法ノ手續ニ依ラズテ生命自由
或ハ財産ヲ奪ハラルナリ。又適當ナル賠償ナクテ
私有財産ヲ公共ノ用途ノ爲メニ徵收セラルナリ

四. 1929年7月27日「ジュネーブ」條約第60條及63條
第60條

俘虜ニ對スル裁判手續ノ開始ニ際シ捕獲國ハ成ル
可ク速ニ且常ニ其論ノ開始期日前ニ保護國ノ代
表者ニ之ヲ通告スベシ...

第63條

俘虜ニ對スル判決ハ捕獲國軍ニ屬スルモノニ關スル同一
ノ裁判所ニ於テ且同一ノ手續ニヨリテノミ言渡サルル
コトヲ得ベシ

五. 1917年及ブルガリヤガ1907年ハグ條約ヲ批准
シテ中タイ事

六. 戰軍法院 第25條及第38條

第1496章 訊問調書 認答ニ得ル場合(オ25條)
又對側當事者ニ正當ナル通告ヲナシテトリスル適當
ニ確証アル訊問調書ニハ若シソノ証人が裁判
所 軍法委員會ノ位置知ルハ又ハ領域地方

外ニ居住ニ又ハ行カヌル場合又ハ裁判所又ハ審問
ノ場所ヨリ 100 マイル 離レテナル所ニ居住ニ又ハ行カ
トスル場合又ハソノ証人が年令 病氣 身体ノ虚弱 拘
禁又ハ他ノ正當ナル理由ノ爲同裁判所又ハ審問ニ出席
証言出来ヌルヲ裁判断所 軍法委員會又ハ任命當
局ニ報告ヲカフテナル場合ニ於テ同軍事裁判所又ハ
委員會ニ於ケル死刑ヲ含マザル如何ナル訴訟ニ於
テモ証拠トシテ讀ムルヲ出来ル。但シ死刑ヲ含ム
事件ニ於テハ 訊問 調書ニヨリ 証言ヲ弁護側ハ引証
スルヲ出来ル (1920 年 6 月 4 日 第 227 章 第 2 節
第 41 法令 第 292)

第 1509 章 裁判長ノ法則ヲ規定シ得ル (第 38 條)
裁判長が適用シ得ルト看做ス範圍内ニ於テ
アメリカ合衆國、地方裁判所、刑事事件ニ於テ一般
ニ認めラレタル証拠法ヲ適用スル規定ニ基テ
軍法會議、軍法委員會、審問會 其他、軍事裁
判ニ於ケル事件ニ於テ 裁判長ハ時ニ應ジ 彼が
修正シ得ル法規ニヨリ 証拠法ヲ含ム裁判方式ヲ
規定シ得ル。但シ之等ノ條文ニ又對又ハ矛盾ニ
ツイテヲ規定セザルナラヌ。ソレヲ更ニ本條文ニ基テ
作ラレタ規定ハ 年々議會ニ提出サルベナラヌ

(1920年6月4日 第227号 第1節 第41
法令 794)

七. 海軍律 第454節

評問調書が使用せられる場合、制限

海軍省條例第68條、規定する所は、從て口頭、
証言が得られ、理由が評問調書が検事側
より証拠として使用せられる場合、死刑又は一
年以上、禁錮刑を科すことが出来ず、

又政策上、士官又、準士官、裁判に於て検事側が
評問調書を使用する場合、判定せられ、最高刑、
解雇以上でなければならぬ。

之等、制限、制、制限がある犯罪、裁判に於て
否と否とをわきま、事件に適用される。評問
調書が全罪状項目に關係してある場合、
此、制限、關係ある罪状項目に對して、適用される。

八. 軍隊内務令 (昭和18年8月11日 軍令陸16号)
綱領

五. 軍紀、軍隊、命脈なり、故に軍隊、常は軍紀を振
作するを要す。時と所とを論ぜず、上下齊に
軍、本義を体し、熱誠に軍務を努力し、
命令は必ず行はる。是を軍紀振作、實証と爲す。

服従は軍紀ヲ維持スル要道ナリ故ニ至誠
上官ニ服従シ其命令ハ絶対ニ之ヲ履行シ
習性ト成ルニ至ラセラルヲ要ス而シテ服従ハ
至誠盡忠ノ精神ヲ出テ陣中雨注ノ間
克ク身命ヲ君國ニ獻ゲ一毫上官ノ指揮
從フニ至ルベキモノニシテ其ノ之ヲ致ス所以、道
上官先ツ自ラ命令ヲ遵奉シテ服従ノ範ヲ
垂ルニ在リ。

第二章 服従

第九 隷下ノ者其ノ長ニ服従スルハ如何ナル場合ヲ
向ハスルハ嚴重ナルベシ
隷下ニ非ザル受令者ノ命令ニ對スル場合モ亦
之ニ同じ

第十 隷屬若ハ指揮ノ關係ヲ有セザル上級先任者
ト下級新任者トノ間ニ於テモ各々其ノ職務ニ
妨ケナキ限リ服従ノ道ヲ守ルベシ

第十一 命令ハ謹テ之ヲ守リ直クニ之ヲ行フベシ
決シテ其ノ當否ヲ論ジ其ノ原因理由等
ヲ質問スルヲ許サズ

新ニ受クル命令ト以前ノ命令ト齟齬スル
トキハ徐々ニ其ノ趣ヲ申述ベ指示ヲ請フベシ

第十二 軍隊ヲ指揮スルニ足ル信スル所ハ上官ヲ
輔佐スルノ至情ヲ以テ進デ之ヲ上官ニ開陳
スルハ各級ノ軍人特ニ幹部ノ責務トス 然レ
ドモ其ノ開陳ニ當リテハ秩序ヲ紊ルガ如キ
事アルベカラズ 又一度上官ノ決定スル事項ニ
對シテハ縱ト意見ヲ異ニスルトモ雖モ常ニ
己ヲ屈シテ專心上官ノ意圖ヲ達成スルヲ
勉メテ。

九. 陸軍刑法

第四章 抗命ノ罪

第57條

上官ノ命令ニ又抗ニ又ハ之ニ服従セザルモノハ左ノ
區別ニ從テ処断ス

1. 敵前ニ於テハ死刑又ハ無期若ハ10年以上
ノ禁錮ニ処ス
2. 軍中又ハ戒嚴地境ニ於テハ1年以上10年
以下ノ禁錮ニ処ス
3. 其他ノ場合ニ於テハ5年以下ノ禁錮ニ処ス

(以上)

陳述書

元日本陸軍大尉 小 市 廣 策
Toic4, "w"

私、既、証人台ニ立テ証言シタガ、之、阿加ニ更、以下、陳述、致、
度、ト思ヒ、私、以下、陳述、井、上司令官ガ、私、米軍ニ付屬、ヲ、処、利、ニ、存、
命令サ、當時、状況、ヲ、委員各位ニ、理解、ヲ、致、ス、度、ト、云、ヒ、熱、心、ト、
希望、リ、タ、委員、皆様、新、ト、ス、ル、モ、ラ、フ、コ、ス、
私、之、迄、軍事的、モ、ト、引、キ、ト、モ、括、リ、タ、コ、ト、早、ク、ラ、陸軍、士官、学校、
入、ッ、タ、コ、ト、ス、

一、陸軍士官学校入学、動機、及、同校、教育

私、昭和十三年十二月一日、陸軍士官学校ニ、入学、同、十、三、年、七、月、二十、日、同校、
卒業、シ、タ、私、士官学校入学、動機、ハ、華、北、ノ、軍、人、生活、
憧、リ、レ、ト、云、フ、事、ヲ、決、シ、テ、軍、人、生活、ト、シ、タ、

士官学校、入、ル、最、初、一、年、間、ニ、普通、高等、教育、ヲ、受、リ、後、一、年、半、間、
軍事、教育、ヲ、受、リ、タ、コ、ト、ス、私、在、学、中、ハ、既、ニ、日、華、事、変、ガ、始、メ、ヲ、
知、リ、タ、コ、ト、ス、時間、ハ、短、縮、サ、レ、タ、コ、ト、ス、道、テ、教科、ヲ、主、ト、シ、戦、術、ヲ、教、練、
ス、ル、コ、ト、ス、学科、ハ、ナ、リ、殊、ニ、私、在、学、中、約、半、年、間、病、氣、休、業、シ、タ、コ、ト、ス、

國際法規、ハ、何、レ、始、メ、学、ブ、校、會、ニ、入、リ、セ、タ、コ、ト、ス、

今、同、事件、ニ、於、テ、私、者、其、レ、國際、法的、ニ、善、イ、ト、惡、イ、ト、言、フ、ハ、
人、道、的、見、地、カ、ラ、判、断、シ、タ、コ、ト、ス、

ニ、事件、當時、ニ、於、テ、ハ、何、レ、お、獨、島、駐、兵

昭和十九年八月中旬頃、ニ、於、テ、大、政、變、ヲ、開、始、セ、タ、爾、來、終、戰、到、
迄、連、日、連、夜、四、候、及、五、八、候、援、護、敵、機、ヲ、伏、シ、テ、上、リ、タ、コ、ト、ス、
ト、言、フ、事、過、去、ニ、テ、同、野、大、政、變、ガ、續、ク、ラ、レ、タ、コ、ト、ス、

斯様ノ激戰下ニ在リモ私々ニ私ノ誓一同ノ敵ニ對シテ憎悪觀念等、
微塵モ懷イタコトハナク都テ敵ヲ殺シ、再敢テ攻撃振テ見ス一同心ヲ
敵ガ天晴レケト怒服シタモノデシク

三、家庭状况

父、昨一月松、復、通、常、鄉、之、二、月、前、死、亡、之、事、。

必が家計の当群、家計、非常、甚しく、毎日、生活、自、ハ、テ、存、ル、必、ズ、シ、タ、リ、

我が家々々々と夫母の毎日の前、陰膳ヲ据テ才前、帰宅、待ツて居ルカ

四、事件：對乙的懲戒

爾后一週由位八里雲頭上散下標何^ト重苦^ク不愉快^ナ

アル知ツトモ、私、武人トシテ一面立派ニ之ヲ遂行シ師團長、營團

且望華不若來心乞可重三行字序屬。對之紀儀。盡之。

私、或トモ、誠意ニ彼、賜物ニヨリト考ヘ其趣旨ニ副キ死刑ヲ
実行シタ。

然、委員各位注リカラス、何故本前ニ一歩退キテカフニナリ。
死刑ニ付テ、熟考ニナカシカト仰言フニテ下リタリ。委員各位、
熟シモ多年、御銘張リ持タル軍人ニ下リタリ。貴方方、多年、

戦争中、戦力カ、幾多、辛苦、嘗メテ下リタリ。

貴方方、日本軍、命令カ如何ニ定ムルカ御存知ナレカ

日本軍、於テ、命令、違ヒテ、又拒ミ、得ニタト云フ様ニ思ヒ、
ナリト云フコトヲ御存ナレカ。

多ク、又、不可能ニテ、命令ナシテ死ニシタ。委員各位ニ、
カフニ、本前死刑、真相ヲ隠蔽、其ノ後、日ニ命令也、守リ
為、自殺スルコトヲ命ゼラレタト云フ語ヲ本前ニナシテ驚カシタ
コトニアリタリ。唯、自殺スル様命令ニカラステ自殺スルモノナ
シタト考ヘ、ナリルカ知レタリ。

日本軍、於テ、凡ソ命令、服従モナシタ。然、此、命令カ
撤回サカシタリ。勝ル、自命、命絶テ下リタリ。

勝ル、自命、死刑ヲ命ゼラレタリ。然、自命、命絶テ下リ
意志カ無カシタ。同好、自命、死刑ニ、全ク無カシト
言フニ、私、ヨリ、知リタリ。

私、勝山、証人、立テ、實ニ度カラシメ。然、彼、当日、命令
サシ実行シタニ、後、既ニ死ニ、其、遺、ミ、遺、ミ、ナリ。

私、達、事、当、日、カフニ、ナリ、身、上、考ヘタリ。

然、私、達、何、カ、生、キ、テ、下リタリ。何、年、私、達、窮、境、ニ、命、令、
拒、ミ、ニ、ト、困、難、サ、御、理、解、下、サ、シ、タ、リ。私、共、亡、御、悲、
事、賜、ニ、ト、御、願、致、シ、タリ。

知へ処刑ヲ止メルコトが出来サスレバサマシクアリマス。其レモ拘ラセ
尚処刑が行ハルコト言フコト。全ク私ヲ司令官、命令ヲ拒否得ナ
カタクナリマス。
又現在私、家族ノ私、身ノ下ヲ安メテ悲嘆ノ涙ニシテナル。同僚
ニ彼カフコトヲ尉、家族ニ未ダ苦シミ續クナリマス。言フコト、
悲劇ニシテ向、申訳ナリ唯々自盡ノ念ニ打テルニシマス。
若シ他ノ釋放サレル機会得ルモ士ハ私ノ月像写真又、軍家
手ノ下カ、彼カフコトモ、月像ノ數枚有。其中、一枚、彼、家族
他、私等ニ本年開示ス。送、先ダ未ダ、其、軍情、心込リ
所、彼ニ謝罪スルト共、彼、家族ノ恩メヤリタイノ考ヘ有。然レモ
甚シコトヲ國際的ノ友情ノ深メルコトが出来、何コトハ合セ
コト存シマス。カフコトモ、家族ノ方、私ノ謝罪、意ヲ傳ヘ
ト共、其、後所、先ダ知ラセ下サシ。私ガ石ニ述ベテモ得ナリ
實現ノ機会ヲ下サシマス。切、裁判官各位、御願致シテ
私達ハカニテ、処刑、全ク歸國長、勅ヲ難イ最命。依リ本當
ニ行ツタマヘマス。歸國長、意圖ガ士氣、鼓舞ト言
フコトアリマス。爲ニ此、實ニ付キ疑ヲ持タルカモ知レマス。
事實私共ハ、心カ、捕虜、身ヲ下リテ復送、途中、エロ。
捕虜ニ肩ヲ負ヒテ、背負ナリシト迫リ言草、中ニ樂シ
会話ヲ交ナリシト其、末ニ限、彼ノ野々コト。又処刑、
日本武士道ノ式、劍ヲ行ヒ、埋葬後私ハ戦死シテ私、武下
同一ニ考ヘテ何處ニ墓ヲ參リ格ナリマス。
最近大尉、進級シタリ、私ニ取テ司令官井上中將、命令ヲ拒否
スルコト如何ニ不可能ナリトテアラスカ。査員各位、御理解願ヒ度
ナリマス。私ハトモ司令官ニ俘虜、処刑、思ヒテ戴ナリ
言フ氣持ヲ司令官室ニ入リテアリマス。假令司令官
ガ俘虜、処刑、私ノ操名ニモ迫リ道ハ下リマス。
日本軍隊、実情、考ヘシテ司令官、命令ヲ拒否得ナリマス。
知ラセテアリス。然レモ事、私ハ館ニ迄拒否、言フ

考を居るがアリス。司令官、前。立つ時私、傍イ夢、
 破す私、嚴シ現実。直面ス。さうかうしてアリス
 井上司令官「カフミ」少尉ヲ東墜シ、勝山隊カ、勝山中尉
 「カフミ」処刑サレ、ト命じらるトキ私、一言モ言ハ得ズ
 其場、立チクニテ。一言ハ度イ數々、エト、咽喉カラコミ、トテ
 口ハ突、思ヒテ、私ハ、遂ニ取テ、這一言モ言ハ得ズ
 然ル、何卒當時、私ハ、境、井上司令官、嚴命、在
 るコトヲ如何ニ困難デアラカ、御理解願フ
 貴方ヲ、米國人、免、丹陸海軍ニ、強シ、連法命令、付キ
 公島ニテ、然ラ、日本ニ、強シ、連法命令ト云、好ミ、
 アリス。少シ私達、軍人、主觀ニ、強シ、命令、連法
 連法ヲ、批判ス。ト、アリス。又、批判、ト、又、數、ト、
 来テ居リ、ト、一度ハ、司令官、命令ス。何、ト、直々、服従
 ン、ト、一度ハ、責任者、命令ス。何、ト、之、疑フ者、
 アリス。ソレ、アリス、唯、絶、服従、ト、アリス。
 是等、コト、勉、証人、出、テ、然、私ハ、本、夏、在、位、
 私ハ、裁、カ、ル、ト、當、テ、之、謝、者、慮、下、サ、テ、カ、ト、思、ハ、ス、
 重、テ、御、願、ヒ、ス、此、第、アリス
 カフミ、少尉、処刑、ヲ、執行、シ、勝山中尉、氣持、石、ボ、
 私ハ、氣持、ト、全、同、好、テ、アリス、ト、思、ハ、ス、之、彼、ハ、公、島、
 私ハ、最、モ、良、ク、知、テ、居、リ、ス。
 然、私ハ、心、カラ、勝山、ハ、情、ヲ、氣、毒、ニ、思、ハ、
 共、彼、ハ、処刑、ヲ、実行、サ、ス、ト、付、キ、上、公、ト、テ、自己、不、明
 之、恥、ハ、衷、心、彼、謝、罪、ス、ト、アリス、何、卒、勝山、ハ、米、國、情、
 御、判、決、ヲ、賜、フ、ト、好、ト、願、ヒ、致、シ、ス

唯々裁判長閣下様、裁判官各位、慈悲を總りて私共、
身上、御同情、御寛大、御安置、賜ひ祈禱願ひ申上
す

昭和二十二年十二月三日

小市重雄

STATEMENT

of

KOICHI, Hiroe, former Captain, Imperial Japanese Army

I have already testified on the witness stand, but I desire to make this additional statement. This personal declaration is made as a plea to the members of the Commission in the fervent prayer that you consider and understand my plight at the time when the Commanding General, Lieutenant General Inoue, ordered me to execute an American prisoner of war.

All my life I had been attracted by things military. So at the earliest opportunity I entered the Japanese Military Academy.

1. My motive for entering the Military Academy and undertaking its education.

I entered the Military Academy on 1 November 1938 and was graduated from it on 20 July 1941. My motive for entering the Military Academy was very puerile and naive -- I was attracted by the splendor of military life. In the first year at the academy I received ordinary higher education; and in the last year and a half, military training. As the China incident had already broken out when I entered, the length of the term at the academy was shortened. Our period was mostly occupied by subjects relating to the art of war and actual training in it, so that the periods allotted to scholastic subjects were very few. Moreover, as I absented myself from the academy for six months on account of illness, I hardly had any opportunity to study international law. My thoughts in the present incident were guided more from the standpoint of humanity than whether it was right or wrong under international law.

2. Battle conditions in the Palau Islands at the time of the incident.

After about the middle of August 1944, the Mimitz operation was launched; and from that time until the end of the war we were continuously bombed -- it would be no exaggeration to say that four to eight enemy planes were above us, raiding us night and day. Our anti-aircraft positions were bombed at least once a day, and each time our position sustained great damage and many of our men were wounded. Even in this fierce battle, my men and I did not harbor the slightest hatred toward the enemy, but rather when we looked up at the courageous attack of the enemy, we admired him saying, "Our foe fights valiantly, we must admit." It was my firm conviction that the strongest weapon for a fighting man was the idea of righteousness; and it was because of this conviction that I was able to fight through, boldly and fearlessly, without ceasing until the end of the war.

3. The condition of my family.

I have my mother who is fifty-eight, two smaller sisters and two smaller brothers in my family. My father died two months prior to my demobilization and home-coming in January. After losing my father, I came to be the prop and mainstay of the family and it is my duty to look after them now.

"X (1)"

0544

My family was very hard up, in a hand to mouth state when I left them, so I know my mother, who is sick, is having uneasy days and is worrying about me. The words of my mother when I left her, "I will set your meal every day and await your return. So please come back soon," still ring in my ears and I cannot forget them.

4. My thoughts on the incident.

When I received the stern order to do the execution from the division commander, General Inoue, I was in a daze and I felt a cold shudder go up my spine. For a week after this I was in the grip of an extremely unpleasant feeling just as if some dark heavy clouds were hanging over my head. When I realized that the orders of the division commander, General Inoue, were fixed and unalterable, I decided as a soldier on the one hand to comply with the wishes of the general and carry them out, and on the other hand to show the prisoner my sincerity by conducting the execution humanely so as to alleviate as much pain as possible and by burying him with care to observe due propriety to him. With this in mind the execution was carried out.

I beg you to try to understand how impossible it was for me, a recently promoted captain in the army, to refuse to carry out the orders of the division commander, Lieutenant General Inoue. With the intention of having the general give up the idea of executing the prisoner, I walked into his office. So I was sure there would be a way out for me if the general mentioned the execution to me. I should have known that I could not refuse when I consider the actual condition in the Japanese Army. At that time I was absorbed with one thought -- to refuse his orders. When I stood in front of the general, my transient illusion was broken and I was obliged to face cold reality.

There I stood without a word to say when the general in a few words told me to have Katsuyama execute the prisoner Kaufman, as it was his unit, the Katsuyama Unit, that had shot Kaufman down. I stood there without being able to utter a single word. I felt as if all the things I wanted to say were going to burst out, but I wasn't able to say a single word to the last. I pray that you will understand my state of mind and how impossible it was for me to refuse the general's order. You Americans talk of unlawful orders in the Army and Navy. In Japan there was no such thing as an unlawful order --- at least in our mind as soldiers we were not allowed to comment on the lawful or unlawful nature of a superior's order. As a matter of fact, we were educated to the fact that we were not to comment upon superior orders. When anyone in authority spoke, there was unquestioned and absolute obedience. I have told you all this on the witness stand but I am so afraid you will not consider this when you judge me.

Furthermore, when I think about how my family is worrying and grieving over me and likewise how long in the future the bereaved family of Second Lieutenant Kaufman will suffer, I have nothing but the deepest feeling of apology and remorse. Why did it happen to Kaufman and why did it happen to me?

If in the future I am given the opportunity to be released it is my sincere wish to paint the portrait of Kaufman, as my occupation is that of a portrait painter, and send one to his family, keep one for myself and send others to the people connected with this incident as I wish to console his soul from the bottom of my heart, and extend my heartfelt apology because I

"X (2)"

0545

wish to comfort his bereaved family. It would be most fortunate for me if I might be able to promote international good-will through this. I beg that my deepest apology be extended to the bereaved family of Second Lieutenant Kaufman and that their names and address be made known to me. I supplicate the members of the commission that a chance be granted me so that I may realize the things that I have stated. What can I do to make amends, I who was suddenly called upon to carry out an order which meant death to a prisoner?

We carried out the execution solely because of the irrevocable orders of the division commander, Lieutenant General Inoue and I beg to assure you that it was not a result of our own true will. You may have some doubt with regard to this point, because the division commander, Lieutenant General Inoue, said that the execution was meant to bolster our morale; but truly, we did as much possible for the prisoner all the way along, by lending him our shoulders or carrying him on our backs and trying to carry on a pleasant conversation notwithstanding the language difficulties while escorting him. Furthermore the execution was conducted in accordance with the way of the Samurai; and after burial was over, I frequently visited his grave as I would have done toward those of my deceased subordinates.

But you may say, "Why didn't you stop and consider before you executed Kaufman?" You members of the commission are officers of many years' experience. You probably all fought through the long war years and suffered much yourself.

Do you understand what an order was in the Japanese Army? Do you know that there was no such thoughts that an order might be unlawful or an order might be refused?

Men died because they were ordered to do the impossible.

You have heard with amazement the story of how Katsuyama was ordered to commit suicide in order to hide the real story of the execution and in order to protect the general. You may think that no person would take his own life simply because he was ordered to do so. In the Japanese Army all orders had to be obeyed. Katsuyama would have taken his life if the order had not been rescinded.

Katsuyama was ordered to execute the prisoner. I know he had no will to do so as I know he had no will to take his own life.

I wish that Katsuyama had taken the witness stand but he has already died a thousand deaths for what he was ordered to do that day and what he did when he carried out the general's orders.

We thought of Kaufman that day, but what could we do? I pray you understand our critical position and how impossible it was to refuse to obey. Have mercy on us. If I could have stopped the execution I would have done so. In spite of this, the execution was carried out because I could not refuse the orders of the commanding general, Inoue.

I believe the feelings of Katsuyama who executed the prisoner were completely the same as mine. As I was his direct superior I am the one who best knows them. I have sympathy for Katsuyama's feelings. I am ashamed as his superior to have had him carry out the execution and I wish to extend my apology to him. I pray that you be lenient in your judgment of him.

"X (3)"

0546

Appealing to your mercy, I beg that sympathy be tendered us and supplicate you for lenient judgment.

December 7, 1947.

Respectfully,

KOICHI, Hiroe.

I hereby certify the above, consisting of three and one-half (3½) typewritten pages, to be a true and complete translation of the original statement written in Japanese to the best of my ability.



EUGENE E. HERRICK, JR.
Lieutenant, USNR.
Interpreter.

"X (4)"

0547

陳述書

元日本陸軍中尉勝山哲爾

一 経歴

私ハ大正四年二月七日長野縣上高井郡高井村大字高井二千十六番地ニ於テ父好太郎ノ二男トシテ生シマシタ。

私ハ昭和二年高井ノ學校尋常科ヲ卒業シ同年四月長野縣須坂中學校ニ入學昭和七年三月同校ヲ卒業シマシタ。

私ハ中學校卒業後高井産業組合ニ勤メテシマシタが昭和十一年一月十日現役兵トシテ宇都宮野砲兵第三聯隊ニ入營シマシタ。

同年五月一日下士官候補者ニ採用サレ爾後累進シテ昭和十六年十二月一日陸軍曹長ニ任ゼラレマシタ。

昭和十七年十二月十日少尉候補者トシテ神奈川県高座郡相模原町ノ陸軍士官學校ニ入學シ翌十八年十月十五日同校ヲ卒業シ

昭和十九年一月十五日陸軍少尉ニ任ゼラレマシタ。昭和十九年十月下旬第十四師團臨時高

射隊ニ勤務トナリ昭和二十年三月一日陸軍中尉ニ任ゼラレマシタ。

二 家庭ノ状況

私、海軍家ハ前述出生地ニアリマシテ家族、
今年六十四才、母ト私、妻、弟及弟、妻、
四人デアリマス。妻ハ其、生家ニ在リ、弟ハ
目下下鮎聯ニ抑留中デ弟、妻モ其、生家ニ
歸ツテ居リマス。母一人デ農業ヲ營
ンデ居リマスガ老母一人デハトモ生計ヲ立テ
ラレマセン。義兄ガ母、生計ヲ補助シ
テ居リマス。財産トシテハ家屋敷、他ニ
田畑併セテ二段五畝程所有シテ居リマス。

三 事件ニ對スル感想

昭和二十年五月中旬某日ハ市大尉ヨリ「上
氣昂揚、烏隴山中尉ニ停傷ヲ處刑
セシメル」ト云フ井上司令官、意圖ニ就
イテ意見ヲ求メシタトキ、私ハ「私隊
ノ士氣ハ大ニ昂揚シテキマスカラ其、爲ナ
ラ停傷ヲ處刑スル必要ハナイト思ヒマス」
ト言ッテ反對シマシタ。

ハ市大尉モ「自分モ同感タ」ト言ッテ賛
意ヲ表シテ呉レマシタ。真逆自分ガ
停傷處刑、任務ヲ負ハサルツトハアルマ
イト思ッテ居リマシタ。所ガ其、翌晩
遅クハ市大尉カラ電話ガ掛ツテキテ勝
山中尉ニ停傷ヲ處刑セシメヨ」ト云フ井
上司令官、嚴命ヲ傳ヘラシタトキハ果然ト

シテ斬首ヲ爲ス所ヲ知りマセンデシタ。
 小市大尉トノ會話カラ司令官、性格トシテ
 命令ニ反對スルコトハ絶對ニ不可能ナル
 コトヲ知りマシタ、デ私ハ巴ムヲ得マセト
 答ヘマシタガ命令ニ従フ決意が出来マセ
 ンデシタ。翌朝「かうふまん」少尉、汝ヲ見
 タトキハ彼ニ對スル同情ノ氣持ガ胸一杯デ
 ナカクツラ振下ス元氣ハアリマセンデシタ。
 然レ司令官ノ嚴命ヲ考ヘテ絶對絶命、
 所ニ至リ遂ニ反對ニ得ズ意ヲ決シ心ヲ鬼
 ニシテ無我無中デ刀ヲ振下シマシタ。
 私ノ記憶ハ薄シテ居リマスガ處刑ノトキ寫
 眞ヲ撮ルトイフ問題ガアツタ様ニ想ヒマス。
 師團司令部カラ派遣サレタ兵ガ處刑寫
 眞ヲ撮ラネバナラナカッタ、デスカ、又ハ私、
 位置ガ惡カッタノカ俘虜ノ位置ガ寫眞ヲ
 撮ルノニ都合ガ惡カッタノカ孰シカデアリマシタ。
 私ハ其ノコトニ就イテハ今デモハッキリシタ記
 憶ガアリマセン。然レソレハ土屋ガ證言シタ
 通りデアツタト思ヒマス。
 私ハハッキリ記憶シテ井ナイト申シマシタ。
 一体ソレハ何故デセカ、ソレハ恰モ何故私
 ガ俘虜ノ處刑ヲ命ゼラレタカ理解出来ナイ
 ノト同様デアリマス。
 斬首ヲ終ツタ後ハ眼前ガ眞暗ニナリ杳然

自失ノ態^{デシタ}ガ暫時、後我^ニ復^{ヘリ}埋
葬ノ爲^ニ土ヲカケ、墓ノ上^ニ石ヲ置^{キマシタ}。
墓前^ニ花、ろうそくヤ水モ供^{ヘラシマシタ}。
ソシテ小市大尉、號令^ニヨリ全員^ガ「がうふまん」
少尉、英靈^ニ祈禱ヲ捧^ゲテ重^ニ埋葬式ヲ
致^{シマシタ}。其後モ何回トナク「がうふまん」
少尉、墓^ニオ詣^{ヘリ}シテ心カラ彼^ニオ詫^ビシ
マシタ。今日カラ考^ヘマス命令ヲ受^ケ
タトモ何故モット強ク反對^シ得^ナカッタ、カ
ト残念^ニ思^ヒレテナリマス。ガ母日敵機ノ
來襲ヲ受^ケ激烈^ニ戦闘ヲ續^ケテキタ當
時ノ状況下^ニ在^ッテ、全ク巴^ラ得^ナカッタ、
デアリマス。亡^キ「がうふまん」少尉、英靈^ニ
對^シハ、管^ニ其ノ冥福ヲ祈^ルト共^ニ彼ノ遺族^ニ
對^シ深^ク心ヨリオ詫^ビ申^上ゲマス。

昭和二十年五月頃、バウオ、諸島ハ米軍、激シ
空襲ヲ受^ケマシタ。私、部隊ハ奮^ニ戦^ヒ、
幸^ニ米軍ノ飛行機一機ヲ撃^テ墜^シマシタ。
私、其ノ日機撃^テ墜^シタコトヲ私、幸運ト思
ツテ居^リマシタ。然^レシ毎員ハコレガ私、大不幸ノ序
曲トナツタデアリマス。コノ一件ハ「がうふまん」氏
ニトツテモ私ニトツテモ悲劇デアッタ、^{ト思}
ヒマス。

「がうふまん」氏、落下傘ヲ降^リテ一度、助^カ
リマシタガ、ヤガテ井上中將、命令ヲカリテ運命

神ハ彼ニ死ノ宣告ヲシタデアリマス。

彼ノ飛行機ヲ撃墜シタ部隊隊長デアッタ私

ノ運命ハ如何ナルモデアッタデセウカ。

私ハ證人臺ニ立タマセンデシタ。何故ナラバ私
ハアノ恐ロシイ試練ニ再び堪ヘラシサモアリマ
シカラ。

其後又ソレヲ命令シタ司令官ヲ保護スル爲ニ

私ハ自決スルコトヲ命ゼラシタデアリマス。

私ガ自決ヲ考ヘタコトダケデ、委員各位ハ私
ガ狂人デハナイカト疑ヒルデセウガ、ソレハ昭和

二十年當時ニ於ケル日本陸軍ガドンナモデアッ

タカ御存ジナイカラデアリマセウ。

ソデ矢島中佐ハ私ニ「止メ」ト命令シマシタ。

私ハモウ死ンダノダト彼ハ言ヒマシタ。

彼「かういふまん」知ラナカッタガ「かういふまん」少尉

ヲ處刑シタ日カラ私ハ既ニ幾度モ死ヌ様ナ心

ヒラシタデアリマス。其時以來私ハトウ云フ

風ニ過シテ來タデアリマセウカ。

委員各位ニ證據トシテ提出サシタ私陳述書

ヲオ聞キニナラシタコトデセウ。

私ノ陳述書ハ六ヶ月間密林ノ中ニ動物様

ニ潜ンデキル間ニ私ガ受ケタ苦痛ノ半分モ語

ツテ居リマセン。

シカラ矢島中佐ノ命令デ變名シテ日本ニ歸

リマシタ。

私ハ私ノ一生ヲ日陰者トシテ送ラネバナラヌノ

デセウカ。誰モ私がドンナニ苦シンダカ知ラナイ
デセウ。

オ前ハオ前、コトバカリ奥ヤ角云ツテ共オ前
ニ殺サシタ「かうふまん」ドウダト云ハシルデウ。
仰セ洵ニ御尤モデ御座イマス。唯私ハ司
令官ノ命令ヲ拒否スルコトが私ニトツテ如何
ニ困難デアリ又私、現在ノ境遇が如何ニ哀し
クモデアルカラ切ニ委員各位ニ御理解願
ヒ度イノデアリマス。

「かうふまん」少尉ヲ處刑シタコトガ後悔サシ
テ徹夜同眠シタコトガ幾度モウツサイミシタ。

「かうふまん」少尉ヲ處刑シタ報ヒ、如何ニ悲シベキ
モノデアルカハ誰ヨリモ當ノ私が一番ヨク承知シテ
居リマス。命令ニ服従シテ處刑シタ私ニハ
神ハ遂ニ慈悲ヲ垂シ賜ハヌノデアリマセウカ。
私ハ日本、軍人デアリマシタガ故ニ幾ラオ祈リ
シテモ遂ニ尚悩マシム一生ヲ送ラヌベナラヌデ
セウカ。

戦争ハ昭和二十年八月終リヲ告ゲタト他人ハ
言ヒマス。然レ私ニトツテハ戦争ハ終ラナカ
ツタニ、今モ尚終ツテハ居リマセン。

私ハ此ノ陳述ハ處刑ノ當日私がドンナ氣持
デサタカ。又司令官ノ命令ヲ拒否スルコト
が如何ニ困難デアツタカラ説明スル爲メ方
カニ他ナリマセンガソレハ餘リニモ拙イモノデア
リマス。

私ハ 委員各位ニ御理解ト御同情トヲ願ヒ
タイ、デアリマス。

私ハ「かうふまん」ヲ處刑シタ日カウ今日迄
凡ソ世ノ親切ト云フモノヲ知リマセシタ。

私ノヤウナ者ニモ同情ト寛容トハアルベキ
筈デアルト期待シタカウ委員各位ノ大裁
キヲ待ツテ居リマス。

天皇陛下

昭和二十二年十二月四日

勝山哲爾

STATEMENT

of

KATSUYAMA, Tetsuji, former First Lieutenant, IJA

1. Personal History.

I was born as the second son of my father, Kotaro, now deceased, at 2016 Oaza-tekai, Takai-mura, Ieritakai-gun, Nagano-ken, on 7 February 1915.

I finished the course at the Takai Grammar School in March 1927, entered the Nagano Prefectural Susake Middle School in April of the same year and graduated in March 1932. After I graduated from school, I worked at the Takai-mura Industrial Corporation. On the 10th of January 1936, I enlisted and entered the Utsunomiya 20th Artillery Regiment. I was appointed to be a non-commissioned officer on the first of May of the year, and then, after promotions, was appointed sergeant major on 1 December 1941. On 10 December 1942 I became a cadet and entered the Army Academy at Saganihara-machi, Kozagun, Kanagawa-ken, from which I graduated on the fifteenth of November 1943. At the end of October 1944, I was attached to an anti-aircraft unit of the 14th Division, and was appointed first lieutenant on 1 March 1945.

2. Condition of My Family.

My family is living in my birthplace to which I have referred above. My family consists of my mother (sixty-four years old this year), my wife, my brother and my brother's wife. My wife is now living with her parents; my brother is still a prisoner of war interned in Russia; my brother's wife, too, is living with her parents. So my mother is living alone and working as a farmer. Since it is hard for her to maintain her livelihood by herself, my brother-in-law is helping her. My house and about half an acre of land are all the property I have.

3. My Feeling toward the Incident.

One day, in the middle of May 1945, Captain Koichi called for my opinion as to the intention of Commanding General Inoue to give me an order to execute a prisoner of war in order to bolster the morale of my unit. I objected to the execution saying that the morale of my unit was high and that it was unnecessary to execute a prisoner for that purpose. Captain Koichi said, "I think so too," and agreed with my opinion, so I did not think I could be given the duty of executing the prisoner, whereas, on the next morning I received a telephone call from Captain Koichi and was informed of a strict order of Commanding General Inoue, "Have First Lieutenant Katsuyama execute the prisoner." When I received this order, I was so amazed that I did not know what to do. Through the conversation with Captain Koichi I knew that the decision of the commanding general would never allow me to object to the order. There was nothing I could do or say contrary to the order. I had to carry it out. Yet I was filled with sympathy toward Second Lieutenant Kaufman when I saw him the next morning and I had not the courage to strike him with my sword. I had no intent to murder. I had no malice in my heart. However, I could not hesitate in the face of the strict order of General Inoue, my superior officer. Steeling my heart against pity, and in a daze, I was ready to strike with my sword. I hardly remember it, but it

"Z (1)"

0562

seems there was at that time a question of a picture to be taken. Some enlisted men from Division Headquarters had to take a picture and I was not standing right or the prisoner was in the wrong place for a picture. I can't remember clearly even now what it was all about, but I think it was as Tsuchiya testified.

Why? I didn't understand it any more than I do why I should be ordered to execute a prisoner.

I felt as if everything was dark before me and I was in a daze. After a while, I returned to normal. What had I done? A person had been executed. Flowers and candles were offered before the grave.

After that, by the command of Captain Koichi, we prayed for the repose of Second Lieutenant Kaufman's soul and finished his burial ceremony. After that I often visited his grave and begged his pardon from the bottom of my heart.

When I recall the incident today, I regret that I could not refuse the order. At that time, we were having daily air raids and a furious battle was constantly being waged. Under such circumstances, I really could not help it. I pray for the repose of the soul of Second Lieutenant Kaufman and beg the pardon of his family for what I did that day.

In May of 1945 the American air raids on the northern Palau Islands were very heavy. My unit fought bravely and fortunately shot down an American plane. I thought it fortunate that we shot down a plane that day, but it was the beginning of my greatest misfortune. That event it seems to me as tragic for me as it was for Kaufman.

Kaufman bailed out and saved himself but fate decreed, by the orders of General Inoue, that he should die.

And for me, the commanding officer of the unit that shot down the plane, what is to be my fate?

I did not take the witness stand because I just couldn't force myself to go through that horrible ordeal again.

I was ordered to commit suicide in order to conceal the execution and protect the general who ordered it. You say I was crazy to even consider such a thing, but you do not know what the Japanese Army was like even in 1945. Then Yajima ordered me to stop. I was already dead he said. He didn't know but I had already died a thousand times since the day Kaufman was executed.

How have I lived since that time? You heard the statement which was introduced into evidence. That part only half told of my suffering as I had for six months been hidden away like an animal in the jungle. Then still under orders of Yajima, I went back to Japan under an assumed name. Was I to hide all my life? No one will ever know how I have suffered.

You say but what of Kaufman? I know what you mean.

"Z (2)"

0563

I plead with you to understand how impossible it was for me to refuse to carry out the General's orders and how pitiful my present condition is. The sleepless nights I have spent in bitter remorse for the part I played in the execution of Kaufman. I know better than anyone, I believe, the answer to what of Kaufman?

Is there no mercy for me? Must I pray again and again and for ever and always have but a troubled life because I was a soldier in the Japanese Army? They said the war was over in August 1945 but it was not and is not for me.

This statement is such a poor effort to explain how I felt that day and how impossible it was to refuse the general's orders.

I pray for your understanding and ask your pity for me. I have known no kindness since that day when Kaufman was executed. There must be some pity and some leniency even for me.

I await your judgment.

Respectfully,

KATSUYAMA, Tetsuji.

I hereby certify the above, consisting of two and one-half (2½) type-written pages, to be a true and complete translation of the original statement written in Japanese to the best of my ability.

Eugene E. Kerrick, Jr.
EUGENE E. KERRICK, JR.
Lieutenant, USNR.
Interpreter.

No. 1

00000000

陳述書

"AA"

一私はアメリカの訴訟手続で私に陳述書を書く特権を與へられ居ることを承知して居ります。私は證人室には立ちません。

其れ故私は茲に私個人の陳述を爲し、私が己むを得ず干與しなければならなかつたアメリカ飛行將校「カフマ」の處刑に於ける私の役割が極めて輕微なるものであることに對する委員各位の寛大なる御取計ひを嘆願するものであります。

私は私が主張したる如く無罪であることを了解して戴き、又證據として與へられた私の行為に就て委員各位の寛大なる措置と理解とを仰ぐ爲に茲に私自身に就て過去に遡つて述べることをお許し願ひ度いのであります。

二私は福島縣の片田舎の農家に生れました。家は豊かではありませんが極めて平和な家庭に育ち、幼い時から両親から特に正直な人間になる様に感化教育を受けて来ました。中學校卒業後私は両親の好意ある御取計ひに依つて仙臺高等工業學校で三年間工作機械や汽機に關する教育を受け

ました。

然し陸軍下級將校の不足を補ふ日本政府の方針に基き一九四二年二月私は強制的に陸軍幹部候補生として陸軍兵役に服せしめられました。

三 日本軍隊では私の育つた家庭の平和な環境や学校に於ける純真な学生生活とは全く違つたものであり規律は極めて厳格で上官の命令には絶対に服従することも要求されました。私は陸軍豫備士官学校で約六ヶ月間豫備士官としての教育を受けましたが命令に服従する點は重然を置いて教えられるのでした。私は陸軍入隊後二十ヶ月即ち一九四三年十二月陸軍少尉となり一九四四年三月第十四師團司令部情報部附を命ぜられ四月にバングラに上陸しました。

四 私がバングラに上陸以後は内地からの糧食及其他一切の補給は一回もありませんでした。

上陸後間もなく「ブリタニヤ島」「アガラル島」が米軍に占領されるから米軍の空襲に依る被害と糧食不足に依る餓饉が相高甚しくなり之に基き死亡者が續出し悲惨な状況を呈する様になりました。

然し我々下級將校及下士官、兵はよく上官の命令に従つて此の困難を堪へ忍んで来ました。

終戦後我々の師團が模範的の軍隊であると賞讃報道され、又米軍から賞状を授與されましたのも、上官の命令に対する絶対的服従が充分に行はれて来たからであると思ひます。日本の軍隊では凡ての將校、就中下級の將校は上官の命令を批判すること、寧ろ實際上許されなかつたのみ、寧ろ盲目的に直に之を寧ろ行する様に教育をされて来て居りました。

殊に最高司令部から出される命令には疑義を披くべし之が寧ろ行を躊躇することなどは假令將校であつても我々下級のものは全く爲し得なかつたことである。

米國人にとっては日本人が命令に服従すること、如何なることを意味し、又日本の陸軍では如何に寧ろ行されて居たかと言ふことを理解することは恐らく困難なことであると思ひます。私が今回起訴された事件に關して矢嶋中佐から「カフマシ」尉を「ロール」島に送る命令を受けました際に、私は其の任務が違法なものであるか否かと言ふことに就て全然考へ

No. 4

付かず。考へる餘裕もなく唯私は即生に之を
實行することしか考へつかはつたのであります。
一方又私は技術家としての専門教員を受け
法律の教育を受けず。又情報参謀附を命
ぜられて居りましたが國際法規に就く教育を
受ける機会もありませんでした。

従つて私が此の時井上師團長から與へられた任務の
殺人罪に關する行為であると言ふことは夢想
もしなかつたこととあります。

私は現在でも尚私の行つたことが殺人であるとは
思ひません。

又私が本年十月聯合軍司令部から東京に呼
出を受けた時には「カフ島戦争裁判の證人」と
して行くので其の準備をなす様に言はれました。

従つて私は十一月十日殺人罪と云ふ罪名で起
訴状を受取つて一驚したのであります。

私は「カフマニカ村」に対しては勇敢なる米軍飛行
將校として敬意を拂ひ、又私として出来る父の親
切を盡しました。

彼も之を認め喜んで呉れて居りました。

「カフマニカ村」が處刑されたことを顧みると誠
に氣の毒で哀悼の情に堪へるせん、又其の家
族に対しても同情に堪へるせん。

Nos.

本要員登壇に於てせられ之では充分でないと思は
れるかも知れるや、然し之は少尉であつて、自命と
しては井上中將から出されを慶利の命令を止め
ることは出来なかつたのであります。

然し之は一方、私が「カマ」少尉を「ロー」島に護送
するに當つては

(一) 此の任務、情報部に勤務する三人の下級將校
中、偶、私に下命されたとて、上官たる大島
中佐に選ばれたことが不幸なる運命であつたこと。

(二) 日本軍隊の傳統として上官の命令特に最
高指揮官の命令は之を批判する餘裕もな
く直ちに実行する如く教育し習慣化せられ
てあつたこと。

(三) 當時の「カマ」島に於ける戦況、即ち聯合軍
の攻撃に依る甚大なる被害、糧食の不足及衛生
状況の不良に依る健康状態の不良等に
依り肉体的にも精神的にも麻痺的状态
にありしこと。

(四) 私が技術家としての教育しか受けて居らず
法律的知識に乏しかつたこと。

等の理由に依りまして私が自發的に又之が要
にあることを意識して此の任務に従事し
たのは全然なことを認むべきです。

No. 6

五、現在私の家庭には妻、年老ひたる両親並に三人の弟妹が居り又近く私の赤坊が生れるところがあります。

私は復員後水戸市に於て一労働者として瓦製造工場に働きましたが復援者を得て一九四六年の暮に小さな瓦製造工場を獨立して經營することが出来る様になりました。

私の家族の大部は私の勤勞に依つて扶養されて居ります。

私が居るせゝと工場の經營が挫折し家族の生活も困る状況にあります。

私の様なつまぬ人間でも面倒を見なければならぬ家族があるのです。

然し斯く申し上げると本眞各氏は何故「カフマ」の家族を考へなかつたのか、彼も亦家族を持つて居るのに、お二例は彼を殺したのではなかつたと申されるかも知れません、然し斯く申されなくても私は「カフマ」を「コロール」島に投擲したのであつて殺したてはあります。

其の私が殺人で有罪となるべきであります。が本眞各氏は私が勝つにどんな風定めの立場を示したかといふ證據があると言はれるかも知れません、併し又司令部の寫眞眞が處刑の寫眞を取るために「カフマ」を太陽の方に面する

No. 7 様に位置を変へさせると言ふ證據も擧つて居ります。此の事は處刑實施者が彼の位置を変へなければならぬことを意味して居ります。

私が現場で處刑實施者に何事かを話したのは此の爲であると言ふ證據も委員各位はお聞きになつておられます。私が寫真班に良、寫真も取らせろ爲に處刑實施者に何事かを話したことが重大なる要素に「得る」であります。私は當日殺人を犯すと言ふ様な意思は全然はつたのであります。

私に對する命令は護衛をして處刑確認の證據を持つて歸ることでありました。

此の爲には寫真が必要であつたのであります。

私が當日行つたことは只命令に従つたのみでありまして何等殺意の無いと言ふことも充分理解あることを述べ次第であります。

私は未だ曾て人を殺したこともなければ殺人及其他の犯罪で起訴されたこともありません。殺人に關する法律は存じません。

係り下ら私が本件に關聯し殺人で起訴をされ殺人罪で有罪になると言ふことは自今には考へられぬことであります。

證據に基づいて委員各位が公正なる裁断を

No. 8

下をれまへ私を釋放されんことを願ふ
次第である。

一九四七年十二月 日

元陸軍中尉

小野瀬 一郎

No. 8

下されば、私を釋放されんことを願ふ
次第である。

一九四七年十二月 日

元陸軍中尉

小野瀬 一郎

"AA (8)"

0581

STATEMENT

of

ONOSE, Ichiro, former Second Lieutenant, Imperial Japanese Army

1. I did not take the witness stand because I understand that under American law and procedure I am privileged to make a statement. So I make this personal declaration and plea for leniency for the small part I was forced to play in the execution of an American flyer, Kaufman.

May I go back and tell you about myself in order to show to you that I am not guilty as I have pleaded and for your leniency and understanding of the things I did as brought out by the evidence.

2. I was born in a family of a farmer in a rural village of Fukushima-ken. Though we were not rich, I was brought up in a very peaceful family. Since my childhood, I have been told by my parents that I had to be an honest man. After I graduated from middle school, my parents kindly allowed me to go to Sendai Technical College where I received three years' education in the use and manufacture of machine tools and boilers. From that time the Japanese Government planned to recruit lower ranking officers because of the shortage in the army, so I was conscripted against my will into the military service as an Army reserve cadet in February 1942.

3. The life in the army was entirely different from what I had known in the peaceful environment of my family and my sincere life as a student. In this new life, discipline was strict and implicit obedience to superior orders was demanded of us. I received six months' training as a reserve officer at the reserve officers' academy, and during this period the main point stressed in that training was obedience to orders. Twenty-two months after I entered the army, that is in December 1943, I was commissioned a second lieutenant. In March 1944, I was attached to the Intelligence Section of the 14th Division Headquarters and in April I came to the Palau Islands.

4. After we arrived on Palau, we did not receive any food supplies or anything else from Japan. Shortly after landing, Peliliu and Angaur were occupied by the American forces and the damage caused by the American forces and starvation caused by the shortage of provisions became very serious. Many men died on account of malnutrition and our condition became miserable. We lower ranking officers and enlisted men, obeying all the orders of our superiors, bore these hardships and suffered greatly.

After the end of the war, our division was commended as an exemplary unit and also received a letter of praise from the American forces. I believe this was because implicit obedience to orders had been strictly enforced.

In the Japanese military forces, all officers particularly the lower ranking officers were not permitted to criticize the orders of their superiors. In particular, the orders which came from the highest headquarters were absolute, and we lower ranking officers could not doubt or hesitate to perform them. It is perhaps difficult to understand what was meant by Japanese obedience to orders and how it worked in the Japanese army.

"BB (1)"

0582

In this incident for which I am charged with murder, I received orders from Lieutenant Colonel Yajima to escort Second Lieutenant Kaufman to Koror. I never thought whether the duty I was assigned was unlawful or not. I could not think of that. I could only think that I had to carry out the order then and there. Because of the military training I had received, it became a habit to act like this. On the other hand, although I had received education as an engineer, I was never taught anything about law. I was attached to the intelligence section but I did not have opportunity to receive any education concerning international law. Therefore, I never thought that the duty I was assigned by Division Commander Inoue was an act indictable under the name of murder. I still do not think what I did was murder.

When I was summoned to General Headquarters, Tokyo, in October of this year, I was told that I was to go to Guam as a witness and to prepare as such. Therefore, I was astonished when I was served with charges and specifications for murder on the tenth of November.

I respected Second Lieutenant Kaufman as a brave officer of the American forces and treated him as kindly as I could. He knew of my kindness and was glad for it. When I recall the execution of Second Lieutenant Kaufman I sympathize with him from the bottom of my heart and feel deeply sorry for his family. You say this isn't enough. But I, a second lieutenant, could not have stopped the execution ordered by General Inoue.

However, as to the fact that I escorted Second Lieutenant Kaufman to Koror, there are the following reasons that show that I did not do it of my own accord and that I did not do it knowing it was wrong.

(1) This duty was accidentally assigned to me who was one of the three low ranking officers of the Intelligence Section. It was my particular misfortune that I was selected by my superior Lieutenant Colonel Yajima.

(2) As a tradition of the Japanese military forces, we were taught to carry out orders of the superiors promptly and without judging whether they were wrong. This became our habit.

(3) The battle conditions in Palau at that time were not favorable to us and we suffered from serious damage by attacks of the allied forces. Provisions were short, sanitary conditions were bad and our health was ruined. I was paralyzed both physically and mentally.

(4) I received an education only as an engineer and knew little about law.

(5) My family consists of my wife, my aged parents, and three brothers. My baby is expected to be born in the very near future.

After being demobilized, I worked as a laborer in a slate Manufacturing Factory in Mito. Then I got a becker, so I came to manage a small slate manufacturing factory of my own at the end of 1946. Most of my family are supported by my work. If I do not return, my factory will be ruined and my family will be unable to maintain their living. Even we little people have our families to think of.

"BB (2)"

0583

But you say why didn't you think of Kaufman's family? He too had a family and yet you killed him.

But I didn't kill Kaufman. Because I escorted him to Koror am I to be found guilty of murder?

You say the evidence shows that I showed Matsuyama how to stand. The evidence also shows that the enlisted photographer from Division Headquarters, in order to get a picture of the execution, had Kaufman moved around so his face was toward the sun. This also meant that the executioner must change his position. You have heard the testimony that it was because of this I said something to the executioner.

Is it material fact that I said something to the executioner in order that the photographer might get a better picture? I only know that I had no intent to commit murder that day.

My orders were to escort -- to bring back evidence of the execution. A picture was, it seems, necessary. I beg you to understand what I did that day was only because of orders and that I had no intent to commit murder.


I do not know the law with regard to murder because never have I killed another person or ever before have I been charged with murder or any crime. But it is impossible for me to think that I should be charged with murder and found guilty of murder in this connection.

On the evidence and your fair judgment I appeal to you for an acquittal.

Respectfully,

OHOSE, Ichiro.

I hereby certify the above, consisting of two and one-half (2½) typewritten pages, to be a true and complete translation of the original statement written in Japanese to the best of my ability.


EUGENE E. KERRICK, JR.
Lieutenant, USNR.
Interpreter.

"BB (3)"

0584

陳述書

一 私、私自身、爲、既、証人台、立ッテ
アリマスが、今茲、又私、陳述ヲ致シ
度、ト思、マス

私、再、殺人罪、就、無罪、ナル、トウ
申、上、ゲ、マス
何卒、私が、再、申、上、ゲ、ル、コト、ウ、御、聴、取
下、サ、シ、又、かつ、起、刑、に、参、加、シ、テ、オ、ラ、ズ
又、私が、當日、ノ、殺人、ヲ、犯、ス、ト、云、フ、何、等、
意、圖、ノ、ナ、カ、ラ、ツ、ト、ウ、信、ジ、ラ、下、サ、ル、様、冀、願
致、シ、マス

二 私、片、田、舎、農、家、ニ、生、シ、中、學、校、卒、業
後、家、業、ヲ、手、傳、ツ、テ、居、リ、マ、シ、タ、ガ、一、九、三、八
年、一、月、陸、軍、兵、役、ニ、服、シ、マ、シ、タ、其、後
志、願、シ、下、士、官、ト、リ、一、九、四、三、年、十、二、月
曹、長、ニ、進、シ、テ、終、戦、ニ、至、ツ、タ、モ、ノ、デ、ア、リ、マ、シ、タ
其、間、六、年、八、ヶ、月、陸、軍、ニ、勤、務、致、シ、
マ、シ、タ、

三 私、が、陸、軍、ニ、勤、務、中、ニ、殆、ト、高、務、仕、事
ニ、從、事、シ、貴、威、ニ、全、然、参、加、シ、タ、事、が
ナ、リ、今、迄、一、發、彈、ヲ、射、ツ、タ、事、が
ア、リ、マ、セ、ン、

一九四四年四月に下島ニ上陸し、第十四
師團司令部情報部附下士官トシ、
事務ニ従事致シマシタガ一九四四年
九月末軍がペリニコ島ニ上陸し
師團司令部がビルタニア島、ジャングル
内ニ移転スルニ至リマシタリ。私、健康
ニ次第ニ害ヲ及ビシタ。即チジャングル内、
不衛生、戦斗、激甚ニ伴フ過労、
給養、悪化等、爲。健康次第ニ衰
へ一九四五年三月ニハ栄養失調、悉然
トナリ勤務、一部ヲ軽減シテ世間ニ述べタ
又状態ニナリマシタ。今更ニ起訴サレマシタ
事件、ハ私ガ斯、如ク肉体的ニモ精神
的ニモ弱ク居リ栄養失調ニ罹リ
居タ時ニ生起シタ事柄デアリマス。
四終戦後私、復員シテカラ日本、軍國
主義カラ脱脚シテ新シキ平和ナ国家
タリシ。又食糧事情或、輕薄ナル人情
カラ日本ヲ救フ爲ニ自分、取モ適シタ
任事、農業デアルト考ヘマシタ。此、道ニ

進しん事じニ決けつ心しんシシタ。

一九四六年五月自命、兼かねニ開拓訓練所
生後、募集ガアリアリシシタ、ニ勇躍ゆうよくシシ。應
募致いたシシタ。今訓練所ニ修業スルニ當
リ、私、最優秀者トシテ褒賞ほうしょうサレレタ。

同訓練所修業後三名、同志ト共同どうどうニ

開拓ニ従事スルコトトシテ郷里ヲ出でテ

新ニ入手シテ元陸軍演習場跡開墾ニ

着手致いたシシタ。私達、成功スル迄、酒モ

煙草モ飲のミタ事ヲ誓ちかシメテ努力致いたシシタ。私

達、努力、人々、認しんメル所トシテ本年

三月朝日新聞(日本ニ於テ最大新聞、

ニニアル新聞)ニ掲載セシ又今七月ニ

農林省開拓局長ガ視察ニ來きタ。我

ヲ激勵きよくシシ、哭なみシシタ。

私達、食けハ中ニモ夫々一萬五千圓宛、

出資シ、馬ヲ購入シタリ又日本ニ余リ

普及シ、居いハカリタター、ハー、プロ

等、機械ヲ購入シ、或、住宅ヲ建たシ、等

懸命、努力ヲシ、來きタ。

私達、仕事は他、人々、良、模範ヲ示シ
ニ居リマス。私達、益々仕事、勵、一層
機械化ヲ圖ルべく、小型トラクターヲ購入スル。
計畫ヲ進メテ居リマス。又私、收穫物ヲ
賣シ、金が出来タラ妻ヲ迎ヘシモリデ
樂シムニホリマス。

時、十月六日私、GHQ法務部ニ
出頭シ命ゼラレ約半月後、カ、証人
ニ出張スルコトヲ申渡シマス。ソレデ
出發迄、間ニ急ぐテ玉蜀黍ヲ收穫シ麥
播キヲスルコトヲ作業中、十月十日突然
ニ理由モ告ゲニルコト無ク刑事二名ニ依リ

最寄リ、警署連行セラル。

私、証人ニカ、行クテアルト告ゲラ
モ、又私自身ノ行為就ニ全然無罪ヲ

確信ニ居リマス。テ今固私ガ起訴サレタ
知ラトモ、非常ニ驚キマス。加之殺人トナ
罪名ヲ負ニサレテ居ルノ見ニ之ヲ信ズルコトガ

出来ナ程驚キマス。

私、殺人ヲ犯シテ居リマス。私、當日カ
少尉、命ゼラレテ通リニ彼ノ所持品ヲ

與^レタ事以外ニ何事モシテ居^リマセ^ン。
私が本事件ニ関係^シマシタ^ルハ私が法廷^ニ
於^テ部言^ヲ致^シマシタ^ル如^クコロシ^ル爲^ニ出張^ス
此^レコトが偶々自分^ノ願^ハ書^キデア^リツカ^ラジ^アリ^マス
之^レハ全^ク偶然^ノ出来事デア^リマ^ス私^ハ健康^ニ
状態^モ通常^ノ仕事^ヲ妨^ガレ^ル程度^デ
ナ^クツ^タノ^デ私^ハ此^ノ出張^ニ出^掛ケ^ルタ^リデア^リマ^ス
之^レ現^ニ在^リ私が殺人罪^ヲ被告^トナル^様ナ^ク不^運
ヲ^蒙ル^ニ至^リツ^タノ^デアリ^マス。

私^ハ單^ニ命^ヲセ^ルタ^リ仕事^ノ性^格ヲ^十分^ニ
了^解ス^ルコ^トナ^リタ^リ之^レ服^從シ^タニ過^ギマ^セシ
若^シ私が殺人罪^ヲ起^訴サ^レテ居^ルニ^トテ年老^シ
イ^タ兩親^ガ聞^クタ^リタ^リト^ノ様^ニ嘆^キ非^シシ^タ
事^ヲセ^ル。私^ハ私^ガ何^等行^ハシ^テ居^ルニ^モ
拘^ハズ^ル殺人罪^ヲ起^訴サ^レテ居^ルニ^トカ^ラ
解^放致^シ兼^ニス^ル。
運^命ト^云フ^モ奇^妙ト^云フ^モ惡^戯ヲ^シメ^ル人^ヲ
玩^ブコ^トガ^アル^モデア^リマ^ス。コ^ノ殺人^ニ何^等
關係^モ私^ハ及^ビ本人^ニ何^等惡^意ナ^ク拘^ハ
マ^ス上^官、命^令、責^任行^ハフ^ニ強^要サ^レタ^リ
小^市、勝^山、及^ビ小^野嶺^等全^部が殺人罪^ヲ
デ^テ起^訴サ^レテ居^リマ^ス。
私^ハ既^ニ私^ガ殺人^ニ何^等關^係ナ^クト^シ。

法定に立証した小市に彼トニア、際
以外に採るべき方法がナクコトヲ立証
シタ。又私が法定に求む如く下條に
力つて少尉、爲眞ヲ撮ル、ニ彼、位置ヲ
變更スル必要ヲ生じテ之ヲ要求シタ爲
偶々小野瀬、勝山、夏、位置ヲ注意シタ
ニ過ギナシアリ。

私、委員各位が私及他、三人、被告ニ就テ
充分御理解アルコトヲ希フ次第ニアリ
ス。事實に我々の被告、比有甚大ニ被害ヲ
被リテ食ひ人トナリマス。

私、今や私の生計ヲ得ル爲、購入シ小サ
ト農場ヲ、仕事ヲ金事ヲ考へテアリ
マス。私、唯、此、法定ニ於テ

無罪トナル事、ミテ考へテ

アリマス。

私、私がガ島、戦争裁判ニ被告トシ
ガ島ニ赴ク事ニナリ時、私が所有シ
居タ總テ、資産が失ヒテ居ルカモ知シ又事
ヲ考へザルヲ得マシ。

然レトテ今、斯、如キ事ヲ考へルべき
アリマス。私、唯無罪トナルヲ祈願
スルノミナリマス。

五、私、自國、爲、勇敢、奮斗、シ、カ、ツ、ル、ハ、針
が日本軍、依、テ、表、刑、サ、タ、コ、ト、ニ、対、シ、テ
深、甚、ナル、哀、悼、ノ、意、ヲ、表、ス、ル、モ、デ、ア、リ、マ、ス
然、レ、乍、ラ、私、ガ、本、事、件、ニ、関、係、シ、タ、事、柄、
ノ、義、ハ、カ、リ、テ、極、メ、輕、微、ナ、事、デ、ア、リ、マ、ス、私
ニ、何、ノ、悪、意、ハ、ア、リ、マ、セ、ン、ニ、テ、シ、タ、
私、ガ、本、事、件、ニ、於、テ、何、等、罪、ヲ、觸、ル、事、ヲ
爲、シ、テ、君、ニ、對、シ、テ、殺、人、罪、ニ、觸、ル、モ、デ、
ナ、リ、ト、ナ、ツ、コ、ト、ニ、御、信、用、下、ナ、リ、テ、無、罪、釋、放
ス、ル、事、ヲ、懇、願、申、シ、テ、リ、ル、次、等、デ、ア、リ、マ、ス

一九四七年十二月四日

元陸軍省長

土屋直彦

STATEMENT

of

TSUCHIYA, Naohiko, former Sergeant Major, IJA.

1. Although I took the stand as a witness in my own behalf, I would like to make this personal declaration at this time. I want to say again that I am not guilty of murder.

Please listen to me again as I plead with you to believe me when I say I did not participate in the execution and when I say to you again that I had no intention to commit murder that day.

2. I was born in a rural farming family. After graduating from middle school, I helped in my family's business, and then, was conscripted in January 1939. Then I volunteered to be a non-commissioned officer and was appointed sergeant major in December 1943. Until the termination of the war, I had served in the army for six years and eight months.

3. When I was serving in the army, the main part of my duties was clerical. So I have never taken part in actual battle nor have I shot with a rifle even once during that period.

In September 1944, I arrived on Palau and was assigned and engaged in clerical work as a non-commissioned officer attached to the Intelligence Section of the 14th Division Headquarters. In September 1944, the American Forces landed on Peleliu, and 14th Division Headquarters moved into the jungle of Babelthup Island. It was after this time that my health was gradually ruined. Unhealthy conditions because of living in the jungle, excessive work caused by the constant severity of battle and the shortage of food made my health poorer 'til at last I was affected by malnutrition in March 1945 and had to have my duties lightened. The incident with which I have been charged took place when I was in such a poor physical and mental condition and suffering from malnutrition.

4. After the end of the war I was demobilized. Then I determined to work as a farmer thinking that I was best fitted for this in that I would be doing my job to separate Japan from its militarism in order to make it become a new peaceful country and in order to alleviate the miserable food conditions of my compatriots and rid them of their insincere humanity. In May 1946, an agricultural training school which taught methods of land development selected students, and I became a student with delight. When I finished the course at that school I was praised as a most excellent student. When I received training in that school, I decided to bring land under cultivation with my three friends after we finished the course. We left our home village and began cultivating a field which was formerly an army training ground which I bought. We decided not to drink or smoke until we succeeded in its development and exerted ourselves. Our efforts came to be recognized by people and our work was reported in the Asahi Shimbun (one of the leading newspapers in Japan) in March of this year. Later in July the head of the Cultivation Bureau of the Agricultural Department came to inspect our work and encouraged us. Although we were poor, each of us could contribute 15,000 yen, and with that money we bought a horse, and such tools as a cultivator, plough and harrow which were not often used in Japan. We also built our house and exerted great effort.

"DD (1)"

0598

Our work became a good model for other people. We worked harder and harder. We intended to buy a small farm tractor in order to mechanize our work further. I looked forward to the day when I would make money by selling crops and get married.

Just at that time, on the sixth of October, I was ordered to go to the Legal Section of GHQ where I was told to go to Guam as a witness about half a month later. Since only a few days remained for me before my departure, I hurriedly harvested the corn and worked in the farm in preparing to seed wheat. When I was thus working on the farm on the fifteenth of October, two policemen came to me suddenly and took me to the police station without telling me the reason. I hoped to contact with my family. I was taking charge of the money for our co-operative farming. So I begged them to let me go home once. But they did not allow me to do so, and I was taken to Sugamo Prison on the next day. Since I was told that I was to go to Guam as a witness and since I was convinced that I was innocent in what I had done, I was very surprised when I learned that I was being charged. It is still more unbelievable for me that I was accused under the charge of murder. I did not commit murder. I did nothing that day except give Kaufman his belongings as I had been ordered to do.

As I stated before, the reason why I had any connection with this case is that it happened to be my turn to go to Koror on a trip. This was really an accidental event. Even my poor state of health did not prevent me from taking my regular turn and I went on a trip which is now turning out to be the cause of my present misfortune, as I am accused of murder. I only obeyed what I was told without understanding the nature of my job. If my old parents hear that I am accused of the crime of murder they will grieve very much. I cannot understand why I am even accused of murder because I did nothing.

Fate plays strange tricks on people. I who had nothing to do with this murder and Koichi, Katsuyama, and Onose who were forced to carry out the orders of their superiors in spite of the fact that they themselves did not have the will, are all charged with murder. I have already testified that I had nothing to do with murder. Koichi has testified how he could not avoid even what he did. As I said on the witness stand, Shimojo wanted a picture so Kaufman's position was changed. Lieutenant Onose only happened to speak up and tell Katsuyama as to his position of his feet. I pray that you will understand me and these other three accused. Truly we are all poor people who have suffered much.

I should not even think of the money and the hard work I did on the small farm I bought in order that I might earn a livelihood. I should only be thinking about the day when I am acquitted of this charge of murder. Life is also very hard for me.

I cannot help but consider that perhaps I have even now lost all material things I possessed when I was told I was going to Guam as a witness at a war crimes trial.

But I must not think of such things, I must only hope and pray for an acquittal.

"DD (2)"

0599

5. I would like to express my deepest sympathy for Second Lieutenant Kaufman who fought bravely for his country and was executed by the Japanese forces. However, my connection with this incident is very nominal. I had no evil motive. Believe me when I say I am not guilty of any wrong doing in this matter and above all I am not guilty of murder.


I pray that you will acquit me.

December 1947.

Respectfully,

TSUCHIYA, Naohiko
Former sergeant major, IJA

I hereby certify the above, consisting of two and one-half (2½) typewritten pages, to be a true and complete translation of the original statement written in Japanese to the best of my ability.


EUGENE E. KERRICK, JR.
Lieutenant, USNR.
Interpreter.

"DD (3)"

0600

OPENING ARGUMENT FOR THE PROSECUTION

BY

Lieutenant James P. KENNY, USN.

If it please the commission:

In the specification under Charge I these four accused are charged with the murder of one Second Lieutenant Wallace F. Kaufman, an American prisoner of war.

Naval Courts and Boards, Section 53, defines murder as "The unlawful killing of a human being with malice aforethought." Unlawful means without legal justification or excuse. The defense has at no time claimed that there was any legal justification or excuse for the killing of Lieutenant Kaufman. It, therefore, follows that the killing was unlawful. The term "malice aforethought" means only that at the time of the killing there existed the intention to kill. Two of the accused, Koichi and Tsuchiya, took the stand in their own defense and admitted that Lieutenant Kaufman was taken to the Japanese Naval Cemetery on Koror on that day in May 1945 for the purpose of executing him. The legalistic language found in the wording of this specification, viz, "wilfully, feloniously, with premeditation and malice aforethought" expresses the same meaning of "intentional" and nothing more.

Now let us consider each of the accused with relation to this charge. The prosecution proved beyond any reasonable doubt that the accused Koichi was present at the beheading of Lieutenant Kaufman and gave the order for his beheading. Koichi took the stand in his own defense and admitted the truth of this. His only plea was that he had acted on superior orders. This is no defense. Koichi is guilty of the murder of Lieutenant Kaufman.

The prosecution has proved beyond any reasonable doubt that the accused Katsuyama was ordered by Koichi to behead the prisoner and that Katsuyama on a morning in May 1945 did behead Lieutenant Kaufman on Koror Island. He had the intention to kill and he did kill. He is guilty of murder as charged.

Next, let us consider the accused Onose. The prosecution has proved that Onose accompanied the victim to the scene of the execution for the purpose of making certain that he was, in fact, executed. On this alone he is guilty of murder as charged. Bouvier's Law Dictionary, Vol 2, states, "All who are present, either actually or constructively, at the place of a crime, and are either aiding, abetting, assisting, or advising its commission, or are present for such purpose, are principals in the crime." (Citing U.S. v Boyd, 45 Fed. 851) Onose was present for the purpose of making certain that Lieutenant Kaufman was executed. The evidence shows that the night before he took part in the discussion and planning of the execution. However, Onose further involved himself at

"EE (1)"

0601

the scene of the execution by showing Katsuyama how to behead Lieutenant Kaufman. American Jurisprudence, Vol. 14, Criminal Law, Sec. 87, states, "To constitute one a principal in a crime, he must be present aiding by acts, words or gestures and consenting to the commission of the crime." Onose was present and did aid by words and gestures. He is guilty of murder.

Now we turn to a consideration of the accused Tsuchiya, concerning whose acts there has been much testimony. The prosecution established that Tsuchiya accompanied the accused Koichi and Onose from Babelthwap to Koror for the purpose of (1) guarding the prisoner and (2) assisting Onose in his duties in connection with the execution. The prosecution's evidence shows that one of Onose's main duties was to make sure or confirm that Lieutenant Kaufman was executed. It is true that the prosecution has not proved that Tsuchiya either took part in the planning of the execution or performed any act at the scene of the beheading. However, there is no denial of the fact that Tsuchiya was present and even though he might not have performed any act at the scene, if he was present along with Onose "for such purpose," then he would become a principal and be guilty of murder as charged. Tsuchiya took the stand in his own defense and testified that the only reason for his presence at the scene was the return of Lieutenant Kaufman's personal belongings to his body prior to the execution.

The commission is therefore faced with a question of fact as to the reason for the presence of Tsuchiya at the scene. If you believe that Tsuchiya is telling the truth and that the sole purpose of his presence was as he claimed, then you should acquit him. However, if you believe that the evidence establishes, beyond any reasonable doubt, that Tsuchiya was a member of an execution party charged with the delivery of the victim to the scene of his execution and seeing to it that he was executed, then he is guilty of murder. The fact that he was a subordinate of Onose and only a non-commissioned officer is not relevant. American Jurisprudence, Vol. 14, Criminal Law, Sec. 73, states, "The fact that one of several persons knowingly promoting and participating in carrying out a criminal scheme acts in subordination to the others... does not render him less a principal."

In Specification 1 of Charge II the accused Koichi is charged with a violation of the law and customs of war because of his failure, as commanding officer, to control the members of his command, and persons subject to his control, viz, Katsuyama, Onose and Tsuchiya, in that he permitted them to kill Lieutenant Kaufman. Specification 2 of Charge II charges Koichi with a violation of his duty, as commanding officer, to protect Lieutenant Kaufman, a prisoner of war, in that he permitted his killing. To have established that Koichi was the commanding officer, that Katsuyama was under his command and, because he was the senior officer present, Onose and Tsuchiya were subject to his control. The Supreme Court of the United States recognized the duty which International Law places upon commanders to control the operations of their subordinates when in the case of the late General Yamashita it stated,

"EE (2)"

0602

"It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders of their commanders would almost certainly result in violations which it is the purpose of the law to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates." (Matter of Yamashita, 14 USL Weekly 414, February 4, 1946.) The law placed an obligation upon Koichi because of his position of command. The evidence proves he did not fulfill that obligation. He is guilty as charged in the two specifications under Charge II.

Gentlemen, this completes my review and comment upon the evidence and applicable law in the present case. Before closing I cannot but remark that again we have heard that none of these accused intended to or wanted to kill the unfortunate Lieutenant Kaufman - all were most reluctant. But, once again, we have heard how they were able to overcome that reluctance and commit murder. The accused Koichi, who testified that he "was just like a child" when he received the order from Lieutenant and General Inoue to execute Kaufman, lost all that timidity and childishness when he changed roles from subordinate to commander and chief executioner. But, gentlemen, the truth or falsity of such testimony has no more bearing on the guilt of these accused than the defense of superior orders. What does matter is that Wallace Kaufman was unlawfully killed. We do not ask for revenge - and sympathy for his bereaved family will not suffice. Justice demands that the executioners of Wallace Kaufman be punished.

Respectfully,

James P. Kenny
James P. Kenny,
Lieutenant, USN.

"EE (3)"

0603

"FF"

昭和二十二年十二月五日

辯論

被告

小市廣榮

勝山哲爾

小野瀬一郎

土屋直彦

辯護人

唐澤高美

"FF (1)"

0604

序 論

委員長並 委員各位

本辯護人、本件全被告、爲メ以下辯論
ヲ爲サントスルモノデアル

本件ハ、檢事側ニ於テ冒頭陳述ノ際述ビ
タ如ク極メテ單純ナ事件デアル 従而

日本辯護人ハ、各々立ツテ辯論ヲ爲ス、繁
ク辯ケ本辯論ヲ以テ日本辯護人全部ノ

辯論ヲ代表セントスル矣ヲ委員各位ニ
御了解願ヒ度イノデアル

又、檢事側ハ、本件第一起訴ニ於テ被告小
市外三名ヲ殺人罪ニ問責シ更ニ第二

起訴ニ於テ被告小市ヲ職務怠慢ニヨ
リ戦争法規並慣習違反ノ罪トミテ問責

セウレタノデアルガ、本辯護人ハ、以下
本論ニ於テ各被告ニツキ支々ソノ刑

責ノ有無並ニ範圍ヲ辯明セントスルモ

ノデアル

先ヅ私ハ細部ニ亘ル考察ヲ爲ス前ニ本
件ノ概略ヲ述ベ度イト思フ

本件ニ於テハ檢事側ノ立證セントシタル
事項モ又辯護側ノ立證セントシタル事項

モ略同一ノ方向ヲ示シテナル 唯ソノ

内容ニ於テ若干ノ差異ヲ見出ス程度ニ

過ギナイ 従而本件ノ大綱デアル井上

司令官ノ命令ニ基イテ本件ガ爲サレタ

ト云フコトハ兩者相一致シタ主張ナ

デアル

以下簡單ニ本事件ノ經過ヲ概觀シテ

見ヤウ

本件ニ於ケル俘虜カフマン少尉ハ昭和

二十年五月初旬B-24ノ搭乗員トシテこゝ

る島ヲ爆撃シタルトコロ所在日本軍高

射砲隊勝山隊ニヨリテ撃墜セラレ落下

傘ニテ降りタガ日本軍ニヨツテ捕ヘラ

シタノデアル

當時ころーる島、守備ニ當ツテエタエ井部
隊ハコノコフマニ少尉ヲ收容スルト共ニ若
干ノ取調ヲ爲シタル後直チニ第十四師團
司令部ニ彼ヲ送ツタソシテ司令部ハカ
フマニ少尉ヲ所在憲兵隊ニ抑留セシメタ
ノデアル司令部ニ於テハ情報參謀矢
島中佐ガソノ翌日俘虜ノ取調べヲ行
ヒソノ結果ヲ書類ヲ以テ井上師團長
並ニ多田參謀長ニ報告シタノデアル
然ルニ多田參謀長ハ右調査ノ不備ヲ
發見シ之ガ再調査ヲ矢島參謀ニ命
ジタノデアル矢島參謀ハ再びカフ
マニ少尉ノ取調べヲ爲シ井上中將ニ
報告シタノデアル
以後如何ナル事情ノ下ニカフマニ少尉
ノ處刑ガ井上中將ノ胸底ニ湧イテ來タ
カハ不明デアル兎ニ角井上中將ハ

俘虜ノ處刑ヲ思ヒ付キころーる高射砲隊
ヲシテ之ヲ執行セシムベク矢島參謀ニソ
ノ意圖ヲ漏ラシタノデアアル
矢島參謀ガコノ俘虜處刑ニツイテ如何ニ
考ヘタカハ我々ノ知ルトコロデハナイ
然シ彼ハコノ司令官ノ意圖ヲ電話デころーる
守備隊長土井中佐ニ知ラセ同中佐ノ意見
ヲ求メタ 土井中佐ハ處刑ニ反對シ其ノ
旨井上司令官ニ傳ヘテ貰イ度イト答ヘタ
以後日時ノ經過ハ不明デアアルガ土井中佐ハ
コノ俘虜處刑ニ關スル司令官ノ意圖及彼
自身之ニ反對シタル旨ヲ被告小市ニ傳ヘル
ト共ニ同被告ノ意向ヲ質シタ 勿論被告
小市モ土井ト同様ノ意見デアリ 之ヲ司令
官ニ傳ヘテ呉レル様土井ニ依頼シタ
被告小市ノ意見ハ司令部ニ傳ヘラレタ
更ニ土井ハ其ノ翌日頃偶々小市隊ノ附
近這行ツタ際小市ニ逢ヒ前ト同様ノ會話

ヲシタノデアル

斯クテ日時ハ過ギテ行ツタ、ソノ間司令部ニ於テハ何事カガ計画サレ決定サレツツアツタト思ハレル。井上中將ハ矢島參謀ニカフマシテ少尉ヲ小市ノ部下勝山中尉ニ勝山隊ノ士氣昂揚ノ爲メ處刑スベク其ノ爲カフマシテ少尉ヲころころ島ニ送ルベキ旨命ジ更ニ其ノ處刑ニツイテ詳細ナル指示ヲ與ヘタ、デアル

矢島參謀ハ小市隊ノ指揮部隊長タル土井中佐ニ之ヲ報ジタ。土井ハ更ニ之ヲ小市ニ傳ヘタ、デアル

時恰モ小市ハ豫テ司令部作戰參謀中川中佐ヨリ米軍飛行機ノ爆撃手ニヨル被害狀況ノ報告並ニ將來ノ作戰打合ノ爲メ出頭ヲ命ゼラレテ居タノデ司令部ニ於テ自己ノ意見ヲ表明スルニ先立チ先ツ勝山中尉ニ司令部ニ俘虜處刑ノ意圖アルコトヲ

知ラセルト共ニ勝山ノ意見ヲモ實シタノデ
アル

勝山ノ意見モ亦小市ト同様處刑ニ反對デ
アツタ 斯クシテ小市ハ若シ彼ガ司令部ニ
行ツタ際俘虜ノ處刑ヲ拒絶シ得ル餘地ガア
ルナラバ最後ノ努力ヲ試ミント決意シ其
ノ夜司令部ニ出頭シタノデアル

司令部ニ出頭セル小市ハ翌朝中川參謀ト
作戰ニ關スル打合ヲ行ツタ 昭和二十年五
月當時ニ於ケルバラオ諸島ノ戰況ハ日本ニ
取ツテ香シイモノデハナカッタ 連日ノ
空襲ニヨリ被害ハ日毎ニ増大シ人員ノ
損傷 兵器彈藥糧食ノ消耗ニ因リ益々困
難ナ戦局ニ當面シテ居ツタ 被告小市
ハ中川參謀トノコノ困難ナ狀況下ニ於ケ
ル作戰打合ノ爲メニソノ日午前ヲ費シ中
川參謀ト晝食ヲ共ニシタ ソシテ晝食後
中川參謀ト共ニ井上司令官ノ許ニ出頭シタ

ノデアル 勿論主ナル要務ハ、こゝに於ける事ニ於
ケル戦闘並ニソレニ因ル被害状況ノ報告
デアツタ 小市、彼自身ノ任務ヲ詳細ニ
報告シタ 作戰ニ關シテハ既ニ中川參謀
ヨリ司令官ノ意思ニ反セザル様嚴重ナル
注意ヲ受ケテサタノデ型通りノ報告ヲシ
タニ過ギナイ 其、會談中井上司令官
ハ既ニ決定セル俘虜處刑ノ命令ヲ被告
小市ニ嚴達シタノデアル
南洋方面陸軍最高指揮官タル井上中將ノ
嚴命ハ、一介ノ陸軍大尉ニ過ギナイ被告小
市、ヨク拒絶シ得ルトコロデナカッタ 而モ
屢次ニ亘ル小市、拒絶ニモ拘ラス 猶且嚴
命ヲ達セラレタ以上最早司令官ノ命令ニ
對シ極ムベキ言葉ハナカッタ 這般ノ事
情ハ軍人タル委員各位ニハ充分御了解
ヲ願ヒ得ルトコロデアル
被告小市ハ直チニ司令部ヲ辭シテ歸途ニ

ツイタ

一方司令部ニ於テハ井上司令官ハ矢島參謀ニ
對シ小市ニ直接命ジ置キタルニヨリ俘虜カ
フマニ少尉ヲ直チニこころニ護送スベキ
旨ヲ重ネテ命ジタ 矢島參謀ハ直チニ自
己ノ部下デアアル 被告小野瀬ヲ選ビ彼
ニ司令部ノ命令ヲ傳ヘルト共ニ護送ニ關
シ詳細ナル指示ヲ與ヘタ 被告小野瀬ハ
被告土屋ガ恰度出張ノ順番ナリシ爲メ
自己ノ補助者ニ選ビ更ニ寫真班員ノ下條
軍屬ヲ隨行セシメルコトニシタ
彼等護送班ノ一行ハ直チニ司令部ヲ出發シ
俘虜ヲ收容セル憲兵隊ニ於テカフマニ少尉
ヲ受取りこころニ行、波止場ニ到着シタ
彼等ハ波止場ニ於テ被告小市ニ會ヒ其ノ夜
彼等ハこころニ向ケ出發シタノデアアル
一行ガこころニ小市隊ニ到着シタノハ既
ニ夜半ヲ過ギテ居タ 小市始メ彼等ハ共ニ

夜食ヲ執リ翌日行ハルベキ處刑ニツイテ具
體的ナ取決メヲ爲シ更ニ小市ハ被告勝山ニ
電話ヲ以テ井上司令官ノ命令ト之ヲ拒否シ
得ザリシ事情ヲ傳ヘ且ツ明朝七時兵隊ヲ從
ヘテ海軍基地ニ參集スベキ旨ヲ命ジタ

翌朝午前七時被告小市ハ彼ノ命ヲ受ケテ處
刑ノ現場ニ參集セル兵員一同ニ司令官ノ命
令ヲ傳達スルト共ニ大イニ士氣ヲ昂揚シテ
司令官ノ意圖ニ副フ様訓示シタ

一方カフマン少尉ニハ小野瀬少尉ヨリ彼ヲ處
刑スベキ旨ノ司令官ノ命令ガ傳ヘラレ彼ノ
所持品ハ被告土屋ヨリ彼ニ返還サレタノシ
テ彼ハ被告勝山ニヨツテ斬首セラレタノデ
アル

カフマン少尉ノ死骸ハ日本ノ慣習ニヨツテ
重ニ埋葬セラレ彼ノ墓ニハ墓標モ建テラレタ
ノデアル 參集者一同ハ小市ノ指揮ノ下ニカフ
マン少尉ノ冥福ヲ祈ツテ默禱シタ

小野瀬、土屋下條等ハ同夜司令部ニ歸リ處刑ハ
無事終了セル旨矢島參謀ニ報告シタ
以上ガ本件ノ概要デアルガ之ニヨツテ我々
ハ本件ガ從來、俘虜殺害事件ト其ノ趣ヲ著
シク異ニシ被告等ハ孰モ其ノ爲ニ得ル限リ最
善ヲ盡シタコトガ充分了解出來ルノデアル
即チ本件ハ絶對ニ俘虜ニ對スル虐殺事件デ
ハナシ 否寧ロ本件被告等ハ俘虜カフマシニ
對シ彼等ノ與ヘ得ル限リノ同情ト慈愛トヲ與
ヘタト謂フベキデアラウ
私ハ以下本論ニ於テ
第一起訴ニ於テ殺人罪トシテ起訴セラレ
テナル各被告ニツイテ辯論ヲ爲シ次デ
第二起訴第一、第二罪狀項目ニ於テ戦争
法規並ニ慣習違反ノ罪トシテ起訴セラレ
テナル被告小市ノ爲メニ辯論ヲ進メルデ
アラウ

本論

第一起訴殺人罪ニツイテ

第一被告小市ノ爲メニ

検事側ハ第一起訴第一罪狀項目ニ於テ被告小市ヲ殺人罪ニ問責シ之ヲ立證スル爲ニ證人下條、矢島及土井、證言各被告、口供書並ニハ
コオ進駐米軍ノ墓地發掘ニ關スル調査報告書ヲ
本法廷ニ提出シタ之等、諸證據ニヨツテ明ラ
カニセラレタ事實ハ被告小市ガ井上中將ノ命
令ニヨツテ相被告勝山ヲシテ俘虜カフマニシ
尉ノ處刑ヲ執行セシメタト言フ事デアル
私ハ檢事側ノ立證セントシタ右、事實ヲ
争フ心算ハ毛頭ナイ然レドウ私ハ被告小市
ガ終始如何ナル態度ヲ以テ本件俘虜處刑
ニ臨ンダカ又如何ニシテ井上中將ノ命令ヲ
受ケルニ至ツタカト言フ事が被告小市ノ刑
責ヲ判斷スル上ニ最も重要ナル點デアルト
考ヘル

以下私ハ各證據ヲ批判シツツ辯論ヲ進メヨウ
先ヅ被告小市ハ本件俘虜處刑ニツイテハ最初ヨ
リ反對ノ意見ヲ有シ之ヲ彼ノ上官タル土井中佐
ニ具申シ且之ヲ司令部ニ傳ヘテ呉レル様同
中佐ニ依頼シテナル

而シテ小市ノ意見ハ司令部ニ達セラレテナク
ノデアル 之ヲ本法院ニ顯出セラレタ諸證
據ニヨツテ案スルニ

先ヅ被告小市ガ土井中佐ヨリノ最初ノ電話デ
初メテ司令部ノ俘虜處刑ノ計劃ヲ如ク時
被告小市ハ斷固反對ノ意見ヲ具申シタ
コノ點ハ被告小市本人ノ證言及ビ陳述書ニ
ヨツテ明ラカナル外檢事側證人土井中佐ノ證
言ニヨツテモ明瞭デアル 即チ證人土井
ハコノ點ニ關シ次ノ如ク證言シテナル

司令部カラ高射砲隊ノ士氣昂揚ノ爲メこゝ
るへ俘虜ヲ送ツテ處刑サセルト言ツテ來タガ
才前ノ方ハ飛行機ヲ落シタカラ 士氣ハ充

分舉ツテナルダロウ。ダカランニ必要ハアルマ
オ前ノ意見ハドウカ。ト小市ニ聞イタラ、小市ハ
部隊長ノ意見ト全ク同感ダト答ヘタ
以上、土井ト、會話ニ依ツテ被告小市ハ本
件俘虏處刑ノ計劃ヲ始メテ知ツタノデアル
コ、後ニ於テモ土井ト小市ト、間ニ數回、
會話ガ交サレ、ソノ都度小市ハ當初ノ意見
ヲ貫キ通シテ來タノデアル

コ、小市ノ意見ハ處刑執行前ニ司令部ニ
達セラレタノデアル。コノコトハ次ニ掲ゲル
證據ニ依リ明瞭デアル

即チ證人矢島ハ辯護人側ノ反對訊問ニ於テ
問土井ト、電話ニ於テ土井ハ小市モ反對
ダト言ハナカッタカ

答土井ノ電話カ、中川ノ言葉カハツキリシマ
ンガ小市ガ反對ダトノ言葉ハ私ノ記憶ニハ
ツキリ残ツテ居リマス

次ニ

問 小市之反對ダト云フ事ヲ司令官ニ傳ヘタカ
答 司令官ガ小市ニ命令シヤウト云フ意圖ヲ
持ツテ井タカラ之ヲ傳ヘル、ハ私ノ義務デ
アル 小市隊ト云ツタカ 小市大尉ト云ツタカ
記憶 ナイガ傳ヘタ

更ニ次ノ問答ニ於テ

問 ソレニ對シ井上司令官ハ何ト云ツタカ

答 記憶 ナイ

ト證言シテナル

トコロガ同證人ハ檢事ノ再訊問ニ於テハ小市ノ反對
意見ヲ司令官ニ傳ヘタカドヤカ ハッキリ記憶
ナシ ト云ヒ或ハ 小市ノ反對ナルコトヲ知ツタ
ノハ處刑ノ前デアツタカ後デアツタカ ハッキリ
シナイ ト云ヒ極メテ曖昧ナ證言ヲシタ

然レラ辯護側ノ再反對訊問ニ於テ彼ハ小市
ガ反對デアルト云フ事ハ土井カウ聞イテ知ツテ
ナルト云ツタ ソコデ辯護側ガ更ニ

土井カウ聞イテ知ツテナルトセバソレハ處刑ノ前カ

ト問フタノニ對シ彼ハ然リト答ヘタ

更ニ辯護側ノ證人小川ハ彼が最初ニ處刑ニ關スル司令官ノ意圖ヲ聞イタノハ井上中將が被告小市ニ命ジタ時ヨリ二、三日前ニ矢島參謀カラ聞イタト證言シ

更ニ同證人ハ小市ノ意見ハ矢島參謀カラ處刑、アツタ日ヨリモ二、三日前ニ聞イタト證言シタノデアル

私ハ以上ノ問答ニヨツテ小市ノ停處刑ニ對スル反對意見が本處刑ノ前ニ司令部ニ達セラレテキタコトが明ウカニセラレタト信ズル

次ニコノ小市ノ意見が井上司令官が被告小市ニ處刑ヲ嚴命スル以前ニ同司令官ニ達セラレテキタリヤ否ヤニツイテ察スルニ

此ノ點ハ必ズシモ明瞭デナイ然レ私ハ矢島參謀が自分が最初ニ井中佐ニ司令官ノ意圖ヲ傳ヘタ時同中佐ハ處刑ニ反對スルヨリ、意見ヲ述ベ

タ 同中佐ノ意見ヲ井上司令官ニ報告シタトキハ
同司令官が既ニ直接小市ニ命令シタ後デアッタ
ト證言シテ井上ノハ極メテ欺瞞ニ満チテ井上ト
考ヘル節ヲ證人矢島ハ第二回目ノ俘虜調査
ノ後井上中將ニ其ノ結果ヲ報告シタノ時
矢島ハ井上中將ヨリ俘虜ヲ處刑シヨウト云フ
彼ノ意圖ヲ打明ケラレ直チニ其ノ日電話デ上
井ニ知ラセタルデアアル 矢島ハ其ノ電話ニミッ
テ上井が處刑ニ反対ナルコトヲ知リ之ヲ井上中
將ニ報告シタ スルト井上中將ハ既ニ小市ニ處
刑ヲ命ジタト言ツタノデアアル 換言スレバ矢島
ノ證言ニヨルト矢島が井上司令官カラ俘虜
處刑ノ意圖ヲ打明ケラレテ之ヲ上井ニ傳ヘ上
井ノ反対意見ヲ井上ニ報告シ井上カラ彼が直
接小市ニ命ジタト傳ヘラレタト云フ 聯ノ出
來事ハ小市が司令部ニ出頭シタ日ニ起ツタコ
トニナルデアアル 何トナレバ證人矢島ハ最初
上井ニ電話シタ時カラ司令官が直接小市ニ處

刑ヲ命ジタト言ツタ時迄ニ數時間乃至半日時間
間ガアツタト言ヒ又之ヲ撤回シテ大分時間
間ガアルト證言シタガ何レニシテモ同日日出
來事タルコトハ間違ヒナイト思ハシル而シテ
小市ガ司令部ニ出頭シテ井上司令官、面前
テ同官カラ直接俘虜處刑ノ命令ヲ受ケタ
以前ニ於テ電話其他ノ方法ニ依リ井上ト
小市トノ間ニ直接會話ガ交サレタト云フ事
實ハ主張モサレテモナケレバ又何等立證サレ
テモナキカラ

之ヲ要約スレバ井上中將ガ矢島參謀ニ始
メテ俘虜處刑ノ意圖ヲ漏シタ日ニ被告小
市ハ司令部ニ出頭シテ司令官カラ俘虜
處刑ノ命令ヲ受ケタコトニナル、テアル
然ルニ檢事側ノ證人ト井上辯護側ノ反
對訊問ニ於テ

問(第二回目、電話ノ意)

第一回目、電話カランドノ位經ツテカラカ

答 二三日経ッテ牛ルト思フ 之ニ想像デアル
面ト向ッテ話シタ時ヨリ後デアル
ト證言シ尚檢事側ノ直接訊問ニ於テ
問電話デ話シタ時トコ、面ト向ッテ話シタ會話
ト、時間的關係ハトウカ

答 一日位アツタト思フ

ト證言シタ

右檢事側、證人矢島及土井、兩名ハ、市
ト井上司令官ト、中間ニ在ッテ本件停傷處
刑ニ關シ連絡、役割ヲ演ジタ被告市ニ
トッテ最モ重要ナル證人デアリ且又上官デモ
アル然ルニ彼等、證言ハ全ク無責任ナ
ノデアル 殊ニ矢島ハ井上司令官ノ側近
ニアツテ本件停傷處刑ニ關シ井上司令官ト
土井中佐ト、連絡ヲ爲シタ點ニ於テ本件、
最モ主要ナル責任者デアル彼コソ事件、
真相ヲ充分ニ承知シテ牛ルト答デアル
然ルニ彼ハ自己ノ責任ヲ回避セシガ爲ニカ

或ハ累、井上中將ニ及ブラ恐シテカ矛盾撞着
ニ満チタ證言ヲシタ

小市ノ意見ガ何時司令官ニ達セラレタカ、以
上兩證人ノ證言ニヨツテハ未ダ明瞭デナイ
然シ司令官ガ直接小市ニ處刑ヲ命ジタ以
前ニ小市ノ意見ガ司令官ニ達セラルベキ十
分ノ時間的餘裕ガアツタコトハ容易ニ推定
シ得ルトコロデアル

反ニコノ推論ニ疑ヲ挿ム餘地アリトシテモ
被告小市自身ニトツテハ「至程重要」デハナイ
カモシレナイ 何トナレバ被告小市ニ取ツテ
ハ彼自身ノ主觀ニ於テ井上司令官ニ自己ノ
意見ガ達セラレタト信ジテ居ルバ充分デ
アリ 又斯ク信スベキ理由ガアツタカラ
デアル

被告小市ハ司令部中川參謀、許ニ出頭スル
直前「勝山中尉」ニ「俘虜」ヲ處刑セシメヨト、
井上司令官ノ指名命令ヲ傳達セラレタ時ニ於テ

スラ尚司令部ニ出頭シテ俘虜ノ處刑ヲ拒絶ス
ル餘地アラバ拒絶セント考ヘタ、コノ爲メニ
相被告勝山ヲ呼ビ彼ノ意見ヲ確メタノデアル
コノ事、被告小市、證言竝ニ小市及勝山、各
口供書中ニ詳述セラルテナルデアル

私ハ被告小市ガコノ俘虜處刑ニ對シテ終始
反對ノ意見ヲ抱イテ居タ事ハ委員各位ニモ
充分御了解願ヘタコトト思フ

次ニ私ハ被告小市ガ終始處刑反對ノ意見ヲ
抱イテ居タニ拘ラス何故彼ガ井上司令官、
俘虜處刑ニ關スル命令ヲ受諾シ勝山ヲ之
テ之ヲ實行セシムルニ至ツタカラ説明セネ
バナラナイ

コノ點ニ關スル被告小市、證言ヲ見ヤム
司令官ニ戰鬪狀況ヤ被害ノ狀況ヲ報告シ
タノデアリマスガ偶々勝山隊ノ被害狀況ニ及ビ
マスト司令官ハ勝山隊ノ士氣ハトヤカト
訛ネラレタノデ、勝山隊ノ士氣ハ昂揚

サレテ居リマス、ト答ヘマシタガ司令官ハ
ナホ勝山隊ノ士氣ヲ心配シテ井タト見エ
テ「士氣昂揚、爲ニ勝山隊ヲ撃隊シタ俘
虜ヲオ前ニ渡スカラ勝山ニ處刑サセロ」ト言
ハレマシタ 尚其ノ際司令官ハ更ニ勝山隊
ノ陣地ヲ成ルベク大勢ノ兵ヲ集メテヤシ 處刑、
トキハ俘虜ノ所持品ヲ身ニ付ケテヤシ、ト申サ
レマシタ

ト證言シ更ニ

證人ハ「ソレニ對シテ何か言フツタカ」ト質問ニ
對シ彼ハ

私ハ飽ク迄反對スル心算デシタガ、バウオ軍
團最高司令官タル井上中將カラ直接命令サ
レト當時大尉ニナツタバカリテ司令官カラハ
子供位ニシカ思ハレテ井ナイ私トシテハ反
對スルコトハ出来マセンデシタ、ソレニ井上司令
官ハ一度決心タフトハナカナカ罷サナイ性質、
人デアルコトハ豫テ承知シテ居リマシタノデ私が反

對シテ其ノヲ知リ作ラナホ命ゼラシル以上反
對シテモ無駄ダト思ツテ何モ申シゲマセンデシタ
ト答ヘテ其ノデアアル 彼ノ口供書中ニモ同
ジ趣旨ガ記載セラレテ其ノデアアル
之等ノ證據ハ被告小市ガ井上司令官ノ命令
ヲ受諾セザルヲ得ナカッタ事情ヲ立證スル
ニ充分デアツテ軍人タル委員各位ニ對シ
テハコレ以上ノ説明ヲ加ヘル必要ハナイト
思フ

最後ニ私ハ被告小市ガ本件受傷カフマン
少尉ニ對シテ如何ナル取扱ヲ爲シタカヲ
述べネバナラナイ

私ハ先ツ辯護側ノ證人田中正雄ノ證言ヲ
引用シヤウ 田中ハ處刑當日被告小市ノ
行動ヲ共ニシ處刑現場ノ狀況ヲ最も明確
ニ證言シタ證人デアアル

小市隊長ガ受傷ト(續ニ處刑現場ニ來タトキ
勝山中尉ノ指揮ニヨツテ全員隊長ニ敬禮シマ

シタ。ソレカラ小市隊長、總員ニ訓示サシタ
訓示ノ言葉ハ「々明瞭」ニ記憶シテ井上イガ
要スルニ井上師團長ノ命令ニヨツテコ、
俘虜ヲ處刑スルノタコロニヨツテ皆、大イ
ニ士氣ヲ昂揚セヨト云フ意味デアツタト
證言シ更ニ

小市隊長ハ小野瀬少尉ニ俘虜ガ何モ知ラサ
ナイデ殺サレテハ氣ノ毒デアルカラ「コレカラ命
令ニヨツテ君ヲ斬ル」ト云フコトヲ俘虜ニ傳へ
テヤルト云ハレタ。ソレハ小野瀬少尉ハ何か
紙ニ書イタモノヲ俘虜ニ讀ンデヤリマシタト
證言シ

更ニ證人田中ハ俘虜ノ埋葬ニツイテ
日本ニ於ケル禮式ニヨリ埋葬シ種々ノ供物
ヲシホ市ノ指揮ニヨツテ總員俘虜カフマン
少尉ノ冥福ヲ祈ツテ默禱ヲ捧ゲタト證言
シタ。更ニ彼ハ小市ヨリカフマン少尉ノ墓標ヲ
建テル様命ゼラレタノデ彼ハ部下ノ兵隊中

大工、経験アル者ニ十字架ヲ作ラシメ之ニ
米國飛行將校ノ墓ト書イテ墓ノ上ニ建テ
タト證言シタ

尚小市ハ證人田中ニ命ジテ墓ニ芝ヲハリ
附近ヲ清掃シ處刑後屢々墓ヲ參ラシタ
小市ハ被告勝山ニモ又證人田中ニモ墓
ヲ參ラスル様勸メタ

以上ハ被告小市ノ證言並ニ各被告ノ口供書
ニヨツテモ立證セラレタ外檢事側カラ證據ト
シテ本法院ニ提出サレタハラオ進駐米軍報告
書ニヨツテモ明白デアル

被告小市ハ停虜カフマニ少尉ニ對シ彼ノ爲ニ
得ル限リノ最善ヲ盡シタノデアル

私ハ以上ノ辯論ニヨツテ被告小市ガ終始
處刑ニ反對シテキタニ拘ラス井上中將嚴
命ニ抗シ難ク止ムナクカフマニ少尉ノ處刑ヲ
執行シタ事又處刑ヲ執行スルニ當ツテハ
カフマニ少尉ニ對シ終始温情ヲ以テ臨ミ彼ノ爲

シ得ル最善、努力ヲ盡シタ事ヲ論證シタ以上、
辯論ニヨツテ被告小市ハ終始本件停場處刑ヲ
反對シタルニ拘ラズ井上中將、嚴命ニ抗シ
難ク被告勝山ヲシテ處刑セシメタノデアリ
テ其ノ間ニ被告小市、自由意志ニ毫末モ介
在シテナシノデアル 従而被告小市ニ、
殺人罪、責任ハナシト確信スル 然レウモ若シ
被告小市ニ有罪ヲ認定セラルル場合ニ於テハ、
彼ノ立場及其ノ態度ニ充分ナル御理解
ヲ與ヘラシ彼ノ爲メニ寛大ナル御判決、與
ラレシコトヲ希フ次第デアル

第二被告勝山ノ爲メニ

検事^側ハ第一起訴ニ於テ被告勝山ヲ殺人罪ニ問
擬シ之ヲ立證スル爲ニ相被告小市ニ對スル
ト同様、諸證據ヲ本法廷ニ提出シタ之等、
諸證據ニヨツテ明ラカニセラシタ事實ハ被
告勝山ガソノ直接、上官タル相被告小市
ノ命令ニヨリ俘虜カフマニ少尉ヲ斬首シタ
ト云フ事デアル

此ノ事實ハ被告勝山ガ既ニ彼ノ口供書中
ニ述ベテキル所デアルカラ私ハ敢ヘテ之ヲ
争ハウトスルモノデハナイ

私ガ被告勝山ノ爲メニ辯論セントスル所
ハ被告小市ニ對スルト略ニ同様デアル
井上中將ノ俘虜處刑メ命令ハ被告小市
ヲ通ジテ被告勝山ニ達セラシタノデアル
井上司令官ノ命令ガ勝山中尉ニ俘虜ヲ
處刑セヨト、指名命令デアツタト云フ事ハ
既ニ被告小市ノ爲メニ辯論ニ於テ述ベタ

從而勝山が司令官、命令ヲ拒否シ得+カッ
タ事情ハ恰モ小市が司令官、命令ヲ拒否シ
得+カッタ事情ト同一デアル

叔テ被告勝山ハ小市が司令部ニ出頭スル直
前小市カラ電話テ小市ノ許ニ呼ビレテ出頭
シタシシテ彼ハ小市ヨリ井上司令官ハ
勝山隊ノ士氣ヲ昂揚スル爲メニ勝山中
尉ニ浮虜ヲ處刑サセロト云ツテキルが自
分ハ反對ダオ前ノ意見ハドウカト訊ネ
ラレタ之ニ對シ勝山ハソレハ斷固拒絕
スベキデアルト答ヘタノデアル

然ルニ翌日、夜半被告勝山ハ再ビ小
市ヨリ電話ヲ以テ司令官、命令ヲ拒絕シ
得ザリシ事情ヲ告ゲラレタ上更ニ明朝七
時海軍基地ニ於テ處刑ヲ執行スベキ事ヲ
命ゼラレタ

被告勝山ハ彼ノ直接ノ上官タル小市ヨリ
井上司令官ノ嚴命デアルカラ處刑セヨ

ト命ゼラシ最早コ、命令ニ服セザルヲ得
十カッタ

以上ノ事實ハ相被告小市ノ證言並小市
勝山ノ口供書ニヨツテ明白デアル

被告勝山ハ小市ノ命令ニヨリ俘虜カマ
ン少尉ヲ斬首スルコトニ依リ處刑ヲ執行
シタ 彼ハ被告小市ト共ニ全ク井上司令
官ノ道具トナツテ命令ノマニ處刑ヲ執
行シタニ過ギナイ

檢事側、證人中被告勝山ニ付キ我々ノ注
意スヘキ證言ヲシタノハ下條光春デアル
下條證人ハ彼ガ俘虜ヲ小市隊本部ニ護
送シテ行ツタ時ニコニ勝山ガ居テニ、三、下
士官ニ俘虜ヲ防空壕ノ中ニ入シタラ充分
監視スル様命シタト證言シタ 然レラ
被告勝山ハ俘虜ガ小市隊本部ニ到着シ
タ夜ハ同本部ニ行ツテ居ナイ 只小市ヨ
リ電話テ處刑ノ命令ヲ受ケタニ過ギナイ

下條證人の當法廷ニ於テスラ被告小市ト被
告勝山トヲ辨識スルコトが出来ナカッタ
私ハ斯クノ如キ證人が勝山ニ關シテ證言
シ得ル道理ガナイト考ヘル 從而下條證人
ノ證言中勝山ニ關スル部分ハ彼自身モ反
對訊問ニ於テ認メサルヲ得ナカッタ如ク
全ク彼ノ相像ニ出ヅルモノデアル
被告勝山ガ俘虜カフマニ少尉、處刑中演ジ
タ役割ハカフマニ少尉ヲ斬首シタト言フ點
ノミデアル 而モ勝山ハ小市ヨリ井上
司令官ノ嚴命デアルト出デラシテ斬首シ
タノデアル
コノ處刑ガ如何ニ彼等、爲シ得ル最善ノ方
法ニヨツテ爲サレタカ 又彼等ガ俘虜ニ對
シ如何ニ同情ト慈愛トラシテ臨ミダカト言
フ事ハ既ニ小市ニ對スル辯論ニ於テ述ベ
タ通りデアル
私ハ委員各位ガ司令官、嚴命ニヨツテ機

械的ニ行動シタ被告勝山ニ對シ無罪ノ決
ヲ賜ランコトヲ切ニ希フ次第デアル

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第三被告小野瀬ノ爲メニ

検事側ハ被告小野瀬ガ本件俘虜護送ノ任ニ
當リ且處刑ノ現場ニ於テ相被告勝山ニ斬首
ノ方法ヲ示シタトノ二點ヲ捉ヘ第一起訴
第一罪狀項目ニ於テ彼ヲ殺人罪ニ附擬シタ
然レド私ハ假令カ、ル事實ガアツタニセヨ之
ニヨツテ殺人罪ト言フ重大ナル刑事責任
ヲ認定スルコトハ斷ジテ許サレナイト信
スル

以下私ハ諸證據ヲ引用シツツ辯論ヲ進メ
ヤウ

被告小野瀬ハ第十四師團司令部情報室配屬
ノ將校デアリ同室ノ長ハ矢島參謀デアッタ
小野瀬ハ矢島參謀ヨリ本件俘虜ヲこころゝるヘ
護送シ其ノ處刑ヲ確認シテ來ル様命ゼ
ラレタノデアアル　コノ點ハ證人矢島渡
部ノ證言ニヨツテ明白デアアル
矢島參謀ハ被告小野瀬ニコノ命令ヲ傳ヘ

ルト同時ニ詳細ナル指示ヲ與ヘタ
即チ(一)憲兵隊ニ於テカフマンス少尉ヲ受取
間違ニナク之ヲこころゝるヘ護送スルコト
(二)カフマンス少尉ノ處刑ヲ確認スルコト
(三)カフマンス少尉ノ所持品ヲ確實ニ返還シ處
刑ノ際之ヲ彼ノ身ニツケサセルコト
之デアル

而シテ矢島參謀ハ彼ガ保管シテ居タ學屬
カフマンス少尉ノ身廻品ヲ小野瀬ニ渡シタ
又矢島ハ憲兵隊ヘモ電話ヲ以テ小野瀬ニ
カフマンス少尉ヲ渡ス様指示シタ
小野瀬ハ矢島ヨリコノ命令ヲ受クルヤ恰モ
出張番タリシ土屋ヲ選ビ自己ノ補助者ト爲
シ更ニ寫眞ヲ寫シテ處刑確認ノ證據トス
ル爲寫眞班員下條軍屬ヲ選ンダ土屋及下
條ヲ選ンダコトガ小野瀬ノ發意ニ基クモノナリ
ヤ、矢島ノ指名ニ因ルモノナリヤハ證人矢島ガ
私ガ直接命ジタガ小野瀬ノ意見具申ニヨリテ

選ンダモノカハツキリシナイガ處刑ノ現場ヲバツ
キリサセル爲メニ土屋曹長ト下條軍屬ニ
緒ニ行ク様命ジマシタ

ト證言シテナルノデ明確デナイ

假令矢島が自ラ土屋及下條ヲ指名シタカド
ウカハ明確デナイニシテモ尠クトモ彼ガ小
野瀬ニ誰カ下士官及寫眞班員ヲ連シテ行
様命令シタコトハ彼ノ證言カラ容易ニ察知
スルコトが出来ル

矢島ハ被告小野瀬ヲ何故ニ選ンダカト言フ點
ニツイテ彼ハ井上司令官ヨリ本件護送ノ任
ニハ將校ヲツケル様命ゼラレタト言ヒ而シテ
辯護側ノ質問ニ對シ“私ノ所ニ居ル者ノ中
デ適當ト認メタカラ”ト答へ更ニコノ任務
ニハ必ズシモ被告小野瀬ヲ要スルモノデナク
誰デモヨイノダト證言シタ又證人渡部
ハ辯護側、小野瀬ガ何故ニ選バレタカト、
質問ニ對シ“當時小野瀬、任務ハ二三日留

牢ニシテモ良イ様ト仕事デアツタノデ選バレ
タト證言シタ以上ニヨツテ被告小野
瀬ノ本件俘虜ノ護送ハ全ク矢島參謀ノ命
令ニヨツタモノデアリ而モ彼が選バレタハ
全ク偶然ト廻合セデアツタコトヲ知ルノデ
アル 即チ被告小野瀬が自ラ進ミテ俘虜
護送ノ任ヲ買ツテ出タモノデナコトハ明瞭
デアル

次ニ私ハ檢事側ニ於テ主張スル第二ノ點即チ
被告小野瀬が處刑ノ現場ニ於テ勝山ニ斬
首ノ方法ヲ示シタト言フ點ニツイテ論述シ
度イ 此ノ點ニ付テハ被告小野瀬が其ノ口
供書ニ於テ勝山中尉ノ足場が悪カッタノデ
彼ニ注意シタノダト述ベテ居ル外土屋ガ
處刑ノ直前勝山中尉ガ軍刀ヲ振上ゲタ格
好ヲ下條軍屬ガ寫真撮ラウトシタ際頭線
ノ具合デ勝山ノ俘虜ニ對スル位置が悪カッ
タノデ之ヲ變更シタトコロ勝山ノ足場ガ決

マラナカツタノデ小野瀬が勝山中尉ニ其足
場ヲ注意シタト證言シテヤル 即チ小野瀬
が勝山ニ示シタ檢事ノ所謂斬首ノ方法ト、
唯單ニ寫眞撮影ノ必要上生ジタ勝山ノ位
置ノ變更ニ伴ツテ勝山ノ足場ヲ注意シタコ
トヲ意味スルニ過ギナイ 檢事側ノ證人
下條ハ小野瀬ハ勝山ノ位置ヲ教ヘ更ニ軍
刀ノ振リ上ゲ方ト振リ下シ方ヲ教ヘタト證言
シタガ苟クモ軍刀ヲ使用シヨウトスル程ノ者ガ
ソノ上ゲ下シ迄人カラ教ハル等ト言フコトガ下
得ル筈ガナイ コノ下條ノ證言中ノ後半ハ到
底眞實トハ思ハレナイ
然シ檢事ハ足場ヲ注意シヤウト刀ノ使ヒ方
ヲ教ヘヤウト斬首ノ方法ヲ示シタ事ニ變リ
ナイデハナイカト言フカモ知レナイ
前ノ第四十一警備隊事件ニ於テモ斬首ノ
方法ヲ示シタト云フ事ガ問題ニサレタノデ
アルガ私ハカ、ル行爲ガ何程人ノ死ニ原因ヲ

與ヘルモノデアルカ疑問デアルト思フ 苟モ
殺人ノ手段ニ刀ヲ用ヒル以上其使ヒ方ノ
巧拙ノ如キハ死ノ結果ニ殆ンド影響ヲ及ボス
モノデハナイ 殊ニ相手が無抵抗デアレバ猶
更ノコトデアル

私ハカ、ル輕微ノ行爲ヲモ尚殺人罪ニ問ハネバ
ナラヌトスル檢事ノ主張ニ對シ慥カラズ疑問ヲ
持ツモノデアル

被告小野瀬ハバベルタツフ島出發ノ前之ニイ
糧食ヤ水ヲカフマン少尉ニ與ヘ不自由ヲ英
語デ彼ニ話掛ケテ彼ノ退屈ヲ慰メテヤル等彼
ノ爲メニ何カト配慮シタノデアル

又彼ハ處刑ノ直前處刑ノ理由ヲカフマン少尉ニ
告ゲテヤッタ

之等ノ俘虜ニ對スル小野瀬ノ心遣ヒハ彼ノ口
供書ニ詳述サレテヤル

恐ラクカフマン少尉ハ其ノ死ニ臨ミ被告小野
瀬ニ對シ格別憎惡ノ念ヲ抱キハニナカッタデア

ロウ、寧ろ被告小野瀬カラ處刑ノ理由ヲ告ゲ
ラレタカフマシ、彼ニ對スル運命ノ糸ガ被告
等ノ手ノ遠ウ及ビヌ高イ所カラ操ラシテキルコ
トラ知ツテ却ツテ被告等、好意ニ感謝ノ情
スラ催シタデアラウトモ相像サレル、テアル
要之俘虜ノ護送ト云ヒ切リ方ノ發示ト云ヒ
被告小野瀬ノ爲シタ行爲ハカフマシ少尉ノ死
ト何等ノ因果關係モナイノテアル
故ニ彼ニ對シテハ無罪ノ御判決アツテ然ルベ
キモノト考ヘル

第四被告土屋、爲メ＝

検事側ハ被告土屋ガ本件俘虜カフマシムト
ヲバべるたつ島ヨリころころ島川市隊へ護送
シタト、一事ヲ以テ彼ヲ殺人罪ニ問擬シタ
本件俘虜ヲ護送シタト言フ事ハ、自體
單獨ニハ殺人罪ヲ構成シナイコトハ明ラカデ
アル 唯コノ俘虜護送ト言フ事が検事側モ
ソノ冒頭陳述ノ末尾ニ於テ述ベテナル様ニ殺
人罪ノ成立ニ幾分デモ寄與シテナルト言フ見
地カラ、コノ護送ノ任ニ當ッタ被告土屋ヲ起
訴シタモノトゾヘル 然レ以下述ベル理由ニ因
リ被告土屋、爲メニ斷然無罪ヲ主張スルモノデ
アル 被告土屋ガ本件俘虜處刑事件ニツイ
テ爲シタ行動ヲ各證據ト照合セテ概觀シ
テ見ヤウ

先ヅ私ハ被告土屋ガ相被告小野瀬ノ補助者
トシテ選バレタ事情カラ考察ヲ進メタイ
本事件當時被告土屋ノ配屬サレテエタ情報

部ニ、被告土屋ヲ含メテ三名、下士官が居タシヤ
グルノ中ニ暮シテ居タ彼等ハ出張が唯一、保養
アツタノデアル司令部ニ於テ本件俘虜ノ處刑が
決定サル俘虜カンマニ少尉ヲころゝる島へ護送スル
コトニナツタトキ偶ニ被告土屋が出張ノ順番ニ當
ツテ居タノデアル 相被告小野瀬が矢島孝謀ヨ
リ誰カ下士官中一人ヲ連レテ行ク様指示セラレタ
時ニ小野瀬ノ腦裡ニ浮シダ者ハ當時出張番ニ當
ツテキタ土屋曹長デアツタノデアル 當時營養
失調デ健康ヲ害シテキタ被告土屋ハ此ノ機會ニ
多少ナリト元氣ヲ恢復シ度イ希望ガアツタシ又
俘虜護送ト言ツテモ小野瀬ニ隨行スルタケノ
デアルカラ輕イ氣持デコノ任務ヲ受ケタノ
デアル 以上ノ事實ハ被告土屋及證人渡
部ノ證言並被告土屋小野瀬ノ口供書ニヨリ
テ明白デアアル 彼ガ此ノ任務ヲ受ケ
タ時ニ何ノ爲メニ俘虜ヲころゝるへ護送
スルノカ彼ニハ分ラナカッタ シテ彼ハ小野

瀬少尉及下條軍醫ト共ニ矢島參謀ノ前ニ申告ニ行
ツタ。ソシテ小野瀬少尉ガ三人ヲ代表シテ申告
シタ。コノ時初メテ被告土屋ハコノころ一る行旅
行ガ處刑サルベキ俘虜ノ護送ヲ目的トスルモノデア
ルコトヲ知ツタ。ソレハ彼ニ對シ既ニ一る行ヲ
發セラレタ後ノコトデアル
被告土屋ハ證人臺ニ於テ
護送ノ俘虜ガ處刑サレルト知ツテモナホ行キタカッ
タカ。トノ質問ニ對シ「私ハ嫌ナ氣持ガシタガ既
ニ命セラレタ後トノデニ從ヒマシタ。ト當
時ノ心境ヲ述ベテナル。コノ被告土屋ニ我々ハ
殺人罪ノ犯意ヲ認メルコトガ出來ルデアロウカ
被告土屋ハ務ハ唯俘虜カフマシ少尉ヲ一るニ
護送スルダケノコトデアル
而モ俘虜護送ノ責任者ハ小野瀬少尉デアツテ
被告土屋デハナイ。被告土屋ノ任務ハ單ニ小
野瀬少尉ヲ補助スルコトニアツタノデアル
檢事側ノ證人矢島モ亦「土屋ハ何カト問ニ

對シ、小野瀬ノ仕事ヲ補助スル者デアルト證言
シタ

本項、初メニ於テ私ハ護送ト言フ事が殺人罪ニ
問ハレル理由ハソレガ人ノ死ト云フ結果ニ幾分
ナリトモ寄與シテアルト考ヘラレルカラダウト述
ベタガ本件ニ於テ護送ノ責任者ハ小野瀬デ
アルカラコノ護送ト言フ事が殺人ニ寄與シタ
ト云フ理由デ此ノ行爲ニ對シ刑事責任ヲ問
ハントスルナラバ、小野瀬一人デ十分デアル
其ノ責任ノ範圍ヲ補助者デアル被告土屋ニ
迄及ボスト言フ事ハ明ラカニ行キ過ギ幾
免レナイ

本法廷ニ顯出セラレタル諸證據ニヨツテ判斷ス
ル限リ被告土屋ノ行爲ニ殺人罪ト言フガ如キ
重大ノ刑事責任ヲ負ハシメルコトハ不可
能デアロウト思フ。若シモ檢事側ガ主張ス
ル如クナラバ、苟シクモ處刑サレルト言フ認識
ノ下ニ爲サレタ以上如何ニ微細ノ行爲デモ

處刑ニ關係アル行爲ヲ爲シタ者ハ殺人罪ニ問ハ
ルコトニナル コノ見地ニ立ツテ本件ヲ見ルナ
ラバ被告土屋ト同等或ハソレ以上ノ行爲ヲシ
テナル者ハ數限リナクアルデアロム
土屋ヲ本件被告トシテ起訴シタコトハ明ラカ
ニ公平ヲ失シタモノト謂フベキデアロム
本事件が最高當局ノ強壓的命令ニ依ツテ
行ハレタ事デアルコトハ明白ニ立證サレテナ
ル 公平ナ裁判ヲ要求スル我々ハ被告土屋
ノ如ク微々タル一介ノ下士官デアリ斯カル微々
タル行動ヲ爲シタ者ニ殺人罪ト云フ重責
ヲ科スルコトハ到底承服出来ナイ
檢事スラノ論告ニ於テ被告土屋ノ有罪
ナルコトニ正當ナル疑ヲ起ベテ立證シタコト
ヲ主張シ得ナカッタノデアル
私ハ被告土屋ニ彼ト同等或ハソレ以上ノ行動
ヲ執リ下ラ猶且起訴ヲ免シタ者ト同様ナ地
位ヲ與ヘル意味ニ於テ彼ニ對シ無罪ノ御判

決ヲ賜フニコトヲ希フ次第ニアル

"TF (44)"

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第二起訴戦争法規並慣習違反ニツイテ

檢査側ハ第二起訴第一罪狀項目ニ於テ被告小市
カシノ取締及監督下ニアツタ被告勝山、小野瀬
土屋共、他姓名不詳者、行動ヲ抑制セスニ之
等、者ニ本件俘虜カフマシ少尉ノ斬首ヲ許可シ
タト言フ點ニ於テ彼ノ職責ヲ無視シ又ハ遂行
シタカツタト主張シ

更ニ第二起訴第二罪狀項目ニ於テ彼ガ拘留
ノ俘虜ノ保護責任ヲ無視シ又ハ遂行シタカ
ツタト主張シ 之等ヲ以テ戦争法規並慣習
違反ノ罪ニ問フテヤルノデアル

私ハ以下被告小市ノ爲ニ 彼ニ果シテ勝山外二
名ノ者ニ對シ取締及監督ノ責任ガアツタカ
否カ及ビ彼ニ俘虜ヲ保護スベキ責任ガア
ツタカ否カノ諸點ニツイテ論議シヤウト思フ
被告小市ト勝山ト、上下ノ關係ハ明瞭デアリテ
論議ノ必要ヲ見ナイ

然シ本件俘虜處刑ニ關係シテ被告小市ニ

彼、部下タル勝山ニ對スル監督責任ガアルカ否カ
ニツイテハ大イニ議論ノ餘地ガアル

即チ被告小市ガ井上中將ヨリ本件俘虜ニ關シ
テ受ケタ命令ハ俘虜ヲ勝山中尉ニ處刑セ
シメヨト言フノデアル

從而被告小市ガ勝山中尉ニ處刑セシメタト
言フ事ハ單ニ井上中將ノ意思ヲ勝山ニ傳
ヘタ文ケデアル 故ニ勝山中尉ガ俘虜ヲ處
刑シタト言フ事ハ被告小市、勝山ニ對スル
監督義務違反トハナラナイ譯デアル

從而本件俘虜處刑ニツイテノ監督責任ハ其
命令ヲ發シタ井上中將ニコソ問ハルベキデア
ツテ之ヲ被告小市ニ求ムル理由ハ毫末モナ
イ

次ニ被告小野瀨及土屋、兩名ハ被告小市、取
締及監督下ニアツタ者デハナイ 彼等ハ第十
四師團司令部情報部ニ配屬サレ同部長タ
ル大島參謀ノ監督下ニアツタノデアル

被告小市、監獄下ニアラサル小野瀬及土屋、兩名
ニ對スル監督ハ小市、責任ノ範圍外ノコトデ
アル。小野瀬ニ命令ヲ與ヘタ者ハ矢島參謀
デアリ。矢島參謀ノ命令ニヨツテ小野瀬ハ土
屋ニ命ジタモ、デアツテ被告小市、意思トハ
全ク無關係デアル。唯彼等ハ小市ト一緒ニ
處刑ノ現場ニ居タト言フニ過ギナイ
叙上ノ理由ニヨリ私ハ被告小市ニ對スル第二起
訴第一罪狀項目ハ無罪デアルト確信スル
次ニ第二起訴第二罪狀項目ノ保護責任ニ
イテ論議シヤウ
凡ソ保護責任ガ生スル爲メハ何等カノ法的
根據ニ基ク保護スベキ義務ガナケレバナラナイ
俘虜ノ保護ニ關シテモ亦同様デアル。檢事側
證人土井ハ俘虜ヲ捕ヘタ場合、直チニ司令
部ニ送ルベキ旨陣中要務令ニ規定セラレテ
ナルト證言シタガコシハ土井部隊ニ於テ俘
虜ヲ保管スベキ義務ノナイコトヲ意味ス

ルハデアル

同様ニ被告小市、高射砲隊ニモ俘虜ヲ保護スベキ義務ハ課セラレテナシ

然ラバ被告小市ハ本件俘虜ヲ保護スベキ義務ガアルデアロウカ

被告小市ハ何等俘虜ヲ保護スベキ旨ノ指示モ命令モ受ケテナシ 彼ガ井上中將

ヨリ受ケタ命令ハ俘虜ヲ處刑スベシトノ命令デアツテ之ヲ保護スベト云フ命令デハナシ

凡ソ保護ト殺害トハ相反スル概念デアル

従而被告小市、本件俘虜ヲ保護スベキ法律の義務ハ遂ニ之ヲ見出し得ナシ

又之ヲ實際問題トシテ考ヘテ見テモ俘虜ガ被告小市、許ニ護送サレタ目的ハ處刑デアツテ

小市ハ其ノ保護ヲ委託サレタノデハナシ

被告小市ニコノ俘虜ノ保護ヲ要求スルコトハ全く無意味デアル

若シコノ俘虜ガ以前ヨリ小市隊ニ拘留サレテナ

タモノデアルカ又司令部カラ送ニシタモノデアツテモ
護送ノ目的が處刑以外ニアリ而モ小市ノ發意ニ
ヨリテ處刑セラレタモノデアルナラバ小市ニシテ俘
虜ニ對スル保護義務違反ノ責任ヲ追及スル
コトニ相當ノ理由ガアルデアロウ

然レテ本件ノ如ク始メカラ處刑スルコトニ確定
シテ居ル俘虜ヲ送り込マレタル者ニ誰カ之ニ
保護ヲ期待スルデアロウカ

本件ニ於テ俘虜カフマン少尉ヲ保護シ得ベク
且之ヲ爲シ得タ者ハ井上中將デアツテ被告
小市ハ俘虜ヲ保護セント欲シテモ保護シ得ナカ
ツタノデアル

コノ點ハ小市ガ本件處刑ニ對シ終始反對ニ續
ケタル拘ラス井上中將ノ命令ニ抗シ難ク處刑
ヲ實行スルノ巴ムナカリシ事情ヲ考フルナラバ
容易ニ理解シ得ルトコロデアル果シテ然ラバ
保護セント欲シテモ保護シ得ナカッタ者ニ
保護ノ責任ヲ求ムルコトハ全ク被告小市ニ不

可能ヲ強ヒルモノデアツテ、ソノ罪トナラザルヤ論
ヲ俟タナシ

検事側ハ第一起訴ニ於テ浮屠、殺害ヲ其、
積極的側面ヨリ見テ、小市ヲ殺人罪ニ問
シ、更ニ本罪狀項目ニ於テ同一事實ヲ其
ノ消極的側面ヨリ見テ職務怠慢ノ罪ニ問
擬シテ居ル

之ハ明ラカニ一個ノ犯罪ニ對シテ一個ノ起訴ヲ
爲シテナルデアアル 被告小市ニ對シテ第一
起訴ノ犯罪ガ成立スルナラバ第二起訴第二
罪狀項目ノ犯罪ハ成立スル筈ガナシ
同様ニ第二起訴ガ成立スルナラバ第一起
訴ハ成立スル筈ガナシ

敘上ノ理由ニヨリ私ハ被告小市ニ對スル第二
起訴第二罪狀項目ニキテ被告小市ニ對シテ無
罪ノ判決ヲ要ホスルモノデアアル

ARGUMENT FOR THE DEFENSE

BY

Mr. Takami Karasawa

Your Honor, the President, and Members of the Commission:

I would like to deliver this argument in behalf of all the accused in this case. As the judge advocate declared in his opening statement, this case is a very simple one. Therefore, I hope you will understand that we Japanese counsel will avoid the complicated practice of each making an argument, by having this argument represent all Japanese defense counsel.

In Charge I the Judge Advocate alleges that the accused Koichi and the other three accused committed murder, and in Charge II he alleges that the accused Koichi violated the law and customs of war by disregarding and failing to discharge his duty. I shall discuss in my main discourse in behalf of each of the accused as to whether they have any criminal responsibility and what the scope of their criminal responsibility is. First, before examining the detail of this case, I would like to outline this incident.

In this case, the facts which both the prosecution and the defense tried to prove are approximately the same. We can only find some differences in their substance. Therefore it is the agreed assertion of both parties that this incident occurred according to the orders of Commanding Officer Inoue - the most important factor in this incident.

Let us take a cursory glance at the course of this incident. Second Lieutenant Kaufman, the prisoner of war in this case, was a member of the crew of a B-24 which bombed Koror in the beginning of May 1945; but the plane was shot down by a Japanese anti-aircraft unit, namely the Katsuyama Unit. He parachuted from the plane and was captured by the Japanese Armed Forces.

The Doi Unit, which was then in charge of guarding and defending Koror, took Second Lieutenant Kaufman into custody. After making some investigations, he was sent to the 14th Division Headquarters which ordered the Kempeitai on the island to confine the prisoner. On the next day, Lieutenant Colonel Yajima, an intelligence staff officer of the headquarters, investigated the prisoner and reported the result of his investigation by documents to Division Commander Inoue and Chief of Staff Tada. Chief of Staff Tada, however, discovered some faults in the investigation, so he ordered Staff Officer Yajima to re-investigate the prisoner. Staff Officer Yajima investigated him again and reported to Lieutenant General Inoue.

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"FF" (1)" Jm

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It is not clear under what circumstances Lieutenant General Inoue had come to think of an execution of the prisoner. But, at any rate, he thought of an execution and intended to have the anti-aircraft unit perform it. Then he revealed his intention to Staff Officer Yajima. We do not guess how Staff Officer Yajima thought about the execution of the prisoner, but he passed this intention of Division Commander Inoue on to Lieutenant Colonel Doi, the commanding officer of the guard unit, by telephone and asked his opinion. Lieutenant Colonel Doi objected to the execution and answered that he wanted Yajima to tell Division Commander Inoue about his opposition.

After that, how much time elapsed is not clear, but Lieutenant Colonel Doi informed the accused Koichi of the intention of the commanding officer to execute this prisoner and that he himself objected to that execution. Then he asked the accused Koichi what he thought of it. Of course the accused Koichi was of the same opinion as Doi, and he asked Doi to tell headquarters that he objected to the execution. Thus headquarters was informed of the opinion of the accused Koichi. Toward the next day, Doi happened to go near the Koichi Unit when he met Koichi again and had the same kind of conversation.

Days passed. It seems that something was planned and decided at the headquarters during that time. Lieutenant General Inoue intended to let First Lieutenant Katsuyama, a subordinate of Koichi, execute Second Lieutenant Kaufman to promote the morale of the Katsuyama Unit, and ordered Staff Officer Yajima to escort Second Lieutenant Kaufman to Koror. He also gave Yajima detailed instructions about the execution.

Staff Officer Yajima reported this to Lieutenant Colonel Doi, the direct superior of the Koichi Unit, who then relayed it to Koichi. Just at that time, Koichi was ordered to go to headquarters to report the damage caused by air raids of the American air forces to Operation Staff Officer Lieutenant Colonel Nakagawa and to talk with him about their future operations. Before going to headquarters to express his opinion, he told First Lieutenant Katsuyama that headquarters was intending to execute the prisoner and called for Katsuyama's opinion about that.

Katsuyama also objected to the execution like Koichi. Thus Koichi resolved to make his last effort to refuse the execution of the prisoner if he had a chance to do so when he went to the headquarters that evening.

Koichi arrived at the headquarters. He waited until the next morning and had a talk with Staff Officer Nakagawa about the operation. In May 1945, the battle conditions on Palau were not favorable for Japan. On account of daily air raids, damage increased day by day. Many men were wounded or killed. Equipment, ammunition and provisions fell short. The Japanese forces were facing hard battle conditions. Throughout the morning the accused Koichi talked with Staff Officer Nakagawa about countermeasures under these hard conditions, and had lunch together. After lunch they went together to see Commanding Officer Inoue. Of course their

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"77 (2)" Jx

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main business was to talk about battles at Koror and to report the conditions of damage. Koichi himself reported his duties in detail. Since he was cautioned by Colonel Nakagawa not to stand up against the commanding officer's intention concerning the operation, he only made a formal report about it. During that conversation, Commanding Officer Inoue solemnly gave the accused Koichi the order of executing the prisoner which he had already decided.

The accused Koichi who was nothing but an army captain could not resist the strict order of Lieutenant General Inoue who was the supreme army commander of the South Sea Area. So long as the strict order was once given after the repeated refusal of Koichi, he could not say anything about the order. Gentlemen of the Commission, you are military personnel. I think you will fully understand these circumstances.

Then the accused Koichi left headquarters and went toward his unit. On the other hand, at headquarters, Commanding Officer Inoue told Staff Officer Yajima again that he gave the order of execution to Koichi and that Yajima had to escort Second Lieutenant Kaufman to Koror at once. Staff Officer Yajima immediately named the accused Onose, one of his subordinates. He relayed him the order of the commanding officer and also gave minute instructions concerning the escorting of the prisoner. Since the accused Tsuchiya was in turn to go on a trip, Onose selected him as his assistant. He further decided to take Gunzoku Shimojo, a member of the photography section, with him. They, the escorting party, left headquarters at once, received Second Lieutenant Kaufman at the Kempeitai which was in charge of the custody of the prisoner and arrived at the harbor to go to Koror.

They met the accused Koichi at the harbor and they went together that night to Koror. It was past midnight when they arrived at the Koichi Unit on Koror. They took their night meal and made specific decisions about the execution which was to be performed on the next day. Then Koichi telephoned to the accused Katsuyama and explained the circumstances under which he could not refuse the orders of Commanding Officer Inoue and told him to assemble with his men at the naval cemetery at 7 o'clock next morning.

At seven o'clock next morning, the accused Koichi told his men, who assembled at the scene of the execution by his order, the orders of the commanding general. He also told them that they had to boost their morale in order to follow the intention of the commanding officer. Second Lieutenant Kaufman was told by Second Lieutenant Onose that he was to be executed by the orders of the commanding general and his belongings were returned to him by the accused Tsuchiya. Then he was beheaded by the accused Katsuyama.

According to Japanese custom, the dead body of Second Lieutenant Kaufman was carefully buried and a grave post was erected on his grave. By the command of Koichi, all assembled persons prayed for the bliss of the dead Kaufman. That evening, Onose and Tsuchiya returned to the headquarters and reported to Staff Officer Yajima that the execution was

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completed and Shimojo returned the next evening.

This is the outline of this incident. From these facts, we can fully understand that this incident is entirely different from the other incident of killing prisoners of war and that the accused in this case did the best they could. This incident is not murder of a prisoner whatsoever. I think we can even say that the accused in this case gave the prisoner Second Lieutenant Kaufman what sympathy and benevolence they could.

In my main discourse, I shall argue first in behalf of each of the accused who are charged with murder in Charge I and then in behalf of the accused Koichi who is alleged to have violated the law and customs of war in Charge II.

MAIN DISCOURSE

Charge I - Murder.

1. In behalf of the accused Koichi:

The Judge Advocate alleges the accused Koichi in Specification 1 of Charge I committed murder, and, in order to prove the allegation, introduced in this court the testimony of Witnesses Shimojo, Yajima and Doi, affidavits of each of the accused and the investigation report of the American Occupation Forces of Palau concerning the excavation of the cemetery. This evidence disclosed the facts that the accused Koichi, in accordance with the orders of Lieutenant General Inoue, ordered his co-defendant Katsuyama to execute a prisoner, Second Lieutenant Kaufman.

I do not at all intend to dispute the facts which the Judge Advocate tried to prove. However, I think it is the most important issue for judging the criminal responsibility of the accused Koichi to find with what attitude the accused Koichi participated in the execution of the prisoner in this case and how he received the orders of Lieutenant General Inoue. Examining the evidence, I would like to continue my argument.

In the first place, the accused Koichi opposed the execution of the prisoner from the time he first heard of it. He stated his opposition to Lieutenant Colonel Doi, his superior officer, and asked him to pass his opposition on to headquarters. Headquarters was informed of this opinion of Koichi.

Let us review these facts according to evidence introduced in this court. When the accused Koichi knew of the plan of execution of the prisoner for the first time, by the first telephone call from Lieutenant Colonel Doi, he firmly expressed his opposition. This point was made clear by the testimony of the accused Koichi, himself, and also by his statement. Besides the prosecution's witness, Lieutenant Colonel Doi, corroborated this in his testimony when he stated, "I said to Koichi, 'Headquarters told me to send a prisoner to Koror to be executed in order to bolster the morale of the anti-aircraft unit. But I think that your

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morale is high as you shot down a plane. So I think it is unnecessary to do such a thing. What do you think of it?' Koichi answered that he was of the same opinion."

Through the above cited conversation between Doi and Koichi, the accused Koichi knew for the first time the plan to execute the prisoner in this case. Even after that, Doi and Koichi talked several times, and every time they had a conversation, Koichi maintained his opposition to that execution.

This opinion of Koichi was made known to headquarters before the execution. This fact is clear by the following evidence:

"Q. Did you tell the commanding general that Koichi also opposed it?

A. As the commanding general intended to give the order to Koichi, it was my duty to tell it to the commanding general. I do not remember whether I said the Koichi Unit or Captain Koichi, but I told him of Koichi's opposition.

Q. Then what did Commanding General Inoue say about it?

A. I do not remember.

Q. When you telephoned to Doi, did Doi say that Koichi opposed the execution too?

A. I am not certain whether it was in Doi's telephone conversation or Nakagawa's words, but I clearly recall the words that Koichi opposed the execution."

However, when this witness was reexamined by the Judge Advocate, he stated that he did not remember exactly if he relayed Koichi's opposition to the commanding general and whether it was before or after the execution that he knew that Koichi opposed the execution. Thus his testimony was very uncertain, so the accused recross-examined him, and he stated that he knew Koichi's opposition because he heard it from Doi. Then the accused asked further whether it was before the execution that he heard of Koichi's opposition from Doi, and he answered affirmatively that it was before the execution. Furthermore, witness for the defense Nakagawa testified that the first time he heard about the intention of the commanding general concerning the execution from Staff Officer Yajima was two or three days prior to the time when the Commanding General Inoue ordered Koichi to carry out the execution. The same witness Nakagawa then testified that he heard about Koichi's opinion from staff officer Yajima two or three days before the execution.

Through the above interrogatories, I believe it is made clear that Koichi's opposition was made known to headquarters before the execution.

Let us consider next whether Koichi's opinion was made known to Inoue's headquarters before Inoue gave him the strict order of the execution. This point is not absolutely clear.

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72 (5) JK

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But I believe that the testimony of Yajima that when he first relayed the intention of the commanding general to Lieutenant Colonel Doi, Lieutenant Colonel Doi opposed the execution, that he then reported Doi's opposition to Commanding General Inoue but that the commanding general had already given orders to Koichi is false in a good many respects. After the second investigation of the prisoner, witness Yajima reported its result to Lieutenant General Inoue. At that time he was told Inoue's intention of executing the prisoner, and he passed it on to Doi by telephone. Yajima knew through that telephone call that Doi opposed the execution, so he reported it to Lieutenant General Inoue. Then Lieutenant General Inoue told him that he had already ordered Koichi to execute the prisoner. ..This is Yajima's testimony. In other words, according to Yajima's testimony, Yajima was told by Commanding General Inoue that he intended to execute the prisoner, this intention was passed on to Doi, Doi's opposition was reported to Inoue by him and he was told by Inoue that he had directly ordered Koichi to do the execution -- this series of events took place on the day when Koichi went to headquarters, because witness Yajima testified it was several hours or half a day from the time he first telephoned to Doi 'till the commanding general directly ordered Koichi to do the execution. He later withdrew this testimony and stated that there was considerable time between them, but, anyway, I think it is correct that these events took place on the same day, because it is neither asserted nor proved that there was a conversation between Koichi and Inoue by telephone or other means before he went to the headquarters and directly received the order of executing the prisoner from Commanding General Inoue in his very presence. In short, the accused Koichi went to headquarters and received the order to execute the prisoner from the commanding general on the day when Commanding General Inoue first told Staff Officer Yajima that he had the intention of executing the prisoner.

However, prosecution's witness, Doi, testified when he was cross-examined by the accused:

"Q. How long was it (the second telephone call) after the first phone call?

A. I think it was two or three days after that, but this is my imagination. It was after I talked (to him) face to face."

He also testified to the direct examination of the Judge Advocate as follows:

"Q. What is the relation of time between the time you talked by telephone and the time you talked face to face?

A. I think there was about a day between them."

These two witnesses for the prosecution, namely Yajima and Doi, were between Koichi and Commanding General Inoue and played the part of intermediary in the execution of the prisoner in this case. For the accused Koichi, they are most important witnesses and are his superiors. However, their testimony was entirely irresponsible. In particular Yajima was a most important and responsible person in this case in that he was attending the Commanding General Inoue and that he kept liaison between

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the commanding general and Lieutenant Colonel Doi concerning the execution of the prisoner in this case. It is he who should have known the truth of this incident. I can not guess whether he tried to evade his responsibility or if he was afraid to involve Lieutenant General Inoue in this case, but he gave very inconsistent testimony. From the testimony of the above witness, it is not as yet clear when Koichi's opinion was relayed to the commanding general, but it may be readily inferred that there was ample time for Koichi's opinion to have been relayed to the general prior to his direct ordering of Koichi to perform the execution.

Even if there should be doubt about this inference, this point may not be so important to Koichi himself, because it would be sufficient if Koichi believed that his opinion had been relayed to the commanding general and also because there are reasons to believe so.

Even when Koichi was relayed from Lieutenant Colonel Doi the general's order to have First Lieutenant Katsuyama execute the prisoner before Koichi left to report to Staff Officer Nakagawa at the division headquarters, Koichi intended to refuse the execution of the prisoner if there was a chance to do so when he appeared before the general. Therefore, Koichi called co-defendant Katsuyama and made sure of his opinion concerning the matter. This point is accounted for in detail in the testimony of Koichi and the statements of Koichi and Katsuyama. I believe that the members of the Commission have fully understood that Koichi's opinion was throughout in opposition to the execution.

At this point I find it necessary to explain why Koichi acceded to the orders of the general and had Katsuyama carry out the execution despite his being against it from the beginning.

As regards this point let us see what Koichi testified. He stated, "I reported to the division commander the condition of battle and damage. Just when I got to explain the damage sustained by the Katsuyama unit, I was asked by the division commander, 'How is the morale of the Katsuyama Unit?' I replied, 'It is excellent.' It seemed that the commander was still worried about the morale of the Katsuyama Unit and he said, 'The prisoner shot down by the Katsuyama Unit will be delivered to you, so have Katsuyama execute him in order to bolster the morale.' He further added, 'You will have the execution performed at the Katsuyama Unit when enemy planes are least numerous. Assemble as many men as you can and return the prisoner's belongings when you execute him.'" Then to the question by defense counsel, "Did you say anything to this?", Koichi replied, "My intention was to oppose it to the end. But when I was directly ordered by Lieutenant General Inoue, the Supreme Commander of Palau Group Force, I who was recently promoted a captain and who was regarded as a mere child by the general, could not oppose the order. Moreover, as I had known before this time that Commanding General Inoue was a man who would hardly change his decision once he had decided upon it, and since he had given the order knowing that we were opposed to it, I thought it was of no avail to oppose it, so I did not say anything." The same account is given in his statement.

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This evidence is sufficient to prove the circumstances under which the accused Koichi was compelled to accede to the orders of the commanding general, and I believe no further explanation is necessary to the members of the commission who are all officers.

Lastly, I shall discuss how the accused Koichi treated the prisoner Kaufman. I shall cite the testimony of Tanaka, Masao, witness for the defense. Tanaka was with the accused Koichi on the day of the execution and he was the witness that testified most clearly about the circumstances surrounding the scene of the execution. He testified, "When Commanding Officer Koichi came to the scene with the prisoner, all the men who were there, saluted him by the command of First Lieutenant Katsuyama. Then the commanding officer made a speech to all of the men. I do not recall the exact words but the speech was to the effect that the prisoner was to be executed by orders of the division commander, and that all of the men should bolster their morale because of it." Tanaka further testified, "Then commander Koichi said that it would be a pitiful thing to have the prisoner executed without letting him know, so he told Second Lieutenant Onose to tell the prisoner that he was to be executed by orders of the commanding general. So Second Lieutenant Onose read some written thing to the prisoner."

As regards the burial of the prisoner, witness Tanaka testified as follows, "The burial was conducted according to the ceremony held in Japan. Various offerings were made and then by the command of Koichi all offered a silent prayer and prayed for the repose of Kaufman's soul." Then Tanaka testified that he was ordered by Koichi to erect a grave marker, so Tanaka had his subordinates who had experience as carpenters make a cross on which he had the words "The grave of an American officer flyer" inscribed, and erected it.

Moreover, Koichi ordered witness Tanaka to plant some lawn grass on the grave and to clean it; and Koichi himself frequently visited this grave, after the execution. Koichi also advised Tanaka and Katsuyama to visit the grave.

The above points, besides being corroborated by the testimony of the accused Koichi and by his statement, have been also made clear from the report of the American occupation forces of Palau which was introduced into evidence in this court by the Judge Advocate. The accused Koichi did as best he could for the prisoner Kaufman.

In my foregoing argument, I have demonstrated and proved that the accused Koichi despite his being opposed to the execution had conducted it against his will unable to resist the stern order of the commanding general, and that when performing the execution he dealt with the prisoner warmly throughout and put forth the best possible effort.

The foregoing argument shows that the accused Koichi despite the fact that he had opposed the execution throughout was unable to resist the stern orders of the commanding general and had the accused Katsuyama carry out the execution and that Koichi had no opportunity to exercise any free

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will in the matter nor did he exercise any whatsoever. Therefore, we firmly believe that the accused Koichi is not responsible for murder. But, if he should be found guilty, we ask you special consideration with regard to his situation and attitude and request your lenient judgment.

2. In behalf of the accused Katsuyama.

In specification 1 of Charge I the prosecution charged the accused Katsuyama with murder and to prove this the prosecution submitted to this court the same evidence as they did in the case of his co-defendant, Koichi. The fact that was made clear by these evidences was that the accused Katsuyama beheaded a prisoner, Second Lieutenant Kaufman, by order of his direct superior co-defendant, Koichi.

As the accused Katsuyama has already stated this fact, in his statement, I will not try to argue on this point. The points which I will endeavor to bring out in my argument for the accused Katsuyama will be about the same as those for the accused Koichi. The accused Katsuyama received the orders of Lieutenant General Inoue to execute the prisoner through Koichi. As I have already stated in my argument in behalf of the accused Koichi, the order of Commanding General Inoue was an irrevocable order commanding First Lieutenant Katsuyama to execute the prisoner. Therefore, the reason Katsuyama could not have refused the orders of the commanding general is for the same reason Koichi could not have refused the orders of the commanding general. Just before Koichi left for the headquarters, he called the accused Katsuyama by phone to come to him. There he was asked by Koichi, "Commanding General Inoue is saying, 'have First Lieutenant Katsuyama execute the prisoner to bolster the spirit of the Katsuyama Unit.' I am opposed to it, but what is your opinion?" To this Katsuyama replied that it should be definitely opposed. But, the accused Katsuyama received a phone call again from Koichi during midnight of the next day and was told the reason why the orders of the commanding general could not be refused, and was further ordered to carry out the execution the next morning at 0700 at the Naval Cemetery.

The accused Katsuyama was ordered by his direct superior, Koichi, to do the execution, for it was an absolute order of Commanding General Inoue; therefore, no longer could he have disobeyed the orders. The above facts were made very clear by the testimony of co-defendant Koichi and by the statements of Katsuyama and Koichi.

The accused Katsuyama beheaded prisoner Second Lieutenant Kaufman by order of Koichi and thus carried out the execution. He, with the accused Koichi, was only an instrument of Commanding General Inoue and did only as ordered and carried out the execution. Among the prosecution witnesses there is one witness who made many statements which we should take notice. This is Shimojo, Mitsuharu.

The witness, Shimojo testified that when he escorted the prisoner the Koichi Unit, Katsuyama was there and that he ordered two or three non-commissioned officers to put the prisoner in the air-raid shelter and

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guard him closely. But the accused Katsuyama did not go to Koichi's headquarters the night the prisoner was brought there. He only received an order to execute by telephone from Koichi. Witness Shimojo could not even identify the accused Koichi and differentiate him from the accused Katsuyama in this court. I think it is not logical to have such witness testify in regard to Katsuyama. Therefore, the testimony of the witness Shimojo, as he himself had to recognize in the cross-examination, was purely his own imagination. The part played by the accused Katsuyama in the execution of prisoner Second Lieutenant Kaufman is only the fact that he beheaded Second Lieutenant Kaufman. Furthermore, Katsuyama only did the beheading because he was told by Koichi that it was an absolute order of Commanding General Inoue. The fact that this execution was carried out in the best way possible and the fact that they faced it with sympathy and benevolence toward the prisoner is as I have already stated in the argument in behalf of Koichi. I sincerely hope that the members of the commission grant a judgment of acquittal against the accused Katsuyama who acted mechanically under the absolute orders of the commanding general.

3. In behalf of the accused Onose.

Pointing out that the accused Onose took charge of escorting the prisoner and showed his co-defendant Katsuyama how to behave at the scene of the execution, the Judge Advocate alleges him to have committed murder in Charge I. Even if he actually did such acts, I believe it is utterly impermissible to allege he has a grave criminal responsibility of murder. With reference to the evidence, I shall constitute my argument.

The accused Onose was an officer attached to the Intelligence Section of the 14th Division Headquarters, and the chief of the section was Staff Officer Yajima. Onose was ordered by Yajima to escort the prisoner to Koror and confirm the execution. This point is clear from the testimony of witness Yajima and Watanabe.

Staff Officer Yajima besides giving this order gave minute instructions to Onose, namely: (1) To obtain Second Lieutenant Kaufman at the Kempeitai and escort him to Koror without fail. (2) To confirm the execution of Second Lieutenant Kaufman. (3) Return Second Lieutenant Kaufman's belongings and let him have them at the time of execution. Then Staff Officer Yajima handed the belongings of Second Lieutenant Kaufman which he was then keeping to Onose. Yajima also telephoned the Kempeitai to deliver Second Lieutenant Kaufman to Onose.

When Onose received this order from Yajima, he appointed Tsuchiya, whose turn it was to go on a trip, as his assistant. He also named Gunzoku Shimojo, a photographer, as his assistant, to take pictures as evidence to confirm the execution. It is not clear whether the appointment of Tsuchiya and Shimojo was made in accordance with Onose's intention or Yajima's naming, as witness Yajima testified, "I am not sure whether I directly ordered them to go or I named them by Onose's advice, but I ordered Sergeant Major Tsuchiya and Gunzoku Shimojo to go in order to confirm the execution." Though it is not certain whether Yajima himself

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named Tsuchiya and Shimojo, it can easily be imagined from his testimony that he at least ordered Onose to take a non-commissioned officer and a photographer.

Then why did Yajima select Onose to go? He testified that he did this because he was ordered by Commanding General Inoue to have an officer in the escort party. He answered on cross-examination by the accused that he thought Onose was an appropriate officer to do this among his officers. He further testified that this duty did not necessarily require the accused Onose but that any officer would have done in his place. The witness Tataneba in reply to the question why Onose was selected testified, "Onose was selected because the nature of his duty permitted him to be away two or three days." From this testimony, we know that the accused Onose's duty of escorting the prisoner was given to him by the order of Staff Officer Yajima and that it was really by accidental chance that he was chosen. Therefore, it is clear that the accused Onose did not volunteer to take charge of escorting the prisoner.

I would like to argue next about the second point which the Judge Advocate maintains—that is that the accused Onose showed Katsuyama how to behead at the scene of the execution.

As to this point, the accused Onose states in his affidavit that he cautioned First Lieutenant Katsuyama because Katsuyama had assumed an incorrect stance. Tsuchiya testified as follows: "Just before the execution, when First Lieutenant Katsuyama held up his sword, Gunzoku Shimojo tried to take a picture. But Katsuyama was at a wrong place for the direction of light to take a picture. Katsuyama changed his position, and he came to stand on the wrong footing. So Onose told him that he was on the wrong footing." Therefore the Judge Advocate's so-called statement in which he maintains that Onose showed Katsuyama "how to cut" means nothing but the fact that Onose gave advice about Katsuyama's footing in accordance with the change of Katsuyama's position caused in order that a picture might be taken. Prosecution's witness Shimojo testified that Onose showed Katsuyama where to step and how to hold a sword aloft and how to strike with a sword. But is it possible that a man who can use a sword should be taught how to hold it aloft and how to strike with it? I can not believe that the last part of this Shimojo's testimony is true.

But the judge advocate might maintain that it makes no difference that Onose showed him how to behead, or whether he cautioned Katsuyama's footing or taught him how to use a sword.

In the case of the 41st Naval Guards, which was tried in this court before, to show how to behead was a matter in question. But I wonder how such an act should cause a man's death. So far as a sword is used to kill a person, the skill in using the sword will have little influence upon the result of death of the victim, still less when the victim has no means of resistance. I have more than little doubt about the assertion of the Judge Advocate that even such a slight act should be charged as murder.

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The accused Onose gave Second Lieutenant Kaufman what little food and water to drink he had when he left Babelthusp. He spoke to him in poor English and tried to assuage his lonesomeness. Thus he had a great deal of consideration for Kaufman. Just before the execution he told Kaufman why he had to be executed. These kindnesses of Onose shown to the prisoner are described in detail in his own affidavit.

Probably Second Lieutenant Kaufman would have had no hatred toward the accused Onose when he was going to be executed. I should rather imagine that Kaufman was thankful for the kindness of the accused when he was told by Onose the reason for his execution, for he would know that the strings of his fate were pulled at such a high place as the accused could not reach.

I conclude that the accused Onose's acts, namely escorting the prisoner and showing Katsuyama how to behave, have no causal relation with the death of Second Lieutenant Kaufman. I request that he should be found not guilty.

4. In behalf of the accused Tsuchiya.

The prosecution charged Tsuchiya with murder because of the single fact that he escorted the prisoner Second Lieutenant Kaufman from Babelthusp to the Koichi Unit on Koror Island. It is obvious that the fact that he escorted the prisoner, if considered independently, does not constitute murder. It is believed, however, the accused Tsuchiya, who was assigned to escort the prisoner, is also indicted from the view that he had contributed to some extent to the constitution of murder as was contended by the Judge Advocate at the conclusion of his opening statement.

Let us, by reflecting upon the various pieces of evidence, make a brief review of the actions of the accused Tsuchiya in the present incident.

I shall, first of all, begin by discussing the circumstances under which the accused Tsuchiya was selected as the assistant of co-defendant Onose.

At the time of the incident, there were three non-commissioned officers including Tsuchiya, attached to the intelligence section. It was the only comfort and relief for these men living in the jungle had to go out for a trip. When the execution of the prisoner was decided upon at the division headquarters and he was to be escorted to Koror, it so happened that it was the accused Tsuchiya's turn to go on a trip. When co-defendant Onose was instructed by Staff Officer Yojima to take one non-commissioned officer among the three attached to the intelligence section the person that came to Onose's mind was Sergeant Major Tsuchiya whose turn it was to go. At this time the accused Tsuchiya was in poor health, suffering from malnutrition. But as Tsuchiya hoped to make some recovery in health by availing himself of this opportunity and as this trip required merely accompanying Onose, Tsuchiya accepted this duty without

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giving much thought to it. The above facts are evident from the testimony of the accused Tsuchiya and witness Watanabe and also from the statements of the accused Tsuchiya and Onose. When Tsuchiya accepted this trip, he did not know why the prisoner was going to be escorted to Koror. Then, with Onose and Shimojo, he went to report to Staff Officer Yajima. Representing the three, Onose reported. And here for the first time, the accused Tsuchiya learned that the trip to Koror was for the purpose of escorting a prisoner who was to be executed. This was after he had been issued the order to go to Koror.

To the question, "Did you still want to go to Koror after you had learned that the prisoner was going to be executed?" his answer was, "I got a very unpleasant feeling, but since it was after the order had been obeyed," and he explained his state of mind at that time. Can we recognize any criminal intent to commit murder on the part of the accused Tsuchiya? The duty of the accused Tsuchiya was only to escort the prisoner, Second Lieutenant Kaufman, to Koror.

Moreover, the person in charge of escorting the prisoner was Second Lieutenant Onose and not the accused Tsuchiya. The duty of the accused Tsuchiya was merely to assist Second Lieutenant Onose. Witness for the prosecution Yajima in reply to the question, "What was Tsuchiya?" testified, "He was the person to assist Onose in his work."

In the outset of this section, I stated that the reason for an act of escorting to be chargeable under the guise of murder, was because it could be thought that the act contributed more or less to the death of a person. In the present case, since Onose was in charge of escorting the prisoner, the charge against Onose alone should be sufficient if the charge of criminal responsibility is intended against this act on the ground that this act of escorting contributed to the crime of murder. To extend this responsibility to the accused Tsuchiya who was only an assistant is obviously going too far.

So long as you judge Tsuchiya by the evidence produced in this court, I believe it is impossible to place on Tsuchiya such grave criminal responsibility as murder for his act. According to the assertion of the Judge Advocate, a man who did an act in relation to the execution in cognizance that a person is going to be executed would be condemned for murder no matter how trifling the act may be. When we consider this incident in the above light, I believe there are many persons who did acts equal or greater than those of Tsuchiya.

Obviously, we must say that in indicting Tsuchiya all fairness has been lost.

It has been definitely proved that the present incident occurred because of the oppressive orders of the higher authorities.

We who ask of you a fair and impartial trial, cannot in any way yield to the practice of imposing such a grave liability as murder on a person such as the accused Tsuchiya, an unimportant non-commissioned officer for

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such a minor act. Even the Judge Advocate in his opening argument could not maintain that he proved beyond reasonable doubt that the accused Tsuchiya was guilty.

In order that Tsuchiya be given the same status as persons who had done acts equal or greater in degree than Tsuchiya, but have not been indicted, I ask that a judgment of not guilty be granted Tsuchiya.

Charge II - Violation of the law and customs of war.

The Judge Advocate charges the accused Koichi with violation of the law and customs of war. In Specification 1 of Charge II, he alleges that the accused Koichi disregarded and failed to discharge his duty to control the operations of members under his command namely, Katsuyama, Onose and Tsuchiya and others unknown, permitting them to behold a prisoner, Second Lieutenant Kaufman, and, in Specification 2 of Charge II, that he disregarded and failed to discharge his duty to protect the prisoner then held captive.

In behalf of the accused Koichi, I would like to argue as to whether he had a duty to control and supervise Katsuyama and other two persons and whether he had a duty to protect the prisoner of war.

The relation between the accused Koichi and Katsuyama in regard to orders is too clear to argue about. However, it is disputable as to whether the accused Koichi had a duty to control his subordinate Katsuyama in connection with the execution of the prisoner. The accused Koichi received an order from Lieutenant General Inoue concerning the prisoner in this case, "Have First Lieutenant Katsuyama execute the prisoner." Therefore, that the accused Koichi had 1st Lieutenant ^{Katsuyama} execute the prisoner only means that he relayed Lieutenant General Inoue's intentions to Katsuyama. So the execution of the prisoner performed by First Lieutenant Katsuyama is not Koichi's disregarding and failing to discharge his duty to control Katsuyama. The responsibility to control the execution of the prisoner in this case should be pressed against Lieutenant General Inoue, who should be made an accused, but there is no ground on which the accused Koichi should be charged with that.

Next, the accused Onose and Tsuchiya were not under control and supervision of the accused Koichi. They were attached to the Intelligence Section of the 14th Division Headquarters and were under control and supervision of Staff Officer Yajima. To control Onose and Tsuchiya, who were not under the supervision of the accused Koichi, is outside the scope of Koichi's duty. It was Staff Officer Yajima who gave orders to Onose, and according to orders of Yajima, Onose gave orders to Tsuchiya. These facts had no relation whatsoever with the intent of the accused Koichi. They only were present at the scene of execution with Koichi.

On the above mentioned grounds, I am convinced that the accused Koichi is of Specification 1 of Charge II not guilty.

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Let us consider his duty to protect the prisoner alleged in Specification 2 of Charge II. A duty to protect should be based upon some legal grounds; the duty to protect a prisoner should be also. Prosecution's witness Doi testified that Army Operation Handbook provides that when a prisoner is captured he should be sent to the headquarters. This means that the Doi Unit has no duty to have or keep a prisoner in custody. Neither did the anti-aircraft unit of the accused Koichi have any duty to protect a prisoner. Then had the accused Koichi a duty to protect a prisoner in this case?

The accused Koichi did not receive any orders or directions to protect the prisoner. The order which he received from Lieutenant General Inoue was to execute the prisoner, not to protect the prisoner. Protection and killing are contrary conceptions. In fine we can not find any legal duty on the part of the accused Koichi to protect the prisoner in this case.

The prisoner was escorted to the accused Koichi to be executed, and Koichi was not told to protect the prisoner. It is entirely meaningless to demand that the accused Koichi should have protected the prisoner. If this prisoner had been in custody of the Koichi Unit or if the purpose of escorting the prisoner from the headquarters had not been to execute him and if the execution had been performed by Koichi's design, there would have been considerable grounds on which to charge Koichi's disregarding and failing to discharge his duty of protecting the prisoner. In this case, however, Koichi received a prisoner who it had already been decided was to be executed. How can you expect him to protect the prisoner?

In this case it was Lieutenant General Inoue who should and could have protected the prisoner, Second Lieutenant Kaufman, and the accused Koichi could not protect the prisoner even though he desired to do so. This point can easily be understood from the facts that the accused Koichi could not resist the orders of Lieutenant General Inoue to execute the prisoner though he again and again opposed the execution.

If it is so, no one can demand the duty of protection of the accused Koichi who could not protect even though he desired to protect. This is to request the utterly impossible of Koichi, and it is needless to say that the accused Koichi is not guilty.

The Judge Advocate observes the killing of a prisoner from its positive side in the first charge and charges Koichi with murder, while he observes the same fact from the opposite side in these specifications, and charges him with neglect of duty. He is evidently making two charges on the basis of the same single fact. If the first charge be sustained against the accused Koichi, how can Specification 2 of Charge II be concluded? In the same way, to sustain the second charge will preclude proving the first charge. On the above ground, I request you to find that the accused Koichi is of Specification 2 of Charge II not guilty.

Respectfully,

KARASAWA, Takami.

I hereby certify the above, consisting of fifteen (15) typewritten pages, to be a true and complete translation of the original argument written in Japanese, to the best of my ability.

Eugene E. Kerrick
EUGENE E. KERRICK
Lieutenant, U.S. Naval Reserve,
Interpreter.

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CLOSING ARGUMENT FOR THE DEFENSE

of

KOICHI, Hiroe, et al

Delivered by Commander Martin E. Carlson, USNR, December 5, 1947.

The defense of Koichi, Hiroe and three others accused of the murder of Second Lieutenant Wallace F. Kaufman, U. S. Army, should not be the case of Koichi, et al but according to the evidence introduced by the prosecution and corroborated by the defense this case should be the case of Lieutenant General Inoue.

These four who are here accused of the murder should not be the accused. They should all be prosecution witnesses against Lieutenant General Inoue.

Section 360, Naval Courts and Boards sets forth excerpts from the Canons of Ethics of the American Bar Association for information and guidance.

We quote from this section: "The primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done."

The judge advocates have tried to see that justice is done. They have by their own witnesses proved that it was Lieutenant General Inoue who ordered the execution. Lieutenant General Inoue personally ordered Captain Koichi to have Katsuyama execute the prisoner as soon as he was delivered to Koror by Lieutenant Onose. Lieutenant General Inoue, the Commanding General of the 14th Division, Imperial Japanese Army, further stated that he was having the prisoner sent from Division Headquarters under escort of an officer whose duty it was to see that the prisoner arrived at Koror safely and alive. Lieutenant General Inoue even gave such detailed instructions and orders that Kaufman must have all his personal belongings such as ring, watch, money and identification card.

All this the prosecution has proved by their own witnesses.

Our only question then is and it should be the only question of the Commission: What of Lieutenant General Inoue? Why isn't he on trial instead of these four accused?

In view of all the evidence presented in this case, that is the material issue and that is the question which the prosecution have put in issue by their own prosecution witnesses and which we have corroborated.

This Commission is not authorized upon its own motion to direct the judge advocates to withdraw the charges against these four accused.

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Section 18 of Naval Courts and Boards reads: "A nolle prosequi (or withdrawal or discontinuance) is an entry made on the record by which the prosecutor declares that he will proceed no further."

In order that justice may be done in this case the judge advocates should enter a nolle prosequi at this time as to these four "little men."

Or are these four "little men" to be found guilty of murder and the big men, the real criminal, escape punishment? Is there one law for a general and another for enlisted men and junior officers?

This is America and the laws of America are enforced as against all persons be they rich or poor, powerful or weak. The procedural rights of an accused person apply to any person who is accused of a crime by the Federal Government.

But the judge advocates may say we are not accusing these four little men with a violation of American law. These four accused are charged with having violated the law and customs of war, which is international law.

I would like to call your attention to what Mr. Justice Murphy said in his dissenting opinion in the Yamashita case, 66 S.Ct. 340:

"The Fifth Amendment guarantee of due process of law applies to 'any person' who is accused of a crime by the Federal Government or any of its agencies. No exception is made as to those who are accused of war crimes or as to those who possess the status of an enemy belligerent. Indeed, such an exception would be contrary to the whole philosophy of human rights which makes the Constitution the great living document that it is. The immutable rights of the individual, including those secured by the due process clause of the Fifth Amendment, belong not alone to the members of those nations that excel on the battlefield or that subscribe to the democratic ideology. They belong to every person in the world, victor or vanquished, whatever may be his race, color, or beliefs. They rise above any status of belligerency or outlawry. They survive any popular passion or frenzy of the moment. No court or legislature or executive, not even the mightiest army in the world, can ever destroy them. Such is the universal and indestructible nature of the rights which the due process clause of the Fifth Amendment recognizes and protects when life or liberty is threatened by virtue of the authority of the United States."

But why are these four "little men", after having been demobilized more than two years ago, suddenly arrested without warrant, and brought to Guam from Tokyo, without any extradition papers and in violation of due process? What military necessity or other emergency demands their trial while the general ordered the execution still remains untried?

But let us look at the evidence as it affects these four accused.

I shall consider first of all the four statements alleged by the judge advocates to be the confessions of each of the accused because these statements are not confessions and they should not have been admitted into

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evidence as confessions.

All four of these accused were regularly demobilized and after living as civilians for two years they were each, one by one, seized without warrant of arrest and thrown into Sugamo Prison. Then without extradition papers they are sent by the U. S. Army on demand of the U. S. Navy to Guam. Here these four persons are all placed in solitary confinement. No charges have as yet been preferred against any of them.

One day they are called before a commander, U. S. Navy, and asked to sign and swear to a statement which in effect reads that the statements which these persons were required to make while in custody of the U. S. Army at Tokyo are true. The administration of this oath by Commander Ogden involved a compulsion. Still no charges are preferred against them although they are held in solitary confinement.

Then on November 10, 1947, each of these persons is for the first time made aware of what and why he was brought to Guam.

In 1833 in the case of *Rex v Davis*, 6 C & P. 178, Gurney, B. it was held that "(examination as witness before magistrate; excluded; 'if after having been a witness you make her a prisoner, nothing of what was then said can be admitted as evidence')" cited in footnote 1 to Sec. 850 on p. 304 of Volume III of Wigmore on Evidence "Testimonial Communication."

The investigator of war crimes, Commander Ogden, required that these four accused swear that their statements written in Tokyo were true. There was no free choice on the part of any of these accused. They all signed the oath Commander Ogden had prepared for them.

In footnote 4, Section 849 Confessions: During Legal Proceedings the rule is laid down: "1824, Sterkie, Evid. II, 38 'The prisoner is not to be examined upon oath, for this would be a species of duress, and a violation of the maxim that no one is bound to criminate himself.'"

I maintain that all Japanese when suspected wrongly of crime and questioned about it are apt, particularly when the circumstances are strongly inculpatory and demand explanation, to make the first explanation that occurs to them. The judge advocates proved this when they introduced into evidence the opinions of U. S. Army investigators of the cause of the death of Kaufman. False stories, of how Kaufman met his death, were invented by certain persons attached to the 14th Division Headquarters of the Imperial Japanese Army. The American investigators believed these false stories, and officially notified the next of kin of Kaufman. Evidently these investigators were not acquainted with Selden's Principle of Mental Agitation. I shall quote the following passage found on p. 285 section 845, Testimonial Communication, Confessions: During Legal Proceedings, Vol. 3, Wigmore on Evidence: "1854, Selden, J., dissenting in *Hendrickson v. People*, 10 N.Y. 33: 'The mental disturbance produced by direct accusation, or even a consciousness of being suspected of crime, is always great, and in many cases insurmountable. The foundation of all

"HH (3)"

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reliance upon human testimony is that moral sentiment which universally leads men, when not under some strong counteracting influence, to tell the truth. This sentiment is sufficiently powerful to resist a trifling motive, but will not withstand the fear of conviction for crime. Hence, the moment that fear seizes the mind, the basis of all reliance upon its manifestation is gone...The mind, confused and agitated by the apprehension of danger, cannot reason with coolness, and it resorts to falsehood when truth would be safer, and is hurried into acknowledgments which the facts do not warrant. Neither false statements nor confessions, therefore, afford any certain evidence of guilt when made under the excitement of an impending prosecution for crime."

In the last half of 1800 the English rule was that statements are deemed n voluntary and therefore inadmissible when they have been made in answer to questions put while in custody. In Section 844 of Vol. III, Wigmore on Evidence, the case of Rex v. Gavin, 15 Cox Cr. 656 is cited: "When a prisoner is in custody, the police have no right to ask him questions...a prisoner's mouth is closed after he is once given in charge, and he ought not to be asked anything."

"In section 847 of Vol. III, Wigmore on Evidence we read: "But about the same time as R v. Johnston (1864) the second form of rule made its appearance in England; i.e., any answers obtained by questions put by an officer to a person in custody were excluded; this rule was by most judges enforced in England, and (perhaps) in Canada from that time onwards." Citing footnote 10, 1905, R v. Knight & Theyre, 20 Cox Cr. 711 "When a police officer has taken anyone into custody,----he ought not to question the prisoner...I am not aware of any distinct rule of evidence that if such improper questions are asked the answers to them are inadmissible, butin my opinion that is the right course to pursue."

1913, U.S. v. Frenn, N.Sc., 10 D.L.R. 452 (the practice of detectives interrogating a prisoner when in jail, and when no one else is present at the interview, should be discouraged.)"
New Brunswick: 1924, R v. Goodwin (1924) 2 D.L.R. 362 (answers of a boy made at the police station; "the examination virtually partook of the nature of a cross-examination"; held inadmissible, after an elaborate argument by Powell, K.C. in a sensible opinion by McKeown, C.J.)"
1931, R v. Price, 3 D.L.R. 155 (statements to a police officer, when under arrest, and no caution given, though a caution had been given by another officer at a prior interview, excluded)"
1933 Quebec: Chepdelaine v. The King, (1935) 1. D.L.R. 805 (murder; the accused woman was daily interviewed by the police for nine days, when under arrest, without counsel; excluded.)"

All four of these persons were asked on Guam to swear to their statements made in Tokyo while held in custody. The theory as to confessions upon oath is that the oath necessarily involves a compulsion. This theory, "ignores the choice which the witness has to use his privilege and decline to answer, by this theory, the mere fact of the administration of the oath, in spite of the giving of a caution, excludes his statements." Footnote 3

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to Section 850, "Such seems to be the notion in the following cases of the preceding list: Smith's (introducing the doctrine), Mercer's, Tucker v. Berrow, Anon., and perhaps Owens before Gurney, B.; see its theory fully stated in the quotation from Jackson v. State, ante paragraph 843."

Wigmore on Evidence, Vol. 3, Section 850, Testimonial Communication; Confessions: During Legal Proceedings.

We cite the ruling laid down in Jackson v. State, 59 Miss. 312 found in Section 843, Testimonial Communication, Vol. III, Wigmore on Evidence, p. 285: "1879, Chalmers J., in Jackson v. State, 59 Miss 312, rejecting an examination as witness after a caution: The principle is that no statement made upon oath in a judicial investigation of a crime can ever be used against the party making it, in a prosecution of himself for the same crime; because the fact that he is under oath of itself operates as a compulsion upon him to tell the truth and the whole truth, and his statement, therefore, cannot be regarded as free and voluntary."

The Illinois case decided in 1905, Hook v. People, 219 Ill. 265, 76 N.E. 356; and People v. Buckmaster (1916) 274 Ill. 435 113 N.E. 713, both held (confession made to the State's Attorney, excluded without pointing out any specific defect) footnote 1 Sec. 851 Vol. III, Wigmore on Evidence page 312: We cite these further cases:

"Federal: 1916 U.S. v. Rivas, 8 P.R. Fed. 401 (statements to postal superior without warning, but not under arrest excluded.)"

"1924, Ziang Sang Wen v. U.S. 266 U.S. 1, 69 L. Ed. 131, 45 Sup. 1 (murder; during 12 days of detention, the accused, who was ill was constantly interrogated; finally, he made a full confession; excluded, on the ground that there was compulsion in fact.)"

"1927, Charley Hee v. U.S. 1st C.C.A. 19 Fed. 2d 335 (interrogation of a Chinese immigrant); "

"1929, Davis v. U.S. 9th C.C.A., 32 Fed. 2d 860 (confession after being taken at midnight to the morgue to view the body; "I want you to give me a complete confession, " excluded; "

"California: 1910, People v. Loper, 159 Calif. 6 112 Par 720 (the "sweating process"; confession excluded."

"1911 People v. Borello, 161 Calif. 367, 119 Par 500 (An ordinary confession obtained by interrogation, peculiar only in the amount of profanity used by the sheriff; excluded)"

Colorado; 1923, Turner v People 73 Colo. 184, 214 Par 390 (Confession obtained by police interrogation, not admissible."

Columbia (Dist.): 1924, Perrygo v U.S. 55 D.C.A. 80, 2 Fed. 2d 181 (murder; a boy of 17, low in mentality, questioned continuously while ill, for an hour and a half, by four or five officers; confession excluded.)

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Illinois, 1920, People v Vinci, 295 Ill. 419 129 N.E. 193 (answers made in response to continuous questioning in the State's Attorney's office excluded on the facts.)"

Iowa: 1922 State v Thomas, 193 Iowa 1004, 188 N.W. 689 (rape; confession to the sheriff under a "four-hour grilling," excluded.)"

1937, State v Henry, 223 Ia. 1241, 275 N.W. 10, 18 (questioning by the sheriff from 11 p.m. 'till noon next day.)"

Michigan: 1917 People v Brockett, 195 Michigan 169, 161 N.W. 991 (confession made after lengthy interrogation and while detained two nights in a cell without a bed, excluded)

1929, People v Cavanaugh, 246 Mich. 680, 225 N.W. 501 (rape)"

Tenn: 1937, Rounds v State, 171 Tenn. 511, 106 S.W. 2d 212 (murder; confession made after four days semi-continuous interrogation by a relay of police officers, excluded)"

Wisconsin: 1922, Lang v State, 178 Wis. 114, 189 N.W. 558 (confession excluded on fact.)"

1943, Burns v District of Columbia, D.C. Mun. App. 34 Att. 2d 714 (vag-rancy; holding admissions made to officers improperly received, following McNabb v U.S.

Texas: 1944, Summers v State, 147 Tex. Cl. 519, 182 S.W. 2d 720, 722 (Krueger, J. : "We think the facts are sufficient to have created the impression on the mind of the appellant that he was under arrest. Hence the evidence should have been excluded.")

Federal: 1940 Chambers v State of Florida, 309 U.S. 227, 60 Sup. 472, 84 L. Ed. 716 (confession obtained by protracted questioning, held illegal, in the light of surrounding circumstances, citing Brown v State of Miss.

1943: Anderson v U.S., 318 U.S. 350, 63 Sup. 599, 87 L. Ed. 829 (incriminating statements procured as the result of prolonged interrogation excluded.)

1943, Gros v U.S. 9th C.C.A., 136 Fed. 2d 878 (agent of German Government and failing to register as such an agent, 40 Stat. 226, 22 U.S.C.A. Sec. 233; length of time defendant questioned considered in conjunction with other circumstances rendered confession, inadmissible.)

1943 Runnels v U.S. 9th C.C.A. 138 Fed. 2d 346 (Murder; admissions, procured by repeated questionings for a period of 17 days, excluded; McNabb v U.S. and Anderson v U.S. cited.)

1944: Ashcroft v State of Tenn., 322 U.S. 143, 64 Sup. 921 88 L. Ed. 1192 (confession in form of unsigned statement obtained after 36 hours of questioning without sleep or rest by relays of officers, experienced in-

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investigators, and highly trained lawyers, excluded;")

1946 Ashcroft v U.S. 90 U.S. 576, 66 Sup. 544, 90 L Ed. 576.)

1944 U.S. v. Ruhl, D.C.D. Mo. 55 Fed. Suppl. 641 (Mitchell v U.S. supra followed.)

1945, Melinski v People of State of N.Y. 324 U.S. 401, 89 L. Ed. 1029, 65 Sup. 781 (murder; defendant was stripped and kept naked for several hours; he was not allowed to interview a lawyer, though he had asked to see one; use of confession obtained under these circumstances, among others, held denial of due process clause of 14th Amendment.)

Columbia (District): 1943, Mitchell v U.S. 78 D.C. Appl 171, 138 Fed. 2d 426 (housebreaking and larceny; confession obtained after arrest and about a week before arraignment was held inadmissible; McNabb v U.S., Note 2, supra relied upon; reversed U.S. v Mitchell 32 U.S. 65, 64 Sup. 896, 88 L. Ed. 1140, supra)

Florida: 1945 Williams v State of Fla., 22 So. 2d 821 (murder; continuous questioning, etc., involuntary.)

North Carolina: 1944 State v Biggs, 224 N.C. 23, 29 S.E. 2d 121 (murder; confessions obtained after prolonged questioning of defendants by officers.)

The Mc Nebb Case not only excluded the confession but Mr. Justice Frankfurter criticized the investigating and arresting officers. I cite the case as it is set forth under section 851, page 54, Supplement to Wigmore on Evidence, Vol. 3.,

Federal: 1943 Mc Nebb v U.S., 318 U.S. 382, 63 Sup. 608, 87 L. Ed. 819 (Murder of an officer of the Alcohol Tax Unit of the Bureau of Internal Revenue engaged in the performance of his official duties, 18 U.S. C.A. 253; after arrest of defendants but prior to their being brought before a committing officer, they were put in a cell for fourteen hours; after which they were subjected to unremitting questioning for two days and denied aid of friends or benefit of counsel; incriminating statements, excluded; Frankfurter, J., (Sup.) 613: Quite apart from the Constitution, therefore, we are constrained to hold that the evidence elicited from the petitioners in the circumstances disclosed here must be excluded. For in their treatment of the petitioners the arresting officers assumed functions which Congress has explicitly denied them. They subjected the accused to the pressures of a procedure which is wholly incompatible with the vital but very restricted duties of the investigating and arresting officers of the Government and which tends to undermine the integrity of the criminal proceeding. Congress has explicitly commanded that 'It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States Commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or

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taking bail for trial....' 18 U.S.C.A. 595. Similarly, the Act of June 18, 1934, c. 595, 48 Stat. 1008,, 5 U.S.C.A. 300 e authorizing officers of the Federal Bureau of Investigation to make arrests, requires that 'the person arrested shall be immediately taken before a committing officer.' Compare also the Act of March 1, 1879, C. 125, 20 Stat. 327, 341, ...18 U.S.C.A. 593, which provides that when arrests are made of persons in the act of operating an illicit distillery, the arrested persons shall be taken forthwith before some judicial officer residing in the County where the arrests were made, or if none, in the County nearest to the place of arrest. Similar legislation, requiring that arrested persons be promptly taken before a committing authority, appears on the statute books of nearly all the states."

This opinion was interpreted by many courts to mean that in cases originating in Federal Courts a confession obtained from the accused prior to being brought before a committing officer was illegal. Moreover, many State Courts by analogy employed the rule thus laid down as a criterion in determining the legality of a confession under State practice."

Yet in spite of our objections and the many citations we gave in support of our objection to the introduction of these statements, the statements were admitted in evidence and will undoubtedly be considered by the Commission in arriving at its findings.

We object specifically to certain statements which if not explained are damaging to each of the accused. The statements were prepared at the command of prosecution investigators with the idea that these statements would be damaging to the efforts and would convict the effiant.

So in the statement said to be the statement of Onose, we find the following sentence: "The footing of Lieutenant Katsuyama was bad so I cautioned him about it."

This one sentence in Onose's statement is the reason he is charged with murder. The judge advocates have stated that this is all that is necessary to convict Onose of the charge of murder. Do they try to prove intent? No, only that Onose cautioned Katsuyama about his footing at the scene of the execution.

The judge advocates know that even if they have been able to get into evidence a coerced statement that they must corroborate this one point and they will conveniently forget about intent.

So their star witness, Shimojo the gunsoku, is brought to the witness stand. It is Shimojo who was ordered to go along from Division Headquarters and take pictures of the execution and he did take pictures, five in all.

But Shimojo couldn't even identify Katsuyama or Koichi. He had been told they were both accused and yet he couldn't identify them. He testified, "The one with the glasses on is Captain Koichi; the one next to him First Lieutenant Katsuyama." All he knew was names and the judge advocate

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if you will remember tried to coach him by telling him if he couldn't see he should step down from the witness stand and go closer. There was nothing wrong with Shimojo's eyesight; it was his hearing that was defective as he testified. Shimojo just didn't know either Katsuyama or Koichi. His testimony that afternoon before and after the recess is very interesting.

Shimojo was a poor witness for the prosecution because he didn't even know whether Koichi and Katsuyama were at the scene of the execution before or after he arrived. Shimojo said: "When I first came to the scene I didn't notice them."

The judge advocate must get Koichi and Katsuyama identified by this witness, however, so he asks him: "After you noticed that Katsuyama and Koichi were at the scene, what happened?"

Again Shimojo is confused because he answers: "Katsuyama and Onose spoke to each other and Onose said to Katsuyama."

He still has Katsuyama ordering things to be done.

Remembering only the name Katsuyama, he testifies next regarding the position of Katsuyama with a sword. He further stated, "At this time Onose showed him how to cut."

Shimojo in answer to question 71 said: "Onose did not have a sword, but Onose was instructing him how to place his feet and how to swing his sword up and how to swing it down."

The court then adjourned for the day.

On cross-examination, Shimojo couldn't testify that Captain Koichi was the officer at the Koichi headquarters the evening before the execution. I refer you to Q. 123 - 127 put to Shimojo on cross-examination particularly Q. 126: "This officer that you can't identify. Did you ever see him again?"

Answer: "No, I haven't seen him since." Q. 127. "You didn't see him at the execution?" Answer: "No, I haven't. To this I am not very clear. But I testified that I did not see him at the scene. But when I saw him at the barracks of the Koichi unit I felt as though he was Katsuyama."

But Shimojo never did identify Koichi and Katsuyama because he did not recall clearly if Koichi wore glasses and he knew Katsuyama did not have glasses on the day of the execution. (See answers to Q. 169 and 170)

To Q. 181 he answered: "I don't recall seeing Captain Koichi there" when the prisoner was cut.

We tried to question Shimojo as to what Onose did at the scene and asked him Q. 184: "What do you recall seeing him do there?, but this question was objected to by the judge advocate on the ground that it was

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repetitious. After his objection had been withdrawn Shimojo's answer was repetitious because he only repeated, "I saw Onose showing Katsuyama how to cut with the sword." Onose however was not in the picture Shimojo took of the cutting. He didn't show how to cut. He showed how to stand in the picture. But on this evidence and on this evidence only the judge advocates ask the Commission to find Onose guilty of murder.

But we ask, what of the criminal intent without which there can never be a crime and in the case of murder we call it "malice aforethought."

There are certain other allegations in the specification of the first charge against Onose. The judge advocate must prove them all: "wilfully, feloniously, with premeditation, and malice aforethought and without justifiable cause." It is necessary that the judge advocates prove all these allegations against Onose as well as against Koichi and Katsuyama.

Does he dare to say that he has proved all these necessary allegations and all are necessary before Onose can be convicted of murder.

We know that the judge advocate failed to prove the specification of murder against Onose even before Tsuchiya testified.

When Tsuchiya got through testifying there wasn't any doubt but that the judge advocate had failed to prove his case against Onose.

Remember the burden of proof is always with the prosecution. Onose is presumed innocent until proved guilty.

The prosecution based his guilt on one slender bit of evidence: that Onose said something to Katsuyama about how to stand. Does the judge advocate still maintain that Onose aided and abetted Katsuyama, that he directly participated in the execution? Does he still try to convince the Commission that Onose is a principal?

Let us look closely at Section 332 of the U. S. Criminal Code: "Whoever directly commits any act constituting an offense defined in any law of the United States or aids, abets, counsels, commands, induces or procures its commission is a principal."

What did Tsuchiya testify to? I shall read it slowly and carefully: "Concerning the point where Onose taught how to cut, there seemed to have been a question and so I would like to state all I know about this. First Kaufman was made to sit down at the spot of the execution with his back towards the sun. Shimojo wanted to take a picture of this and as the light was coming directly into the camera he wanted the position of Kaufman changed. The position of Kaufman was changed so he would face the sun and he was made to sit down. First Katsuyama's footing was firm, but as the position was changed he was not prepared so Onose coached him about his footing."

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So it turns out that the act which Onose did was directly aiding Shimojo in taking the picture. The judge advocates will search in vain in the Hague Convention of 1907 or the Geneva Prisoners of War Convention of 1929 for any clause or even an implication which says it is an international crime and offense against the law and customs of war to take pictures of an execution. Nor will they find it is an international crime to aid another person in taking a picture of an execution.

After Tsuchiya had testified as he did, the following entry appears in the record: "Neither the accused, the judge advocates, nor the commission desired further to examine this witness."

We were satisfied of the innocence of Onose. The judge advocate didn't have anything to say then. By now he should be reconciled that there was only an intent on the part of Onose to see that Shimojo got the kind of a picture he wanted. The prosecution failed to prove any intent whatsoever for the act of Onose and Tsuchiya testified it was only a question of a picture and not a question of helping Katsuyama execute the prisoner.

We are sure that the Commission is firmly convinced that Onose is innocent.

The evidence proves Onose innocent; the Commission now need only formally acquit Onose of the charge of murder finding the charge not proved and Onose not guilty as charged according to the evidence the Commission does therefore acquit Onose of the charge of murder.

Why Tsuchiya was ever charged with murder or with any offense we would like to know.

The prosecution offered no evidence to prove Tsuchiya guilty in any way. The statement which was put into evidence as a confession of Tsuchiya is not a confession. Wigmore on Evidence, Vol. III, Sec. 821, page 238, defines a confession: "A confession is any acknowledgment in express words, by the accused in a criminal case, of the truth of the guilty fact charged or of some essential part of it."

Nowhere in his statement does Tsuchiya acknowledge he did any of acts charged in the specification of Charge I.

We object to the translation of a certain sentence in Tsuchiya's statement and he definitely cleared that up when Tsuchiya took the witness stand on the sixth day of the trial.

Tsuchiya testified: "The next morning when I went to the Naval Cemetery I saw Kaufman sitting down."

And why did he go to this Naval Cemetery?

Let him answer himself: "The day before the execution I was told by Onose to return Kaufman's belongings at the last minute, so I carried his orders out accordingly."

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According to his testimony Tsuchiya took no part in the execution and he was fifteen meters away when Kaufman was executed.

Tsuchiya was close enough, however, to see that Shimojo was taking pictures of the execution. Tsuchiya, however, took no pictures himself or did he participate in any way in the execution.

Tsuchiya should never have been indicted or charged with the crime. He should never have been joined with the three other accused.

This misjoinder of Tsuchiya however was a boomerang this time because it was Tsuchiya who remembered that Shimojo wanted Kaufman facing the sun so he could get a good picture. As Onose was responsible and charged with bringing back proof of the execution, he aided Shimojo in getting a picture. This as we have said is no crime even according to international law.

Not a single witness has testified that Tsuchiya participated in any way in this execution. We are most anxious to hear upon what the judge advocate is to base his argument and justify bringing Tsuchiya to trial for murder.

There is no justification for charging Tsuchiya with murder. He should be found not guilty and acquitted.

As to multiplicity of charges we have objected to this. Now that all the evidence is in it is clear that Charge II is based on the same act and only drawn and charged to provide for the exigencies of proof.

Koichi, if found guilty of Charge I, should then be found not guilty of Charge II and vice versa.

We refer the Commission to C.M.O. 2, 1932, p. 13, CMO-1-193 p. 12, CMO-4, 1925, p. 22.

We particularly call your attention to CMO-1, 1939, p. 14 wherein the J.A.G. of the Navy set forth the policy of the Navy Department in the case of multiplicity of charges.

The policy was set forth in CMO 10-1926, p. 8, and in CMO-8, 1927.

We have not seen the review by the J.A.G. Navy of the Tachibana war crimes trial held here at Guam, but whatever the ruling was on that case the Commission should consider it and be guided by it as a matter of policy.

As we have said this should have been the trial of Inoue and not of Koichi and Ketsuyama.

Must they accept the responsibility for this execution which was planned and ordered by 14th Division Headquarters? Where is this General Inoue? Why do not the prosecution at least explain to the Commission th

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present whereabouts of General Inoue and if he is dead say so.

Their own prosecution witnesses testified that General Inoue ordered the execution but the big question is where is Inoue?

Even the harsh Mosaic law demanded no more than an eye for an eye. Do the judge advocates also insist upon their pound of flesh. These are war crimes trials and it can well be said they are without precedent. Yet we should hearken to the principles of punishment.

"What Shall be Done with the War Criminals?" is the name of a little booklet prepared for The United States Armed Forces Institute by the American Historical Association August 1944. On page 38 there is a chapter "How Shall The Guilty Be Punished?":

"Many people believe that the United Nations either individually or jointly, should dispose of all Axis war criminals by shooting or hanging. A little reflection, however shows that this solution of the problem, though simple, might be contrary to the best interests of the peoples who have suffered from the Axis' cruelties. Apart from this the question has been raised whether capital punishment for most of the guilty is in harmony with scientific criminology and penology.

In the United States we regard every offender as an individual. His assets and liabilities are studied and a program is planned to make the most of his abilities, develop new ones, curb his bad habits, and gradually restore him to a useful and law-abiding place in society."

We believe this policy should be followed for the war criminals.

So what about these two little men who were forced to participate in the execution of Kaufman because Lieutenant General Inoue wanted to boost the morale of the Katsuyama Unit which had been practically wiped out by the American bombers?

Katsuyama and his men were ready to die at their posts but they were also eager to fight on. Their spirits were high and the morale was excellent. Katsuyama and Koichi had been seriously wounded, they still bear the scars with both of their ears badly disfigured, but they believed in the righteousness of their cause so fought on boldly.

They wanted no part in an execution of an American prisoner. It is too easy to stand here before this Commission and say that Koichi and Katsuyama should have bearded the lion in his den. Koichi and Katsuyama you say should have refused to carry out the general's orders. They should have been bold. You who say this know little of armies and less of the Japanese Army if you imagine it was the order of things that second lieutenants and captains refused to carry out the orders of a Lieutenant General.

Military organizations including the American Army are founded upon the principle of obedience to orders and responsibility of command and

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for the orders that superiors issue. We see it every day in our own American Army and Navy. It is so fundamental it needs no exposition: Rank and station carry with the position grave responsibilities. There is no analogy to this in civilian life.

Koichi and Katsuyama did not participate in this execution because they wanted to. Nor has it been proved that anyone was at the scene because they wanted to be. They were ordered to be there so they were there. Let us be realistic about it. Every Japanese didn't want war. Many were conscripted and many hated war.

You must believe these four when they say they were ordered to the things they admitted doing that day.

Let us realize that a military organization demands obedience. If the orders are illegal punish the person who gave the orders, who thought up the diabolical idea, and planned it all down to such details as taking pictures.

No, gentlemen, these are not the real criminals in this case.

The prosecution would magnify the position of Koichi and hold that because General Yamashita, Commanding General of the Fourteenth Army Group of the Imperial Japanese Army in the Philippine Islands was tried for failure to discharge his duty as commander to control the operations of the members of his command, then Koichi should also be tried. But Yamashita was the Commanding General in the Philippines and Lieutenant General Inoue was the Commanding General in the Palau. There the analogy stops for many reasons.

But we do not hold that the Yamashita case is good law. Mr. Justice Rutledge and Mr. Justice Murphy both dissented. Mr. Justice Murphy said "The recorded annals of warfare and the established principles of international law afford not the slightest precedent for such a charge. This indictment in effect permitted the Military Commission to make the crime whatever it willed, dependent upon its biased view as to petitioners duties and his disregard thereof, a practice reminiscent of that pursued in certain less respected nations in recent years."

Mr. Justice Murphy further stated:

"War breeds atrocities. From the earliest conflicts of recorded history to the global struggles of modern times inhumanities, lust and pillage have been inevitable by-products of man's resort to force and arms. Unfortunately, such despicable acts have a dangerous tendency to call forth primitive impulses of vengeance and retaliation among victimized peoples. The satisfaction of such impulses in turn breeds resentment and fresh tension. Thus does the spiral of cruelty and hatred grow.

If we are ever to develop an orderly international community based upon a recognition of human dignity, it is of the utmost importance that

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the necessary punishment of those guilty of atrocities be as free as possible from the ugly stigma of revenge and vindictiveness. Justice must be tempered by compassion rather than by vengeance."

So in this present case we say that justice demands an explanation from the judge advocates as to "What of General Inoue?"

Justice for both Koichi and Katsuyama must be tempered with compassion.

The judge advocate has said that superior orders are no defense. How then does he explain paragraph 347 of the Rules of Land Warfare:

"Individuals of the armed forces will not be punished for these offenses (violations of the customs and laws of war) in case they are committed under the orders or sanction of their government or commanders."

The judge advocate knows of this rule, a rule still in effect in the American Army. He keeps saying the rule should be changed and that therefore this Commission should ignore the rule. But the rule is still in effect. It did not enter the American rules until 1914.

It is not enough that the judge advocate says the law should be changed. He says these two accused knew the order was illegal and therefore should be punished. But what law must be applied in order to determine illegality. "Normally the law to be applied in order to determine the illegality of the order that resulted in atrocities would have to be the law of the accused man's country. He could not be expected to know the law of the enemy nation that prosecutes him." -From "What Shall be Done with War Criminals?", FM 11 page 31. The prosecution failed to prove this point but this is beside the point because the American rule is still in effect that superior orders are a defense.

Rules of Land Warfare Basic Field Manual, FM 27-10, section 345.1 of chapter 11, Penalties for Violations of the Laws of War, "Individuals and organizations who violate accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defense or in mitigation of punishment. The person giving such orders may also be punished." -- By Order of the Secretary of War, G. C. Marshall, Chief of Staff. November 15, 1944.

So both Koichi and Katsuyama under the American rule are protected by reason of superior orders.

Surely in this case Justice must be tempered by compassion.

It was the judge advocate who introduced as evidence into the record the statement of Katsuyama. This statement shows who the real criminals in this case are.

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General Inoue and his headquarters staff were not satisfied that they had ordered Katsuyama to execute an American prisoner. Now they order him to commit suicide as part of their scheme to hide from the Americans the real facts in the case.

Impossible! No. The word of the general was law even if the war was over and Japan had been beaten. So Katsuyama reports to the general in full combat dress uniform. Staff Officer Yajima leads Katsuyama to a deserted hut in the jungle and there he tells him that since he had executed a prisoner by orders of the general, "as long as you are alive it will jeopardize the position of the Commanding General, Inoue." The general felt his responsibility now that the Americans were demanding an accounting for the prisoner.

So the orders are that you, Katsuyama, are to commit suicide in order to protect the General. Poor Katsuyama! Hadn't he been through enough.

It is hard for an American to believe but Katsuyama was so disciplined that he prepared to commit suicide because he was ordered to do so.

But Yajima stopped him, saying, "You are already dead!" Katsuyama was stripped of all his clothes. He was given other clothes and told, "From now you are Koyama, Micio."

Then this new man, Koyama, was kept hidden away in the jungle living like an animal.

Katsuyama's clothes were put on a corpse and the corpse allowed to rot in the sun until it was beyond recognition. Then it is discovered that it is the corpse of Katsuyama who had murdered the American flyer Kaufman. That was the trumped-up story told to the Americans and they believed it. They made an official report as to this and Kaufman's next of kin were notified. The judge advocate even introduced all this into evidence.

Now the problem was to get Katsuyama back to Japan under his assumed name. Yajima took care of all this and took him back as his orderly. The records of Katsuyama were made to show his death by suicide and new records started for Katsuyama under the name of Koyama, and under that name he was demobilized.

Words cannot describe what Katsuyama went through hiding out as he was forced to do under an assumed name. But there was no money and so Katsuyama had to take a chance on being identified and he went to Tokyo to find work in order to live. He found work but his life was one of constant fear and dread.

It must have been a happy day when he was discovered for now he could tell all. He could tell how he had been made a victim of un-

"HH (16)"

0685

bridled power and cruelty. He told his story as best he could after two years of living in solitude, in dread and in fear and also bitter remorse for what he had done.

Although he told his story he was without friends and without the aid of counsel so his story only brought him more trouble.

He was thrown into Sugamo Prison, Tokyo, and then sent to Guam. Here he was put in solitary confinement and charged with murder.

He has been on trial in this courtroom for the murder of an American prisoner.

You may say why didn't he take the stand and tell his story? The miracle is that he can still talk and that his mind is not gone altogether. Since that day in May of 1945 Katsuyama hasn't known what it is to be a human being. The high command at Palau never accorded him any recognition of human dignity.

We agree there is the question, "What of Kaufman?" but there is also the question, "What of Katsuyama?" When you answer that question, you members of the Commission, we pray that your justice may be tempered by compassion rather than by vengeance.

So in this case of both Koichi and Katsuyama we ask that you apply the highest standards of justice. Stark retribution should not masquerade under the cloak of false legalism.

You can be magnanimous as to these four "little" men who are here charged with another man's crime.

Respectfully,

Martin E. Carlson
Martin E. Carlson,
Commander, U. S. Naval Reserve.

"HH (17)"

0686

CLOSING ARGUMENT FOR THE PROSECUTION

In re: KOICHI, Hiroe, et al

By

Lieutenant Commander Joseph A. Regan, USN.

The judge advocate has no intention of re-arguing the admissibility of the confessions which are already in evidence. At the time of the introduction of these confessions there was lengthy argument by Commander Carlson, but the Commission did accept the confessions.

The judge advocate does not intend to answer the defense arguments of improper seizure of these accused, for that question was settled at the time the defense counsel objected to the jurisdiction of this Commission.

For the information of the defense counsel and the Commission, the judge advocate advises that Lieutenant General Inoue is presently confined to Sugamo Prison, Tokyo, Japan, and Lieutenant General Inoue will be brought to trial for his crimes at a time set by the Director War Crimes, Pacific Fleet.

As was brought out by the opening statement of Lieutenant Kenny, all of the statements made by the judge advocate in his opening address have been proved.

There is no point in repeating these facts and laboring the point. The Commission has heard the evidence and the evidence spells out guilt.

The main facts proven by the prosecution have not been rebutted by the defense. There never was any question but that General Inoue had by himself determined upon the death of the unfortunate Kaufman. The prosecution admitted this at the start of the case and the prosecution witnesses so testified. But merely because the idea was germinated by the general - Kaufman did not immediately die. While the general decided that Kaufman should die - these accused pursuant to his illegal order brought about the actual death of the American prisoner of war.

Inoue's words alone could not kill but the sword of Katsuyama did almost sever Kaufman's head from his bound body.

The defense has not denied this but have contented themselves by insisting that because of the relative ranks all were helpless before the implacable general.

Once again in a War Crimes trial the essential facts of murder and guilt have not been controverted but the weak shield of superior orders has been raised by the accused -- and this shield should not be permitted to shelter them.

"II (1)"

0687

This defense of Superior Orders has been raised many times in preceding trials. Not only before this Commission but before other commissions in Japan and Europe. It was not accepted by the Nuremberg Tribunal; it has not been accepted by other commissions and it should not be accepted by this commission.

Koichi himself has admitted from the stand that he knew it was improper for Kaufman to be executed. That he knew even the purpose given for the execution would not be attained by it. Yet he also admitted that he was afraid to refuse or even remonstrate with the general when they were face to face. Koichi was afraid so Kaufman died - and now he desires to be excused from the consequences of his cringing obedience.

Without the efforts of Koichi the murder would not have come about. He was told by Inoue to make the arrangements and the Commission knows from his own testimony and the testimony of Shimojo and Tanaka how well he carried out his instructions.

Koichi has testified that Inoue himself named Katsuyama to be the sword wielder. It is a little difficult to believe this. Yajima's testimony does not bear it out - for Yajima says the order that Inoue gave was for the Koichi Anti-aircraft Unit to execute the prisoner. It is also a little difficult to believe that a Lieutenant General with a command of many thousands of personnel would be familiar with the names of men second lieutenants under his command. Koichi not only arranged the details of the execution but also designated the executioner.

There is no point in arguing the guilt of Katsuyama. He has confessed his part. His was the actual hand that carried out Inoue's order as relayed through Captain Koichi.

Onose is guilty of murder not only because he was a member of the execution party but more particularly because he participated in the murder by counseling Katsuyama in the correct method of using the sword and the manner in which he was to place his feet. The Commission may well believe Tsuchiya when he says that Onose cautioned Katsuyama concerning the taking of a picture. We do not quarrel with this statement for it does not contradict Shimojo's testimony that Onose showed Katsuyama how to stand and how to best use his sword. Onose's confession is also authority for the fact that he counselled Katsuyama just prior to the execution and is for this reason that the prosecution asks for his conviction.

The guilt or lack of guilt of Tsuchiya is a question of fact for the Commission. It is for the Commission to decide whether or not his being a member of the execution detail was such an act as to render him legally responsible as a principal. In the case of Koichi, Onose and Katsuyama - they were much more than mere members of the execution detail and they acted directly against the prisoner.

The facts of the case are undisputed. The law of the case is simple. Murder has been committed and the accused responsible should be punished.

That they acted under orders does not prevent their being found guilty. While their statements were moving and the arguments of their counsel long, their guilt has not been denied. Their only defense is nothing but a plea to the mercy of the Commission and might better have been made after the finding.

Let the Commission be merciful when it comes to the time of sentence but let the Commission be just at this time and by the findings again notify all interested peoples that murder under the guise of war will not go unpunished.

Respectfully,

Joseph A. Regan
Joseph A. Regan
Lieut. Commander, USN.

"II (3)"

0689

I certify that this is an official report of nine (9) pages as submitted to me by William R. Gill, Captain, Infantry, investigating officer for the Legal Section, GHQ, SCAP.

Richard E. Rhoadsill,
Lieutenant Colonel, OMC, Date: 17 December 1946
18 November 1947. Chief, Investigation Division
Legal Section, GHQ, SCAP

Report of Investigation Division, Legal Section, GHQ, SCAP.

Inv. Div. No. 1346	CRD No.	Report by: <i>William R. Gill</i> WILLIAM R. GILL Captain, Infantry
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Title: Corporal Irving TOPP

Synopsis of facts:

On 4 May 1945 Corporal Irving Topp, ASN 12177268, became Missing in Action over Koror Island, Palau. Wallace F. KAUFMAN, 2nd Lt., another crew member who escaped the crash, was murdered on Koror Island by Lt. KATSUYAMA, a Japanese Officer. Whereabouts and fate of TOPP have not been determined.

-P-

DETAILS:

At Tokyo:

This case is predicated on a check sheet dated 13 Dec 46 which has been received from the AG-PE requesting information concerning the fate of Corporal Irving Topp. This check sheet reads as follows:

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

CHECK SHEET

(Do not remove from attached sheets)

File No.: AG 21-Topp, Irving Subject: Corporal Irving Topp

Note From: AG-PE To: Investigation Div, Date: 13 December 1946
No. Legal Sec, GHQ SCAP

1. Attention is invited to the attached copy of letter received by the Commander-in-Chief, regarding the fate of Corporal Irving Topp, 12177268.

Distribution: 1 From
1 CRD (Encl)
2 AG Casualty Branch
2 Inv Div (File # 1346)
3 OCQM (Memorial Division)
1 AGPE
1 COM MARIANAS (Info.)

LEGAL SECTION	
INV. DIV.	
FILE NO. 1349	SERIAL NO. 3
DATE 14	

Extra copies filed

EXHIBIT 1 (1)

0690

2. Request any information available in your office upon which to base reply, attention being invited to the attached copy of reply to Mr. Topp.

2 Incls:

1. Ltr fr Mr A Topp to Gen MacArthur
2. Ltr, GHQ AFAC, to Mr Topp

/s/ R. C. U.
R. C. U.

1001 Eastern Parkway
Brooklyn, New York
December 4, 1946

General Douglas MacArthur
A.F.O. 500
c/o Postmaster
San Francisco,
California

Honorable General MacArthur:

My son Corporal Irving Topp, 12177266, is missing-in-action since May 4, 1945. He was shot down while on a bombing mission over Koror Island, Palau, in a B-24 and was the top turreter. A squadron of planes left Anguar to bomb Koror Island and while bombing the anti-aircraft installation on Koror the plane was hit by anti-aircraft after "Bombs Away". When the rest of the planes returned, the eye witnesses reported that the wing of the plane was seen to come off and one parachute open.

When the war was over and our Col. Fike negotiated the surrender of Palau Islands with the Japanese Col. Tada, it was learned that the Parachutist was picked up by the Japanese, taken to the anti-aircraft garrison and after being kept a prisoner for twenty days was shot there by a Japanese Officer, Lt. Katsuyama. This parachutist was later identified as Lt. Wallace Kaufman, the navigator of my son's plane.

I went several times to the War Dep't. in Washington D.C. for an inquiry about my son and up to the present time Washington does not know what happened to the plane or to the rest of the 10 men of the plane. On March 20, 1946, Mr. Louis Kaufman, father of Lt. Wallace Kaufman, received an answer to one of his letters from you telling him that "the reason" why the Japanese officer killed his son, was that the Japanese Officer became enraged while viewing the scene of the crashed plane and therefore shot Lt. W. Kaufman. Now if there is a record that the crashed plane was seen twenty days after the accident occurred, what happened to the plane and where are the ten

men that were in the plane? I also want to explain that this was the only plane lost over Koror throughout the entire war, so the plane Lt. Katsuyama viewed was without a doubt the plane my son was on. In as much as, there are captured records of the viewing of the scene of the crashed plane, where are reports of the men of the plane? I feel that if the Japanese Military Officials who were in charge of Koror Island at the time this accident occurred would be questioned regarding what happened to the plane and its crew, it may lead to a definite clue as to what happened to these unfortunate men, one of whom is my son.

I am enclosing a copy of the letter that Mr. Louis Kaufman received from you and I hope that you will insist upon an immediate interrogation of the Japanese Military men who were in charge of the anti-aircraft garrison and who were in charge of Koror Island at the time this plane was shot down and during the time Lt. Kaufman was kept as a prisoner at the installation, at which time the plane was viewed.

I trust this will have your immediate attention and that I may have your reply regarding the outcome of the Japanese Military men's interrogation. Thank you.

Very respectfully yours,

A. Topp

C O P Y

23 March 1946

Dear Mr. Kaufman:

The Commander-in-Chief has asked me to acknowledge your letter of February 6, 1946, only recently received, concerning certain matters connected with the death of your son, Lt. Wallace F. Kaufman.

With the assistance derived from official Japanese Documents, it has been possible to locate the grave of your son and to have his body transferred to the United States Army Forces Cemetery. It has also been possible to confirm the fact that he was killed by Lt. Katsuyama in a fit of rage while they were viewing the scene of the plane crash, and that Lt. Katsuyama later committed suicide.

Up to the present time no evidence has been uncovered which would implicate any other Japanese in the murder of your son. Should any such evidence come to light, you may rest assured that prompt and severe action will be taken.

EXHIBIT 1 (3)

0692

The Commander-in-Chief has asked me to reiterate his condolence to you on your great loss.

Yours very truly,

S. J. Chamberlin
Major General, General Staff Corps
Acting Chief of Staff

Mr. Louis Kaufman
146 Madison Avenue
New York 16, New York

APO 500
14 December 1946

Mr. A. Topp
1001 Eastern Parkway
Brooklyn, New York

Dear Mr. Topp:

Your letter of 4 December 1946 to General MacArthur regarding further efforts to determine the fate of your son, Corporal Irving Topp, 12177268, has been referred to me for reply.

The matter is receiving attention, and you will be given a further reply as early as practicable.

Yours sincerely,

JOHN B. COOLEY
Colonel, AGD
Adjutant General.

Inspection of CED Files indicate that the following information is at hand concerning the murder of KAUFMAN another crew member. This information is recorded in CED File # Pa 251:

EXHIBIT 1 (4)

0693

Retained with
~~CONFIDENTIAL~~

NAVY NO. 3252
AS:G-2:EMP-cal

HEADQUARTERS, ISLAND COMMAND PELELIU
c/o FLEET POST OFFICE, SAN FRANCISCO, CALIF.

21 November 1945

RESTRICTED

From: Commanding General, Island Command Peleliu.
To : 4719 Commanding Officer, 867th Bomber Squadron, 494th
Bomber Group.

Subject: Case of Wallace F. Kaufman, 2nd Lt.

Enclosures: (A) Report of remains of Kaufman, Wallace, exhumed
at Koror, 14 November 1945.
(B) Report of Graves Registration Officer.
(C) Wallet and contents thereof belonging to Kaufman,
Wallace F., 2nd Lt.

1. From the report by General Sadao Inoue, Commanding General, Japanese Forces, Palau Area, on U.S. Prisoners of War, the following information is presented for your information: 2nd Lt. Kaufman was captured at Koror, first interned at Babelthuap, but on his own request was returned to Koror. While at Koror he became engaged in a conversation with 1st Lt. Katsuyama, an English Speaking Japanese Officer. 2nd Lt. Kaufman requested permission to see the place where he was shot down. On arriving at the location, Lt. Katsuyama became so angered at the scene of destruction that he took 2nd Lt. Kaufman to a neighboring cemetery and killed him.

2. Lt. Katsuyama is reported by General Inoue to have committed suicide about August 24, 1945. Due to the absence of witnesses, other than Japanese, it has not been possible to verify Lt. Katsuyama's death.

3. No facilities are available at this command for handling personal effects of deceased army personnel. Therefore the wallet and contents belonging to 2nd Lt. Wallace F. Kaufman are forwarded herewith for your disposition.

/s/ F. O. Rogers
/t/ F. O. Rogers

~~CONFIDENTIAL~~
Retained with

EXHIBIT 1 (5)

0694

~~CONFIDENTIAL~~
Restricted

U.S. NAVAL BASE HOSPITAL NO. 20
c/o FLEET POST OFFICE
SAN FRANCISCO, CALIF.

15 November 1945

RESTRICTED

From: Leonard Haking, Lt., (MC), USNR.
To: Medical Officer in Command.
Subject: Report on remains of KAUFMAN, Wallace, exhumed at
Koror, 14 November 1945.

Enclosure: (A) Dental Report.

1. Lt. Wright, Lt. Belgea, two other officers and I departed North Beach at 0715, 14 November 1945, arriving Koror approximately 1100. Lt. Wright arranged to have the party driven to the site of burial.

2. The grave of the deceased was found in a small Japanese cemetery, marked by a post having Japanese characters.

At about four (4) feet, the skull was first encountered. This was face down and in proper relationship with the rest of the body as noted on further exposition of the remains. The skull and mandible were intact, but separate. Five (5) of the cervical vertebrae found were also intact and revealed no evidence of violence. All the other bones were found except those of one hand and wrist and most of the bones of the other hand and wrist. The shoes were intact and contained all of the bones of the ankles and feet. Central nervous system tissue was not yet completely decomposed.

From the remains exhumed, it was determined that the body was that of an adult male of short stature.

The dental findings as determined by Lt. P. Belgea, Jr., (DC), USNR, revealed #'s 6,7,8,9,11,21,22,23,24,25,26 missing but sockets present as would obtain in extractions of few days post-operatively.

As digging continued and shreds of clothes were brought up and examined, I found a zipper type leather wallet in one unopened pocket which contained four (4) American dollars, and identification papers belonging to Wallace Kaufman.

LEONARD HAKING

~~CONFIDENTIAL~~
Restricted
6

EXHIBIT 1 (6)

0695

REPORT OF BURIAL
NAVMED-671 (3-45)

Restored with
~~CONFIDENTIAL~~

Ship or Station
Attached at Time of Death Prisoner of War Date report 1945
filled out 15 November.

Copy of Identification Tag Name
KAUFMAN, Wallace F.

None File or Sv No. Rank or Rate Branch of Service
129696 F/O Army Air Corps

Cause of death Place of Death
Killed on Koror by Japanese, 24 May,
1945 (Taken from intelligence report) Koror Island, Palau Islands.

Name of next of kin (if known) Address of Next of Kin.
Mrs. L. Kaufman 456 Schenck Ave., Brooklyn,
N.Y.

Date of Death Date of burial
24 May 1945 (Taken from Intel Report) 15 November 1945 (Reinterred)

Name of Cemetery Location of Cemetery
U.S.A.F. Cemetery Peleliu #1 Peleliu, Palau Islands
Grave Marker Type Plot No. Row No. Grave No.
Star of David 6 11 158

Type of Religious Ceremony Religion of Deceased
Jewish Jewish.

List of Personal effects found on body
and disposition of same Means used to identify body:
(See atchd sheet for personal effects) An identification card was
found with remains of body.
Personal effects sent to CO,
867th Bomber Squadron, 494th
Bomber Group.

Identification data buried with body.
Report of burial buried with body (printed in pencil) enclosed in a
metal container.

Bodies buried on Either Side
Body on left Rank or Rate File or Service No.
HOLDER, Emerald W. Corp. 977394 Grave No.
157

Body on right
Vacant
Person reporting Burial Rank or Rate Person Conducting Burial Rites
Joseph DAIGNEAULT PFC E.R. HOWARD, Chaplain, Lt. Comdr.,
USNR.

"EXHIBIT 1 (7)"

0696

In Reburial, Give Location of Previous Burial
Grave was previously located on Koror,
Palau Islands, removed 14 November 1945
from Jap. Cemetery on Koror to U.S.A.F.
Cemetery Peleliu No. 1 on 15 Nov 1945.

Verified and forwarded:

/s/ Jim S. Wright
/t/ JIM S. WRIGHT,
1st Lt, USMCR,
G.R.O.
(Title)

~~CONFIDENTIAL~~
Restored with

~~CONFIDENTIAL~~
Restored with

15 November 1945.

REPORT OF BURIAL ON: KAUFMAN, Wallace F., F/O 129696, Army Air Corps.

List of Personal Effects:

- 1 Ball Fold (deteriorated) - zipper.
- 1 sheet personal stationery.
- 4 one (1) dollar bills.
- 1 five (5) dollar bill.
- 1 twenty (20) dollar bill.
- 1 War Dept. I.D. Card.
- 1 Officer Pay data card.
- 1 Immunization Register record.
- 4 Money Order receipts - Nos. 3672, 3674, 32510, 32511.
- 1 pocket calendar.
- 1 address; Vici Frye.
- 1 airmail postage stamp
- 1 deteriorated picture of man and woman.

~~CONFIDENTIAL~~
Restored with

Inspection of PACUSA records indicate that the manifest of the crew is not available; however, it has been pointed out that only one of the men has escaped and that that surviving member was murdered.

It has further been pointed out that the plane in question was the only one to have crashed on Koror Island during the war.

"EXHIBIT 1 (8)"

0697

UNDEVELOPED LEADS:

The Tokyo Office -- at Tokyo -- will place a demand on the Japanese Government for a list of the addresses of the Japanese Personnel who were connected with the handling of Prisoners of War on Koror Island during 1945.

The Tokyo Office -- at Tokyo will place a demand on the Japanese Government for the present address of General Sadao INOUE, former commanding General of Koror Island, Palau.

The Tokyo Office -- at Tokyo -- will request thru Com Mariannas that an investigation on the Island be conducted to determine the whereabouts of the plane wreckage and the disposition of the remainder of the bodies.

The Tokyo Office -- at Tokyo -- will interrogate General Inoue, Sadao to determine the facts concerning the records pertaining to this incident.

P E N D I N G.

STATEMENT

As it was over two and a half years ago, there are points which I do not recall clearly.

Details of the date, time, action, and conversation, I have forgotten. I would like your understanding regarding this.

After the great American Task Force raid on the Palaus in August 1944 until the end of the war, eight to twelve American planes continued to bomb our positions and establishments night and day. Around the beginning of May, 1945, we were bombed by about 200 planes in all for about ten days. By this bombing our anti-aircraft positions were almost completely destroyed. The KATSUYAMA Unit (1st company) was severely damaged leaving only one gun at the end of the raid. At the very end of this raid one large bomber was shot down. I later heard that one American prisoner was captured. (Heard he was captured by the natives).

K.H. In order to rebuild the damage done by the bombing, I had all the men work on rebuilding the position and on the other hand made plans for operations. Around the middle of May, this work was finished. It was when I was preparing to leave for the division to talk over the method of operation (I recall I was called by the division). Suddenly I received a direct telephone call from Commanding Officer DOI (At all times, except during time of battle, the anti-aircraft unit was ^{attached to} ~~under~~ his ^{unit} command. I was relayed by the Commanding Officer DOI the telephone call from the division).

Contents of call by DOI as follows:

"The division is going to send the prisoner who was captured from the American plane shot down by the KATSUYAMA Unit the other day and they want him executed, so I told them that the anti-aircraft unit was in high spirit and that there was no necessity for it here, but they called back again." As I absolutely did not have this will and did not see any necessity of it and furthermore, I had no time and was against it, I clearly and definitely replied against it as follows:

"I am absolutely against it. The spirit of the men can not be increased by executing a prisoner. It has nothing to do with the spirit of the men. It is pitiful to execute an unresisting person and there are cases where the opposite phenomena occurs, and furthermore, there is not time."

Commanding Officer DOI was also against this execution; so our opinions matched. In a little while Commanding Officer DOI called again and said, "I relayed your opposition to the division headquarter, but they called again and want us to carry out the execution." Therefore, I again said what I said before and told him to relay as follows: "My unit is absolutely against it; so please refuse." After this I was called again, but refused clearly and definitely. Again I received a phone call from Commanding Officer DOI, as: "The division called and said that they will have him executed by Lt. KATSUYAMA at the KATSUYAMA Unit; so relay this to KATSUYAMA." Therefore, I called KATSUYAMA over by phone and told him the contents of the phone call. At this time I told KATSUYAMA to refuse it, and as he was not in the mood to do it, he indicated his reluctance, but because the contents of the division's phone call was commanding and forceful, KATSUYAMA said, "If it is an absolute order I can not help it."

At this time I also relayed if it was possible to refuse, I would like it to be refused.

Thus at my departure I said, "When I go to the division, if the situation is refusable, I will do my best to refuse, " and left.

KATSUYAMA knows about the above also.

After I arrived at the division, right away I talked with the head operation staff officer, Lt. Col. NAKAGAWA on the plan of the operation and this took all morning. Furthermore, from the rumors of the officers and men of the headquarter after my arrival and from the words relayed by the non-commissioned officers that everything was ready to escort the prisoner, I knew the absoluteness and decisiveness of the order. After the operation conference with the head staff officer, NAKAGAWA, and after chow, I went with him to the Commanding Officer of the division to report the battle situation and the plans for future operation. At which time, after listening to what we had to say, he said, "I will send the prisoner by escort company, so have KATSUYAMA execute him."

Once an order had been decided on and relayed down the line, there was nothing I could say. In other words, after we had stated our opinion clearly in the beginning and then as it was relayed down the line as a definite order, I absolutely could not further state my opinion when I thought of the strong and absolute orders of the ordinary day. (Ref.: condition of that time, my position, and status).

I rested a while and planning to leave on the boat going to Koror that night, I departed. About 3 hours after I had reached the pier, the escort company with the prisoner with ONOSE in command arrived at the pier to get on the same boat. About one hour later, with official couriers of other units, the boat departed toward Koror during the night. In regard to the condition of the prisoner at that time as the prisoner was in the center of the escort group and as it was dark, I do not know what his condition was. Right after I arrived at the plateau of our headquarters around 12 o'clock at night. I had the adjutant, TANAKA, take care of the quarters for the escort company and relayed the contents of the division headquarter's order to Commanding Officer DOI and Lt. KATSUYAMA. By talking it over with the escort company leader, adjutant TANAKA and Lt. KATSUYAMA, we decided the execution would take place at the cemetery early next morning when the enemy planes came over the least, so that we could utilize the time when we were not fighting.

The next morning when I arrived at the cemetery, everyone was gathered there. The escort company leader, 2nd Lt. ONOSE, told the prisoner in English that he was to be executed by orders of the division and I relayed that he was to be executed by Lt. KATSUYAMA by orders of the division. I handed over my own personal towel to be used as a blindfold for the prisoner and had 2nd Lt. ONOSE give a cigarette to the prisoner, and while I was in a haze, the prisoner was executed by KATSUYAMA.

Paying respect to the man who died in action, Lt. KATSUYAMA and the adjutant, TANAKA, placed a grave mark and some flowers and the men were dismissed to carry on the days duty. Already in the sky there were 4 to 8 small planes attacking the establishments and positions. The escort company completed their duty and with the report of the execution went back that night. I had the adjutant report this to the Commanding Officer DOI.

The above was carried out by strict orders and was not of our own accord. Before the order was decided on under the condition of that time I did all I could do and furthermore, after the execution was decided, I did what humane thing I was able to do as far as my position permitted.

After the war in regard to this the Commanding Officer DOI, said that we did the best we could do and that we tried our best to stop it. But as it was a strict order of our superior, and as it was against our will that we did it, he firmly believed that we were not guilty. When I think about the condition of that time, I firmly believe that we were not able to take any other action and believe in fair play.

17 Oct. 1947

Former Capt. I.J.A.
KOICHI, Hiroe.

"EXHIBIT 2 (3)"

0701

I Hiroe KOICHI, being duly sworn on oath, state that I have had read to me and understand the translation of the foregoing transcription of my statement dated the 17th day of October, 1947 and consisting of three pages, and that it is the truth to the best of my knowledge and belief.

Koichi Hiroe
小市廣榮

Hiroe KOICHI

Subscribed and sworn to before me this the 7th day of November, 1947.

H. L. Ogden, Consul USA

Guan, M.I.

I, Frederick A. Savory, civilian interpreter, being duly sworn on oath, state that I truly translated the above statement and oath to the witness and that the witness thereupon in my presence affixed his signature thereto.

Frederick A. Savory
Interpreter.

Subscribed and sworn to before me this the 7th day of November, 1947.

H. L. Ogden, Consul USA

"EXHIBIT 2 (4)"

0702

概三年半以上経過して為 月日 時分 言語 行動 細部 固く 忘失
又記憶不明 疎し 矣 充分 誤り せらる。

昭和十九年八月、米軍大機動部隊、八子諸島東攻以来 終戦 刻迄
連日 八枝至十枝に上り、十枝以上の陣地を、諸施設攻奪、終日終夜
續行せり。昭和二十年五月初旬、敵大型機延二百枝、概十日間、五

攻襲を受、此、戦中、當り、高射砲陣地 全滅的破壊 損害を受、

勝山(第五隊被害甚く、最終戦、敵一門ヲ残さず、ミートした。

此、最終戦、當り、大型機一機、甚墜せり、後日米兵一名捕虜とせし
る事とせり。(島民、捕へりし由あり)

此、右戦中、為、被害、復旧を為 全員総力ヲ以テ陣地構築、樹、
一、作戦指導計畫ヲ作成 五月中旬概此迄、態勢終了、師團。

爾后、戦中、固く、詰合せ、為、先遣隊中より、(師團、時々、如く、氣遣)

先遣準備(多割)中、突如、土井部隊長(當時高射砲、戦中、外、復、配属下り、

電話、土井部隊長、經由、師團、通じり)より、直接電話アリ、内容、

「師團、先、日、勝山、隊、甚、墜、せ、米、機、捕、虜、二、名、と、告、げ、失、利、と、言、ふ、

「米、機、高、射、砲、隊、の、士、氣、が、墜、落、し、其、の、必、要、が、無、い、と、言、傳、へ、る、

又、言、ふ、米、機、が、」ト、言、ふ、に、私、右、意、志、全、く、無、い、其、の、好、果、を、全、

認、め、又、其、の、戦、果、を、受、け、る、事、を、私、絶、對、に、拒、絶、し、捕、虜、二、名、

失、利、と、言、ふ、に、是、は、墜、落、し、士、氣、を、全、く、喪、失、し、無、抵抗、

者、と、言、ふ、に、私、主、張、す、る、に、及、び、現、象、を、見、る、に、其、の、戦、果、を、受、け、

ト、對、明、瞭、に、拒、絶、意、志、を、傳、へ、土、井、部、隊、長、右、失、利、と、言、ふ、に、私、

全、然、と、意、見、同、一、と、言、ふ、に、暫、く、土、井、部、隊、長、電話、アリ、

「亦、然、意、見、確、定、師、團、同、令、部、隊、長、何、と、言、ふ、に、失、利、と、言、ふ、に、

米、機、が、」ト、言、ふ、に、私、前、と、同、一、事、を、傳、達、し、私、隊、對、新、時、對、新、時、

對、新、時、ト、傳、達、し、其、の、再、三、同、一、内、容、電、話、が、

傳、達、せ、る、に、其、の、意、見、對、新、時、對、新、時、拒、絶、意、志、を、傳、へ、

"Exhibit 3 (2)"

翌朝、墓地、台地、刻着七、降（皆集合）、一、獲送、極大、路、測、方、行、
 莫、語、捕、虜、御、國、命、令、ヨリ、火、刑、セ、ル、旨、傳、信、私、御、國、命、令
 二、甚、多、賜、出、書、火、刑、セ、ル、旨、傳、達、私、捕、虜、對、私、有、
 手、被、目、陰、ニ、エ、心、好、依、賴、小、野、種、村、捕、虜、ニ、煙、草、エ、ラ、モ、ウ、
 夢、心、地、ニ、ア、同、近、將、山、ヨリ、火、刑、セ、ラ、レ、タ、
 數、名、者、對、私、礼、を、送、御、國、並、將、山、中、尉、郵、重、ニ、之、が、埋、送、セ、タ、
 田、中、尉、也、墓、標、一、花、束、ヲ、設、ケ、タ、各、兵、衛、散、退、其、日、江、警、同、多、
 上、空、ニ、一、早、四、機、ヲ、八、機、ヨリ、シ、小、型、機、攻、撃、分、諸、施、設、諸、陣、地、
 加、ヘ、シ、テ、好、ク、獲、送、シ、極、大、獲、得、セ、タ、執、行、報、告、ヲ、以、テ、同、夜、歸、途、
 ニ、シ、テ、一、年、餘、隔、對、私、ハ、尉、也、通、信、報、告、セ、タ、
 石、強、固、嚴、正、ノ、命、令、ヨリ、全、全、獲、テ、行、ハ、タ、レ、タ、命、令、也、三、所、
 ニ、於、テ、當、時、狀、也、下、下、己、ノ、ソ、ク、ス、セ、タ、全、ソ、ク、ノ、得、得、火、刑、確、定、石、
 ニ、當、テ、己、按、テ、記、國、内、ニ、テ、一、極、力、人、道、的、對、処、セ、ル、モ、ナ、リ、
 終、戰、後、石、國、ニ、再、歸、降、書、捕、虜、火、刑、内、通、國、ニ、テ、一、極、力、又、討、
 且、成、テ、公、処、テ、死、命、十、間、其、上、嚴、命、ニ、甚、多、全、存、セ、タ、全、獲、テ、行、ハ、タ、
 何、ハ、タ、モ、無、イ、タ、確、信、ヲ、給、ル、ト、申、サ、レ、タ、私、當、時、狀、也、追、想、セ、
 時、其、上、行、動、ノ、取、導、ナ、カ、タ、ト、確、信、シ、公、明、正、大、ヲ、信、ス、

日七十月十

小市盧榮

In the latter part of October, 1944, I was sent as required duty personnel to the Koror Anti-aircraft Unit which was under the command of Captain KOICHI and was appointed company commander of the Koror Anti-aircraft Unit.

K.T

RM.
About six o'clock one day in the middle of May, 1945, I received a 'phone call from battalion headquarters requesting me to come to see Captain KOICHI, the battalion commander.

I reported immediately to the battalion commander's office. Captain KOICHI was alone in the room.

Thereupon I was informed as follows by Captain KOICHI: an order was received by telephone from the army group commander to decapitate one prisoner.

I replied to Captain KOICHI that we should refuse.

Captain KOICHI also concurred.

This was before Captain KOICHI left for army group headquarters that night concerning battle operations. I left Captain KOICHI and returned to the unit.

The following day late at night I received orders from battalion headquarters by telephone that I was to be at the entrance of the hospital by seven o'clock the following morning and await further orders. At seven o'clock the next morning I was waiting at the hospital entrance. Presently both Captain KOICHI and First Lieutenant ONOSE came there bringing one prisoner with them.

At that time KOICHI ordered me, "Decapitate the prisoner in accordance with the orders of the army group commander." Unable to oppose the order I decapitated FN. the prisoner.

When it was over I reported to Captain KOICHI, the battalion commander, that it had been carried out.

Funeral prayers were offered at the grave of the prisoner and I returned to the unit.

One night after the war was over, in about the middle of August, I received orders by telephone from Lieutenant Colonel YAJIMA at army group headquarters that First Lieutenant KATSUYAMA was to pack his military gear and report to him. I departed immediately that night, arrived at Lieutenant Colonel YAJIMA's place about six o'clock the next morning and went in to see him.

Lieutenant Colonel YAJIMA took me to a shack in the middle of a dense forest where there were no people and gave me the following orders. From this time on I acted according to the instructions of this same lieutenant colonel.

"In accordance with the orders of the commanding officer you decapitated an American prisoner. While you are alive the commanding officer is in a dangerous position. You will die for the sake of the commanding officer. Before that you will write and leave behind two notes (one addressed to the commanding officer and one to the higher authorities.)"

I thought this was an unlawful act but if it was for the sake of the commanding officer there was no room for dispute, so I wrote the two notes to be left behind and handed them to Lieutenant Colonel YAJIMA. Then Lieutenant Colonel YAJIMA continued further saying that First Lieutenant KATSUYAMA was thereby dead. Then he said, "You are to strip yourself of your military equipment, take off your uniform, put on your summer work clothes and from now on you will be called KOYAMA, Mikio."

Then I was instructed, "Henceforth, you must call yourself KOYAMA, Mikio," and I lived in seclusion in one room of the shack. Here my freedom was completely restricted. From that time on, I spent five and a half months of very said days hearing nothing of the affairs of the outside world.

On 15 February 1946, I was put on a Japanese coast defense vessel together with Lieutenant Colonel YAJIMA for evacuation from Palau. We reached the port of URAGA by the end of February. Then the first part of March I went to stay with an acquaintance of the lieutenant colonel in Gumma-ken, Gumma-gun, Nagao-mura, Yokobori and was engaged in farming in the same home.

During this period Lieutenant Colonel YAJIMA went to Tokyo many times, met Chief of Staff, TADA, and requested the fund for concealment of KOYAMA, Mikio, which was promised immediately after the war. However, I was told that they bandied words and being in very dire straights economically, they gave only a little money. This was the first time I learned of the plans for my concealment made just after the war by the commanding officer and the chief of staff.

I heard the story and thereby learned that when Lieutenant Colonel YAJIMA went to Tokyo on an official business trip, according to information from the commanding officer, as the registered domicile of KATSUYAMA had been erased, he had been registered at Tokyo-to, Kojimachi-ku, 1 Chome, No. 6.

About twice Lieutenant Colonel YAJIMA mentioned quite strongly the following matters. Even though the commanding officer and the chief of staff were fine men, at present they were quite calmly and shamelessly acting unethically in their own behalf.

When I heard this I thought it was very unlikely and not to be believed. However, on the other hand I came to have a strong feeling that there was room for doubt.

In order to reduce the economic burden of Lieutenant Colonel YAJIMA somewhat, I obtained his permission and resolved to go to Tokyo, engage in manual labor and support myself.

K.T. In the middle of September, 194⁶, wearing ragged clothes, I departed from Gumma-ken alone and arrived one morning at Ueno Station. I got off the train and just at the time when everyone was going to work I started toward ASAKUSA to look for a job. On the way I got off the car and at SAKA-MACHI was engaged in conversation by a man who seemed to be a contractor. Then when I told him my state of affairs he said very kindly, "My name is UMEMOTO. Wouldn't you like to try working at my place. I decided to do so and went with Mr. UMEMOTO K.T. to a small building in FUKAGAWA-ku, ~~SHINJUKU~~ ^{SHINJUKU}-machi, 1 Chome, No. 7, which was

the premises of the UMEMOTO Contracting Company. From that day on I was engaged in cleaning up the remains of the wartime fires. I entered the small house of my employer which was on the premises and lived there until I entered Sugamo. I am truly grateful for the kindness I received from people and the true freedom I had as a member of community life.

There are no mistakes in the above.

5 September 1947.
KATSUYAMA, Tetsuji
Former First Lieutenant, IJA.

I hereby certify the foregoing to be a true and complete translation, to the best of my ability, of the original document in Japanese.

Frederick F. Tremayne
FREDERICK F. TREMAYNE
Lieutenant (jg) USNR
Interpreter

I Tetsuji KATSUYAMA being duly sworn on oath, state that I have had read to me and understand the translation of the foregoing transcription of my statement dated the 5th day of September 1947 and consisting of three pages, and that it is the truth to the best of my knowledge and belief.

Katsuyama Tetsuji
勝 山 哲 爾

Tetsuji KATSUYAMA

Subscribed and sworn to before me this the 7th day of November 1947.

H. L. Ogden, Consul, U.S.A.

Guam, M.I.

I, Frederick A. Savory, civilian interpreter, being duly sworn on oath, state that I truly translated the above statement and oath to the witness and that the witness thereupon in my presence affixed his signature thereto.

Frederick A. Savory
Interpreter.

Subscribed and sworn to before me this the 7th day of November 1947.

H. L. Ogden, Consul, U.S.A.

"EXHIBIT 4 (4)"

0709

私ハ昭和十九年十一月一日小市大尉、指揮スルコロール高射
隊ニ勤務要員トシテ派遣サルコロール高射隊中隊長ヲ
命ゼラレタシタ

昭和二十年五月下旬某日午後六時頃大隊本部ヨリ大隊
長小市大尉、許ニ電致、電話ヲ受ケタシタ

私ハ直ニ大隊長室ニ出頭シタシタ其ノ部屋ニハ小市
大尉一人デイレシタ

其處デハ小市大尉ヨリ次ノセウニ傳ヘラレタシタ

集團司令官ヨリ俘虜一名ヲ斬首セヨト、電話命令ヲ
受ケタ

私ハ小市大尉ニ拒絶スベキタト答ヘタシタ

小市大尉モ肯キタシタ

小市大尉ハ作戰ニ関シテ其夜集團司令部ニ出發スル
前タツタ

私ハ小市大尉、許ヲ辞去歸隊シタシタ

翌日初暁タ電話デ大隊本部ヨリ私ニ明朝七時
迄ニ病院入口ニ到リ後命ヲ待テトノ命令ヲ受ケ
タシタ 翌朝午前七時迄ニ病院入口ニ到リ待ッテ

イタシタ 問モナク小市大尉小野瀬中尉、兩名ハ俘
虜一名ヲ同行シテ其處ニ來タシタ

其ノ際小市大尉ヨリ私ニ集團司令官ノ命令ニヨリ俘虜
ヲ斬首セヨト命ゼラレタシタ 命令ニ抗シ得ズ
私ハ斬首シタシタ

終ッテ大隊長小市大尉ニ實情ヲ報告シマシタ
其ノ基ニ基キテハ新リマシタ私ハ歸隊シマシタ
其ノ後八月中旬某日夜軍司令部矢嶋中佐ヨリ勝山中尉
ハ軍装ヲ整ヘ予ノ許ニ出頭スルヤウ電話ニテ命令ヲ受ケ
シタ 私ハ其ノ夜直チニ出發シ聖朝ハ舞臺 矢嶋中佐ハ
到着面接シマシタ
矢嶋中佐ハ密林内ノ又ノ平ナキ小屋ニ私ヲ引キ入レテ次ニ
之ニ命ジマシタ 此時カラ同中佐ノ指示ニ從ッテ私ハ行
動シマシタ
貴官ハ米軍俘虜ヲ司令官ノ命令ニ依ッテ斬首シタ
貴官ガ生キタイテハ司令官ノ立場ガ危イ司令官ハ死
スノダ ソノ前ニ遺書ニ通(司令官及上司宛)書ク
私ハ不法ナコトダト考ヘタガ上官ノ為ナラ抗辯ノ餘地ナクソ
コデ遺書ヲニ通書イテ矢嶋中佐ニ渡シタ處更ニ矢嶋
中佐ハ言ツツイテ勝山中尉ハ今死シタノダトイッテ私
ハ軍装ヲ解カレ軍服ヲ制脱サレテ夏ノ作業服ヲ着セシタ
ソレヲ更ニオ前ハ只今カラ小山幹雄トイフモイダ
タラオ前ハ小山幹雄ト自稱シナケレバナラナイト命
ゼラシ小屋ノ空ニ開居サレマシタ コデ完全ニ私ハ自由
ヲ束縛サレマシタ ソレ以後約五ヶ月半密林内デ世間
ノ狀勢ヲ知ラズ憂ヒテ日ヲ送りマシタ
翌昭和三年二月十五日バウオ島引揚ノ日本海所艦
矢嶋中佐ト一緒ニ乗船サレシ二月末浦賀港ニ到着

シタ。三月、初メ群馬縣群馬郡長尾村横堀、
中佐ノ知人佐藤方ニ落着キ同家ニテ約六ヶ月農業
ニ従事サセラシメシタ。

其ノ間矢嶋中佐ハ錢度カ東京ニ出テ多田參謀長
ニ會ヒ終戰直後約束シタル小山幹雄地下工策資金
請求シタガ言フ左右ニ僅少ノ金ヲ與ヘタノミニテ全ク經濟
的ニ困窮ノ旨ヲ私ニ話サシメシタ。此時私ハ始メテ終戰
直後、司令官參謀長ノ私ニ對スル地下工策計畫ヲ知リ
マシタ。

尚矢嶋中佐ハ五月頃東京出張ノ際勝山ノ本籍ハ司令官ヨリ
ノ通知ニテ抹消シタルノデ東京都麹町区一丁目六番地ニ
籍ヲ入レタトノ話ヲ聞キシヲ知リマシタ。

矢嶋中佐ハ二度位此ノヤウナフトヲ恥ケト語ツタコトガアリ、
司令官參謀長ノヤウナ立派ナ人デモ現在ハ全ク自己ノ利
益ノ爲ニハ不道德ナコトヲ平氣デ行ツテ恥ジナイ。

之ヲ聞イテ眞逆ノレナコトハ信ヤシキコトヲ考ヘタキタガ
或ハ疑フ餘地モアルヤウナ氣持ガ深クナツテ來マシタ。

私ハ矢嶋中佐經濟負担ヲ幾分デモ軽減スル爲ニ其
ノ承諾ヲ得。東京ニ出テ勞働シ自活スル決心ヲシ
シタ。

昭和三年九月中旬私ハ單身貧シイ服裝ヲ群馬縣
ヲ出發汽車デ或朝上野驛ニ到着下車シテ一度出勤時
間ヲ混雜シテキタ中ノ職ヲホウル爲メ彦草ニ向フ途中

下車坂所デ請負業風ノ人カラ訃掛ケラシタノデ實情ヲ
訃シタ處 梅本トイツ者ダガ復ノ處デ働イテ之ル氣
ハナйкаト親切ニ云ハシ 腹ヲ決メテ深川邑平ノ所
一丁目七番地ノ梅本組現場小屋ニ梅本氏ニ伴ハシ一緒ニ
行キマシタ 其ノ日カラ戰災跡片付作業ノ仕事ニ從ヒ
其ノ現場小屋ニ住込ニテ築鴨ニ入所迄暮シマシタ
此ノ東京ニ於テ約九ヶ月間ノ社會生活ハ市民トシテ
人々ノ親切ヲ身ニ受ケ眞ニ自由ト 感謝ノ氣持デ一
杯ダツタ

右事實ニ相違ナシ

昭和三年九月五日 元陸軍中尉 勝山哲爾

Statement concerning the escorting and execution of Second Lieutenant Kaufman and the surrounding circumstances.

ONOSE, Ichiro /seal/
Former Intelligence Officer
Staff Section, 14th Division
Headquarters.

Circumstances up to the departure from Babelthuap upon orders to escort Second Lieutenant Kaufman from Babelthuap to Koror.

One afternoon while Captain Koichi was talking with Staff Officer Yajima alone in Staff Officer Yajima's room I was told by Staff Officer Yajima to take with me Sergeant Major Tsughiya and Shimojo, a gunzoku, who was in charge of photography, escort Second Lieutenant Kaufman to Koror Island and confirm the execution. At this time Staff Officer Yajima advised me to carry a pistol and shoot to kill if Second Lieutenant Kaufman should run away and to go and report to INOUE, the Commanding Officer.

As Chief of Staff TADA was sick at that time I reported only to INOUE, the Commanding Officer. The Commanding Officer gave orders to me, "If the officer of the antiaircraft unit fails to decapitate the prisoner in front of a large group of his subordinates, and if it seems that he is backing down because he has lost his dignity, you will decapitate /TN - The prisoner/."

I took Sergeant Major TSUCHIYA and SHIMOJO, the gunzoku, with me, had Sergeant Major TSUCHIYA carry the pistol and a service sword and went to the kempeitai where Second Lieutenant Kaufman was being detained. Second Lieutenant Kaufman was being detained in a room with other criminals. As Captain NAKAMURA of the Kempeitai said he would give me one man from the Kempeis, I accepted his proposal, had the kempei take the end of the rope /TN which was tied/ to Second Lieutenant Kaufman and started off for the pier.

While we were walking he asked me if I could speak English. When I replied that I could speak a little he became very elated and told me that while he had been detained at the kempeitai he had compared the simple Japanese vocabulary which he had learned, "te," and "ashi," "kutsu," "me," "hand," /TN - "hand," and "foot," "shoes," "eyes," "nose,"/ etc with English.

Since at that time American planes were continually circling over Babelthuap during the day, avoiding observation by them, we proceeded with great caution. On the way we stopped off at the Gasupan field storehouse, got some dry bread to give to 2nd Lieutenant Kaufman, gave him some dry bread and water and took a short rest. It was evening when we arrived at the wharf, but I recall that it was about an hour's time before the boat departed.

When we reached the wharf Captain Koichi and his orderly had already arrived.

At that time, fearing the air raids of the American forces, the wharf was built at Garamado Bay on the west side of Babelthuap and the boat went back and forth to Koror periodically in the evening. Captain Koichi, ourselves and other passengers boarded this boat.

The boat arrived at the wharf on Koror Island without mishap on the way.

Circumstances of the execution of 2nd Lieutenant Kaufman.

It was growing dark when we arrived at the wharf on Koror. Guided by the non-commissioned officers and enlisted men from the Koichi unit who had just come out to meet Captain Koichi we started toward the barracks of the Koichi unit. Although 2nd Lieutenant Kaufman complained on the way that his feet hurt on account of sores from his shoes, naturally, as there was no means of conveyance, we continued to walk as we were. The Koichi unit was located at a spot about a thirty minute walk from the wharf. After we arrived at the Koichi unit we turned 2nd Lieutenant Kaufman over to the guards of the Koichi unit and the Kempeis returned to the kempeitai detachment on Koror. At the Koichi unit we had guards escort 2nd Lieutenant Kaufman and he was detained in the guard house.

I stayed in the unit commander's room. Early the next morning while I was eating breakfast with Captain Koichi, a report was made to Captain Koichi to the effect that preparations had been made. Therefore, after eating, the unit commander and I went together to the scene of execution. 2nd Lieutenant Kaufman had already been taken out by the guards and had arrived at the scene of execution.

I approached 2nd Lieutenant Kaufman and read to him the English which I had received from our colleague, 2nd Lieutenant Hamano, before we started out (words which meant, "We are sorry but according to the order of the commanding officer you have been sentenced to be executed.") As 2nd Lieutenant Kaufman asked in return, "Why," I pointed out the antiaircraft positions and said in my poor English, (I don't know whether or not he understood what I meant), "The American forces have bombed those positions and many Japanese soldiers have died. Therefore, the Commanding Officer has given orders to kill you." He said, "is war?"* As I thought he said it to mean, "That is war isn't it?" I said, "You will be kill...is war,"* intending to express the meaning, "That you will be killed is also part of the war." He made a gesture as if to say there was nothing else to say.

I gave him a cigarette. While he was enjoying the smoke, a non-commissioned officer from near the hole was ordered to escort 2nd Lieutenant Kaufman and he was taken to the hole.

The execution was fixed for and carried^{out} early in the morning when American airplane patrols were not very active, however, as news may have /TN - gotten out/ from the unit beforehand, a crowd of enlisted men had gathered to see the execution. After 2nd Lieutenant Kaufman sat down by the hole, Captain Koichi said to ask him if he wanted to be blindfolded or not. When I tried to ascertain this by gesticulation he nodded as if to say please put on a blindfold. With that I informed the guard to that effect and a blindfold was put on.

As the position of 1st Lieutenant Katsuyama's feet was bad I cautioned him about it and 1st Lieutenant Katsuyama once again measured the distance and took his position.

1st Lieutenant Katsuyama made 2nd Lieutenant Kaufman put his head forward with the back of his sword and when he /TN - Katsuyama/ measured his breathing 2nd Lieutenant Kaufman took one deep breath. When 1st Lieutenant Katsuyama swung his sword down the body of 2nd Lieutenant Kaufman, it fell into the hole. As the neck was cut about in half he died instantly. Shimojo, the civilian, took a few pictures of these circumstances.

When the execution was over the hole was covered over immediately, flowers were presented and the unit as a whole saluted this grave.

I am sure it was 1st Lieutenant Tanaka who said "Let us put a cross on this grave later."

I told Captain Koichi that my duties were completed, bade him farewell, called on Colonel Doi with 1st Lieutenant Katsuyama and reported the nature of my duties and their completion. 1st Lieutenant Katsuyama also reported that the execution had been completed.

Then Colonel Doi asked 1st Lieutenant Katsuyama sarcastically, "Well, did you raise the morale?"

Circumstances following the execution of 2nd Lieutenant Kaufman.

In the evening of the day the execution of 2nd Lieutenant Kaufman was completed, I again returned to headquarters on Babelthuap Island. I made a report to Staff Officer Yajima and to the commanding officer concerning the circumstances of the execution and reported the completion of my duties.

The pictures taken by Shimojo, the civilian, were finished later and I remember it seemed like they were shown to the commanding officer by Staff Officer Yajima.

Immediately after the war was over these pictures were burned up by Captain Watanabe.

4 August 1947.

The End.

I hereby certify the above to be a true and complete translation of the original statement written in Japanese to the best of my ability.

Frederick F. Tremayne
FREDERICK F. TREMAYNE,
Lieutenant (jg), U. S. Naval Reserve,
Interpreter.

* Appears in English in the original.

"EXHIBIT 6 (3)"

0716

I Ichiro ONOSE being duly sworn on oath, state that I have had read to me and understand the translation of the foregoing transcription of my statement dated the 8TH day of August, 1947, and consisting of three pages, and that it is the truth to the best of my knowledge and belief.

Onose Ichiro
小野瀬 一郎

Subscribed and sworn to before me this the 7th day of November, 1947.

W. L. Ogden, Comd. USN

Cuba, M.I.

I, Frederick A. Savory, civilian interpreter, being duly sworn on oath, state that I truly translated the above statement and oath to the witness and that the witness thereupon in my presence affixed his signature thereto.

Frederick A. Savory
Interpreter.

Subscribed and sworn to before me this the 7th day of November, 1947.

W. L. Ogden, Comd. USN

"EXHIBIT 6 (4)"

0717

カフマナ尉、護送處刑及其前後

狀況 = 閱 陳述 情報停將發

元十四師團司令部參謀部 一 野 濱

郎

○カクアムシ射ヲバベルダグ島カラコール島ニ護送スル
コトヲ命ゼラレバベルダグ島ヲ出發スル迄ノ状況

小中大尉が文島参謀、部屋に文島参謀ト二人あり
何カ話ヲシテオケタ日、午後八、文島参謀カラ土屋曹長
ト寫真ヲ擔當金シテオケタ下條軍醫連レカラフタツテ
ラコヤール島ニ護送シ處刑ヲ確認シテ来ル様ニ言ヒ渡
サレタ。此時文島参謀ハ拳銃ヲ携行シカラフタツテ射殺
逃走スル時、射殺ラヌ様ニト注意ヲ與ヘ井上司命令ニ
申告シテ作ル様ニ言ハレタ。

當時多田參謀長ハ病氣グタ、デ私ハ井上司令官ニミ
申上セシタ。司令官ハ「若シ高射砲隊、將校が大勢、部下
ノ前デ捕虜ヲ斬リ指シタラ威嚴ヲ失フカント死込ミラ
スル様ナ時、才前ガ斬ツテ来シト命ゼエシタ

私ハ土屋曹長ト下條軍醫ヲ達シ軍刀ト拳銃ヲト土屋曹長
ニ持タセテ當時カクマシカ尉ヲ留置ニテ斗々憲兵隊ニ
行ツタカクマシカ尉ハ他、犯罪人ト一諸、部屋ニ留置
サレ斗々憲兵隊、中村大尉カク憲兵、兵一名ヲ附ケテ
ヤルカクト云クマシタデ私ハ此、申出テ受テ、憲兵ニ
カクマシカ尉、縄尻ヲ取テテ波止場ニ向ツタ

政自漢至唐(宋)至元都無異也。一。所。作。亦。

歩キテ、彼、私ニ英語ヲ話セルカト聞イタ、デ私、サシ、話
セルト答ヘルト又、彼、喜ニテ、彼が憲兵隊ニ留置サレテ耳
聞ニ覺エタ、聞、早、日本語、早語、手、トカ、足、靴、目、
鼻、ト、英語ト共ニ対照シテ、私ニ話シテ聞カセタ
當時晝間、米軍、飛行機ガ、ビブルダグ島、上空ヲ
巡回シテオタ、デ私達ハ、目ヲ、ビブルダグ島、注意シ、
進マ、途中カスビ、野戦倉庫ニ立寄リ、カウマシサ村
ニ與フル為ニ靴バンヲ受テ取リ、彼ニ靴、水ヲ與ヘ、地
シタ、波止場ニ着イタ、バ、オダッタガ船ガ出發スルマデニ、
一時間位、時間ガアツタ様ニ記憶スル
私達ガ波止場ニ着イタ時、小市大尉ト彼、當番、既ニ着
イタタ
當時米軍、空龍ヲ飛、波止場、ビブルダグ島西方、
カマド湾ニ設テ、船、タ方、定期的ニコロール島ト、間ヲ
往復シテタタ、私達モ小市大尉モ他、乗客ト共ニ、船
ニ乗リ込シタ、デアル
船、途中何、事故モエ、コロール島、波止場ニ着イタ

○カウマシサ村處刑、状況

私達ガ波止場ニ着イタ時、既ニ薄暗クナシタタ、私達、慎重
小市大尉ヲ迎ヘ、出テタタ小市隊、下士官ヤ兵ニ案内サシ、
小市隊、宿舎ニ向タ、途中カウマシサ村、靴擦、為カ
足ガ痛イト訴、タ、ト、何、論、棄、物、ト、無、イ、デ、其、儘、歩、マ

續々 小中隊は波止場から歩いて三十分位、所々位置して
斗々 小中隊は到着してからアンサ尉が小中隊の衛兵を
別渡して衛兵はコロール島にアッタ意兵分隊を導く
小中隊はアンサ尉の衛兵を護衛させて衛兵の位置
に
私、隊長室に泊って翌早朝 小中隊と共々朝食を攝
て午几時準備、教習のアンサ尉は報告がアッタ、食
後隊長と共に處刑場へ赴いた。アンサ尉は衛兵
を連ねて出て處刑場へ到着した。

私、アンサ尉は近所へ出發して先立って同僚、兵隊
アンサ尉の書き手は貫つた英文(貴方は、氣を毒からと司令官、
命令はヨリ死刑に處せられよう、と云ふ意味、言葉)を
讀み聞かせた。アンサ尉は「何故？」と又問ひ、アンサ尉は
砲隊、陣地を指し示し私、下午に英語で(彼に私、意が通
じたらどうか、解らないか)米軍が陣地を爆撃する日本
の兵隊が澤山死んだ。其の司令官は貴下を殺す様は命
せん、と云つた。彼は「is war?」と云つた。私、彼が
「其の戦争がどうか、と云ふ意味で發した、と云ふ
「貴方は殺される戦争だ、と云ふ意味、積
て you will be kill ... is war. と云つた。彼は「は、と云
と云ふ身振りをした。

私、彼は煙草を喫いた。彼が口から云つた「は、と云ふ
文、傍から下士官の衛兵はアンサ尉を連ねて来

様ニ命ジタ、テ彼、穴ノ傍ニ立ッテ行カリ
處刑、米軍、飛行機、砲戒ヲ敷キ、ナニ早朝ヲ期シテ
行ハシタ、テアッタガ豫メ部隊カラ通報カヤッタ為デアラカ
カ人垣ヲ破ル程處刑ノ見ルタニ、兵隊達ガ集リマタ
カラフマシヤ尉ガ穴ノ傍ニ坐ッテカ、小市大尉ガ目隠シヲ
カドワカ訊イキ、是ト云フ、テ、午真似テシテ確タラ目隠
ヲシテ是ト云フ様ニ續イタ、テ、其ノ白衛兵ニ導ヘテ目隠
シタ
勝山中尉、足場が悪イ、テ私、之ヲ注意、勝山中尉、元度
問合(距離)ヲ計ッテ身構ヘタ
勝山中尉、刀、指テカラフマシヤ尉、首ヲ前ニ伸ベシセテ呼
吸ヲ計ッテ、此時カラフマシヤ尉、一ツ大キク息ヲ吐キ、様ヲ
タ、勝山中尉、刀ガ振り下サルトカラフマシヤ尉、体ニ穴、
中ニ落ケタ頸部、約半、命斬シタ、テ、一瞬ニシテ彼、死ニ
下條軍属、之ヲ状況ヲ數葉、金直ニ收メタ
處刑ガ済ムト直グ穴ヲ埋メ、北ヲ拂ケテ部隊一同、コ、
墓ニ敬礼ラシタ
確カ田中中尉、タツト思フ、後ヲコ、墓ニ十字如クホリ、
マロウヨ、等ト云フマタ
私、私、任務、済マ、留、小市大尉ニ述ベテ暇ヲ告ゲ
勝山中尉ト共ニ土井大佐ヲ訪ネ、私、任務ト其、終了、
旨ヲ申出シタ、勝山中尉モ處刑ガ終マタ田中中尉ニ
此、時土井大佐、皮肉相ニ「ドウダ、不士氣ガ印揚カレタカラ

トト勝山中尉ニ尋ネテヤタ

。カフマニヤ尉處刑後、状況

私（カフマニヤ尉、處刑ラフヘク日、タ、万再、ハ、ベ、タ、フ、島

、司令部ニ歸ツタ 其、

大島參謀、井上司令官ニ任務終了、申出、處刑状況ニ

就テ報告シタ

下條軍属、撮ツタ写真、其、後出来上ツタカ、之、大島

參謀、井上司令官ニ不見セシタ様ニ記憶スル

其、此、写真、終戦直後大島參謀、命、ヨリ渡部

大尉ヲ焼却シタ

昭和二十二年八月四日

以上

右内容、真實ナルコトヲ誓フ

元陸軍中尉 小野瀬 一郎

One day in June, 1945, orders came from Staff Officer YAJIMA to escort Kaufman to Koror. Three of us, Second Lieutenant ONOSE in charge, SHIMOJO, and myself, reported to YAJIMA and went to the kempeitai. At the kempeitai we received Kaufman from Captain NAKAMURA and one auxiliary kempei (name unknown) took the rope with which he was bound. We went over the mountain roads to Gasupan and waited at the Gasupan wharf until it grew dark. During this time we received dry bread from the Gasupan field storehouse and gave it to Kaufman. At this time Captain KOICHI, commander of the antiaircraft unit was at the wharf. We waited until dark, boarded a landing craft together and went to Marakaru pier. That night was a moonlit night and we walked along the road about three kilometers. Captain KOICHI, ONOSE, myself and SHIMOJO, ^{highway} went east together on the ~~government road~~ and arrived at the headquarters of the antiaircraft unit of the Koror battery about eleven o'clock. During this time I think that Kaufman was ~~very~~ tired. Two or three times he complained that his legs hurt. However, it was night and moreover as there was a moon, the American planes were constantly overhead. No automobiles were in use so, comforting Kaufman, we went on. At the headquarters of the antiaircraft unit we handed Kaufman over to enlisted men of the antiaircraft unit. SHIMOJO and I rested in an underground shelter about half a kilometer away.

*About eight o'clock the next morning we took Kaufman and went to the vicinity of the graveyard. That morning no planes flew over which was a rare occasion. We were able to proceed without interruption until the execution was over.

It seems that the news of Kaufman's execution was spread throughout the antiaircraft units and to the navy dual purpose battery and a large group of men came to watch.

ONOSE let KAUFMAN rest, gave him a cigarette and told him, "You will meet your fate." When Kaufman in a pitiful voice asked, "Why?" ONOSE explained the reason to him. I returned to Kaufman a Waltham watch and a picture of his mother (the articles left at the intelligence section when Kaufman was captured and interrogated). Kaufman put on the wrist watch, opened the picture of his mother and looked at it intently. At that time SHIMOJO, the civilian, took pictures.

Next he was blindfolded and made to sit down facing the east in front of a hole which had been prepared. First Lieutenant KATSUYAMA drew his service sword, swung the sword about twice to get the feel of it, took his position and finally cut off the head of Kaufman. The head was not completely severed but was still attached to the body by the skin of the throat. The corpse fell into the hole in this condition. The enlisted men from the antiaircraft unit undid the rope, buried the corpse as it was and placed flowers on top of the hole.

After that ONOSE, myself and SHIMOJO separated ourselves from the men of the antiaircraft unit and the auxiliary kempeis and went to Colonel DOI's place and reported the completion of our duties. When we finished supper

*May also be translated as
"About eight o'clock the next morning
KAUFMAN was taken and" etc.

E. S. Ferish Jr.
A. USNR
Interpreter

"EXHIBIT 8 (1)"
Exhibit 8

0723

we went to MARAKARU wharf, waited for night to come, boarded the landing craft and returned to our unit.

8 September 1947.
TSUCHIYA, Naohiko.

I hereby certify that the foregoing is a true and complete translation, to the best of my ability, of the original document in Japanese.

Frederick F. Tremayne
FREDERICK F. TREMAYNE,
Lieutenant (jg) USNR
Interpreter.

I Naohiko TSUCHIYA being duly sworn on oath, state that I have had read to me and understand the translation of the foregoing transcription of my statement dated the 8TH day of September, 1947 and consisting of two pages, and that it is the truth to the best of my knowledge and belief.

Tsuchiya. Naohiko
土屋直孝

Subscribed and sworn to before me this the 8th day of November, 1947.

W. H. Ogden, Consul, USA.

Guan, H.I.

I, Frederick A. Savory, civilian interpreter, being duly sworn on oath, state that I truly translated the above statement and oath to the witness and that the witness thereupon in my presence affixed his signature thereto.

Frederick A. Savory
Interpreter.

Subscribed and sworn to before me this the 8th day of November, 1947.

W. H. Ogden, Consul, USA.

"EXHIBIT 8 (3)"

0725

昭和二十年六月某日大島某部よりカウフマン、コロー島ニ渡送
る様命令あり小野瀬少尉ヲ長とし和ト下條軍兵ト三人
ヲ大島ニ申告シ某部ニ行かんと、急ぎ隊ヲ平村大尉
ヨリカウフマンヲ受取り補助憲兵(或名不詳)一名捕虜
ヲ取リテ山路ヲガスルニ、技ヲテカスルに皮上場ニテ
日ノ暮ルルヲ待チマシタ、此ノ間コロー野戦倉庫ヨリ砲
ヲ反領シカウフマンニ送リマシタ、此ノ時高射砲隊長、
小市大尉に皮上場ニ居リマシタ日ノ暮ルルヲ待チ
井ニ大砲ニ来リマシタ連頭ニ到着シマシタ、
當夜月夜ヲアリマシタ夜路ヲ約三軒歩キマシタ
小市大尉、小野瀬、和、下條、補助憲兵カウフマン
ガ共ニ待道ヲ東進シ夜ノ十一時頃コロー砲台
ノ高射砲隊本部ニマシタ、此ノ間カウフマン少シ
疲勞セルモカニ、三度足ガ痛イト訴ヘマシタ夜
分デアリ又月夜ノ為米軍機ガ始終頭上ニアリ
自動車ヲ用ヒル機ニモエカズナダナ作ラ行キマシタ
高射砲隊本部デカウフマン高射砲隊本部、兵ニワ
タシ和ト下條ニ約半軒離シタ地下壕ニ休ミマシ
タ
明朝八時頃カウフマンヲ連シ基地附近ニ行キマ
シタ、當朝、珍ラシク米軍機ガ飛来セズ處刑
終ニ途中断セズ行フ事ガ出来マシタ、
カウフマン、處刑、報ガ全高射砲隊及海軍高射砲
隊ニ傳ヒテ居タモト見エシ大勢、者ガ見、来

昭和二十年六月二日(日)

ヲ居リマシタ。

小野頼がカウツマシヲ休マセテ煙草ヲ喫シ「不前、命
ヲ貰フこと申シマス」トカウツマシガ稍悲シゲナ声ヲ
ボウ、ト訊イタ、ゾ小野頼が「ソノ理由ヲ説明致
シマシタ。私、カウツマシニウオールサシ、時計及彼ノ母親
ノ高真（カウツマシガ捕イラシテ訊問スルトキ情報ニ
アツカニ居タモ）ヲ返シテヤリマス」カウツマシ
晩時計ヲハメ、母親、高真ヲ聞キレドナリ見
ツメ「オリアシタ、ソノ時下係車馬ヲ高真ヲオリアシ
タ。

次ニ隊ヲ用意サシマス穴ノ前ニ東面ニテ坐ニヤ
テ目隠シヲシマシタ。勝山ヤ新ガ軍刀ヲ引致
イニニ度位置軍刀ヲ振ツテ見ニ位置直リキメ。
遂ニカウツマシノ首ヲ斬「マシタ、首ニ離シス
烟ノ皮ヲ體ニツナガツテオリアシタ。屍体ハ「ソノマ
穴ノ中ニ落タ込ミマス」テ高射砲隊ノ兵隊ガ
捕獲ヲホトキ「ソノ儘埋メテ塚ノ上ニ花ヲ立テ
テヤリマス」。

其、後小野頼私、下係「高射砲隊ノ人々及補助
憲兵ト別シテ土井大佐ノ所ニ行キ任務終了
トシテ申告シタ食ヲスマシ「マラカル埠頭ニ到リ夜、
来リ「侍テテ大勢ニ乗リ歸隊致シマス」。

昭和二十二年九月八日 土屋直彦

AFFIDAVIT FOR THE CHARACTER OF KOICHI, Hiroe, FORMER CAPTAIN, IMPERIAL JAPANESE ARMY.

/s/ NAKAGAWA, Kiyoshi,
Former Colonel,
Staff Officer of the 14th Division,
Imperial Japanese Army.

1. How I came to know Captain KOICHI.

On 26 July 1944, when Koror was bombed by the American Forces, and Major Yamagami, commanding officer of the anti-aircraft unit died in action, I tried to find his successor. Just at that time, I learned that Captain Koichi who was then in the hospital on account of his wounds was an expert of anti-aircraft, and I appointed him in place of Major Yamagami. I have known him since then.

2. The period of time that I have known Captain KOICHI:
Since the end of July 1944.

3. His character.

(1) He had a firm sense of responsibility. He had a firm sense of responsibility so that the aim of the anti-aircraft fire was to shoot down planes. He was always opposed to the opinion of division headquarters that a reduction in our damage should be considered above all things. He had a strong will and he had to carry out anything about which he was convinced.

(2) He love his men and his men obeyed him well. In spite of difficult battle conditions and poor equipment and untrained members of his unit, he conducted operations with great merit. I think this was because he loved his men affectionately and obeyed his superiors sincerely. On 3 April 1945, Lieutenant General Inoue, the commanding general of the division, praised his merit and gave him a letter of commendation.

(3) He was righteous. He firmly opposed the execution of Second Lieutenant Kaufman from a humane point of view, but he could not resist an absolute order and was obliged to relay the orders to Katsuyama. I think it could not be helped because of the customs of the Japanese Forces.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

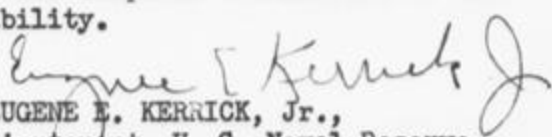

EUGENE E. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

EXHIBIT 10 (a)

0729

小市元大尉人格證明 元陸軍大佐 土井詮生

一 昭和十九年十二月以降終戦迄臨時高射砲大隊長トシテ
十数回、面識アルモノニテ直接、部下タラザリシタメ考
料表其他参考トスベキモノナク談笑、間又、部下ノ
噂ニ依リ概ネ左ノコトヲ知ル

二 性格

資性温順篤厚ニテ責任觀念旺盛ナリ之ガタメ
常ニ部下ニ親愛セラル

三 性格反映、例證

一 元來臨時高射砲大隊、各隊ヨリ摘出セル將兵ヲ
以テ編成シ特ニ損害大ナリシタメ遂ニ現地召集者
ヲ含ムニ至リ其ノ素實モ著シク低下シ所謂劣
等裝備ナリシモ拘ラス日夜訓練ヲ重ネ徹頭
徹尾敢闘セシメ畢竟彼ガ隊長トシテ、責任
觀念ノ旺盛ト部下ガ隊長ヲ信頼セル結果ニ
外ナシ

二 本公判事項ニ關聯スル件ニ就テハ彼ノ温順ナル
資性ハ司令部ノコロールニ於ケルカリシガ尉
處刑ノ件ニ關シ官ノ意見ニ全然同意ス

土井詮生

對ノ意ヲ表シ部下ニモ辱々之ヲ語リ居タリシト聞ク
井上司令官ノ命令ニ依リ己ムヲ得ザルコソ尉ノ處
刑セシモ彼ガ資性ノ發露ハ情憫、情惜ヲ能ハス其
ノ墓所ヲ清メ展墓セシコト教團ニ及ベリト聞ク
生來責任觀念旺盛ナリシモノ内心燃エバ如キ
反對意見ヲ有シツ、モ一大尉トシテ令嚴ニ背キ
司令官ノ前ニ出テ其ノ直接命令ヲ受領シ之ニ反
抗スルノ術ヲ日本軍人トシテハ逆キツ、其ノ
命令ニ服従シ部下ニ處刑ヲ命ジタルモノニ外ナズ
ト思考ス

"Exhibit 11"

AFFIDAVIT FOR THE CHARACTER OF FORMER CAPTAIN KOICHI.

/s/ DOI, Akio,
Former Colonel, IJA.

1. He was the commanding officer of the privisional anti-aircraft battalion from November 1944 to the end of the war, and I met him more than ten times during that period. As he was not my direct subordinate, I did not see his service record or other documents so I have no reference, but I know the following from the talks I had with him and from his reputation among his subordinates.

2. His nature was mild and sincere, and he was full of sense of responsibility, so he was always loved by his subordinates.

3. Examples which show his good character.

(1) Originally, the privisional anti-aircraft battalion was organized by men picked from various units. As the unit suffered from great damage, it had to include those who were conscripted on Palau for emergency purposes, so the quality of soldiers became poorer. The unit was poorly equipped. In spite of these unfavorable circumstances, he trained his men day and night and his unit fought most bravely. I think this was because he was a man of responsibility as a commanding officer and his men relied upon him very much.

(2) I would like to state in connection with this case that he was such a mild man that he agreed with my opinion as to the execution of Second Lieutenant Kaufman on Koror and was opposed to the execution. I heard that he often told his men that he had opposed to the execution.

(3) Although he was obliged to execute Second Lieutenant Kaufman according to the orders of Commanding General Inoue, he sympathized with Kaufman very much because he was of such a good character. I heard that he cleaned his grave and prayed before it several times.

(4) He was very responsible in nature. Therefore, although he was very much opposed to the execution in his heart, he could not resist the strict orders as a mere captain when he received them directly from Commanding General Inoue. I believe the he cried out against doing this in his heart when he had to obey the orders and ordered his men to do the execution.

I certify the above to be a true and complete translation of the original petition to be best of my ability.

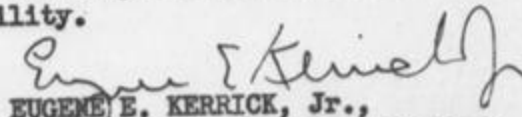

EUGENE E. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

EXHIBIT 11 (a)

0732

元陸軍大尉 小市廣栄、人格証言

元第西師團司令部陸軍大尉 渡部敏夫

一 本人之知ルに至リテ経緯

昭和元年六月小市大尉が高射砲中隊長に命ぜられ陸軍士官学校第五十五期生ニシテ仙臺一期先輩生トシテ知り昭和十九年七月二十八日米軍機動部隊来襲後小市大尉がアムギサン島高射砲陣地ニ訪ヒテ時東彼ヲ知り同じ陸軍士官学校出身ナルトヨリ舊知ノ友人ノ様ニ親シム。

二 本人ノ人格

1. 責任觀念旺盛ナルヲ

昭和二十年三月頃米軍機、攻撃ヲ受ケテ陸員傷シタガ入院セルトシテ當ニ其ノ陣地ニ在リテ戦斗指揮ヲ統テ部隊ノ志氣ヲ昂揚シタ。

2. 服従心が強カラ。

命令ニ對シテ平素、自己ノ反対意見等一切ノモノヲ放棄シテ之ニ服スルノガ常ナリ。

3. 親切ナルヲ。

和ニ對シテ平素ニ後輩生トシテ懇切丁寧ニ色々注意ヲシテ指導セリ。

又同情心が厚く温厚な人格者なり。

4. 優秀な人材なり。

軍成部隊元又其装備を十分な高射砲
隊を克く掌握し、戦い最後迄継続

なり。
高射砲隊全將兵、信頼を集めてなり。

"Exhibit 12"

0734

AFFIDAVIT FOR THE CHARACTER OF FORMER CAPTAIN KOICHI, Hiroe.

1. How I came to know him.

When Captain KOICHI was appointed commanding officer of the anti-aircraft company, I learned that he was in the 55th class at the Academy, one year senior to me. When I visited him at the anti-aircraft unit on Arkabesan Island after the great task force attack, I came to know him well and after that we became intimate friends as we were both academy graduates.

2. His character.

a. He was a person with a great sense of responsibility.

During the raid in March 1945, he was wounded but he did not enter the hospital but stayed at his position commanding operations and bolstering the morale.

b. He was a man with a strong sense of obedience.

He always obeyed orders and cast aside his opposition.

c. He was kind.

He taught me many things always with kindness and care and guided me as his junior. He was a man with a sympathetic heart and was always gentle to others.

d. He was an outstanding officer.

Though his unit was a provisionally assembled one with insufficient equipment, he commanded it in a masterful manner and fought until the last.

All his men had great confidence in him.

/s/ WATANABE, Toshio,
Former Captain, IJA,
14th Division Headquarters.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

Eugene E. Kerrick, Jr.
EUGENE E. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

EXHIBIT 12 (a)

0735

元陸軍大尉 小市広栄、人格証言。

防空隊元陸軍中尉 羽石信男

一 本人ヲ知ルニ至ッタ経緯。

昭和^{昭和}年九月十五日、私がコールの防空隊ニ派遣セ
られ私が第一中隊長ニ、小市大尉が防空中隊長トナリ
爾來小市大尉ヲ知ルニ至ル

ニ 本人ノ人格

性質ハ極メラ温順デアリマシテ、非常ニ情ニ

厚ク戦フガ極メラ教訓セム間ニ在ラモ事ヲ公正

ニ判断シ一なモ情ヲ失ヒ、事ヲ誤ルガ如ク事ハアリ
マセデシヲ

具体的ニ例ヲ挙ゲムトハ、今般ノカラスン事件、
如クモ事ヲ正シテ判断シ其ノ非ナル事ヲ知ラ再ニ
ノ電話ニ於テモ處刑シテハ意思モテ吾州致シテ居ッ
タ事實ヲ見エ極メラ明瞭ナ事ト信ジマス

司令部ノ命令ニテ處刑スルノ事ヲ至ッタ事ニ服従
シタムト云ヘテガラ本人モ深ク遺憾ニ耐イナカッタ事。

なジマス其ノ証拠ニハ處刑台ニ於テモカフマシテ少尉

ノ墓地ノ清掃ヲシバノ行ハ其ノ實ヲネンゴロニ

申ツタ話ニテ聞キテモ明カナル事トナジマス。

又激戦ノ在リテ後ハ厚々私ノ中隊ニモ電話ヲ掛ケ

又ハ巡視ニ來ラシメテ被害者状況又ハ食料ノ状況

等ヲ謂ベ煙草等ニ於テモ少ナク令テ都下ニ
無ヘラシメシヲノテ都下ノ大隊長ニ深ク感謝、念
軍隊ヲ離レ人間味ニ於テ國ヲ信ジツケラレタ感アリ
ニ。

私ハ小市大尉ガ今日スラ知ツテモ深ク同情ニ
今日小市大尉ノ人格ヲ証明ニ減刑セラシメ事ヲ
願フモノデアリマス

ニ 附 記

小市大尉ハ長男デアリ 今ヨリ八月ニ父親死
ニアリテ家庭的ニモ極メラヌ、母デアリ深ク同
情致シテ居ンモノデアリ 一ヨリモ小市大尉ガ釋放
サルニエトテ都下ノモノデアリマス。

以上

AFFIDAVIT AS TO THE CHARACTER OF KOICHI, Hiroe, FORMER CAPTAIN, IJA.

/s/ HAISHI, Nobuo,
Former First Lieutenant, IJA.

1. How I came to know him.

I was detached to the anti-aircraft unit as the First company commander on September 15, 1944, and Captain KOICHI became the battalion commander. From this time I came to know him.

2. His character.

He was a gentle person and very kind. Even when the battle situation became severe, he always judged impartially and never lost his sense of benevolence and went the wrong way.

I shall explain this by some examples. In the present Kaufman incident he considered it and found that it was not the right thing so he opposed it by telephone many times. His character is evident from this fact. Even though he carried out the execution by orders of headquarters I believe he regretted it very much. I say this because, I have heard that after the execution he went to visit the grave many times and ordered it to be cleaned.

After a fierce battle, he would phone or come to my company and ask about the damage and casualties and the food conditions. He would always give his share of tobacco to the men, so apart from the military set-up he was deeply respected by all of his men. This was a great factor in our being united as one. Since I learned about the present case, I have felt the greatest sympathy for him. I testify to his character and pray for your lenient judgment.

3. I further wish to add that he is the eldest in the family. He lost his father and his family is in a pitiable situation. I pray that he will be released soon.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

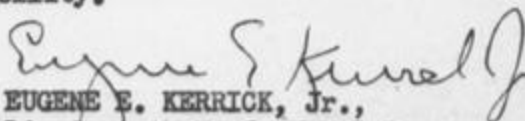

EUGENE E. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

EXHIBIT 13 (a)

0738

[illegible]

- (4) 兵隊、一者不^レガク煙草——モ司令部ニハ傳^レカ
シカ送^レテ来^レナカ^レズ。爲^ニチヤ大尉、好^キキ煙草——
口ニヤス^ル。年ニテ告^グ、兵隊ニオクヘニシ^テ
- (5) 米國 P.W. ヲ司令部ニハ^レキト土居部隊カ^ニ運^レル、
アリニ多^ク時、金^ヲ更^ニ村^ヲ表^シ明^ス——
- (6) P.W. 又^モ利^ハ兵^ヲ取^リ、副^シ若^シニ^テ来^リカ^ラ何^ノ回^ニモ^モ差^シ、瑠^ヲ抑^ス、
命^ヲセ^リシ^テ事^ヲ。
- (7) 大^ノ隊長^ガ兼^ニ花^ヲ持^ツテ^テ數^ノ回^ニ P.W. 差^シ參^リサ^リ事^ヲ。

女、様、事柄、御、見、下、市、本、附、様、性、邊、
順、人、情、中、有、人、他、一、寸、サ、ト、思、乙、ミ、知、事、
「言、果、名、年、一、三、三、年、上、有、三、方、年、度、心、
敬、服、二、事、が、出、来、二、ラ、

AFFIDAVIT AS TO THE CHARACTER OF KOICHI, Hiroe. FORMER CAPTAIN. IJA.

/s/ TANAKA, Masao
Former C.O. of 3rd Company, Koichi Unit.

1. How I came to know him.

When I was the commanding officer of the 3rd company of the provisional anti-aircraft unit, our battalion commander, Major Yamaguchi, was killed in action on July 26, 1944; and as his successor Captain KOICHI took over the battalion and from that time I came to know him.

2. His character.

Captain KOICHI was a particularly quiet and gentle man. In the service for six years I never met a kinder and gentler man than he. Here are some examples.

(a) The anti-aircraft unit was a provisional unit consisting of men from all units. Until the end of the war 150 men, about half of the unit, were killed, but in spite of this the reason that the unit was able to fight on courageously was because of the kind and gentle character of Captain Koichi. All the men were glad to die for him.

(b) When a soldier made a mistake he would never use violence against him but would quietly reason with him.

(c) He had his meals with his orderly and ate what the men did. This practice may sound natural and proper to the person in the American forces, but in the Japanese army this is seen only seldom. Despite the fact that Palau was short of food, the difference between the officers and men was great. But Captain Koichi did as his men did, and this was one of the greatest factors that united this unit.

(d) The supply of tobacco from headquarters was meager so Captain Koichi refrained from smoking and gave it to his men.

(e) He was definitely opposed to executing the prisoner when he was relayed the message of headquarters from Doi Unit.

(f) After the execution and after I became his adjutant I was ordered to clean the grave many times.

(g) Captain Koichi himself went to visit the grave of the prisoner and offered flowers.

Taking into consideration the above points, I believe there is not a man who is as kind and gentle as Captain Koichi. I was conscripted into the army so I am about 13 years older than Captain Koichi but I respected him from the bottom of my heart.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

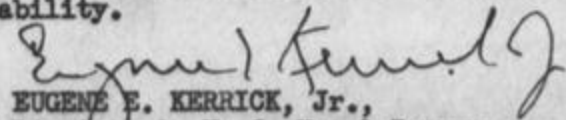

EUGENE E. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

EXHIBIT 14 (a)

0741

勝山中尉人格證明

陸軍大佐土井隆生

一 昭和十九年十月頃ヨリ終戦迄、間勝山中尉が
陸軍高射砲大隊中隊長として在任中の十回余
リ面識せしモノミテ深ク其ノ資質ヲ知悉セシモ
概テ左ノ如シ

二 性 格

資性 伶俐 温厚ニシテ特ニ義務心厚ク部下、
信望頗ル厚シ

三 性格反映ノ例證

、ヨリハ陸軍高射砲大隊、終戦迄終日終夜戦ヲ
ヲ経續シ、就中勝山中隊長、高射砲隊中、白眉ト
シテ尤モ戦果ヲ揚ゲ、其ノ功績モ亦特ニ著シ、
シモ其ノ部下ヲ掌握シ部下亦中隊長ヲ信頼
シ莫ニ一心同体トナリテ敢斗シ、其ノ此ノ戦
果ヲ揚ゲタルモノナリ、特ニ自ラ火傷ヲ負ヒ起
シ能ハサル重傷ナリシニモ拘ラズ傷後ヲ裏ミテ
指揮シ終戦迄一貫敢斗セリ之レ彼が燃スル
如キ義務心ト部下ノ信頼ニ結果ニ外ラス

2 本合判事項ニ関スル件ニ就テハ、彼、カミヤ尉
處刑ヲ實施セルヘニ可、命令ニ依リ己ヲ
得ル處刑執行人ノ立場ニ立テルモノニシテ、彼ノ
資性ノ義務心ヲ發揮シ日本軍人トシテ其、
命令ニ絶体服従セルモノニ外ナラズト思存ス

"Exhibit 15"

0743

CHARACTER EVIDENCE FOR KATSUYAMA, FORMER FIRST LIEUTENANT.

/s/ DOI, Akio,
Former Colonel, IJA.

1. From about November 1944 until the end of the war while First Lieutenant KATSUYAMA served as company commander of the Provisional Anti-aircraft Battalion, I met and talked with him more than ten times, so I do not know him thoroughly, but what I know him is as follows:

2. Character. He was of a gentle and bright nature and was very dutiful and was looked up to by his subordinates.

3. Examples which shows his character.

a. The Koror Provisional Anti-aircraft Battalion continued fighting day and night until the end of the war. Among these anti-aircraft companies, Katsuyama's company was the best. His unit shot down the most planes and at the same time received the most damage, but he always had control of his men and furthermore his subordinates trusted their company commander, and they worked as one; so they were able to obtain such victories. In spite of the fact that he was seriously burned and was not able to walk, he tried to hide his wounds and took command. He fought bravely until the end of the war. He was able to do this from his strong sense of duty and the trust which his subordinates put upon him.

4. In regard to the incident of this case I think the reason why he had to carry out the execution of Second Lieutenant Kaufman was that he was obliged to take the position of an executioner by orders of his supreme commander and by his dutiful nature. He had to obey the orders absolutely as a Japanese soldier.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

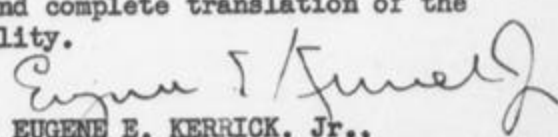

EUGENE E. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

EXHIBIT 15 (a)

0744

元陸軍中尉 勝山哲爾の人格証言

元第十四師團参謀 陸軍大佐 中川 康

一 証人が勝山中尉を知りしに至る経緯

昭和十九年十月二十一日、島の高射砲隊増強の際、特に重要人物で、傷害を將校も連立する事となつた時、出身者三十九陸隊長が、惜しむのも高射砲隊に轉属させた事を知つた。

二 証人と勝山中尉との知りし期間

昭和十九年十月下旬以来

三 人格等について

一 親戚観念が旺盛であつた

昭和二十年始め、砲兵隊隊員も若軍に依り、勝山陣地へ侵入せられ、負傷したには不効陣地にして射撃砲隊を繰げた。

二 人柄に厚手があつた

之しき、糧秣事情に苦しみ、部下と共に、今更合の

陣幕の如く、手桶陣には、食糧の盡る、自己一人に食

つて部下の食糧を盡かした。

部下皆服従する事も親の顔であつた。

三 服従にかが旺盛であつた

下士官から傷害者の故も、以て陸軍士官学校へ入る

し、特に服従する事は積極的であつた。

カフツと死刑の問題も服従する事は天性であつた。

之しか人道とか言ふことを超越して居つたもので

ある。

CHARACTER EVIDENCE OF KATSUYAMA, FORMER FIRST LIEUTENANT.

/s/ NAKAGAWA
Former Colonel, IJA,
Former 14th Division Staff Officer.

1. How I came to know First Lieutenant KATSUYAMA.
On October 1944 when the anti-aircraft unit on Koror was strengthened, it became necessary to select an excellent officer with good character. I came to know him when he was thus selected to take up duty at the anti-aircraft unit notwithstanding the requests of the commanding officer of the 59th Infantry Regiment.
 2. The period I have known KATSUYAMA.
Since the latter part of October 1944.
 3. In regard to his character, etc.
 - (1) He had a strong sense of responsibility. At the beginning of 1945 the Americans dropped oil bombs on the Katsuyama position and in spite of the fact that he was wounded he stayed on and continued to command the firing of the guns.
 - (2) He was very humane. He suffered under the poor food situation with his men, and he took the sole responsibility when he let his men get food by using scarce hand grenades to fish. His subordinates all served him as though he were their father.
 - (3) He had a strong sense of obedience. Because he was very excellent while an NCO, he entered the Army Academy and he took positive action in regard to obedience.
- In regard to Kaufman's execution too, his inherent nature of obedience exceeded the thoughts of humanity.

I certify the above to be a true and complete translation of the original petition to the best of my knowledge.

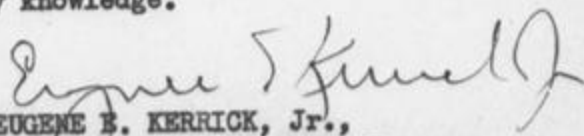

EUGENE B. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

EXHIBIT 16 (a)

0746

ハ 部隊ヲ離ラセシメ、中ニ匿ハシ、隊長^③
不在間、部隊ノ事、之ヲ常ニ心配シテ居タリ

2. 人情ニ乏シカク

ハ 食糧事情極度ニ悪化シテ際、萬一、
場合、自ラ全量位ヲ食フ覚悟、下ニ決断シ、
糧秣等ヲ使用シ、變態ヲ行ヒ、部隊ノ食糧
事情、向上ヲ圖リシマシム
シモ、彼、常ニ兵士同シ食物ヲ攝リ、不平ヲ
洩スモノナリ、苦樂ヲ共ニシマシム

3. 優秀ナル將校アリ

ハ 彼、下士官、陸軍士官學校ヲ経テ將校
ニシタリ、彼、步兵第五十九師砲兵大隊
第三中隊附、時カラ其、中隊長丸山大尉、
彼ヲ最も信頼スル中隊長トシ、高射砲隊ニ
転シ、事ヲ残念ガシマシム

ロ 彼、高射砲隊ニ転シ、後短時日ニシテ其、
射撃ニ熟達シ、伎倆、優秀アリ

4. 服従心カ強カク

高射砲隊ハ野砲隊カ、転シ、際相立
不満ヲ持シ、事ヲ振振アリ、カ、彼、其、振振

自由、意志、及此等事を一度受ふは上帝！^③
欣然之に就き其に実行する性格を有す
5. 彼に力ある時、眞福を全うし祈り、
ニ其徳を以て己に究む途微く倍倍、如き
態度が有る。

"Exhibit 17"

0749

AFFIDAVIT FOR THE CHARACTER OF KATSUYAMA, Tetsui, FORMER SECOND LIEUTENANT,
IMPERIAL JAPANESE ARMY.

/s/ WATANABE, Toshio,
Former Captain,
Attached to the 14th Division
Headquarters, Imperial Japanese Army.

1. How I came to know him.

Second Lieutenant Katsuyama graduated from the Army Academy in 1943 as a cadet, and was attached to the 20th Artillery Regiment. Just at that time I was an officer of the same regiment, and I came to know him as one who graduated from the Army Academy like me.

2. His Character.

(1) He was full of a sense of responsibility.

(a) Around February 1945, the anti-aircraft unit was seriously bombed by petroleum bombs dropped from American planes and Second Lieutenant Katsuyama was seriously wounded. Since he knew his heavy responsibility as a commanding officer, he did not leave his position and continued his operational command.

(b) After the end of the war, they tried to conceal Katsuyama. Katsuyama took his responsibility and tried to commit suicide but it was stopped by Yajima and me.

(c) When he was away from his unit and hiding in the jungle, he was always worrying about his unit which had lost its commanding officer.

(2) He was humane.

When the food conditions on Palau became very bad, he did fishing with explosives by his own decision, making up his mind that he would take all the responsibility if anything might happen on account of that, and tried to improve food conditions in his company. He had the same meal as his men and never complained about it. He shared the hardships with his men.

(3) He was an excellent officer.

After serving as a non-commissioned officer, he entered the Army Academy and was appointed an officer. When he was attached to the 2nd Company, Artillery Battalion, 59th Infantry Regiment, his Company Commander, Captain Maruyama admired him as a most reliable platoon leader, and regretted it when he was transferred to an anti-aircraft unit.

(b) After he was transferred to an anti-aircraft unit, he became skillful in firing anti-aircraft guns in a few months, and he was very skillful.

(4) He was very obedient.

When he was transferred from an artillery unit to an anti-aircraft unit he looked dissatisfied of it. But whenever he received orders, though they were against his will, he was willing to carry them out with complaint.

(5) He prayed for the repose of the soul of Second Lieutenant Kaufman. After he went into the jungle to hide himself, he had such an attitude like an enlightened priest.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

Eugene E. Kerrick, Jr.
EUGENE E. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

EXHIBIT 17 (a)

0750

乙卯に高射隊第三中隊長元陸軍中尉勝山哲爾、人格記す

高射隊元陸軍中尉 羽石信男

一、本人ヲ知ルニ致スル経緯

昭和十九年九月十日、勝山中尉、乙卯に砲台ニ私入リ、カサ、砲台ニ派遣スル、同年其十日、私、第一中隊長ニ勝山中尉が第三中隊長ヲ命ゼシ、爾に勝山中尉ヲ知ル。

二、本人ノ人格

意面ヨニミテ実行力ニ富ミ服従心ガ強い人格ヲ有シテ居リシ。

其、例ヲ舉ゲルニ、空襲被、敎訓、二十年、二月、食糧料、不足ヲ来シ各隊共ニ農耕ヲ實施シテ所ニシテ（新平ノカタウ）其、頃司令部ヨリ

挺身肉攻切込ニ、訓練ヲ實施セヨト、命令アリシ、カ私、中隊長、之ヲ実行ニセシ、

勝山中尉、萬難ヲ克服シテ上司ノ命令ヲ實行シ、如クニ、爾、テ居リス。高射隊ガ新平モ、農耕ヲ實施シ、然後、夜間ヲ利用シテ切込、訓練、

行フ、ト、用意、事、テ、有リセシ。

是、如ク、實、見、勝山中尉、勝服従心ニ富ミ、実行力ヲ有シテ居ル事、判リス。

今、乙卯、ニ、事件、就、多、ク、初、緯、追、テ、述、ル。

乙

向キコシタガ最トニ上リマシ、命令ニテ萬止ム
得ス處刑ニシテ事ナシニス

勝山中尉ノ境遇ニ當時ノ心境ノ甚ニサリ藤原
ノ私心ヨリ同情致シテ居ンニテアリマス

殿ノ公正ナル裁判ノ下ニ減刑セムニ事ヲ期待シテ
居ルモノナリニス

"Exhibit 18"

0752

AFFIDAVIT AS TO THE CHARACTER OF KATSUYAMA, Tetsuji, FORMER C.O. OF THE 2ND COMPANY, KOROR ANTI-AIRCRAFT UNIT.

1. How I came to know him.

On September 15, 1944, First Lieutenant KATSUYAMA was detached to the Koror battery and I was sent to the Arakebesan emplacement. On October 1 of the same year I was appointed commanding officer of the 1st company and he was appointed commanding officer of the 2nd company so from that time on I came to know him.

2. His character.

He was a serious minded person, and a man who practiced what he said. He had a strong sense of obedience. I shall give a few examples of his character.

After the severe bombing in February 1945, food became scarce and each unit engaged in farming in its spare time. At this time the headquarters put out an order to practice bayonet charges but my company did not do this. But I heard that the Katsuyama Unit practiced it by overcoming all difficulties. It was not an easy thing for the anti-aircraft unit to fight, farm and besides train the men in bayonet charges. From this, it can be seen that he was a man of practicability and a man of obedience.

As regards the present incident of the prisoner Kaufman, I have heard that he was opposed to it at first but in the end could not help but obey the orders of his superior.

When I think of his feelings and his sufferings, I have the greatest sympathy for him.

I pray that you will judge him most impartially and be lenient with him.

/s/ HAISHI, Nobuo,
Former First Lieutenant, IJA.

*I certify the above to be a true
and complete translation to the
best of my ability*

*EE / Furnish J
Lt USNR*

EXHIBIT 18 (a)

0753

AFFIDAVIT AS TO THE CHARACTER OF KATSUYAMA, Tetsui, FORMER FIRST LIEUTENANT, IJA.

/s/ TANAKA, Masao,
Former C.O. 3rd Company, Koichi Unit,
Former First Lieutenant, IJA.

1. How I came to know him.

When I was the commanding officer of the 3rd company of the provisional anti-aircraft unit, he came and took over the duty as company commander of the second company and from that time I came to know him.

2. His character.

He was a kind person with a strong sense of obedience to his superiors.

When headquarters issued an order to train the men in bayonet charges in December 1944, the other units did not do it because of battle duty and farming. But the Katsuyama unit did what it was told, and obeyed the orders of the superior. When headquarters ordered the prisoner to be executed, he, along with us, was opposed to it. When he carried out the execution it was against his will and he only did it because he was a man with a strong sense of obedience. That he was a man of kindness and feeling toward his men can be seen from the fact that his unit was united and bravely fought to the end even though his unit sustained the greatest casualties. Particularly, the fact that he visited the grave of the prisoner twice proved that he was a man of benevolent feelings.

I certify the above to be a true and complete translation of the original petition to best of my ability.

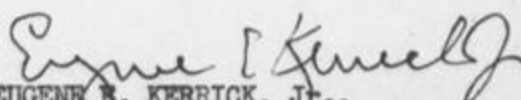

EUGENE B. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

EXHIBIT 19 (a)

0755

元陸軍少尉小野瀬一郎の人格證言

元第十四師團參謀陸軍大佐 中川 廉

一 証人小野瀬少尉を知った経緯

昭和十九年第十四師團司令部がコロール島に上陸した際司令部情報司令部と血書出征の鯨が入られて進軍した儘を待たぬと知ったから此が小野瀬少尉である

二 証人と小野瀬少尉との知り期間

昭和十九年四月二十四日以降

三 格等について

一 責任観念の旺盛で終ては積極性であった

血書進軍を遂行積極性を持つて仕事には金と熱中をもつた人である

責任観念の旺盛の裏を覆はれて昭和十九年十月マカニカル島に捜索壕墓を推進する時其の中に選ばれると其の隊長坂本大尉も仰げた

一 性格明朗で上官同僚の信用が厚かった

明朗は性質は事の上上官同僚の心境を明しく

におた 仰ては又非常な人情に厚かった

上官からは ぬきれぬ

AFFIDAVIT AS TO THE CHARACTER OF ONOSE, ICHIRO, FORMER SECOND LIEUTENANT, IMPERIAL JAPANESE ARMY.

/s/ NAKAGAWA, Kiyoshi
Former Colonel,
Staff Officer of the 14th
Division,
Imperial Japanese Army.

1. How I came to know Second Lieutenant Onose.

In 1944, when the 14th Division Headquarters arrived on Koror, I heard there was an excellent officer who pleaded to enter the Intelligence Section with a letter written with blood. I knew afterwards that this man was Second Lieutenant Onose.

2. The period of time that I have known him.

Since 24 April 1944.

3. His character.

(1) He was full of a sense of responsibility and was positive in everything. He was such a positive man as to volunteer to enter the Army with a letter written with blood. He was earnest in his work and even forgot to take his meals. His strong sense of responsibility was admitted, and he was appointed a member of a party which had a duty of setting up a reconnaissance station on Marakal, and he assisted Captain Sakamoto, the chief of the party, very well.

(2) He was of cheerful character and was relied on by his superiors and comrades. His bright character made his superiors and comrades merry, and he was a very benevolent person to his subordinates. He was loved by his superiors.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

Eugene E. Kerrick, Jr.
EUGENE E. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

"Exhibit 20(a)"

0757

元陸軍少尉小野瀬一郎、人格証言

元第十四師團司令部附陸軍大尉 渡部敏夫

一 本人が知ルに至ツタ経緯

小野瀬少尉、昭和十九年三月第十四師團南方へ派遣セラルル爲ニ
編成ヲ改正スル迄 野砲兵第三十聯隊附スルツカガ私元当時小野瀬
少尉ト同じ、野砲兵第三十聯隊附スルツカガ見習士官當時多
將校團ヲ同じ、ニ居リ、第十四師團司令部附ニナリモ亦同
ジ情報掛將校トシ復員ニ至ル迄殆ド常ニ彼ト寝食ヲ共ニ
シ来タ

彼ノ人格ニ関シハ私ハ最もヨウ知リ居ル者、一人元アル信ニ

二 本人ノ人格

イ 情ニ厚イ人スルヲ

イ 米軍俘虜ニ訊問スル際彼ハ情報掛將校トシ、局勢ニ行ツ
居リ、其俘虜ニ接シ、彼ノ態度ハ常ニ紳士的ニアルヲ
訊問中彼ハ煙草ヲ喫スル時ハヤスエシ自ラ、煙草ヲ
俘虜ニ奨メテ居タ

ロ 彼ノ友人、中澤見習士官ガ、ペルー島ニ戦死シタ後
中澤ハ、主派ナ格ニ人物スルヲト彼ヲ稱ヘ、彼中澤
見習士官ノ事ヲ語ル際彼ハ涙ガムノガ常ナリタ

ハ 情報部ノ下士官兵ニ対シ自ラ、煙草ヲ食糧(加給品)等
ヲ食フ事(不自由)ニ食住ノ苦勞ヲ共ニスル様ニ勉メタ

ニカフマシ、カネ、外開キ、イ、カフマシ、カネ、ハ、主派ナ米軍將校
ニ、ス、彼、尊敬ス、ト、賞メ、ト、共ニ、彼、眞、福、ヲ、祈、リ、居、タ。
カ、當、番、兵、ヲ、私、的、方、面、ニ、花、メ、非、常、ニ、可、愛、カ、ミ、兵、信、賴、ガ
厚、カ、タ。

2. 優秀ナル技術、將校ニ責任觀念旺盛ニシタ。

(1) 昭和十九年十月、歩兵第十五聯隊坂本大尉、カ、カ、カ、島ニ
積、載、快、意、ヲ、為、ニ、出、発、シ、タ、際、情、報、部、ヨリ、小、野、班、ノ、尉
カ、其、輔、佐、ヲ、為、隨、行、シ、タ、カ、其、困、難、ナ、任、務、ヲ、完、遂、セ
シ、タ。

坂本大尉、小、野、班、ノ、尉、カ、來、ラ、矣、シ、タ、ス、ア、困、難、ナ、任、務、ヲ
完、遂、出、来、タ、ス、ニ、テ、ト、彼、ヲ、救、賞、シ、タ、リ。

(2) 第十四師團司令部、カ、旅、順、出、發、ス、際、輸、送、船、能、登、丸、ノ、
軍、需、品、積、込、シ、監、督、指、導、ヲ、命、じ、タ、時、彼、ハ、晝、夜、兼、行、
不、眠、不、休、之、ニ、當、リ、其、積、込、作、業、ヲ、順、調、ナ、シ、タ、リ、
輸、送、指、導、員、歩、兵、第、三、聯、隊、長、中、川、大、佐、カ、非、常、ニ
感、謝、セ、タ、リ。

(3) 情報部ニ在、ル、彼、執、務、ハ、事、ニ、主、派、ス、井、上、中、將、
多、田、參、謀、長、矢、島、參、謀、等、諸、官、カ、其、不、備、ヲ
指、摘、セ、ル、様、ナ、事、ハ、殆、ド、ナ、カ、タ。

(2) 極多粗更ノ給與、中大劇務ヲ遂行シ、其ノ為身体ヲ擔ヒテ
入院スルニ再三カケタ。入院中ニ於テモ彼ノ寢語ニ尚其
任務ニ関スル事項ヲ徇ヘテ附添、看護人ヲ威嚇セシ
タリ。

3 宗教心ニ篤カシク

彼ノ家ハ確カ熱烈ナ日蓮宗信者ニアリタガ其ノ影響ヲ
受テ他ノ宗教ニ関シテモ其ノ帰スル所ニ同じニアリヤリス。
教元ヨリ理解出来ルト又「自分ノ運命ハ絶対ナリ」
自分ノ運命ニ「逆ハス」ト云フニ正當ナ氣持、持主ニア
リ。

4 其他

(1) 部附將校カ集リ雑談スル際、米軍ノ卓越スル戦斗
方式ノ前ニ日本軍ハ敗レルカモ知ス。ト特異ニ意見
ヲ吐クナリタガ其ノ様ナ事ヲ上官或ハ部下等ニ所
ニ於テハ決シテ口ニスル様ナ事ニナリ。

(2) 井上中將多田參謀長ノ強烈ナ性格ノ前ニ如何ニ
意見具申エカカ通ラヌ。ト嘆シテナリ。

AFFIDAVIT AS TO THE CHARACTER OF ONOSE, ICHIRO, FORMER SECOND LIEUTENANT, IMPERIAL JAPANESE ARMY.

1. How I came to know him.

Before the 14th Division was reorganized and sent to the South Seas area, Second Lieutenant Onose was attached to the 20th Field Artillery Regiment where I also had duty at that time. He was at this time still a cadet but was in the same group of officers as I. When we were attached to the 14th Division, we were both intelligence officers, so we worked and had quarters together until the end of the war, so I am sure that I am one person who knows about his character well.

2. His character.

(a) He was kind. His attitude toward American prisoners was always gentleman-like, and when he wanted to smoke during interrogation he always offered a cigarette, though he himself did not have many, to the prisoner.

(b) When his intimate friend cadet Nakazawa died in action at Peliliu, he praised him, saying, "He was a fine man, a man who I regret to see die." After that, whenever he mentioned Nakazawa, he had tears in his eyes.

(c) He gave away his personal ration of tobacco and other foods to the enlisted men of the intelligence section and suffered together with them under the inconvenient living and poor food conditions.

(d) After Kaufman was executed, he always praised him saying, "Kaufman was a fine officer; I respect him," and he always prayed for the repose of Kaufman's soul.

(e) He looked after his orderly with great care and gained great confidence from his men.

3. He was an outstanding technical officer and had a strong sense of responsibility.

(a) When Captain Sakamoto of the 15th Regiment left for Makarakaru Island in October 1944 in order to collect information, Second Lieutenant Onose was sent from the intelligence section to accompany him, and accomplished this difficult mission. Captain Sakamoto praised him, saying, "If I hadn't had Onose with me, it would have been difficult to accomplish the mission."

(b) When Onose was ordered to supervise the loading of armament on the transport ship "NOTO-MARU" upon the departure of the 14th Division Headquarters from Fort Arthur, he exerted himself in this duty day and night, and finished the work in due time. He was greatly praised by the Commanding Officer of the 2nd Infantry Regiment, Colonel Nakagawa.

"Exhibit 21(a)(1)"

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(c) The manner in which he executed his duty at the intelligence section was excellent, and there was hardly any occasion when faults were pointed out in his work by Lieutenant General Inoue, Chief of Staff Tada, Staff Officer Yajima and other officers.

(d) Because the food was very bad and on top of that he had to work hard, his health failed and he had to enter the hospital again and again. Even while hospitalized he used to say things in regard to his duties while asleep and made the nurses cry.

4. He was very religious.

His family was strongly adhered to "Michiren" religion and he was greatly influenced by this and he used to say in regard to other religions as follows: "All religions are the same in the end. I can understand Christianity very well." "Fate is absolute and I can not oppose this fate." He was a person who always was normal.

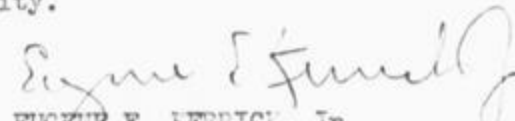
5. Other facts.

(a) When the officers of the intelligence section gathered and talked, he would give out an opinion that Japan might lose in face of the superior American operational plans, but he never said such a thing in front of superiors or subordinates.

(b) He expressed regrets very much saying, "Confronted by the strong character of Lieutenant General Inoue, and Chief of Staff Tada, no opinion no matter what it is can be expressed."

/s/ WATANABE, Toshio

I certify the above to be a true and complete translation of the original petition to the best of my ability.


EUGENE E. HERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

"Exhibit 21(a)(2)"

0762

小野瀬忍少尉人格証言 矢島俊彦

一 私ト小野瀬ト、関係、私が昭和十九年六月下旬前任者、
田中少佐、内地轉任に伴、情報部兼任トナツタ際、始メリ
南侵終戦迄情報ヲ^(年報)於^(本)勤務シタリ

其、間私、彼^(年報)優秀ナル將校ト^(本)信頼スル所ガアリシヲ

責任觀念旺盛デアリタリ 其、一ニ、例、申シマス

④ 師團、米軍ガ^(年報)ベリシ、既、占領シタ昭和十九年十月頃、
島ニ近イ、^(本)マカセル島、攻本大尉ヲ長トシ、有カ、搜索隊、
必、情報、收事、當、^(年報)マカセル島、小野瀬少尉、其、一員トシ
加、^(本)マカセル島、此、島、常、米軍、砲撃、下、曝サシ
所、^(年報)マカセル島、此、困難、状況、下、良、攻本大尉、
更、私、米軍、情况、^(年報)マカセル島、取、^(本)マカセル島、詳、^(年報)マカセル島、
私、仕事、^(年報)マカセル島、^(本)マカセル島、

⑤ 昭和十九年九月、^(年報)マカセル島、米軍、上陸、企圖、明瞭、ナルト
共、師團、^(年報)マカセル島、^(本)マカセル島、^(年報)マカセル島、^(本)マカセル島、
カ、^(年報)マカセル島、^(本)マカセル島、^(年報)マカセル島、^(本)マカセル島、
タ、^(年報)マカセル島、^(本)マカセル島、^(年報)マカセル島、^(本)マカセル島、
、^(年報)マカセル島、^(本)マカセル島、^(年報)マカセル島、^(本)マカセル島、
、^(年報)マカセル島、^(本)マカセル島、^(年報)マカセル島、^(本)マカセル島、

二 彼、同情心、強、人デアラス

私、共、任務、上、^(年報)マカセル島、^(本)マカセル島、^(年報)マカセル島、^(本)マカセル島、
、^(年報)マカセル島、^(本)マカセル島、^(年報)マカセル島、^(本)マカセル島、
、^(年報)マカセル島、^(本)マカセル島、^(年報)マカセル島、^(本)マカセル島、
、^(年報)マカセル島、^(本)マカセル島、^(年報)マカセル島、^(本)マカセル島、

ラミラに、同情を度々自分、与へるや、食物、一杯（こ）り
カバン（提督）ヲ彼と与へるや

又信房、對ニ處刑、對ミ、反對者、一人ヲ師団長、
命令ニ對ミ、絶体ヲ攻撃、力ヲ、何と云ふヲ下テ嘆息
居るや

又カフミ、廿射、立派ト人格、據ミ、米軍將校、後方
ヲ攻撃、一人ヲ下るや

四、彼、積極的ト人下るや

彼、常、私ト仕事ニ對テ電文ト意見出申ッ人ヲ
其、意見モ亦正當ト云フカ多カシク、此ヲ、彼、意見
ヲ下テ採用シ居るや

又、本島、於テ監視哨、位置、彼、空地點燈、依
テ意見出申、結果下るや

五、機件ハ精神、劣ル人下るや

前、述ベタ、カフミ、島、搜索、據、空ヲ推出ニ下、

水雷ト危険ガ伴ハ、機件ハ、劣ル人下るや、
彼、自ラ進ミ其ノ任務、就イタノ下

ATTESTATION AS TO THE CHARACTER OF ONOSE, ICHIRO, FORMER SECOND LIEUTENANT, IMPERIAL JAPANESE ARMY.

/s/ YAJIMA, Toshihiko

1. My relation with Onose started around the latter part of June, 1944, when I undertook additional duties of the intelligence section for the former officer, Major Nishida who left for Japan. From then until the end of the war for more than a year I worked with him at the intelligence section. During this time, as he was an excellent officer, I trusted him very much.

2. He has a very strong sense of responsibility. I will give one or two examples.

(a) Around October, 1944, when the Americans had already taken Peililiu, the division sent out a good reconnaissance post with Captain Sakamoto as leader to "Ikarabaru" Island near Peililiu and had it gather information. Second Lieutenant Onose was a member of this party. This island was always under bombardment and bombing of the Americans but he was a very good assistant to Captain Sakamoto under this difficult condition and he in turn assisted my work because of it.

(b) In September, 1944, with the knowledge that the Americans were definitely planning to land on Peililiu, the division put an advanced command post on "Aruboku" mountain on Babelthusp Island. He went with me to this post and this is the time that we as an intelligence section worked the hardest. For about one month we worked hardly without rest or sleep, but he took positive steps in assisting me; so I was able to carry on without any great mishap during this time.

3. He has a strong sense of sympathy. From the standpoint of our duty, we had more opportunity than others to meet prisoners, but he always looked at them with sympathy and treated them with sympathy. He sympathized with the inconvenient life Second Lieutenant Kaufman had to bear in the imperfect place of confinement at the Kempeitai, so he frequently gave him part of his own food and provisions (milk, dry biscuit, cigarettes, etc.).

Furthermore, he was one of the persons who were against execution of prisoners and he regretted very much that there was nothing we could do against the absolute orders of the Division Commander. Furthermore, after he saw the high character of Second Lieutenant Kaufman, he was one of the persons who praised the outstandingness of the American officers.

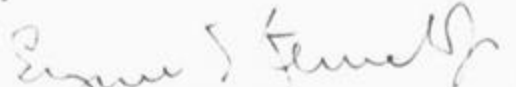
4. He was a man of positive action. He was the one who usually expressed important opinions on my work. And nearly all these opinions were right; therefore, I usually listened to his opinions. The positions of the lookout posts on Babelthusp were set up by his experienced opinion.

"Exhibit 22(a)(1)"

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5. He had a strong spirit of self-sacrifice. Great danger was involved to advance the reconnaissance post to "Terakeru" Island, which I have stated before. One person from the intelligence section had to go, but no one was willing to go. At this time he himself went on this mission.

I certify the above to be a true and complete translation of the original petition to the best of my ability.


EUGENE E. HERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

"Exhibit 22(a)(2)"

0766

无陵弟少尉小翠齋一印 弟人恪敬言

此後，我與周同鄉，

陸軍大臣 陸軍省 陸軍部 陸軍省 陸軍部

下 德 元 亨

六本八巻之五ノ五經傳

此据和十九年十二月項。發。陳。青。沙。十。師。團。司。長。印。

附錄卷之七 上 州縣官制

總戰後の日本を引揚せしめんとすの第一義

六卷八十一信

元弘情郭室勸諸王命以之有以爲宣武中

庚子月一號 與世詠在十一日 和 秋 以 美 心 矣 然 亦 子 元 操

丁未年正月一日。市終。紀。地。分。南。白。地。分。南。白。地。分。南。白。

鐵上金に金を以てはかたし

予一、乃之、乃之、乃之。外書一云：天帳或與此字同。

像銚子一ヶ所を特に重く尊重する其の他は必ずしも細

七、得子、夢子、水子、子情、報室、子、煙草、金

也。毛猪にすわせしむる事尤た多し。見家計 百一十回

[illegible]

一、此子也。其母曰：「吾生此子，何如？」

「くわいしんは、日本人の常識に耐へて、私は日本に郷を

かゝる小形像、少尉の世辞に對する、作樂も亦それと云ふ

此心之理一而為二，轉機而一。

AFFIDAVIT AS TO THE CHARACTER OF ONOSE, ICHIRO, FORMER SECOND
LIEUTENANT, IMPERIAL JAPANESE ARMY.

/s/ SHIMOJO, Mitsuharu
Gunzoku photographer attached
to the 14th Division Headquar-
ters.

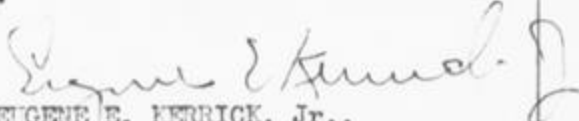
1. How I came to know him.

From the time I was attached to the photography squad of the intelli-
gence section after being transfered to the 14th Division Headquarters from
the Akatsuki Unit in December 1944, I came to know him and from that time
until the end of the war we served together.

2. His character.

When I was first transfered to the photography room of the intelligence
section, he was the one who looked after me. He would never raise his voice
at me when I made a mistake. When I was depressed by some harsh words said
to me by others, he would come to me and console me. When I developed pic-
tures in the laboratory he would come and give me cigarettes and other things
which comforted me. When we were in the intelligence room he often gave us
cigarettes, so all the enlisted men respected him. When I went on trips he
was the one who saw to it that I was taken care of. He was a very kind offi-
cer and I had not forgotten about him after I returned to Japan.

I certify the above to be a true and complete translation of the
original petition to the best of my ability.


EUGENE E. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

"Exhibit 23(a)"

0768

FF12/A17-10(2)
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3193

20 MAR 1948

The military commission, composed of Army, Navy, and Marine Corps officers, in the foregoing case, by precept dated November 8, 1947, was ordered convened November 20, 1947, or as soon thereafter as practicable by the Commander Marianas Area pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. PacFlt serial 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47). The commission was authorized to take up this case as indicated in the precept. The order for trial (charges and specifications) was issued November 10, 1947 and served on the accused on the same day. The trial was held under authority of Naval Courts and Boards except that the commission was authorized by the precept to relax the rules for naval courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated December 5, 1945 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals, and modifications thereof, as necessary to obtain justice.

Briefly stated the evidence in this case, as relates to the respective accused named in the specification of Charge I, is to the following effect. An American aviator, Second Lieutenant Wallace F. KAUFMAN, USA, was captured at KOROR Island in the spring of 1944 by members of a Japanese anti-aircraft unit stationed at that place. He was delivered by his captors to the Kempeitai (Military Police) unit of the 14th Japanese Army Division Headquarters on BABELTHUAP Island. Subsequently and without legal justification the Commanding General of the 14th Division ordered his execution by the KOICHI Anti-aircraft Unit on KOROR, for the purpose of improving the morale of Japanese personnel in that area. A party including ONOSE, TSUCHIYA, SHIMOJO and an enlisted man from the 14th Division Kempeitai, name unknown, with ONOSE in charge was ordered to take KAUFMAN from BABELTHUAP to KOROR for execution by KOICHI and other designated members of his command. ONOSE's orders directed him to return KAUFMAN's personal belongings to him and to personally execute KAUFMAN should the other persons designated fail to do so - he was to see that the execution of KAUFMAN did not fail. All members of this party knew before leaving BABELTHUAP that KAUFMAN was to be executed. They escorted him to KOROR. After arrival in KOROR a conference, attended by KOICHI, ONOSE, KATSUYAMA, TSUCHIYA and others was held. At this conference the time and place of KAUFMAN's execution was discussed. The next morning at or about 0700 the 24th of May 1944 at a graveyard on KOROR where a grave had been dug KOICHI, ONOSE, KATSUYAMA, TSUCHIYA and others assembled with KAUFMAN in custody, in the presence of about thirty to fifty other members of KOICHI's command. KOICHI was in general charge. ONOSE informed KAUFMAN that he was to be executed. TSUCHIYA, who had assisted in escorting KAUFMAN from BABELTHUAP to KOROR, was present to render such assistance and perform such acts as ONOSE might require and in accordance with ONOSE's orders did in fact immediately prior to the execution deliver to KAUFMAN his personal belongings, being photographed by the execution party photographer while so doing. KAUFMAN was then placed near the grave for execution. ONOSE instructed KATSUYAMA relative to the technique of execution. KATSUYAMA beheaded KAUFMAN with his sword on the order of KOICHI.

On the above facts the commission found the specification of the first charge "proved in part, proved except the words 'TSUCHIYA, Naohiko, then a sergeant major, IJA,' which words are not proved," as to accused KOICHI, KATSUYAMA, and ONOSE. The commission found the specification "not proved"

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as to accused TSUCHIYA. It is obvious that the commission's findings of "proved in part" as to KOICHI, KATSUYAMA and ONOSE were based on the commission's acquittal of TSUCHIYA. The findings in this respect do not affect the legality of the commission's findings of "Guilty" as to Charge I as the exceptions made by the commission leaves the specification still supporting the charge (Sec. 429, N.C. & B.).

The convening authority does not concur in the commission's findings of "not guilty" and "not proved" on Charge I and the specification thereunder as to accused TSUCHIYA (Sec. 472, N.C. & B.), because he believes, for the reasons hereinafter stated, that a prima facie case was established against TSUCHIYA, which was not overthrown by rebutting evidence adduced by him (Sec. 156, N.C. & B.).

As stated above accused TSUCHIYA was a member of an escorting party of four persons commanded by accused ONOSE which took KAUFMAN from the Kempeitai, 14th Division Headquarters, on BABELTHUAP to KOROR for execution. TSUCHIYA knew KAUFMAN was to be executed at the time he was taken into custody by the escorting party. He was an assistant of ONOSE whose mission it was from the outset to assure KAUFMAN's execution. He attended ONOSE every step of the way from the time KAUFMAN was taken into custody until he was executed on KOROR, and performed such duties as were ordered by ONOSE. He attended the conference with ONOSE the night before the execution at which the time and place of the execution was discussed and announced. He went with ONOSE the next morning and was present at the execution. Immediately prior to the execution he delivered to KAUFMAN his personal effects in compliance with ONOSE's orders, and had his picture taken with KAUFMAN while doing this. All of these facts were admitted by TSUCHIYA and testified to by other witnesses.

There was no contradictory evidence unless TSUCHIYA's statements, to the effect that (1) he had no malice towards KAUFMAN and that he did not wish him executed; (2) he went in the escort party with ONOSE in obedience to orders and (3) he did not perform the act of execution, could be considered such evidence. These statements of TSUCHIYA are simply a statement of his opinion to the effect that because he did not commit the actual act of execution, he did not murder KAUFMAN. They do not explain away or overthrow the facts that he escorted KAUFMAN from BABELTHUAP to KOROR for execution and assisted ONOSE as necessary until KAUFMAN's execution was accomplished by KATSUYAMA in his presence.

The very nature of a war crime is such that participation either involves the accused as a principal or not at all. The extent of participation is not an element to be considered in the findings but rather in the quantum of sentence (Rev. in case of 1st Lt. M. TANEICHI, et al, 21 Nov. 1946). Section 550, Title 18 of the United States Code defines principals as follows:

"Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

This definition has in practice been made applicable in war crimes cases tried throughout the world. It varies from the general legal concept of who is a principal only to the extent that it makes all persons who are in contemplation of law parties to a crime principals. It has always been true, generally speaking, "....every one is a party to an offense who either

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actually commits the offense or does some act which forms part of the offense or assists in the actual commission of the offense or of any act which forms part thereof, or directly or indirectly counsels or procures any person to commit the offense or to do any act forming a part thereof or who aids one who has committed the offense, knowing that he has committed it, for the purpose of preventing his apprehension or conviction" (Sec. 72, Miller on Crim. Law).

In the instant case it is clear that TSUCHIYA did not counsel, procure or command anyone to commit the murder of KAUFMAN or himself strike the blow that killed KAUFMAN. He was present at the execution but his mere acquiescence or approval would not be sufficient to constitute him an accessory before the fact (a principal) (Rev. of case Lt. M. YOSHIOKA, et al, dated 20 Mar. 1946). The remaining status, which he might occupy making him a responsible party to the murder of KAUFMAN, is that of an aider and abettor. This he unquestionably was. He had assisted in escorting KAUFMAN from BABEL THUAP to KOROR for execution. He was present at the execution. His presence and non-interference was designed as an encouragement to the perpetrators of the crime. He was, with the knowledge of the perpetrators, near enough to give assistance and, as shown by his past performance in escorting KAUFMAN to KOROR and carrying out orders of ONOSE at the scene of execution, intended to do so if it became necessary (see generally, Wharton's Crim. Law (12th Ed.) pp. 327 - 364). He was a party to the community of unlawful purpose at the time the act was committed. In such circumstances it is unnecessary to show that he expressly authorized the others to do the act (Sec. 75(c), Mil. Crim. Law, p. 233).

It is, in my opinion, clearly intended by the Potsdam Declaration of 26 July 1945 wherein it states, ".....stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners," that all aiders and abettors in the murder of our prisoners of war should be punished. In this connection many pronouncements have been made by Allied statesmen as to whom would be punished for war crimes (War Criminals - Their Prosecution and Punishment by Sheldon Glueck, p. 191). Both President Roosevelt and Prime Minister Churchill on 24 March 1944 repeated themselves in proclaiming punishment for war criminals. Churchill included not only the miscreants but also their agents, and Roosevelt promised the subordinates and functionaries as well as the leaders having a part in war crime acts would be punished. But even before this the United States Senate unanimously adopted the concurrent resolution presented by Senator Barkley to the effect that "the dictates of humanity and honorable conduct in war demand that this inexcusable slaughter and mistreatment shall cease and that it is the sense of this Congress that those guilty, directly or indirectly, of these criminal acts shall be held accountable and punished in a manner commensurate with the offenses for which they are responsible" (Cong. Rec. Senate 9 Mar. 1943, p. 1773).

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Subject to the above remarks the proceedings, in the foregoing case of KOICHI, Hiroe, KATSUYAMA, Tetsuji, ONOSE, Ichiro and TSUCHIYA, Naohiko are approved. The findings of guilty and sentences as to the accused KOICHI, KATSUYAMA and ONOSE are approved.

KOICHI, Hiroe, KATSUYAMA, Tetsuji, and ONOSE, Ichiro, will be transferred to the custody of the Commanding General of the 8th Army, via the first available United States ship, to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan.

TSUCHIYA, Naohiko, who was acquitted, was released from arrest and returned to Japan.

C. A. Pommall
C. A. POMMALL,
Rear Admiral, U. S. Navy,
The Commander Marianas Area.

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
Headquarters of the Commander in Chief

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c/o Fleet Post Office,
San Francisco, California.

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The record is, in conformity with Appendix D-14, Naval Courts and Boards, 1937, and Chief of Naval Operations serial OLP22 of 28 November 1945, transmitted to the Judge Advocate General of the Navy to be revised and recorded.

Dewitt C. Ramsey
Dewitt C. RAMSEY,
Admiral, U. S. Navy,
Commander in Chief Pacific
and United States Pacific Fleet.

To: Secretary of the Navy (Office of the Judge Advocate General).
Re: Record of proceedings of a Military Commission in the cases of KOICHI, Hiroe, KATSUYAMA, Tetsuji, ONOSE, Ichiro and TSUCHIYA, Naohiko.

Copies to:
ComMarianas
Cinopacflt War Crimes Officer, Guam.

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Headquarters of the Commander in Chief

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c/o Fleet Post Office,
San Francisco, California.

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Cincpacflt does not concur with the convening authority in his comments on the acquittal of TSUCHIYA. It is the prerogative and duty of the court to weigh the evidence presented to it (Naval Courts and Boards, Sections 304, 305). The Navy Department has repeatedly held in effect that the court itself having personally heard the witnesses testify, is ordinarily more competent to arrive at the facts than is the reviewing authority (Court Martial Order 10, 1931, 15, 16). After a court, acting as the judge of facts has arrived at a finding as a result of its determination of the facts established by the evidence, the question for the reviewing authority is whether there is sufficient evidence to support such a finding, not whether an opposite finding would have been justified (Court Martial Order 4, 1930, 7). Where, as in this case, the evidence is sufficient when "weighed" to support the findings of the court, no error is committed even though the conclusions reached by the court are erroneous in the mind of the convening authority (Court Martial Orders 4, 1937, 17; 4, 1935, 5, 6; 3, 1944, 436). In the instant case, it is considered that while under orders to accompany the execution party, TSUCHIYA's position as an enlisted man in a party of officers precluded a positive refusal to proceed with the party. In as much as TSUCHIYA himself by word or deed committed no act which made him a participant in the actual murder, it is not considered that presentation of the personal effects to the deceased at the scene of the execution makes TSUCHIYA an accessory, any more than the cameraman who took a picture of the presentation.

Upon the face of the pleadings, the offense alleged under Charge II and specifications 1 and 2 thereunder were preferred to provide for the exigencies of proof (Naval Courts and Boards, Section 19). In accordance with the Judge Advocate General's action (OO-TACHIBANA, Yoshio, et al/A17-20 I(3-19-47 HJH:mas 154578) approved by the Secretary of the Navy 18 July 1947, (JAG:I:RAS:fld A17-20/00(6-25-47) 154578), the findings on Charge II and specifications 1 and 2 thereunder as to the accused KOICHI might be set aside. However, as the conviction on this charge and the specifications thereunder are legal, it is considered that any action to set them aside should be taken by the final reviewing authority.

Subject to the foregoing, the proceedings, findings of guilty and sentences in the foregoing case of KOICHI, Hiroe, KATSUYAMA, Tetsuji, ONOSE, Ichiro, and TSUCHIYA, Naohiko, and the action of the convening authority thereon, are approved.

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