

DECLASSIFIED

Authority: NND 760050 (1945-1949)

By: NARA NARA Date: 1976

Koichi, Hiroe et al. (24 Nov 1947)

(162424)
PART 1 OF 4

0179

ADDRESS REPLY TO

AND REFER TO

NAVY DEPARTMENT

WASHINGTON 25, D. C.

JAG:I:JKR:lmh
Mil. Com. - KOICHI, Hiroe, et al
A17-10/OQ (7-22-48) 162424

13 AUG 1948

The proceedings, findings and sentences in the foregoing military commission case, the actions of the convening and reviewing authorities thereon, and the remarks of the Judge Advocate General are approved.

Frank B. Rowen

Acting Secretary of the Navy.

Case No
162424

0180

ADDRESS REPLY TO

NAVY DEPARTMENT

WASHINGTON 25, D. C.

AND REFER TO

JAG:I:JHR:lmh

Mil. Com. - KOICHI, Hiroe, et al

A17-10/00 (7-22-48) 169484

13 AUG 1948

The proceedings, findings and sentences in the foregoing military commission case, the actions of the convening and reviewing authorities thereon, and the remarks of the Judge Advocate General are approved.

151

ACTING

Secretary of the Navy.

CC - SecNav Files

0181

JAG:1:JHR:1mh
Mil. Com. - KOJCHI, Hiroe, et al
A17-10/00 (7-22-48) 162424

23 AUG 1948

The proceedings, findings and sentences in the foregoing military commission case, the actions of the convening and reviewing authorities thereon, and the remarks of the Judge Advocate General are approved.

151
Acting Secretary of the Navy.

0182

NAVCOM
NAVAL COMMUNICATION SYSTEM

Jul 27 16 25 00

DRAFTED BY: CDR. S.M. Hart, USN FILE NO. 22716352 ROOM NO. 2056 EXT. NO. 120
CDR. S.M. Hart, USN CDR. S.M. Hart, USN 22716352 27 July 1948
 Please leave this space clear

FROM: JAG (War Crimes)
 TO: COM MARIANAS (War Crimes Office)
 INFO: SENAV (Lt. Col. Youngblood)

Room 2056

PRECEDENCE

- ☒ PRIORITY
☐ ROUTINE
☐ DEFERRED
☐ NIGHT LETTER

UNLESS CLASSIFIED
RESTRICTED
 WILL BE CLASSIFIED
PLAIN

Unless otherwise indicated, this dispatch will be transmitted with Deferred Precedence.

TEXT:

RE NOCHI KIRCH CASE NUMBER 36 X ADVISE JAG WAR CRIMES TRIAL
 STATUS IF GEN INOUE FORMER JAPANESE COMMANDER PALAU IN CONNECTION
 WITH NOCHI CASE COMMA NUMBER OF WALLACE F KAUFMAN US ARMY
 COMMA AND ANY OTHER CHARGES X

0183

In reply refer to Initials
and No.

Op22D/rif
Serial 847P22

NAVY DEPARTMENT
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON 25, D. C.



20 JUL 1948

FIRST ENDORSEMENT on
JAG Record of Proceedings
OO-KOICHI, Hiroe/Al7-10
I (6-3-48) HTM:vll 162424
dated 16 July 1948.

RECEIVED

21 JUL 1948

OFFICE OF JUDGE
ADVOCATE GENERAL

From: Chief of Naval Operations.
To: Judge Advocate General.

Subject: Record of Proceedings of Military Commission at
Guam in the case of Hiroe Koichi et al.

1. Returned, contents noted.

J. C. Hancock
J. C. Hancock,
By direction.

23 JUL 1948

0184

OO-Koichi, Hiroe/A17-10
I (6-3-48) HTM:vll 162424

MEMORANDUM IN THE MILITARY COMMISSION CASE OF:

25 7/5
Koichi, Hiroe
former Capt., IJA
Katsuyama, Tetsuji
former 1st Lt., IJA
Onose, Ichiro
former 2nd Lt., IJA
Tsuchiya, Naohiko
former Sgt. Maj., IJA.

Place of Trial:
Guam, Marianas
Islands.

Date Tried:
24 Nov 1947

Date Received:
27 Apr 1948

1. The record of trial in the case of the above named persons has been examined by GCM Panel #2 and found to contain substantial error.

2. The record of the case is as follows:

CHARGES: I MURDER

spec. - 24 May 1945, Koror Island, killed by beheading with a sword, a named American aviator, a prisoner of war.

II VIOLATION OF THE LAWS AND CUSTOMS OF WAR
(Koichi only)

spec. 1 - Same time and place, failed to control persons under his command and allowed them to kill same named POW.

spec. 2 - Same time and place, failed to protect same named POW and allowed persons under his command to kill him.

PLEAS: NO

FINDINGS: I - G (spec proved except as to accused Tsuchiya).
II - G (specs proved in part).

SENTENCES: Koichi, Katsuyama, and Onose to be confined for a period of 25 years.

20 Mar 1948

CA ACTION: Did not concur in acquittal of Tsuchiya. Subject to such remarks, proceedings, findings and sentences approved.

18 Apr 1948

REVIEWING AUTHORITY ACTION: Did not concur with CA's remarks on acquittal. Subject to remarks, proceedings, findings and sentences and action of CA thereon approved. Transmitted record to JAG.

3. FACTS:

In May, 1945, an Army B-24 was shot down by defensive (Japanese) forces on Koror in the Palau Group. There was one survivor, Second Lieut. Wallace F. Kaufman, USA, who was immediately captured. After preliminary questioning on Koror, Kaufman was transferred to the main headquarters on Babelthump for additional interrogation.

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OO-Koichi, Hiroe/A17-10
I (6-3-48) HTM:vll 162424

CMDR
The commanding general, Lt. Gen. Inoue, decided that morale of the defensive units on Koror would be bolstered if Kaufman were executed in their presence. Colonel Doi, who was then in command of all installations on Koror, opposed this plan. The accused Koichi and Katsuyama agreed with him that the execution should not take place. Inoue was informed of the opinions of these three.

Shortly after this, Inoue ordered Koichi to have Kaufman executed by the accused Katsuyama. Second Lieut. Onose, attached to Inoue's staff, was ordered to deliver Kaufman to Koror and see that he was executed. The accused Tsuchiya was detailed to act as guard since it was his turn to make a trip from Babelthuap.

Koichi, Onose, Tsuchiya, a photographer, an unnamed military police and Kaufman went from Babelthuap to Koror by boat and went at once to Koichi's headquarters. At that point Katsuyama was told that he was to perform the execution the next morning.

At the appointed time, Kaufman was brought to the place selected for the execution. Tsuchiya returned to Kaufman his personal belongings. Kaufman was given a cigarette and then he was blindfolded. Onose informed him that he was to be executed. After some shifting to give the photographer the best view of the action, Katsuyama struck with a sword. The blow almost completely severed the neck. Kaufman fell into a hole which had been dug for the purpose, and he was then buried. The proceedings were witnessed by members of the nearby units, and photographs were taken.

After the execution, all hands returned to their respective units. A report was made to Inoue. The grave was marked and flowers were planted.

After the surrender of Japan, an American unit opened the grave and established the identification of the cadaver.

The prosecution then offered and, over the objections of the accused, the commission received extrajudicial statements made by each of the accused. These statements were not in conflict with the evidence outlined

The evidence indicates that the statements were taken by unidentified investigators while the accused were confined in Tokyo. The accused were then transferred to Babelthuap and as officers of the U.S. Navy then confronted each accused with his statement and instructed him to sign it under oath. No further showing as to the manner in which the statements were procured was offered by the prosecution.

The defense made no attempt to controvert the facts in evidence. Reliance was placed on evidence tending to show that the accused opposed the execution of the aviator to as great a degree as was possible, and that this opposition had no effect on Inoue.

4. APPLICABLE LAW AND DISCUSSION:

The commission was authorized by paragraph 5 of its precept to relax the rules prescribed by Naval Courts and Boards and to use the rules issued by the Supreme Commander of the Allied Powers (SCAP Rules). Inasmuch as these Rules give a commission wide latitude in deciding what evidence shall

OO-Koichi, Hiroe/A17-10
I (6-3-48) HTM:vlj 162424

be admitted, and since the Rules expressly provide (in 16, a. (3)) that affidavits or statements taken by an officer detailed for that purpose by military authority shall be admissible, the commission properly admitted the statements of the accused. In any event there was no conflict between the testimony offered by the prosecution, the statements and the evidence offered by the defense. The admission of the statements could not, therefore, have prejudiced the rights of the accused.

The single specification under I, Murder, alleges that the accused did, on or about 24 May 1945, kill one Wallace F. Kaufman, an American prisoner of war. Specification 1 under II, Violation of the Laws and Customs of War, alleges that the accused Koichi failed to control persons subject to his orders and allowed them to kill Kaufman. Specification 2 alleges that Koichi failed to take proper measures to ensure the safety of Kaufman, a prisoner of war in his custody, and allowed persons under his command and control to kill the said Kaufman.

The allegation of killing Kaufman (Charge I) and the allegations that Koichi was derelict in his duties in allowing Kaufman to be killed (Charge II) being based as they were on the same circumstances, were preferred to provide for the contingencies of proof. The accused Koichi was, therefore, convicted of three offenses growing out of but one act. Cf. File: OO-Furuki, Hidesaku, A17-10/OQ, approved by the Secretary of the Navy on 12 Feb 48.

5. CONCLUSION AND RECOMMENDATION:

It is recommended that an opinion be prepared recommending that the findings on Charge II and the specifications thereunder and the actions of the convening and reviewing authorities thereon, be set aside.

H. T. Marshall
G. H. Gueen

Upon reconsideration of the record in the light of Board of Review report No. 1207, the opinion therein stated that this case is distinguishable from the case of Hidesaku FURUKI (A17-10/OQ) and is governed by the rule in the case of ASANO is concurred in. Accordingly, it is recommended that the case be passed as legal as recommended by the Board of Review.

H. T. Marshall

G. H. Gueen

gmr

ADM
5415

9/18
JUL
1948

NAVY DEPARTMENT
Office of the Judge Advocate General

16 JUL 1948

From: The Judge Advocate General.
To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentences in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.


G. L. RUSSELL

Judge Advocate General of the Navy.

GCM REFERRAL (7-9-48) ben General Court Martial Case No. 162424

Name	Rank or Rating	Date Received
Hiroe KOICHI	then a captain, IJA	27 April 1948
Tetsuji KATSUYAMA,	then a first lieut., IJA	
Ichiro ONOSE	then a second lieut., IJA	
Naohiko TSUCHIYA	then a sergeant major, IJA	
(Tried in joinder)		

Trial Held (Place)	Date of Trial
2 Guam, Marianas Islands	24 November 1947

OFFENSES

I, MURDER

Spec - 24 May 1945, Koror Island, killed by beheading with a sword, a named American aviator, a prisoner of war.

II, VIOLATION OF THE LAW AND CUSTOMS OF WAR

(Koichi only)

Spec 1 - Same time and place, failed to control persons under his command and allowed them to kill same named POW.

Spec 2 - Same time and place, failed to protect same named POW and allowed persons under his command to kill him.

Pleas

NG to all.

Findings

I, G (spec proved except as to accused Tsuchiya); II, G (specs proved in part)

Sentences

Koichi, Katsuyama, and Onose to be confined for a period of 25 years.

C. A. Action

20 March 1948

Subject to remarks, the proceedings are approved. The findings of guilty and sentences as to the accused Koichi, Katsuyama and Onose are approved.

Sugamo Prison, Tokyo, Japan (As to Koichi, Katsuyama and Onose).

Reviewing Authority

18 April 1948

Subject to remarks, the proceedings, findings of guilty and sentences, and the action of the convening authority thereon, are approved. The record is, in conformity with Appendix D-14, Naval Courts and Boards, 1937, transmitted to the Judge Advocate General of the Navy to be revised and recorded.

0189

162424

OGM REFERRAL (7-9-48) Gen General Court Martial Case No. 152424

Name	Rank or Rating	Date Received
Niroe KOICHI	then a captain, IJA	27 April 1948
Tetsuji KATSUYAMA,	then a first lieut., IJA	
Johiro ONOSE	then a second lieut., IJA	
Kachiko TSUCHIYA	then a sergeant major, IJA	
(Tried in Joinder)		

Trial Held (Place)	Date of Trial
Guam, Marianas Islands	26 November 1947

OFFENSES

I. MURDER

Spec - 24 May 1945, Koror Island, killed by beheading with a sword, a named American aviator, a prisoner of war.

II. VIOLATION OF THE LAW AND CUSTOMS OF WAR
(Koichi only)

Spec 1 - Same time and place, failed to control persons under his command and allowed them to kill same named POW.

Spec 2 - Same time and place, failed to protect same named POW and allowed persons under his command to kill him.

Plans

NS to all.

Findings

I, G (spec proved except as to accused Tsuchiya); II, G (spec proved in part)

Sentences

Koichi, Katsuyama, and Onose to be confined for a period of 25 years.

G. A. Action

20 March 1948

Subject to remarks, the proceedings are approved. The findings of guilty and sentences as to the accused Koichi, Katsuyama and Onose are approved.

Sagami Prison, Tokyo, Japan (As to Koichi, Katsuyama and Onose)

Reviewing Authority

18 April 1948

Subject to remarks, the proceedings, findings of guilty and sentences, and the action of the convening authority thereon, are approved. The record is, in conformity with Appendix B-14, Naval Courts and Boards, 1937, transmitted to the Judge Advocate General of the Navy to be revised and recorded.

0190

NAVY DEPARTMENT
Office of the Judge Advocate General

16 JUL 1948

From: The Judge Advocate General.
To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentences in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G. L. RUSSELL
Judge Advocate General of the Navy.

0191

SON REFERRAL

(7-8-48) Son

General Court Martial Case No. 100124

Name	Rank or Rating	Date Received
Hiroe KOICHI	then a captain, IJA	27 April 1948
Tetsuji KATSUYAMA,	then a first lieut., IJA	
Ichiro ONOSE	then a second lieut., IJA	
Kachiko TSUCHIYA	then a sergeant major, IJA	
(Tried in Joinder)		

Trial Held (Place)	Date of Trial
Guam, Marianas Islands	24 November 1947

OFFENSES

I. MURDER

Spec - 24 May 1948, Korer Island, killed by beheading with a sword, a named American aviator, a prisoner of war.

**II. VIOLATION OF THE LAW AND CUSTOMS OF WAR
(Keichi only)**

Spec 1 - Same time and place, failed to control persons under his command and allowed them to kill same named POW.

Spec 2 - Same time and place, failed to protect same named POW and allowed persons under his command to kill him.

Pleas

NS to all.

Findings

I, 6 (spec proved except as to accused Tsuchiya); II, 6 (spec proved in part)

Sentences

Keichi, Katsuyama, and Onose to be confined for a period of 25 years.

C. A. Action

20 March 1948

Subject to remarks, the proceedings are approved. The findings of guilty and sentences as to the accused Keichi, Katsuyama and Onose are approved.
Susana Prison, Tokyo, Japan (as to Keichi, Katsuyama and Onose)

Reviewing Authority

18 April 1948

Subject to remarks, the proceedings, findings of guilty and sentences, and the action of the convening authority thereon, are approved. The record is, in conformity with Appendix B-14, Naval Courts and Boards, 1937, transmitted to the Judge Advocate General of the Navy to be revised and recorded.

0192

NAVY DEPARTMENT
Office of the Judge Advocate General

16 JUL 1948

From: The Judge Advocate General,
To: The Chief of Naval Operations (Op-32)

The proceedings, findings and sentences in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G. L. RUSSELL
Judge Advocate General of the Navy.

0193

COM REFERRAL (V-2-48) was General Court Martial Case No. 10000

Name	Rank or Rating	Date Received
Hiroe KOICHI	then a captain, IJA	27 April 1948
Tetsuji KATSUYAMA,	then a first lieut., IJA	
Ichiyo ONOSE	then a second lieut., IJA	
Naohiko TSUCHIYA	then a sergeant major, IJA	
(Tried in joint)		

Trial Held (Place)	Date of Trial
Guam, Marianas Islands	24 November 1947

OFFENSES

I, MURDER

Spec - 24 May 1945, Korer Island, killed by beheading with a sword, a named American aviator, a prisoner of war.

II, VIOLATION OF THE LAW AND CUSTOMS OF WAR
(Koichi only)

Spec 1 - Same time and place, failed to control persons under his command and allowed them to kill some named POW.

Spec 2 - Same time and place, failed to protect some named POW and allowed persons under his command to kill him.

Pleas

NS to all.

Findings

I, 6 (spec proved except as to accused Tsuchiya); II, 6 (spec proved in part)

Sentences

Koichi, Katsuyama, and Onose to be confined for a period of 25 years.

C. A. Action

20 March 1948

Subject to remarks, the proceedings are approved. The findings of guilty and sentences as to the accused Koichi, Katsuyama and Onose are approved.

Guam Prison, Guam, Japan (as to Koichi, Katsuyama and Onose)

Reviewing Authority

18 April 1948

Subject to remarks, the proceedings, findings of guilty and sentences, and the action of the convening authority thereon, are approved. The record is, in conformity with Appendix D-14, Naval Courts and Boards, 1937, transmitted to the Judge Advocate General of the Navy to be revised and recorded.

0194

NAVY DEPARTMENT
Office of the Judge Advocate General

16 JUL 1946

From: The Judge Advocate General.
To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentences in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G. L. RUSSELL
Judge Advocate General of the Navy.

0195

SON REFERRAL (7-9-48) was General Court Martial Case No. 10000

Name	Rank or Rating	Date Received
Hiroo KOICHI	then a captain, IJA	27 April 1948
Tetsuji KATSUYAMA,	then a first lieut., IJA	
Ichiro ONOSE	then a second lieut., IJA	
Kachiko TSUCHIYA	then a sergeant major, IJA	
(Tried in joinder)		

Trial Held (Place)	Date of Trial
Guam, Marianas Islands	24 November 1947

OFFENSES

I. MURDER

Spec - 24 May 1945, Korer Island, killed by beheading with a sword, a named American aviator, a prisoner of war.

II. VIOLATION OF THE LAW AND CUSTOMS OF WAR

(Koichi only)

Spec 1 - Same time and place, failed to control persons under his command and allowed them to kill same named POW.

Spec 2 - Same time and place, failed to protect same named POW and allowed persons under his command to kill him.

Pleas

NS to all.

Findings

I, 0 (spec proved except as to accused Tsuchiya); II, 0 (spec proved in part)

Sentences

Koichi, Katsuyama, and Onose to be confined for a period of 25 years.

C. A. Action

20 March 1948

Subject to remarks, the proceedings are approved. The findings of guilty and sentences as to the accused Koichi, Katsuyama and Onose are approved.

Susuma Faison, Tokyo, Japan (As to Koichi, Katsuyama and Onose)

Reviewing Authority

18 April 1948

Subject to remarks, the proceedings, findings of guilty and sentences, and the action of the convening authority thereon, are approved. The record is, in conformity with Appendix B-14, Naval Courts and Boards, 1937, transmitted to the Judge Advocate General of the Navy to be revised and recorded.

0196

NAVY DEPARTMENT
Office of the Judge Advocate General

16 JUL 1948

From: The Judge Advocate General.
To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentences in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G. L. RUSSELL
Judge Advocate General of the Navy.

0197

COM REFERENCE (7-9-48) Gen General Court Martial Case No. 100104

Name	Rank or Rating	Date Received
Nirao KOICHI	then a captain, IJA	27 April 1948
Tetsuji KATSUYAMA,	then a first lieut., IJA	
Ichiro ONOSE	then a second lieut., IJA	
Kashiko TSUCHIYA	then a sergeant major, IJA	
(Tried in jointer)		

Trial Held (Place)	Date of Trial
Guam, Marianas Islands	24 November 1947

OFFENSES

I. MURDER

Spec - 24 May 1945, Koror Island, killed by beheading with a sword, a named American aviator, a prisoner of war.

**II. VIOLATION OF THE LAW AND CUSTOMS OF WAR
(Koichi only)**

Spec 1 - Same time and place, failed to control persons under his command and allowed them to kill some named POW.

Spec 2 - Same time and place, failed to protect some named POW and allowed persons under his command to kill him.

Pleas

Not to all.

Findings

I, G (spec proved except as to accused Tsuchiya); II, G (spec proved in part)

Sentences

Koichi, Katsuyama, and Onose to be confined for a period of 25 years.

C. A. Action

20 March 1948

Subject to remarks, the proceedings are approved. The findings of guilty and sentences as to the accused Koichi, Katsuyama and Onose are approved.

Sagami Prison, Tokyo, Japan (as to Koichi, Katsuyama and Onose).

Reviewing Authority

18 April 1948

Subject to remarks, the proceedings, findings of guilty and sentences, and the action of the convening authority thereon, are approved. The record is, in conformity with Appendix B-14, Naval Courts and Boards, 1937, transmitted to the Judge Advocate General of the Navy to be revised and recorded.

0198

NAVY DEPARTMENT
Office of the Judge Advocate General

18 JUL 1948

From: The Judge Advocate General.
To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentences in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G. L. RUSSELL
Judge Advocate General of the Navy.

15 March 1948-2000

GENERAL COURT MARTIAL DATA SHEET

NOICKI KATSUYAMA, ONASE TSUCHIWA IJA
(Last Name) (First Name) Middle Initial (Rating) (Classification)

Marshall Mil. Com mission
(Reviewing Officer)

Docket No. 62424

	Yes	No	Remarks
1. Was the court convened by proper authority?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
2. Are the precept and any modifications thereof in letter form certified as true copies by the judge advocate?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
3. If there have been modifications by despatch and no confirming letters attached to the record, are the despatches signed by the convening authority (not the judge advocate)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
4. Does the record show place and date the court met?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
5. Did the court have jurisdiction of the <u>person</u> of the accused?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
6. Did the court have jurisdiction of the <u>offenses</u> charged?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
7. Were the members and judge advocate shown to be present named in the precept or its modification?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. Were there five members or more present at every meeting?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Were any "members" present who were not legally assigned?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Were any members legally assigned <u>not</u> present or accounted for?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Was the accused asked whether he desired counsel?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
12. Was the accused extended the right of challenge as to members?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. Were the judge advocate, the members, the reporter and the interpreter sworn?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
14. Did the accused acknowledge receipt of a copy of the charges and specifications?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
15. Was the accused asked if he had any objection to the charges and specifications?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
16. Did the accused object to the charges and specifications or any of them?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Correctly answered
17. Does each specification state an offense?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
18. Does each specification support the charge under which laid?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
19. Is the Statute of Limitations involved?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accused thought so
20. Was the accused asked if he was ready for trial?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Review Panel No. II

0200

- Yes No Remarks
21. Does the record show that no witnesses not otherwise connected with the trial were present? X
 22. Was the accused properly arraigned? ✓
 23. Was the accused warned as to the effect of his pleas of guilty? N/A
 24. Was the accused's response, if any, recorded? ✓
 25. Were the witnesses, if any, sworn? ✓
 26. Was the accused afforded opportunity to make a statement? ✓
 27. Was the accused's statement consistent with his pleas? (applies only to pleas of "guilty") ✓
 28. Was the accused afforded opportunity to make an argument? ✓
 29. Are the findings properly recorded as prescribed by Naval Courts and Boards? ✓
 30. If the finding includes exceptions and substitutions, does the specification as amended support original or lesser included offense? ✓
 31. Is the evidence, if any, of previous convictions admissible? ✓
 32. Is the sentence legal, not excessive (NC&B, 457), and in proper form? ✓
 33. Was the sentence authenticated by the signatures of all members of the court and of the judge advocate? ✓
 34. Was the record authenticated by the signature of the president of the court and of the judge advocate? ✓
 35. Was clemency recommended by any members of the court? A
 36. Was the accused's receipt for a copy of the proceedings appended to the record? ✓
 37. Does the action of the convening authority?
 - (a) Have a date and signature? ✓
 - (b) Expressly approve the proceedings, findings and sentence? ✓
 - (c) Is the action otherwise legal? ✓
 38. Was there loss to the Government? X
 39. Is the general court martial card properly made out? ✓
 40. Additional Remarks.

6/1/40
(Date)

H. Marshall
(Signature of reviewing officer)

CS did not
concur in
aff - Reth.
Why are y
thru

0201

Cincpacflt File

26

P.M.

A17-10(1)

Serial 1917

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
HEADQUARTERS OF THE COMMANDER IN CHIEF



2307

FIRST ENDORSEMENT on
ComMarianas letter
FF12/P13-10(3) 02-
JDM-hn serial 3117
dtd. 22 March 1948.

23 APR 1948

From: Commander in Chief Pacific and U. S. Pacific Fleet.
To: Secretary of the Navy (Office of the Judge Advocate General).
Subject: KOICHI, Hiroe, former captain, IJA, KATSUYAMA, Tetsuji, former first lieutenant, IJA, and ONOSE, Ichiro, former second lieutenant, IJA - documents and petitions for clemency.
Reference: (a) Cincpacflt letter serial 1848 dated 18 April 1948.
1. Forwarded.
2. The record of proceedings of the trial by military commission in the case of KOICHI, Hiroe, former captain IJA, et al was forwarded by reference (a).


S. H. INGERSOLL
CHIEF OF STAFF

Copies to: (1st end. only)
ComMarianas
Cincpacflt War Crimes Officer, Guam



0202

STRI 131708

no OTHER SOURCE FOR
 CONFIDENTIAL
 -OO (S)OI-818/818
 818 1818-818-818
 .818 818 818 818

Subject: KOTONI, HIRSH, Forest Guardsman, LA, KATUNIAN, Tereza,
Forest Fire Lieutenant, LA, and WOODS, Edith, Forest
second lieutenant, LA - documents and pictures for
release.

Reference: (u) Cincinnati letter dated 15 April 1964.

3. The results of proceedings of the trial by military commission in the case of KULMER, whose former captain USA, et al was forwarded by reference (a).

(info. line tel) : not seized

Director, Federal Bureau of Investigation

RECEIVED
APR 1946
OFFICE OF JUDGE
MORTON G. DOWNS
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

0203

FF12/P13-10(3)
02-JDM-hn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: - 3117

CMA 60

22 MAR 1948

From: The Commander Marianas Area.
To: The Secretary of the Navy (JAG).
Via: Commander in Chief Pacific and U. S. Pacific Fleet.

Subject: KOICHI, Hiroe, former captain, IJA, KATSUYAMA, Tetsuji,
former first lieutenant, IJA, and ONOSE, Ichiro, former
second lieutenant, IJA - documents and petitions for
clemency.

Enclosure:

- (A) Petition from MATSUBASHI, Kyuzaemon, dated 1 December 1947, in behalf of KOICHI, Hirohide, in Japanese with English translation.
- (B) Petition from NATSUME, Koo and 74 others, undated, in behalf of KOICHI, Koei, in Japanese with English translation.
- (C) Petition from NISHIZAWA, Junsuke and 6 others, undated, in behalf of KOICHI, Koei, in Japanese with English translation.
- (D) Petition from KOICHI, Raiichi and 5 others, undated, in behalf of KOICHI, Hiroei, in Japanese with English translation.
- (E) Petition from SUZUKI, Tomo and 7 others, dated November 30, 1947, in behalf of KOICHI, Koei, in Japanese with English translation.
- (F) Petition from KOICHI, Michihiro dated 1 December 1947, in behalf of KOICHI, Koei, in Japanese with English translation.
- (G) Petition from KOICHI, Miyo (mother) and 5 others, dated November 30, 1947, in behalf of KOICHI, Koei, in Japanese with English translation.
- (H) Petition from SHIRO, Kuraishi, dated 30 November 1947, in behalf of KOICHI, Koei, in Japanese with English translation.
- (I) Petition from AOKI, Kanji dated 30 November 1947, in behalf of KOICHI, Koei, in Japanese with English translation.
- (J) Petition from KOICHI, Chosaku dated 30 November 1947, in behalf of KOICHI, Koei, in Japanese with English translation.
- (K) Petition from ASABA, Shuichiro and 1 other, dated 30 November 1947 in behalf of KOICHI, Koei, in Japanese with English translation.
- (L) Petition from KOICHI, Yoshihide and 2 others, dated 28 November 1947, in behalf of KOICHI, Hiroei, in Japanese with English translation.
- (M) Petition from AOKI, Yunosuke and 8 others, dated 30 November 1947, in behalf of KOICHI, Koei, in Japanese with English translation.
- (N) Petition from AOKI, Kojiro and 6 others, dated 30 November 1947, in behalf of KOICHI, Koei, in Japanese with English translation.

0204

FF12/P13-10(3)
02-JDM-hn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3117

22 MAR 1948

Subject: KOICHI, Hiroe, former captain, IJA, KATSUYAMA, Tetsuji,
former first lieutenant, IJA, and ONOSE, Ichiro, former
second lieutenant, IJA - documents and petitions for
clemency.

- (O) Petition from NOBUO, Miyamae, dated November, 1947, in behalf of KATSUYAMA, Tetsuji, in Japanese with English translation.
- (P) Petition from ITO, Toshio, dated 3 December 1947, in behalf of KATSUYAMA, Tetsuji, in Japanese with English translation.
- (Q) Petition from KOYAMA, Tatsuo, dated 1 December 1947, in behalf of KATSUYAMA, Tetsuji, in Japanese with English translation.
- (R) Petition from KATSUYAMA, Yoshinosuke, dated 1 December 1947, in behalf of KATSUYAMA, Tetsuji, in Japanese with English translation.
- (S) Petition from KATSUYAMA, Shinji, dated 1 December 1947, in behalf of KATSUYAMA, Tetsuji, in Japanese with English translation.
- (T) Petition from SHIMIZU, Gonsuke, dated 3 December 1947, in behalf of KATSUYAMA, Tetsuji, in Japanese with English translation.
- (U) Petition from SOSOGI, Seizo, dated 30 November 1947, in behalf of KATSUYAMA, Tetsuji, in Japanese with English translation.
- (V) Petition from TSUBOI, Yoshitomo, dated 3 December 1947, in behalf of KATSUYAMA, Tetsuji, in Japanese with English translation.
- (W) Petition from SHIGEKURA, Sangi, undated, in behalf of KATSUYAMA, Tetsuji, in Japanese with English translation.
- (X) Petition from TAKIZAWA, Genshin, dated 2 December 1947, in behalf of KATSUYAMA, Tetsuji, in Japanese with English translation.
- (Y) Petition from KAMIKAWI, Hiroshi, and 6 others, dated 3 December 1947, in behalf of KATSUYAMA, Tetsuji, in Japanese with English translation.
- (Z) Petition from YAMAGISHI, Gensaku, dated 3 December 1947, in behalf of KATSUYAMA, Tetsuji, in Japanese with English translation.
- (AA) Petition from KOIDE, Washiro, dated 3 December 1947, in behalf of KATSUYAMA, Tetsuji, in Japanese with English translation.
- (BB) Petition from EBIZAWA, Taminosuke, dated 2 December 1947 in behalf of ONOSE, Ichiro, in Japanese with English translation.

0205

FF12/P13-10(3)
02-JDM-hn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

22 MAR 1948

Serial: 3117

Subject: KOICHI, Hiroe, former captain, IJA, KATSUYAMA, Tetsuji, former first lieutenant, IJA, and ONOSE, Ichiro, former second lieutenant, IJA - documents and petitions for clemency.

- (CC) Petition from MOROI, Tokuji, dated 1 December 1947, in behalf of ONOSE, Ichiro, in Japanese with English translation.
- (DD) Petition from KUJIOKA, Yoshiga, dated 1 December 1947, in behalf of ONOSE, Ichiro, in Japanese with English translation.
- (EE) Petition from KATAGIRI, Risaburo, and 1 other, dated 1 December 1947, in behalf of ONOSE, Ichiro, in Japanese with English translation.
- (FF) Petition from GOTO, Bun, dated December 1947, in behalf of ONOSE, Ichiro, in Japanese with English translation.
- (GG) Petition from KOBAYASHI, Toji, dated 2 December 1947, in behalf of ONOSE, Ichiro, in Japanese with English translation.
- (HH) Petition from AOYAMA, Mitsugu, dated 1 December 1947, in behalf of ONOSE, Ichiro, in Japanese with English translation.
- (II) Petition from HIGURE, Iwagoro, dated 1 December 1947, in behalf of ONOSE, Ichiro, in Japanese with English translation.
- (JJ) Petition from GOTO, Saburo, dated 2 December 1947, in behalf of ONOSE, Ichiro, in Japanese with English translation.
- (KK) Petition from MIAYMOTO, Tadahiko, and one other, dated 2 December 1947, in behalf of ONOSE, Ichiro, in Japanese with English translation.
- (LL) Petition from ONO, Nobuyoshi, dated 2 December 1947, in behalf of ONOSE, Ichiro, in Japanese with English translation.
- (MM) Petition from DEGUCHI, Shin, dated 2 December 1947, in behalf of ONOSE, Ichiro, in Japanese with English translation.

1. A military commission convened by this command on Guam tried subject named Japanese for war crimes committed against American prisoners of war on Koror Island, Palau Islands. All were sentenced to twenty-five (25) years imprisonment. The record in this case has been forwarded to the Commander in Chief Pacific and United States Pacific Fleet, the reviewing authority, and will, in accordance with the provisions of Section D-14 of Naval Courts and Boards, be referred to the Secretary of the Navy.

2. Enclosures (A) through (MM) have been received by Commander Marianas subsequent to trial of the subject named war criminals and are forwarded for such action as may be considered appropriate.

0206

FF12/P13-10(3)
02-JDM-hr

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

22 MAR 1948

Serial: 3117

Subject: KOICHI, Hiroe, former captain, IJA, KATSUYAMA, Tetsuji,
former first lieutenant, IJA, and ONOSE, Ichiro, former
second lieutenant, IJA - documents and petitions for
clemency.

3. It is noted that translations of petitions in behalf of KOICHI,
Hiroe, (enclosures (A) through (N)), reflect variations in the spelling of
his first name. All of these petitions have been determined to relate to KOICHI,
Hiroe, former captain, IJA.

C. A. Pownall
C. A. POWNALL

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TESTIMONIAL

1 December 1947

Name : KOICHI Hirohide
Date of Birth : Dec. 10, 1920
Present Address: No. 243, Kurita, Nagano City, Nagano Pref.

The above-mentioned person is the eldest son of the late KOICHI Hiroshige and is gentle and sincere, possessing a strong sense of justice. His school records through elementary and middle schools were very good and his gentle nature won popularity among those who knew him. He was rather reticent and always got along nicely with other people. Being the first-born, he was well qualified to succeed to his father's estates. He was, in addition, dutiful to his parents and tender-hearted towards his brothers and sisters.

He always sided with the righteous and hated wrong. Being very sensitive, he was well up in art and enjoyed music from time to time. When he was graduated from middle school, the whole country happened to be in the midst of war. As his father was very fond of the military uniform, he followed his father's wishes and entered the military service. Gentle as he was, he lacked in controlling power, it is true. But he loved a quiet life. As a commander, he was very considerate of his subordinates. Towards his subordinates' wrongs he was lenient and sympathetic. For that reason he was loved by all.

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Subsequent to war's end he was chosen to be a civilian battalion commander for agricultural production. Having been demobilized, he became a peaceful farmer, and as an avocation he enjoyed art. He was happy to live together with his bereaved mother and young brothers and sisters. Until to-day he lived such a nappy and peaceful life, being loved by his superiors and neighbors. Such being the case, he was always respected though his society was limited. As he was an exemplary young man in and out of his home, no wrong could have been, perpetrated by him, we believe. He was too good for that.

MATSUBASHI Kyuzaemon,
Mayor of Nagano City.

0209

日二十日

山本 父

担任

身元調書

長野縣 長野市 大字 桑田 町 三番地

山 市 廣 野

大正九年二月十日生

右山市廣野は故廣野の長男にして性温順 樸朴にして身正義心の逞
い男子であり山は校中秀才より成績優良で温厚 人々の深く敬愛
する所でありました。 弟は人に遠く事なくかえり無口で一本分の
が同人の徳性でありました。 長男である故に両親の意を一つぐ
最も厳格で実践力に乏しくありません。 何事も事を構へることなくひたすら
両親のつがへ弟妹を愛しました。 正しくしる邪をこりながら人でありました
しかも情にまろい風流性のある人であり 繪画に特に時に優れ 常に絵を
画面に打ち出す時 音楽にも親しんでおりました。

中学校卒業になり 恰も軍國調をたなわける時にあり 社会の一般の人が
うであつた如く 同人も父親が非常な軍人の服従に憧憬したため父の意

長野市

これに従つて軍に入り 軍人として順守することになり 温厚なることになり 道
徳も性善にして威圧力弱小なることになり 不道であつたと思はれます。
常に勤め生活より 静的生活を憧れて居り 隊長としても思いやりの深い青
年であり 部下の過失に対しては諷刺よりも善言を以て一義として 一般の所もよく
先戦後援されて 農産大隊隊長にもなりました。 復員後は舊態を捨て 心
氣一新 家にもより 農耕のかかわる 多年の念願であつた 繪画に従事し 非常な
喜びを持つて再び専らしました。 山市同人は父なき妹の長男として 父母及び幼
弟妹をかねて共に静かにして 和やかな生活を送り 繪画を親しむ事になり
個性を生きて 今に至りまゝに従つて 近隣の人々よりも親しまれ 先輩よりも
親愛せられておりました。 右は同人の経歴と性質の過程であつますが 特に同人の
性質として 持てた 温順であつた 樸朴であつた 正義心の強い 青年であつた
事と人に対しては 温和で 交際が 乏しく 人との 間に 隔たれて 居り 事 遂に 控
へて 居る 兄として 又 友人に対しては 善言を 青年であつた 事と 遂に 如
何なる 事にして も 不正な 事は せず と思はれ 山市も 同人が 不正な 行為

(捺印)

02 10

と存するは余りにも過激なり、善なる性質であつたからであらう

昭和二十二年十二月一日

長野市長松橋久左二



長野市

P E T I T I O N

KOICHI Kōei, ex-Captain of the Army, was a very obedient youth and had a strong sense of righteousness as stated in the testimonial. So should he have acted against uprightness we hereby beg you that you would take the extenuating circumstances into consideration and treat him leniently.

NATSUME Kōo	: 1543, Nishitsuruga-cho, Nagano-shi.
TODOROKI Kin-emon	: 1893, Daizujima, Daizujima-mura, Kamiminochi-gun, Nagano-ken.
NOZAWA Tomoheru	: 2258, Hakoshimizu, Naganoshi.
IMAI Michihiro	: 747, Nanase-machi, Nagano-shi.
ISHIZAKA Naoji	: 94, Yoshidahigashi-machi, Nagano.
AOKI Sadao	: Inariyama-machi, Sarashina-gun.
MINEMURA Kesao	: 12, Minamimata, Nagano-shi.
TSUKADA Takanori	: 571, Shimohigana, Inasoto-mura, Sarashina-gun.
YAMASHITA Tsuyako	: 93, Sakurae-machi, Nagano-shi.
DOI Takeko	: 296, Tamachi, Nagano-shi.
URANO Yukio	: Nishi-tsuruga-machi, Nagano-shi.
YAMAZAKI Dai	: Matsuoka, Daizujima-mura, Kami- Minochi-gun.
NISHIZAWA Shigetoshi	: Akanuma, Naganuma-mura, Kami- Minochi-gun.
MINEKAWA Shokan	: Inaba, Nagano-shi.
UCHIYAMA Kazuko	: Minamimata, Nagano.

KOIKE Chieki	: Yokozawa-machi, Nagano-shi.
HIRATA Tsuyako	: 67, Shinsuwa-machi, Nagano-shi.
YAMANOI Tsune	: Minami-ishido-machi, Nagano-shi.
SATAKE Kojiro	: Minami-chitose-machi, "
SAITO Kaname	: Furuno, Nagano-shi.
UCHIDA Kurajirō	: 206, Kurita, Nagano-shi.
KOBAYASHI Kasezo	: 207, Miwada-machi, Nagano-shi.
KOIKE Atsumi	: 2144, Hakoshimizu, Nagano-shi.
MINEMURA Tomoe	: 447, Kurita, Nagano-shi.
NAKAMURA Eitarō	: 67, Tachi-machi, Nagano-shi.
KURITA Kunitarō	: Nakamura, Nagano-shi.
YONEYAMA Terasu	: Miwada-machi, Nagano-shi.
KURAIISHI Tsurujiro	: 20, Kawabata, Nagano-shi.
HARADA Sumi	: 430, Saijo, Asakawaemura, Kami-Minochi-gun.
OGAWA Sataro	: 39, Wakamatsu-cho, Nagano-shi.
WATANUKI Takeshi	: 539, Asahi-mura, Kami-minochi-gun.
TAKANO Takeshi	: do.
YUDA Tsuneo	: Nakamura, Nagano-shi.
MARUYAMA Bunzō	: Tomitske, Furuta-mura, Kami-minochi-gun.
SASAKI Mitsu	: Komachi, Nagano-shi.
MATSUZAKI Nario	: Kitaichi, Nagano-shi.
MAITA Tadashi	: Wakamatsu-cho, Nagano-shi.
SUGANO Haruo	: Yoko-machi, Nagano-shi.
TAKIZAWA Yasuo	: Kyowa-mura, Sarashina-gun.
SATO Ihachi	: 65, Kita-hon-cho, Nagano-shi.

TAKIZAWA Yoshio	: 113, Seigo-machi, Nagano-shi.
INOUE Yukiko	: 45, Asahi-machi, "
MAKINO Yoshie	: 138, Agata-machi, "
HARAYAMA Kazuko	: 180 Kami-chitose, Nagano-shi.
KOBAYASHI Yoshio	: Motozen-machi, "
TAKEDA Tatsuji	: 218, Shinsuwa-machi, "
IMAI Kiyoko	: 18, Kitsuneike, "
TAMANOI Shigeru	: Minamimata, "
TAKIMOTO Katsutoshi	: Minami-agata-machi, "
YOSHIMURA Shigeko	: Shinsuwa-machi, "
YAMADA Yuriko	: Shinden-machi, 2
NAKAZAWA Tsuya	: Miwada-machi, "
KOBAYASHI Haru	: Yokoyama-cho, "
NIIZAWA Yoshie	: Iwatsuki-mura, Suburb of Nagano-shi.
SAKAI Emiko	: Yokozawa-machi, Nagano-shi.
IDE Tamon	: Tsumashina-cho, "
KOBAYASHI Katsuo	: Majima-mura, Suburb of Nagano-shi.
SHIMA Yoshiji	: Tsumashina-cho, Nagano-shi.
NAKAMURA Teizo	: Furusato-mura, Suburb of Nagano-shi.
YAMASHITA Fusako	: Ainoki-higashi, Nagano-shi.
MIYAZAKI Kaya	: Ta-machi, Nagano-shi.
KURASHINA Yoshinobu	: Goka-mura, Hanishina-gun,
TAKATA Hisao	: Sakurae-machi, Nagano-shi.
MOMIYAMA Ai	: Yokozawa-machi, Nagano-shi.
KAYATSU Tamio	: Amori-mura, Kami-minochi-gun.
HIGUCHI Yoshio	: Minami-chitose-machi, Nagano-shi.

NOIKE Kazuko	: Kami-takata, Nagano-shi.
KOIDE Tamae	: Asehi-mura, Suburb of Nagano-shi.
MACHIDA Kimi	: Miwada-machi, Nagano-shi.
SHIODA Kaku	: Shinsuwa-machi, Nagano-shi.
YODA Tamiko	: Tsuruga Nenase, Nagano-shi.
MARUYAMA Chiyoko	: 196, Kurita, Nagano-shi.
IDA Sadao	: 27, Tsumashina, Nagano-shi.
KUROE Mie	: 27, Yoko-machi, Nagano-shi.

⑤

歎願書

元隆軍大尉小市廣榮氏。別れ身元調書の標
神希なる温順家。一丁目。正我心。強。昔年。下
り。一。た。此。氏。に。志。一。正。我。に。反。する。点。不。弗。度
所。主。一。た。ら。然。く。願。望。一。何。卒。却。意。大。有。る。弗。如。意
也。求。取。に。致。一。志。市
右歎願敬一志市

長崎市西鶴町一五三番地夏目孔夫

長崎縣大島村大字大島六番地妻倉名門

長崎市桐清水三三八番地野澤友春

長崎市七軒町七五

長崎縣佐賀郡石原庄佐伯

更級郡蒲原所青木貞雄

長野市南俣工峰村笹野雄

更級郡蒲原右
大字下米地三二塚田隆則

長野市橋本町九三山下八也子

長野市田町三九六工井あけ子

長野市西鶴町南那年久

長野縣大島村大字大島六番地妻倉名門

長野市南俣工峰村笹野雄

長野市南俣工峰村笹野雄

長野市南俣工峰村笹野雄

長野市横堤町

小池平秋

長野市妙徳町

平田安子

長野市南石原町

山崎栄

長野市高木町

佐々木清

長野市石北

斎藤新

長野市雲田二丁目

山田重二郎

長野市三輪町

小林明彦

長野市箱清水三丁目

小池淳美

長野市雲田四丁目

春井友也

長野市土町

栗田邦太郎

長野市土町

栗田邦太郎

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倉谷鶴子

長野市川端

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長野市旭町五井工平三

長野市勝公夏牧由牙枝

長野市二丁成六平山如子

長野市新保町二八小林義雄

長野市新保町二八武田達

長野市城池六今井清子

長野市南條乙野井友

長野市南条河松本勝造

長野市新保町吉村一子

長野市新田所山田百合子

長野市三郷町中俣

長野市横山小林晴

長野市外宮郷新保町仁

長野市横澤町田中如美子

長野市喜多井山多門

長野市外宮郷小林勝雄

長野市喜多井志摩喜司

長野市外宮郷中林悌三

長野市相馬系山下房子

長野市田所宮崎由美

埴科郡五加村倉科嘉

長野市穂枝町高田久雄

長野市穂澤山安

長野市安成町菅津氏健

長野市南蔵子 祖上慶吉
 長野市上高田 野池和子
 長野市外羽村 小島圭雄
 長野市上高田 田中 信
 長野市新保町 塩田 信
 長野市松本 依田 子
 長野市栗田 丸山 子
 長野市妻科 二七 猪田貞雄
 長野市瀬戸 三 黒川美多

P I T I T I O N

Mr. KOICHI, Koei is Mr. KOICHI, Hironaka's elder brother. It was with a great shock that we heard of his detention by the Allied Forces and moreover of his transfer to Guam, Oceania. As we are fully aware of his character and when we think of his family conditions and his future, we cannot but beg you to repatriate him as quickly as possible by presenting herewith a special petition.

Mr. Koei was born as the eldest son of the late Mr. Hirosuke. Since his childhood he has been gentle and faithful and he is a good youth, having a strong sense of justice. But in the midst of the trends of thought of militarism he was also enlisted in the army following the fashion of the time. In spite of his personal strong mind he could not defy the general ideology of the society at that time. He liked a quiet life and at home he was always interested in drawing pictures and drew much. After he was demobilized he has decided to be a portrait-drawer, devoted himself to the study of art for which he had a great longing for many years and thus he has made such progress in it as his pictures were accepted for the local exhibition. He portraited many pictures of officers and men of the Allied Forces and these pictures were welcomed by them very much. He has been endeavouring to make a great contribution toward a peaceful new Japan, doing what he can. He who has chosen the second course in art which

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has no limit and border in the world believed that there is no error in his course and we think that he was clever in his choice. As we love him deeply we had a great expectation for his existence. Now that he has left here we feel keenly a great loss to us all. We firmly believe that his existence as a man who seeks for peace and also as a humanitarian is not at all small. It is not only for the progress of his picture-drawing that we feel sorrow.

It is unclear whether Mr. Kōei has now been summoned as a witness or sent as a suspect of war crimes, but from his daily conducts we affirm that there was no injustice and falsehood in his conducts and we strongly believe it. If he is examined in connection with the responsibilities of a unit commander we especially beg you to deal leniently with matters concerning him taking the abovementioned circumstances into special account and in case he was summoned as a witness we hope that he will be sent back in the shortest possible time and we ardently by you to allow him to open a new phase.

Your obedient servant,

NISHIZAWA, Jinsuke,	No. 349Hakoshimizu-cho, Nagano-shi.
TAKAMURA, Takashi,	Inariyama-cho, Sarashina- gun, Nagano-ken.
ARAI, Junko,	315, Nakagosho, Nagano-shi
KONDO, Aiko,	Naka-machi, Yashiro-cho, Hanishina-gun, Nagano-ken.
YOSHIZAWA, Takeshige,	Amori-mura, Kamimizuuchi- gun, Nagano-ken.
KURAIISHI, Fumio,	Kawabata-takada, Nagano- shi.
MATSUMAE, Yoshio	Furusato-mura, Nagano-shi.

0221

長野市国府本町三丁目五番 西澤 寛
長野市国府本町三丁目五番 高木 孝
長野市国府本町三丁目五番 新井 昭子
長野市国府本町三丁目五番 辻 藤子
長野市国府本町三丁目五番 吉沢 成子
長野市国府本町三丁目五番 石川 文雄
長野市国府本町三丁目五番 石川 文雄

昭和二十二年十一月一日

P E T I T I O N

KOICHI Hiroei

The above-mentioned person was taken in custody as war criminal suspect but learning his home situation and thinking about his character, I beg you to grant special consideration so as to enable him to return home.

After his father's death, he lives with his mother, five brothers and sisters.

As he is the eldest son, he must make a plan for his brothers and sisters to earn a living in future.

As he is the mainstay of the home, the son's absence causes his mother sadness beyond our imagination. I know very well his character from his childhood.

He was kind to such domestic animals as cats and dogs; he was fond of reading and was especially good at drawing.

He is gentle by nature and was on intimate terms with people and well spoken of.

After repatriation, he devoted himself to painting in order to earn a living as a painter. He is expert in portrait painting and he had painted portraits of many Allied Forces Soldiers.

0224

He always said "I have found in art a most congenial occupation."

The defeat made him return to his native place and light of peace and love fill his home. Now, owing to his absence his family abandon themselves to grief.

I petition respectfully that the Allied Forces will grant Koichi, peace lover the releasement with mercy and leniency.

245 Kurita, Nagano-shi, Nagano-ken.

Koichi Raichi (Sealed)

Koichi Aki "

Koichi Mieko "

Koichi Yukio "

Koichi Ketsuei "

Koichi Mieko "

0225

数 張 書

小市 廣栄

右者戦争犯罪人として連合軍に拘引されましたが彼小市
広栄の家系を知り彼の人物を思ふとき特別の御計らいにより
歸還方法願ひする次第であります

彼の家庭は父が死没し母を五人の弟妹がおります
彼長男で五人の弟妹の今後の生活計画を立てやらねは
ならぬであります 彼は家庭の柱として彼を母後の母
の悲しみも非常なものであります

又彼の人物も私幼少頃より能く知て居ります大體其の勤
物を受護し讀書を好み特に書が上手でありました
性質が従順で人との交りも良く世間評判も良く私の
尊敬する人物でありました

日本 西 康

敗戦後歸還してからは画もこれ身を立てべく努力して居
ました尚像画は立派なもので連合軍軍人も通つてゐるも
あります 彼は口癖に僕は生來の職を得たと言つて居るも
敗戦は彼を故郷に迎へて平和と愛の光が彼の家庭にみま
りました

今は彼の家庭は全く家族は悲歎に暮して居ります

再心附願ひ致します

連合軍の慈悲と寛容によつて平和の生果を得た彼
小市広栄の歸還方法を願ひ致します

長野縣長野市栗田四丁目五番地

小市 頼一

小市 敏子

小市 美江子

小市 幸男

小市 廣栄

小市 美栄子

P E T I T I O N

Nov. 30, 1947.

For what reason KOICHI Kōei was recently retransferred to Guam has not been made known to us. However, it is our firm belief that he can never have acted against justice, being an affable man of integrity, righteous and sympathetic by nature. He is indeed an upright youth in character.

At home, he was loved by his family and made favourable impression on others. Although he had no wide circle of friends, he was quite affable in society.

It is our humble and ardent wish, not only for himself, but also for his family, that he should be sent home as quickly as possible.

It is our humble request that you would take into consideration the above statement, and deal leniently with the fault for which he should have been responsible.

We hereby present our petition,

Tomo Suzuki (signed)

Yoshizō Suzuki (")

Teruko Suzuki (")

Mitsuko Suzuki (")

Katsuhiko Maruyama (")

Sakae Sekurai (")

No. 146, Minami-katamachi, Naganoshi.

Shūichirō Kasuga (signed)

Fumiko Kasuga (")

Minami-ishidōmachi, Naganoshi.

0227

し
す

謝 願 書

此の度、父榮君、再度のガム移送について、その理由は不明、不解でありながら、同君の性質として、温厚、義理強い人であり、且、思ひやり、深い人でありながら、誤っても不正な処置は同君として取り得るもの、確信致しております。同君は、餘りにも若い青年であり、同君が家にあるのは、つねに家族及び人々から好ましく、社会人として、無文庫ながら、円満な人でありました。ここに、同君及び御家族の哀れ、と、速刻の遷送を切にお願いする次第であります。同君の責任として、過天ありなれば、右事情の上、寛容なる御処置を同君の爲とお願い致します。右致願致します。

昭和二十二年十一月三十日

長野縣長野市南縣町百四十六番地

鈴木 木 子 (印)

鈴木 真 浩 (印)

鈴木 照 子 (印)

鈴木 光 子 (印)

山 勝 子 (印)

井 十 可 (印)

長野市南縣町

春 修 一 郎 (印)

唐 美 子 (印)



P E T I T I O N

Name: KOICHI Kōei

The abovementioned person is gentle in nature and hard-working. After being demobilized the year before last, he supported, a fatherless family of 5 brothers and sisters. I am astonished that such a person has been arrested as a war crime suspect. Should he be so proved, I sincerely hope that he will be treated leniently. If suspicion were clarified, I sincerely wish that he will be granted to return home as quickly as possible.

Dec. 1, 1947

KOICHI Michinhiro

250 Kitanaka, Kurita-ku, Nagano
City, Nagano-ken.

0229

女史廣集

右、者ハ一昨午、復此以來又、大々、飛、つ、つ、
 今日、直、探、ケ、其、商、人、ハ、弟、妹、ハ、世、話、モ、ト、シ、其、出、
 ハ、美、極、極、陰、ニ、テ、勤、勤、飛、テ、リ、拘、ル、人、物、カ、就、記、
 者、就、者、ト、テ、拘、リ、サ、レ、タ、ル、ト、一、事、ヲ、聞、キ、驚、キ、居、ル、
 其、方、力、カ、一、ニ、定、カ、ア、リ、テ、之、ヲ、見、ル、機、ハ、何、カ、所、實、大、
 ト、其、處、思、フ、然、レ、テ、不、融、ニ、中、シ、ケ、ル、ニ、
 不、容、疑、カ、情、レ、テ、之、ヲ、見、ル、機、ハ、一、日、元、早、ク、帝、國、を、来、
 得、ル、孫、即、配、處、相、作、テ、度、度、ハ、不、融、ニ、致、ス、次、方、テ、之、

光緒二十二年十一月一日

长野縣長野市栗園北平三丁目

此市並張

0230

P E T I T I O N

It is a course of sorrow for familymembers, relatives and friends that Kōei is said to have been removed to Guam Island after detention at Sugamo.

As the eldest son of the late Hirotsuke, he had been supporting his mother and younger brothers and sisters. We humbly ask for his returning home as soon as possible. Why he had been transferred to Guam is still unknown; It is quite unexpected that he should commit illegal acts, for he is a man of mild, right and chaste character. After he had been demobilized, he returned home, and loved and looked after his younger brothers and sisters, as the head of his family. Further, he was also popular among the neighbours. He began his study of paintings, his long-cherished desire. He was absorbed in it, as there came many orders from Allied military personnel. After his leaving here for Sugamo, we have been in great difficulties on account of a mountain of orders.

Therefore, His removal to Guam Island have caused us to be fallen into great distress, economically as well as circumstancedly, since he was the prop and stay of our family--good head-man, good son and good brother. Our worry are doubled, when we think about his future.

We hereby respectfully beg for his returning home as early as possible.

Even if Kōei committed a crime unfortunately, we humbly request you to show clemency to Kōei in consideration of the

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above-mentioned circumstances.

Nov. 30, 1947.

KOICHI	Miyo, Mother.
"	Etsuko, Younger Sister.
"	HiHiromi, Younger Brother.
"	Hironaka, "
"	Tateko, Younger sister.
"	Hiroaki, Younger Brother.

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瓜茶集

広学が、移送については全く不明であり、それが温度に於て正義
心の強い潔癖性にして勿論不正な行為を「たとへば世間」の思ひ
も「よき事」であり、それが復讐後家に帰り、父と母と「よき父」として
家長として弟妹を愛し、立派の風評も「よき」他、爾年、念取であ
り、また繪画に従事し、進言軍將兵の論文も訳し、あつて
毎日之に専心し、をおり、一たび広学出版後は進言軍將兵
希望作品の命、山積、を「誠」に困り、父方であり、す
前記の如く、父は家長として「よき父」として「よき父」として

家におりてたれば、それの度、移居は、家の支柱を決た
ひ交際の、に経済的に非常な驚動を覚悟をうけたと
共に、恥辱の前途を思ひ、更に「肩の痛せずにはおれず、
一日も早く帰還致し、まて身方の、借金の仕事に従事し、
随、諸軍將兵の御期待に恥づべく、家族一同、親戚一同、
交友一同切に、く、恥辱儀の一日も速に帰還を祈ひ

尚石学集に不寒、良がたりしを知らば在状々酌量、
。二何卒寛大なる処置を切に／＼お願ひし事案であり。言
石教範所。言。

昭和三年七月三日

疎悅子

卷之六

第 五 卷

珠 子 圓

明衣

P E T I T I O N

30 Nov. 1947

We are greatly surprised at the information that Mr. Kōei Koichi was taken to Sugamo Detention House at the end of August and was sent to Guam the other day.

Although there is no knowledge whether he was ordered to appear in the Military Tribunal as a War crime suspect or as a witness, yet we who know him very well are perfectly confident that he has taken no acts which would constitute any crime.

We have the honor of informing you that he has been a humanitarian of a strong sense of justice and that he has always been a mild-mannered and good-natured young man.

In his family, there are in addition to himself only his mother, his younger brother and sister. It is considered that his family has been placed in a very great distress.

We, for that reason, are in special hopes that he will be allowed to return home in the shortest possible time in order that the anxiety of himself as well as of all his family members may be relieved and also in the hope that his lofty object for the accomplishments in his fine arts will surely be attained.

Moreover, when Mr. Koichi Kōei is put on trial as a responsible person in the actual field, we have the honor to entreat your Excellency to make your most generous efforts with your perfect understanding about the above-stated facts so as to enable him to come back to his home at the earliest possible moment.

I have the honor to be,
sir,

0234

Your obedient servant,

SHIRO KURATSHI

Representative for all
other petitioners of
Awata Ward, Nagano Pref.

0235

P E T I T I O N

Nov. 30, 1947

KOICHI Kōei demobilized home in Jan. last year. He again transferred to Guam island in August this year. We cannot know of the detailed circumstances. He has been working at home for his family as eldest son of Mr. Hirotsuke who are already dead.

We hope he shall return soon, as his family has lost the prop and stay and is sorrowful at his absence.

We, as intimate acquaintances of Kōei, hope his rapid re-
turning heartily.

2513, Inoue-mura, Kamitakai-gun,
Nagano Pref.

Aoki Kanji

" Kikui

" Kesaji

" Shizuko

" Shigeko

" Keiko

Fujisawa Ryojūburo

0237

謝願書

小市、無業君昨年一月復員してより、今月
八月に至り再びの島へ移り送られた由詳細
についてはすべて不明であるが故に、貴助氏の長
男として、家系を承る働きに励み、一日の
家族一同の幸福を憂へ、日夜の痛みの思ひも
早く帰還を祈願する次第であり、
貴に、貴家系を承ると思ふ親己として、新居の建て直し
休む暇も待たずに、対して、共に同じに堪へ、速
刻に帰還を祈願致します。

右謝願書にて了す

昭和二十一年十一月三十日

長野県上高井郡井上村三三番地

青木 幸之助

青木 夢子

青木 静子

青木 茂子

青木 幸子

藤澤 亮二

P E T I T I O N

30 Nov. 1947

I am much surprised that Kōei Koichi should have been detained in Sugamo Detention House as a suspected war-criminal and then sent to Guam. Since he was demobilized, he had been looking after his younger brothers and sisters, taking the place of the dead father. It may be easily imagined how they are heart-broken at their losing him, the nucleus of the family, again. He is loved by every pf his neighbors since childhood, and gentle and dainty in character. Especially he is so good at painting that we may well call him a genius. And many orders were given to him by the Allied Forces and people held him in high esteem. Even at present there are many orders given by them, but inconvenience is felt, I hear, in executing such orders on account of his absence.

Therefore, whoever is acquainted with him can never imagine from his character that he was sent there because of his wrong deed. But, if it is true that he had some failure, I entreat you to treat him with your generous heart for the sake of him and of his family.

I eagerly wish that the day of his coming back and of his becoming serviceable to the Allied Forces come in an earliest future, and at the same time I earnestly request you to get rid of his family's regret.

CHosaku Koichi

Aomori Village, Kami-Mizuuchi
District, Nagano Prefecture.

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歎願書

小市元保君は今夜戦犯。容疑者として巣鴨拘置所へ入所。更にケル島へ送られし事を知り、非常に驚いておる次第です。同君は復讐後父亡き後を継いで弟妹を養へておりました。同君不在となりしで再び支柱を失ない一家。歎きは思ふにも限りあります。同君は小生頃より血闘の人となし、おとなしく淑静な性格をもちておりました。殊に同君は繪圖、天才とも云ふべく上手で、詮註陣より、詮文が多数にあり、非常に重寶がられておりました。今猶詮文が少量にあるが同君不在。為不便を感じておると。事です。故に同君を知る者は、その性格から不正な行為のために送られたと決して思はれませんが、もし思案がありしとせば同君の家族、今迄平寛大な御恩置をお受け致しす。同君、一日も早く帰宅して再び詮註陣、御役に入一日でもうお祈りすると共に家族の悲歎を一日も早く取りのぞかれ、暢やかに歎願致しす。

昭和三年十二月三十日

長野縣上野郡安井里村差出

小市長佐

P E T I T I O N

30 Nov. 1947

Mr. KOICHI Kōei was demobilized in January, last year and called back again to Guam, South Islands. Details of the fact are not known; but as he is the head of the family, supporting his mother and brothers and sisters, so his absence from his house has caused a not inconsiderable inconvenience. Mr. KOICHI is mild in nature and deeply sympathetic with others. Moreover, he is a man of integrity. So that, it can not be thought that he has been sent for on account of his having been unjust in his own conduct; but, if perchance there was any fault that was to be responsible to him, I beg to entreat you to treat him with utmost generosity and call him back home not only for his own sake but also for his family as soon as possible.

Hoping that you will see your way to grant my request, I hereby present this petition.

ASABA Shuichiro

ASABA Noboru

Hirashiba, Amori-mura, Kami-mizuuchi-gun,
Nagano-ken.

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數 願 書

今般、少市廣榮君昨年百機買し、今
再び南洋諸島名公送られ、事は事
実の詳細を以て不明であります。同君は
家となりて家長として母親及び弟妹を扶
養してあり、同君の不在に當りては非
常に不便を感じておられ、おそれ、
広榮君の性質を以て、思ひやうが深
い上、清廉潔白であり、その自己の行爲
が不正のだから送られ、と思はれる。せうが
もし同君の責任に歸する過失があり、た
ゞらば何卒寛大なら御處置をお願ひする。
もし同君のたゞ家族のため、又或は切に切に広
榮君の一日も早く送返るをお願ひする。おそれ、

三

石數願致。一〇〇。

昭和三十一年十一月三十日

長野縣上木内郡安里村平林

朝 場 周二郎

朝 場 登

P E T I T I O N

28 November 1947

We have received an information that KOICHI Hiroei, having been repatriated in January 1946, was sent again to Guam Island in August 1946, though we have not been informed of the reason for that. He is the late Mr. KOICHI Hirosuke's eldest son and his successor. He is gentle, affable and benevolent to his friends. His family are very anxious about his fate and are praying to God for his speediest possible return.

We hereby entreat you to grant our sincere wishes for the above-mentioned person's earliest possible repatriation.

KOICHI Yosninide

KOICHI Suzu-ko

KOICHI Masahide

No. 258, Kurita-kitanaka, Nagano-shi

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敬 啓 書

小市廣榮君昨年二月復員。してより今年八月に至り、再び
グアム島へ移送されよるに由、詳細としてはすべて不明で
ありやうが、家庭にあって長男として、政廣助氏の後を
継ぐべき同君として、家族一同、非常な悲痛をおもひ、一日に
はまた同君の帰還をお願ひする次第であります。
同君は良人として温良、在家人として人づき合ひよく、思いや
りの深い人であります。異郷に在る榮君を知る知己として、
家族の百様の侍従に對しなごころ、これに切に同君の速刻の
帰還をお願ひ致しやう。

右敬 啓 致しやう。

昭和二十二年十月二十八日

長野市栗田北中三平(遺)

小市 出 英

小市 すす子

小市 正 英

P E T I T I O N

30 Nov. 1947

Sir:

I have the honor of submitting to you the petition, signed by myself and six other persons.

I have heard that Koei Koichi was sent to Suam Island. When He returned home after the defeat of our country, his father had already died.

He is the head of his family which consists of his mother, many of his younger brothers and sisters, and was securing the living of his family. Quite contrary to my expectation, he was sent to that island, and has been placed into a very difficult distress.

Koei is one of our relatives, and we have a firm belief that he is an affable man of great integrity.

I hereby entreat you together with other persons who have signed on this paper that you will deal with him special lenience for the sake of himself and also for all his family members who have lost his father so as to enable him to return to his home in the shortest possible time.

I have the honor to be,

sir,

Your obedient servant,

Kojiro Aoki,

his uncle, No.2,750, Inoue,
Inoue-mura, Kami-takai-gun,
Nagano Prefecture.

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Tsune Aoki,
Ichiro Aoki,
Kazuyo Aoki,
Sakae Aoki,
Hisako Aoki,
Sadako Aoki.

0246

歎願書

此の度、小市石栄君が公の身で帰還しなされた
との事。負戦後帰還と成りし時は、既に父が
死せしと居りし。

母と多数の事柄の家長として能く一家の生活
を安定せし居りし所計、今も帰還と成りし小市家
としては、実に困難な事柄である。

石栄君は我々の親族として有るが、温厚篤実
の者と確信せし居りし。何卒同君の身、又父を
後の一家の爲に寛大な言動を以て、日も早く
帰還相成るを望む。

左歎願者 幸

昭和二十二年十二月三十日

長野縣上高井郡井上村大字井上

二千七百三十番地

伯父

青木幸治郎

青木 一 女

青木 一 郎

青木 一 子

青木 久 子

青木 定 子

P E T I T I O N

We are in late autumn, and are busily engaged in the preparation for tidying over the year-end. It is indeed heart-breaking to behold the grief and lamentation of the parents, brothers and sisters of KOICHI Kōei who was sent back to a certain island in the South in less than ten days after his demobilization.

Kōei was gentle and righteous from his childhood, and we are entirely confident of his good behavior during his stay abroad. What happened to him recently may be beyond our conjecture. He is the eldest son, and his parents, brothers and sisters are eagerly awaiting his early release and return. We are his near relatives, and considering his family affairs, it is our ardent wish that he should be released home. He is believed to have obediently submitted to the order of detention.

This is the earnest appeal of his near relatives that he would be released to his native place as soon as possible after the conclusion of his examination.

Nov. 30, 1947.

His uncle Yunosuke Aoki (signed)

Gennosuke Aoki(")

Kiyoko Aoki ((")

Masami Aoki (")

Kaneo Aoki (")

Kesakichi Aoki(")

Kakutaro Maruyama (signed)

Mitsu Maruyama (")

Tomiko Maru yama (")

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0249

CONCERNING THE CHARACTER OF KATSUYAMA TETSUJI, EX-1LT.

1. His native place and its surroundings:

KATSUYAMA Tetsuji was born as the second son of KATSUYAMA Kōtarō, No. 2,016, Takai-mura, Kamitakai-gun, Nagano-ken on 7 February 1915.

His father, Kōtarō (dead) was a teacher of a primary school and his mother, Matsue, engaged in farming enough to get plenty of food while keeping house.

He had two brother Kisuke (elder), Jisuke (younger) and two sisters Masa (elder), Yukie (younger), but the elder brother and the younger sister was dead, the elder sister was married to other house and the younger brother is now detained in Soviet area.

Tetsuji's home where he was brought up from infancy to youth was peaceful and exceptionally well-off as a farm-house.

2. His character and his deeds.

As his father had had interest in study of vegetation, he also had much of the same taste since his completion of primary school course till he become a two year class student of a middle school.

Besides, he has various kinds of taste and in his middle school life, he was engrossed in sports and music. He was very courteous and kind to his schoolmates and his character was generally quiet and steady and not gay in the least.

On graduating he wanted to enter a normal school but owing to his weakness in mathematics he could not accomplish his purpose.

After completing the middle school course he served in the Takai-mura Industrial Guild as the financial clerk till he entered barracks.

0250

He then showed an excellent ability in the above business, being kind, courteous and bright to everybody, upon whom he made very favorable impression.

During the above-stated period of service, he studied 'No' songs and flower-arrangement as his taste, which he was very much eager to learn, as they were likely to fit his character. Generally speaking, he was obedient to the Head and others in the office and kind to his friends; so he got the best reputation.

3. Relation between him and me:

I was born in the same village as he was junior by and three years to him, so I went along with ^{him} in the course of school life three years longer in the same primary school and middle school, and even in the office of the Industrial Guild he and I served together for a year and a half in the same section, — strangely an intimate relation was there between us.

He was one of my friends from childhood, a senior in school-life, a colleague in the office and a companion in music, sports, 'No' songs and flower-arrangement as well, so I believe. I am the first man to understand him.

He was almost wanting in originality and dogmatism, so he always acted upon senior's instruction or after having asked for colleague's criticism, and in doing things he was so straightward as to be called a simpleton.

He also often talked about poetry and literature with me and it seemed that he had a pretty good knowledge thereof.

Generally speaking, the strongest impression which I received from

him was that he was a person faithful to his friends and kind to all.

I made the above description in such a mental condition as if I were to swear by god. Ten years have passed since I parted with him, for he was serving in the army and in these ten years what changes have happened in him?; so I cannot help being anxious about it.

Was his tender and simple mind spoiled in the furious battle-field? Or did the strict orders of his senior officers misuse his virtue of obedience?

I feel as if my heart were broken breaking at the sight of his mother and this wife, who are leading the god-fearing life and praying for him in their own native place.

November, 1947

Nobuo Miyamae (Sealed)

Takai-mura, Kamitakai-gun, Nagano-ken.

I hereby certify that the above is true in every particular.

3 December, 1947.

Naoshichi Nakamura (Sealed)

Head of Takai Village Office, Kamitakai-gun, Nagano-ken.

0252

二 生 活

一 幼 少 時 代

(自 傳)

元陸軍中尉勝山哲爾の人物について。

一 出生の地とその環境

勝山哲爾は長野縣上高井郡高井村ニ。一不審地勝山好太郎の二男として文正四年二月七日出生した。父好太郎は(現在死)小学校訓導を勤め、母松枝は家事のかたから一家の食糧には充分な程の田畑を耕して居た。

兄弟は元信祐、姉まさ、弟清祐、妹幸枝との五人であつたが現在兄信祐と妹の幸枝は死没し、姉のまさは他家へ嫁ぎ、弟の清祐は少連に居る。

哲爾がその幼年時代と青年時代の初期を過した一家は平和な

といふ農村として口外に豊裕生活を送る。

二 性 格 と 行 動

哲爾の父好太郎氏が植物の研究を趣味として居たので、その影響を受けたものであらう。哲爾は小学校卒業の頃から中學三年頃まで植物について非常な興味を持って居た。又哲爾は趣味の多い男で、中學時代に音楽やスポーツにも相當の熱意を示した。學友との交際も極めて丁寧で情誼に厚かつた。しかし集會してみても、彼の中學時代は地味でつまらないものであつて決して派手ではなかつた。

卒業に際し、師範学校入学を希望したものであるが、教習が
不得手と、遂に入学出来なかった。

中学卒業後、軍隊に入隊を命ぜられるまで、高井村産業組合
の金庫係として勤務した。事務の成績は優秀であった。懇切で
寧ろ、しがらみ明らかで、彼に接するすべての者は彼に付く、非常に
好ましい印象を持つた。

此の産業組合勤務中、余暇に、謡曲と華道とを趣味として学んだ。
この謡曲と華道は彼の性格に適應したのであらう。熱心である。

除合せざるに産業組合勤務中の彼は従順で、組合長の洗練

よく服し、朋輩との交際も円満で、その世評は極めて良好
である。

三 彼と私

私は哲爾と同じ村に生れ、年齢は三オク、学校も三年後で
同じ小学校から同じ中学校に学び、同じ産業組合の同じ課で一年が月
勤務した。全く不思議な程。彼と私の関係である。

彼は私の竹馬の友であり、学校の先輩であり、職場の同僚であり、
音楽やスボ、少や、謡曲、華道のグループである。だから私は誰
よりも彼を知り居るつもりである。

哲爾には 強創的なる一や、強断を始むるがう。この上司
指示を受けるが、乃其は同僚の批判を求め、後行動するよう
思てあつた。そしてその行動にあたりは、高心直と言つて、程
率直であつた。

又、彼はよく私に詩と文學を語つた。その方面の知識も多量にある
ようである。

總じて、友情に厚く、親戚な思ひとしての印象が、私の彼に対する
印象のすべてである。

以上私は神に誓ふような心境で、この手記を書き終へた。

彼と別れて、すでに十年になる。それは彼が軍隊に入隊したから
に。此の十年の間に彼はどう変化してゐたか。私はそれについて
知らぬ。

彼が、やましく、すなはち心は、激しい戦争と革命を好む
に思へる。それと、上司のきびしい命令が彼の従順の美徳
を重用したものであつたか。私は彼のために神に祈るやうに生活をし
て居る故郷の母や妻、姿を見るとき、眞に断腸の思いがする。

昭和三年十二月

長野縣上高井郡高井村

宮前信男



右の通に相違ないことを證明する

昭和三十一年十一月三日

長野県上野原町高井村長 村直也



CERTIFICATION FOR PERSONAL CHARACTER

Name: KATSUYAMA Tetsuji.

Rank: former 1st Lieutenant.

Address: No. 2,016 Takai, Takai-mura, Kami-takai-gun, Nagano Pref.

As he was sincere, mild-natured, and kind to his friends. He, in addition, was always loved and respected by his classmates when he was in the middle school. He was of such a good personality that he loved peace and culture even after his graduation from that school. There was no one who spoke ill of him. Every one who knew him praised him to the skies saying that he was a good social being who loves peace, and has a strong sense of responsibility. I also firmly believe it from the bottom of my heart.

I certify that the above-mentioned statement is true in every point.

ITO Toshio,
a friend of KATSUYAMA Tetsuji,
No. 240 Suzaka, Suzaka-cho,
Kamitakai-gun, Nagano-ken.

I hereby certify that the above-mentioned statement is correct in every particular.

NAKAMURA Naoshichi,
Village Headman of Taki-mura,
Kamitakai-gun, Nagano-ken.

December 3, 1947.

0257

人格証明書

長野県上高井郡高井村大字高井六二番地

元陸軍中尉 勝山 哲爾

真面目にして温順で友達に親切で中学校在学中はいつも級中の友に敬愛されておりました。卒業後も平和と文化を愛する善良な人物でした。彼を悪く言う人はない。彼を知る人は誰でも、彼を

平和を愛し、自己の責任を重んじるよき社会人だといふ賞讃する私心も底からそう信ずる。

右相違ない事と證明する

長野県上高井郡須坂町大字須坂二四

勝山 哲爾の友人

右 伊藤 敏雄

右通り相違ないことを證明する

長野県上高井郡高井村大字高井六二番地



CERTIFICATION OF PERSONAL CHARACTER

1 Dec. 1947

Name: KATSUYAMA Tetsuji, ex-Army Lt.

Domicile: No. 2,016, Takai, Takai-mura, Kamitakai-gun,
Nagano Pref.

The above-mentioned person was serious and diligent in his studies, making good records at the primary and middle schools; it was quite natural, therefore, that he then enjoyed the confidence of his fellow-students. While serving as a clerk in the office of our Village Industrial Association, he was devoted to his duties and won the confidence of the villagers, and great hopes had been entertained of him as a promising youth.

I hereby certify that the above statement is quite correct.

KATSUYAMA Yoshinosuke

One of Relative of KATSUYAMA Tetsuji,

No. 222, Takai-mura, Kamitakai-gun, Nagano Pref.

I hereby certify that the above is true
and correct.

3 Dec. 1947

NAKAMURA Naoshichi,

Headman of Takai-mura,
Kamitakai-gun, Nagano Pref.

0259

人格證明書

長野縣上野原町長官署第二二二電

元陸軍中尉 膳山登南

石、小、中、校中、方、校、長、中、二、性、質、良、直、目、三、
情、動、成、績、優、良、二、三、以、同、係、間、二、使、用、了、
尚、有、有、産、業、組、合、二、事、務、交、二、三、紀、職、中、二、極、二、
職、務、二、熱、心、二、三、村、民、二、信、頼、二、得、有、為、二、有、功、
二、三、將、来、二、期、待、二、三、二、三、

名 膳 山 登 南

昭和四年九月二十日

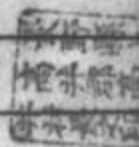
膳山登南、親戚

長野縣上野原町長官署第二二二電

膳山登之邪

右の通り、相違ない、と、証明する。
昭和三年二月三日

長野縣上野原町長官署第二二二電



CERTIFICATION OF PERSONAL CHARACTER

Name: KATSUYAMA Tetsuji

Rank: Ex-1st Lieutenant

Address: 2,016, Oaza-Takai, Takai-mura, Takai-gun, Nagano-ken.

About idea, character and good deed.

This is to certify that the abovementioned person, having been influenced by his father, an educator who rendered conscientious services for long time and who concentrated his mind upon his children's discipline day and night, Katsuyama obtained gratifying excellent results in studies and sports which he was in the elementary school and middle school.

His principle was to be dutiful to his parents, to love his country fervently and to lead his classmates by setting an example.

Entering military service, he was obedient to the Imperial Rescript and became the pattern of soldiery and was awarded with unprecedented promotion.

1. Since his childhood he had been gentle, and virtuous, having a knowledge of human nature, he loved others and won respect of his classmates. As he grew up, he assumed leadership of village folk as a young leader of the village.
2. He obtained ^{ex}cellent records in school, and as he got to the upper grade, he was awarded with honor prize, and every year he took charge of the class, as monitor.

0261

Dec. 1, 1947

KOYAMA Tatsuo

Katsuyama Tetsuji's Elementary School
Teacher,
1173, Oaza-Shizuma, Akitsu-mura,
Shimomizuuchi-gun, Nagano-ken.

I certify that the abovementioned statement is true and correct
to the best of knowledge and belief.

Dec. 3, 1947

NAKAMURA Naoshichi

Village master of Takai-mura, Kami-
takai-gun, Nagano-ken.

0262

人格証明書

長野県上高井郡高井村大字番地二・六番地

元陸軍中尉 勝山哲爾

思想、品性及善行について

一、私事勤業、教育者たる父の訓育は日夜その教養に専念
され、小學校及中學校在學中には學業に意欲に優秀な成績
を挙げ、思想はよく親に孝行し、國を愛する情切なるものあり
日頃の徳行は学友に譽れ、その善行は親に孝行するものあり
一度軍務に服し、やがて新義隊に奉職し、身を以て軍人の義務を
破格の早升進を見せしめられた。

一、幼少の頃より強固にして品行方正、人情を和し、親切に人を愛するは
學友より尊敬され、長らく村中要青年として村民に譽れ
その功多しとす

一、學業成績優秀にして、進級に際しては優等賞を授けられ
學友に於ては年々級長に任ぜられ、その功多しとす。

右 相違ないことを證明する

昭和二十三年十二月一日

長野県上高井郡高井村大字番地二・六番地

勝山哲爾、小學校長兼校長

右

小

山

辰

雄

印

右通り相違ないことを證明する

昭和二十三年十二月一日

長野県上高井郡高井村大字番地二・六番地

長野県上
高井郡高
井村長印

CERTIFICATION OF PERSONAL CHARACTER

1, Dec. 1947

Name: KATSUYAMA Tetsuji, ex-Army 1st Lt.

Presect Address: No. 2,016, Oaza Takai, Takai-mura, Kami-takai-gun, Nagano Pref.

This is to certify that the above mentioned person was employed as a clerk by Credit Section, Industry Guild of Takai Village after he was graduated from the Susaka Middle School, established by Kami-Takai-gun. After serving at the Section referred to for three years he was called up for military service, and during his service he was promoted to N.C.O.. He passed the examination for Military Academy and after being graduated from the above Academy he went to front.

Being sincere in his disposition and faithful in his duty, he won the confidence of his colleagues and villagers. He, also, applied himself close to his duties while he served in the Credit Section, so he was looked upon as a promising youth.

KATSUYAMA Shinji, relative of Katsuyama Tetsuji.

No. 1998, Oaza Takai, Takai-mura, Kami-Takai-gun, Nagano Pref.

This is to certify that the above statement is true and correct to the best of my knowledge and belief.

3, Dec. 1947

NAKAMURA, Naoshichi, Head of Takai-mura, Kami-Takai-gun, Nagano Pref.

0264

人格証明書

長野縣上高井郡高井村字高井二・一六番地

元陸軍中尉 勝山 哲爾

右、本村皇乃井尋常小学校卒業、卒業後、即ち立役中学校に入
學、同校を卒業、その後、高井村産業組合信用部事務員として就任
在職三年、後徴兵適齢に達し検査合格、合入官服隊中士に果進
後、擢せられ士官学校に入學し士官として出陣したるなり
本人、資性篤實、體直、職務に格勤、到處成績佳良なり、
又、同僚、郷党間信用あり、其産業組合事務員として就任したる
又、極々熱心、職務に勤情、有為、青年として、愈々郷党の信
頼を博し、益々將來の希望せらるるなり

右証明候也

昭和六年拾月拾日

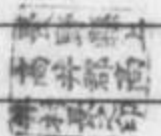
勝山哲爾親戚

長野縣上高井郡高井村字高井二・一六番地

勝山 信司

右、通、相違なきことを証明する
昭和六年十一月三日

長野縣上高井郡高井村字高井二・一六番地



CERTIFICATION OF PERSONAL CHARACTER

3 Dec. 1947

Name: KATSUYAMA Tetsuji

Rank: ex-Army Lt.

Domicile: No. 2, 016, Oaza Takai, Takai-mura, Takai-gun,
Nagano Pref.

This is to certify that the above-mentioned person was
good in behaviour, gentle, benevolent, amiable and was beloved
by his classmates at middle school.

SHIMIZU Gonsuke, a friend of KATSUYAMA,
Kitahara-machi, Susaka-machi,
Kami-Takai-gun, Nagano Pref.

This is to certify that the above statement is true
and correct to the best of my knowledge and belief.

NAKAMURA Naoshichi,
The Head of Takai-mura,
Takai-gun, Nagano Pref.

0266

人格証明書

(52)

長野県上高井郡高井村大字高井二〇二二

之陸軍中尉 陽山 哲 刺

茲者我等生年校報及中一最主品行
 方心以下性温順之ヲ殊ニ博愛心
 在存一集目ニ故愛され之信
 紳是之田満太人格者不有之
 右相違之云也

長野県上高井郡高井村大字高井

友人

清水 哲也

右の通り相違ないことを證明する

昭和二十二年十一月三日

長野県上高井郡高井村大字高井



CERTIFICATE FOR PERSONAL CHARACTER

30 Nov. 1947

Name: KATSUYAMA Tetsuji

Rank: Former Lt., Army

Address: No. 2,016, Oaza-takai, Takai-mura, Kamitakai-gun,
Nagano-ken.

This is to certify that the abovementioned person has been throughout the whole course of his life in his village virile, mild-mannered and faithful. He, in addition, has been always fair and square in dealing with matters. He has enjoyed a high reputation among his villagers and thus constantly set a living example for all others in his daily life.

His friend,

SOSOGI, Seizō,

No. 1,838, Oaza-takai, Takai-
mura, Kamitakai-gun, Nagano-ken.

I also certify that the abovementioned facts are all true.

3 Dec. 1947

NAKAMURA, Naohichi,

Head of Takai Village,
Kamitakai-gun, Nagano-ken.

0268

人格證明書

長野縣上高井郡高井村大字高井二〇一六番地
先陸軍中尉 勝山哲爾

右は在郷中 修実實剛健 温厚 篤實 實にし
て 事に處するに 公明正大 村民の 人望
高く 日常の 行動 總て 他 の 模範 たり
左 相違 ない 事を 證明 する

昭和二十二年十一月三十日

長野縣上高井郡高井村大字高井一八八番地
勝山哲爾 友人

右

十日 木 正 三

右の通り 相違 ない 事を 證明 する

昭和二十二年十一月三日

長野縣上高井郡高井村大字高井一八八番地

CERTIFICATION OF PERSONAL CHARACTER

3 Dec. 1947

Name: KATSUYAMA Tetsuji, ex-Army Lt.

Domicile: No. 2,016, Takai, Takai-mura, Kami-takai-gun,
Nagano-ken.

The above-mentioned person is an affable man of integrity, full of warm friendship, of simple and virile spirit, and has a strong sense of responsibility. When once he have made up his mind, he never fails to carry out it.

In home life, he was always obedient to his parents. When he came of age, he was revered and loved by all his friends. Particularly, when he was a student of the middle school, he went on foot a distance of one and a half 'ri' to school, never having missed a day.

We had a great regard for his perseverance and diligence. Although he is now under detention, we firmly believe that there is no change in his mind and he will be fairly judged on a trial, just and righteous.

I hereby certify that the above statement is quite correct.

TSUBOI Yoshitomo, (sealed)

A friend of KATSUYAMA Tetsuji
No. 723, Suzaka-machi, Kami-takai-gun,
Nagano-ken.

0270

NAKAMURA Naohichi(sealed),

Headman of Takai-mura, Kamitakai-gun,
Nagano-ken.

0271

人格証明書

長野県上高井郡高井町大字高井二〇二六
元陸軍中將 勝山哲爾

右は其の性温厚徳實にして、反善心に富み
 道意剛健、責任觀念強く、且、暇す所は
 必ず達する人なり。家庭においては孝心に富み
 社会に富み、人物に多く、常に吾と友人敬慕の
 的であつた。殊に中学校時代は一里有年の
 道と五年間徒歩にて休む日なく通學し、

其の心筋力と勤勉は余に敬服して、
 今都爲の身なり。存心は常に善
 所は必ずや正義の裁判に於て光明
 ある判決のありしを信するが如し。

右相違ないことを証明する

長野県上高井郡須坂町七三
勝山哲爾の友人

壺井義友

右の通り相違ないことを証明する

長野県上高井郡高井町大字高井二〇二六



CERTIFICATION OF PERSONAL CHARACTER

Name: KATSUYAMA Tetsuji, ex-Army Lt.

Present Address: No.2,016, Takai, Oaza, Takai-mura, Kami-Takai-gun, Nagano Pref.

He was bright and cheerful, and had warm friendship for every friend of his. He was liked by all of his friends better than any other persons. His enthusiastic effort for learning was also revered by them. He was a man of character and won respect of all the students in our school.

I hereby certify that the above is quite correct.

SHIGEKURA Sangi,
Ue-machi, Susaka-machi,
Kami-takai-gun, Nagano Pref.

I hereby certify that the above is quite correct.

NAKAMURA Naoshichi,
Village-master of Takai-mura,
Kami-takai-gun, Nagano Pref.

0273

人格証明書

長野縣上高井郡高平村大字高井二〇一六

元陸軍中尉 勝山哲爾

性質明朗にして友情の厚く友人中彼れ程

愛され天君の外に無かつた

熱心な学生中一と下級生間バツ最大子

人格者であつた

右相違ありまへん

長野縣上高井郡須坂町高井

重倉三義

重倉三義



0275

CERTIFICATE FOR PERSONAL CHARACTER

2 Dec. 1947

Name : KATSUYAMA Tetsuji
Rank : Former 1st Lieutenant.
Address : No. 2,016 Takai, Takai-mura, Kami-takai-gun, Nagano
Prefecture.

He was of a gentle disposition, but at the same time, was of fortitude. He was a man of faithfulness and politeness and was patient about everything. He was always sincere, earnest, and incorruptible. He was also consciousness itself. It is a human nature that one is apt to take mean attitude towards powerful persons, but he disdained any idea of truckling to the powerful, and behaved gentlemanly to everybody throughout the whole course of his life. Moreover, he never called other persons with impolite words and was always polite and courteous. He was never haughty with mean-spirit and disliked to do such a thing. He was in high credit with his school-mates and friends. During his school days, he was elected as a committee of the Department of Art and Science as well as other affairs, and devoted himself to his duties with sincerity for the benefit of public interest and welfare in defiance of sparing any pains.

As I have mentioned above, his character and daily conducts show that he was a man of all-round nature and full of humanity.

TAKIZAWA Genshin
a friend of KATSUYAMA Tetsuji
No. 307 Yoko-machi, Suzaka-cho, Kami-takai-gun,
Nagano Prefecture,
December 2, 1947.

I hereby certify that the above-mentioned statement is true and correct in every particular.

0276

NAKAMURA Naoshichi
Village Headman of Taki-mura,
Kami-takai-gun, Nagano Prefecture,
December 3, 1947.

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人格證明書

長野縣上高井郡高井村大字高井三六

元陸軍中尉

勝 山 哲 爾

資性、外柔内剛、謹直ニシテ、謙讓、且、何事ニ對シテ
モ忍耐、人ニ對シテ常ニ眞剣、常ニ執誠、常ニ清冽
ノ人ナリ、獨身此ノ長ハシメテ、又權威ニ對シテ
卑屈ナル態度ヲ取ル、カ人情ナルガ、彼ハ常ニ民
衆的ニ態度ヲ取ルコトヲ、何人ニ對シテモ紳士的ニ
態度ヲ以テ始終シタリ、而シテ他面、他人ニ對シテモ此ヲ呼ビ棄
ニスルコトヲ、常ニ丁寧、然レモ、之ハ卑屈ニ威張ルコ
トヲ、威張ルコトモ嫌フ人ナル、學友朋友同ノ信用
ヲ厚ク、在學中ハ學藝部其他ノ委員ニ選出セラレ、
而シテ、厭ハズ公供福利ノ爲ニ誠心誠意其ノ職責
ヲ完遂セリ、以上申シ述ベタ如ク、彼ノ性格、日常ノ

行動ハ人聞愛ニ滿タリ、圓滿ナル人格者ナル。

一九四七年二月二日

勝 山 哲 爾 代 朋友

長野縣上高井郡須坂町横町三七

龍 澤 巖 信

右邊ノ相違ハ之ニモ證明ナリ

昭和二十七年二月二日

長野縣上高井郡高井村大字高井三六



CERTIFICATION OF PERSONAL CHARACTER

3, Dec. 1947

Name : KATSUYAMA Tetsuji.

Rank : ex-Army Lt.

Present Address: No. 2,016, Takai, Oaza, Takai-mura, Kamitakai-gun, Nagano Pref.

He was kind and gentle by nature in his boyhood, and was loved and respected by those who surrounded him. Later, he became a man of moral sense, and performed his social duty completely. He was also a leading man among his friends and juniors in his native place. He was devoted to his parents at home, and his family was a good example for the villagers as a peaceful one. While he attended our school, he was loved by his teachers and was respected by his school-mates, according to his unceasing seekness for peace and civilization.

Those, who have once been acquainted with him, cannot but remember him as a dear and intimate fellow.

We hereby certify that the above is quite correct.

KAWAKAMI Hiroshi

ITO Toshio

SASAKI Sakuji

KOYANAGI Masakatsu

WAKUI Shigeru

KOBAYASHI Saburo

AKI Shichi

His classmates at Susaka Middle School, Nagano Pref.

I hereby certify that the above is quite correct.

NAKAMURA Naoshichi, Village-master of Takai-mura, Kamitakai-gun, Nagano Pref.

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人格證明書

長野県上高森郡高井村

大字高井村ニ住スル

元陸軍中尉勝山哲雨

氏は幼時より性温良なりて親切
ありそのため若く周囲の人達に
敬愛され、事大であつた成人も
道義心より又社会人として義
務は忠実に完遂する性質であ
つた。公衆道徳を身と以て実践
し郷里に於ける友人後輩のよい
指導者として仰がれてゐた。家庭の
に於ては父母より孝養を盡し、若く
は兄弟姉妹に和やかな家庭とし、村
人、模範であつた。
名教社青年は、友人と情よく交
はり平和とて対する。學問を以て
師に愛され、敬されてゐた。
君を知る者は、誰も若く良人物
を思ふあらずいはれらるゝ。

右の通り相違ない事を証明する。

長野県須賀野村同級生

川上博

伊藤政雄

佐々木作治

小柳政勝

浦井茂

小林三郎

青木正一

右の通り相違ない事を證明する。
長野県上高森郡高井村高井村道七
須賀野村同級生

CERTIFICATION OF PERSONAL CHARACTER

3, Dec., 1947

Name: KATSUYAMA Tetsuji

Rank: ex-Army Lt.

Address: No.2, Old, Takai, Oaza, Takai-mura, Kami-Takai-gun,
Nagano Pref.

He often visited us, from his primary school days, to play with our children or to instruct them in their learning. He guided them so kindly and heartily that our children were quite familiar with him and were waiting for him to come. Then he graduated from a middle school and served in the office of the agricultural association of the village, where he was the object of praise of its members. Afterwards he was levied into the army, but I am sure that his gentle nature has been unchanged as it was in his boyhood.

I hereby certify that the above is quite correct.

YAMAGISHI Sensaku,

a friend of KATSUYAMA Tetsuji's father's
No. 1,286, Susaka, Oaza, Susaka-machi,
Kami-takai-gun, Nagano Pref.

I hereby certify that the above is quite correct.

NAKAMURA Naoshichi,

Village-master of Takai-mura;
Kamitakai-gun, Nagano Pref.

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CERTIFICATION OF PERSONAL CHARACTER

Name: KATSUYAMA Tetsuji

Rank: Ex-1st Lt.

Address: 2,106, Oaza Takai, Takai-mura, Kamitakai-gun, Nagano-ken.

Soon after KATSUYAMA graduated from the middle school, he was employed as member of Industrial Guild. I worked with him at the desk side by side with his desk.

He was by nature cheerful and bright, having a strong sense of responsibility so that he devoted to his duties and worked earnestly. He was loved by others just as he was by myself.

On the other hand, he was very courteous and friendly, and even after retiring from service, he was as courteous to his superiors as before and wrote to them from time to time. He was saying that in the army he was respected and loved by his superiors as well as by his comrades and subordinates and that he could discharge his duties cheerfully.

3 Dec. 1947

KOIDE Washiro (sealed)

678, Oaza Takai, Takai-mura,
Kamitakai-gun, Nagano-ken.

I certify that the above-mentioned statement is true and correct to the best of my knowledge and belief.

3 Dec. 1947

NAKAMURA Naoshichi (sealed)

Village master of Takai-mura,
Kamitakai-gun, Nagano-ken.

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CERTIFICATION OF PERSONAL CHARACTER

2 Dec. 1947

Domicile: Yamagata, Yamagata-mura, Naka-gun, Ibaraki-ken.

Present Address: No. 1641, Kami-kane-machi, Mito-shi.

Name: ONOSE Ichiro

Date of Birth: 10 March 1920

This is to certify that the above-mentioned person was a man of solid principle, and a good citizen while he was residing in Mito-shi.

EBIZAWA Taminosuke,

Assistant and Acting Mayor
of Mito-shi.

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人格証明書

本籍地 茨城県那珂郡山手村山手
現住所 水戸市上金町二六二番地

小野 頼 一 郎

大正九年三月十日 生

右の者は志操極めて堅實にして水戸市に在住中
良き市民たる事を証明す

昭和二十二年十二月二日

水戸市代理助役梅老作良三



CERTIFICATION OF PERSONAL CHARACTER

1 Dec. 1947

Present address: No. 1641, Kamikane-machi, Mito-shi,
Ibaraki-ken.

Date of Birth : 10 Mar, 1929

ONOSE Ichiro

This is to certify that the above-mentioned person
has good reputation, mild and good-natured and is an
exemplary young man in his native town.

Immediately after his repatriation from the South
Area in January 1946, he was married and earnestly engaged
in his business

MOROI Tokuji

Former Head of Neighborhood
Assembly,
No. 1632, Kamikane-cho,
Mito-shi.

0287

(21-8-80,000)

CERTIFICATION OF PERSONAL CHARACTER

1 Dec. 1947

Domicile: Yamagata, Yamagata-mura, Naka-gun, Ibaraki-ken.

Present Address: No. 1641, Kami-kan'e-machi, Mito-shi.

Name: ONOSE Ichiro

Date of Birth: 10 March, 1920

To witness the personal character of the above-mentioned person, the following facts may be stated:

1. After being graduated from the Mito Middle School, he entered the Sendai Higher Industrial School, and at the same time when he was graduated from the same, entered barracks as a soldier in active service, and was demobilized in January, 1946.

2. He was gentle in nature; a man with the drilled-in habit of being decent in appearance and manners; always warm-hearted and faithful to his class-mates, and had even the experience of having saved one of his friends, by showing him right way, from his being compelled to leave school.

3. After demobilization he has been making efforts for the encouragement of the peaceful thoughts and democratization for the people in his street and its neighbourhood, to say nothing of his family.

KUJIOKA Yoshiga,

Social Education Section,
Education and Welfare Department,
Ibaraki Prefectural Government.

0289

人格證明書

本籍 茨城県那珂郡山方村大字山方
現住所 茨城県水戸市上金町一六四番地

小野瀬 一郎

大正九年三月十日生

右の者に對し左の事實を陳述致します

一 小野瀬一郎は水戸中學卒業後仙臺高等工業學校を卒業と同時に現役入營し昭和三十一年一月復員したものである

二 性質極めて温順で容儀端正時に温情に厚く級友のたゞ至誠を以て善導し退學を免れしめた

三 復員後は家庭内は勿論のこと近隣並に町内の者に對し平和思想の昂揚と民主化のため努めた

昭和三十三年十二月一日

茨城県廳教育民生部社會教育課

久地 岡

美賀



CERTIFICATION OF PERSONAL CHARACTER

1 Dec. 1947

Present address: No. 1641, Kamikane-machi, Mito-shi,
Ibaraki-ken.

Date of Birth: 10, Mar. 1929

ONOSE Ichiro

This is to certify that the above-mentioned person
is a man of principle, true to his friends as he has won
the confidence of his seniors and juniors. He was also
a devoted student, having an excellent spirit of industry.

KATAGIRI Rinsaburo

Instructor of Mito Middle School
No. 5788, Tokiwa-machi, Mito-shi.

YINUMA Kiyoshi

Instructor of Mito Middle School
No. 4993, Sunakubo-cho, Mito-shi.

1920

CERTIFICATION OF PERSONAL CHARACTER

1 Dec. 1947

Present address: No. 1641, Kamikane-machi, Mito-shi,
Ibaraki-ken.

Date of Birth: 10, Mar. 1920

ONOSE Ichiro

This is to certify that the above-mentioned person
is a man of principle, true to his friends so he has won
the confidence of his seniors and juniors. He was also
a devoted student, having an excellent spirit of inquiry.

KATAGIRI Risaburo

Instructor of Mito Middle School
No. 5786, Tokiwa-machi, Mito-shi.

IIZUKA Kiyoshi

Instructor of Mito Middle School
No. 4993, Sunakubo-cho, Mito-shi.

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水戸市上金町二三四番地
水戸市上金町二三四番地
水戸市上金町二三四番地

小野瀬 一郎

大正九年三月十日生

有は志保極めて堅実にして及道に
篤く上下の信望も一身に蒐め研究心
旺盛なり爲學の生徒であつた事と
証明致し可

昭和三年十二月一日

水戸市常盤町五七六

水戸市常盤町五七六
水戸市常盤町五七六
水戸市常盤町五七六

水戸市砂防所四九九三

水戸市砂防所四九九三
水戸市砂防所四九九三
水戸市砂防所四九九三

CERTIFICATION OF PERSONAL CHARACTER

Dec. 1947

Permanent address: Oaza-yamakata, Yamakata-mura, Naka-gun,
Ibaragi-ken.

Present address : 1641, Kamikane-machi, Mito-shi,

Date of Birth : Mar. 10, 1920.

ONOSE Ichiro

This is to certify that in the elementary school, Onose was gentle and docile having co-operative spirit and never been seen to quarrel with his classmates. As he was specially very kind to his friends and an obliging person, he enjoyed their utmost confidence. He was also obedient to the teacher and was a conscientious child with a strong sense of justice.

GOTO Bun (sealed)

Ex-teacher in charge,

Principal of Takehara
Elementary School of
Higashibaragi-gun,
Ibaragi-ken.

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人格證明書

本籍
現住所

茨城県那珂郡山方村大字山方
水戸市上金町一六四一番地

小野 瀬 下 郎

大正九年三月一日生

右の者は小學校在學中より温良素直で協調性
強く級友と争ひし事をも一度も見受くつた
特に友達に對して親切で世話好きだつたので級友が
信望も厚く教師の命に上り従ひ真面目で正義觀の強
い子供であつたことを證明する

昭和三十三年十二月 日

元担任教師

茨城県東茨城郡竹原小學校長

後

藤

大

CERTIFICATION OF PERSONAL CHARACTER

1 Dec. 1947

Present Address: No. 1641, Kamikane-machi, Mito-shi,
Ibaraki-ken.

Name : ONOSE IChiro

Date of Birth : 10 Mar. 1920

This is to certify that the above-mentioned person is of a mild character. From his childhood, he had been dutiful to his parents, true to his brothers, and very kind to others. As he grew older, he was pious, and charitable to all. As he had much interest in technical field, he entered a technical college. He was also serious in his study as well. I am firmly convinced that he is one of the model young men in modern Japan. I am practising medicine and am an old acquaintance of his parents'. I know him from his childhood. About twelve or thirteen years ago, while his elder sister was suffering from serious pneumonia, I remember him nursing her without sparing himself, which was of great help to her early recovery. I have been deeply impressed by his affectionate nature.

He has recently been engaged in the business of tile-making and is doing fair and square commercial deal.

The above is a very brief account of part of his

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personal character.

This is my solemn avowal before the Cross that he is
possessed of philanthropic spirit.

Dr. Mitsugu Aoyama(sealed),

Attending physician from Ichiro's
childhood; residing at No. 2169,
2-chome, Sakae-machi, Mito-shi,
Ibaraki-ken.

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人格證明書

木下市金町二丁目

小野順一郎

昭和九年三月十日

一、性格

温順、精神、所有者である。

友人及び同親に孝、兄弟に對し温和

果敢、的、博識、補給、味、工業

方面に趣味をもち、高貴、工業、學業、學業

學問に對し、最も、眞面目、且、忠實である。

近、代、目、本、に、於、て、字、に、み、る、權、記、事、年、下

三、行為

醫師に自分職業、一日、野、郎、親、と、

一郎、君、と、知、る、居、る、今、は、十、二、年、迄、前、に

交、友、し、重、馬、と、師、と、就、業、中、種、復、復、と

今、も、茲、處、の、心、を、深、く、事、業、品、と、居、る

近、來、と、家、族、に、於、て、孔、缺、を、修、公、明、大

に、高、取、り、と、居、る

以上極々簡易な筆で、師を示す為
要す。博愛の精神、所至にあらざる
十三年の間に、

昭和三年十一月一日

来々々々々々々々々々々々

水々々々々々々々々々々々

衛師 青 小 真

etch

CERTIFICATION OF PERSONAL CHARACTER

2 Dec. 1947

Present address: 1641 Kamikane-machi, Mito-shi.

Date of Birth : Mar 10, 1920.

ONOSE Ichiro

This is to certify that from his infancy Onose was gentle and clear-headed, and went through elementary, middle, and higher technical schools at the top of the class. He respects his parents and has never been heard nor seen to quarrel with them. He was tender-hearted towards his brother and sister and very popular among his classmates and neighbours.

After repatriation, he was devotedly helping the business of his father.

Therefore, I was looking forward with much interest to his brilliant future.

KOBAYASHI Toji (sealed)

1291 Shinganji-machi,
Mito-shi.

0300

人格証明書

本籍 水上市 金町一六四番地
住所 現

小野瀬 一郎

生九年三月廿五

右 有幼少、眞より性質眞溫和とい
頭腦明碩、當時の小学校より中学校
高工校まで主席として卒業し、今日に至る
父母尊敬の一友。いさか、開いた事。
見、有る長男として弟妹の
ため、進歩は甲より乙より進歩所、

人々より評判をたつた復員後は
一意専心父の業に勤み奮つた
私、懐柔も利目（物中）人物
きたり致して居る。

右通り証明します

昭和三年五月二日

水上市信賴寺六二九

小林 藤次

CERTIFICATION OF PERSONAL CHARACTER

1 Dec. 1947

Present address: No. 1641, Kamikane-machi, Mito-shi.
Ibaraki-ken.

Date of Birth : Mar. 10, 1920.

ONOSE Ichiro

This is to certify that the above-mentioned person is a school-mate of Takeo, my second son and often came my house from his childhood.

He is a mild and humane person and has been on intimate terms with his school-mates.

Since his demobilization in January 1946, he has been engaged in manufacturing cement-tiles at his present address and it is well-known fact that he was a man of good behavior and much obedient to his parents.

HIGURE Iwagoro (sealed)

one of his acquaintance;
residing at No. 1446,
Nanimatsu-cho, Mito-shi.

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(七)

人格證明書

本籍地 水戸市上金町六丁目一番地
現居地 同

小野瀬 一郎

大正九年三月一日生

右者乃曾二男武男、事父如少、排、排、排、
父之居、性質温和、人、人、人、人、人、人、人、人、
之、之、之、之、之、之、之、之、之、之、之、之、之、之、
父母、命、命、命、命、命、命、命、命、命、命、命、命、命、命、
夜、夜、夜、夜、夜、夜、夜、夜、夜、夜、夜、夜、夜、夜、夜、夜、
服和之、之、之、之、之、之、之、之、之、之、之、之、之、之、之、之、

服和之、之、之、之、之、之、之、之、之、之、之、之、之、之、之、之、

本人報告者

水戸市上金町六丁目一番地

日暮 岩五郎

CERTIFICATION OF PERSONAL CHARACTER

2 Dec. 1947

Domicile: Yamagata, Yamagata-mura, Naka-gun, Ibaraki-ken.

Present Address: No. 1841, Uekane-cho, Mito-shi, Ibaraki-ken.

Name: ONOSE, Ichiro

Date of Birth: 10 Mar. 1920

This is to certify that the abovementioned person is one of our most intimate old playmates since our boyhood and has grown up as the apple of his parents eye.

His parents have specially believed in God and Buddha and therefore he is really quite pious thanks to his parents' kind instructions. There are many friends who keep company with him because of his lofty character and of his lofty principle for mutual aid. We have the honour to report to you that we are also to be numbered among them.

It is said that he will be judged as a war criminal suspect.

We, in perfect belief of his character, affirm most strongly that, as for himself, there were no such words and deeds of as would excite suspicion for any reason whatsoever.

His class-mates in the Primary School:

GOTO, Saburo,

No. 1828, Mukai-cho, Mito-shi, Ibaraki-ken.

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TAN, Naoyuki

No. 5991, Motoyama-cho, Mito-shi, Ibaraki-ken

FUNAYAMA, Shokichi,

No. 1401, Namimatsu-cho, Mito-shi, Ibaraki-ken.

TSUGAWA, Teiichi,

No. 1271, Fujisaka-cho, Mito-shi, Ibaraki-ken

OTANI, Yuichi,

No. 940, Torimi-cho, Mito-shi, Ibaraki-ken

KAWAKAMI, Misao,

No. 312, Kurohane-cho, Mito-shi, Ibaraki-ken

KUMOTA, Saburo,

No. 634, Tamikoji, Mito-shi, Ibaraki-ken

MIYAKE, Shiro,

No. 582, Omachi, Mito-shi, Ibaraki-ken

0305

土曜

人格証明書

本籍地 茨城県那珂郡山方村山方
現住所 茨城県水戸市上金町二六四番地

小野瀬 一郎

大正九年三月十日生

右、者、私等トハ幼少ノ頃ヨリ、友人ニシテ氏ハ

両親ノ慈愛ノ下ニ生長セリ

両親ハ特ニ神佛ヲ信仰シ爲ニ氏モソノ訓育ヲ

受ケ神佛ヲ信仰スルノ念厚ク友人間ニモ彼、

人格ヲ慕ヒ又相互扶助ノ念厚キタメ交際スル者

多ク私等モソノ一人ナリ

氏ハ今度戦争犯罪人被害者トシテ裁キニ

付サルト聞ク

私等ハ氏ノ人格ヲ信ジ絶対ニ嫌疑ヲ受クル如キ

言動ナカリシ事ヲ確信スル

昭和二十三年十二月二日 小學校同級生一同

茨城県水戸市向井町二八八番地 後藤 三郎

元山町五九九番地 丹 直信

並井町二四〇番地 船山 正吉

藤坂町一五七番地 津川 貞一

島見町九四〇番地 大谷 勇一

黒羽根町三三番地 川上 操

田見小路六三四番地 森田 三郎

大町五八二番地 三宅 士郎

CERTIFICATION OF PERSONAL CHARACTER

2 Dec. 1947

Domicile: Yamagata, Yamagata-mura, Naka-gun, Ibaraki-ken.

Present Address: No. 1641, Uekane-cho, Mito-shi,

Name: ONOSE, Ichiro

Date of Birth: 10 Mar., 1920

This is to certify that the above mentioned person is a senior graduates of the Mito Middle School whom we heartily respect. His various kindhearted, humanitarian and exemplary leadership which was given to us who assembled around him with feelings of immense admiration for his personality at the very beginning of our school term, his warm-hearted leadership and even his candid advice which was given to us from time to time and at which we were fully satisfied without any objection in full appreciation of his advice which was given from his innermost heart and from his gentle, impartial and serious character as if it were for his own affairs, all these have enabled us to realize that he is the best person we can consult with and that he is truly like our elder brother who has indeed a lofty character and is in addition really a man of special trustworthiness.

MIYAMOTO, Tadahiko, his junior graduate,
2-chome, Izumi-cho, Mito-shi

TACHIHARA, Kuninosuke, his junior graduate,
Yokatakekuma-cho, Mito-shi

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INABA, Tadao, his junior graduate,
963, Torimi-cho, Mito-shi

URUNO, Shirō, his junior graduate,
Akebono-cho, Mito-shi

YAGI, Susumu, his junior graduate,
5, 6-chome, Tana-machi, Mito-shi

TACHIHARA, Ken, his junior graduate,
Yokotakekuma-cho, Mito-shi

MIYAMOTO, Kiyozumi, his junior graduate,
Naka-machi, Mito-shi

TOYOSHIMA, Tokuro, his junior graduate,
Minami-machi, Mito-shi

SHASUBANA, Tetsuo, his junior graduate,
Kanzaki-cho, Mito-shi

SUZUKI, Akiyoshi, his junior graduate,
Naka-machi, Mito-shi

TOYOSHIMA, Toshiro, his junior graduate,
Minami-machi, Mito-shi

0308

本籍地 茨城県水戸市
現住所 水戸市上金所二丁目番地

小野瀬 一郎
全九九年三月十日止

右の方は秋英。水戸中學校に於ける學友たる
先輩であります。入学の当初より、人格を
慕ひ、集つて秋英に對し、亦これに敬々、人間的
無窮の温情溢れる御指導は、時に頂さるゝを言
ふ事に依り、秋英の身に合つて、考へ、頂い
て居る事、又優しく中々眞面目な御事、遊
んだもの、ある事等の爲に、何等秋英の年に逢ふ
を得ば、不來、又さうして、良き相談相手、兄と

秋英の信頼、一措之能はなかり人格者であります
昭和二年十二月二日

水戸市泉町二丁目
後筆官本 忠彦
水戸市横竹隈町
立原 邦之介
水戸市島見町九六三
稲葉 忠夫
水戸市曙町
宇留野 志郎
水戸市棚町六丁目五
木 達

水戸市横竹限町

水戸市立原 健

水戸市仲町

水戸市宮本清 總

水戸市南町

水戸市豊島 徳郎

水戸市神崎町

水戸市謝花 徹男

水戸市仲町

水戸市鈴木 昭夫

水戸市南町

水戸市豊島 壽郎

CERTIFICATION OF PERSONAL CHARACTER

2 Dec., 1947

Domicile: Yamagata, Yamagata-mura, Naka-gun, Ibaraki-ken.

Present Address: No. 1641, Uekane-cho, Mito-shi

Name: ONOSE, Ichirō

Date of Birth: 10 Mar., 1920

This is to certify that the abovementioned person is a man of such a lofty character that, as he has been brought up in a pious family, his humanitarian conducts and views, were specially conspicuous even in his Mito Middle School days when we studied together with him there his cool judgements which have originated from his sincere character, in addition, always enabled him to take the middle-of-the-road course instead of going to extremes. Moreover his earnest intention of seeking after for justice and truth which would never admit even a bit of evil has very often touched us to the hearts. Thus he has constantly commanded the utmost confidence among us. Lastly, we have the honour to add that he has made a tremendous number of intimate friends whose friendship and cordiality toward him has remained constantly unaltered during a very long period of time up to the present.

His friends:

ONO, Nobuyoshi,

Kuramae, Mito-shi

0311

YANAGIHASHI, Sakae,

No. 350, Fujizawakoji, Mito-shi

MITADERA, Yasuo,

No. 2623, Hakamazuka-cho, Mito-shi

KONDO, Mikishiro,

No. 551, O-machi, Mito-shi

SAKUMA, Shigemitsu,

No. 955, Torimi-cho, Mito-shi

ODANO, Ryo,

810, 9-chome, Moto, Mito-shi

YAMADA, Eishiro,

No. 103, Minami-3-no-maru, Mito-shi

Hirose, Taira,

No. 241, Shimoumeka, Mito-shi

KUWAI, Kiyoshi,

4203, Ishikawa-cho, Mito-shi

03 12

人格證明書

本籍地 茨城県那珂郡山方村山方
現住所 水戸市上金町一六四二番地

小野 瀨 一郎

大正九年三月十日生

右の者は信仰に厚く、家庭に育ちたる故も
以て我々意を同じくせる水戸中學校時代に
在りてもその人道的舉動見解は特に異彩
を放ちその眞摯なる性格より来る冷靜な
る判断は過激に趨ることなく常に中正を採
り又此來の邪惡をも許さぬ正義眞理探求
の心は屢々我々の胸をうち爲に友人間の信望篤
く多数の友を得て幾室霜を閱するも薄れること

なき交誼を續けあり

昭和二十二年十二月二日

水戸市藏前

友人 小野 宜洋

水戸市藤澤小路三五〇

〃 都 橋

水戸市松原新二六三三

〃 三田寺 泰男

水戸市又町五一番地

〃 近藤 新四郎

水戸市鳥見町九五五

〃 佐久間 重光

水市本九丁目

水市角三九二〇三番地 小田野 涼

水市山田字全郎 山田

水市下梅香 二四番地

水市廣瀬 平

水市石町 四二三

水市川合 三

03 14

CERTIFICATION OF PERSONAL CHARACTER

2 Dec., 1947

Domicile: Yamagata, Yamagata-mura, Naka-gun, Ibaragi-ken.

Present Address: No. 1641, Uekane-machi, Mito-shi,
Ibaragi-ken

Name: OMISE, Ichiro

Date of Birth: 10 Mar., 1920

This is to certify that the abovementioned person is
a steady man of just principles, that he has made great
efforts for the establishment of this theatre and that he
is making wholehearted endeavors for the popularization of
American films.

DEGUCHI, Shin

Manager of the Central Theatre,
devoted to the American films,
Kurobane-cho, Mito-shi.

03 15

人格証明書

本籍地
現住所

北城郡那珂郡山村山形

全 県水上市上全町一六四二番地

小野瀬 一郎

大正九年三月十日生

右、陸軍正道、士ニシテ當劇場設立ニ
数シ多ク、努力ヲ盡シ専ラアメリカ映画
普及、為ニ盡力致シ居ル事ヲ證明仕候

昭和二十三年十二月一日

水上市黒沢町

アメリカ映画専門館 セントラル劇場

経営者

出

口

し

人

February 1, 1948

General Douglas MacArthur, the Supreme Commander for the Allied Powers.

PETITION

Sir:

This is my petition for my beloved husband, ICHIRO ONOSE (30 years old) who was an Ex-Japanese Army 1st Lieutenant served at Parao Island from April, 1944 to the end of the war.

Soon after the termination of the war, he was authorized by your Army's order and returned to our home on January 1, 1946. Since then, as a civilian he was earnestly followed his duty to keep our household affairs to fit for our old parents and also has been the garbage collector of the Dependent Housings (Ibaraki Military Government Team) in Mito City. So we were quite happy.

But, meanwhile, our happiness seemed gone as my husband was called several times as a witness of the War Criminal Trial. And at last on 18th, October, 1947, he was arrested as a suspect of the War Criminal and sent to Guam for the prosecution.

With my old parents and baby (2 months old) who was born after he was apprehended, I was hoping, hoping and praying for the day that he might be acquitted of the crime he was suspected.

But, it was like a horrible dream, that recently we have received from the pleader there telling that my poor husband was sentenced twenty-five years' imprisonment !

When he was arrested, he openly told me that he was quite innocent and clean-handed and that he was very much optimistic and sure of the quite impartial judgment of U.S. Army Trial.

But to hear this judgment, we are more than shocked and dismayed and overwhelmed with grief.

Enclosure to C.A.O. No 137 (3W6)

0317

To tell the truth, I know nothing about the case with which my husband involved and for which he was convicted, but I do know that my husband is my beau ideal and was a good man.

So you see how we are broken hearted on hearing the sad news.

Of course I am well aware that the sentence my husband was pronounced is the result of the fair trial at your Military Court.

Nevertheless, my dear General I must petition you and wish you to review the case and perhaps generously condone his mistake for me and my baby so that we may pursue our life with the light of living and hope in future.

Lastly, I shall be greatly obliged if you will kindly comply with my petition.

Yukie Onose

YUKIE ONOSE

27 years old,
No.1641, Kamikane-machi,
Mito City, Ibaraki Prefecture.

03 18

歎願書

私の夫小野瀬一郎は陸軍中尉として
一九四四年四月よりパラオ島の日本陸軍
部隊に勤務して居りましたが終戦後
アメリカ軍の御好意により日本内地
への引揚を許可せられ一九四^六年一月日
に浦賀港へ上陸、直ちに郷里の私ども
家族の許へ帰つて参りました。

夫は帰還後は引續き郷里に於て老父の
家業を助け、また水戸市に於ける茨城
軍政部家族住宅の廃品回収係と勤め
平和日本の一員として只管更生の道を進
んで居りました。

ところがその後私の夫は駐日米軍當局
から戦犯證人として再三呼出を受け身
となり、遂には戦犯容疑者として逮捕せられ
一九四七年十月十八日裁判のためグム島へ
護送せられました。

私は夫の老父母と共に夫の逮捕後に
生れました長女を養育しつつ夫の帰りを
待つて居りましたが、最近現地に於ける
日本側弁護人よりの來信によりまして、
夫が禁錮二十五年の判決を受けた由を
知りました。

私の夫は逮捕の日まで常に私ども
家族に対し身の潔白を語り、且つアメリカ
軍事裁判の公正なる審理を期待する
旨語つて居りましたので、私ども家族は
夫に対する判決を知りまして、最大の
衝撃を受け、唯々悲歎に暮れて
居ります。

居ります

勿論私ども家族は私の夫が関係
しました事件の内容については何も知り
ませんが、平常の夫の性情を最も
よく知つて居りますので今回の出来事
を夢かと思ひ驚いて居ります。

私は私の夫が受けました判決が「アメリカ
軍事裁判の公正な審理の結果に
よるもので有ります事を固く信ずる者で
ありますが、哀れな私ども家族の表情
を御憫察下されますと共によく
御詮議下さいまして、御寛大な御処置
を賜りまして、私どもの心に光明を與へて、
下さいます様切に懇願申上げる次第
でございます。

一九四八年二月一日

茨城縣水戸市上金町一六四一

小野瀬ユキ子

マツカーサー

元師閣下

FF12/F13-10(3)
02-MEC-gfs

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 10587

25 MAY 1948

#162424
Panel II



From: The Commander Marianas Area.
To: The Secretary of the Navy (JAG).

Subject: OMOSE, Ichiro, former second lieutenant, IJA -
petition for clemency.

References: (a) The Commander Marianas Area action, file FF12/A17-10(2)
over O2-JDM-fak, serial 3109 dtd 20 Mar. 1948, in the
case of KOICHI, Hiroe, et al.
(b) Commander in Chief, Pacific and U.S. Pacific Fleet action,
file A17-25, serial 1848 dtd 18 Apr. 1948, in the case of
KOICHI, Hiroe, et al.

Enclosure: (A) Petition from Yukie OMOSE, wife, dated 1 Feb. 1948, in
behalf of OMOSE, Ichiro, in Japanese with English
translation.

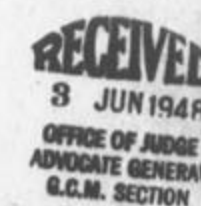
1. A military commission convened by this command on Guam tried
subject named Japanese in the case of KOICHI, Hiroe, et al for war crimes
committed against an American prisoner of war. OMOSE, Ichiro was convicted
and sentenced to twenty-five (25) years imprisonment.

2. The record of proceedings in this case was acted upon by The
Commander Marianas Area on 20 March 1948 and forwarded to the Commander in Chief,
Pacific and U.S. Pacific Fleet. By reference (b) it was referred to the Judge
Advocate General of the Navy.

3. Enclosure (A) was received by Commander Marianas subsequent to
the trial of subject named war criminal and is forwarded for such action as
may be considered appropriate.

cc: CinCPacFlt.

C.H. Wright
C.H. WRIGHT



162 424 (II)
JHR

0321

FF12/117-19
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

20 MAR 1946

MEMORANDUM TO: Commander in Chief Pacific and United States Pacific Fleet.
Commander Marianas Area.

Subject: Review of the Record of Trial by a Military Commission of
former Captain Hiroe KOICHI, I.J.A., et al.

Reference: (a) CinCPac/POA Restricted Desp. 170150 Dec. 1945.
(b) CinCPac and U.S. PacFt Staff Instructions 1947,
paragraph 2 H 3 (c).

Enclosure: (A) Record of subject case (original and three copies; one
copy for CinCPacFt, one copy for SecNav for delivery to
United Nations War Crimes Commission, and one copy for
Commander Marianas).
(B) Proposed action to be taken by ComMarianas on subject case.
(C) Proposed action to be taken by CinCPacFt on subject case.

1. In accordance with references (a), (b) and verbal instructions
of Commander Marianas, this brief, which contains my comments and recommendations,
is submitted.

2. TRIAL:

a. Offenses.

CHARGE I - MURDER

Specification

In that KOICHI, Hiroe, then a captain, IJA, KATSUYAMA, Tetsuji, then a first lieutenant, IJA, ONOSE, Ichiro, then a second lieutenant, IJA, and TSUCHIYA, Naohiko, then a sergeant major, IJA, all attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations, did, each and together, at Koror Island, Palau Islands, on or about May 24, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed, by beheading with a sword, one Wallace F. Kaufman, second lieutenant, United States Army, an American prisoner of war, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

FF12/P13-10(3)
02-MEC-gfs

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 10537

From: The Commander Marianas Area.
To: The Secretary of the Navy (JAG).

Subject: ONOSE, Ichiro, former second lieutenant, IJA -
petition for clemency.

References: (a) The Commander Marianas Area action, file FF12/A17-10(2)
over 02-JDM-fsk, serial 3109 dtd 20 Mar. 1948, in the
case of KOICHI, Hiroe, et al.
(b) Commander in Chief, Pacific and U.S. Pacific Fleet action,
file A17-25, serial 1848 dtd 18 Apr. 1948, in the case of
KOICHI, Hiroe, et al.

Enclosure: (A) Petition from Yukie ONOSE, wife, dated 1 Feb. 1948, in
behalf of ONOSE, Ichiro, in Japanese with English
translation.

1. A military commission convened by this command on Guam tried
subject named Japanese in the case of KOICHI, Hiroe, et al for war crimes
committed against an American prisoner of war. ONOSE, Ichiro was convicted
and sentenced to twenty-five (25) years imprisonment.

2. The record of proceedings in this case was acted upon by The
Commander Marianas Area on 20 March 1948 and forwarded to the Commander in Chief,
Pacific and U.S. Pacific Fleet. By reference (b) it was referred to the Judge
Advocate General of the Navy.

3. Enclosure (A) was received by Commander Marianas subsequent to
the trial of subject named war criminal and is forwarded for such action as
may be considered appropriate.

cc: CinCPacFlt.

C.H. Wright
C.H. WRIGHT

RECEIVED
3 JUN 1948
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

0323

FF12/A17-19
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

20 MAR 1949

MEMORANDUM TO: Commander in Chief Pacific and United States Pacific Fleet.
Commander Marianas Area.

Subject: Review of the Record of Trial by a Military Commission of
former Captain Hiroe KOICHI, I.J.A., et al.

Reference: (a) CinCPac/POA Restricted Desp. 170150 Dec. 1945.
(b) CinCPac and U.S. PacFlt Staff Instructions 1947,
paragraph 2 H 3 (c).

Enclosure: (A) Record of subject case (original and three copies; one
copy for CinCPacFlt, one copy for SecNav for delivery to
United Nations War Crimes Commission, and one copy for
Commander Marianas).
(B) Proposed action to be taken by ComMarianas on subject case.
(C) Proposed action to be taken by CinCPacFlt on subject case.

1. In accordance with references (a), (b) and verbal instructions
of Commander Marianas, this brief, which contains my comments and recommendations,
is submitted.

2. TRIAL:

a. Offenses.

CHARGE I - MURDER

Specification

In that KOICHI, Hiroe, then a captain, IJA, KATSUYAMA, Tetsuji, then a first lieutenant, IJA, ONOSE, Ichiro, then a second lieutenant, IJA, and TSUCHIYA, Naohiko, then a sergeant major, IJA, all attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations, did, each and together, at Koror Island, Palau Islands, on or about May 24, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed, by beheading with a sword, one Wallace F. Kaufman, second lieutenant, United States Army, an American prisoner of war, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

0324

FF12/Al7-19
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Subject: Review of the Record of Trial by a Military Commission
of former Captain Hiroe KOICHI, I.J.A., et al.

CHARGE II - VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that KOICHI, Hiroe, then a captain, IJA, commanding officer of the Provisional Anti-aircraft Unit, otherwise known as the Koror and Koichi Anti-aircraft Unit, attached to the military installations of the Imperial Japanese Army, Koror Island, Palau Islands, and while so serving at said anti-aircraft unit, did, at Koror Island, on or about May 24, 1945, at a time when a state of war existed between the United States, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the commanding officer of the Provisional Anti-aircraft Unit, otherwise known as the Koror and Koichi Anti-aircraft Unit, to control the operations of members of his command and persons subject to his control and supervision, namely, KATSUYAMA, Tetsuji, then a first lieutenant, IJA, attached to and serving at said anti-aircraft unit, ONOSE, Ichiro, then a second lieutenant, IJA, TSUCHIYA, Naohiko, then a sergeant major, IJA, and others unknown, permitting them, the aforesaid persons, and persons unknown, to kill unlawfully and cause to be killed unlawfully on or about May 24, 1945, at Koror Island, Palau Islands, by beheading with a sword, one Wallace F. Kaufman, second lieutenant, United States Army, an American prisoner of war, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Specification 2

In that KOICHI, Hiroe, then a captain, IJA, commanding officer of the Provisional Anti-aircraft Unit, otherwise known as the Koror and Koichi Anti-aircraft Unit, attached to the military installations of the Imperial Japanese Army, Koror Island, Palau Islands, and while so serving at said anti-aircraft unit, did, at Koror Island, Palau Islands, on or about May 24, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the commanding officer of the said Provisional Anti-aircraft Unit, otherwise known as the Koror and Koichi Anti-aircraft Unit, to take such measures as were within his power and appropriate in the circumstances to protect one Wallace F. Kaufman, second lieutenant, United States Army, an American prisoner of war, then and there held captive by the armed forces of Japan at Koror Island, Palau Islands, as it was his duty to do, in that he permitted the unlawful killing by beheading with a sword, by members of his command and persons subject to his control and supervision of the said prisoner of war, in violation of the law and customs of war.

0325

FF12/A17-19
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Subject: Review of the Record of Trial by a Military Commission
of former Captain Hiroe KOICHI, I.J.A., et al.

b. Pleas, to Charges and Specifications by individual
accused:

KOICHI, Hiroe

CHARGE I - Not guilty (R.p. 3)
Specification - Not guilty (R.p. 3)

CHARGE II - Not guilty (R.p. 3)
Specification 1 - Not guilty (R.p. 3)
Specification 2 - Not guilty (R.p. 3)

KATSUYAMA, Tetsuji

CHARGE I - Not guilty (R.p. 3)
Specification - Not guilty (R.p. 3)

ONOSE, Ichiro

CHARGE I - Not guilty (R.p. 4)
Specification - Not guilty (R.p. 4)

TSUCHIYA, Naohiko

CHARGE I - Not guilty (R.p. 4)
Specification - Not guilty (R.p. 4)

c. Findings, on Charges and Specifications with
reference to each accused:

KOICHI, Hiroe

CHARGE I - Guilty (R.p. 102)
Specification - Proved in part (R.p. 102)
Proved except the words "and TSUCHIYA, Naohiko,
then a sergeant major, IJA", which words are
not proved.

0326

FF12/A17-19
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Subject: Review of the Record of Trial by a Military Commission
of former Captain Hiroe KOICHI, I.J.A., et al.

CHARGE II - Guilty (R.p. 102)
Specification 1 - Proved in part (R.p. 102)
Proved except the words "and TSUCHIYA, Naohiko,
then a sergeant major, IJA", which words are
not proved.
Specification 2 - Proved (R.p. 102)

KATSUYAMA, Tetsuji

CHARGE I - Guilty (R.p. 102)
Specification - Proved in part (R.p. 102)
Proved except the words "and TSUCHIYA, Naohiko,
then a sergeant major, IJA", which words are
not proved.

ONOSE, Ichiro

CHARGE I - Guilty (R.p. 103)
Specification - Proved in part (R.p. 103)
Proved except the words "and TSUCHIYA, Naohiko,
then a sergeant major, IJA", which words are
not proved.

TSUCHIYA, Naohiko

CHARGE I - Not guilty (R.p. 103)
Specification - Not proved (R.p. 103)

d. Sentences:

KOICHI, Hiroe	Twenty-five (25) years confinement	(R.p. 106)
KATSUYAMA, Tetsuji	Twenty-five (25) years confinement	(R.p. 106)
ONOSE, Ichiro	Twenty-five (25) years confinement	(R.p. 106)

e. Maximum Sentence:

Death

FF12/AL7-19
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Subject: Review of the Record of Trial by a Military Commission
of former Captain Hiroe KOICHI, I.J.A., et al.

f. Convening Authority:

Rear Admiral C. A. FOWNALL,
United States Navy,
The Commander Marianas Area.

g. Place of Trial:

The auditorium, Headquarters, Commander Marianas,
Guam, Marianas Islands (R.p. 1).

h. Date of Trial:

24 November 1947 to 6 December 1947.
Arraignment: 24 November 1947 (R.p. 3, 4).
Sentence: 6 December 1947 (R.p. 106).

3. FORMAL MATTERS:

a. Authority for the commission to act.

By precept dated 8 November 1947, the commission was ordered convened 20 November 1947, or as soon thereafter as practicable by the Commander Marianas Area pursuant to authority inherent in a Military Commander and as authorized by the Commander-in-Chief, Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinCPacFlt serial 0558 of 8 March 1946; ComMarianas Desp. 292336Z of Sept. 1947; CinCPacFlt Desp. 020103Z of Oct. 1947; SecNav Desp. 081946Z of Oct. 1947; CinCPacFlt Desp. 092353Z of Oct. 1947). The trial was held under authority of Naval Courts and Boards, except that the commission was permitted to relax the rules of Naval Courts to meet the necessities of the trial and use the rules of evidence and procedure promulgated by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, and modifications thereof, as necessary to obtain justice.

b. All members of the commission were present throughout the trial.

0328

FF12/A17-19
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Subject: Review of the Record of Trial by a Military Commission
of former Captain Hiroe KOICHI, I.J.A., et al.

c. All members of the commission, judge advocates, reporters, interpreters and witnesses were sworn (R.p. 1, 5, 27, 35, 56, 61, 63, 72, 75, 85, 94, 97, 104).

d. The charges and specifications were shown to have been served on the accused on 10 November 1947 (R.p. 1).

e. The accused were represented by counsel of their own choice (R.p. 1).

f. There was no objection to any member of the commission (R.p. 1).

g. The accused in effect objected to the charges and specifications (R.p. 2, Prefix "B" and "D") on the following grounds:

Objection 1: That the charges and specifications do not state the specific law and customs of war violated.

Comment: The specifications under Charge I and Charge II in simple, accurate and concise language apprised the accused of the offense charged (N.C. & B., Sec. 29). It is not necessary that the law and customs of war referred to be set forth verbatim. The commission is empowered to take judicial notice of treaties, statutes, etc., and such matter need not be charged. "Matters of which courts may take judicial notice need neither be charged nor proved." (N.C. & B., Sec. 309).

Objection 2: That the accused are being improperly tried in joinder.

Comment: All of the accused in this case were jointly charged in the specification of Charge I. The offense therein alleged is the murder of one American prisoner of war on or about 24 May 1945 at Koror Island. The specification used follows a form specification given in Section 88, Naval Courts and Boards for use in joinder trials. Accused KOICHI, who was joined in the specification of Charge I, was also separately charged in specifications 1 and 2 of Charge II. "All the charges against the accused should be consolidated into one set of charges, and one trial had upon the consolidated set instead of having two or more trials" (Sec. 20, N.C. & B.).

Objection 3: That Charge I and Charge II grew out of the same incident but are contradictory as Charge I alleges a wilful killing whereas Charge II alleges a neglect of duty.

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Comment: It is proper for the convening authority to prefer as many charges as he considers necessary. "The law permits as many charges to be preferred as may be necessary to provide for every possible contingency in the evidence" (N.C. & B., Sec. 19).

Objection 4: That Specification 2 of Charge II is duplicative of Specification 1 of Charge II.

Comment: Specifications 1 and 2 of Charge II allege different offenses in that they each allege the violation of a different and distinct duty placed upon the accused KOICHI by the law of war. "Different offenses, however, of the same nature, should be included in separate specifications under the same charge" (N.C. & B., Sec. 23).

Objection 5: That the prosecution has used improper pleading in joining the accused in Charge I with "others to the relater unknown."

Comment: It was not improper to join the accused with "others to the relater unknown" for by analogy there is authority for this procedure in Naval Courts and Beards, Section 34, which provides that if not known, the party injured must be described as a person "by name to the relater unknown." There is further authority for the propriety of such pleading in 27 American Jurisprudence, Indictment and Informations. It is stated in Section 82, "It is the general rule that where the names or identity of persons whom it is necessary to name or identify in the indictment or information are in fact unknown to the grand jury or the prosecuting attorney, it is proper to aver that fact and describe them as persons unknown or as persons whose names are unknown." Citing Durland Vs. United States, 161 U.S. 306; Coffin vs. United States, 156 U.S. 432.

Objection 6: That the specification under Charge I does not follow the specification in Section 53 of Naval Courts and Beards.

Comment: In pleading war crimes it is not mandatory that the form specifications set out in Naval Courts and Beards be followed. The form specifications given in Naval Courts and Beards are merely sample specifications which satisfactorily set out the offenses under the circumstances there indicated (Sec. 45, N.C. & B.). In this connection the United States Supreme Court in discussing the sufficiency of the pleading in the trial of General TOMOYUKE YAMASHITA stated:

"Obviously charges of violations of the law of war triable before a military tribunal need not be stated with the precision of a common law indictment. Cf. Collins v. McDonald, supra, 420. But we conclude that the allegations of the charge, tested by any reasonable standard, adequately alleges a violation of the law of war and that the commission had authority to try and decide the issue which it raised. Cf. Dealy v. United States, 152 U.S. 539; Williamson v. United States, 207 U.S. 425, 447; Glasser v. United States, 315 U.S. 60, 66, and cases cited."

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Objection 7: That the charges and specifications do not show an exception to the statute of limitations.

Comment: There is no necessity of showing any exception to a statute of limitations for the crime alleged is a war crime (murder of an American prisoner of war). "The offense need not have been committed after a particular date to render the responsible party of parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931" (Regulations Governing the Trials of Accused War Criminals, SCAP AG 000.5 (5 Dec 45) 2 b (2); see also Potsdam Declaration, 26 July 1945). There is no statute of limitations for wilful murder under U.S. Federal law (U.S.C.A., Sec. 581). An indictment for any offense punishable by death may be found at any time without regard to any statute of limitations (Sec. 581a, U.S.C.A.).

The action of the commission in overruling all the objections was, in my opinion, correct.

h. The commission found the charges and specifications in due form and technically correct (R.p. 2).

i. The accused were properly arraigned (R.p. 3, 4).

4.

MOTIONS AND PLEAS:

a. The accused made a plea to the jurisdiction (R.p. 2, Prefix "F") in effect on the following grounds:

1. "Since the jurisdiction over territory of a court, whether it be in a criminal or civil case, grows out of the consideration that will enable the accused person to be tried in the territory most convenient to him, the question as to which court has jurisdiction over territory in a particular case should be chiefly determined in consideration of the benefit of the accused person." There is no benefit to the accused in being tried by this commission, therefore, the commission has no jurisdiction.

2. There is no jurisdiction because the accused Japanese nationals have been long demobilized from the Japanese Army.

3. There is no jurisdiction because the accused have not been properly extradited and are therefore not legally before the commission.

The plea to the jurisdiction was, in my opinion, properly denied (R.p. 2) for the reasons stated in paragraph 6(a) below.

b. The accused made a plea in bar of trial (R.p. 3, Prefix "F") on the ground that the alleged offenses had taken place more than two years before the charges and specifications were drawn and was therefore barred by the statute of limitations.

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The plea in bar of trial was, in my opinion, properly denied (R.p. 3) for the reasons stated in sub-paragraph 3(g) above.

c. A plea in abatement was made by the defense on the ground of misjoinder of parties (R.p. 2, Prefix "G", "H", "I").

The plea in abatement was properly denied, in my opinion, for the reasons given in sub-paragraph 3(g) above.

d. The accused all pleaded "Not Guilty" to the charges and specifications (R.p. 3, 4).

e. When the prosecution rested and before the defense began, defense counsel made a motion for a directed acquittal of the accused ONOSE, Ichiro and TSUCHIYA, Naohiko (R.p. 68, Appendix "R") on the grounds that the prosecution had not proved the guilt of these accused beyond a reasonable doubt.

This motion was, in my opinion, properly denied for there is no provision in Naval Courts and Boards for such a motion (N.C. & B.) Sec. 1111.

f. The defense objected to the prosecution's request that the commission take judicial notice of (1) The Potsdam Declaration of July 26, 1945, (Sec. 10); (2) The Geneva Prisoner of War Convention of July 27, 1929; (3) That the Palau Islands are part of the command of Commander Marianas; (4) The Hague Convention of October 18, 1907 (R.p. 4, 5). The commission properly overruled these objections (R.p. 5) for Section 309, Naval Courts and Boards provides, "Courts should take judicial notice of: (a).....(c) Matters which the court is bound to know as a part of its own special duty and function, such as the United States Constitution, treaties,....."

5. EVIDENCE: Briefly summarized the competent evidence is to the following effect:

a. For the prosecution.

A B-24 was shot down by an anti-aircraft unit over Koror (R.p. 28) and one survivor parachuted from the plane and was captured (R.p. 28). The prisoner was interrogated by Colonel DOI and it was ascertained that his name was Kaufman and that he was an American lieutenant (R.p. 28). The prisoner was fed and then sent to the Inoue Headquarters by car (R.p. 28). This occurred sometime in April 1945 (R.p. 25). Lt. Col. YAJIMA, Staff Intelligence Officer (R.p. 35) having been advised by DOI of the capture of the prisoner (R.p. 36) informed Chief of Staff TADA and also the Lt. General INOUE (R.p. 36). As there were no facilities at Headquarters to accommodate the prisoner, YAJIMA called the Kempeitai, then commanded by Lt. Col. MIYAZAKI to have the prisoner confined there (R.p. 36). The prisoner was interrogated twice by YAJIMA (R.p. 36, 37) and it was ascertained that his name was Kaufman and that he was a lieutenant, either second or first (R.p. 36). The personal belongings of the prisoner consisted of

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an identification card, a cross on a chain, a watch and a ring (R.p. 42). These were kept by YAJIMA while Kaufman was confined in the Kempeitai (R.p. 42). Several days after the second interrogation of Kaufman, Lt. General INOUE told YAJIMA to have Kaufman executed (R.p. 37) at the Koichi Anti-aircraft Unit on Koror (R.p. 37) in order to boost morale at that unit. YAJIMA called Col. DOI who was in charge of the Koror Defense Unit and advised him of the commanding officer's intention (R.p. 38). DOI said he could not agree with the execution (R.p. 28, 38). DOI called KOICHI and informed him of the contents of YAJIMA's call (R.p. 28). YAJIMA sometime later reported this to INOUE (R.p. 38). At that time INOUE told YAJIMA that he had personally ordered Captain KOICHI to execute the prisoner and told YAJIMA to send the prisoner to Koror (R.p. 38). INOUE also told YAJIMA that the prisoner's possessions were to be returned to him and that his death was to be confirmed and for that purpose have an officer from Headquarters go along with him (R.p. 39) and that he (INOUE) would personally speak to the officer concerning this (R.p. 39). YAJIMA designated Second Lieutenant ONOSE of the Intelligence Section to confirm the execution, return the possessions and escort Kaufman to Koror "without fail" (R.p. 39). ONOSE asked permission to take Sergeant Major TSUCHIYA along and also Gunzokii SHIMOJO to confirm the death of the prisoner (R.p. 39, 40). YAJIMA ordered this to be done, and gave as his reason for the order "at this time there were bombings every day so if one person went along and if he got into some kind of trouble, it would be very difficult" (R.p. 39, 40). YAJIMA told ONOSE to report to INOUE (R.p. 40). ONOSE, SHIMOJO and TSUCHIYA later reported to YAJIMA (R.p. 6) after ONOSE had seen INOUE (R.p. 40). TSUCHIYA was ordered to assist ONOSE in carrying out the orders (R.p. 40, 41, 45, 46). TSUCHIYA "was to assist ONOSE when ONOSE can not do it all himself. He was also to obey what ONOSE says and do accordingly" (R.p. 46). All knew Kaufman was to be executed before escorting him to Koror (R.p. 39, 86). YAJIMA called the Kempeitai to turn over Kaufman to ONOSE (R.p. 41) and YAJIMA turned over Kaufman's possessions to ONOSE (R.p. 42). At the Kempeitai, the prisoner was turned over to ONOSE who was accompanied by TSUCHIYA and SHIMOJO (R.p. 57, 58, 7, 87). The Kempeitai supplied the party with an assistant Kempei to guard the prisoner (R.p. 87, 58) and the "escort company with ONOSE in command" (Exh. 2 p. 2) set out for Gaspan harbor (R.p. 87, 7). They arrived at the pier with the prisoner in the center of the escort group (Exh. 2). At the harbor, before securing a boat for Koror, the party was joined by Captain KOICHI and his orderly (R.p. 7). When the vessel arrived at Koror, the party went to the quarters of the Koichi Unit (R.p. 8, 88). The prisoner was placed in an air raid shelter under guard (R.p. 9). In Captain KOICHI's quarters a conference, attended by KOICHI, ONOSE, KATSUYAMA, TSUCHIYA and a non-commissioned officer of the Katsuyama Unit, was held to determine the time and place of the execution (R.p. 9, 18, 89). It was decided that Kaufman would be executed at 7 o'clock the next morning in the naval cemetery (R.p. 9). The next morning the prisoner was taken to the naval cemetery (R.p. 10), where there was a grave prepared (R.p. 11),

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and a public execution arranged for (R.p. 10, 14, 37; Exh. 2; p. 95). There were about thirty persons present (R.p. 10) including ONOSE, KOICHI, KATSUYAMA and TSUCHIYA (R.p. 10). The prisoner's belongings were returned to him by TSUCHIYA who was with ONOSE in front of him (R.p. 10, 11). The prisoner was tied by a rope which was held by a man from the Koichi Unit (R.p. 10). A picture was taken of TSUCHIYA returning the prisoner's personal belongings to him by SHIMOJO, the official photographer (R.p. 89). Upon orders from KATSUYAMA the prisoner was blindfolded (R.p. 11). KATSUYAMA swung up his sword but didn't seem to have the right stance (R.p. 11). ONOSE then with words and gestures gave KATSUYAMA instructions as to how to place his feet, how to swing the sword and what part of the neck to aim at when he brought the sword down (R.p. 81, 12). After receiving these instructions, KATSUYAMA brought his sword down on Kaufman's neck (R.p. 13) and about half of the neck was cut. The prisoner died and was placed face down in the grave and dirt was placed upon him (R.p. 13). ONOSE and TSUCHIYA returned to headquarters and ONOSE reported to YAJIMA that Kaufman had been executed (R.p. 41, 90).

b. For the defense.

KOICHI, Hiroe, one of the accused, took the stand in his own defense (R.p. 75). He testified that when DOI called him concerning INOUE's intention to have the prisoner executed at Koror, he asked DOI to refuse it for him (R.p. 76). Later DOI called again to advise that he had reported KOICHI's opposition but Headquarters was insisting that the prisoner would be delivered to Koror and that KATSUYAMA would execute him (R.p. 76). KOICHI advised KATSUYAMA of this (R.p. 77) and KATSUYAMA said he was against it and asked that it be refused (R.p. 77). KOICHI had to visit headquarters to confer with Staff Officer NAKAGAWA concerning battle damage and he told KATSUYAMA he would refuse the orders for him if the subject of the execution came up (R.p. 77). KOICHI did visit headquarters and was advised by NAKAGAWA before seeing INOUE not to disagree with him (R.p. 77). NAKAGAWA and KOICHI went to see INOUE and INOUE gave KOICHI orders to have the prisoner executed before his assembled men by KATSUYAMA (R.p. 77). INOUE also gave KOICHI detailed instructions (R.p. 77) concerning the execution and specifically told him that the prisoner's belongings were to be returned to him (R.p. 78). KOICHI returned to Koror (R.p. 79) and advised KATSUYAMA of INOUE's order (R.p. 79) and that the prisoner would be executed the following morning (R.p. 79). The following morning, KOICHI went to the cemetery where the men were assembled (R.p. 80). KOICHI addressed the men and told them of the division commander's orders. Then he had KATSUYAMA execute the blindfolded prisoner (R.p. 80). The prisoner was buried and his grave marked. Flowers and prayers were offered (R.p. 80).

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TSUCHIYA, Naohiko, one of the accused, took the stand as a witness in his own behalf (R.p. 85). He testified that he was a clerk in the intelligence section of the staff of the 14th Division (R.p. 85). That when intelligence officers of the section went on trips, one of the three non-commissioned officers of the section would take turns accompanying them (R.p. 85). That in May of 1945, ONOSE asked him to go to Koror to escort prisoner Kaufman (R.p. 86). That as it was his turn, and he thought the trip would be beneficial to his health, he agreed (R.p. 86). That he went with ONOSE and SHIMOJO to YAJIMA and then heard ONOSE report his (ONOSE's) orders so that for the first time he learned that the prisoner was to be executed (R.p. 86). That he accompanied ONOSE and SHIMOJO to the Kempeitai where the prisoner escorted by an armed assistant Kempei was turned over to ONOSE (R.p. 86). That the party set out for Gaspan Harbor - enroute ONOSE gave TSUCHIYA a watch, a ring, and a wallet with instructions to return them to the prisoner at the last minute (R.p. 87). That at the pier, the party was joined by KOICHI and his orderly (R.p. 87). That the party embarked for Koror and arrived there at midnight (R.p. 88). That they were met by non-commissioned officers of the Koichi Unit who took the prisoner (R.p. 88). That at KOICHI's quarters the time and place of the execution was discussed but TSUCHIYA did not participate in the discussion (R.p. 18, 88). That the next morning when he visited the cemetery, Kaufman was already there (R.p. 88). That he returned the prisoner's possessions (R.p. 89). That after Kaufman was given his possessions, he was led away (R.p. 89). That from a distance of about 15 meters, he saw Kaufman executed but that he did not participate in the execution (R.p. 89). That his duty as guard had ceased when Kaufman was turned over by ONOSE to the Koichi guards and that his only other duty in relation to the prisoner was to return his belongings (R.p. 92). That concerning the point of ONOSE showing KATSUYAMA how to cut, ONOSE had only coached KATSUYAMA concerning firm footing after Kaufman's position had been changed to enable SHIMOJO to take a picture (R.p. 92, 93).

A witness, TANAKA, Masao, testified that on the day of the execution he was advised by the non-commissioned officer doing the work of the adjutant that a prisoner was to be executed on orders of Commanding Officer INOUE and that TANAKA was to attend with his men (R.p. 72). That KOICHI made a speech advising that the prisoner was to be executed on orders of Division Commander INOUE (R.p. 73). That after the execution the prisoner was buried according to Japanese custom (R.p. 73). That at KOICHI's request he made a cross for the grave (R.p. 74). That KOICHI often visited the grave and had it cleared (R.p. 74).

A witness, WATANABE, Toshio, testified that YAJIMA had called DOI. That ONOSE was selected to accompany Kaufman as his duties were least urgent and that TSUCHIYA was selected because he was in poor health and it was his turn to go out (R.p. 98).

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A witness, NAKAGAWA, Kiyoshi, testified that he had sent for KOICHI to confer concerning battle damage (R.p. 95). That he went with KOICHI to see INOUE and heard INOUE tell KOICHI to have the Katsuyama Unit (R.p. 95) execute the prisoner in order to boost morale (R.p. 96).

6. DISCUSSION:

a. As to jurisdiction.

Express authority to appoint military commission to try war criminals was delegated to the Commander Marianas Area by the Commander-in-Chief, United States Pacific Fleet, in his confidential serial 0558, dated 8 March 1946. Further it appears that such authority is inherent in his command (Appendix D, N.C. & B; Yamashita vs. Styer, 327 U.S. 1).

The accused made a plea to the jurisdiction as indicated in paragraph 4(a) above. It is well established that a military commission convened by authority of the Commander-in-Chief, Pacific and U.S. Pacific Fleet and/or any military commander has jurisdiction to try war crimes and accused war criminals (Yamashita vs. Styer, 14 U.S.L. Weekly 414, 4 Feb. 1946; Appendix D, N.C. & B., 1937; SecNav ltr. re war crimes dated 13 Jan. 1945 and CinC U.S. Fleet ltr. serial 2812, dated 6 April 1945). The murder of an unarmed prisoner of war as alleged in the instant case is well recognized as a war crime (ComMarianas Military Commission Order No. 39 in re IWANAMI, Hiroshi, former Captain, IJN, et al; ComMarianas Military Commission Order No. 33 in re TACHIBANA, Yoshio, former Lieutenant General, IJA, et al). Jurisdiction for such offenses and for perpetrators thereof is well established, particularly by the Potsdam Declaration of 26 July 1945 which states,"stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners."

The plea referred to in paragraph 4(a)(1) is improper. The present case involves a war crime as distinguished from an ordinary crime since it involves the murder of an unarmed American prisoner of war. Jurisdiction in war crimes cases as indicated in the precept of The Commander Marianas Area, dated 8 November 1947, is based upon custody at the time of trial. Paragraph 3 of the precept provides, "The military commission shall be competent to try all offenses within the jurisdiction of exceptional military courts,.... It shall have jurisdiction over all Japanese nationals and others who worked with, were employed by or served in connection with the former Japanese Imperial Government, in the custody of the convening authority at the time of trial, charged with offenses committed against United States nationals,...."

The plea referred to in paragraph 4(a)(2) is without merit in its contention that merely because the accused were demobilized they are no longer amenable to justice. The Potsdam Declaration of 26 July 1945 provided that "stern justice shall be meted out to all war criminals." It is immaterial whether the accused ever were members of the armed forces of Japan.

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The plea referred to in paragraph 4(a)(3) that the accused are not legally before the commission as they were not properly extradited cannot be maintained for the laws of the respective nations relative to the extradition of criminals generally are not applicable in the cases of war criminals. This is covered in a report of State-War-Navy- Coordinating Subcommittee for the Far East dated 12 September 1945 and subsequently issued instructions by the Joint Chiefs of Staff to SCAP. The relative instructions to SCAP were implemented in his Legal Section Memorandum dated 22 June 1946 which in effect provides that any command outside of the Far East Theater may obtain suspected war criminals by submitting a request therefor, including in the request: (a) the name and address of suspected war criminals; (b) the name of command making request; (c) information which constitutes basis for request; and, (d) place where suspected war criminal is to be tried (see also Potsdam Declaration dated 26 July 1945). Paragraph 3 of the precept in this case gave the commission jurisdiction of the accused.

b. As to procedure.

(1) Selection of the commission followed the approved practice of including Army, Navy and Marine Corps officers as members of the commission (see my memorandum dated 20 February 1946 in the case of Colonel OISHI, et al). Prosecution and defense personnel were duly authorized and appointed by the convening authority.

(2) The proceedings of the commission, as authorized in the precept, were governed by the provisions of Naval Courts and Boards, except that the commission was permitted to relax the rules for naval courts to meet necessities. The rules of evidence and procedure, issued and promulgated by the Supreme Commander for the Allied Powers (APO 500, 5 Dec. 1945 AG 000.5) were authorized for use as necessary to obtain justice.

(3) The accused were advised of and accorded all rights prescribed.

(4) The sentences are legal.

c. As to evidence.

Referring to Charge I and the specification thereunder, there is sufficient competent evidence to support the commission's findings of guilty relative to defendants KOICHI, KATSUYAMA, and ONOSE. The commission's findings of

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proved in part on the specification relative to KOICHI, KATSUYAMA and ONOSE are based on the acquittal of TSUCHIYA. The commission's finding of "not guilty" as to TSUCHIYA is discussed below. The commission's findings of "proved in part" as to the specification do not affect the legality of the findings of "Guilty" as to the charge inasmuch as the exceptions made by the commission leaves the specification still supporting the charge (Sec. 429, N.C. & B.).

Turning now to the acquittal of TSUCHIYA, it is my opinion that there was sufficient competent evidence to establish a prima facie case against him which has not been rebutted. In other words it is my opinion that there is insufficient evidence to support the commission's acquittal of TSUCHIYA. Sufficiency of the evidence to sustain the finding of the commission is one of the matters which should always be specially considered by reviewing authorities, keeping in mind the duties of the commission in weighing the evidence before it (Sec. 472, N.C. & B.).

In acquitting the defendant TSUCHIYA on Charge I and the specification thereunder, the commission must have disregarded the confession of TSUCHIYA and his evidence while a witness on the stand in his own behalf relative to the part he played in bringing about the illegal execution of Kaufman. TSUCHIYA was, as established by prosecution evidence an assistant to ONOSE who had been illegally ordered to assure the killing of Kaufman, doing the killing himself if necessary. In support of this the uncontroverted evidence of both the prosecution and defense established that TSUCHIYA was one member of an escorting party of four persons commanded by ONOSE which took Kaufman from the Kempeitai at the 14th Division Headquarters on BABELTHUAP Island to KOROR Island for execution in accordance with orders of the Commanding General of the 14th Division, Gen. INOUE. TSUCHIYA knew Kaufman was to be executed at the time he was taken into custody by the escorting party, that is, before he left BABELTHUAP. TSUCHIYA attended a conference with ONOSE and others connected with the mission of murdering Kaufman on KOROR the night before Kaufman's execution at which the time and place of his execution was discussed and announced. TSUCHIYA went the next morning to, and was present at, the scene of execution. Immediately prior to the execution he delivered the personal belongings of Kaufman to him in compliance with orders of ONOSE, the officer in charge of the escorting party. While delivering the belongings to Kaufman, his picture was taken with Kaufman by another member of ONOSE's escorting party, the official photographer SHIMOJO. All of these facts were admitted by TSUCHIYA and testified to by other witnesses. He maintained however, that (1) he had no personal malice towards Kaufman and that he did not wish him executed; (2) he went in the escort party in obedience to orders; and (3) he did not kill Kaufman.

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On the above facts it is difficult to understand on what theory or facts the members of the commission based their acquittal of TSUCHIYA. It is likely that they did not believe that TSUCHIYA's part in escorting Kaufman, in obedience to superior orders, from BABELTHUAP Island to KOROR Island; assisting ONOSE in his mission to assure the execution of Kaufman and delivering the personal belongings of Kaufman to him and having his picture taken with Kaufman immediately before the execution at the scene of execution, constituted in law an overt act on the part of TSUCHIYA to commit murder.

It is true, as often repeated in effect, in text books and court decisions, mere contemplation or intention to commit a crime is not an act amenable to human laws. The mere speculative wantonness of a licentious imagination, however dangerous or even sanguinary in its object, can in no case amount to a crime. But the moment that any overt act is manifest, the offender becomes amenable to the laws (Vol. II, Bouviers Law Dictionary, p. 2436). An overt act relative to crime is defined in Black's Law Dictionary, in part, as follows:

"Overt Act

In criminal law, An open, manifest act from which criminality may be implied. An open act, which must be manifestly proved. 4 Inst. 12. An overt act essential to establish an attempt to commit a crime is an act done to carry out the intention, and it must be such as would naturally effect that result unless prevented by some extraneous cause. People v. Mills, 178 N.Y. 274, 70 N.E. 786, 67 L.R.A. 131; State v. Enanno, 96 Conn. 420, 114 A. 386, 389; State v. Lehman, 44 N.D. 572, 175 N.W. 736, 740. It must be something done that directly moves toward the crime, and brings the accused nearer to its commission than mere acts of preparation or of planning, and will apparently result, in the usual and natural course of events, if not hindered by extraneous causes, in the commission of the crime itself. State v. Thomason, 23 Okl. Cr. 104, 212 P. 1026, 1027; Powell v. State, 128 Miss. 107, 90 So. 625, 626; State v. Roby, 194 Iowa, 1032, 188 N.W. 709, 714."

When more than one individual is involved in the commission of a crime it is not necessary that each individual personally commit all the acts constituting the crime, and the overt act required of such individual need merely extend to and evidence the nature of his participation in the crime. "Generally speaking every one is a party to an offense who either actually commits 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 Criminal Law).

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In the past, particularly in civil law, technical and complicated distinctions have been established for testing the relation to an offense of the parties concerned in its commission. As a result parties to a crime have been classified as principals and accessories which classification has been further broken down to, principals in the first degree, principals in the second degree, accessories before the fact and accessories after the fact. This complicated classification of parties and their relationship to the offense committed has perhaps confused members of the commission in determining the responsibility of TSUCHIYA.

"At common law participants in crime are either principals or accessories. Principals are usually divided into principals in the first degree and principals in the second degree. Accessories consist of accessories before the fact and accessories after the fact. Principals in crime include all persons who are present at the commission of the wrongful act and participate therein either directly or indirectly, while accessories include persons who in some manner are connected with a crime either before or after its perpetration, but who are not present at the time the crime is committed." (14 Am.Jur. Crim.Law Sect. 72).

Note that under the common law definition TSUCHIYA could qualify as a principal in view of the fact that he was present at the scene at the time of the execution, and that if he participated at that time, his participation was that of a principal.

The distinction between principals in the first degree and second degree, and accessories before the fact has in almost all jurisdictions become obsolete.

14 Am.Jur. Crim.Law, Sect. 72 states: "These distinctions however have been abrogated to a large extent by statutory provisions variously worded. By some statutes an accessory is defined to be one who stands by and aids, abets, or assists or who, not being present, aiding abetting, or assisting, advises, encourages, aids or abets in the perpetration of a crime, thereby including both accessories and principals as known to the common law. By others all persons are principals who act together in the commission of an offense or are concerned in the commission of an offense whether they directly commit the act constituting the offense or aid and abet or otherwise advise and encourage its commission".

The state of the law in this respect is summarized in footnote 4, page 226 of Miller's Criminal Law as follows: "1 Bishop on Criminal Law (1856) Sec. 456, p. 388: 'The distinction is in all respects without a difference and it should not be preserved in the books', Letton, J., in Skidmore v. State, 80 Neb. 698, 115 N.W. 288; Francis v. State, 111 Neb. 580, 197 N.W. 379:

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'It is a principle of our criminal law that all persons who are concerned in the accomplishment of an offense are parties to that offense, and unless otherwise specially provided are liable to the same penalty. No general statement covering all the acts which may involve one as a party to an offense has been formulated, and such a statement is obviously impracticable. But the nature of the acts by which one may become concerned in the accomplishment of an offense has been illustrated by numberless decisions as to the effects of particular acts in respect to particular offenses. Unfortunately, the general principles thus illustrated have been obacured by the fact that from earliest times technical and complicated distinctions were established for testing the relation to an offense of the parties concerned in its commission.'

'This complicated system of nicely technical distinctions has been practically abolished by statute, both here and in England. Now, all persons concerned in the accomplishment of an offense (unless otherwise specially provided) may be indicted, prosecuted and punished in the same manner as principals in that offense were formerly proceeded against.' STATE v. SCOTT, 80 Conn. 317, 323, 68 A. 258, Miller, Cas. Crim. Law, p. 173."

The distinction between principals and accessories before the fact has been abolished in so far as the U.S. Federal Government is concerned by Section 550, Title 18 of the United States Code which provides:

"'Principals' defined. 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 section makes principals and accessories before the fact all principals (cases cited in footnote 3, Sec. 550, Title 18, U.S.C.A.; Sec. 41, N.C.&B.). Accordingly one who aids and abets the commission of murder is a principal.

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Such distinctions do not exist in war crimes, but even if such distinction existed, the participation of TSUCHIYA would be sufficient to constitute him a principal "in the second degree" to the murder of KAUFMAN.

This is clearly evident from the following extract from
14 Am.Jur. Crim. Law, Sect. 76:

"S 76. In Second Degree.--By most of the ancient writers on the common law of England, persons who were present at the commission of a crime only for the purpose of aiding, countenancing, or encouraging its perpetration were described as accessories at the fact. They could not be brought to trial until the principal offenders had been convicted or outlawed. This circumstance, together with the fact that the distinction between an aider and abettor and a principal was found to be a distinction without difference, long since led to the classifying of aiders and abettors as principals in the second degree. They may be defined as persons who are present at the time a crime is committed, lending their countenance, aid, encouragement or other mental aid or keeping watch or guard at some convenient distance while another person does the actual criminal act. A mere bystander is not guilty as a principal in the second degree for commission of a crime, if he does not in any way procure, incite, or encourage the act done by the actual perpetrator."

TSUCHIYA's guilt appears clear and unequivocal. One is a party to an offense if he 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. He need not himself wield the sword or fire the gun that causes the illegal killing of a human being to be guilty of murder. It is sufficient if he performs one act in the nature of assistance or furtherance of the crime knowing at the time that the crime is to be committed. For instance, a man who intends to assist, and is sufficiently near to do so, as where he is watching outside a house, while another is committing a burglary or other felony inside, is a principal. So, also if he is within a convenient distance, with intent to aid in a murder if his aid is necessary (Sec. 75(a), Miller's Criminal Law, p. 230 and cases cited therein).

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To assist or encourage the actual perpetrator of a crime is to "aid" or "abet" him. The assistance rendered need not be physical. "It may consist in mere encouragement to do the act. Thus it is sufficient to make one a principal if he watches so as to warn the person actually committing the deed, or if he is present, or near by, to the actual perpetrator's knowledge, with an intention of assisting him if necessary..." (Sec. 75(b), Mil. Crim. Law, p. 232). There must of course always be a community of unlawful purpose at the time the act is committed. There is, however, no necessity to show that one expressly authorized the other to do the act; if the act done by one were within the purview of the common design, or even if it were a natural and probable consequence of the common unlawful purpose, they are all liable (Sec. 75(c), Mil. Crim. Law, p. 233).

Counseling or procuring the commission of an offense makes a person guilty as a principal even if he is not present at the scene of the crime, because he is in such circumstances an accessory before the fact. "Counseling or procuring the commission of an offense includes threats, promises, etc., which may have provoked the offense, the procuring of implements or other means which may have served in its commission, with intent that they shall so serve, and assisting, knowingly and willfully, the perpetrator of the offense, in those acts which have prepared for, facilitated or consummated the offense" (underscoring supplied) (Sec. 76, Mil. Crim. Law, p. 237).

The assistance rendered by TSUCHIYA appears to have been substantial and valuable. He was available and ready to render and did render such assistance as ONOSE required in carrying out his mission to assure the execution of Kaufman in the manner prescribed by the Commanding General of the 14th Division. It is immaterial, as affecting his violation of law whether he furnished this assistance gratuitously or for a compensation and benefit to himself (State v. Scott 80 Conn. 317, 325, 68 A. 258, citing 2 Stephen's History of English Criminal Law 229-240).

Even though a community of unlawful purpose was established and overt acts had been taken by TSUCHIYA in execution of that purpose, such as escorting Kaufman from BABELTHUAP to KOBOR for the purpose of executing him, he could have repented and withdrawn from the commission of the crime so as to make himself innocent by merely notifying the principal perpetrator and abandoning the purpose prior to the consummation of the crime. This, however, he never did. Mere disapproval after having assisted as he did in the crime, without any effort to prevent its consummation, or mere withdrawal without the knowledge of his confederates will not relieve him (Sec. 76(b), Mil. Crim. Law, p. 238).

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The above principles enunciated in municipal law tending to establish the responsibility of all persons individually connected with a crime have been given effect in the trial of war crimes cases, as will be seen from the below excerpts from the reviews of the cases indicated:

MAKATO YOSHIOKA, Lt., et al.
(Date of Review 20 March 1946)

"The charge and specifications are that the accused 'did willfully and unlawfully kill' certain persons. It is not alleged there was a conspiracy. The evidence does not bring the accused Kai within any of the violations of the laws of customs of war set forth in 2, b, (1), (b) of the Regulations Governing the Trials of Accused War Criminals, although this reviewer recognizes that said regulations are not delimiting.

"It. Kai did not counsel, procure or command anyone to commit these crimes, he was present at the execution and his mere acquiescence or approval is not sufficient to constitute him an accessory before the fact. See 22 CJS 165-170; Wharton's Criminal Law (12th Ed) pp 371-2.

"The remaining status which he might occupy, justifying the Commission's position as to his guilt, is that of an aider and abettor, or principal in the second degree. Since there is not statutory distinction in the rules governing these trials between principal and principal in the second degree, he may be viewed and treated as a principal if sufficient evidence exists to maintain this position.

"Certain facts must be proved to convict one as an aider and abettor. He must be present. If he is present, he is not necessarily party to the commission of the crime unless his presence and non-interference was designed as an encouragement to the perpetrators of the crime. He must be near enough to give assistance and have the intent to do so, if it become necessary, to the knowledge of the perpetrator of the crime. Words of encouragement heard by the accused or motions or acts encouraging the actual criminal may make one an aider and abettor. See generally, 22 CJS 157-162; Wharton's Criminal Law (12th Ed) pp 327-349."

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MIKIO TANEICHI, 1st Lt., et al.
(Date of Review 21 November 1946)

"At this point it is deemed pertinent to note that although there may be some general authority in law to the effect that it is possible to have a finding of 'Guilty as accessories before, during and after the fact' it is the opinion of this reviewer that such a finding should be discouraged in war crimes cases. The very nature of war crimes is such that participation either involves the accused as principals or not at all, and the extent of participation is not an element to be considered in the Findings but rather in the Sentence."

SEIICHI ONISHI, Lt. Col., et al.
(Date of Review 25 January 1947)

"According to the modern trend it doesn't matter whether he is a principal or an aider an abettor, or an accessory before the fact. If he is any of these, he can be charged with doing the crime himself, and even though the proof shows that he was only an accessory or aider and abettor, that proof is sufficient to sustain a finding of guilty on the charge and to subject him to the same penalties as the individual whom he has aided and abetted.

"Under many jurisdictions, the distinction between accessory before the fact, aider and abettor and principal have been abolished, both as to pleading, proof and as to criminal liability.

"24 F.C. p. 114, sec. 59, sets out:

'App. D.D. 1907. A person who, although not personally present at the commission of a crime, advises, incites, or connives at the offense, or aids or abets the principal offender, is now a principal, under Code. D.C. sec. 908, D.C. Code 1929, T. 6, sec. 5; and it is not essential that any specific time or mode of committing the offense shall have been advised or commanded, or, if so, that it shall have been committed in the particular way instigated, or that there shall have been any direct communication between such person and the actual perpetrator. - Maxey v. U.S. 30 App. D.C. 63.'

'C.C.A. Alaska 1907, Under Pen. Code Alaska, sec. 186, 188, which abolish the old distinctions between principal and

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accessory before the fact, one who aids and abets another in the commission of a crime may be charged in the indictment and convicted as a principal. *Rosecranz v. U.S.*, 155 F. 38, 83 C.C.A. 634.'

'C.C.A. N.Y. 1920. The acts of the principal become the acts of the accessory or aider and he may be charged as having done the act himself, and be indicted and punished accordingly, under Pen. Code, sec. 332, 18 U.S.C.A. Sec. 550, making the accessory a principal. *Di Preta v. U.S.*, 270 F. 73.'

'C.C.A. Wyo. 1928. Accessories may be indicted, tried and convicted as principals. 18 U.S.C.A. sec. 550. *Madigan v. U.S.*, 23 F. 2d 180.'

As set out above the facts in this case are simple and the law equally clear. An American prisoner of war was captured by Japanese at KOROR Island in 1944. He was taken to the Kempeitai unit of the 14th Japanese Army Division Headquarters on BABELTHUAP. Subsequently and without legal justification the Commanding General, 14th Division ordered his execution on KOROR Island. A party including TSUCHIYA, SHIMOJO and ONOSE with ONOSE in charge was ordered to take Kaufman from BABELTHUAP to KOROR and see that he was there executed by KOICHI and other designated members of his command. ONOSE was further to see that Kaufman's personal belongings were returned to him before he was executed. ONOSE's orders required him to himself execute Kaufman should the other persons designated fail to do so. He was there to see that the execution of Kaufman did not fail. TSUCHIYA was one of his assistants for carrying out his mission in connection with the execution of Kaufman. He acted as a guard in transporting Kaufman to KOROR for execution. He was at the scene of execution to render such assistance and perform such acts as ONOSE might require, and did in fact at the scene immediately prior to the execution deliver in accordance with ONOSE's orders the personal belongings of Kaufman to him. He was photographed while returning the belongings by another member of the execution party. This was without any doubt an act preliminary to, and connected with, Kaufman's execution, which was being performed publicly for the purpose of improving the morale of Japanese personnel in the area. The evidence including TSUCHIYA's own testimony leaves no possibility of a doubt that TSUCHIYA was with others ordered as a member of a party to execute Kaufman and he played his part in the execution from the time Kaufman was turned over to the execution party by the Kempeitai at the 14th Division Headquarters on BABELTHUAP Island until he was executed in the graveyard the next day on KOROR Island.

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If it could be said that TSUCHIYA did not commit a war crime, it would be difficult to say that any Japanese soldier ever did. It was clearly intended by the Potsdam Declaration of 26 July 1945 that such persons would be punished as it is stated therein "....stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners," (underscoring supplied). There have, in this connection, been many pronouncements by United Nations' statesmen, among them the "Declaration of January 13, 1942 at St. James Palace, London, of nine of the governments in exile, President Roosevelt's warnings of August 21 and October 7, 1942, the statement in the House of Parliament by the Lord Chancellor, October 7, 1942, the statement of October 2, 1942 by Commissar Molotov, the British and United Nations Declarations of October 25, 1941, the Soviet and Chinese notes of November 27, 1941 and January 9, 1942, the statement by Foreign Secretary Eden on March 10, 1944 to the House of Commons on Japanese atrocities against British prisoners of war" (War Criminals: Their Prosecution and Punishment by Sheldon Glueck, p. 191).

On March 24, 1944 both President Roosevelt and Prime Minister Churchill again proclaimed punishment for war criminals. Churchill included not only the "miscreants" but also their agents, and Roosevelt promised that "These having a part in such acts - leaders, subordinates and functionaries - would all be punished."

On March 9, 1943 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 these 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).

From the above and other not quoted pronouncements by responsible authorities, there can be no doubt that it has been and is the intention of the United States and other Allied Governments to punish all enemy nationals who participated, in any capacity, in committing war crimes.

Based on the facts and law as above recited it is my opinion that TSUCHIYA is in contemplation of law a person guilty of the murder of Kaufman. It is further my opinion that his acquittal is a miscarriage of justice and an error which should not be approved or in effect concurred in by silence on the part of the reviewing authorities.

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Referring to Charge II and the specifications thereunder, there is sufficient competent evidence to support the commission's findings of "guilty" relative to accused KOICHI who was the only one tried on this charge. The commission's finding of "proved in part" on specification 1 was based on the acquittal of TSUCHIYA as discussed above. This does not affect the legality of the commission's finding of "Guilty" on the charge (Sec. 429, M.C. & B.).

d. As to sentence.

The three convicted accused were sentenced to terms of confinement (25 years respectively) as indicated in paragraph 2(d) above. The sentences are legal, and appear justified by the nature of the offenses of which the respective accused were convicted and the circumstances of such offenses as indicated by the evidence. It appears that all accused in this case were acting under superior orders.

e. Generally.

(1) The two specifications of Charge II concerned the accused KOICHI alone, and they were found proved with certain unimportant exceptions as to specification 1. Both specifications of Charge II alleged distinct offenses but were based on the same circumstances as the specification of Charge I on which KOICHI was also convicted.

In accordance with the Judge Advocate General's action (OO-TACHIBANA, Yoshio, et al/117-20 I(3-19-47 HJH:mas 154578) approved by the Secretary of the Navy 18 July 1947 (JAG:I:RAS:fld 117-20/00(6-25-47) 154578), the findings on specifications 1 and 2 of Charge II and the findings on Charge II as to the accused KOICHI could be set aside. However, such action is not required as the conviction on this charge and the two specifications is legal. It is my opinion that any action with a view to setting aside the findings on Charge II and the specifications thereunder should be taken by the final reviewing authority if such action is considered warranted by that authority, and not by the Commander Marianas Area or the Commander-in-Chief, U.S. Pacific Fleet.

(2) During the trial the accused and also the judge advocate made various objections to the admissibility of certain evidence. Each of these objections, and the rulings of the commission has been considered. Based on the authorized procedure for the commission and the rules of evidence, which were properly adopted, (JAG Desp. 062125 March 1946), it is my opinion that the commission's rulings were in all instances legal and without material prejudice to the

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interest of the accused. By the precept the commission was authorized to use the rules of evidence and procedure contained in SCAP Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, as necessary to obtain justice.

7.

OPINION:

It is the opinion of the undersigned that:

- a. The military commission was legally constituted;
- b. The commission had jurisdiction of the persons and offenses;
- c. The evidence supports the findings of "guilty" as to accused KOICHI, KATSUYAMA and ONOSE. The evidence does not support the finding of "not guilty" as to accused TSUCHIYA and his acquittal is a miscarriage of justice;
- d. The record disclosed no errors materially prejudicial to the accused;
- e. The sentences are legal.

8.

RECOMMENDATIONS:

It is recommended (1) that the proceedings, findings of guilty, and the sentences in the cases of KOICHI, KATSUYAMA, and ONOSE be approved; (2) that the convening and reviewing authorities do not concur in the acquittal of the accused TSUCHIYA for the reasons given in paragraph 6(c) above; and (3) that the record, in conformity with Appendix D-14, Naval Courts and Boards, 1937, be transmitted to the Judge Advocate General of the Navy for revision and record.

9.

ACTION:

Actions designed to carry the above recommendations into effect, should they meet with your approval, are submitted herewith as enclosures (B) and (C).

10.

This review has been delayed in preparation due to the pressure of other more urgent war crimes work.

John D. Murphy
JOHN D. MURPHY,
Rear Admiral, U.S. Navy (Ret.),
Director War Crimes, Pacific Fleet.

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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 in 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 $\frac{1}{2}$, 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 Kempitai, 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

FF12/A17-10(2)
02-JDM-fak

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial:

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 BABELTHUAP 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).

~~If it could be said that TSUCHIYA did not commit a war crime, it would seem to be difficult to say that any Japanese soldier ever did.~~

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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02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial:

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. Pownall
C. A. POWNALL,
Rear Admiral, U.S. Navy,
The Commander Marianas Area.

ENCLOSURE (B)

0353

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
Headquarters of the Commander in Chief

CinCPacFlt File

c/o Fleet Post Office,
San Francisco, California.

Serial:

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 KOICHI, KATSUYAMA and ONOSE are approved. The action of the convening authority is approved.

The acquittal of TSUCHIYA, Naohiko is not concurred in for the reasons stated in the convening authority's action.

The record is, in conformity with Appendix B-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.

DeWitt C. Ramsey,
Admiral, U. S. Navy,
Commander in Chief Pacific
and United States Pacific Fleet.

ENCLOSURE (C)

0354

BEP A234

BHP B170

BMP B 236

QWW2

NMNM BHPB BEPC

FM BHPB 54 /COMMARTANAS 020703Z

TO BHPB/CINCPACFLT

INFO BEPC/SECNAV

BEPC/JAG

GRNC

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8 DEC 1947

OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

disputed-log
JAG 505

FOR PUBLIC INFORMATION OFFICE FOR IMMEDIATE RELEASE X WAR CRIME TRIAL
FOUR JAPANESE ACCUSED OF MURDER AND VIOLATION OF LAW AND CUSTOMS
OF WAR RECONVENED 2 DECEMBER X ACCUSED KOICHI TESTIFIED COL DOI
CALLED AND SAID THE HEADQUARTERS WANTED THE PRISONER EXECUTED AT HIS
ANTI AIRCRAFT UNIT IN ORDER TO BOLSTER THE MORALE OF THE MEN X SAID
BOTH HE AND COL DOI WERE OPPOSED TO IT BUT THE HEADQUARTERS WERE
INSISTANT AND WANTED KATSUYAMA TO CARRY OUT THE EXECUTION X TESTIFIED
KATSUYAMA WAS ALSO AGAINST IT AND HE RELAYED KATSUYAMAS DISAPPROVAL
TO COL DOI X TESTIFIED THAT WHEN HE WENT TO HEADQUARTERS CONCERNING
OPERATIONS HE WAS ASKED BY LT GEN INOUE ABOUT THE SPIRIT OF THE MEN
IN THE UNIT AND HE SAID THEY WERE IN GOOD SPIRITS X SAID INOUE TOLD
HIM THE PRISONER WAS GOING TO BE DELIVERED TO HIM AND TO HAVE
KATSUYAMA TESTIFY THAT HE SAID HE WOULD KATSUYAMA CARRY OUT THE

0355

EXECUTION IN ACCORDANCE WITH INOUE'S ORDERS X UNDER CROSS EXAMINATION TESTIFIED HE WAS SENIOR OFFICER PRESENT AT THE SCENE OF THE EXECUTION X SAID HE DID NOT OPPOSE THE EXECUTION IN THE PRESENCE OF LT GEN INOUE BECAUSE THE GENERAL WAS TOO MUCH OF A SUPERIOR AND WHEN HE GAVE AN ORDER DID NOT CHANGE IT X SAID HE DID NOT WRITE IN HIS STATEMENT THAT THE ORDER FOR THE EXECUTION HAD BEEN GIVEN BY INOUE BECAUSE HE WANTED TO CONCEAL IT AND HE WAS TOLD TO MAKE THE STATEMENT AS BRIEF AS POSSIBLE X EXAMINATION OF KOICHI COMPLETED AND ACCUSED TSUCHIYA TOOK STAND IN OWN BEHALF X TESTIFIED HE WENT WITH ONOSE TO ESCORT KAUFMAN TO KORO FOR THE EXECUTION BECAUSE IT WAS HIS TURN TO GO ON A TRIP X SAID THAT HE HAD NOT KNOWN KAUFMAN WAS TO BE EXECUTED UNTIL HE REPORTED WITH ONOSE TO STAFF OFFICER YAJIMA X CLAIMED UNDER RE-DIRECT EXAMINATION THAT THE ONLY REASON HE WENT TO THE EXECUTION WAS TO RETURN THE PRISONERS PERSONAL BELONGINGS TO HIM AS HE HAD BEEN ORDERED X COMMISSION GRANTED AN ADJOURNMENT UNTIL 4 DECEMBER FOR FURTHER PREPARATION OF THE DEFENSE

CFN 2 4

02/27/57 DTC

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FF12/A17-10
02-JDM-hn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3114

22 MAR 1948

MILITARY COMMISSION ORDER NO. 41

(In re KOICHI, Hiroe, former Captain, IJA, et al)

1. During period 24 November 1947 to 6 December 1947, KOICHI, Hiroe, former captain, IJA, KATSUYAMA, Tetsuji, former first lieutenant, IJA, ONOSE, Ichiro, former second lieutenant, IJA, and TSUCHIYA, Naohiko, former Sergeant major, IJA, were tried by a United States Military Commission convened by order of the Commander Marianas Area, dated 8 November 1947 at the Headquarters, Commander Marianas, Guam, Marianas Islands, on the below listed charges and specifications:

CHARGES:

CHARGE I - MURDER (one specification).

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place of Offense</u>	<u>Date of Offense</u>	<u>Name of Accused</u>
1.	Kill an American POW, Wallace F. Kaufman, 2nd Lt., U.S. Army.	Koror Island, Palau Islands	24 May 1945	KOICHI-KATSUYAMA ONOSE - TSUCHIYA

CHARGE II - VIOLATION OF THE LAW AND CUSTOMS OF WAR (two specifications)

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place of Offense</u>	<u>Date of Offense</u>	<u>Name of Accused</u>
1.	Failed to control persons under his command	Koror Island, Palau Islands	24 May 1945	KOICHI
2.	Failed to protect an American POW, Wallace F. Kaufman, 2nd Lt., U.S. Army.	Koror Island, Palau Islands	24 May 1945	KOICHI

FINDINGS: The commission on 5 December 1947 made 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.

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3114

22 MAR 1948

MILITARY COMMISSION ORDER NO. 41

(In re KOICHI, Hiroe, former Captain, IJA, et al)

"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."

SENTENCES: The commission on 6 December 1947 sentenced the accused 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, Tetsuji, to be
confined for a period of twenty-five (25) years.

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

2. On 20 March 1948 the convening authority (Commander Marianas),
subject to certain remarks not herein quoted, took the following action:

"....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. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Marianas Area.

cc: CinCPacFlt (3)
JAG, USN (3)
SCAP (3)
Comdg. Gen. U.S. 8th Army, Japan (3)
National War Crimes Officer, Wash. D. C. (3)
CO, Marine Barracks, Guam (7)
ComMarianas Liaison Officer, Tokyo, Japan (3)

AUTHENTICATED:

H. D. Vanston
H. D. VANSTON,
Flag Secretary.

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KOICHI, HIROE et al.

(24 Nov 1947)

(162424)
PART 2 OF 4

0359

Case of
Koichi, Hiroe
Katsuyama, Tetsuji
Onose, Ichiro
Tsuchiya, Naohiko

RECORD OF PROCEEDINGS
of a
MILITARY COMMISSION
convened at
United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands,
by order of
The Commander Marianas Area.

RECEIVED
27 APR 1948
OFFICE OF JUDGE
ADVOCATE GENERAL
G.M.A. SECTION

83 JUL 1948
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II

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KOICHI, Hiroe
KATSUYAMA, Tetsuji
ONOSE, Ichiro
TSUCHIYA, Naohiko

Trial by Military Commission at the Headquarters
Commander Marianas, Guam, Marianas Islands
November 24, 1947

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02-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Nov 8 1947

Serial: 20971

From: The Commander Marianas Area.
To : Rear Admiral Arthur G. ROBINSON, U. S. Navy.
Subject: Precept for a military commission.

1. Pursuant to the authority vested in me by virtue of my office as The Commander Marianas Area and further by the specific authority vested in me by the Commander-in-Chief Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U. S. Pac. Flt. 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), military commission is hereby ordered to convene at the Headquarters Commander Marianas on Guam, Marianas Islands at 10 o'clock a.m. on Thursday, November 20, 1947, or as soon thereafter as practicable, at the call of the President, for the trial of such persons as may be legally brought before it.

2. The military commission is composed of the following members, viz:

Rear Admiral Arthur G. ROBINSON, U. S. Navy, President.
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, and of Lieutenant Commander Joseph A. REGAN, U. S. Navy, Lieutenant James P. KENNY, U. S. Navy, and Lieutenant David BOLTON, U. S. Navy, as judge advocates, any of whom is authorized to act as such.

KUWATA, Hideo, and KARASAWA, Takami, both furnished by the Japanese Government, and Commander Martin E. CARLSON, U. S. Naval Reserve, all of whom are lawyers, and SANAGI, Sadamu, a former captain, Imperial Japanese Navy, furnished by the Japanese Government, are available and authorized to act as defense counsel. This authorization does not preclude as defense counsel others who are available and are desired by the accused.

In trials of accused charged with offenses against nationals of foreign governments and natives of islands of the Trust Territory of the Pacific Islands duly accredited representatives of the governments and natives concerned are authorized to participate as observers.

3. The military commission shall be competent to try all offenses within the jurisdiction of exceptional military courts, including offenses referred to in the Commander Marianas despatch cited in paragraph 1 above. It shall have jurisdiction over all Japanese nationals and others who worked with, were employed by or served in connection with the former Japanese Imperial Government, in the custody of the convening authority at the time of trial, charged with offenses committed against United States nationals, persons referred to in the Commander Marianas despatch cited in paragraph 1 above and white persons whose nationality has not prior to ordering of the trial been established to the satisfaction of the convening authority. Nothing herein limits the jurisdiction of the military commission as to persons and offenses which may be otherwise properly established.

"A (1)"

0363

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02-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Nov 8 1947

Serial: 20971

Subject: Precept for a military commission.

4. The military commission upon conviction of an accused is empowered to impose upon such accused any lawful punishment including the death sentence, imprisonment for life or for any less term, fine or such other punishments as the commission shall determine to be proper.

5. The proceedings of the military commission will be governed by the provisions of Naval Courts and Boards, except that the commission is permitted to relax the rules for naval courts to meet the necessities for any particular trial, and may use such rules of evidence and procedure, issued and promulgated by the Supreme Commander for the Allied Powers, (Letter General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945 A.G. 000.5 (5 Dec. 45) LS, Subject: "Regulations Governing the Trials of Accused War Criminals", and modifications thereof) as are necessary to obtain justice. The commission may adopt such other rules and forms, not inconsistent herewith, as it considers appropriate.

6. Detachment of an officer from his ship or station does not of itself relieve him from duty as a member or judge advocate of this commission. Specific orders for such relief are necessary.

7. Power of adjournment is granted the commission, and adjourned sessions may be held at such times and at such places as the commission may determine.

C. A. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Marianas Area.

Copies to:
Members of the Commission.
Judge Advocates.
Judge Advocate General, U. S. Navy.

A true copy. Attest:

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

"A (2)"

0364

小市廣榮外三名=対スル起訴及罪状項目=対スル異議

昭和二十二年十一月二十四日

弁護人 飯田日出夫

被告等ハ以下述ベル理由=因リ本件起訴及罪状項目=対シテ異議ヲ申立テル。

(1) 各起訴罪状項目、末尾=孰モ「之ハ戦争法規ニ慣習ニ違反シテ居ル」ト書カレタルガ、被告等ガ如何ナル法規、如何ナル慣習ニ違反シタカハ具体的ニ示サレタナシ。違反シタ法規、慣習ヲ特定シテ云フコトハ Naval Courts & Boards、第27節、規定ニ違フモノデアル。即チ同節ハ合衆国法、海軍省條令、裁判所々在州法、一般的ニ命令、外ハ逐語的ニ明記スベキ旨要求シタルノデアル。被告等ハ本件起訴罪状項目=所謂戦争法規慣習トハ米国内法ヲ意味スルノデハナク、國際的ニ戦争法規慣習ヲ意味シタルニシテ、明瞭デアルカラデアル。ソレ故ニ被告等=如何ナル犯罪ガ起訴サレタルカラ知ラセル爲ニ逐語的ニ明記セネバナラヌノデアル。

斯様ニ起訴状、書キオハテ=Naval Courts & Boards 第27節、規定ニ違反スルミナラス、被告等、重大ニ權利ヲ侵害スルモノデアル。何トナレバ被告等ガ違反シタト言ハレル法規慣習ヲ十分ニ知ラズシテハ、被告等ハ適當ニ弁護ヲ準備シ得ナシカラデアル。

(2) 第一起訴=於テ小市廣榮、勝山哲爾、小野瀬一郎
及土屋直孝ヲ合同起訴シテ中ルガ之ハ Naval Courts &
Boards 第17節=違反シ居ル。即チ同節=ハ "Trial in
joinder - accused persons will not be joined in
the same charge and specification unless for con-
cert of action in an offense. The mere fact that
several persons happen to have committed the
same offense at the same time does not authorize
their being joined in the charge." ト規定サレテ中ル、
デアル。尚合同審理、要件ヲ示ス所=、更ニ court martial
order カラ引用シヨウ。即チ同書 77-1919=ハ合同審理、
行ハルベキ場合トシテ、"The mere fact that several
persons happen to have committed the same offense
at the same time does not authorize their being
joined in charge. Thus where two or more persons
in the naval service take occasion to desert
or absent themselves without leave, in company
but not in pursuance of a common unlawful
design and concert, the case is not of a single
joint offense, but of several separate offenses
of the same character, which are no less several
in law though committed at the same moment."

ト謂ハレテナルノデアル。オ一起訴罪状項目中、"did each and together"ト謂フ語ハ、殺人ガ同時=同所=於テ同一犯罪ヲ犯シタル事案ハ之ヲ示スデアラウガ、"in pursuance of a common unlawful design and concert"ヲ示スニハ十分デナシ。之ヲ示ス爲ニハ前、淺野事件、起訴状=於ケルガ如ク、"in pursuance of a common intent"トテ、極言ヲ搜入セネバナラヌ。若シ之ヲ搜入レ得ナシ極ナ事情ガアルナラバ、被告等ヲ各別個=起訴スベキデアル。

(3) 小市廣榮ハオ一起訴=於テ米軍俘虜、意思的殺害ニ因リ起訴セラレ、オ一起訴=於テ同一俘虜、殺害=基キ指揮官トシテ、職務ヲ無視シタ即チ職務怠慢トシテ起訴サレタル。元來是等ニワ、起訴ハ同一事件=基クモノデアル。抑、故意ト過失トハ互ニ相反スル觀念デアリ、全ク異ル心理状態ヲ示スモノデアル。即チ本件俘虜、殺害ガオ一起訴=示サレタル様ニ小市ノ意思=因ルモノデアルナラバ、彼、過失=因ルモノデハアリ得ナシ。又オ一起訴=示サレタル様ニ過失=因ルモノナラバ、彼、故意=因ルモノデハアリ得ナシ。是等ハ互ニ矛盾スルモノデアツテ、両方共=眞實デハアリ得ナシカラ、両者ノ中孰レカ一方ハ削除サルベキデアル。

(4) オ一起訴オ一起訴罪状項目ニ於テハ小市廣榮ガ彼、指揮下ニ在ッタ人々ニ對シテ取締下ニ在ッタ人々ノ抑制セズ臨時高射砲隊長トシテ、職責ヲ違法=無視シ遂行シタカツタ主張サレ、同オ一起訴罪状項目ニ於テハ彼ガ米軍俘虜ヲ保護ス

ベキ責任アル=拘ラス保護=適切ナル手段ヲ講ジナカフヲト=
於テ臨時高射砲隊長トシテ、職務ヲ無視シ又ハ遂行シカ
ツト主張サレテホル。之ハ明ラカニ二重起訴デアル。何トナレバ、
両者ハ孰レモ臨時高射砲隊長トシテ、小市広榮、職務怠慢
ヲ責ムルモノデアルガ、臨時高射砲隊長トシテ、小市、職務ハ
其ノ本質上常ニ一個デアツテ二個若クハソレ以上ニ分割サルベ
キモノデハナイ。加之、本件ニ於テ小市、職務怠慢ヲ構成スル
基本的事實ハ両者全ク同一デアル。被告が全ク同一違法行
爲ヲ遂行或ハ同一法律上義務違反ニ對シテ二個若クハ
ソレ以上、責任ヲ問ハレルコトガアルナラバ、ソレハ明ラカニ被告ノ
權利ヲ害スルモノデアル。故ニオニ起訴中、ニツノ罪狀項目ハ
一ツニ併合セラルベキデアル。

(5) オニ起訴オニ罪狀項目ニ「其他姓名不詳者」ト云フ
語ガアルガ、元來オニ起訴ハオニ起訴ニ於テ主張サレテホル事
實ニ基クモノデアル=拘ラス、オニ起訴ニツイテ言葉ヲオニ起訴ニ
挿入スルコトハ不當デアルカラ、此ノ言葉ハ当然削除セラルベキデ
アル。尚姓名不詳者ト併合サレルトキハ被告等、權利ハ侵害
サレルモノデアルカラ、「其他姓名不詳者」ト云フ言葉ニ異議ヲ
持ムモノデアル。(終)

鉄田日出史

OBJECTIONS TO THE CHARGES AND SPECIFICATIONS
IN THE CASE OF KOICHI, HIROE, ET AL.

Delivered by
KUWATA, Hideo, Defense Counsel

24 November 1947.

All the accused object to the charges and specifications of the present case for the following reasons.

1. At the conclusion of each specification of each charge it is alleged, "this in violation of the law and customs of war," but it is not indicated specifically what law and what customs were violated by these accused. Not to specify what law and what customs of war were violated is a violation of section 27 of Naval Courts and Boards which requires, that other than Federal statute, articles of the government of the navy, laws of the state in which the court is sitting or general regulations, all enactments should be set forth verbatim, because it is obvious that the law and customs of war alleged to have been breached in the charges and specifications of this case, should not be the domestic law and customs of the United States of America, but international law and customs of war. It must therefore be set out verbatim in order to apprise the accused of what crimes he is charged.

This manner of formulation of the charges and specifications is not only a violation of the provision set forth in Section 27 of the Naval Courts and Boards but is also prejudicial to the substantive rights of the accused because preparation for proper defense of these accused cannot be made without their being fully apprised of the law and customs which they are alleged to have violated.

2. In charge I, KOICHI, Hiroe, KATSUYAMA, Tetsuji, ONOSE, Ichiro and TSUCHIYA, Naohiko are charged in joinder; but this is in violation of Section 17 of Naval Courts and Boards, which provides, "Trial in joinder --- Accused persons will not be joined in the same charge and specification unless for concert of action in an offense. The mere fact that several persons happen to have committed the same offense at the same time does not authorize their being joined in the charge." To show the requirements of joint trial, another quotation will be made from Court Martial Order, CMO 77-1919 states: "When joint trial should not be held. 'The mere fact that several persons happen to have committed the same offense at the same time does not authorize their being joined in the charge. Thus where two or more persons in the naval service take occasion to desert or absent themselves without leave, in company but not in pursuance of a common unlawful design and concert, the case is not of a single joint offense, but of several separate offenses of the same character, which are not less several in law though committed at the same moment.'" File 26262-5714, G.C.M. Rec. No. 41658. The term, "did, each and together" found in the specification of Charge I may indicate the fact that several persons committed the same offense at the same place and at the same time, but it is not sufficient to show "in pursuance of a common unlawful design and concert." In order to show this, there must be interposed such terms as "in pursuance of a common intent," as found in the charges and specifications of the previous Asano case. If circumstances do not permit

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of this interposition, then the accused should be tried separately.

3. In charge I, Koichi, Hiroe is charged with the wilful murder of an American prisoner, while in Charge II with disregarding his duty as the commanding officer in regard to the murder of the same prisoner, that is, he is charge with neglect of duty. Originally, both of these charges grew out of the same incident. Now, wilfulness and negligence are contradictory to one other and express an entirely different state of mind on the part of the doer. That is, if the killing of the prisoner in the present case is attributed to the wilfulness of Koichi as alleged in Charge I, then it cannot have been caused by his negligence; if it is attributed to negligence as alleged in Charge II, then it cannot have been caused by his wilfulness. The two contradict each other. Hence both cannot be true. Therefore, one of the two should be deleted.

4. In specification 1 of Charge II, it is alleged that Koichi, Hiroe did unlawfully disregard and fail to discharge his duty to control the operation of members of his command and persons subject to his control and supervision as commanding officer of the provisional anti-aircraft unit, while in specification 2 of the same charge it alleged that he did unlawfully disregard and fail to discharge his duty to take such measures as were within his power and appropriate under the circumstances to protect an American prisoner of war, as it was his duty to do as the commanding officer of the provisional anti-aircraft unit. This is clearly a duplication of specifications, because, both condemn the neglect of duty on the part of Koichi, Hiroe as the commanding officer of the provisional anti-aircraft unit, and Koichi's neglect of duty as the commanding officer of the provisional anti-aircraft unit, while they are inherently one in substance, should not be separated into two or more parts. Moreover, the fundamental acts comprising Koichi's neglect of duty in the present case are one and the same in both instances. If the accused is called to account for two or more responsibilities for the commission of an identical unlawful act or omission of an identical legal duty, it is obviously prejudicial to the rights of the accused. Therefore, we maintain that the two specifications in Charge II should be consolidated into one.

5. In specification 1 of Charge II, we find the terms "and others unknown," despite the fact that Charge II is based upon the facts alleged in Charge I, in which such a term is not found. It is improper to have a term in Charge II which is wanting in Charge I therefore this term, "and others unknown" should be deleted. We object to the term, "and others unknown" because the accused are thereby prejudiced when they are joined with others unknown.

Respectfully,

Kuwata, Hideo.

I hereby certify the above, consisting of two (2) typewritten pages to be a complete and true translation of the original objection to the best of my ability.

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

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OBJECTION TO THE CHARGES AND SPECIFICATIONS
IN THE CASE OF KOICHI, HIROE, ET AL.

Delivered by
Commander Martin E. Carlson.

24 November 1947.

May it please the Commission:

The defense further objects to the charges and specifications on the grounds of improper joinder of parties.

In C.M.O. 4-1931, pages 13 and 14, the J.A.G. of the Navy held that "Under certain circumstances, namely, where common unlawful design, converted action, or conspiracy are involved parties to the particular offense may be properly joined, but a trial in joinder cannot properly be had unless these circumstances are alleged to have obtained."

The specification under Charge I does not allege that Koichi, Katsuyama, Onose, and Tsuchiya committed the act by common unlawful design, or conspiracy.

In C.M.O. 4-1931 the J.A.G. further holds that "the mere fact that several persons happen to have committed the same offense at the same time does not authorize them being joined in the charge". (See file: A-17-9 (3) EN4 (211227) July 23, 1928.

We further object to the charges and specifications because all of the accused are not included in both charge. In Charge II, violation of the law and customs of war, only one of the accused, Koichi, Hiroe, is charged.

In 27 Am Jur. Indictments and Informations, Sec 123, page 683, the rule is laid down: "Different defendants cannot be charged in the same indictment where they are not all included in each count thereof." Citing Mc Elroy vs U.S.; 164 U.S. 76, 41 Led 355, 178, Ct. 31; Culjak vs U.S. (C.C.A. 9th) 53F (2nd) 554, 82 A.L.R. 480.

We object to the specification under Charge I because it does not follow the sample specification in Section 53 of Naval Courts and Boards.

We specifically object to the common law allegations of murder in the specification under Charge I and move that such allegations be stricken from the specification by the grounds that there are no common law offenses against the United States. Citing 14 American Jurispendence Criminal Law, volume 14, Criminal Law, Section 15, page 766 and Peltit vs Walsh, 194 U.S. 205; 18 U.S.C.A. Par. 451 et Seg, and U.S. vs Reese 92 U.S. 214, 23 Led.

Section 15 reads: "Crimes against United States. - While there was some uncertainty in the early decisions it is now well settled that except as to treason which is defined by the Federal Constitution, there are no common-law offenses against the United States." (Citing: Donnelly vs U.S.,

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276 U.S. 505, 72 L. ed. 676, 48 S. Ct. 400; U.S. vs Gradwell, 243 U.S. 476, 61 L. ed 857, 37 S. Ct. 407. Annotation: Am. Cas. 1918A, 991.)

In order that an act may be prosecuted as a crime in the courts of the United States, statutory authority therefore must exist. (Citing U.S. vs Bathgate, 246 U.S. 220, 62 L. ed. 676, 38 S. Ct. 269; U.S. vs Eaton, 144 U.S. 677, 3 L. ed. 591, 12 S. Ct. 764; U.S. vs Brewer, 139 U.S. 278, 35 L. ed. 190, 11 S. Ct. 538; Manchester vs Mass., 139 U.S. 240 35 L. ed. 159, 11 S. Ct. 559; Jones vs. U.S. 137 U.S. 202, 34 L. ed. 691, 11 S. Ct. 80; U.S. vs Britton, 108 U.S. 199, 27 L. ed. 698, 2 S. Ct. 531; Cotton vs U.S., 11 How. (U.S.) 229, 13 L. ed 675; U.S. vs Hudson, 7 branch (U.S.) 32, 3 L. ed. 259.

Annotation: Am. Cas. 1913 E., 1252, s Am Cas. 1918A, 991.

The courts of the United States in determining what constitutes an offense against the U.S. must resort to the statutes of the U.S. enacted in pursuance of the Constitution. Re Kollock, 165 U.S. 526, 41L. ed. 813, 178. Ct. 444.)

The courts have no right to treat an act done within a state as a crime against the U.S. unless congress has declared it to be such. (citing U.S. vs Reese, 92 U.S. 214, 23 L. ed. 563)"

As my colleague has stated not to set forth the law and customs of war which these accused are said to have violated is prejudicial to their substantive rights.

We maintain there is a presumption that these four accused all Japanese nationals do not know either our common law or our statutory law.

The objection that the specification under Charge I does not follow the sample specification of murder in Section 53 Naval Courts and Boards which is based on the ruling of the J.A.G., Navy Department, in C.M.O. 237-1919, page 15, to the effect that "the specification should allege the felonious infliction of mortal wound of which mortal would the said -- died."

My colleague has pointed out that Charge II is but a duplication of Charge I insofar as Koichi, Hiroe, is concerned. I wish to call the commission's attention to the ruling of the J.A.G. in C.M.O. 45-1916, page 2. "The department does not approve of trying an accused on two charges where the identical facts are made the basis of both." C.M.O. 5-1914, page 7. "Insofar as the record discloses there appears to have been no necessity in this case for resorting to multiplicity or plurality of charges in order to provide every possible contingency in evidence." As explained in C.M.O. 42-1914, page 7, and the offense set forth under Charge III is not distinguished from that under Charge II." ---the department--- has invited attention to the foregoing in order that a recurrence of the irregularities noted herein may be prevented."

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We further object because a bare neglect of duty is not a crime. We cite 14 Am Jur. Criminal Law, Section 14, page 764 and particularly footnote 2 which reads: "Under the New York Penal Law a bare neglect of a legal duty is not a crime unless a statute so prescribes as there is no common law crime in the state. People vs Kurpp; 206 L. Y. 373, 99 NE. 841 Am Cas. 1914 B. 243.

So in this case we move that the commission quash Charge II.

We object to the charges and specifications because they do not show an exception to the statute of limitations. Article 61, Articles for the Government of the Navy provides a statute of limitations of two years. Section 179 Whartons Criminal Procedure, volume I, page 227, lays down the rule: "Where a time is limited by general statute for preferring an indictment, the time laid should ordinarily appear to be within the time so limited, or over that the case falls within statutory exceptions." Citing People vs Miller, 12 Cal. 291; Lankin vs People, 94 ILL. 101; People vs Gregory, 30 Mich. 371; U.S. vs Winslow, 3 Sawy. 337 Fed Cas. No. 16742; State vs Owen, 13 Sawy, 57, 32 Fed 537; Eng. R. vs Brown, M&M. 163, 22 Eng. C. L. 495.

Section 369 Ibid again states the rule: "But where a statute exists limiting all prosecutions within fixed periods, the more exact course is to state the time correctly in the indictment, and then over the exception, and this mode of pleading is now generally required.

All of these accused while in custody were required to sign written statements which statements were made the basis of the charges and specifications against them and therefore according to the rule laid down in 27 Am Jur. Indictments and Informations Section 151, page 705, the charges and specifications should be quashed. Citing State vs Peirce 173 Ind 99; Siklak vs Cowin 133 Va. 789; State vs Lloyd 152 Wisc. 24.

For the many objections which we have made to the charges and specifications we move that they be quashed as against these four accused.

Respectfully,

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

"D (3)"

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小中廣榮外三名、~~日中~~権・肉スル抗弁。

昭和二十二年十一月二十四日

弁護人 秋田日出夫

民事事件ニセヨ。刑事事件ニセヨ。凡ソ裁判所ノ土地管轄ハ被告
ヲシテ其ノ最も便利トスル土地ニ於テ裁判ヲ受ケサセヨトスル考慮ニ
出デタモノデアルカラ。特定ノ事件ニ付キ何レノ裁判所ガ土地ニ肉スル
管轄權ヲ有スルカハ主トシテ被告人ノ利益ニ因テ決定セラルベキ
モノデアル。此ノ見地ニ立ツテ考察スルバ土地管轄ニ付テハ被告人ノ
住所、居所或ハ現在地ヲ管轄スル裁判所ヲ優先セシムベキデ
アル。唯犯罪地ニ於テハ通常証據ノ蒐集ガ容易ナル等ノ理由
ニ因リ一般ニ捜査ヤ審理ニ便利ナルト考ヘラレルカラ。被告ノ現在
地ト犯罪地トガ管轄裁判所ヲ異ニスル場合ニ於テハ犯罪地ヲ
管轄スル裁判所ニモ亦土地ニ肉スル管轄權ガ認めラレルデアル。
又土地管轄ヲ異ニスル数個ノ事件ガ常連スルトキ即チ数人ガ共ニ
同一又ハ別個ノ犯罪ヲ犯シタキ、数人通謀シテ各別ニ犯罪ヲ犯シ
タキ、数人同時ニ同一場所ニ於テ各別ニ犯罪ヲ犯シタキ等所謂
常連事件ニ於テハ一個ノ事件ニ付管轄權ヲ有スル裁判所ガ他ノ事件
ヲモ併セテ管轄シ得ルモノトモ訴訟ノ便宜上ニ是認セラレル所ナル。
是本弁護人が従来、若波事件ヤ浅野事件ニ於テ管轄ノ抗弁ヲ
提出シタカツタ所以ナル。即チ若波事件ニ於テハ若波ヲ始メ、坂上
本間、河島、沢田、田中、桑原、筒井、高石等被告ハ復讐セズ、終戦後

浅野=付テモ亦同様デアツ。随テ是等事件=於テハ復員シ其、他ノ
被告等ヲモ当地=移シテ是等未復員、被告等ト併合審理スルコト
トハ訴訟ノ便宜上許容サルベキコト考ヘラレハデアル。然レ漢末法
=於テハ此ノ便宜スラモ管轄上ノ正当ノ理由トハナラヌデアル。

翻テ本件ノ場合ヲ見ル=。本件被告等ハ孰モ俘虜タル身分ヨリ
解放サレテ日本ヘ歸リ、ソコデ日本政府=依リ正式=復員セシメラレテ
市民トナリ、年来日本=住ンテ居タノデアル。はらお諸島ノ日本軍ニ既
悉ク日本=歸サレ、復員シテ、今ヤはらお諸島ニ在ル島ハ本件犯罪
ノ證據蒐集=付何等ノ便宜ヲモ提供スルモ、デハナシ。現=本件ノ
取調ニ悉ク東京デ行ハレ被告及証人孰レモ取調ニ就スル=便テ
逐次当地=移送サレテ来タモノデアル。斯クテ本事件ヲ常軍事委員
會ガ裁判スルコトハ被告ノ利益ノ爲ニモ、訴訟ノ便宜上カラモ何等
ノ意義ヲ認メラナシ。

固ヨリ檢事ノ precept for a military Commission 第3頁
中、"It shall have jurisdiction of ~~exceptional~~ over
all Japanese nationals and others who worked
with, were employed by or served in connection
with the former Japanese Imperial Government,
in the custody of the convening authority at the
time of trial, charged with offenses committed
against United States nationals -----", 條項=依據

シ本軍事委員会=本件=対スル管轄権アリト主張スルデアラツ。
然ニ斯クハ如クナレバ、凡ソ如何ナル人、如何ナル犯罪=付テモ管轄権
アリト云フ=等シク凡ソ土地管轄ナル觀念ハ全ク無視セラレ、刑事
訴訟法ガ土地管轄ナル觀念ヲ認メテ一面被告ノ利益ヲ考慮スル
ト共ニ、他面訴訟審理ノ便宜ヲ計フテハ全ク没却スル
=至ルノデアル。吾人ハ、檢事ガ既ニ久シキ以前ニ日本軍カラ復員シ
是等被告=対シテ正當ナル管轄権存在スルコトガ絶対ニ必要
ナルコトヲ主張スルモノデアル。

假=precept for a military commission 中、前記條項
ガ是認セラルベキモノナリトスルモ、同 precept ノ一項末尾ニモ明
記セラレアル如ク、本軍事委員ガ審理ニ得ルハ、同委員会、前ニ
正當ニ審ラサレタ人ヲデナケレバナラヌ。吾人ハ、被告等ガ正當ニ本委員
会、前ニ審ラサレタ者デナリト云フ異議ヲ提出スルモノデアル。

今本件被告等ガ逮捕サレタ経緯ヲ見ルニ、被告小市廣榮ハ
昭和20年12月27日俘虜ナル身分ヨリ解放セラレ、翌21年1月7日
日本ニ帰還シ、同月10日復員シ、年来家庭ニ於テ農業ニ従事中
本年8月12日第一復員局ヨリ「終戦事務連絡」爲一週同、
糧食ヲ携行シテ同局ニ出頭スベキ旨、電報ヲ受ケ、直チニ上京
同月19日聯合軍司令部法務部ニ出頭、翌20日巣鴨刑務
所ニ收容サレ、本年10月4日(あむ)ニ送ラレタデアル。

被告勝山格爾ハ昭和21年2月15日俘虜ナル身分ヨリ解放
セラレ、同月24日日本ニ到着シ、同月26日復員シ、東京都内ニ於テ

人夫トシテ稼働中本年6月24日日本人警官二名依リ刑務所
=同行ヲ求メラル。令状+フシテ二日間同所=留置サレタ後同月26日
正當手續=依ラズシテ巢鴨刑務所=送ラレ。何等句留理由ヲ
告ゲラレルト+同所=句留サレ。本年10月4日ぐあむ=送ラレタ
アル。

次=被告小野瀬一郎ハ昭和20年12月20日俘虜タル身分ヨリ
解放サレ。翌21年1月11日日本=到着。即日復員シ。年来家業タル
民製造業=従事中本年四月始頃ヨリ本件=付教回取調ヲ受ケ
タガ逐=本年10月10日才一復員局ヨリぐあむ裁判ノ証人トシテ出立
スル=付準備ヲ整ヘテ出頭セヨトノ電報=接シ直=上京。聯合
軍司令部法務部=出頭シタガ理由不明ノ條帰宅セシメラル。
越エテ同月16日日本人警官突如被告宅ヲ訪シ警察=同行ヲ
求メラル。翌17日警官二伴ハレテ上京。直=正當手續=依ラズシテ
巢鴨刑務所=收容サレ。同月20日引渡状+フシテぐあむ=移送サ
レタデアル。

最後=被告土屋直孝ハ昭和20年10月23日俘虜タル身分ヨリ
解放サレ。同月28日日本=帰還シ。翌11月8日復員シ。年来農業
=従事中本年10月15日日本警官三名突如被告宅ヲ訪シ令状
ヲ示シテ最寄警察署=同行ヲ求メラル。翌16日警官二名=
戒護サレテ上京。句留状+フシテ直々=巢鴨刑務所=收容サレ。
同月20日引渡状+フシテぐあむ=移送サレタモノデアル。

被告等ハ日本官憲カ同行ヲ求メラル際=逮捕状ヲ示サレタ

外に於ては、東鳴刑務所=収容サレ=るツテ留状ヲ示サレタコト
ナリ。凡ソ個人、生命、身体、自由、名誉、財産等、其、基本的權利
トシテ今日總ベテ、民主主義國家、憲法=於テ其、不可侵ノ保障サ
レテナルデアル。現ニ米國憲法條ニオ四條ニハ「不合理ニ搜索
又ハ逮捕若クハ押収=対シ、人民ガ身体、家宅、書類及ビ所有物、
安全ヲ保障サル權利ハ之ヲ侵害スルコトヲ得ズ。令狀ハ凡ソ宣誓
若クハ確約=支持セラル信賴スル=足ル原因=基テノミ發セラル
ベク、且ツ搜索セラルベキ場所及ビ逮捕、押収セラルベキ人或ハ
物件ヲ特ニ指定スルモノナルヲ要ス」ト規定サレタル。又米國憲法
ヲ模範トシテ制定サレタ日本、新憲法ニハ次ノ様ニ規定ガアル。即チ

オ三十三條 何人も、現行犯トシテ逮捕される場合を除いては、
權限を有する司法官憲が發し、且ツ理由となつてゐる犯罪
を明示する令狀によらなければ、逮捕されない。

オ三十四條 何人も、理由を直ちに告げられ、且ツ直ちに弁護人
に依頼する權利を與へられなければ、抑留又は拘禁され
ない。又何人も、正当な理由がなければ、拘禁される要求
があれば、其の理由は、直ちに本人及び其の弁護人の出席
する公開の法廷で示されなければならない。

オ三十五條 何人も其の住居、書類及び所持品について、侵入、
搜索及び押収を受けることない權利は、オ三十三條の場合
を除いては、正当な理由に基いて發せられ、且ツ搜索の
場所及び押収する物を明示する令狀がなければ、侵され

ない。

搜索又は押収は、権限を有する司法官憲が発する各別令状により、これを行ふ。

上記引用條文=依つて明らかな様=現行犯トシテ逮捕サレル場合ヲ除ケハ、権限ヲ有スル司法官憲が発シ、且ツ理由トナフテナル犯罪ヲ明テスル令状=依ラナケレバ逮捕サレナイ權利、直チ=理由ヲ告ゲラレ、且ツ直チ=弁護人=依頼スル權利ヲ与ヘラレナケレバ抑留又ハ拘禁サレナイ權利ハ新憲法=依リ日本国民=保障サレテナルデアル。同様ノ保障ハ米国人=對シテ米國憲法=依ツテ与ヘラレテナル筈デアル。是等ハ今日全世界ノ文明國民=遍ク保障サレテ基本的ノ權利デアル。如何=戦争犯罪人ナリトハ云ヘ、理由ヲ明テシテ逮捕状ナクレテ逮捕サレ、理由ヲ明テシテ勾留状ナクレテ勾留サレト云フゾハ、基本的人權ノ侵害デアツテ明らかな=違法デアル。然レバ此ノ手續上、違法ハ日本憲憲ノ責=歸スベキモデアツテ、米軍当局ノ周知スル所デハナリトモ議論存スル外モ想像=難クナリ。然レバ此ノ場合=於ケル日本、憲憲ハ米軍ノ補助者トシテ行動シテナルデアルカラ、日本憲憲ノ犯シテ違法行為ハ直チ=米軍ノ違法デアツテ、日本憲憲ノ所爲ナリト一舉ハ米軍以テ逮捕勾留上ノ瑕疵ヲ是正スル=是ルモノデハナリ。Precept第一項=モ明記サレテナル如ク、本軍法委員會ハ正當ノ手續=依ツテ其ノ前=審判人々ヲ審理スル權能ヲソアレ、斯カル違法ノ手續=依ツテ其ノ前=審判人々本件被告等ヲ審理スル權能ハ絶対=ナク確信スル。

日本ハ今ヤ聯合軍最高司令官ノ末軍ニ依ツテ占領サレテ中ル。
日本官憲ヲシテ末國ノ法ニシラス。末國ノ裁判所ニテ審理サレル凡テ
人々ニ末國憲法ニ依ツテ保障サレテ中ル權利ヲ侵害サセル外又例
日本官憲ヲシテ日本ノ新憲法ノ條規ヲ侵害サセル外ハ末國ノ慣習
ニ叶フ所以デナク又日本ノ法律ニ依ツテモ末國ノ法律ニ依ツテモ
正当デハナシ。

本弁護人ハ叙上ノ理由ニ因リ。本軍事委員會カ全被告ヲ
審理スル裁判權ノ行使ニ對シテ被告等爲ニ抗弁ヲ提出スル
次デアル。(終)

鎌田日出史

PLEA TO THE JURISDICTION OF THE MILITARY
COMMISSION TO TRY KOICHI, HIROE AND THREE OTHERS

Delivered by
KUWATA, HIDEO, DEFENSE COUNSEL

24 November 1947

Since the jurisdiction over territory of a court, whether it be in a civil or criminal case, grows out of the consideration that will enable the accused person to be tried in the territory most convenient to him, the question as to which court has jurisdiction over territory in a particular case should be chiefly determined in consideration of the benefit of the accused person. Upon reflection of this point of view, the court which exercises jurisdiction over the accused persons address, residence or present domicile should have priority as regards jurisdiction over territory. Only in the case where the present domicile of the accused and the place of the crime come under different jurisdiction, jurisdiction over territory is recognized also in the court exercising jurisdiction over the place of the crime, because it is generally convenient for investigation and trial on the ground that gathering of evidence is ordinarily easiest at the place of the crime. When several cases coming under different jurisdictions are joined with each other, as when several persons have committed together the same or different crime, or when several persons plotting together each have committed a different crime, or when several persons plotting together each have committed a different crime, or when several persons at the same place and time each have committed a different crime and the like, in other words in a case in joinder, the court exercising jurisdiction over one case is recognized for the sake of convenience in procedure as being able to combine the other cases and have jurisdiction over all of them. This is the reason why I did not submit any objection to the jurisdiction in the previous Iwanami and Asano cases. That is, in the Iwanami case, Iwanami, Skagami, Homma, Kawashima, Sawada, Tanaka, Kuwabara, Tsutsui and Takaishi were not demobilized; they were directly transferred from Truk to Guam in succession after the end of the war. In the Asano case, the same was true with Asano. Thus, in the previous two cases, it is conceivable that by transferring the other accused who had already been demobilized, a trial in joinder with them might have been permitted in view of the expediency of procedure.

Turning to the present case, we find that all of the accused were released from military status and disarmed military personnel and returned to Japan where they were official demobilized and subsequently resided in Japan as citizens. The personnel of the armed forces of Japan have all been repatriated from the Palau Islands to Japan and have been demobilized. At present Koror Island, Palau Islands presents us with no convenience what-so-ever as regards the gathering of evidence as to the crime in the present case. As a matter of fact, the investigation of this case was completely carried on in Tokyo; and when the investigation had been completed, the accused and witnesses were sent here one after another. Therefore we find no grounds what-so-ever on which this commission might try this case either in view of any benefit for the accused or of expediency of procedure. But under Anglo-American procedure expediency is no justification.

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The judge advocate may contend that the commission has jurisdiction over the present case by relying upon the provision in paragraph 3 of the precept for military commission which reads, "It shall have jurisdiction over all Japanese nationals and others who worked with, were employed by or served in connection with the former Japanese Imperial Government, in the custody of the convening authority at the time of the trial." If this be the case, it would be like contending that there is jurisdiction over any person and any crime; the idea of jurisdiction over territory would be totally disregarded and the purpose of the criminal procedure law recognizing the idea of territorial jurisdiction in part in consideration of the benefit of the accused person and in part in effecting expediency in procedure would be ignored.

We maintain that it is incumbent upon the judge advocates to show proper jurisdiction over these Japanese Nationals long ago demobilized from the Japanese Army.

Even if the above cited provision of the precept for a military commission is accepted, the persons this commission is authorized to try must be such persons as may be legally brought before it, as explicitly stipulated in the last sentence of paragraph 1 of the precept. We object that these accused are not legally brought before this commission.

Let us turn our attention to the course by which these accused were apprehended.

The accused Koichi, Hiroe was released from the status of the disarmed military person on 27 December 1945 and returned to Japan 7 January 1946. He was demobilized on the 10th of the same month and engaged in farming thereafter. Receiving a telegram from the 1st Demobilization Bureau on 12 August of this year stating that he should be present at the bureau with food enough for one week in order to settle lason affairs relating to the termination of war, he immediately left for Tokyo. He reported to the Chief of the Criminal Registry Division, U. S. Army on the 19th of the same month, and on the next day he was confined in Sugamo Prison. He was sent to Guam on 4 October of this year without any extradition papers.

The accuse Katsuyama, Tetsuji, upon being released from the status of a disarmed military person on 15 February 1946, returned to Japan on the 24th of the same month and was demobilized two days later. While working as a laborer in Tokyo, two Japanese Policemen demanded that he should accompany them to the Municipal Police Station. After being detained there for two days, without a warrant, he was taken to Sugamo Prisoner without due process and confined. No charges being made against him, he was sent to Guam on 4 October of this year without any extradition papers ever having been issued.

The accused Onose, Ichiro was released from the status of a disarmed military person on 20 December 1945. Returning to Japan on 11 January of the next year, he was demobilized on the same day. While engaged in his

"F (2)"

0382

family's business of tile manufacturing, he was investigated several times since the first part of April this year. Finally, on 10 October of this year receiving a telegram from the 1st Demobilization Bureau stating that he had to come to the same Bureau prepared to leave for Guam as a witness, he immediately came up to Tokyo. He reported to the Chief of the Criminal Registry Division, U.S. Army, but was told to return without being informed of the reason. On the 16th of the same month, he was suddenly visited at his home by a policeman who demanded that he should accompany him. Without a warrant of arrest. The next day he came to Tokyo accompanied by the policeman and was confined in Sugamo Prisoner without due process. He was sent to Guam on the 20th of the same month without any extradition papers.

The accused Tsuchiya, Naohiko was released from the status of a disarmed military person on 23 October 1945 and returnin to Japan on the 28th of the same month, he was demobilized on 8 November. While engaged in farming after that, he was suddenly visited at his home by a policeman who demanded that he should come to the nearest police station without a warrant. The next day, on the 16th, he was escorted by two policeman to Tokyo still without a warrant, he was immediately confined in Sugamo Prison with due process of arrest and was sent to Guam on the 20th of the same month without any extradition papers.

When these accused were ordered by the Japanese policeman to accompany them, they were shown no warrant for apprehension, nor were they shown a warrant for detention when they were confined in Sugamo Prison. The inviolability of individual life, body, freedom, honor and property is guaranteed in the constitutions of all the modern democratic nations, as the fundamental right of the individual. The 4th Amendment of the United States Constitution clearly states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Furthermore in view of the new Constitution of Japan which was enacted according to the example of the Constitution of the United States provides as follows:

"Article 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended as the offense being committed."

"Article 34. No person shall be arrested or detained, without being once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

"Article 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause, and particularly describing the place to be searched and things to be seized, or except as provided by article 33.

"F (3)"

0383

"Each search or seizure shall be made upon separate warrant issued by a competent judicial officer."

As it is clear from the provisions cited above, the right to be free from apprehension except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended as the offense being committed; and the right to be free from arrest and detention without the immediate privilege of counsel or without being informed of the charges against him has been guaranteed to the people of Japan through the new Constitution. The same guarantee must be given to the people of the United States by the Constitution of the United States of America. These are fundamental rights universally guaranteed to the civilized nations of the world today. Even if the accused are war criminals, it is a violation of the fundamental rights of the individual and obviously illegal to apprehend them without a warrant specifying the offense, or detain them without a warrant specifying the cause.

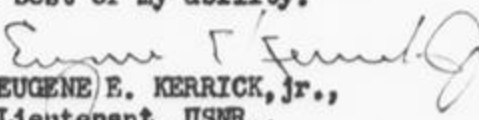
The judge advocate may contend, however, that the illegality of this procedure is attributed to the Japanese officials and is of no concern of theirs. But, since the Japanese officials in this case, are acting as assistants of the American Forces, this defect in apprehension and detention cannot be remedied on the ground that it resulted from the actions of the Japanese officials. As it is explicitly provided in the 1st paragraph of the precept, the commission is authorized to try such persons as may be legally brought before it, but not to try the accused in the present case who were brought before this commission by such illegal procedure as I have stated in the above. Japan is occupied by the U.S. Army forces under the Supreme Commander of the Allied Powers. To permit any Japanese official to violate not only the laws of America but particularly the rights guaranteed by the U. S. Constitution to all persons tried in U.S. Courts and to permit Japanese officials to violate the provisions of the new Constitution of Japan is not in keeping with the traditions of the U.S. of America nor is it legal either under U. S. Law or present Japanese law.

On the above mentioned grounds, I offer this objection to the jurisdiction of this military commission to try all of these accused.

Respectfully,

Hideo Kuwata.

I hereby certify the above, consisting of four (4) typewritten pages, to be a true and complete translation of the original Plea to the Jurisdiction of the Military Commission, to the best of my ability.


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

"7 (4)"

0384

PLEA IN ABATEMENT

Delivered by
Martin E. Carlson.

To: The Military Commission, Commander Marianas, Guam, Marianas Islands.

The accused, Koichi, Hiroe, makes this plea in abatement on the ground of misjoinder of parties. We bring to the attention of the Commission the antagonistic defenses of the accused Koichi, Hiroe, and Katsuyama, Tetsuji.

The accused Katsuyama, Tetsuyi, has made a statement implicating the codefendant Koichi, Hiroe and the prosecution intends to offer this statement of Katsuyama, Tetsuyi, as evidence in this present trial.

In Whartons Criminal Procedure volume I, page 411, the rule is laid down: "Where the defense of joint defendants are antagonistic, it is proper to grant a severance. And this is eminently the case where one joint defendant has made a confession implicating both and which the prosecution intends to offer on trial." Citing Com vs James; 99 Mass. 438.

The accused Koichi, Hiroe, therefore prays that this commission grant him a severance at this time from the accused Katsuyama, Tetsuyi.

Koichi, Hiroe, objects to trial in joinder with the accused Katsuyama, Tetsuyi.

The accused Koichi, Hiroe, prays that the charges and specifications be quashed as against him.

Respectfully,

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

"G"

0385

PLEA IN ABATEMENT

Delivered by
Martin E. Carlson.

To: The Military Commission, Commander Marianas, Guam, Marianas Islands.

The accused, Onose, Ichiro, makes this plea in abatement on the ground of misjoinder of parties. We bring to the attention of the Commission the antagonistic defenses of the accused Onose, Ichiro, and the codefendant Koichi, Hiroe; Katsuyama, Tetsuyi; and Tsuchiya, Nachiko.

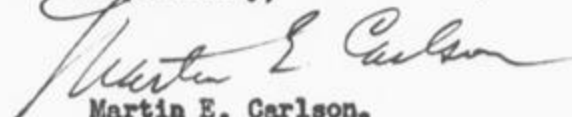
The accused Koichi, Hiroe; Katsuyama, Tetsuyi; and Tsuihija, Nachiko, have all made statements implicating Onose, Ichiro and the prosecution intends to offer these statements as evidence in this present trial.

In Whartons Criminal Procedure volume I, page 411, the rule is laid down, "Where the defenses of joint defendants are antagonistic it is proper to grant a severance. And this is eminently the case where one joint defendant has made a confession implicating both and which the prosecution intends to offer on trial." Citing Com vs James; 99 Mass. 438.

The accused Onose, Ichiro, therefore, prays that this commission grant him a severance at this time from the accused, Koichi, Hiroe; Katsuyama, Tetsuyi; and Tsuchiya, Nachiko.

The accused Onose, Ichiro, prays that the charges and specifications be quashed as against him.

Respectfully,


Martin E. Carlson,
Commander, USNR.

11

0386

PLEA IN ABATEMENT

Delivered by
Martin E. Carlson.

To: The Military Commission, Commander Marianas, Guam, Marianas Islands.

The accused, TSUCHIYA, Naohiko, makes this plea in abatement on the ground of misjoinder of parties. We bring to the attention of the Commission the antagonistic defense of the accused Onose, Ichiro, and the accused Tsuchiya, Naohiko.

We cite Whartons Criminal Procedure volume I, page 411: "When the defenses of joint defendants are antagonistic, it is proper to grant a severance. And this is eminently the case where one joint defendant has made a confession implicating both and which the prosecution intends to offer on trial." Citing Com vs James 99 Mass. 438.

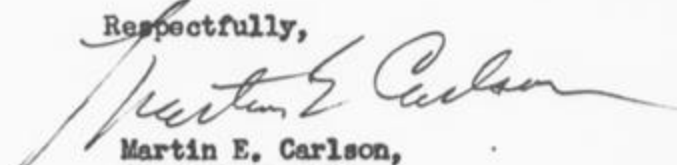
The accused Onose, Ichiro, has made a statement implicating the codefendant Tsuchiya, Naohiko and the prosecution intends to offer this statement of Onose, Ichiro, as evidence in this present trial.

The accused, Tsuchiya, Naohiko, therefore, prays that this commission grant him a severance at this time from the accused Onose, Ichiro.

Tsuchiya, Naohiko, objects in trial in joinder with the accused Onose, Ichiro.

The accused Tsuchiya, Naohiko prays that the charges and specifications be quashed as against him.

Respectfully,


Martin E. Carlson,
Commander, USNR.

"I"

0387

小市廣榮外三名=対スル免訴, 申立

昭和二十二年十一月二十四日

弁護人 鉄田日出夫

小市廣榮、勝山哲爾、小野瀬一郎及土屋直孝、四被告ハ
the statute of limitations, 理由=因リ彼等=対シ免訴
ノ判決アランゾトヲ申立テル次オデアル。

Naval Courts & Boards オ407節=ハ "The statute of
limitations, as affecting persons subject to trial
by naval courts martial, is contained in
articles 61 and 62, A. G. N." ト規定サレテ居リ, Article
for the government of the Navy, Article 61 =ハ

"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. Sec 1624, Art. 61; Feb 25, 1895, C. 128, 28 Stat.

680)ト規定サレテ居ル。

本件犯罪ハ孰モ昭和二十年五月二十四日頃犯サレタト主張サレテ居リ、起訴及罪状項目日附ハ昭和二十二年十一月十日デアツテ、~~起訴~~後二年以上ヲ経過シテタル。法律的ニ見レバ、起訴事實ニ付テ并解スル爲ニ法律上ノ手續ニ基イテ召喚サレタトキニ於テ、^{ノミ}犯罪ニ付テ起訴サレタコトニナルデアツテ、調査官ヤ検事、取調ハ未ダ以テ刑事訴訟進ト云フヲ得ナシ。然ラバ本件ニ於テ審理命令ガ發セラレタ即チ被告等ニ對シテ起訴ノアツタハ昭和二十二年十一月十日デアツテ、犯罪後満二年ヲ経過シテタルト洵ニ明白デアル。

然ラバ被告等ハ此間逃避シ或ハ其ノ他正義ニ服サナシ様ニ明白ニ障害ヲ作爲シタデアラウカ。被告等ハ孰モ昭和二十年末或ハ昭和二十一年初頭末軍ニ依リ俘虏タル身分カラ解放サレテ日本ニ歸リ、日本政府當局ニ依リ正式ニ復員セシメラレ、爾來市民トシテ夫々ノ生業ニ従事シテ居タ者デアツテ正義ニ服サナシ様ニ明白ニ障害ヲ作爲シタト云フ事實ハ認めラレナシ。

故ニ被告等ハ昭和二十年五月二十四日頃犯サレ、昭和二十二年十一月十日ニ起訴サレタ犯罪ニ對スル審理ノ抗弁トシテ statute of limitationsニ基キ免訴ノ申立ヲスル次第デアル。(終)

鎌田日出史

PLEA IN BAR OF TRIAL FOR KOICHI, HIROE
AND THREE OTHERS.

Delivered by
KUWATA, Hideo, Defense Counsel.

24 November 1947.

These four accused, KOICHI, Hiroe; KATSUYAMA, Tetsuju; ONOSE, Ichiro; TSUCHIYA, Naohiko, make this plea in bar of trial on the grounds of the statute of limitations.

Section 407 of the Naval Courts and Boards provides as follows: "The statute of limitations, as affecting persons subject to trial by naval courts martial, is contained in Articles 61 and 62, A.G.N.", and Article 61 of the Articles for the Government of the Navy reads, "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. sec. 1624, Art. 61; Feb. 25, 1895, c.128, 28 Stat. 680.)

All offenses in the present case are alleged to have been committed on or about May 24, 1945. The charges and specifications are dated November 10, 1947, more than two years after the offenses were committed. In the eyes of the law a person is charged with crime only when he is called upon in a legal proceeding to answer to such a charge, and the mere investigation by an investigator or judge advocate does not of itself create a criminal charge. The orders to try the present case were issued on November 10, 1947 and it is only too obvious that more than two years have passed since the offenses were committed.

Then have these accused absented themselves or was there some other manifest impediment that they should not have been amenable to justice? All of the accused were released from the status of prisoners by the American forces at the end of 1945 or at the beginning of 1946. Upon returning to Japan they were officially demobilized by the proper authorities of the Japanese Government and have been engaged thereafter in their respective occupations as citizens. There are no recognizable facts of any manifest impediment that might not have made them amenable to justice.

Therefore, these four accused plead the statutes of limitations as a bar to their trial for the offenses committed May 24, 1945 and charged under the date of November 10, 1947.

Respectfully,

KUWATA, Hideo.

I hereby certify the above, consisting of one (1) typewritten page, to be a true and complete translation of the original "Plea in Bar of Trial, to the best of my ability.

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

0390

FF12/A17-13
02-JDM-hn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 21048

NOV 10 1947

From: The Commander Marianas Area.
To: Lieutenant Commander Joseph A. REGAN, USN, and/or
Lieutenant James P. KENNY, USN, and/or
your successors in office as Judge Advocates,
Military Commission, Commander Marianas.

Subject: Charges and Specifications in the case of:

KOICHI, Hiroe
KATSUYAMA, Tetsuji
ONOSE, Ichiro
TSUCHIYA, Naohiko

1. The above named persons will be tried before the Military Commission of which you are judge advocate upon the following charges and specifications. You will notify the president of the commission accordingly, inform the accused of the date set for trial, and summon all witnesses, both for the prosecution and for the defense.

CHARGE I

MURDER

Specification

In that KOICHI, Hiroe, then a captain, IJA, KATSUYAMA, Tetsuji, then a first lieutenant, IJA, ONOSE, Ichiro, then a second lieutenant, IJA, and TSUCHIYA, Naohiko, then a sergeant major, IJA, all attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations, did, each and together, at Koror Island, Palau Islands, on or about May 24, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed, by beheading with a sword, one Wallace F. Kaufman, second lieutenant, United States Army, an American prisoner of war, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

"L (1)"

0391

Received true and correct copies, both in English and Japanese,
of Charges I and II and specifications thereunder, on the 10th day of
November, 1947.

小市 康策

KOICHI, Hiroe

勝山 哲爾

KATSUYAMA, Tetsuji

小野瀬 一郎

ONOSE, Ichiro

土屋 直彦

TSUCHIYA, Naohiko

The above acknowledgement read to the accused in Japanese before they
signed.

George Kumai
GEORGE KUMAI, Interpreter.

0392

CHARGE II

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that KOICHI, Hiroe, then a captain, IJA, commanding officer of the Provisional Anti-aircraft Unit, otherwise known as the Koror and Koichi Anti-aircraft Unit, attached to the military installations of the Imperial Japanese Army, Koror Island, Palau Islands, and while so serving at said anti-aircraft unit, did, at Koror Island, on or about May 24, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the commanding officer of the Provisional Anti-aircraft Unit, otherwise known as the Koror and Koichi Anti-aircraft Unit, to control the operations of members of his command and persons subject to his control and supervision, namely, KATSUYAMA, Tetsuji, then a first lieutenant, IJA, attached to and serving at said anti-aircraft unit, ONOSE, Ichiro, then a second lieutenant, IJA, TSUCHIYA, Naohiko, then a sergeant major, IJA, and others unknown, permitting them, the aforesaid persons, and persons unknown, to kill unlawfully and cause to be killed unlawfully on or about May 24, 1945, at Koror Island, Palau Islands, by beheading with a sword, one Wallace F. Kaufman, second lieutenant, United States Army, an American prisoner of war, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Specification 2

In that KOICHI, Hiroe, then a captain, IJA, commanding officer of the Provisional Anti-aircraft Unit, otherwise known as the Koror and Koichi Anti-aircraft Unit, attached to the military installations of the Imperial Japanese Army, Koror Island, Palau Islands, and while so serving at said anti-aircraft unit, did, at Koror Island, Palau Islands, on or about May 24, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the commanding officer of the said Provisional Anti-aircraft Unit, otherwise known as the Koror and Koichi Anti-aircraft Unit, to take such measures as were within his power and appropriate in the circumstances to protect one Wallace F. Kaufman, second lieutenant, United States Army, an American prisoner of war, then and there held captive by the armed forces of Japan at Koror Island, Palau Islands, as it was his duty to do, in that he permitted the unlawful killing by beheading with a sword, by members of his command and persons subject to his control and supervision, of the said prisoner of war, in violation of the law and customs of war.

C. A. Pownall

C. A. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Marianas Area.

"L (2)"

0393

「アメリカ」合衆國太平洋艦隊
「マリアナ」方面司令官

昭和二十三年十一月十日 二〇〇八ノ

發、 「マリアナ」方面司令官

宛、 「アメリカ」合衆國海軍少佐「ウィリアム・エ・リーガン」
「アメリカ」合衆國海軍大尉「エム・ビ・ケニー」
又、「マリアナ」方面司令部軍法委員會ニ
於ケル検事トシテ、貴官ノ後任者

記、
小 市 廣 榮
勝 山 哲 爾
小 野 瀨 一 郎
土 屋 直 彦

ノ事件ニ於ケル起訴及非罪項目

以上、人々ノ貴官ノ検察官タル軍法委員會
ニ於テ左記ノ起訴及非罪項目ニ就テ裁判
サレテアラハ、ヨリテ貴官ノ裁判長ニ其ノ旨ヲ
通報シ報告ニ裁判ノ日時ヲ通知シ検事側
及報告側ノ全證人ヲ召集セヨ。

第一起訴
殺人

罪狀項目

「ハリオ」諸島、日本帝國陸軍々事施設ニ配置
サレタ小市廣榮當時陸軍大尉、勝山
健爾當時陸軍中尉、小野瀨一郎、當時陸
軍少尉、土屋直彦、當時陸軍師長、同
軍事施設ニ勤務中、各個ニ又ハ相兵ニ「アメリ
合衆國連合諸國」及其、屬領、不日本帝國ト
戦争状態ニ任ツ、昭和二十年五月二十四日頃
「ハリオ」諸島「コビル」島ニ於テ意思的ニ
違法的ニ企圖ト悪意トヲ以テ正當ナ理
由モナク同時同处ニ於テ日本軍ニヨリ抑留
サレタサ一名「アメリ」人佐佐木「タツキ」陸軍
少尉「サウス・エフ・コフマン」ヲ軍刀ニヨリ
銃撃シ斬リツケ殺シ殺サセタ之ハ戦争
法規並ニ慣習ニ違反シタリ。

ス。

第三起訴

戰爭法規並ニ慣習ニ違反

罪狀項目 一、

「ハラオ」諸島「コロ」島、日本帝國陸軍々事施設ニ
配屬サレテキタ臨時高射砲隊別名「コロ」又、小市
高射砲隊々長當時陸軍大尉小市廣榮、同
高射砲隊ニ對テ「アメリカ」合衆國連合諸國
及其ノ屬領ヲ日本帝國ト對テ戰フ狀態ニ在ツク昭和
二十年五月二十四日頃「コロ」島ニ於テ彼、指揮トニ在
ツク人々並ニ彼、取締及監督トニア、人々即チ
同高射砲隊ニ配屬對テ中、勝山哲爾當時陸軍
中尉、小野瀨一郎當時陸軍少尉、土屋直冬當時
陸軍島長、其、他姓名不詳者、行動ヲ抑制セズ
同時同處ニ於テ日本軍隊ヨリ抑留サレテキタ一名、
「アメリカ」人係屬「アメリカ」陸軍少尉「ウオレス・エフ・ニコル」
ヲ昭和二十年五月二十四日頃「ハラオ」諸島「コロ」島ニ於テ
上記ノ人々及姓名不詳者ニ軍刀ヲ斬首スルコトヨリ
違法的ニ殺シ殺サセムコトヲ許可シ違法的ニ臨時
高射砲隊別名「コロ」又、小市高射砲隊々長ト
シテ、彼ノ職責ヲ無視シ又ハ遂行シタリタ
之ハ戰爭法規並ニ慣習ニ違反シテ平ル。

第三起訴 (續)

非狀項目 二、

「バタオ」諸島「コロ」島、日本帝國陸軍々事施設ニ
配屬サレテ并々臨時高射砲隊別名「コロ」又ハ小市
高射砲隊々長當時陸軍大尉小市廣榮、同
高射砲隊ニ勤務中「アメリカ」合衆國連合諸國
及其屬領ハ日本帝國ト戰爭狀態ニ在リテ昭和
二十年五月二十四日頃「コロ」島ニ於テ
同時同處ニ於テ日本軍隊ニヨリ抑留サレテ平々一名、
「アメリカ」人係屬「コロ」島陸軍少尉「コロ」コフツ
ヲ保護スルコトヲ彼、權限内、コトアリ而モ當時、
狀況下適切ナル処置ヲ「コロ」ニモ拘ラス又ソレガ
彼、職責ヲ「コロ」ニモ拘ラス彼、指揮下ニ在リテ
人々並ニ彼、取締監督下ニ在リテ人々ニ同僚屬
ノ首ヲ切リ「コロ」ニモ違法的ニ殺スコトヲ許可シ
違法的ニ臨時高射砲隊別名「コロ」又ハ小市高
射砲隊々長トシテ、彼、職責ヲ無視シ遂行シテ
「コロ」之、戰爭法規並ニ慣習ニ違反スルモノナリ。

Certified to be a true
and complete translation
to the best of my
ability.
S. J. F. J. J.
H. J. J. J.

「コロ」島

「コロ」島海軍少將

「コロ」島司令官

「コロ」

4.

0397

FIRST DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Monday, November 24, 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.

Corporal Michaud O'Neil, U. S. Marine Corps, entered with the accused
and reported as provost marshal.

The judge advocate introduced Stewart R. Smith, yeoman first class,
U. S. Navy, and Archie L. Haden, junior, yeoman first class, U. S. Navy, as
reporters; and they were duly sworn.

The judge advocate introduced Lieutenant Eugene E. Kerrick, junior,
U. S. Naval Reserve, Mr. Frederick Savory, Mr. Shigeo Yamanouchi, and Mr.
George Kumai as interpreters, and they were duly sworn.

Each of the accused requested that Commander Martin E. Carlson, U. S.
Naval Reserve; Mr. Sanagi, Sadamu; Mr. Karasawa, Takami, and Mr. Kuwata,
Hideo, act as his counsel. Commander Carlson, Mr. Sanagi, Mr. Karasawa, and
Mr. Kuwata took seat as counsel for the accused.

The judge advocate read the precept, copy prefixed marked "A."

An interpreter read the precept in Japanese.

The judge advocate did not object to any member.

The accused did not object to any member.

The judge advocates and each member were duly sworn.

Each of the accused stated that he had received a copy of the charges
and specifications preferred against him, both in English and in Japanese,
on November 10, 1947.

The judge advocate asked the accused if they had any objections to make
to the charges and specifications.

The accused replied in the affirmative. Mr. Kuwata, Hideo, a counsel for the accused, read a written objection to the charges and specifications, prefixed marked "B."

An interpreter read a English translation of Mr. Kuwata's objection, prefixed marked "C."

Commander Carlson made a further written objection to the charges and specifications, prefixed marked "D."

The judge advocate replied.

The accused waived the reading of the reply of the judge advocate to this objection in Japanese in open court.

The commission was cleared.

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

The commission made the following ruling:

The commission rules that the objections of the accused to the charges and specifications are not sustained, and that the commission finds the charges and specifications in due form and technically correct.

An interpreter read the ruling of the commission in Japanese.

Mr. Kuwata, Hideo, a counsel for the accused, read a written objection to the jurisdiction of the commission over the accused, copy prefixed marked "E."

An interpreter read an English translation of the accused's plea to the jurisdiction, copy prefixed marked "F."

The judge advocate replied.

The accused waived the reading of the judge advocate's reply to the accused's plea to the jurisdiction in Japanese in open court.

The commission made the following ruling:

The commission rules that the plea to the jurisdiction is denied.

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, read written pleas in abatement, copies prefixed marked "G", "H" and "I."

The accused waived the reading of the pleas in abatement in Japanese in open court.

The judge advocate replied.

The accused waived the reading of the judge advocate's reply to their pleas in abatement in Japanese in open court.

The commission made the following ruling:

The commission rules that the various pleas are denied.

Each of the accused stated that he was ready for trial.

Mr. Kuwata, Hideo, a counsel for the defense, read a written plea in bar of trial, copy prefixed marked "J."

An interpreter read an English translation of the accused's plea in bar of trial, copy prefixed marked "K."

The judge advocate replied.

The commission made the following ruling:

The commission rules that the plea in bar of trial is denied.

The judge advocate read the letter containing the charges and specifications, original prefixed marked "L."

An interpreter read the charges and specifications in Japanese, prefixed marked "M."

The judge advocate arraigned the accused as follows:

Q. Koichi, Hiroe, you have heard the charges and specifications preferred against you; how say you to the specification of the first charge, guilty or not guilty?

A. Not guilty.

Q. To the first charge, guilty or not guilty?

A. Not guilty.

Q. To the first specification of the second charge; guilty or not guilty?

A. Not guilty.

Q. To the second specification of the second charge; guilty or not guilty?

A. Not guilty.

Q. To the second charge; guilty or not guilty?

A. Not guilty.

Q. Katsuyama, Tetsuji, you have heard the charge and specification preferred against you; how say you to the specification of the first charge; guilty or not guilty?

A. Not guilty.

Q. To the first charge; guilty or not guilty?

A. Not guilty.

Q. Onose, Ichiro, you have heard the charge and specification preferred against you; how say you to the specification of the first charge; guilty or not guilty?
A. Not guilty.

Q. To the first charge; guilty or not guilty?
A. Not guilty.

Q. Tsuchiya, Naohiko, you have heard the charge and specification preferred against you; how say you to the specification of the first charge; guilty or not guilty?
A. Not guilty.

Q. To the first charge; guilty or not guilty?
A. Not guilty.

The commission then, at 11:15 a.m., took a recess until 2:10 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 prosecution began.

The judge advocate read a written opening statement, appended marked "N." *OK*

An interpreter read a Japanese translation of the opening statement of the judge advocate.

The judge advocate requested the commission to take judicial notice of the following:

That a state of war existed between the United States of America and the Imperial Japanese Empire during that portion of the year 1945 which ended on September 2, 1945.

The Potsdam Declaration of July 26, 1945, particularly paragraph 10, which reads in part as follows: "We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners."

The Geneva Prisoner of War Convention of July 27, 1929, and of the fact that although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control; particularly Article 2 of Title I of that convention which reads as follows: "Prisoners of war are in the power of the hostile power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity."

"Measures of reprisal against them are prohibited."

That Koror Island, Palau Islands, is part of Commander Marianas area.

The Hague Convention of October 18, 1907, and especially Article 23(c) which reads as follows: "It is especially forbidden to kill or wound an enemy who, having laid down his arms, or having no longer any means of defense, has surrendered at discretion."

An interpreter read the request to take judicial notice in Japanese.

The accused made a written objection to the request of the judge advocate on judicial notice, appended marked "O."

The accused waived the reading in open court of this objection in Japanese.

The judge advocate replied.

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

The commission made the following ruling:

The commission will take judicial notice of all items and documents requested by the judge advocate.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and residence.

A. Shimojo, Mitsuharu, 22 Ora, Anabuki, Mima Gun, Tokushima, Ken.

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

A. The one with the glasses on is Captain Koichi; the one next to him, First Lieutenant Katsuyama; the one behind him is Lieutenant Onose and the one next to him is Sergeant Major Tsuchiya.

3. Q. Who are the other two?

A. The one on the left is Second Lieutenant Onose and the one on the right is Sergeant Major Tsuchiya.

4. Q. Did you ever serve in the Japanese armed forces?

A. Yes, as a gunzoku, I served in the military service.

(Interpreters note:) Gunzoku is a civilian attached to the armed forces.

5. Q. Where did you serve?

A. The last place was the Palau Islands.

6. Q. Between what dates were you with the Japanese force in the Palau Islands?

A. In March 1944 I arrived on Palau and was attached to the Akatsuki Unit and in December of the same year I was transferred to headquarters where I served until the end of the war.

7. Q. What headquarters was this?

A. The 14th Division, or in other words, Teru or Inoue Division.

8. Q. What were your duties at headquarters?

A. I was in the photographic squad.

9. Q. Did you ever see a white man at the 14th Division Headquarters?

A. No.

10. Q. Did you ever see a prisoner of war while you were a photographer attached to the 14th Division Headquarters?

A. No. I did not see any prisoners. When they took a prisoner from the Kempeitai Unit and executed him I saw him personally.

(Interpreter's Note:) Kempeitai means military police.

11. Q. Will you describe the man that you saw at the Kempeitai Unit?

A. At a glance he was dressed as an aviator.

12. Q. Can you tell us the color of his skin?

A. I do not recall very clearly but the color of his skin was lighter than that of the Japanese.

13. Q. How did you happen to go to the Kempeitai?

A. Onose and I received orders to go to Koror and then without knowing that we were going to take prisoners to Koror we went to the Kempeitai.

14. Q. This Onose that you mention, is he one of the accused in this case?

A. Yes.

15. Q. Who gave you and Lieutenant Onose these orders?

A. I received orders from Onose.

16. Q. What did Onose tell you?

A. Onose told me, "You are going to Koror with me so make preparations to take pictures," and then he told me that we were going to report to Yajima so come along.

17. Q. Did you report to Yajima?

A. Yes.

18. Q. What did Yajima tell you, if anything?

A. It was not only I alone. Onose and Tsuchiya, we three were there. He told us, "to take care of yourselves and go."

19. Q. After you left Yajima where did you go?

A. For a little while I was at the intelligence room, then I returned to my photography room.

20. Q. After you left the photography room where did you go?
A. After leaving the photography room I came back to the intelligence room and with Onose and Tsuchiya we went to the Kempeitai. gmk

21. Q. When you got to the Kempeitai, what happened?
A. When we came to the Kempeitai Unit, the prisoner was already brought in front of the MP Unit and there Onose went and talked with the officers of the MP Unit inside the room which was in the headquarters.

22. Q. You say this prisoner had the uniform of an aviator. Will you describe this uniform.

A. When I saw this aviator his clothes were like that of a Japanese aviator and the pockets on his trousers were way down.

23. Q. Did he have any metallic emblems on him?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. No, I did not see any.

24. Q. When you and Onose went to Koror, did anyone else go with you?

A. An assistant "Kempei"(MP) went with us. His rank was a leading private.

25. Q. When you and Onose went for the first time to the Kempeitai, did anyone else go with you?

A. There was nobody else. The assistant MP, of whom I just spoke, was the person who went from the Kempeitai to Koror with us.

26. Q. How long did you stay at the Kempeitai?

A. About 40 to 50 minutes.

27. Q. What happened after you left the Kempeitai?

A. An assistant MP and Onose, Tsuchiya and I and the prisoner, that is five in all, went from there to Gaspan Field Storage House. gmk

28. Q. And what happened then?

A. Onose went into the field storage house and we, sitting outside, waited there, and Onose got some biscuits.

29. Q. What happened then?

A. After receiving this biscuit we went to Nekken Pier from where the ships to Koror went out.

30. Q. What happened then?

A. After arriving at this Nekken Harbor there were two men of the Akatsuki Unit at the Akatsuki Unit liaison office. Then having the MP guard the prisoner, Onose, Tsuchiya and myself went into the quarters. A short time later Keichi and his orderly came along.

The court then, at 3:30 p.m., took a recess until 3:45 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.

Shimojo, Mitsuharu, 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.

(Direct examination continued).

31. Q. What was the rank of Koichi at this time?
A. He was a captain.

32. Q. When you say Koichi, is this (pointing to the accused Koichi) the Koichi that you are talking about?
A. I believe the one on the left in the front row is Koichi.

33. Q. What happened after Captain Koichi joined you?
A. After we greeted Captain Koichi, I went to the Nouni and Akatsuki Unit.

34. Q. Did the boat to Koror finally arrive at that pier?
A. Yes, it came, but it was night when it came.

35. Q. Who got on that boat to Koror?
A. When the boat arrived at Nekken pier there was some cargo which was to be transported to Koror on the boat, and perhaps there were about 15 or 20 army men from various units, I don't know to what units they belonged, on the boat. Then there were Captain Koichi, Second Lieutenant Onose, Sergeant Major Tsuchiya, myself, Captain Koichi's orderly, an assistant Kempei, and the prisoner.

36. Q. Did you know Onose's rank at this time?
A. He was a second lieutenant.

37. Q. Do you know Tsuchiya's rank at this time?
A. Sergeant major.

38. Q. Did this vessel finally get to Koror?
A. Yes.

39. Q. What happened when you got to Koror?
A. When we arrived at Koror, we went to the quarters of the Koichi Unit.

40. Q. Who went to the quarters of the Koichi Unit?
A. We seven, who got on the boat at Nekken Harbor, went to Koichi's quarters.

41. Q. Will you enumerate the people who went to Koichi's quarters?
A. The persons that went to Koichi's quarters were Captain Koichi, Second Lieutenant Onose, Sergeant Major Tsuchiya, myself, Captain Koichi's orderly, the assistant Kempei, and the prisoner.

42. Q. What happened then?
A. When I arrived, there were one or two non-commissioned officers and there was one officer, I don't know exactly but I believe this was Katsuyama. He was ordering to have the prisoner placed in the air raid shelter and to guard him well.

43. Q. Do you mean that Katsuyama was giving the orders concerning the prisoner?
A. I don't recall clearly, but I believe it was Katsuyama who was giving out the orders.

44. Q. What was done with the prisoner?
A. The prisoner was confined to the air raid shelter.

45. Q. What did the rest of you do?
A. We put a table in front of Captain Koichi's quarters and had tea and ate there.

46. Q. Was anything said about the execution?

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

The judge advocate withdrew the question.

47. Q. Did any of you do any talking?
A. Yes, we did.

48. Q. What did you discuss?
A. Captain Koichi, Second Lieutenant Onose, the person who I think was Katsuyama, a non-commissioned officer of Katsuyama's Unit, and Tsuchiya were talking. From what I heard, they were talking about the place and the time of the execution of this prisoner and, from what I learned from their talk, it was decided that the place of the execution would be at the naval cemetery and the time was to be 7 o'clock the next morning.

The accused moved that this answer be stricken from the record unless it were shown what was actually said by each accused.

The judge advocate replied.

The commission announced that the motion was not sustained.

49. Q. What happened then?
A. Then we put up for the night and Second Lieutenant Onose and Captain Koichi went to Captain Koichi's quarters.

50. Q. Where did you go?
A. Sergeant Major Tsuchiya and I were led to different quarters.

51. Q. Tell us what happened the next morning?

A. Waking up the next morning, I went to the Doi Unit to visit one of my friends who came from the same prefecture. He was not present and so from the Doi Unit, I directly went to the naval cemetery which was designated as the place of execution.

52. Q. And when you got there, what did you see?

A. When I went there, Onose and Tsuchiya were in front of the prisoner. One of the men from the Koichi Unit was holding the rope which was tied to the prisoner and there were some other men around the prisoner.

53. Q. About how many people in all were there?

A. I do not know the exact number of people that were there, but when I went there the first time there was about thirty.

54. Q. Where was the prisoner?

A. The prisoner was at the far end of this naval cemetery just where the main road comes down.

55. Q. Was he standing or sitting.

A. Sitting.

56. Q. Was he tied?

A. Yes, he was tied.

57. Q. How was he tied?

A. Both his biceps were tied and his wrists were loosely tied.

58. Q. What happened then?

A. When I arrived there, Second Lieutenant Onose and Sergeant Major Tsuchiya were in front of the prisoner and Onose was speaking to the prisoner. I went to the side of the prisoner and Katsuyama and Koichi came along.

59. Q. Besides Katsuyama and Koichi, did anyone else come along?

A. When I got to the scene, Tsuchiya and Onose were speaking to the prisoner. Shortly after I came, behind me there were Koichi and Katsuyama and as to the question that was just asked if there was anybody else behind me, I don't know. And another thing, whether Koichi and Katsuyama were there before me or came after me, I don't know. When I first came to the scene I didn't notice them.

60. Q. What language did Onose use in speaking to the prisoner?

A. Onose was using English.

61. Q. After you noticed that Katsuyama and Koichi were on the scene, what happened then?

A. Katsuyama and Onose spoke to each other and Onose said to Katsuyama, "I told the prisoner about the execution." When I heard this, I looked at the prisoner. The prisoner looked very much upset and his face was dropped down. A little while later, I heard the prisoner say to Onose, "Thank you." Onose gave him a cigarette and lit it.

62. Q. What happened then?

A. I would like to add this now, because I have dropped it. When I first arrived in the scene, Onose was giving back the belongings which the prisoner seemed to have possessed. They were a watch, a ring, and a necklace with a cross on it.

63. Q. After Onose had given the prisoner a cigarette, what happened then?

A. Up to that time Katsuyama and Onose were conversing but I don't know what they were saying. A short time later, Katsuyama ordered the soldier who had the rope which was tied to the prisoner to lead the prisoner to the hole which was about ten meters from where he was.

64. Q. What did this hole look like?

A. This hole was dug oblong from the east to the west. The length from east to west was about seven feet, its width was about three and one-half feet and its depth was, I believe, about three and one-half feet.

65. Q. Did you see this hole being dug?

A. No, I did not see it being dug. When I arrived to the scene, it was already dug.

66. Q. Was the prisoner brought to the hole?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes, he was.

67. Q. And after the prisoner was brought to the edge of the hole, what happened then?

A. Then Katsuyama ordered one soldier to blindfold this prisoner. This soldier got a towel and blindfolded the prisoner. Katsuyama was then standing to the back of the prisoner with his sword drawn out and he had another soldier run some water on the sword. JK

68. Q. What happened then?

A. After the blindfold was put on and Katsuyama had his sword washed with water, Katsuyama stood to the right of the prisoner.

69. Q. And what happened then?

A. Katsuyama swung up his sword, but it looked as if Katsuyama did not have confidence in himself and he was shivering and he was swinging his sword up and down and correcting his posture. At this time, Onose showed him how to cut.

70. Q. Show us exactly what Onose did.

A. Onose did not have a sword, but Onose was instructing him how to place his foot and how to swing his sword up and how to swing it down.

71. Q. Show us what Onose did.

A. Katsuyama was standing like this (the witness stood with his feet in horizontal alignment) and Onose told him how to place his foot and how to swing up his sword and what part of the neck to aim at when he brought his sword down. (The witness demonstrated by placing his right foot forward of his left foot while making a chopping motion, and by indicating a point on his neck with his hand.)

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Tuesday, November 25, 1947.

SECOND DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Tuesday, November 25, 1947.

The commission met at 9:15 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 first day of the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

Shimojo, Mitsuharu, the witness under examination when the adjournment was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

72. Q. After Onose had finished instructing Katsuyama as to how to stand and how to use his sword, what happened?

A. After he had taught Katsuyama the way of using the sword, First Lieutenant Katsuyama took a firm position and aimed at the prisoner and swung down his sword.

73. Q. What happened then?

A. First Lieutenant Katsuyama swung at the neck and about half of the prisoner's neck was cut; and the prisoner fell lying prone in the hole.

74. Q. What happened then?

A. For a while First Lieutenant Katsuyama had a pale face, but he seemed to come back to his senses and ordered the soldiers to lay the prisoner facing down in the hole. The soldiers took the rope which was tied to the prisoner and First Lieutenant Katsuyama and the soldier buried him.

75. Q. While all this was going on, what were you doing?

A. While this was going on I was standing nearby.

76. Q. Were you doing anything?

A. While the prisoner was being buried I did not do anything. I was standing there with my camera.

77. Q. Were you doing anything at all with your camera while you were there?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes, I used it on the scene.

78. Q. How many pictures did you take?

A. Five in all.

79. Q. Tell us what pictures you took.

A. The first one was as I have stated yesterday. The picture of Onose giving the prisoner a cigarette and the prisoner smoking the cigarette. The second was when First Lieutenant Katsuyama was swinging the sword down. The third was when First Lieutenant Katsuyama swung his sword down and the prisoner fell into the hole; and the fourth while the prisoner was lying in the hole. I took the picture of the prisoner's neck. The fifth while the men were burying the prisoner - the scene of the men burying the prisoner. gx

80. Q. Can you tell us in what month and what year this execution took place?

A. I think this execution took place after the middle of May, 1945.

81. Q. After the prisoner had been executed and buried, what happened then?

A. After the prisoner was buried, Katsuyama ordered the soldiers to clear the place and they planted plants and placed rock and made a grave there. Then Katsuyama gathered the soldiers around the grave and gave a silent prayer for the deceased...for this prisoner. At this time I was on a little hill and I took this picture.

82. Q. After you had completed taking your pictures and after the praying was over, what happened then?

A. After this was finished I went to the Koichi Unit. I returned to the barracks of the Koichi Unit. I had already departed from Onose and Tsuchiya. Later I went to the Katsuyama Anti-aircraft Position.

83. Q. After you finished your business on Koror that day, did you return to Babelthup?

A. Do you mean the headquarters?

84. Q. Yes.

A. I did not go back right away after I finished taking pictures. I returned during the evening.

85. Q. Did you return by boat?

A. Between Koror and the main island of Babelthup there is a channel - Arimisu Channel - I had to cross this channel and from there on I walked to headquarters.

86. Q. Did Onose and Tsuchiya return with you to Babelthuap?
A. Headquarters?

87. Q. Yes.
A. Yes, we returned to headquarters.

88. Q. Did you at any time have a conversation with any of the accused concerning the execution?

This question was objected to by the accused on the grounds that it was leading and that this witness could not testify to an admission by any of the accused.

The judge advocate did not reply.

The commission announced that the objection was not sustained.

A. What I heard concerning this was at the Doi Unit. Onose and Tsuchiya and an officer of the Doi Unit were conversing. According to Onose's conversation he said that if this execution could not be performed by the Koichi Unit, he was ordered by the division commander to do it himself.

89. Q. What did you do with the pictures that you took?
A. That night, after returning to headquarters, I started printing them. Around 0800 the next morning I gave these to Onose there in the intelligence room. Onose was looking at them with other NCO's.

90. Q. Did you ever see these pictures again?
A. No, I haven't seen them since then.

Cross-examined by the accused:

91. Q. You testified that you were a gunzoku. Were you a gunzoku because you had defective hearing?
A. That is not so.

92. Q. Is your hearing defective?
A. Yes.

93. Q. In both ears?
A. Yes.

94. Q. You testified that you received orders to go to the Kempeitai Unit without knowing you were going to take prisoners to Koror. Were you working under Lieutenant Onose so he gave you these orders as one of his subordinates?

A. Onose was one of the officers working in the intelligence room. I was the photographer of the intelligence room.

95. Q. This intelligence room. Where was it located? Was it located on Koror Island?

A. It was at the headquarters.

96. Q. Whose headquarters?
A. It was the headquarters of the Teru Unit.

97. Q. Who was the commanding officer of this unit?
A. Lieutenant General Inoue.

98. Q. And Onose was attached to this headquarters?
A. Yes.

99. Q. What kind of photographing equipment did you take with you?
A. It was a small camera called Baldox.

100. Q. Did Lieutenant Onose order you to take this camera with you?
A. This was the only small camera at the headquarters. Other than this there were big aeronautical cameras.

The commission stated that the reply was not responsive and directed the interpreter to restate the question to the witness.

The interpreter restated the question.

A. No, he did not order.

101. Q. Who did?
A. I took it on my own account.

102. Q. Who ordered you to go with Lieutenant Onose?
A. Second Lieutenant Onose ordered me that "you are going along with me to Koror."

103. Q. How did Tsuchiya happen to join the party?
A. I do not know this.

104. Q. Was he attached to the headquarters of General Inoue?
A. Yes, he was attached to the headquarters.

105. Q. Did you go into the room with Lieutenant Onose so that you know that he talked to the MP officers?
A. I do not know.

106. Q. How do you know he talked to the MP officers?
A. I saw them talking.

107. Q. Could you hear what they were saying?
A. No.

108. Q. You say that Captain Koichi and his orderly came along while you were at Nekken Harbor. How did you recognize Captain Koichi?
A. Koichi came to where we were with his orderly.

109. Q. Did you know it was Captain Koichi?
A. I did not know that he was Koichi at that time, but I came to know that he was Koichi when I went to Koichi's unit. But I knew that he was a captain from his insignia while I was at the Nekken Pier.

110. Q. When did you find out it was Koichi?
A. I found this out at the barracks at Koichi's unit.

111. Q. How did you recognize Koichi's orderly?
A. Even on the way this orderly was taking care of Captain Koichi, so I believed he was the orderly.

112. Q. What was his name?

A. I do not know his name.

113. Q. Had you ever seen Captain Koichi before you met him that day?

A. No.

114. Q. Did you ever see him again until yesterday in this courtroom?

A. I think I did not see him.

115. Q. You didn't see this same person at the execution?

A. I saw him at the scene.

116. Q. Did you recognize him as the same person?

A. Yes, I did.

117. Q. Did you know that he was Captain Koichi at that time?

A. At that time I already knew.

118. Q. Describe these quarters you went into. You say you went into the Koichi quarters.

A. Do you mean the location?

119. Q. What they looked like.

A. What I recall is that it was a barracks-like building and around it were banana trees planted. Other than that I do not remember.

120. Q. Why is it that you do not recall who was giving orders that evening?

A. I thought that as for me I did not have to recognize this person.

121. Q. What did you actually hear him say that night, this person?

A. When the prisoner was brought, this person ordered some men to put the prisoner in the air raid shelter and also told two or three soldiers to guard him carefully. After that we went to the table which was placed in front of the Koichi quarters and while we were there he came to where we were and discussed the time ~~at~~ place of the execution. OK

122. Q. Who did?

A. That is Koichi, Onose and this officer were discussing about it. Other than that I think there were some NCO's of the Koichi unit.

123. Q. This other officer that you can't identify. Did you ever see him again?

A. No, I haven't seen him since.

124. Q. You didn't see him at the execution?

A. No I didn't. On this I am not very clear. But I testified that I did not see him at the scene. When I saw him at the barracks of the Koichi unit I felt as though he was Katsuyama.

125. Q. Had you ever seen him before?

A. Do you mean Katsuyama?

126. Q. This person.

A. I haven't seen him before this.

127. Q. What did you hear Koichi say that evening at the conversation?
A. Captain Koichi and the officer I thought was Katsuyama and Onose, an NCO of the Koichi Unit and Tsuchiya were talking but I am not clear as to what Koichi said.

128. Q. You said you put a table. Who put this table?
A. I said that we talked outside near the table but I did not say that they put the table. The table was out there.

129. Q. Did you sit down at this table?
A. We had chairs round the table and we sat on the chairs.

130. Q. Can you describe in just what relation each of you sat at this table?
A. I do not know in what position we all sat but the persons who sat were Koichi, the officer who was ordering the men about the guarding of the prisoner, an NCO of the Koichi Unit, Onose, Tsuchiya and myself.

131. Q. Can't you remember actually how many sat down at this table?
A. I think there were six in all. What I mentioned before the last question.

132. Q. Did you say anything during this conversation?
A. I did not say anything in particular at this time.

133. Q. Did you say anything at all? Did you take part in the conversation at all?
A. I did not participate in the conversation or the discussion of the prisoner.

134. Q. Did Tsuchiya take part in the discussion of the prisoner?
A. I do not recall that Tsuchiya was talking.

135. Q. Did any of the non-commissioned officers have anything to say during that conversation?
A. The other NCO's were discussing in this conversation.

136. Q. Did you hear Koichi say he had been ordered to execute the prisoner by the General?
A. That I did not hear.

137. Q. Did you hear Onose say that he had been ordered to execute the prisoner by General Inoue?
A. I heard Onose say that if Koichi, Katsuyama or other persons of the Koichi Unit could not perform the execution, General Inoue had ordered him to do it. That is what I heard from Onose. But this I did not hear directly. I think it was at the Doi Unit when Onose was talking to this effect to the NCO of the Doi Unit.

138. Q. What did you hear Lieutenant Onose say at this conversation? You testified that the execution had been ordered, time set and the place designated. Did he speak these words at this conversation?
A. This I do not recall clearly.

139. Q. Then it is possible that you didn't hear this at all at this conversation?
A. I do not know who said it but I heard the time and the place mentioned in this conversation.

140. Q. Didn't you hear Captain Koichi say he objected to executing the prisoner?

A. This I did not hear.

141. Q. You said that you went to the Doi Unit. How far was this Doi Unit from this place?

A. Is that from the Koichi Unit?

142. Q. Yes.

A. I think it was around five or six hundred meters if you go through the back gate from the quarters of the commanding officer of the Koichi Unit to the Doi Unit Headquarters.

143. Q. Was there anybody at this conversation at the Koichi Headquarters from the Doi Unit?

A. That I myself did not see.

144. Q. Do you know how many people were in the Koichi Unit?

A. When you say this do you mean persons that were in the barracks?

145. Q. No. That belonged to the Koichi Unit.

A. That I do not know.

146. Q. Now you said that you saw Lieutenant Onose speak to the prisoner. What did you hear Lieutenant Onose say to this prisoner?

A. Where do you mean?

147. Q. At the scene of the execution.

A. I do not know English but when Katsuyama came Onose was saying to Katsuyama that he had pronounced to the prisoner his execution. But other than this I do not know what Onose said to the prisoner.

The witness was duly warned.

The commission then, at 10:15 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.

Shimojo, Mitsuharu, 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-examination continued).

148. Q. Did you hear Tsuchiya say anything to this prisoner at this time?

A. No, I did not.

149. Q. Did you ever hear him say anything to the prisoner?

A. No, I didn't.

150. Q. You stated that you saw Onose give the prisoner something. Was this a Japanese cigarette that he gave him?

A. Yes, it was.

151. Q. What else did you say Lieutenant Onose gave the prisoner?

A. At the scene of the execution I saw Onose give a cross with a chain, a ring, and a watch to the prisoner.

152. Q. Did he say anything to the prisoner at this time when he gave him these things?

A. He was conversing. JK

153. Q. You don't know what he said to him?

A. I don't know.

154. Q. What did the prisoner do with this cross when Onose gave it to him?

A. When I went to the scene the prisoner had the cross already around his neck. When I went to the scene, Onose was just handing him the ring.

155. Q. What did the prisoner do with the ring?

A. The prisoner's hands were tied but they were tied very loosely, so the prisoner was putting the ring on his finger.

156. Q. What did he do with the watch when Onose gave it to him?

A. Onose put the watch on his wrist for him.

157. Q. But you didn't actually see him give the prisoner the cross, then?

A. When I went there the cross was already around his neck.

158. Q. So you just imagined that Onose gave him the cross, but you did see him give the prisoner the ring and the watch. Isn't that so?

A. Yes.

159. Q. This hole⁴ that you say was dug. You didn't see any one dig the hole, did you? JK

A. No, the hole was already dug when I got there.

160. Q. When you say it was already dug, couldn't it have been a shall hole instead of one that was dug? JK

A. It was not that kind of hole.

161. Q. When did you first get to see this Lieutenant Katsuyama that you say was at the scene?

A. I do not recall clearly, but before the execution I went to the Katsuyama Unit anti-aircraft position and I do not recall if I saw him then or not.

162. Q. You think that this might have been the first time that you saw him, at the scene of the execution?

A. I think that it was the first time I saw him at the scene of the execution and somehow I think I have seen him before, but actually where I first knew it was Katsuyama was when I saw him at the scene.

163. Q. Did you ever see him after that?

A. When I went to take some pictures of the anti-aircraft positions of the Katsuyama Unit, I saw him. Since then, after the war, I think he came to the headquarters once and I think I saw him then but it is not clear.

164. Q. This Katsuyama that you think you saw at the scene - were his ears bandaged that day?

A. I do not recall if he had them bandaged or not.

165. Q. Were Captain Koichi's ears bandaged that day?

A. I do not recall this.

166. Q. Was Captain Koichi wearing glasses that day?

A. I do not recall clearly if he had glasses on or not.

167. Q. Was Katsuyama wearing glasses that day?

A. He did not have glasses on.

168. Q. Was there anyone else that was showing this Katsuyama how to place his feet that day?

A. I don't recall.

169. Q. Do you remember seeing Captain Koichi there when you heard Katsuyama order the soldiers to blindfold the prisoner?

A. No, I do not.

170. Q. How close to Katsuyama were you when you saw them swinging the sword?

A. It was about four meters.

171. Q. Were you the only gunzoku present at this scene?

A. At the scene there were quite a few soldiers there ~~and~~ I could not tell if some were gunzoku or not but I think there were two or three civilians among them. JX

172. Q. Was there anyone standing between you and Katsuyama when you saw Katsuyama swing his sword and cut the prisoner?

A. There were lots of soldiers on each side of the hole watching Katsuyama.

173. Q. Was there anyone between you and Katsuyama?

A. When I took the pictures of Katsuyama swinging the sword it was from the front. On one side of the hole the prisoner was sitting down and on both sides of the hole there were two rows of soldiers watching Katsuyama ~~and~~ I took the picture from the opposite side of the hole. JX

174. Q. So you could see everybody that took part in this execution, is that right?

A. Yes, I could see all.

175. Q. You say that Katsuyama had a pale face but then he came back to his senses. What do you mean when you say he came back to his senses? JX

A. Do you mean after he cut?

176. Q. Yes.

A. When he had cut the prisoner, the color of his face had changed and he was standing there with his sword dangling down.

177. Q. Did you see anyone else cut with a sword that day?

A. There was no one else cut.

178. Q. Did you see Koichi there when you saw Katsuyama cut?

A. I don't recall seeing Captain Koichi there.

179. Q. If he had been there, you would have seen him. Is that right?
A. It can be thought that way but as I was busy with my own work, that is photography, I didn't pay any attention to the others.

180. Q. Do you recall seeing Onose there?
A. I recall Onose was there.

181. Q. What do you recall seeing him do there?
A. I recall Onose being there because I saw Onose showing Katsuyama how to cut with the sword.

182. Q. Did your picture show that?
A. Do you mean Onose?

183. Q. Yes.
A. Onose is not in the picture I took when Katsuyama cut.

184. Q. You say you remember Onose showing him how to place his feet. Did he actually move Katsuyama's feet or did he just give him instructions by mouth?

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

The accused withdrew the question.

185. Q. Did he actually go over and place Katsuyama's feet in a certain position?
A. No.

186. Q. What did he do, then?
A. If we consider this part as a hole, Katsuyama was near the place where the table is and at this end of the hole, Onose was standing. (Indicating a distance of about twelve feet).

187. Q. What did you hear Onose say to Katsuyama?
A. He was showing by saying to "open up your legs a little more" or "put that leg forward" and how to swing the sword.

188. Q. Now, Tsuchiya, where was he during all this time?
A. He was standing about one meter diagonally to the right of me.

189. Q. All during the time that you were there, was he to the right of you, one meter from you?
A. I first noticed Tsuchiya being there after I finished taking the picture.

190. Q. You didn't see him hand any of the belongings of Kaufman to Lieutenant Onose at the scene of the execution then?
A. I don't know who Kaufman is.

191. Q. The prisoner.
A. This I didn't see.

192. Q. Did you see Tsuchiya do anything at the scene of the execution?
A. I don't recall.

193. Q. You didn't see him tie the prisoner?

A. The prisoner was tied when he left the Kempeitai.

194. Q. You didn't see Tsuchiya give any directions to Katsuyama about how to wield the sword?

A. No.

195. Q. You didn't see him cut with the sword?

A. There was no such thing.

196. Q. And you didn't see him take part in helping blindfold the prisoner?

A. That point I don't recall.

197. Q. Were you the only photographer there at the scene?

A. There was no other photographer at the scene other than me.

198. Q. Why did you give these pictures to Lieutenant Onose?

A. When we returned to the headquarters, I was ordered by Onose to bring the film to the intelligence room without leaving even one print or film in the photo lab, so I delivered them to him.

199. Q. What headquarters did you return to and print these pictures?

A. The Teru Unit headquarters.

200. Q. Who else returned to headquarters? You and Onose and who else?

A. I felt that Sergeant Major Tsuchiya went home with us.

201. Q. Was he stationed at the same headquarters as you were?

A. Yes.

202. Q. Now, you testified as to a conversation that Onose had. Where did this conversation take place afterwards?

A. What do you mean? Which conversation?

203. Q. The conversation that you testified to this morning after the execution had taken place. You testified to a conversation that you heard Lieutenant Onose have.

A. Do you mean the conversation between Onose and myself?

204. Q. This morning on direct examination, you testified to a conversation that you heard Lieutenant Onose have after the execution and concerning the execution.

A. This was at the Doi Unit.

205. Q. That was at the Doi Unit. When did it take place? How long after the execution?

A. I went to the Doi Unit after I went up to the anti-aircraft position, and I think it was a little before or a little after twelve.

206. Q. The same day as the execution?

A. Yes.

207. Q. Who was present at this conversation?

A. I think there was a person who seemed to be an officer of the Doi Unit.

208. Q. Can't you remember who he was?

A. I do not know their names.

209. Q. Was Captain Koichi there?
A. I didn't see him.

211. Q. Was Tsuchiya there?
A. Yes.

212. Q. How did you happen to be there?
A. I went to take the pictures of the anti-aircraft position and then I came back to the Doi Unit. I just stayed there a little while and I heard the conversation and then I obtained the permission of Lieutenant Onose and returned to the Akatsuki Unit Detachment.

213. Q. What did you hear Lieutenant Onose say at this conversation?
A. I just heard him say that he was ordered by General Inoue that if Katsuyama or someone of the Koichi Unit could not perform the execution "you perform it."

214. Q. Who was he telling this to?
A. This was when he was talking to the other officer.

215. Q. You don't know who this other officer was?
A. No, I don't know his name.

216. Q. Do you know what happened to the prisoner after he was buried? That is, do you know if his body was ever dug up?
A. I do not know anything about these points.

217. Q. Yesterday you testified that Onose ordered you that you were "coming with me, so prepare the cameras." When did you receive this order?
A. I think it was around 8 o'clock in the morning.

218. Q. You testified that you reported to Staff Officer Yajima. Who went to report this?
A. Second Lieutenant Onose, Sergeant Major Tsuchiya, and myself - three in all - went.

219. Q. Did all three of you report?
A. Second Lieutenant Onose represented the rest and reported.

220. Q. How did Onose report? In what words did he report?
A. He said that three of us would bring the prisoner to Koror and hand him over to the Koichi Unit or Katsuyama Unit.

221. Q. Did he say for what reason he is going to had the prisoner over to the other unit?
A. He did not say for what reason the prisoner was to be handed over to the other unit.

222. Q. You have stated that you brought a small camera called Baldox. Did you bring any film?
A. Yes.

223. Q. At what time did you depart from the headquarters?
A. I think it was around 10 o'clock in the morning.

224. Q. When did you reach the Kempeitai?
A. Soon after that.

225. Q. Yesterday you testified that you stayed forty of fifty minutes at the Kempeitai and then left about 11 or 12 o'clock. There is a little difference in time, is there not?

A. I was just guessing the approximate times.

226. Q. You have stated that after you went to the Gaspan pier later on Captain Koichi came to the Gaspan pier. Is it not true that Captain Koichi was there when you went to the Gaspan pier?

A. I do not know if Koichi was there before us or not but when we went to the Akatsuki Unit Liaison Office, he was not there. He came later.

227. Q. You have testified that when you arrived at the barracks of the Koichi Unit, a person who you thought was Katsuyama ordered the men to guard the prisoner carefully. Was this the first time that you have seen this person?

A. Yes.

228. Q. Then, when you say that you thought him to be Katsuyama, is this what you thought at that time?

A. Yes.

229. Q. Why did you think this officer was Katsuyama?

A. I just presumed that he was Katsuyama.

230. Q. Then no one said that he was Katsuyama, did they?

A. No one said he was Katsuyama.

231. Q. Then you have testified that officer was not at the scene the next day. Is that true?

A. The night before the execution, I just presumed that this officer was Katsuyama and I don't know how he looked. At the scene I saw Katsuyama but I do not know if Katsuyama was that officer that I saw the night before.

The witness was duly warned.

The commission then, at 11:30 a.m., took a recess until 2:10 p.m., at which time it reconvened.

Present: All the members, the judge advocate, 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.

Shimojo, Mitsuharu, 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-examination continued.)

232. Q. You have testified that Onose gave the prisoner back his ring and watch and so on. Isn't it the truth that Tsuchiya handed over these things?

A. I do not know who gave the cross with the chain on it but I believe it was Onose who gave the ring and watch to the prisoner.

233. Q. You have testified that Katsuyama ordered someone to blindfold the prisoner. Was it not Koichi who gave this order?

A. I think it was First Lieutenant Katsuyama.

234. Q. When Katsuyama gave this order did you see Koichi near or around this place?

A. No, I did not.

235. Q. Before the execution was carried out, did you not see Koichi give a speech to the soldiers that were gathered there?

A. No, I did not.

236. Q. You have stated that after Katsuyama executed the prisoner that the men cleared the place and planted flowers and trees and placed a rock and made a grave. Who gave this order?

A. I saw Katsuyama while ordering the men, helping them plant the trees and flowers and what not and saying "place the rock here" or "plant the tree here" and so on.

237. Q. This morning you testified that after Katsuyama executed the prisoner, he was pale and he was just standing there but later he came to his senses. Now you testify that he, Katsuyama, gave the order and it was he himself who did what you stated before. Wasn't it Koichi who gave this order for him to do it?

A. What I saw was that Katsuyama was instructing the men and he himself performing the above. I do not know if Koichi gave Katsuyama the order to do it but what I saw was Katsuyama was giving the order and helping the men.

238. Q. Then, after the grave was made did you not see a tomb mark placed on the grave with the writing "the grave of an American flyer."

A. What do you mean by something written?

239. Q. Something that will specify whose grave this is.

A. I did not see this. This did not come to my sight.

240. Q. You testified that after the execution you went to the anti-aircraft position and then later came back and went to the Doi Unit. What was the reason you went to the Doi Unit?

A. That is because Second Lieutenant Onose and Sergeant Major Tsuchiya went to the Doi Unit before I left, so I went there.

241. Q. When you went back, did you not go back by yourself?

A. I think I went back with Onose and Tsuchiya. That is because I think Onose would not have let me go alone because I had taken a valuable picture. I believe he would not have let me go alone in the night and he would have watched over me.

242. Q. Is it not that Onose and Tsuchiya left that evening and you slept over one night and left the next day?

A. I returned that night.

243. Q. That night when the prisoner was brought to Koror, you testified that there was a conference held to discuss the time and place of the execution. Wasn't it just there you just had supper and not a conference there?

A. I think I have stated before that it was only a conversation, not a conference. I think it was not a formal conference to discuss the time and place of the execution but they were just talking about it at this time when we had our supper brought before us.

Reexamined by the judge advocate:

244. Q. At this supper party the time and place of the execution were discussed, were they not?

A. It is a fact that they discussed this point.

245. Q. When Onose told you that he wanted you to go with him to go to Koror, did he tell you why he wanted you to accompany him?

A. That he did not.

246. Q. Did you know before you left for Koror that you were going to take pictures of an execution?

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

The judge advocate replied.

The judge advocate withdrew the question.

The accused did not desire to recross-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.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.

A. Doi, Norio, colonel, Imperial Japanese Army.

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

A. In the front row near this side is Captain Koichi, Hiroe. Second in the first row is Captain Katsuyama. I do not know his first name. First one in the second row is Second Lieutenant Onose. The second person in the second row is a non-commissioned officer of the headquarters. I do not know his name.

3. Q. Did you serve with the Japanese armed forces at Koror?

A. I have.

4. Q. Between what dates did you serve there?

A. 17 June 1944 until the end of the war. Until I was demobilized.

5. Q. And what were your duties on Koror?

A. Do you mean the last duty?

6. Q. What were your duties in May of 1945?

A. Commanding Officer of the Koror Defense Unit.

7. Q. And in May of 1945 did your force capture a prisoner of war?

A. Yes.

8. Q. Will you tell this commission about that?

A. I have forgotten the date but I believe it was the early part of May. B-24's attacked Koror and at that time the anti-aircraft unit made a direct hit on one B-24 and it broke up into pieces and fell into the sea. At this time one American soldier came down on a parachute and landed into the sea south of Koror. As the American planes left, went away toward Peleliu, we, myself and all the persons who were in the air raid shelters, saw the American soldier coming down on the parachute and it fell into the sea. At that time the Yamada Unit or the Atazuki, in other words the Atazuki Unit, launched a boat and went to get this prisoner. There were about four Atazuki Unit soldiers of the Atazuki Unit in the boat which went to capture the American soldier. They pulled him up on the boat and brought him to my headquarters. In my headquarters there was one intelligence officer named Goto. He was a second lieutenant and, as he spoke a little English, I interrogated the prisoner with him as interpreter. The prisoner did not understand Goto's English very well, but I found out the following from him. His name was Kaufman. I thought at that time he was a first lieutenant and remembered there was a gold bar on his collar. But later I learned through the Americans that he was a second lieutenant. His age was around 25 or 26. His home in the States I think he stated it was near Washington but I do not recall the name of the town. The base was at Peleliu. That's about all I was able to obtain from him.

9. Q. What was the name of this prisoner?

A. At that time I learned through Goto that it was Haufman, but later I found out it was Kaufman.

10. Q. Did you find out his first name.

A. I did not.

11. Q. What did you do with the prisoner when you finished interrogating him?

A. It was around noon, therefore food and tea were given to him and he was made to rest. Around 1600 I sent him to the Inoue Headquarters by car, with a guard guarding him.

12. Q. Did you ever see that prisoner again?

A. No.

13. Q. Did you ever have a conversation with any of these four accused concerning that prisoner?

A. Yes, I have.

14. Q. When was that?

A. I think it was about one month since this time.

15. Q. With which one of the accused did you have this conversation?

A. I talked to Captain Koichi.

16. Q. What did you say to Koichi and what did he say to you in the telephone conversation?

A. I stated what the headquarters told me, so I told him that what they told me. I told Koichi "the headquarters wants to send the prisoner to Koror and have him executed at the anti-aircraft unit. But I refused. The reason is because if you shoot down a plane the morale is already bolstered by it and there is no need to kill a prisoner to bolster the morale. In fact, you may not bolster the morale. What do you think, Koichi?" Koichi answered, "I am of the same opinion as you, commanding officer." This was through a telephone call but I asked this another time, face to face and twice the answer was the same.

17. Q. Where did you have this face to face conversation with Koichi?
A. I think it was when I was going to the Kato Unit under my command. On the way to this unit I believe I talked to Koichi.
18. Q. How long after the telephone conversation with Koichi did you have this face to face conversation with him?
A. I recall it was about one day later.
19. Q. When you said that headquarters had called you, who do you mean at headquarters?
A. The 14th Division Headquarters. Headquarters of Lieutenant General Inoue.
20. Q. What particular officer at the 14th Division Headquarters called you on the phone?
A. Staff Officer Yajima.
21. Q. And in this conversation you had with Yajima, was Koichi's name mentioned?
A. No, it wasn't.
22. Q. What was Koichi's rank at this time.
A. Captain.
23. Q. And what were his duties?
A. Battalion leader of the anti-aircraft unit.
24. Q. What was the name of that particular anti-aircraft unit?
A. Koror Anti-aircraft Battalion.
25. Q. Was it also known as the Koichi Anti-aircraft Battalion?
A. Ordinarily it is Koichi Unit.
26. Q. Was this command of Koichi's also known as the Provisional Anti-aircraft Unit?
A. It is Provisional.

Cross-examined by the accused:

27. Q. What identification did this prisoner have on him when he was captured and you interrogated him?
A. He had a picture and there was something written on it.
28. Q. Did he have any metal identification tags with his name on them?
A. I think he had that among his belongings. It think I saw it along with his belongings.
29. Q. What was done with these identification tags?
A. I sent that along with his other belongings.
30. Q. You didn't keep any of his property. You sent it all to headquarters when you sent the prisoner to headquarters. Is that right?
A. Yes.
31. Q. Was there a headquarters' order to turn all captured prisoners over to headquarters?
A. This is a written clause in the Japanese field handbook.

32. Q. And that's the reason he was sent to General Inoue's headquarters. Was it?

A. Yes.

33. Q. How long after this prisoner was captured did Yajima telephone you in regard to him?

A. I do not recall clearly but I think it was about a month later.

34. Q. What did Yajima say to you in this telephone conversation about the prisoner?

A. "Commanding General Inoue wants to send the prisoner to Koror to the anti-aircraft unit to have him executed to bolster the morale of the unit. What do you think about it?"

35. Q. Why did he call you on the phone?

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

The accused made no reply.

The commission announced that the objection was not sustained.

A. That is because I was the commanding officer of the Koror Defense Unit and at the time of the enemy landing I would be in command, therefore, as a chain of order it came to me.

36. Q. Was Koichi one of your subordinate officers then?

A. No, he was not.

37. Q. After this conversation, you said you telephoned Koichi. Did you telephone him immediately?

A. It was not right away.

38. Q. Were you told by Yajima to telephone Koichi and tell him about this conversation?

A. No.

39. Q. Then why did you telephone him?

A. I called him up because he had something to do. Yajima stated that he wanted to bolster the morale of the Koichi Unit, therefore Koichi's unit was the one connected to this, so I called him up.

40. Q. Do you know who Koichi's superior officer was?

A. Directly above him is Lieutenant General Inoue.

41. Q. Was there no telephone connection between Koichi's unit and Inoue's headquarters?

A. There was.

42. Q. You say it was the Koichi Unit that Koichi was in command of. Why was it designated the Koichi Unit?

A. It is usual that the commanding officer's name is put in front of the unit.

The witness was duly warned.

The commission then, at 3:15 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.

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

No witnesses not otherwise connected with the trial were present.

Doi, Norio, 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-examination continued).

43. Q. You said that there was a telephone between the Koichi Unit and General Inoue's Unit. Wasn't this a battle telephone and restricted to use under battle conditions?

A. I think an ordinary phone call could be possible.

44. Q. Do you know whether this execution that Yajima phoned you about was ever carried out by the Koichi Unit?

A. Yes, I do.

45. Q. Were you ordered by Yajima to carry out the execution?

A. I was not ordered.

46. Q. Do you know whether General Inoue's headquarters ordered Koichi to carry out the execution?

A. I heard this after the execution was performed.

47. Q. Did Koichi ever report to you that this execution had been carried out?

A. He did not report.

48. Q. How did you find out the execution had been carried out, then?

A. I heard, I think it was from the adjutant or the orderly, the next day or the next day after the next day.

49. Q. Was Koichi, as the commanding officer of the Koichi Unit, required to report such a thing had taken place at his unit to you?

A. Even though he did not report this to me, that is no crime.

The commission directed the witness to answer the question.

The question was repeated.

A. He did not have to.

50. Q. Then he was directly under the General for administrative purposes. Was he?

A. Yes.

51. Q. This field manual that you mentioned. Did this field manual fix the responsibility for the safety of prisoners in the general headquarters?

A. There is such a phrase in the section called "On Guard."

52. Q. So that in the Palau Group, Fourteenth Division Headquarters was responsible for all prisoners of war. Is that right?

This question was objected to by the judge advocate on the ground that it was incompetent, irrelevant, and was not the best evidence.

The accused replied.

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

The commission announced that the objection was not sustained, but stated that the commission would not permit further delving into the details of this particular field manual.

The question was repeated.

A. Yes.

57. Q. You testified that after this telephone conversation with Yajima about the execution, you called Koichi regarding the execution and that he, too, was against the execution. What was Koichi's reputation on Koror?

This question was objected to by the judge advocate on the ground that it was beyond the scope of the direct examination.

The accused made no reply.

The commission announced that the objection was sustained.

54. Q. You received a telephone call from Yajima concerning the execution of the prisoner. What was your reply to this telephone call?

A. "Don't send the prisoner to Koror. Even though you send the prisoner to Koror and have him executed here, it will not bolster the morale of the soldiers, so please don't send the prisoner to Koror."

55. Q. Did Yajima say anything to your reply?
A. At that time?

56. Q. Yes.
A. No.

57. Q. Then, you have stated that you relayed this to Koichi and Koichi also was against it. Did you relay this opinion of Koichi to the headquarters?

A. There was no necessity of relaying what Koichi said, because the headquarters did not ask the opinion of Koichi. They asked my opinion.

58. Q. Then, if the headquarters only asked your opinion, why did you relay this to Koichi?

A. That is because the headquarters had a plan to have the prisoner executed at Koror, so I just talked to Koichi about it.

59. Q. Then was it only once that headquarters called in regard to this prisoner?

A. There was one more phone call.

60. Q. How long was it that this phone call came to you after the last phone call you received?

A. I am not clear on this but I think it was about two or three days later.

61. Q. Then you have stated that you talked with Koichi face to face while going to the Kato Unit. Was it before this time or after this time that the phone call came?

A. Of course it was after.

62. Q. Who was the other party who called you the second time?

A. Staff Officer Yajima.

63. Q. Please tell us what Yajima said to you?

A. I don't recall the words of Yajima on the second call but I think the contents of it was the same as the first.

64. Q. How did you reply to this?

A. I said, "I refused the first time and it is the same, so please tell them so."

65. Q. After the second phone call, did you notify Koichi as you did the first time?

A. No, I did not.

66. Q. You have stated that this second phone call was after you talked to Koichi face to face. If this is so, why did you talk to Koichi again at that time?

A. That is, I talked to him face to face. The first time I talked to him was through the telephone so I just stopped over and asked him the same thing face to face.

67. Q. Was it to confirm Koichi's opinion?

A. It was not to confirm the opinion of Koichi.

68. Q. Do you know what anti-aircraft unit shot down this plane?

A. Do you mean what company shot down this plane?

69. Q. Yes.

A. I heard it was the Katsuyama Unit.

70. Q. Then was the name of Katsuyama mentioned in the conversation of Yajima to you and the conversation to Koichi?

A. No, there was none.

71. Q. In answering the second phone call, you have stated that your opinion was the same as first and was against it. At this time, did you mention anything of the opinion of Koichi?

A. I don't think I did.

72. Q. Then, at the same time you didn't think it was necessary for you to ask the opinion of Koichi?

A. Yes.

The judge advocate did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness made the following statement:

The time which elapsed from the time the prisoner was captured and the time he was executed was one month. I do not recall the time and dates but I mentioned one month, so the time of one month may be off. The chief defense attorney questioned me as to the identification card, but at that time I saw the picture of him and on the back some writing but yesterday I saw the sergeant's identification card and it was different. I think it was the picture and on the back of that there was some writing. In the field manual in a section "On Guard" is mentioned surrender personnel and those with the flag of truce. I used that clause because the prisoner had come down on a parachute and surrendered. OK
OK

The witness was duly warned and withdrew.

The commission then, at 4:20 p.m., adjourned until 9 a.m., tomorrow, Wednesday, November 26, 1947.

THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Wednesday, November 26, 1947.

The commission met at 9:05 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 second day of the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.
A. Yajima, Toshihiko, lieutenant colonel, IJA.
2. Q. If you recognize these accused, state their names and former ranks.
The witness correctly identified all of the accused.
3. Q. Were you ever attached to the Fourteenth Division on Babelthuap?
A. Yes, I was.
4. Q. Between what dates did you serve there?
A. I arrived for duty there on May 11, 1944, and I served there until the end of the war when I was returned to Japan.
5. Q. In April and May of 1945 what were your duties?
A. I was a staff officer in charge of intelligence.
6. Q. Do you recall sometime in April of 1945 being advised that a B-24 had been shot down?
A. Yes, I do.
7. Q. When did you receive this information?
A. I received a phone call from the DoI Unit.

8. Q. Do you recall the person who called you on the phone?
A. I do not recall clearly but I am sure it was Colonel Doi, himself.
9. Q. What did he tell you?
A. He said to me as follows, "Just now one B-24 was shot down and one soldier came down on a parachute and has been captured. I will send him immediately to headquarters."
10. Q. At the time of this telephone call, what was Doi's position?
A. He was the commanding officer of the Koror Defense Unit.
11. Q. And what was his rank?
A. I believe he was still lieutenant colonel at this time.
12. Q. After you received this telephone call from Colonel Doi, what did you do?
A. I immediately reported this to Lieutenant General Inoue and Chief of Staff, Colonel Tada, and also, as at that time there were no facilities at headquarters to accommodate the prisoner, I called up the Kempeitai to have the prisoner confined there.
13. Q. Who was the commanding officer of the Kempeitai at that time?
A. It was Lieutenant Colonel Miyazaki.
14. Q. Did the prisoner arrive at headquarters?
A. He did not come directly.
15. Q. Tell us about *it*.
A. I recall that one of the intelligence officers of the Doi Unit - his name is Goto - escorted the prisoner and came. OK
16. Q. Did he bring the prisoner to you?
A. No, the prisoner was brought to the entrance of the headquarters and from there Second Lieutenant Goto came to me and contacted me about it.
17. Q. What did you tell him to do with the prisoner?
A. I told him to take the prisoner with him and immediately go to the Kempeitai.
18. Q. Did you ever interrogate this prisoner?
A. Yes, I did.
19. Q. When was this?
A. The first investigation was made the next day after he was confined at the Kempeitai.
20. Q. Did you question the prisoner yourself or through an interpreter?
A. I questioned him through an interpreter.
21. Q. And what did you learn from the prisoner as a result of the interrogation?
A. The name of the prisoner was Kaufman, his rank was - I don't remember exactly, but he was second lieutenant or first lieutenant. He flew from Anguar to bomb Koror and he told us about conditions of the airport in Anguar. There were many other things that he said, but I can't recall them

very clearly now. At Koror when American occupation forces got there I submitted a written report in Japanese about it but there is no mistake about what I say now.

22. Q. After you interrogated Kaufman, what did you do?

A. After the investigation, I made up a report and read this report to Lieutenant General Inoue and I repeated the same report to Chief of Staff, Colonel Tada.

23. Q. Did you receive any orders concerning the prisoner?

A. Yes, I did.

24. Q. What were you told to do?

A. Lieutenant General Inoue directly ordered me to cut this prisoner.

25. Q. Did General Inoue order you, personally, to kill this prisoner?

A. No, Lieutenant General Inoue personally told me to have the prisoner cut.

26. Q. How long after Kaufman had arrived at the Kempeitai did you receive this order?

A. After I made my first report to Lieutenant General Inoue, Colonel Tada pointed out some faults in my investigation, so I again made an investigation, and when I went to report about the second investigation he told me. I believe this was several days later.

27. Q. Could it have been as much as a month later?

A. No, that much time couldn't have elapsed between.

28. Q. When General Inoue gave the order to have the prisoner executed, did he give you any reason for having the prisoner executed?

A. Yes, he did.

29. Q. What did he tell you?

A. I made a mistake. He did not state the reason. He told me what measures to take concerning the prisoner.

30. Q. Tell us what General Inoue told you.

A. At that time, the anti-aircraft unit at Koror sustained heavy damages by the bombings of the American planes. Koichi and the others who had been there for a long time were wounded and received wounds by these bombings. Their guns and implacements were destroyed and also damaged. Lieutenant General Inoue had been worried if the morale of this anti-aircraft unit had declined, and so he thought that if he had the anti-aircraft unit execute this prisoner, the morale would be boosted again. So, he asked me how about having the prisoner executed at the anti-aircraft unit and he asked me what I thought about this.

31. Q. In this conversation, did General Inoue specifically mention the Koichi Anti-aircraft Unit?

A. Yes, he did.

32. Q. After this conversation with General Inoue, what did you do?

A. After reporting this to Chief of Staff, Colonel Tada, I phoned up Colonel Doi and relayed this order.

33. Q. Why did you call Doi?

A. Because the Koror Anti-aircraft Unit was under the command of Koror Defense Unit.

34. Q. What did you say to Doi?

A. I relayed to him that it was the intention of the commanding officer to have the prisoner who was sent to headquarters executed in the hands of the Koror Anti-aircraft Unit.

35. Q. On Koror, who was the commanding officer of the Anti-aircraft Unit?

A. Captain Koichi.

36. Q. Was the Koichi Anti-aircraft Unit the only anti-aircraft unit on Koror?

A. As far as the army is concerned, yes.

37. Q. Why didn't you call Koichi direct?

A. When we relay an order, we usually do it by phone. So I just did it according to custom.

The commission directed that the interpreter repeat the question to the witness.

The interpreter repeated the question to the witness.

A. (Continued) Because there was no necessity for calling him direct. JK

38. Q. What did Doi say to you on the telephone?

A. Doi said, "I can not agree to this execution. Isn't it the proper thing to have the Kempeitai Unit do it?"

39. Q. After you had this conversation with Doi, what did you do?

A. I relayed the words of Colonel Doi to the commanding officer.

40. Q. And what did the commanding officer say?

A. The commanding officer said, "I personally ordered it to the Koichi Unit, so you send the prisoner to Koror."

41. Q. Did he say that he had personally given the orders to Captain Koichi?

A. Yes. It was Captain Koichi instead of the Koichi Unit.

42. Q. How much time elapsed from the time you had the telephone conversation with Colonel Doi and the time you spoke to General Inoue and were told that he had given the orders to Koichi personally?

A. Several hours. About half a day elapsed between the times. (The witness requested permission to withdraw the answer.) Considerable time elapsed between the two, but I can not recall how much.

43. Q. After you had this second conversation with General Inoue, what did you do then?

A. I relayed this to Colonel Doi.

44. Q. You relayed what to Doi?

A. I told him, "The commanding officer has personally given the order to Captain Koichi. I will send the prisoner to Koror."

45. Q. After this second conversation with Colonel Doi, what did you do then?

A. I took steps to send Second Lieutenant Kaufman to Koror.

46. Q. What particular steps did you take?

A. I'll have to go back a little. When I was told by the commanding officer he gave me the following orders besides that, and I acted according to that order. The commanding officer told me to confirm the death of Kaufman, to return without fail Kaufman's belongings, and to send Kaufman to Koror without fail. He gave me these three orders and he said this was very important, so to have an officer go along. He said that he would personally speak to the officer about this. Then I returned and went to the intelligence office. There, I gave the above orders to Second Lieutenant Onose. Furthermore, either I directly ordered Onose or it was Onose's request, I do not know which, but in order to confirm the death of Kaufman, I ordered to have Gunzoku Shimojo and Sergeant Major Tsuchiya go along with him.

47. Q. What, exactly, did you tell Onose?

A. I gave the following orders to Onose concerning Kaufman, "You will confirm his death and you will take care of his belongings and return them to him, and see that they execute the prisoner."

48. Q. What did Onose say to you when you gave him these orders?

A. I do not recall what he said.

49. Q. Now, think on it. What did Onose say to you after you told him what to do? What did he say about Tsuchiya and Shimojo?

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

The judge advocate withdrew the question.

50. Q. During this conversation, after you had given these orders to Onose, did you have any further conversation with him?

A. I further added for him to go directly to the commanding officer and as I had in my custody the belongings of Kaufman, I gave them to him.

51. Q. So far, you have told us what you told Onose. Now, tell us what Onose said to you.

A. I do not recall.

The witness was duly warned.

The commission then, at 10:10 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.

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

No witnesses not otherwise connected with the trial were present.

Yajima, Toshihiko, 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.)

52. Q. In this conversation that you had with Onose, what did Onose say concerning Tsuchiya?

A. He said that he wanted to take Tsuchiya along with him so he ordered him to do so.

53. Q. Did he tell you why he wanted to take Tsuchiya with him?

This question was objected to by the accused on the ground it was leading.

The judge advocate withdrew the question.

54. Q. Was Tsuchiya present with Onose at the time you had this conversation with him?

A. He was not there.

55. Q. What exactly did he say concerning Tsuchiya?

A. I can not recall clearly but he said that he wanted to take Tsuchiya along with him.

56. Q. Did he give you any particular reason why he wanted Tsuchiya?

A. No, he did not state any particular reason for taking him.

57. Q. Did you agree to let him take Tsuchiya?

A. Yes, I agreed, so I ordered him to do so.

58. Q. Why?

A. At that time there were bombings every day so if one person went along and if he got into some kind of trouble it would be very difficult.

59. Q. During this conversation with Onose, did Onose say anything about Shimojo?

A. In order to confirm the death of the prisoner, Onose proposed to take along Shimojo.

60. Q. How was Shimojo going to confirm the death of the prisoner?

A. By taking pictures he was going to confirm the death.

61. Q. Did you tell Onose to report to General Inoue?

A. Yes, I did.

62. Q. Before Onose, Tsuchiya, and Shimojo left, did they report to you again?

A. Yes, they did.

63. Q. When the three of them reported to you, did Onose tell you what General Inoue had ordered him to do?

A. I do not remember.

64. Q. When the three of them reported to you, did you tell Tsuchiya why he was being sent to Koror with the prisoner?

A. I think I didn't say anything in particular. My recollection is not clear on this point.

65. Q. Did you ever tell Tsuchiya what his duties were in relation to that trip to Koror and the prisoner?

A. Whether I said it or whether it was said through Onose I do not recall.

66. Q. Well, what was said?

A. The order which I received from the commanding officer - whether this was relayed through me or Onose, I do not remember.

67. Q. And what was this order again?

A. The orders were to make sure of the death of Kaufman, to return belongings to him without fail and to escort.

68. Q. Did you call the Kempeitai that day?

A. Yes, I did call them.

69. Q. What orders did you give the Kempeitai?

A. The phone call to the Kempeitai was as follows: "Kaufman is to be sent to Koror. In regards to this Onose will go over there and get him."

(The word "escort" in Japanese also means "to guard," according to the Japanese dictionary, confirmed by the interpreter.)

70. Q. Did Onose report back to you after he returned from Koror?

A. Yes, he reported to me.

71. Q. Did Tsuchiya report also?

A. Yes, he did.

72. Q. What was reported to you after their return?

A. From Onose the following was reported: "Kaufman was executed without fail in accordance with the ways of the Japanese Samurai by Company Commander First Lieutenant Katsuyama of the Koror Anti-aircraft Unit."

73. Q. Did you see the pictures of the execution?

A. Yes, I did.

74. Q. Getting back to Tsuchiya for the moment. You testified that Onose asked for Tsuchiya because of the heavy bombings, and if one person went alone it would be difficult. Did you make sure that Tsuchiya knew why he was going on this expedition?

A. Whether I directly ordered him or whether it was through Onose, I do not know which it was, but all in all, my intentions were relayed to him.

75. Q. You know that Tsuchiya knew why he was going along?

This question was objected to by the accused on the ground that it was putting words in the mouth of the witness.

The judge advocate withdrew the question.

Cross-examined by the accused:

76. Q. When this soldier that was captured was sent to headquarters, what identification, insignia, marks or records did he have on his person?

A. Yes, he had.

77. Q. What did he have?

A. (Witness indicated with his fingers the shape of a small card) He had a card to which was attached his picture and he had an insignia for rank, but I think he did not have any identification tag.

78. Q. Did you identify him by means of this identification card?

A. I identified him by his card and also by investigating him.

79. Q. Did he have a cross on a chain around his neck?

A. Yes, there was.

80. Q. Did he have a watch?

A. Yes, he did.

81. Q. And a ring?

A. Yes.

82. Q. What was done with these personal belongings?

A. When Kaufman was brought over from Koror to be confined at the Kempeitai, First Lieutenant Goto handed them over to me.

83. Q. How long did you keep them?

A. Up to the day that Kaufman was sent to Koror.

84. Q. Then what did you do with them?

A. I handed them all over to Second Lieutenant Onose.

85. Q. What orders did you give him in regard to these personal belongings of the prisoner?

A. I told him to make sure that these belongings would not be stolen en route to Koror, and when he went to Koror to return them to Kaufman without fail. Jx

86. Q. Did he report that he had returned them to Kaufman without fail?

A. Yes, he did report to me that these were returned without fail.

87. Q. So that the personal belongings of Kaufman were buried with him?

A. As I did not witness it myself, I cannot say for sure myself, but Onose told me - he said that they had buried them with the body of Kaufman.

88. Q. Who was this interpreter you used in questioning Kaufman?

A. It was Second Lieutenant Hamano.

89. Q. Where did General Inoue talk to you about this prisoner the first time he talked to you?

A. In the room of Lieutenant General Inoue.

90. Q. Was there anyone else present?

A. No, there was nobody else.

91. Q. Was this an order of General Inoue's to have the prisoner executed that he gave you at this time?

A. When he told this to me at that time I did not consider it as an order yet.

92. Q. Do you know whether it is possible under Japanese military law for General Inoue to have given orders to execute this 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.

93. Q. The first time when you relayed the orders of Inoue to Colonel Doi, did you do this in your official capacity as staff officer to General Inoue?
A. Yes.

94. Q. Then you were simply relaying General Inoue's orders and not your own orders.
A. It was not my personal order.

95. Q. Did you make it plain to Colonel Doi that it was the general's orders that you were relaying?
A. The first time I said to him that there were such intentions.

96. Q. This second time when General Inoue said to you that he personally gave Captain Koichi orders to execute the prisoner, did you understand him to mean that he had ordered Captain Koichi to have the prisoner executed?
A. Yes, I understood him to mean so.

97. Q. Now, the second time you talked to Colonel Doi did you make it plain to him that you were relaying the orders of General Inoue?
A. Yes, I made it clear to him.

98. Q. When you sent Kaufman to Koror was it on the orders of General Inoue?
A. Yes.

99. Q. This order of General Inoue to send Kaufman to Koror, did you refuse to carry out this order?

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.

100. Q. Did you refuse to carry out the general's orders to send the prisoner to Koror?
A. I did not refuse it.

101. Q. In your opinion was this a legal order of General Inoue's, to send the prisoner to Koror?

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.

102. Q. Why didn't you refuse to send the prisoner to Koror?

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.

103. Q. Why did you give the orders to Onose to convoy the prisoner to Koror?

A. Because I thought he was the person most fit to do this among the persons who were working under me.

104. Q. Was this a legal order that you gave to Onose?

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

The accused made no reply.

The commission announced that the objection was sustained.

105. Q. Did Onose refuse to carry out this order?

A. No, he did not refuse.

106. Q. Could Onose have refused to carry out the order?

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

The accused made no reply.

The commission announced that the objection was sustained.

107. Q. Was Onose a subordinate officer of yours?

A. Officially he is not my subordinate. We all are subordinates of the chief of staff. *JK*

108. Q. The orders that you gave to Onose were orders given in the regular course of your duties as a staff officer. Is that correct?

A. Yes, it is.

109. Q. The orders that you said that you gave to Onose to confirm the death of the prisoner. What did you mean by that?

A. To make sure whether the execution was carried out without fail.

110. Q. Under the orders that you gave to Onose, was he, as a headquarters officer, required under the circumstances to see that the Koichi Unit carried out the General's orders to execute the prisoner?

A. Yes, he was.

111. Q. Did you personally order Tsuchiya to accompany Onose?

A. I did not directly give orders to Tsuchiya.

112. Q. Who did?

A. Through Onose I ordered him to go along.

113. Q. Was he attached to the same headquarters, the intelligence, that you were the head of?

A. Yes.

114. Q. What were his duties at this headquarters?

A. His duty was the collection of information.

115. Q. You say that Onose desired that Shimojo go with him. Did he say to you that this was in order that it might confirm to you and the General that he, Onose, had delivered the prisoner to Koichi and Koichi carried out the orders of the General?

A. Yes, it was.

116. Q. Did you order Tsuchiya to kill the prisoner?

A. No.

117. Q. Do you know whether he did kill the prisoner?

A. I do not know.

118. Q. Was Tsuchiya, then, only an enlisted guard to accompany Onose, who had orders to deliver the prisoner to Koichi?

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

The accused replied.

The commission announced that the objection was not sustained.

A. He was not a guard.

119. Q. What was he?

A. He was a person to assist the work of Onose.

120. Q. Did Onose's orders to escort include delivering the prisoner alive and safe to the Koichi Unit at Koror?

A. Yes.

121. Q. Did Onose do this?

A. Yes.

122. Q. Tsuchiya's orders, were they to assist Onose in delivering the prisoner alive and safe to the Koichi Unit?

A. That was also included.

123. Q. Was this the full extent of Tsuchiya's orders?

A. That was a part of the order that he had received.

124. Q. What other orders had he received?

A. The other orders were the orders that were given Onose, because Tsuchiya's duties were to assist Onose.

The witness was duly warned.

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.

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

Yajima, Toshihiko, 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.

No witnesses not otherwise connected with the trial were present.

(Cross-examination continued.)

125. Q. Did Onose ever report back to you that he, himself, had executed this prisoner?

A. No.

126. Q. Did he ever report that Tsuchiya had executed the prisoner?

A. No.

127. Q. Did he ever report to you just who had executed the prisoner?

A. Yes, he did.

128. Q. Who did he report had executed the prisoner?

A. He said Second Lieutenant Katsuyama executed the prisoner.

129. Q. You said that Tsuchiya's orders were to assist Onose. Could it have been possible for Tsuchiya, an enlisted man, to give orders concerning this execution to the Koichi Unit as long as Onose was present?

A. That is not possible.

130. Q. Do you know just what the extent of Tsuchiya's authority was as a result of the orders that he had to accompany Onose on this trip?

A. It was to assist Onose when Onose can not do it all by himself. It was also to obey what Onose says and to do accordingly.

131. Q. Now, would you ordinarily give an enlisted man specific and detailed orders when he was ordered to accompany an officer on a mission?

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

The accused withdrew the question.

132. Q. Did you give Tsuchiya any specific and detailed orders other than the orders to accompany Onose on this mission?

A. No, I did not.

133. Q. Did I understand you correctly to say that the orders to Onose were to see that the Koichi Unit carried out this execution?

A. Yes, that is correct. But that is only a part of the mission.

134. Q. Then, was there some doubt in your mind that the Koichi Unit would not carry out the execution?

A. What I ordered to Onose was what Lieutenant General Inoue had ordered to me.

135. Q. Was that then in case the Koichi Unit refused to execute the prisoner, Onose was to do it himself?

A. No, that is not included in it.

136. Q. So that when the prisoner was sent to the Koichi Unit there was no doubt that the orders of the General were to be carried out.

A. No, there was no doubt. JK

137. Q. Since Onose was the one that proposed to take Tsuchiya along, isn't it true that it was he that gave any detailed instructions to Tsuchiya regarding his duties?

A. Yes.

138. Q. And, since the orders to the entire party were to escort and guard the prisoner on the way to Koror, this meant that they were not to kill the prisoner on the way to Koror and no other party was to kill the prisoner?

This question was objected to by the judge advocate on the grounds that it was double and that counsel was attempting to testify for the witness.

The accused withdrew the question.

139. Q. Were the orders to the execution party that they were to see that the prisoner, Kaufman, was safely escorted and delivered to the Koichi Unit at Koror?

A. That was also included.

140. Q. Now, did Onose have any orders from you regarding the relaying of the General's orders for the Koichi Unit to execute the prisoner?

A. He did not.

141. Q. Koichi received the order to execute the prisoner direct from the General, did he?

A. Yes.

142. Q. Do you know how many anti-aircraft companies there are in the Koichi Anti-aircraft Unit?

A. The companies that had anti-aircraft guns were two and one company had machine guns.

143. Q. Do you know what company shot down the plane in question?

A. I do.

144. Q. What company shot the plane down?

A. I think it was the Katsuyama Company.

145. Q. You stated that in the first conversation with Lieutenant General Inoue, he stated, "What do you think about having the Koichi Anti-aircraft Unit execute the prisoner?" Is this true?

A. Yes.

146. Q. On this occasion, what did you say to the commanding officer?

A. I did not express my opinion.

147. Q. Did the commanding officer say, on this occasion, to have the Katsuyama Unit, which shot down the airplane, execute the prisoner?

A. I think he did not refer to this.

148. Q. At any time later did the commanding officer say to have the Katsuyama Company, which shot down the plane, execute the prisoner?

A. I have no recollection.

149. Q. When they shot down this plane in question, were there any requests that the anti-aircraft unit wanted to execute this prisoner themselves?

A. No.

150. Q. When Lieutenant General Inoue relayed to you about executing the prisoner, you said that the commanding officer said that the Koichi Unit had sustained heavy wounds by the bombing of the American planes. Do you know to what extent the personnel were wounded?

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.

151. Q. You testified that the Koror Anti-aircraft Unit was under the command of the commanding officer of Koror, but isn't it true that the anti-aircraft unit was under the direct command of General Inoue?

A. The Provisional Koror Anti-aircraft Unit was under the immediate command of the commanding officer of the Fourteenth Division but all the units on Koror, as far as the land defense was concerned, were under the command of the commanding officer of Koror.

152. Q. You testified that when you first relayed to Doi the intention of the commanding officer concerning this execution, you said that it was not an order but only his intention. Is this correct?

A. Yes.

153. Q. Then, was it your intention to ask the opinion of Doi and also of the Koror Anti-aircraft Unit, and if they opposed this, was it your intention not to have them do it?

A. Concerning this matter, it is all up to the character of the commanding officer. When I said "intention," it would undoubtedly become the commanding officer's final decision but at this time it was just an intention as yet.

154. Q. You testified that Doi reported to you on this occasion that he was opposed to the execution and that the Kempeitai should do this. What did you reply to Doi as regards his answer?

A. I said that I would relay his intention to Commanding Officer Inoue.

155. Q. Did you say exactly what Doi told you to the commanding officer?
A. Yes.

156. Q. When did you relay this?
A. Some time elapsed after this phone call.

157. Q. As the intelligence officer, did you express any opinion to sustain this opinion of Doi's?

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

The accused withdrew the question. OK

158. Q. What was the answer of the commanding officer at this time?
A. It was as I have just stated before.

The commission directed the witness to answer the question.

A. (Continued) The commanding officer said as regards this matter, "I have directly ordered Captain Koichi." Furthermore, the commanding officer, Inoue, said to me to take measures to send the prisoner to Koror.

159. Q. When Commanding Officer Inoue made this answer, wasn't this two or three days after you had spoken to Doi for the first time?
A. As regards the relation of time, I have no definite recollection, but I remember the facts that he stated.

160. Q. Prior to the commanding officer making the reply that you have just stated, don't you recall having contacted Doi and spoken to him about it once or twice?
A. I do not remember.

161. Q. Have you any recollection of meeting Koichi at the Fourteenth Division Headquarters before the prisoner was executed?
A. I do not have a clear recollection but I do remember hearing from Staff Officer Nakagawa, who has the next room to me, saying that Koichi came to headquarters.

162. Q. I shall go back a little and ask you another question. When you had this first talk over the phone with Doi, do you have any recollection of Doi stating that not only himself but Captain Koichi was opposed to the execution?

A. Either it was the phone call from Colonel Doi or it was the words of Staff Officer Nakagawa. I don't have a clear recollection but I do remember that Captain Koichi was against this.

163. Q. Did you ever relay to the commanding officer, Lieutenant General Inoue, that Captain Koichi was against this?

A. As there were intentions to order Koichi, it was my duty.

The commission directed the witness to answer the question.

The question was repeated.

A. (Continued) Yes, I relayed it. Either I said Captain Koichi or the Koichi Unit, I don't remember, but I relayed that one of them was against it.

164. Q. What did the commanding officer, Lieutenant General Inoue, say then?
A. I don't remember.

165. Q. When you received the order of Commanding Officer Inoue to take measures in sending the prisoner, Kaufman, to Koror, you stated that you were given three things to do. One is escort; two is returning his belongings; and three is the confirmation of death. Will you tell us in what specific manner you intended to have your subordinate carry these orders out?
A. I am asked to state specifically, but I have no recollection. *JK*

166. Q. Who did you intend to do this escorting?
A. As I recall, this escorting I thought, naturally, that the Kempeitai would take care of this, so I think I did not give out any specific instructions.

167. Q. Who did you intend to return the belongings?
A. Second Lieutenant Onose.

168. Q. How did you intend to make sure of the death of the prisoner?
A. The best way is by witnessing it, so I did not give out any specific instructions, but as there was an opinion expressed to take a picture of this I thought this very well to report to the commanding general, so I thought well of this and issued orders.

169. Q. You just stated that it was an opinion expressed to take pictures. What is that?

A. I shall state this in a little more detailed manner. In this intelligence room and the staff officers' room, I and Onose and other officers were staying in the same room. So, in relation to our room, therefore, there were numerous opportunities for opinions to be expressed.

170. Q. Was it you that first stated the opinion that pictures should be taken?
A. Either I first said this or it was Onose or it was some other officer's opinion. I am sure that it was Onose's opinion.

171. Q. Do you have any recollection that Shimojo first suggested to take pictures?
A. No, I did not hear about this.

172. Q. What was the position of Second Lieutenant Onose at the headquarters?
A. He was an officer attached to the staff.

173. Q. You have testified that Onose and you were the subordinates of the Chief of Staff. When you say "officer attached to the staff," don't you mean that this officer was under the staff officers?

A. If you will refer this matter to the higher regulations concerning the higher officers, you will find out the officer attached to the staff is under the Chief of Staff but he is not under the staff officers. When I said that he was not my subordinate, I meant that he was not my direct subordinate.

174. Q. An officer attached to the staff is directly attached to the Chief of Staff, but concerning everyday matters, doesn't he receive instructions from various staff officers he is attached to? Isn't this the way it is in the Japanese army?

A. Yes, that is the custom, but there are officers attached to the various departments that receive orders direct from the Chief of Staff.

The witness was duly warned.

The commission then, at 3:15 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.

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

No witnesses not otherwise connected with the trial were present.

Yajima, Toshihiko, 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-examination continued:

175. Q. At the time of the incident, how many officers attached to the intelligence office like Onose were at the headquarters?

A. There were three.

176. Q. What was the post of Sergeant Major Tsuchiya at the time of the incident?

A. He was a non-commissioned officer attached to the intelligence section.

177. Q. How many non-commissioned officers were attached to the intelligence section just like Tsuchiya?

A. I recall there were three.

178. Q. In order to send the prisoner to Koror, was it your idea that you selected Onose and not the idea of the commanding officer, Inoue?

A. That was my idea.

179. Q. When you said to Onose to go to Koror Island with the prisoner, didn't Onose say to you, "Isn't this the thing for the Kempeitai to do?"

A. I do not remember.

180. Q. Wasn't it the custom in the Japanese army when an officer went on a long trip or when he went on a trip and stayed overnight to be accompanied with a non-commissioned officer or men?

A. It was the custom for an officer to take along his orderly but it was not a custom to take along a non-commissioned officer.

181. Q. You did not designate by name Sergeant Major Tsuchiya, but was it not you that said to Onose to take along one non-commissioned officer?

A. I do not have a clear recollection but according to the opinion of Onose I think I ordered one non-commissioned officer to go along.

182. Q. Did you ever hear Tsuchiya personally make a request to be sent to Koror?

A. No.

183. Q. You just testified that there were three officers attached to the intelligence section. Was there any particular reason that you sent Onose?

A. No, there wasn't. JK

184. Q. You testified that there were three non-commissioned officers attached to the intelligence section. Was there any particular reason for sending Tsuchiya?

A. No, there wasn't.

185. Q. Then to go on this mission of escorting this prisoner to Koror it could have been anybody else that you appointed?

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. Anyone would do.

186. Q. At the time of the incident, was Shimojo the only photographer at the headquarters?

A. Yes.

187. Q. From the testimony you have given, could it be understood that the headquarters ordered this execution to be carried out in spite of the opposition of Captain Koichi and Colonel Doi?

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

The accused withdrew the question.

188. Q. Then, concerning this execution of the prisoner, do you acknowledge the fact in spite of the opposition of Captain Koichi and Colonel Doi, the headquarters ordered this to be carried out?

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 was cleared.

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

The commission made the following ruling:

The commission ruled that the objection was sustained on the ground that the question called for an answer that would invade the province of the commission.

189. Q. Didn't General Inoue and his headquarters command unit accept the responsibility of the entire incident and try to hide it when they ordered Katsuyama to commit suicide in August 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 sustained.

Reexamined by the judge advocate:

190. Q. Did you ever discuss this case with Koichi at headquarters before the execution?

A. I do not have a definite recollection but I think there was no discussion.

191. Q. As a matter of fact, you know there wasn't any discussion. Don't you?

The witness did not reply.

The judge advocate withdrew the question.

192. Q. Isn't it a fact that you didn't even know Koichi had been at headquarters until after Inoue told you that he had ordered Koichi to carry out the execution.

A. I think it may have been so.

193. Q. And you yourself don't really know what Koichi's feelings about the execution were at all, do you?

A. I have no definite recollection concerning this. Either I heard about Koichi's opposition before the execution or either I heard about his opposition after the order was given to him. I am not clear.

Recross-examined by the accused:

194. Q. Although you said you didn't discuss this case with Captain Koichi, did you ever discuss this case with Captain Katsuyama at headquarters?

A. No.

195. Q. Although Koichi didn't tell you directly, didn't you know, hearing from Colonel Doi and General Inoue, that Captain Koichi was opposed to this execution by any of the members of his unit or the execution being held at his unit?

A. When Colonel Doi phoned me I did not hear about this directly from Colonel Doi.

196. Q. Then you didn't know that Captain Koichi was opposed to the execution, is that right?

A. As I stated in the answer to the judge advocate, I remember hearing that he was opposed to it, but if it was before the incident or after the incident I do not remember.

197. Q. Do you remember whether Captain Koichi was at headquarters that day when you started the prisoner back to Koror?

A. At that time I did not know.

198. Q. Was it on a different occasion that General Inoue had told Captain Koichi personally that the execution was to be carried out at his unit?

A. The day when?

199. Q. The day when the prisoner started back to Koichi's unit.

A. It was on the same day.

200. Q. So that the day you started the prisoner back, that was the day that Captain Koichi was told he had to execute the prisoner, and that was the first time that he was told about it.

This question was objected to by the judge advocate on the ground that it was beyond the scope of the reexamination.

The accused withdrew the question.

201. Q. You have testified that you relayed to Lieutenant General Inoue that Koichi was against this execution. Is this true?

A. With the idea of having the anti-aircraft unit do the execution, I phoned Doi but this was opposed, so I relayed that the Koichi Unit was against it.

202. Q. You just said that you relayed this when you phoned Colonel Doi. Then, is it not true that the opposition by the Koichi Unit was made before the execution?

A. Yes.

Reexamined by the judge advocate:

203. Q. When you called Doi, did you speak to Koichi on the phone?

A. No.

204. Q. And the idea that you got from that telephone conversation that Koichi was opposed to the execution was given to you by Doi, is that correct?

A. Is the judge advocate mentioning Captain Koichi or the Koichi Unit?

205. Q. I am talking about Captain Koichi.

A. I know that the Koichi Unit was opposed to it.

206. Q. And you only know this because Doi told you. Is that correct?

A. Yes.

Examined by the commission:

207. Q. When you relayed the information to General Inoue that the Koichi Unit was opposed to this, did the general make any comment?

A. When I relayed this to Lieutenant General Inoue, Lieutenant General Inoue had already ordered Captain Koichi to do the execution so he only relayed to me about this.

208. Q. He made no other comment?

A. I did not hear anything else in particular.

209. Q. You have testified on cross-examination that there were three commissioned officers and three non-commissioned officers attached to the intelligence section. Who was in charge of this intelligence section?

A. I, Yajima, was in charge of this section.

210. Q. You testified upon cross-examination that, "through another person I learned that Captain Koichi came to headquarters." Do you remember the name of the person from whom you learned this? That is on the day just prior to the day on which the party left for Koror.

A. Staff officer Nakagawa.

The witness made the following statement:

In reply to the question of the defense counsel, I answered that he was not a subordinate of the intelligence. My testimony was not complete so I would like to add here. I said that a person was not my subordinate under the intelligence. I said Onose wasn't. Generally speaking, when we refer to an officer being superior or inferior we speak as regards his rank and also as regards the chain of command. When I said that Onose was not my subordinate I meant that he was not my subordinate in relation to the chain of command but, in the sense of superior or inferior, he would be my subordinate. OK

Recross-examined by the accused:

211. Q. When an officer attached to the intelligence section receives an order from the chief of staff stating that he is attached to the intelligence section, isn't it proper that this officer is a subordinate of the chief of the intelligence section? Isn't it natural that he serves under the intelligence staff officer?

A. It would not be an order but an instruction. I could order Onose to go to a certain place if the matter comes into relation with intelligence but I can not say for him to go someplace in relation to personal matters.

212. Q. To send Onose to Koror, wasn't this an official duty as an intelligence officer and not a personal matter?

A. Yes, that is why I ordered him.

The judge advocate did not desire to reexamine 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. OK

The commission then, at 4:35 p.m., adjourned until 9 a.m., Friday, November 28, 1947.

FOURTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, November 28, 1947.

The commission met at 9:12 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. ~~Bo~~coe, Coast Artillery Corps, United States Army, gk
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 third day of the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.
A. My name is Sano, Giichi. My rank is Kempei (Military Police) First Lieutenant, Imperial Japanese Army.
2. Q. If you recognize these accused, state who they are.
A. Captain Koichi. Behind him is First Lieutenant Onose. Beside Koichi is First Lieutenant Katsuyama. Behind Katsuyama is Sergeant Major Tsuchiya.
3. Q. In May of 1945 were you attached to the Imperial Japanese Army at Palau?
A. I was.
4. Q. To what unit were you attached?
A. I was attached to the military police, which was attached to the 14th Division.
5. Q. In the month of May did you have occasion to see a prisoner of war at the Kempeitai Headquarters?
A. Yes.
6. Q. Can you explain for this commission how that prisoner happened to come to the Kempeitai?
A. The commanding officer of the Kempeitai, Miyazaki, said, "The Doi Unit of Koror will bring one prisoner to the Kempeitai Headquarters. Yajima will

investigate him first at the Kempeitai. He will be brought first to the Kempeitai and Yajima will come to the Kempeitai to investigate him." I did not know the reason why he was brought here. On that same day Yajima came to the Kempeitai with Hamano and investigated the prisoner for the first time and then brought the prisoner to the division headquarters. Two or three days later the prisoner was again brought to the Kempeitai and stayed about one day. Soon after that, First Lieutenant Onose and Sergeant Major Tsuchiya of the division headquarters came to the Kempeitai and the prisoner was handed over to them. That is about all I know.

7. Q. Were you present when the prisoner was questioned by Yajima?
A. I was there because I was ordered by the commanding officer.

8. Q. Did you learn the name of this prisoner?
A. First Lieutenant Kaufman.

9. Q. Did you learn from the interrogation how the prisoner happened to be taken a prisoner by the Japanese forces?
A. I did. JK

10. Q. How did he happen to be taken prisoner?
A. Around May, 1945, the Koror Anti-aircraft Unit shot down a plane. A native reported to the Doi Unit about this prisoner and the Doi Unit went out to capture the prisoner who came down. This prisoner was brought to headquarters and was questioned there. I was told this by the commanding officer, Miyazaki.

The accused moved to strike out this answer on the ground that it was hearsay.

The commission directed that the answer be stricken out.

11. Q. From what you heard during the interrogation of the prisoner, did you learn his nationality?
A. I just know that he was an American.

The accused moved to strike out this answer on the ground that it was hearsay.

The judge advocate replied.

The commission directed that the answer be stricken out.

12. Q. When the prisoner was interrogated by Yajima, was he asked his nationality?
A. He was.

13. Q. What did he say his nationality was?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. / I do not understand English, but as Hamano was there writing down the answers I saw in his report the first word which said "American," but I could not see the rest. JK

14. Q. How long was this prisoner kept at the Kempeitai?

A. I believe the prisoner was brought to the Kempeitai and that evening he was brought to the headquarters.

15. Q. After being taken to headquarters, was he again taken to the Kempeitai?

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

The judge advocate withdrew the question.

16. Q. You say that Lieutenant Onose and Tsuchiya came for the prisoner. How long after the first arrival of the prisoner at the Kempeitai was this?

A. About two or three days, I think.

17. Q. Did Onose say why he wanted the prisoner?

A. I did not hear anything.

18. Q. Who surrendered the prisoner to Onose?

A. I handed the prisoner over to Onose by the orders of the commanding officer.

19. Q. Was anybody else present when you handed the prisoner over to Onose?

A. Sergeant Major Tsuchiya was there and I believe there was one person from the photographic squad.

20. Q. Was anybody else sent along with the prisoner?

A. The commanding officer said that Onose was coming to take the prisoner and to have one person of the Kempeitai go along. It could be anyone, so I had one Kempei go along with Onose and the prisoner. This was by orders of the commanding officer.

21. Q. For what reason was this Kempei sent along with the prisoner?

A. It think there was something said to the commanding officer from division headquarters but the commanding officer only said to me "There is an officer coming from the headquarters to bring the prisoner so have a non-commissioned officer or an assistant Kempei go along." That is all I know.

The accused moved that this answer be stricken on the ground that it was hearsay.

The commission directed that the answer be stricken out.

22. Q. Who was the Kempei who was sent along?

A. I do not remember.

23. Q. Did you ever see Kaufman again after that time?

A. No, I haven't.

Cross-examined by the accused:

24. Q. Who, or what organization at the 14th Division, was responsible for the safety and custody of prisoners of war?

A. I think the unit who captured the prisoner. They have the responsibility.

The accused requested that the question be repeated by the interpreter.

The question was repeated by the interpreter.

A. (Con't). That was the intelligence section of the headquarters.

25. Q. Who is the head of the intelligence section ^{of} headquarters? JK

A. He was the staff officer of the intelligence section, Yajima.

26. Q. What kind of an organization was this that you belonged to, the Kempeitai?

A. By orders of the 14th Division there was a South Sea Kempeitai formed and this was attached to the 14th Division and by its order our work was to get all the information of various sources.

27. Q. Did the organization have the custody of prisoners?

A. We were not ordered to that effect.

28. Q. Who was the commanding officer of the Kempeitai of the 14th Division?

A. Lieutenant Colonel Miyazaki.

29. Q. Were you his assistant?

A. I was a subordinate to Miyazaki.

30. Q. Who turned this prisoner, Kaufman, over to the Kempeitai?

A. A non-commissioned officer of the Doi Unit brought the prisoner to the Kempeitai.

31. Q. Were you there when he brought the prisoner to the Kempeitai?

A. Yes, I was.

32. Q. What did you do with him?

A. Before the prisoner was brought, the headquarters told the commanding officer of the Kempeitai that one prisoner would be brought to the Kempeitai from the Doi Unit, so the Kempeitai was to keep custody of this prisoner. The above was relayed to the Kempeitai commanding officer from headquarters. JK

33. Q. Did you lock Kaufman up?

A. Soon after he was brought to the Kempeitai he was brought to the conference room at the Kempeitai. And soon after that staff officer Yajima came to the Kempeitai.

34. Q. Did Kaufman ever leave the custody of the Kempeitai at any time?

A. After the prisoner was brought to the Kempeitai, staff officer Yajima came right away to the Kempeitai and interrogated the prisoner and after he was interrogated he was brought to the division headquarters. JK

35. Q. What kind of place did the Kempeitai keep Kaufman in when they had custody of him?

A. He was not confined.

36. Q. What specific orders did Yajima give the Kempeitai regarding this prisoner?

A. What do you mean by "what kind of orders"?

37. Q. Didn't you have any orders when you took over Kaufman from Yajima?

A. There was no order in particular.

38. Q. Who ordered you to turn him over to Onose?
A. I was ordered by the commanding officer.
39. Q. By the commanding officer, you mean whom?
A. I was ordered by Lieutenant Colonel Miyazaki, "a first lieutenant will come from the headquarters. Turn the prisoner over to him."
40. Q. Did he tell you to tie the prisoner before you turned him over to Onose?
A. The prisoner was handed over to Onose and before he left for Koror I think the commanding officer ordered the prisoner be tied.
41. Q. Who tied the prisoner?
A. One Kempei non-commissioned officer tied the prisoner but I have forgotten his name.
42. Q. This Lieutenant Colonel Miyazaki, did he tell you that you would get this prisoner back again?
A. I did not hear this.
43. Q. Why did you send one of your Kempeitai along?
A. I do not know about this. I was just ordered to send one Kempei along.
44. Q. Who does know about this?
A. I believe Captain Nakamura of the Kempeitai knows about this.
45. Q. What orders did you give this Kempei that you sent along with Kaufman?
A. He was not one of my subordinates. He was one of the subordinates of Nakamura so I did not give any specific orders.
46. Q. Do you know whether Nakamura gave him orders?
A. That I do not know.
47. Q. Was this Kempei armed?
A. Yes, he was armed.
48. Q. Did he ever come back to the Kempeitai?
A. He came back.
49. Q. Did he make any report about the prisoner, Kaufman?
A. He was not my subordinate so I did not hear anything.
50. Q. Do you know where this Captain Nakamura is?
A. At present he is with me.
51. Q. Where is that? In the stockade at Guam?
A. Yes.
52. Q. Do you know how many times Yajima came to the Kempeitai to interrogate this prisoner?
A. He came right after the prisoner was brought to the Kempeitai and later he came once, so I think he came twice.
53. Q. Isn't it true that the prisoner was always interrogated at the Kempeitai and never was brought to the headquarters? Isn't this true?

A. That is not true. Yajima came to the Kempeitai and questioned the prisoner and went back to the headquarters. He came back right away and around evening of that day the prisoner was brought to the division headquarters. About two or three days later he was brought back and soon after that Onose came to get this prisoner. I believe that all other members of the Kempeitai know about this fact that he was brought over to the headquarters.

54. Q. Did you see the prisoner being brought to the headquarters with your own eyes?

A. Yes, I did.

55. Q. When Onose and Tsuchiya came to the Kempeitai to get the prisoner, did you say anything to these persons?

A. Yes, I did. I asked First Lieutenant Onose where he was going to bring the prisoner.

56. Q. What did he say?

A. I heard from there he was going to be sent to Koror on a boat.

The judge advocate did not desire to reexamine this witness.

The commission did not desire to examine this witness. 9X

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 10:13 a.m., took a recess until 10:38 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.

The judge advocate was called as a witness for the prosecution and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, rank, and present duties.

A. James P. Kenny, lieutenant, U. S. Navy, judge advocate of this commission.

2. Q. If you recognize the accused, state as whom.

The witness correctly identified each of the accused.

3. Q. Are you the legal custodian of a document involving one Wallace F. Kaufman which concerns the issues of this case?

A. I am.

4. Q. If you have this document, will you produce it?

A. I do, and here it is.

The document produced by the witness was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

The accused requested permission to cross-examine this witness before the introduction of the document.

The commission announced that the request of the accused was granted.

Cross-examined by the accused: OK

5. Q. How did this document get into your custody?

A. The document was forwarded to me as a member of the staff of the Director of War Crimes, Pacific Fleet, by Lieutenant Colonel William R. Gill, chief of the investigation division, SCAP.

6. Q. Is this document an original document?

A. The forwarding endorsement by Lieutenant Colonel William R. Gill is original. The document itself contains copies of official Army reports.

7. Q. Is the forwarding endorsement signed and dated?

A. It is.

8. Q. Is it sworn to as to the copies being true or official?

A. It contains a certification by Lieutenant Colonel William R. Gill.

9. Q. Is the document or any part of it restricted?

A. Certain copies of this official Army document are classified restricted.

10. Q. As the custodian, have you the authority from the originator of this document, or from anyone in authority, to introduce this document into evidence before this commission?

A. I have authority under Article 75, U.S. Navy Regulations, 1920.

11. Q. Is the entire document to be offered into evidence and made a part of the record?

A. It is so offered.

The introduction of this document into evidence was objected to by the accused on the grounds that it was a restricted document, that the documents are reports, that they state the opinion of the investigators, and that they are hearsay.

The judge advocate replied.

The commission was cleared.

The commission was opened and all parties to the trial entered. The commission announced that the objection was not sustained. There being no further objection, the document was so received in evidence, and is appended marked "Exhibit 1".

Reexamined by the judge advocate:

12. Q. Will you please read from the document those sections that deal with the burial of Wallace F. Kaufman?

The witness read pages 6, 7, and 8 of "Exhibit 1".

An interpreter read a Japanese translation of pages 6, 7, and 8 of "Exhibit 1".

The accused did not desire to recross-examine this witness.

The commission did not desire to examine this witness.

The witness resumed his seat as judge advocate.

The commission then, at 11:25 a.m., took a recess until 2:15 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, and Stewart R. Smith, yeoman first class, U. S. Navy, reporters.

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you please state your name and rank?
A. Herbert L. Ogden, commander, U. S. Navy.
2. Q. Will you please tell us your present duties?
A. Investigator with the Director, War Crimes, Pacific Fleet.
3. Q. If you recognize these accused, please state their names.
A. I recognize Koichi, Katsuyama, Onose and Tsuchiya.
4. Q. Are you the legal custodian of certain statements made by these accused and pertaining to the issues of this case?
A. I am.
5. Q. Will you tell this commission how these statements came into your possession?
A. These statements were forwarded to our office here by a liaison officer in Tokyo by courier.
6. Q. After you received these statements what did you do with them?
A. I took these statements to the War Criminal Stockade and talked to each of the accused individually for the purpose of having him verify the truth of the original statement and the correctness of the translation. I handed the accused the original (Japanese) of his statement and handed the interpreter, Mr. Savory, the English translation. I had Mr. Savory read the English translation back to the accused in Japanese. Each of the accused then stated that the Japanese statement was correct and after certain corrections on the translation, which appear on the face of the translation, were made, they then swore to the truth of the statement as translated. JK
7. Q. At the time these accused swore to the truth of the statements, was it in your presence?
A. Yes, sir.

8. Q. Prior to their signing or at the time of their signing, did you make any of the accused any promises whatsoever?

A. I did not.

9. Q. Prior to their signing or at the time of their signing these statements, did you use any duress upon any of these accused?

A. I did not.

The documents produced by the witness were submitted to the accused and to the commission, and by the judge advocate offered in evidence.

The accused requested permission to cross-examine this witness before the introduction of the documents.

The commission announced that the request of the accused was granted.

Cross-examined by the accused:

10. Q. Prior to the time that you took these statements down to the War Criminals Stockade to have the accused swear to them and sign them, did you read these statements?

A. Yes, sir.

11. Q. Was this part of your regular duty to investigate this particular case?

A. Yes, sir.

12. Q. Were these four accused civilians at the time you took these statements down to have them sworn to?

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.

13. Q. At the time that you examined Koichi, Katsuyama, Onose, and Tsuchiya, and had them swear to these statements, did they have counsel?

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. No counsel for the accused was present at that time.

14. Q. Did you warn these four accused that anything they might say might be used against them?

A. I simply asked them to verify the truth of a previously made statement.

15. Q. The original documents, are they signed, dated, and sworn to?

A. Do you mean the original in Japanese?

16. Q. Yes.

A. The translation shows that they were signed.

17. Q. Is the original sworn to?

A. No, sir.

18. Q. Do you know whether Koichi wrote this original when he was held in confinement in Sugamo Prison?

A. I do not know.

19. Q. Do you know who was present when he wrote it?

A. I am informed that Lieutenant Tremayne was present when all these statements were made.

20. Q. Were you present when any of them were written?

A. I was not.

21. Q. Do you know if anyone else except Lieutenant Tremayne was present when they were written?

A. I do not know who was present when they were written.

22. Q. When you called these four accused one at a time out at the War Criminals Stockade, did you give them to understand they were at liberty not to swear to these statements?

A. That was clearly understood.

23. Q. But did you inform him that he was at liberty not to make the statement?

A. ~~By~~ statement do you mean verification? OK

24. Q. Yes, in other words, did you tell him that he was at liberty not to make this verification?

A. I simply asked each of the accused if he were willing to swear to the truth of the translation. They all appeared willing to do so.

25. Q. Isn't it true that these verifications, this swearing to these statements that you had these four accused make, they were made after you had determined in your own mind that an accusation might be made against them?

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

The accused replied.

The commission announced that the objection was sustained.

26. Q. Did you inform any of these four accused that an accusation against them might be implied because they were involved to such an extent in this case?

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

The accused made no reply.

The commission announced that the objection was sustained.

27. Q. Did you inform any of these persons that they, Koichi, Katsuyama, Onose, and Tsuchiya, might be accused if they signed this statement?

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

The accused made no reply.

The commission announced that the objection was sustained.

28. Q. Did you inform any of these accused of the gist of the evidence against them?

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

The accused made no reply.

The commission announced that the objection was sustained.

29. Q. Did you instruct any of these four accused that they had the right of any witness to refuse to answer statements that were incriminating or degrading?

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

The accused made no reply.

The commission announced that the objection was sustained.

30. Q. You stated that none of these four had counsel. Did any of these four, at the time that they signed these statements, ever waive the right to have counsel?

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

The accused made no reply.

The commission announced that the objection was sustained.

Commander Martin E. Carlson, counsel for the accused, read a written objection to the receipt of these documents into evidence, appended marked "P."

The judge advocate replied.

The commission was cleared.

The commission was opened and all parties to the trial entered. The commission announced that the objection was not sustained and the statements would be received in evidence. The commission directed that an interpreter's

note be entered in that portion of Tsuchiya's statement which was brought into contention by the counsel for the defense, in order to clarify for the commission the exact nature of the interpretation. The statement of Koichi, Hiroe, in English, and the original Japanese thereof, were marked "Exhibit 2" and "Exhibit 3" respectively. The statement of Katsuyama, Tetsuji, in English, and the original Japanese thereof, were marked "Exhibit 4" and "Exhibit 5" respectively. The statement of Onose, Ichiro, in English, and the original Japanese thereof, were marked "Exhibit 6" and "Exhibit 7" respectively. The statement of Tsuchiya, Naohiko, in English, and the original Japanese thereof, were marked "Exhibit 8" and "Exhibit 9" respectively.

Reexamined by the judge advocate:

31. Q. Will you read the statement of Koichi?

The witness read the statement of Koichi, Hiroe, in English, appended marked "Exhibit 2." OK

An interpreter read the statement in Japanese, appended marked "Exhibit 3."

32. Q. Will you read the statement of Katsuyama?

The witness read the statement of Katsuyama, Tetsuji, in English, appended marked "Exhibit 4."

An interpreter read the statement in Japanese, appended marked "Exhibit 5." OK

33. Q. Will you read the statement of Onose?

The witness read the statement of Onose, Ichiro, in English, appended marked "Exhibit 6."

An interpreter read the statement in Japanese, appended marked "Exhibit 7."

34. Q. Will you read the statement of Tsuchiya?

The witness read the statement of Tsuchiya, Naohiko, in English, appended marked "Exhibit 8."

An interpreter read the statement in Japanese, appended marked "Exhibit 9."

The accused did not desire to recross-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 accused read a written plea in abatement, appended marked "Q."

The judge advocate replied.

The commission announced that the plea was denied.

The prosecution rested.

Commander Martin E. Carlson, counsel for the accused, read a written plea for directed acquittal in the case of Onose, Ichiro, appended marked "R."

The judge advocate replied.

The commission announced that the plea for directed acquittal in the case of Onose, Ichiro, was denied.

Commander Martin E. Carlson, counsel for the accused, read a written plea for directed acquittal in the case of Tsuchiya, Naohiko, appended marked "S."

The judge advocate replied.

The commission announced that the plea for directed acquittal in the case of Tsuchiya, Naohiko, was denied.

The accused requested that the commission adjourn until 9 a.m., Tuesday, December 2, 1947, to allow time to properly prepare the case for the defense.

The commission announced that the commission would adjourn until 9 a.m., Monday, December 1, 1947.

The commission then, at 4:25 p.m., adjourned until 9 a.m., Monday, December 1, 1947.