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**U. S. War Department**

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**WAR CRIMES OFFICE**

**Judge Advocate General's  
Office**

File No. 48-37-1 NAVY CASE  
Sub. HIROE KOICHI ET AL

See also Nos. ....

.....  
.....  
.....  
.....

U. S. GOVERNMENT PRINTING OFFICE 16-42379-1

0155

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.  
24 November 1947

101-2274

#41.

48-37

0156



CSCAD/71289/none/  
J. S. Egre/ps

AIR MAIL

48-44

27 April 1948

Mrs. Annie Topp  
584 Logan Street  
New York, New York

*Koichi*

Dear Mrs. Topp:

In accordance with our telephone conversation, I checked upon the status of the trial transcript in which you were interested. The Department of the Navy informed me that they have received the trial transcript.

The Navy Judge Advocate is reviewing the transcript and as soon as his review has been concluded he will make available to this office a copy of the trial transcript, in order that you may examine it.

As soon as it is received from the Department of the Navy we will communicate with you.

Sincerely yours,

EDWARD H. YOUNG  
Colonel, GSC  
Chief, War Crimes Branch

MEMO FOR RECORD: On 26 Apr 48 Mrs. Topp telephoned Col. Young as to the present status of the case in which Lt. Kaufman was a victim. Mrs. Topp has previously been advised that as soon as the trial transcript is received in the War Crimes Branch she will be permitted to examine it. This communication is to advise her that the trial transcript has been received by the Navy Judge Advocate and that it is being reviewed. As soon as the case has been reviewed, she may examine the trial transcript in this office. The Navy Judge Advocate informed Comdr. Hart that the trial transcript would be forwarded to this office upon the completion of the review.

MN

AIR MAIL

*✓ Navy Div.*

0157

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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*James P. Kenny* *Leut. USA*

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*James P. Keary* *Lead. USK*

0159



FF12/A17-10  
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)"

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James C. Henry, Jr., CDR

0160

FF12/A17-10  
02-JDM-rhj

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Nov 8 1947

Serial: 20971

Subject: Precept for a military commission.  
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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.

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*James P. Henry* *Law. 15X*

"A (2)"

0161

OBJECTION TO CHARGES AND SPECIFICATIONS, DELIVERED BY MR. KUNATA, HIDEO,  
TOKYO, JAPAN.

Original document in Japanese prefixed to the original record. Certified translation prefixed herewith marked "C."

0162



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, Nachiko 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 26262-5914, 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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*James P. Keary* *Law. U.S.*

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0163

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 specification 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.

CERTIFIED TO BE A TRUE COPY

*James P. Kenny* *Kenn WK*

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

"C" (2)"

0164



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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*James P. Kenney* *Lieut. W.R.*

0165



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 Kullock, 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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*James P. Kenny* *Lawst. USA*

"D (2)"

0166

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 Owan, 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; Siklek 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,  
Commander, USNR.

"D (3)"

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*James P. Kennedy* Legal Clerk USN

0167

PLEA TO JURISDICTION, DELIVERED BY MR. KUWATA, HIROO, TOKYO, JAPAN.

Original document in Japanese prefixed to the original record. Certified translation prefixed herewith marked "Y."

0168



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.

"F (1)"

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*James P. Keary* *Legal Coun.*

0169

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 liaison 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 accused 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)"

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*James I. Keary* *Legal Officer*

0170



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."

CERTIFIED TO BE A TRUE COPY

*James P. Kenny* *Lieut. USK*

"T (3)"

0171



"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 Kuvata.

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.

" (4) "

CERTIFIED TO BE A TRUE COPY

*James P. Kerrick* *Law. USA*

0172

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, Tetsuji, has made a statement implicating the codefendant Koichi, Hiroe and the prosecution intends to offer this statement of Katsuyama, Tetsuji, 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, Tetsuji.

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

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

Respectfully,

Martin E. Carlson,  
Commander, USNR.

"C"

CERTIFIED TO BE A TRUE COPY

*James P. Henry Lieut USN*

0173

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.

"H"

CERTIFIED TO BE A TRUE COPY

*James I. Keganey* *James I. Keganey*

0174



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"

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*James P. Kenney* *Law USN*

0175

PLEA IN BAR OF TRIAL, DELIVERED BY MR. KUWATA, HIDBO, TOKYO, JAPAN.

Original document in Japanese prefixed to the original record. Certified translation prefixed herewith marked "E".

0176

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.

CERTIFIED TO BE A TRUE COPY

*James I. Keady* *Lead USA*

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

44

0177



FF12/A16-2  
02-JDM-hm

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, Hiroo  
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, Hiroo, 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.

CERTIFIED TO BE A TRUE COPY

*James P. Kenny* Lieut USN

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, TSUYAMA, 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.

G. L. POWHALL,  
Rear Admiral, U.S. Navy,  
The Commander Marianas Area.

CERTIFIED TO BE A TRUE COPY

*James P. Kenny* *Lt USN*

"L (2)"

0179



「アメリカ」合衆國太平洋艦隊  
「マリアナ」方面司令官

昭和二十二年十月十日 二二〇八三

發、 「マリアナ」方面司令官

宛、 「アメリカ」合衆國海軍少佐「エドワード・エ・リーガン」  
「アメリカ」合衆國海軍大尉「エドワード・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 瀬 一 郎  
土 屋 直 彦

ノ事件ニ於ケル起訴及罪狀項目

一、 以上、 貴官ノ「検察官」タル軍法委員會  
ニ於テ左記、 起訴及罪狀項目ニ就テ裁判  
サレテアラハ、 貴官、 裁判長ニ其ノ旨ヲ  
通報ノ被告ニ裁判ノ日時ヲ通知シ、 検事側  
及被告側、 全證人ヲ召集ス。

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James P. Henry Lt Col USA



第二起 許  
殺人

罪狀項目

「バニオ」諸島、日本帝國陸軍々事施設ニ配置  
下ニ于テ小市廣榮當時陸軍大尉、藤山  
恒爾當時陸軍中尉、小野瀬一郎、當時陸  
軍少尉、土屋直彦、當時陸軍軍醫長、同  
軍手施設ニ勤務中、各個ニ又ハ相共ニ「バニオ」  
合衆國連合諸國及其、屬領、日本帝國、  
戰爭狀態ニ任シ、昭和二十年五月二十四日頃  
「バニオ」諸島「ゴロレ」島ニ於テ意思的ニ  
違法的ニ企圖シ、惡意トテ以テ不當ノ理  
由ニテ同時同處ニ於テ日本軍ニヨリ抑留  
サレテ于テ一名「アムカ」人佐佐木「タツキ」陸軍  
少尉「ケオリス・エフ・コフマン」ヲ軍刀ニヨリ  
惡意戰爭ノ斬リツケ殺シ、殺サセタ之ハ戰爭  
法規並ニ慣習ニ違反シテ平ル。

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*James P. Henry* *Lawyer*

2.



## 第三起訴

戰爭法規並ニ慣習、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  
及其ノ屬領ハ日本帝國ト戰争狀態ニ在ツク昭和  
二十年五月二十四日頃「コロ」島ニ於テ彼、指揮下ニ在  
ツタ人々共ニ彼、取締反監督下ニア、人々即チ  
同高射砲隊ニ配屬勤務中、勝山哲爾當時陸軍  
中尉、小野瀬一郎當時陸軍少尉、土屋直孝當時  
陸軍曹長其、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」人佐佐木「アメリカ」陸軍少尉「ウオレス・エフ・コマシ」  
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ルト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、職責ヲ無視シ又ハ遂行シタカシタ  
之ハ戰爭法規並ニ慣習ニ違反シキル。

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James P. Henry *[Signature]*

3.

予二起訴(續)

罪狀項目 二、

「ハライ」諸島「コロ」島、日本帝國陸軍々事施設ニ  
配属サレテ平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、屬領ハ日本帝國ト戦争状態ニ在リタ和  
二十年五月二十四日頃「ハライ」諸島「コロ」島ニ於テ  
同時同処ニ於テ日本軍隊ニヨリ抑留サレテ平々一名、  
「アメリカ」人佐藤「アキラ」陸軍少尉「アリス」エフ「コック」  
ヲ保護スルコトガ彼、權限内、コトナリ而モ當時、  
状況下適切ナル処置「アッタ」モ拘ラヌ又ソレガ  
彼、職責「アッタ」モ拘ラヌ彼、指揮下ニ在リタ  
人々並ニ彼、取締監督下ニ在リタ人々ニ同僚僚  
ノ首ヲ切リコトニヨリ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、遂行シテ  
タッタ之ハ戦争法規並ニ慣習ニ違反スルモノナリ。

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*James P. Henry* 少将

「アメリカ」合衆國海軍少将

「ハライ」方面司令官

■(3)■



OPENING STATEMENT FOR THE PROSECUTION

Delivered by

Lieutenant Commander Joseph A. Regan

24 November 1947.

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

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

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

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"N (1)"

*James I. Kary* *Lieut. USX*



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

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

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

Respectfully,

Joseph A. Regan.

"N (2)"

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*John P. Kenny* *1st Lt. USA*



**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 Michael O'Hial, 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 Kmai 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.

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*James P. Kenny* Lieut. USA





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.

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*James P. Kenny* *Test OK*



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. Kumata, 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.

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*Paul A. Henry* *Lieut. USA*



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, Machiko, 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 "W."

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."

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*James P. Kenny* Lieut. USA





"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(e) 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. Shinoje, Mitsuharu, 22 Ora, Anabuki, Mina 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 Keichi; 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?

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*James P. Kany* *Law. USA*

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.

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*James P. Leary* Lieut. USK

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.

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.

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.

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*James P. Kenney* *Lt. Col. USA*





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 Houni 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.

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*John A. Kerry* *Lieut. J.R.*

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 Kempai, 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.

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*James P. Pease Lieut. USN*

51. Q. Tell us what happened the next morning?  
A. Waking up the next morning, I went to the Dei Unit to visit one of my friends who came from the same prefecture. He was not present and so from the Dei 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?

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*James L. Brady Sec'd. U.S.A.*





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.

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.

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*James A. Kennedy* *Lieut. USA*

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 feet 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.

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*James P. Harvey* Lieut. USA



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.

Shinoje, 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.

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*James P. Kenny* Lieut USN





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.

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 - Arinigu Channel - I had to cross this channel and from there on I walked to headquarters.

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*John P. Henry* Lieut. USA



86. Q. Did Onose and Tsuchiya return with you to Rabelthuap?  
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 Dei Unit. Onose and Tsuchiya and an officer of the Dei Unit were conversing. According to Onose's conversation he said that if this execution could not be performed by the Keichi 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 gunsoku. Were you a gunsoku 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 Kampeitai 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.

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*James P. Henry* Law. U.S.A.

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.

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*James P. Keary* Lieut USN



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 and place of the execution.

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.

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*James P. Kenny* *Lieut. USA*



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.

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*James P. Kennedy* *Trust. WR*



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.

Archib 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.

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*James A. Hickey* *Lieut USN*



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.

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 hole that you say was dug. You didn't see any one dig the hole, did you?

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 shallow hole instead of one that was dug?

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.

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*James P. Keary* *Lieut USK*



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 gunsoku present at this scene?

A. At the scene there were quite a few soldiers there and I could not tell if some were gunsoku or not but I think there were two or three civilians among them.

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.

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?

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.

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*James P. Kerry* *Lieut. USA*

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.

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*James P. Brady, Lieut USA*





193. Q. You didn't see him tie the prisoner?

A. The prisoner was tied when he left the Kempetai.

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.

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*James P. Henry* *Lt. Col. USA*



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 hand 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.

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*James P. Henry* *Paul W. K.*



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.

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*James P. Henry* *Lead. USN*



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.

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*James P. Kennedy* *Lieut. USA*



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, Morio, 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.

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*James L. Henry Lieut-USA*



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 Kaufman, 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.

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*James P. Perry*





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. I 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.

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*James P. Henry* *Lead USA*

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.

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*James P. Keady* *Sub. D.R.*

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."

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*James P. Hoxey* *Law. SA*





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.

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*James P. Henry* *Lew VSR*



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.

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*James P. Henry, Lieut. USA*



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.

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.

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*James P. Henry* Capt. USK





THIRD DAY

United States Pacific Fleet,  
Commander Marianas,  
Guan, 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 Babelthusp?  
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 Dei Unit.

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*James P. Kenny* Lieut. USN



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 Miyasaki.
14. Q. Did the prisoner arrive at headquarters?  
A. He did not come directly.
15. Q. Tell us about, *etc.*  
A. I recall that one of the intelligence officers of the Doi Unit - his name is Goto - escorted the prisoner and came.
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

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*James P. Henry* *USX*



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 placements 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.

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*John P. Kenny* *Leut. USN*





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.

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."

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*James A. Heany* Lt. Col. US 2

45. Q. After this second conversation with Colonel Ded, 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.

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*James P. Keary* Lieut. USA

(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.

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*James P. Henry* *Test USA*



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 Sasurai by Company Commander First Lieutenant Matsuyama 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.

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*James P. Henry, Law. USA*

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 Kempei-tai, 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.

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.

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*James P. Kearney* Lt. Col. OSK

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 Dei, 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 Dei 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 Dei 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.

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*James P. Kenny* Lieut. USA



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 convey 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.

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.

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*James P. Kearney* Lieut. J.S.R.

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 Keichi and Keichi 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 Keichi?

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 Keichi 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 Keichi 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.

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*James P. Henry, Lieut. USA*

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 Keishi 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.

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*James P. Henry* *Lieut. USN*



133. Q. Did I understand you correctly to say that the orders to Onose were to see that the Keichi 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 Keichi 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 Keichi 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 Keichi Unit there was no doubt that the orders of the General were to be carried out.

A. No; there was no doubt.

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 Keichi 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 Keichi Unit to execute the prisoner?

A. He did not.

141. Q. Keichi 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 Keichi 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.

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*James P. Henry Lieut. USX*

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.

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*James P. Kenny* Lieut. OSR

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.

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.

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*James P. Henry* *Law-USA*



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 Korer, 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.

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 Shimoje 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?

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*James C. Henry* Lieut. USA

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 man?

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?

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*James P. Kennedy Lieut. USN*

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.

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:

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*James P. Henry* *Lieut. USN*



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.

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*James P. Henry, Lt. Col. USA*

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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.

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*James P. Kray, Law. USA*

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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.

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.

The commission then, at 4:35 p.m., adjourned until 9 a.m., Friday, November 28, 1947.

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*James P. Kerry* Lt. Col. USA





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. Royce, 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 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 advocates:

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 Dei Unit  
of Koror will bring one prisoner to the Kempeitai Headquarters. Yajima will

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*James P. Kenny Lieut. USA*

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.

10. Q. How did he happen to be taken prisoner?  
A. Around May, 1945, the Korer 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, Miyasaki.

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.

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*James P. Keany Test. USA*

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.

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.

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*James P. Henry* *Lead. USA*

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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 <sup>of</sup> headquarters?

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 Miyasaki.

29. Q. Were you his assistant?

A. I was a subordinate to Miyasaki.

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.

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.

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.

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*James P. Kenney Lieut. USA*

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 Miyasaki, "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 Miyasaki, 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?

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*James P. Kenny* *Lieut. USN*

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.

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.

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*James P. Kenny Lieut-USN*



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~~<sup>Ex</sup>-examined by the accused:

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".

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*James P. Henry* *Test. O.K.*

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.

7. Q. At the time these accused swore to the truth of the statements, was it in your presence?

A. Yes, sir.

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*James P. Kenny Lieut. USA*

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.

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*John P. Keary* *Lieut. USMC*



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 Keichi 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?

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.

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*James A. Kenny Lieut. USA*

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 those 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

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*James P. Keary* Lieut. USN

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."

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."

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."

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*James P. Keary Lieut. USA*



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.

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**FIFTH DAY**

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

The commission met at 9:10 a.m.

**Present:**

Rear Admiral Arthur G. Robinson, U. S. Navy.  
Lieutenant Colonel Henry K. Rescoe, 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 F. Kenny, U. S. Navy, judge advocates.  
Archib L. Haden, junior, yeoman first class, U. S. Navy, reporter.  
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The defense began.

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

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

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

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

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

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

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

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*James P. Kenny* *Test USA*

**"AMENDMENT V--CAPITAL CRIMES; DUE PROCESS.**

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

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

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

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

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

**6. Articles of War 25 and 38:**

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

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

**7. Section 454, Naval Courts and Boards:**

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

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*James P. Henry* *Law. USA*



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

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

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

"General Principle.

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

"Chapter II. Obedience.

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

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

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

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

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

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

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

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

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

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*James P. King* *Int. USA*

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

The commission was cleared.

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

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

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

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

Examined by the accused:

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

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*James P. Henry Lieut. USA*

10. Q. What happened then?

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

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

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

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

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

The witness was duly warned.

The commission then, at 10:20 a.m., took a recess until 10:45 a.m., at which time it reconvened.

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

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

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

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

14. Q. Then what happened?

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

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

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

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*James P. Keary* *Tant. ASK*



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

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

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

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

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

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

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

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

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

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

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

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

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*James P. Kennedy* *Head USA*

SIXTH DAY

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

The commission met at 9 a.m.

Present:

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

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

No witnesses not otherwise connected with the trial were present.

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

Examined by the judge advocate:

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

Examined by the accused:

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

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*James P. Kenny* *Test. 42*

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8. Q. When did you see this prisoner?

A. I recall it being in the middle of May, 1945.

9. Q. Do you recall the name of this prisoner?

A. I do. His name is Kaufman, second lieutenant, army aviator.

10. Q. Do you know what happened to this prisoner?

A. I do.

11. Q. What happened to him?

A. He was finally executed.

12. Q. Do you know how he came to be executed?

A. I do.

13. Q. Please explain to the commission how he came to be executed.

A. I shall explain. About half a month prior to the middle of May, 1945, my position was destroyed by the American air raids. Therefore my positions and my men sustained great damage. At this time I was ordering on one hand to repair the destroyed position and on the other hand I was making operational plans for the future. Just at this time, Colonel Doi called me on the phone and relayed me the following message; he said, "The division headquarters wants to have your unit execute the aviator which the Katsuyama Unit had shot down in the previous battle. I, Doi, am opposed to it but what do you think about this?"

14. Q. When you were asked about your opinion by Colonel Doi, what did you reply to this?

A. I said to him, "The spirit of the men would not be bolstered by killing one prisoner. An opposite phenomena might be caused by this and the spirit will be lowered. Moreover, it is a pity to kill a non-resisting prisoner and if we do this we will lose all sense of responsibility. It is not worth doing. Moreover, we are still fighting and there is no time and we cannot tell when there is going to be a big air raid and we have no time. I want you to refuse this definitely for me." This is what I relayed to Colonel Doi.

15. Q. What did you do then?

A. Colonel Doi then said to me, "I definitely agree with you and I will definitely refuse this for you."

16. Q. What did you do then?

A. A short time elapsed, about one day, and during this period I recall receiving one or two telephone calls from Colonel Doi to the same effect. And each time I told Doi my reasons and asked him to definitely refuse this to headquarters.

17. Q. What did you do then?

A. Each time Colonel Doi said that he would relay definitely my refusal to headquarters and then there was a last phone call in which Colonel Doi relayed the following message: "I relayed your definite opposition to the headquarters without fail but the headquarters are still insisting upon delivering the prisoner and having him executed. They are saying that they will have Katsuyama do it. Relay this to Katsuyama."

18. Q. Did you relay what you heard from Doi to Katsuyama?

A. I immediately called Katsuyama by phone and relayed to Katsuyama the orders of the division.

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*James P. Kerry* Lieut. 052





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

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

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

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

21. Q. What did you do then?

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

22. Q. Then what?

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

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

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

24. Q. Did you go to division headquarters?

A. I did.

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

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

26. Q. What did you do then?

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

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

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

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

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

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*James P. Henry* *Lt. Col. USA*

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

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

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

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

31. Q. Then you did not say anything?

A. I did not.

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

A. I do not understand what the counsel means.

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

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

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

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

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

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

36. Q. What happened then?

A. Then we withdrew.

37. Q. Then what?

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

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

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

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*James P. Kenny* *Test. USA*

The accused replied.

The commission announced that the objection was sustained.

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

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

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued).

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

A. I returned to the pier at Babelthuap Island.

40. Q. What happened there?

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

41. Q. Then what?

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

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

A. I then called up Katsuyama by phone.

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

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

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

A. Yes, I did.

45. Q. What did Katsuyama say to this?

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

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

A. He did not.

47. Q. What happened then?

A. Then I went to bed.

48. Q. Then what happened?

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

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*James P. Henry Lead. USA* 79

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49. Q. What happened on this hill?

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

50. Q. And then what?

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

51. Q. Then what?

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

52. Q. What happened then?

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

53. Q. What happened after this?

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

54. Q. Then what?

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

55. Q. Then what?

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

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

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

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

A. No.

58. Q. Was Onose your direct subordinate?

A. No, Onose was not my subordinate.

59. Q. How about Tsuchiya?

A. Tsuchiya also was not my subordinate.

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

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

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*James P. Ramsey* *Lieut USMC*

Cross-examined by the judge advocate:

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

A. Yes.

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

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

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

A. Yes, I did.

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

A. Onose showed Katsuyama.

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

The judge advocate replied.

The commission announced that the motion was denied.

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

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

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

A. No.

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

A. No.

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

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

69. Q. Yes.

A. There is no contradiction.

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

A. Yes, it is.

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

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

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*James P. Kennedy* *Lawyer*

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

A. No. Absolutely not.

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

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

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. There is no such fact.

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

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

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. There is no such thing.

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

A. Yes.

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

A. Yes.

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

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

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

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

Reexamined by the accused:

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

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

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*James P. Henry* *Lead. 052*

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The accused withdrew the question.

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

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

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

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

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

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

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

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

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

A. Yes.

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

A. No, I could not.

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

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

The accused replied.

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*James P. Henry* *Law. 0522*

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The commission announced that the objection was sustained.

87. Q. Did you actually and personally behead the prisoner?  
A. Do you mean that I, myself, took the sword?

88. Q. Yes.  
A. No, I did not.

89. Q. This statement of August 19, 1947, under what circumstances were you required to write the statement?  
A. I was requested to come to the Meiji Building and I went there and then suddenly the investigator told me to write the truth of this incident. I was requested to write this in a very short time so I did not have enough time to make it all inclusive.

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

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

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

No witnesses not otherwise connected with the trial were present.

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

(Reexamination continued.)

90. Q. After you had finished this statement of August 19th did you ever verify it? Was it read back to you and verified by you?  
A. No, it was not.

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

92. Q. Did you ever order Lieutenant Haneishi to execute this prisoner?  
A. No, I did not.

93. Q. Did he execute the prisoner?  
A. No, he did not.

94. Q. This sergeant major you think might have assembled your men that day, was this Tsuchiya?  
A. No, it was not Tsuchiya.

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

The commission did not desire to examine this witness.

The witness made the following statement:

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

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*James P. Kerney* *Tent. USA*

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

The witness resumed his status as accused.

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

Examined by the judge advocate:

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

Examined by the accused:

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

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

The accused replied.

The commission announced that the objection was sustained.

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

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*James P. Henry* *Gen. USA*

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

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

The accused replied.

The commission announced that the objection was not sustained.

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

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

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

13. Q. What was this special assignment?

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

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

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

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

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

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

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

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

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

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

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

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*James P. Henry* *Law. 152*

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

A. Yes.

20. Q. Did Yajima give you any instructions?

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

21. Q. Did he give Shimojo any instructions?

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

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

A. Yes.

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

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

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

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

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

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

26. Q. Then what happened?

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

27. Q. What did you do there?

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

28. Q. What happened then?

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

29. Q. What did you do there?

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

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

A. I think about two hours.

31. Q. Then what happened?

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

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*James P. Kenny* *Lund-USA*

32. Q. When did you arrive at Koror?

A. It was around midnight when we reached Koror.

33. Q. What happened when you reached Koror?

A. At the Koror pier non-commissioned officers of the Koichi Unit met us. From there we went to the headquarters of the Koichi Unit and after about one hour arrived there.

34. Q. What happened to the prisoner?

A. At the headquarters the prisoner was handed over by the Kempei to the non-commissioned officers of the Koichi Unit and I think he was taken to an air raid shelter.

35. Q. Who handed the prisoner over?

A. Onose did.

36. Q. Are you sure you didn't hand him over?

A. No, it was not me.

37. Q. Then what happened after Lieutenant Onose handed this prisoner over to the Koichi guards?

A. From there we went to the front of Captain Koichi's quarters. Food was brought over and Captain Koichi and some of his non-commissioned officers were discussing the time and the place regarding the execution.

38. Q. Did you take part in this conversation?

A. No, I did not.

39. Q. Did any of the enlisted men take part in it?

A. The persons who took part in the conversation were Koichi and a non-commissioned officer or non-commissioned officers of the Koichi headquarters. The rest did not take part in it.

40. Q. After the meal, what did you do?

A. Just before we had the meal the Kempei went to the Kempei detachment at Koror; he left us and went there. After having the meal, Shimojo and myself left and went to an air raid shelter which was about one kilometer away from this place and slept there.

41. Q. Where was the prisoner?

A. I do not know where he was but probably he was in an air raid shelter.

42. Q. What did you do the next morning?

A. The next morning when I went to the naval cemetery I saw Kaufman sitting down.

43. Q. Why did you go to this naval cemetery?

A. The day before the execution I was told by Onose to return Kaufman's belongings at the last minute, so I carried his orders out accordingly.

44. Q. Why didn't you return them to him the night before?

A. If I had returned these belongings to him the night before, as this prisoner was helpless, these belongings might have been stolen from him.

45. Q. What did you see when you arrived at the cemetery that morning?

A. I saw fifty to sixty men assembling and I saw a first lieutenant with his ears bandaged.

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*James P. Henry* *Lieut. USA*

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

A. No, I did not know.

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

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

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

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

49. Q. What happened then?

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

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

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

51. Q. Did you see Kaufman executed?

A. Yes, I did.

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

A. No, I did not.

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

A. I was about fifteen meters away.

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

A. No, I did not.

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

A. Yes, I saw Shimojo take pictures.

56. Q. When did you leave?

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

57. Q. When did you leave this scene?

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

58. Q. Did you go alone?

A. I went with Onose.

59. Q. Where did you go with Onose?

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

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*James P. Kenny* Lt. Col. USMC

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

A. The night of the same day.

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

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

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

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

The accused did not reply.

The commission announced that the objection was not sustained.

A. No.

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

A. No, I absolutely did not.

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

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

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

A. I had chiefly clerical duties.

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

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

The accused did not reply.

The commission announced that the objection was sustained.

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

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

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

No witnesses not otherwise connected with the trial were present.

Tsuchiya, Nachiko, 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.

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*James P. Kenny* *Law 412*

Cross-examined by the judge advocate:

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

A. Second Lieutenant Onose.

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

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

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

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

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

A. Yes.

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

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

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

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

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

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

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

A. I do not understand the question.

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

A. I did not know.

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

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

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

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

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

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

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

A. Yes.

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*James P. Kerry Law. USA*



Reexamined by the accused:

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

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

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

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

The accused replied.

The commission announced that the objection was sustained.

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

A. No, he did not.

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

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

The accused replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. Yes.

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

A. Yes.

85. Q. And what was this duty?

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

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

A. Yes.

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

The commission did not desire to examine this witness.

The witness made the following statement:

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

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*James H. Reay* *Pres. USN*

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

The witness resumed his status as an accused.

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

The commission announced that the request was granted.

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

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*James P. Kennedy* *Gen. vsk*

SEVENTH DAY

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

The commission met at 9 a. m.

Present:

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

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

No witnesses not otherwise connected with the trial were present.

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

The commission announced that the request was granted.

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

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

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

No witnesses not otherwise connected with the trial were present.

A witness for the defense entered and was duly sworn.

Examined by the judge advocates:

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

The witness correctly identified each of the accused.

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*James P. Kenny* *James P. Kenny*



Examined by the accused:

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

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*James P. Henry* *Law. 052*

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

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

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

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

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

A. I recall that he did not say anything.

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

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

The accused replied.

The commission announced that the objection was sustained.

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

A. His attitude was one of respect.

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

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

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

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

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

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

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

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

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

A. Yes.

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

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

The accused withdrew the question.

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

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

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*John A. Kenny* *Test. vs 21*

29. Q. When did you hear this?  
A. I recall that it was before the execution.

30. Q. How much time before?  
A. I recall that it was about two or three days.

31. Q. What was Koichi's opinion?

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

The accused withdrew the question.

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

The commissi<sup>o</sup>n did not desire to examine this witness.

The witness made the following statement:

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

The witness <sup>o</sup>as duly warned and withdrew.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.  
A. Watanabe, Toshio, captain, Imperial Japanese Army.  
2. Q. If you recognize the accused, state their names and former ranks?  
A. Captain Koichi, Second Lieutenant Oose, Second Lieutenant Katsuyama, and Sergeant Major Tsuchiya.

Examined by the accused:

3. Q. Have you ever served with the Japanese army at Palau?  
A. I have.  
4. Q. During what period of time was this?  
A. From April 1944 to December 1945.  
5. Q. With what unit did you serve?  
A. Fourteenth Division Headquarters.  
6. Q. On what island was this Fourteenth Division situated?  
A. It was on Koror Island and also Babelthup Island.  
7. Q. Of these two, on which island did you serve?  
A. I served on both of these islands.  
8. Q. What was your duty at this headquarters?  
A. I served as an intelligence officer under Staff Officer Yajima.  
9. Q. While you were serving at Palau did you ever see a prisoner?  
A. I did.

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*James P. Kenny* *USK*

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A.9 Second Lieutenant Kaufman.

A. It was around the beginning of May 1945.

A. He was executed.

A. I do.

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

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

A. As I remember, there were two.

A. Yen.

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

A. By orders of Staff Officer Yajima.

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

A. Three.

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

A. Yes.

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

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

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

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

A. I recall that it was about two days.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The defense rested.

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

The judge advocate replied.

The commission announced that the motion was denied.

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

The judge advocate replied.

The commission announced that the motion was denied.

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

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

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

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

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

No witnesses not otherwise connected with the trial were present.

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

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

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*James P. Kenny* *Lieut. USA*

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

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

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

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

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

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*James J. Kenny* *Leut. USA*

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EIGHTH DAY

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

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United  
States Army,  
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United  
States Army,  
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,  
Major Andrew I. Lyman, U. S. Marine Corps, members, and  
Lieutenant Commander Joseph A. Regan, U. S. Navy, and  
Lieutenant James P. 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 seventh day of the trial was read and approved.

No witnesses not otherwise connected with the trial were present.

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

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

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

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

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

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

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

No witnesses not otherwise connected with the trial were present.

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

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

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*James P. Kenny* *Lead. USN*

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

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

No witnesses not otherwise connected with the trial were present.

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

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

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

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

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

No witnesses not otherwise connected with the trial were present.

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

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

The trial was finished.

The commission was cleared.

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

As to the accused, Koichi, Hiroe:

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

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

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

The second specification of the second charge proved.

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

As to the accused, Katsuyama, Tetsuji:

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

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

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*James P. Kenny* *Legal Sec.*

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As to the accused, Onose, Ichiro:

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

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

As to the accused, Tsuchiya, Naohiko:

The specification of the first charge not proved.

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

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

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

No witnesses not otherwise connected with the trial were present.

The commission announced its findings.

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

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*James P. Keary* Gen. USA



NINTH DAY

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

The commission met at 9 a.m.

Present:

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

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

No witnesses not otherwise connected with the trial were present.

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

Examined by the judge advocate:

1. Q. <sup>S</sup>State your name.  
A. Kumata, Hideo.

Examined by the accused:

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

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*James P. Kenny, Lieut. U.S.N.*

7. Q. Are these documents written in Japanese?  
A. Yes, they are written in Japanese but are already translated in English.
8. Q. Did you read these documents?  
A. Yes.
9. Q. What did you find out as a result of reading these documents?  
A. These documents were written by their superiors or colleagues or other persons while they were serving in the Japanese army and I find out that these were suitable to show their character.
10. Q. Have the judge advocates had access to these documents?  
A. They have not, so I wish to show them to them, now.

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

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

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

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

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as counsel for the accused.

The commission was cleared.

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*James P. Kenney* Legal. USA

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

The commission, therefore, sentences him, Koichi, Hiroe, to be confined for a period of twenty-five (25) years. 12/6/47

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.

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

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

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

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

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

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

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

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*James P. Kenny* Seal. USN

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

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

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

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

JOSEPH A. HEGAN,  
Lieutenant Commander, U. S. Navy, Judge Advocate.

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

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*James P. Kenny* *Test. USA*

OBJECTION TO THE COMMISSION TAKING JUDICIAL  
NOTICE.

Delivered by  
Commander Martin E. Carlson.

24 November 1947

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

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

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

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

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

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

We object that the Potsdam Declaration is immaterial and irrelevant.

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

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

"O (1)"

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*James P. Kenney* *Lieut. USN*

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully,

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*James P. Kennedy Lieut. USA*

Martin E. Carlson,  
Commander, USNR.

"O (2)"

0295



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

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

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

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

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

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*Joseph P. Kenny Lieut. USA*

"p (1)"

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

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

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

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

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

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

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

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

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*James P. Henry*

"P (2)"

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

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

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*James P. Kelly, Law. USA*

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

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

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

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

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

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

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*James P. Kenney* *Secy. USA*

"P (4)"

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

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

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

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

Quoting again from Vol. 3, Wigmore on Evidence, Sec. 860, p. 342: "The original English rule was that the prosecution (offering the confession) must show that it was made voluntarily, i.e., without any improper inducement from the person receiving the confession, and this rule is accepted in most American jurisdictions." 1783 Thompson's case. 1 Leach Cr. L., 3rd ed., 328 semble, Hotham, B.; 1851 R v Warringham v. Den. Cr. C. 447, Ferke B.; 1893, R. v. Thompson, 2 Q.B. 12, 18.  
Ireland: 1924 State v. Treanor (1924) 2 Jr. Rep. 193;  
Canada: R v Picariello, (1923) 1 D.L.R. 979 Alta; (cited ante 839);  
1934 R v. Rasmussen, (1935) 1 D.L.R. 237 Alta. (preceding cases not cited.);  
1935 Nearkudonis v The King, (1935) 3 D.L. R 424, Dom.

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

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

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*James P. Kenny* Genl. USA

"P (5)"

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

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

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

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

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

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

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

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

Respectfully,

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

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*Joe P. Henry* *Lieut. USA*

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0301



PLEA IN ABATEMENT

Delivered by  
Martin E. Carlson.

May it please the Commission:

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

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

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

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

CERTIFIED TO BE A TRUE COPY

*James L. Kenney* *Lieut. USN*

Respectfully,

Martin E. Carlson,  
Commander, USNR.

"Q"

0302

PLEA FOR DIRECTED ACQUITTAL

in the case of

ONOSE, Ichiro

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

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

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

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

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

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*James P. Keary Genl. USA*

"R"

0303

PLEA FOR DIRECTED ACQUITTAL

in the case of

TSUCHIYA, Machiko

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

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

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

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

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

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

CERTIFIED TO BE A TRUE COPY  
*James P. Kenny Lieut. USN*

25

0304



OPENING STATEMENT OF ACCUSED, DELIVERED BY MR. KUWATA, HIDEO, TOKYO,  
JAPAN.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "U."

0309

OPENING STATEMENT FOR THE DEFENSE

Delivered by KUTATA, Hideo, on 1 December 1947.

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

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

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

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James P. Garry, Lieut. VSK

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0306

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

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

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

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

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

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*James P. Gandy* Lt. USA



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

Respectfully,

Hideo Kuwata.

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

Respectfully,

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

"U (3)"

CERTIFIED TO BE A TRUE COPY

*James P. Kenney Lieut. USN*

0308

PLEA FOR JUDICIAL NOTICE, DELIVERED BY MR. KARASAWA, TAKAMI, TOKYO,  
JAPAN.

Original document in Japanese appended to the original record.

0309

STATEMENT OF ACCUSED KOICHI, HIROR, FORMER CAPTAIN, IJA.

Original document in Japanese appended to the original record.  
Certified translation appended herewith marked "X."

0310



STATEMENT

of

KOICHI, Hiroe, former Captain, Imperial Japanese Army

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

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

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

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

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

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

3. The condition of my family.

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

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*James P. Kenny* *Lieut. USN*

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0311

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

4. My thoughts on the incident.

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

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

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

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

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

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*James C. Henry* Capt. USA

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0312



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

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

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

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

Men died because they were ordered to do the impossible.

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

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

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

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

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

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*James P. Henry, Capt. USA*

"X (3)"

0313



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

December 7, 1947.

Respectfully,

KOICHI, Hiroe.

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

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

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*James P. Kenny* Lieut. USN

"X (4)"

0314

STATEMENT OF ACCUSED KATSUYAMA, TETSUJI, FORMER FIRST LIEUTENANT, IJA.

Original document in Japanese appended to the original record.  
Certified translation appended herewith marked "2."

0315

STATEMENT

of

KATSUYAMA, Tetsuji, former First Lieutenant, IJA

1. Personal History.

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

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

2. Condition of My Family.

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

3. My Feeling toward the Incident.

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

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*James P. Kennedy* *Genl. USA*

"2 (1)"

03 16



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

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

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

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

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

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

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

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

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

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

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

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

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*June P. Kenny* *Law. 012*

"2 (2)"

0317

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

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

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

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

I await your judgment.

Respectfully,

KATSUYAMA, Tetsuji.

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

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

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*Eugene E. Kerrick, Jr.* Lieut. USNR

"2 (3)"

0318

STATEMENT OF ACCUSED GUNSE, ICHIRO, FORMER SECOND LIEUTENANT, IJA.

Original document in Japanese appended to the original record.  
Certified translation appended herewith marked "EE."

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*James P. Barry Sent ASK*

"AA"

03 19



STATEMENT

of

ONOSE, Ichiro, former Second Lieutenant, Imperial Japanese Army

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

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

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

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

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

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

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

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*James P. Keary Lieut. USN*

"BS (1)"

0320

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

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

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

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

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

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

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

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

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

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

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*James P. Kennedy* *Sub. USA*

"DB (2)"

0321

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

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

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

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

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

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

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

Respectfully,

OHGSE, Ichiro.

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

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

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*James A. Henry Seal USN*

"B (3)"

0322



STATEMENT OF ACCUSED TSUCHIYA, NAOHINO, FORMER SERGEANT MAJOR, IJA.

Original document in Japanese appended to the original record.  
Certified translation appended herewith marked "DD".

0323

STATEMENT

of

TSUCHIYA, Naohiko, former Sergeant Major, IJA.

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

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

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

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

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

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

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*James P. Henry Head USA*

"BB (1)"

0324

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

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

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

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

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

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

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

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*James P. Kenney* Genl. USA

"ED (2)"

0325



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

I pray that you will acquit me.

December 1947.

Respectfully,

TSUCHIYA, Naohiko  
Former sergeant major, IJA

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

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

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*James P. Henry Lieut USN*

DD (3)

0326

OPENING ARGUMENT FOR THE PROSECUTION

BY

Lieutenant James P. KENNY, USN.

If it please the commission:

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

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

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

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

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

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*James P. Kenny Lieut. USN*

"EE (1)"

0327

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

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

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

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

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*James P. Kenny* *Gen. USA*

"EE (2)"

0328



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

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

Respectfully,

James P. Kenney,  
Lieutenant, USN.

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*James P. Kenney Lieut. USN*

"EE (3)"

0329

ARGUMENT FOR THE ACCUSED, DELIVERED BY MR. KARASAWA, TAKAMI, TOKYO,  
JAPAN.

Original document in Japanese appended to the original record.  
Certified translation appended herewith marked "GG."

77

0330

ARGUMENT FOR THE DEFENSE

BY

Mr. Takami Karasawa

Your Honor, the President, and Members of the Commission:

I would like to deliver this argument in behalf of all the accused in this case. As the judge advocate declared in his opening statement, this case is a very simple one. Therefore, I hope you will understand that we Japanese counsel will avoid the complicated practice of each making an argument, by having this argument represent all Japanese defense counsel.

In Charge I the Judge Advocate alleges that the accused Koichi and the other three accused committed murder, and in Charge II he alleges that the accused Koichi violated the law and customs of war by disregarding and failing to discharge his duty. I shall discuss in my main discourse in behalf of each of the accused as to whether they have any criminal responsibility and what the scope of their criminal responsibility is. First, before examining the detail of this case, I would like to outline this incident.

In this case, the facts which both the prosecution and the defense tried to prove are approximately the same. We can only find some differences in their substance. Therefore it is the agreed assertion of both parties that this incident occurred according to the orders of Commanding Officer Inoue - the most important factor in this incident.

Let us take a cursory glance at the course of this incident. Second Lieutenant Kaufman, the prisoner of war in this case, was a member of the crew of a B-24 which bombed Koror in the beginning of May 1945; but the plane was shot down by a Japanese anti-aircraft unit, namely the Katsuyama Unit. He parachuted from the plane and was captured by the Japanese Armed Forces.

The Doi Unit, which was then in charge of guarding and defending Koror, took Second Lieutenant Kaufman into custody. After making some investigations, he was sent to the 14th Division Headquarters which ordered the Kempeitai on the island to confine the prisoner. On the next day, Lieutenant Colonel Yajima, an intelligence staff officer of the headquarters, investigated the prisoner and reported the result of his investigation by documents to Division Commander Inoue and Chief of Staff Tada. Chief of Staff Tada, however, discovered some faults in the investigation, so he ordered Staff Officer Yajima to re-investigate the prisoner. Staff Officer Yajima investigated him again and reported to Lieutenant General Inoue.

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*James P. Keary Lieut. USA*

"GG(1)"  
"FF(1)"

0331



It is not clear under what circumstances Lieutenant General Inoue had come to think of an execution of the prisoner. But, at any rate, he thought of an execution and intended to have the anti-aircraft unit perform it. Then he revealed his intention to Staff Officer Yajima. We can not guess how Staff Officer Yajima thought about the execution of the prisoner, but he passed this intention of Division Commander Inoue on to Lieutenant Colonel Doi, the commanding officer of the guard unit, by telephone and asked his opinion. Lieutenant Colonel Doi objected to the execution and answered that he wanted Yajima to tell Division Commander Inoue about his opposition.

After that, how much time elapsed is not clear, but Lieutenant Colonel Doi informed the accused Koichi of the intention of the commanding officer to execute this prisoner and that he himself objected to that execution. Then he asked the accused Koichi what he thought of it. Of course the accused Koichi was of the same opinion as Doi, and he asked Doi to tell headquarters that he objected to the execution. Thus headquarters was informed of the opinion of the accused Koichi. Toward the next day, Doi happened to go near the Koichi Unit when he met Koichi again and had the same kind of conversation.

Days passed. It seems that something was planned and decided at the headquarters during that time. Lieutenant General Inoue intended to let First Lieutenant Katsuyama, a subordinate of Koichi, execute Second Lieutenant Kaufman to promote the morale of the Katsuyama Unit, and ordered Staff Officer Yajima to escort Second Lieutenant Kaufman to Koror. He also gave Yajima detailed instructions about the execution.

Staff Officer Yajima reported this to Lieutenant Colonel Doi, the direct superior of the Koichi Unit, who then relayed it to Koichi. Just at that time, Koichi was ordered to go to headquarters to report the damage caused by air raids of the American air forces to Operation Staff Officer Lieutenant Colonel Nakagawa and to talk with him about their future operations. Before going to headquarters to express his opinion, he told First Lieutenant Katsuyama that headquarters was intending to execute the prisoner and called for Katsuyama's opinion about that.

Katsuyama also objected to the execution like Koichi. Thus Koichi resolved to make his last effort to refuse the execution of the prisoner if he had a chance to do so when he went to the headquarters that evening.

Koichi arrived at the headquarters. He waited until the next morning and had a talk with Staff Officer Nakagawa about the operation. In May 1945, the battle conditions on Palau were not favorable for Japan. On account of daily air raids, damage increased day by day. Many men were wounded or killed. Equipment, ammunition and provisions fell short. The Japanese forces were facing hard battle conditions. Throughout the morning the accused Koichi talked with Staff Officer Nakagawa about countermeasures under those hard conditions, and had lunch together. After lunch they went together to see Commanding Officer Inoue. Of course the

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*James P. Keay* *Lieut. USMC*

"GG (2)"  
"FF (2)"

0332

main business was to talk about battles at Koror and to report the conditions of damage. Koichi himself reported his duties in detail. Since he was cautioned by Colonel Nakagawa not to stand up against the commanding officer's intention concerning the operation, he only made a formal report about it. During that conversation, Commanding Officer Inoue solemnly gave the accused Koichi the order of executing the prisoner which he had already decided.

The accused Koichi who was nothing but an army captain could not resist the strict order of Lieutenant General Inoue who was the supreme army commander of the South Sea Area. So long as the strict order was once given after the repeated refusal of Koichi, he could not say anything about the order. Gentlemen of the Commission, you are military personnel. I think you will fully understand these circumstances.

Then the accused Koichi left headquarters and went toward his unit. On the other hand, at headquarters, Commanding Officer Inoue told Staff Officer Yajima again that he gave the order of execution to Koichi and that Yajima had to escort Second Lieutenant Kaufman to Koror at once. Staff Officer Yajima immediately named the accused Onose, one of his subordinates. He relayed him the order of the commanding officer and also gave minute instructions concerning the escorting of the prisoner. Since the accused Tsuchiya was in turn to go on a trip, Onose selected him as his assistant. He further decided to take Gunzoku Shimojo, a member of the photography section, with him. They, the escorting party, left headquarters at once, received Second Lieutenant Kaufman at the Kempeitai which was in charge of the custody of the prisoner and arrived at the harbor to go to Koror.

They met the accused Koichi at the harbor and they went together that night to Koror. It was past midnight when they arrived at the Koichi Unit on Koror. They took their night meal and made specific decisions about the execution which was to be performed on the next day. Then Koichi telephoned to the accused Katsuyama and explained the circumstances under which he could not refuse the orders of Commanding Officer Inoue and told him to assemble with his men at the naval cemetery at 7 o'clock next morning.

At seven o'clock next morning, the accused Koichi told his men, who assembled at the scene of the execution by his order, the orders of the commanding general. He also told them that they had to boost their morale in order to follow the intention of the commanding officer. Second Lieutenant Kaufman was told by Second Lieutenant Onose that he was to be executed by the orders of the commanding general and his belongings were returned to him by the accused Tsuchiya. Then he was beheaded by the accused Katsuyama.

According to Japanese custom, the dead body of Second Lieutenant Kaufman was carefully buried and a grave post was erected on his grave. By the command of Koichi, all assembled persons prayed for the bliss of the dead Kaufman. That evening, Onose and Tsuchiya returned to the headquarters and reported to Staff Officer Yajima that the execution was

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*James P. Henry Lieut. USN*

"GG (3)"  
"PP (3)"

0333



completed and Shimojo returned the next evening.

This is the outline of this incident. From these facts, we can fully understand that this incident is entirely different from the other incident of killing prisoners of war and that the accused in this case did the best they could. This incident is not murder of a prisoner whatsoever. I think we can even say that the accused in this case gave the prisoner Second Lieutenant Kaufman what sympathy and benevolence they could.

In my main discourse, I shall argue first in behalf of each of the accused who are charged with murder in Charge I and then in behalf of the accused Koichi who is alleged to have violated the law and customs of war in Charge II.

#### MAIN DISCOURSE

##### Charge I - Murder.

##### 1. In behalf of the accused Koichi:

The Judge Advocate alleges the accused Koichi in Specification 1 of Charge I committed murder, and, in order to prove the allegation, introduced in this court the testimony of Witnesses Shimojo, Yajima and Doi, affidavits of each of the accused and the investigation report of the American Occupation Forces of Palau concerning the excavation of the cemetery. This evidence disclosed the facts that the accused Koichi, in accordance with the orders of Lieutenant General Inoue, ordered his co-defendant Katsuyama to execute a prisoner, Second Lieutenant Kaufman.

I do not at all intend to dispute the facts which the Judge Advocate tried to prove. However, I think it is the most important issue for judging the criminal responsibility of the accused Koichi to find with what attitude the accused Koichi participated in the execution of the prisoner in this case and how he received the orders of Lieutenant General Inoue. Examining the evidence, I would like to continue my argument.

In the first place, the accused Koichi opposed the execution of the prisoner from the time he first heard of it. He stated his opposition to Lieutenant Colonel Doi, his superior officer, and asked him to pass his opposition on to headquarters. Headquarters was informed of this opinion of Koichi.

Let us review these facts according to evidence introduced in this court. When the accused Koichi knew of the plan of execution of the prisoner for the first time, by the first telephone call from Lieutenant Colonel Doi, he firmly expressed his opposition. This point was made clear by the testimony of the accused Koichi, himself, and also by his statement. Besides the prosecution's witness, Lieutenant Colonel Doi, corroborated this in his testimony when he stated, "I said to Koichi, 'Headquarters told me to send a prisoner to Koror to be executed in order to bolster the morale of the anti-aircraft unit. But I think that your

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*James P. Kenny* *Lieut. USA*

"GG (4)"  
"FF (4)"

0334



morale is high as you shot down a plane. So I think it is unnecessary to do such a thing. What do you think of it?' Koichi answered that he was of the same opinion."

Through the above cited conversation between Doi and Koichi, the accused Koichi knew for the first time the plan to execute the prisoner in this case. Even after that, Doi and Koichi talked several times, and every time they had a conversation, Koichi maintained his opposition to that execution.

This opinion of Koichi was made known to headquarters before the execution. This fact is clear by the following evidence:

- "Q. Did you tell the commanding general that Koichi also opposed it?  
A. As the commanding general intended to give the order to Koichi, it was my duty to tell it to the commanding general. I do not remember whether I said the Koichi Unit or Captain Koichi, but I told him of Koichi's opposition.
- Q. Then what did Commanding General Inoue say about it?  
A. I do not remember.
- Q. When you telephoned to Doi, did Doi say that Koichi opposed the execution too?  
A. I am not certain whether it was in Doi's telephone conversation or Nakagawa's words, but I clearly recall the words that Koichi opposed the execution."

However, when this witness was reexamined by the Judge Advocate, he stated that he did not remember exactly if he relayed Koichi's opposition to the commanding general and whether it was before or after the execution that he knew that Koichi opposed the execution. Thus his testimony was very uncertain, so the accused recross-examined him, and he stated that he knew Koichi's opposition because he heard it from Doi. Then the accused asked further whether it was before the execution that he heard of Koichi's opposition from Doi, and he answered affirmatively that it was before the execution. Furthermore, witness for the defense Nakagawa testified that the first time he heard about the intention of the commanding general concerning the execution from Staff Officer Yajima was two or three days prior to the time when the Commanding General Inoue ordered Koichi to carry out the execution. The same witness Nakagawa then testified that he heard about Koichi's opinion from staff officer Yajima two or three days before the execution.

Through the above interrogatories, I believe it is made clear that Koichi's opposition was made known to headquarters before the execution.

Let us consider next whether Koichi's opinion was made known to Inoue's headquarters before Inoue gave him the strict order of the execution. This point is not absolutely clear.

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*June 1. Henry Law. 012*

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But I believe that the testimony of Yajima that when he first relayed the intention of the commanding general to Lieutenant Colonel Doi, Lieutenant Colonel Doi opposed the execution, that he then reported Doi's opposition to Commanding General Inoue but that the commanding general had already given orders to Koichi is false in a good many respects. After the second investigation of the prisoner, witness Yajima reported its result to Lieutenant General Inoue. At that time he was told Inoue's intention of executing the prisoner, and he passed it on to Doi by telephone. Yajima knew through that telephone call that Doi opposed the execution, so he reported it to Lieutenant General Inoue. Then Lieutenant General Inoue told him that he had already ordered Koichi to execute the prisoner. ..This is Yajima's testimony. In other words, according to Yajima's testimony, Yajima was told by Commanding General Inoue that he intended to execute the prisoner, this intention was passed on to Doi, Doi's opposition was reported to Inoue by him and he was told by Inoue that he had directly ordered Koichi to do the execution -- this series of events took place on the day when Koichi went to headquarters, because witness Yajima testified it was several hours or half a day from the time he first telephoned to Doi 'till the commanding general directly ordered Koichi to do the execution. He later withdrew this testimony and stated that there was considerable time between them, but, anyway, I think it is correct that these events took place on the same day, because it is neither asserted nor proved that there was a conversation between Koichi and Inoue by telephone or other means before he went to the headquarters and directly received the order of executing the prisoner from Commanding General Inoue in his very presence. In short, the accused Koichi went to headquarters and received the order to execute the prisoner from the commanding general on the day when Commanding General Inoue first told Staff Officer Yajima that he had the intention of executing the prisoner.

However, prosecution's witness, Doi, testified when he was cross-examined by the accused:

"Q. How long was it (the second telephone call) after the first phone call?

A. I think it was two or three days after that, but this is my imagination. It was after I talked (to him) face to face."

He also testified to the direct examination of the Judge Advocate as follows:

"Q. What is the relation of time between the time you talked by telephone and the time you talked face to face?

A. I think there was about a day between them."

These two witnesses for the prosecution, namely Yajima and Doi, were between Koichi and Commanding General Inoue and played the part of intermediery in the execution of the prisoner in this case. For the accused Koichi, they are most important witnesses and are his superiors. However, their testimony was entirely irresponsible. In particular Yajima was a most important and responsible person in this case in that he was attending the Commanding General Inoue and that he kept liaison between

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*James P. Keary Lieut. USA*

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the commanding general and Lieutenant Colonel Doi concerning the execution of the prisoner in this case. It is he who should have known the truth of this incident. I can not guess whether he tried to evade his responsibility or if he was afraid to involve Lieutenant General Inoue in this case, but he gave very inconsistent testimony. From the testimony of the above witness, it is not as yet clear when Koichi's opinion was relayed to the commanding general, but it may be readily inferred that there was ample time for Koichi's opinion to have been relayed to the general prior to his direct ordering of Koichi to perform the execution.

Even if there should be doubt about this inference, this point may not be so important to Koichi himself, because it would be sufficient if Koichi believed that his opinion had been relayed to the commanding general and also because there are reasons to believe so.

Even when Koichi was relayed from Lieutenant Colonel Doi the general's order to have First Lieutenant Katsuyama execute the prisoner before Koichi left to report to Staff Officer Nakagawa at the division headquarters, Koichi intended to refuse the execution of the prisoner if there was a chance to do so when he appeared before the general. Therefore, Koichi called co-defendant Katsuyama and made sure of his opinion concerning the matter. This point is accounted for in detail in the testimony of Koichi and the statements of Koichi and Katsuyama. I believe that the members of the Commission have fully understood that Koichi's opinion was throughout in opposition to the execution.

At this point I find it necessary to explain why Koichi acceded to the orders of the general and had Katsuyama carry out the execution despite his being against it from the beginning.

As regards this point let us see what Koichi testified. He stated, "I reported to the division commander the condition of battle and damage. Just when I got to explain the damage sustained by the Katsuyama unit, I was asked by the division commander, 'How is the morale of the Katsuyama Unit?' I replied, 'It is excellent.' It seemed that the commander was still worried about the morale of the Katsuyama Unit and he said, 'The prisoner shot down by the Katsuyama Unit will be delivered to you, so have Katsuyama execute him in order to bolster the morale.' He further added, 'You will have the execution performed at the Katsuyama Unit when enemy planes are least numerous. Assemble as many men as you can and return the prisoner's belongings when you execute him.'" Then to the question by defense counsel, "Did you say anything to this?", Koichi replied, "My intention was to oppose it to the end. But when I was directly ordered by Lieutenant General Inoue, the Supreme Commander of Palau Group Force, I who was recently promoted a captain and who was regarded as a mere child by the general, could not oppose the order. Moreover, as I had known before this time that Commanding General Inoue was a man who would hardly change his decision once he had decided upon it, and since he had given the order knowing that we were opposed to it, I thought it was of no avail to oppose it, so I did not say anything." The same account is given in his statement.

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*James P. Kenney* *Lt Col USA*

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This evidence is sufficient to prove the circumstances under which the accused Koichi was compelled to accede to the orders of the commanding general, and I believe no further explanation is necessary to the members of the commission who are all officers.

Lastly, I shall discuss how the accused Koichi treated the prisoner Kaufman. I shall cite the testimony of Tanaka, Masao, witness for the defense. Tanaka was with the accused Koichi on the day of the execution and he was the witness that testified most clearly about the circumstances surrounding the scene of the execution. He testified, "When Commanding Officer Koichi came to the scene with the prisoner, all the men who were there, saluted him by the command of First Lieutenant Katsuyama. Then the commanding officer made a speech to all of the men. I do not recall the exact words but the speech was to the effect that the prisoner was to be executed by orders of the division commander, and that all of the men should bolster their morale because of it." Tanaka further testified, "Then commander Koichi said that it would be a pitiful thing to have the prisoner executed without letting him know, so he told Second Lieutenant Onose to tell the prisoner that he was to be executed by orders of the commanding general. So Second Lieutenant Onose read some written thing to the prisoner."

As regards the burial of the prisoner, witness Tanaka testified as follows, "The burial was conducted according to the ceremony held in Japan. Various offerings were made and then by the command of Koichi all offered a silent prayer and prayed for the repose of Kaufman's soul." Then Tanaka testified that he was ordered by Koichi to erect a grave marker, so Tanaka had his subordinates who had experience as carpenters make a cross on which he had the words "The grave of an American officer flyer" inscribed, and erected it.

Moreover, Koichi ordered witness Tanaka to plant some lawn grass on the grave and to clean it; and Koichi himself frequently visited this grave, after the execution. Koichi also advised Tanaka and Katsuyama to visit the grave.

The above points, besides being corroborated by the testimony of the accused Koichi and by his statement, have been also made clear from the report of the American occupation forces of Palau which was introduced into evidence in this court by the Judge Advocate. The accused Koichi did as best he could for the prisoner Kaufman.

In my foregoing argument, I have demonstrated and proved that the accused Koichi despite his being opposed to the execution had conducted it against his will unable to resist the stern order of the commanding general, and that when performing the execution he dealt with the prisoner warmly throughout and put forth the best possible effort.

The foregoing argument shows that the accused Koichi despite the fact that he had opposed the execution throughout was unable to resist the stern orders of the commanding general and had the accused Katsuyama carried out the execution and that Koichi had no opportunity to exercise any free

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*James P. Henry* *Legal Coun.*

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will in the matter nor did he exercise any whatsoever. Therefore, we firmly believe that the accused Koichi is not responsible for murder. But, if he should be found guilty, we ask you special consideration with regard to his situation and attitude and request your lenient judgment.

2. In behalf of the accused Katsuyama.

In specification 1 of Charge I the prosecution charged the accused Katsuyama with murder and to prove this the prosecution submitted to this court the same evidence as they did in the case of his co-defendant, Koichi. The fact that was made clear by these evidences was that the accused Katsuyama beheaded a prisoner, Second Lieutenant Kaufman, by order of his direct superior co-defendant, Koichi.

As the accused Katsuyama has already stated this fact, in his statement, I will not try to argue on this point. The points which I will endeavor to bring out in my argument for the accused Katsuyama will be about the same as those for the accused Koichi. The accused Katsuyama received the orders of Lieutenant General Inoue to execute the prisoner through Koichi. As I have already stated in my argument in behalf of the accused Koichi, the order of Commanding General Inoue was an irrevocable order commanding First Lieutenant Katsuyama to execute the prisoner. Therefore, the reason Katsuyama could not have refused the orders of the commanding general is for the same reason Koichi could not have refused the orders of the commanding general. Just before Koichi left for the headquarters, he called the accused Katsuyama by phone to come to him. There he was asked by Koichi, "Commanding General Inoue is saying, 'have First Lieutenant Katsuyama execute the prisoner to bolster the spirit of the Katsuyama Unit.' I am opposed to it, but what is your opinion?" To this Katsuyama replied that it should be definitely opposed. But, the accused Katsuyama received a phone call again from Koichi during mid-night of the next day and was told the reason why the orders of the commanding general could not be refused, and was further ordered to carry out the execution the next morning at 0700 at the Naval Cemetery.

The accused Katsuyama was ordered by his direct superior, Koichi, to do the execution, for it was an absolute order of Commanding General Inoue. Therefore, no longer could he have disobeyed the orders. The above facts were made very clear by the testimony of co-defendant Koichi and by the statements of Katsuyama and Koichi.

The accused Katsuyama beheaded prisoner Second Lieutenant Kaufman by order of Koichi and thus carried out the execution. He, with the accused Koichi, was only an instrument of Commanding General Inoue and did only as ordered and carried out the execution. Among the prosecution witnesses there is one witness who made many statements which we should take notice. This is Shimojo, Mitsuharu.

The witness, Shimojo testified that when he escorted the prisoner + the Koichi Unit, Katsuyama was there and that he ordered two or three non-commissioned officers to put the prisoner in the air-raid shelter and

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*James P. Henry* *Lieut USA*

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guard him closely. But the accused Katsuyama did not go to Koichi's headquarters the night the prisoner was brought there. He only received an order to execute by telephone from Koichi. Witness Shimojo could not even identify the accused Koichi and differentiate him from the accused Katsuyama in this court. I think it is not logical to have such witness testify in regard to Katsuyama. Therefore, the testimony of the witness Shimojo, as he himself had to recognize in the cross-examination, was purely his own imagination. The part played by the accused Katsuyama in the execution of prisoner Second Lieutenant Kaufman is only the fact that he beheaded Second Lieutenant Kaufman. Furthermore, Katsuyama only did the beheading because he was told by Koichi that it was an absolute order of Commanding General Inoue. The fact that this execution was carried out in the best way possible and the fact that they faced it with sympathy and benevolence toward the prisoner is as I have already stated in the argument in behalf of Koichi. I sincerely hope that the members of the commission grant a judgment of acquittal against the accused Katsuyama who acted mechanically under the absolute orders of the commanding general.

3. In behalf of the accused Onose.

Pointing out that the accused Onose took charge of escorting the prisoner and showed his co-defendant Katsuyama how to behead at the scene of the execution, the Judge Advocate alleges him to have committed murder in Charge I. Even if he actually did such acts, I believe it is utterly impermissible to allege he has a grave criminal responsibility of murder. With reference to the evidence, I shall constitute my argument.

The accused Onose was an officer attached to the Intelligence Section of the 14th Division Headquarters, and the chief of the section was Staff Officer Yajima. Onose was ordered by Yajima to escort the prisoner to Koror and confirm the execution. This point is clear from the testimony of witness Yajima and Fatanabe.

Staff Officer Yajima besides giving this order gave minute instructions to Onose, namely: (1) To obtain Second Lieutenant Kaufman at the Kempeitai and escort him to Koror without fail. (2) To confirm the execution of Second Lieutenant Kaufman. (3) Return Second Lieutenant Kaufman's belongings and let him have them at the time of execution. Then Staff Officer Yajima handed the belongings of Second Lieutenant Kaufman which he was then keeping to Onose. Yajima also telephoned the Kempeitai to deliver Second Lieutenant Kaufman to Onose.

When Onose received this order from Yajima, he appointed Tsuchiya, whose turn it was to go on a trip, as his assistant. He also named Gunzoku Shimojo, a photographer, as his assistant, to take pictures as evidence to confirm the execution. It is not clear whether the appointment of Tsuchiya and Shimojo was made in accordance with Onose's intention or Yajima's naming, as witness Yajima testified, "I am not sure whether I directly ordered them to go or I named them by Onose's advice, but I ordered Sergeant Major Tsuchiya and Gunzoku Shimojo to go in order to confirm the execution." Though it is not certain whether Yajima himself

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*John A. Kenny* *Gen. 012*

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named Tsuchiya and Shimojo, it can easily be imagined from his testimony that he at least ordered Onose to take a non-commissioned officer and a photographer.

Then why did Yajima select Onose to go? He testified that he did this because he was ordered by Commanding General Inoue to have an officer in the escort party. He answered on cross-examination by the accused that he thought Onose was an appropriate officer to do this among his officers. He further testified that this duty did not necessarily require the accused Onose but that any officer would have done in his place. The witness Tatenabe in reply to the question why Onose was selected testified, "Onose was selected because the nature of his duty permitted him to be away two or three days." From this testimony, we know that the accused Onose's duty of escorting the prisoner was given to him by the order of Staff Officer Yajima and that it was really by accidental chance that he was chosen. Therefore, it is clear that the accused Onose did not volunteer to take charge of escorting the prisoner.

I would like to argue next about the second point which the Judge Advocate maintains—that is that the accused Onose showed Katsuyama how to behead at the scene of the execution.

As to this point, the accused Onose states in his affidavit that he cautioned First Lieutenant Katsuyama because Katsuyama had assumed an incorrect stance. Tsuchiya testified as follows: "Just before the execution, when First Lieutenant Katsuyama held up his sword, Gunzoku Shimojo tried to take a picture. But Katsuyama was at a wrong place for the direction of light to take a picture. Katsuyama changed his position, so he came to stand on the wrong footing. So Onose told him that he was on the wrong footing." Therefore the Judge Advocate's so-called statement in which he maintains that Onose showed Katsuyama "how to cut" means nothing but the fact that Onose gave advice about Katsuyama's footing in accordance with the change of Katsuyama's position caused in order that a picture might be taken. Prosecution's witness Shimojo testified that Onose showed Katsuyama where to step and how to hold a sword aloft and how to strike with a sword. But is it possible that a man who can use a sword should be taught how to hold it aloft and how to strike with it? I can not believe that the last part of this Shimojo's testimony is true.

But the judge advocate might maintain that it makes no difference that Onose showed him how to behead, or whether he cautioned Katsuyama's footing or taught him how to use a sword.

In the case of the 41st Naval Guards, which was tried in this court before, to show how to behead was a matter in question. But I wonder how such an act should cause a man's death. So far as a sword is used to kill a person, the skill in using the sword will have little influence upon result of death of the victim, still less when the victim has no means resistance. I have more than little doubt about the assertion of the Judge Advocate that even such a slight act should be charged as murder.

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*James P. Kenny* Lieut. USA

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The accused Onose gave Second Lieutenant Kaufman what little food and water to drink he had when he left Babelthuap. He spoke to him in poor English and tried to assuage his lonesomeness. Thus he had a great deal of consideration for Kaufman. Just before the execution he told Kaufman why he had to be executed. These kindnesses of Onose shown to the prisoner are described in detail in his own affidavit.

Probably Second Lieutenant Kaufman would have had no hatred toward the accused Onose when he was going to be executed. I should rather imagine that Kaufman was thankful for the kindness of the accused when he was told by Onose the reason for his execution, for he would know that the strings of his fate were pulled at such a high place as the accused could not reach.

I conclude that the accused Onose's acts, namely escorting the prisoner and showing Katsuyama how to behave, have no causal relation with the death of Second Lieutenant Kaufman. I request that he should be found not guilty.

4. In behalf of the accused Tsuchiya.

The prosecution charged Tsuchiya with murder because of the single fact that he escorted the prisoner Second Lieutenant Kaufman from Babelthuap to the Koichi Unit on Koror Island. It is obvious that the fact that he escorted the prisoner, if considered independently, does not constitute murder. It is believed, however, the accused Tsuchiya, who was assigned to escort the prisoner, is also indicted from the view that he had contributed to some extent to the constitution of murder as was contended by the Judge Advocate at the conclusion of his opening statement.

Let us, by reflecting upon the various pieces of evidence, make a brief review of the actions of the accused Tsuchiya in the present incident.

I shall, first of all, begin by discussing the circumstances under which the accused Tsuchiya was selected as the assistant of co-defendant Onose.

At the time of the incident, there were three non-commissioned officers including Tsuchiya, attached to the intelligence section. It was the only comfort and relief for these men living in the jungle had to go out for a trip. When the execution of the prisoner was decided upon at the division headquarters and he was to be escorted to Koror, it so happened that it was the accused Tsuchiya's turn to go on a trip. When co-defendant Onose was instructed by Staff Officer Yajima to take one non-commissioned officer among the three attached to the intelligence section the person that came to Onose's mind was Sergeant Major Tsuchiya whose turn it was to go. At this time the accused Tsuchiya was in poor health suffering from malnutrition. But as Tsuchiya hoped to make some recovery in health by availing himself of this opportunity and as this trip required merely accompanying Onose, Tsuchiya accepted this duty without

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*James P. Harvey* *Lead. USA*

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giving much thought to it. The above facts are evident from the testimony of the accused Tsuchiya and witness Wetansbe and also from the statements of the accused Tsuchiya and Onose. When Tsuchiya accepted this trip, he did not know why the prisoner was going to be escorted to Koror. Then, with Onose and Shimojo, he went to report to Staff Officer Yajima. Representing the three, Onose reported. And here for the first time, the accused Tsuchiya learned that the trip to Koror was for the purpose of escorting a prisoner who was to be executed. This was after he had been issued the order to go to Koror.

To the question, "Did you still want to go to Koror after you had learned that the prisoner was going to be executed?" his answer was, "I got a very unpleasant feeling, but since it was after the order had been obeyed," and he explained his state of mind at that time. Can we recognize any criminal intent to commit murder on the part of the accused Tsuchiya? The duty of the accused Tsuchiya was only to escort the prisoner, Second Lieutenant Kaufman, to Koror.

Moreover, the person in charge of escorting the prisoner was Second Lieutenant Onose and not the accused Tsuchiya. The duty of the accused Tsuchiya was merely to assist Second Lieutenant Onose. Witness for the prosecution Yajima in reply to the question, "What was Tsuchiya?" testified, "He was the person to assist Onose in his work."

In the outset of this section, I stated that the reason for an act of escorting to be chargeable under the guise of murder, was because it could be thought that the act contributed more or less to the death of a person. In the present case, since Onose was in charge of escorting the prisoner, the charge against Onose alone should be sufficient if the charge of criminal responsibility is intended against this act on the ground that this act of escorting contributed to the crime of murder. To extend this responsibility to the accused Tsuchiya who was only an assistant is obviously going too far.

So long as you judge Tsuchiya by the evidence produced in this court, I believe it is impossible to place on Tsuchiya such grave criminal responsibility as murder for his act. According to the assertion of the Judge Advocate, a man who did an act in relation to the execution in cognizance that a person is going to be executed would be condemned for murder no matter how trifling the act may be. When we consider this incident in the above light, I believe there are many persons who did acts equal or greater than those of Tsuchiya.

Obviously, we must say that in indicting Tsuchiya all fairness has been lost.

It has been definitely proved that the present incident occurred because of the oppressive orders of the higher authorities.

We who ask of you a fair and impartial trial, cannot in any way yield to the practice of imposing such a grave liability as murder on a person such as the accused Tsuchiya, an unimportant non-commissioned officer for

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*James A. Henry* *Lieut. USA*

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such a minor act. Even the Judge Advocate in his opening argument could not maintain that he proved beyond reasonable doubt that the accused Tsuchiya was guilty.

In order that Tsuchiya be given the same status as persons who had done acts equal or greater in degree than Tsuchiya, but have not been indicted, I ask that a judgment of not guilty be granted Tsuchiya.

Charge II - Violation of the law and customs of war.

The Judge Advocate charges the accused Koichi with violation of the law and customs of war. In Specification 1 of Charge II, he alleges that the accused Koichi disregarded and failed to discharge his duty to control the operations of members under his command namely, Katsuyama, Onose and Tsuchiya and others unknown, permitting them to behold a prisoner, Second Lieutenant Kaufman, and, in Specification 2 of Charge II, that he disregarded and failed to discharge his duty to protect the prisoner then held captive.

In behalf of the accused Koichi, I would like to argue as to whether he had a duty to control and supervise Katsuyama and other two persons and whether he had a duty to protect the prisoner of war.

The relation between the accused Koichi and Katsuyama in regard to orders is too clear to argue about. However, it is disputable as to whether the accused Koichi had a duty to control his subordinate Katsuyama in connection with the execution of the prisoner. The accused Koichi received an order from Lieutenant General Inoue concerning the prisoner in this case, "Have First Lieutenant Katsuyama execute the prisoner." Therefore, that the accused Koichi had 1st Lieutenant <sup>Katsuyama</sup> Koichi execute the prisoner only means that he relayed Lieutenant General Inoue's intentions to Katsuyama. So the execution of the prisoner performed by First Lieutenant Katsuyama is not Koichi's disregarding and failing to discharge his duty to control Katsuyama. The responsibility to control the execution of the prisoner in this case should be pressed against Lieutenant General Inoue, who should be made an accused, but there is no ground on which the accused Koichi should be charged with that.

Next, the accused Onose and Tsuchiya were not under control and supervision of the accused Koichi. They were attached to the Intelligence Section of the 14th Division Headquarters and were under control and supervision of Staff Officer Yajima. To control Onose and Tsuchiya, who were not under the supervision of the accused Koichi, is outside the scope of Koichi's duty. It was Staff Officer Yajima who gave orders to Onose, and, according to orders of Yajima, Onose gave orders to Tsuchiya. These facts had no relation whatsoever with the intent of the accused Koichi. They only were present at the scene of execution with Koichi.

On the above mentioned grounds, I am convinced that the accused Koichi is of Specification 1 of Charge II not guilty.

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*James P. Keary* *1st Lt USA*

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0344

Let us consider his duty to protect the prisoner alleged in Specification 2 of Charge II. A duty to protect should be based upon some legal grounds; the duty to protect a prisoner should be also. Prosecution's witness Doi testified that Army Operation Handbook provides that when a prisoner is captured he should be sent to the headquarters. This means that the Doi Unit has no duty to have or keep a prisoner in custody. Neither did the anti-aircraft unit of the accused Koichi have any duty to protect a prisoner. Then had the accused Koichi a duty to protect a prisoner in this case?

The accused Koichi did not receive any orders or directions to protect the prisoner. The order which he received from Lieutenant General Inoue was to execute the prisoner, not to protect the prisoner. Protection and killing are contrary conceptions. In fine we can not find any legal duty on the part of the accused Koichi to protect the prisoner in this case.

The prisoner was escorted to the accused Koichi to be executed, and Koichi was not told to protect the prisoner. It is entirely meaningless to demand that the accused Koichi should have protected the prisoner. If this prisoner had been in custody of the Koichi Unit or if the purpose of escorting the prisoner from the headquarters had not been to execute him and if the execution had been performed by Koichi's design, there would have been considerable grounds on which to charge Koichi's disregarding and failing to discharge his duty of protecting the prisoner. In this case, however, Koichi received a prisoner who it had already been decided was to be executed. How can you expect him to protect the prisoner?

In this case it was Lieutenant General Inoue who should and could have protected the prisoner, Second Lieutenant Kaufman, and the accused Koichi could not protect the prisoner even though he desired to do so. This point can easily be understood from the facts that the accused Koichi could not resist the orders of Lieutenant General Inoue to execute the prisoner though he again and again opposed the execution.

If it is so, no one can demand the duty of protection of the accused Koichi who could not protect even though he desired to protect. This is to request the utterly impossible of Koichi, and it is needless to say that the accused Koichi is not guilty.

The Judge Advocate observes the killing of a prisoner from its positive side in the first charge and charges Koichi with murder, while he observes the same fact from the opposite side in these specifications, and charges him with neglect of duty. He is evidently making two charges on the basis of the same single fact. If the first charge be sustained against the accused Koichi, how can Specification 2 of Charge II be concluded? In the same way, to sustain the second charge will preclude proving the first charge. On the above ground, I request you to find that the accused Koichi is of Specification 2 of Charge II not guilty.

Respectfully,

KARASAWA, Takami.

I hereby certify the above, consisting of fifteen (15) typewritten pages, to be a true and complete translation of the original argument written in Japanese, to the best of my ability.

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*James P. Kenney* *Lieut. USA*

EUGENE E. KERRICK  
Lieutenant, U.S. Naval Reserve,  
Interpreter.

"GC (15)"

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CLOSING ARGUMENT FOR THE DEFENSE

of

KOICHI, Hiroe, et al

Delivered by Commander Martin E. Carlson, USNR, December 5, 1947.

The defense of Koichi, Hiroe and three others accused of the murder of Second Lieutenant Wallace F. Kaufman, U. S. Army, should not be the case of Koichi, et al but according to the evidence introduced by the prosecution and corroborated by the defense this case should be the case of Lieutenant General Inoue.

These four who are here accused of the murder should not be the accused. They should all be prosecution witnesses against Lieutenant General Inoue.

Section 360, Naval Courts and Boards sets forth excerpts from the Canons of Ethics of the American Bar Association for information and guidance.

We quote from this section: "The primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done."

The judge advocates have tried to see that justice is done. They have by their own witnesses proved that it was Lieutenant General Inoue who ordered the execution. Lieutenant General Inoue personally ordered Captain Koichi to have Katsuyama execute the prisoner as soon as he was delivered to Koror by Lieutenant Onose. Lieutenant General Inoue, the Commanding General of the 14th Division, Imperial Japanese Army, further stated that he was having the prisoner sent from Division Headquarters under escort of an officer whose duty it was to see that the prisoner arrived at Koror safely and alive. Lieutenant General Inoue even gave such detailed instructions and orders that Kaufman must have all his personal belongings such as ring, watch, money and identification card.

All this the prosecution has proved by their own witnesses.

Our only question then is and it should be the only question of the Commission: What of Lieutenant General Inoue? Why isn't he on trial instead of these four accused?

In view of all the evidence presented in this case, that is the material issue and that is the question which the prosecution have put in issue by their own prosecution witnesses and which we have corroborated.

This Commission is not authorized upon its own motion to direct the judge advocates to withdraw the charges against these four accused.

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*James I. Henry Lieut. USN*

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Section 18 of Naval Courts and Boards reads: "A nolle prosequi (or withdrawal or discontinuance) is an entry made on the record by which the prosecutor declares that he will proceed no further."

In order that justice may be done in this case the judge advocates should enter a nolle prosequi at this time as to these four "little men."

Or are these four "little men" to be found guilty of murder and the big men, the real criminal, escape punishment? Is there one law for a general and another for enlisted men and junior officers?

This is America and the laws of America are enforced as against all persons be they rich or poor, powerful or weak. The procedural rights of an accused person apply to any person who is accused of a crime by the Federal Government.

But the judge advocates may say we are not accusing these four little men with a violation of American law. These four accused are charged with having violated the law and customs of war, which is international law.

I would like to call your attention to what Mr. Justice Murphy said in his dissenting opinion in the Yamashita case, 66 S.Ct. 340:

"The Fifth Amendment guarantee of due process of law applies to 'any person' who is accused of a crime by the Federal Government or any of its agencies. No exception is made as to those who are accused of war crimes or as to those who possess the status of an enemy belligerent. Indeed, such an exception would be contrary to the whole philosophy of human rights which makes the Constitution the great living document that it is. The immutable rights of the individual, including those secured by the due process clause of the Fifth Amendment, belong not alone to the members of those nations that excel on the battlefield or that subscribe to the democratic ideology. They belong to every person in the world, victor or vanquished, whatever may be his race, color, or beliefs. They rise above any status of belligerency or outlawry. They survive any popular passion or frenzy of the moment. No court or legislature or executive, not even the mightiest army in the world, can ever destroy them. Such is the universal and indestructible nature of the rights which the due process clause of the Fifth Amendment recognizes and protects when life or liberty is threatened by virtue of the authority of the United States."

But why are these four "little men", after having been demobilized more than two years ago, suddenly arrested without warrant, and brought to Guam from Tokyo, without any extradition papers and in violation of due process? What military necessity or other emergency demands their trial while the general ordered the execution still remains untried?

But let us look at the evidence as it affects these four accused.

I shall consider first of all the four statements alleged by the judge advocates to be the confessions of each of the accused because these statements are not confessions and they should not have been admitted into

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*James P. Henry* *June 1952*

"HH (2)"

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evidence as confessions.

All four of these accused were regularly demobilized and after living as civilians for two years they were each, one by one, seized without warrant of arrest and thrown into Sugamo Prison. Then without extradition papers they are sent by the U. S. Army on demand of the U. S. Navy to Guam. Here these four persons are all placed in solitary confinement. No charges have as yet been preferred against any of them.

One day they are called before a commander, U. S. Navy, and asked to sign and swear to a statement which in effect reads that the statements which these persons were required to make while in custody of the U. S. Army at Tokyo are true. The administration of this oath by Commander Ogden involved a compulsion. Still no charges are preferred against them although they are held in solitary confinement.

Then on November 10, 1947, each of these persons is for the first time made aware of what and why he was brought to Guam.

In 1833 in the case of *Rex v Davis*, 6 C. & P. 178, Gurney, B. it was held that "(examination as witness before magistrate; excluded; 'if after having been a witness you make her a prisoner, nothing of what was then said can be admitted as evidence')" cited in footnote 1 to Sec. 850 on p. 304 of Volume III of Wigmore on Evidence "Testimonial Communication."

The investigator of war crimes, Commander Ogden, required that these four accused swear that their statements written in Tokyo were true. There was no free choice on the part of any of these accused. They all signed the oath Commander Ogden had prepared for them.

In footnote 4, Section 849 Confessions: During Legal Proceedings the rule is laid down: "1824, Starkie, Evid. II, 38 "The prisoner is not to be examined upon oath, for this would be a species of duress, and a violation of the maxim that no one is bound to criminate himself."

I maintain that all Japanese when suspected wrongly of crime and questioned about it are apt, particularly when the circumstances are strongly inculpatory and demand explanation, to make the first explanation that occurs to them. The judge advocates proved this when they introduced into evidence the opinions of U. S. Army investigators of the cause of the death of Kaufman. False stories, of how Kaufman met his death, were invented by certain persons attached to the 14th Division Headquarters of the Imperial Japanese Army. The American investigators believed these false stories, and officially notified the next of kin of Kaufman. Evidently these investigators were not acquainted with Selden's Principle of Mental Agitation. I shall quote the following passage found on p. 281 section 845, Testimonial Communication, Confessions: During Legal Proceedings, Vol. 3, Wigmore on Evidence: "1854, Selden, J., dissenting in *Hendrickson v. People*, 10 N.Y. 33: "The mental disturbance produced by a direct accusation, or even a consciousness of being suspected of crime, is always great, and in many cases insurmountable. The foundation of all

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*James C. Henry* *Lent. 052*

"HH (3)"

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reliance upon human testimony is that moral sentiment which universally leads men, when not under some strong counteracting influence, to tell the truth. This sentiment is sufficiently powerful to resist a trifling motive, 'it will not withstand the fear of conviction for crime. Hence, the moment that fear seizes the mind, the basis of all reliance upon its manifestation is gone...The mind, confused and agitated by the apprehension of danger, cannot reason with coolness, and it resorts to falsehood when truth would be safer, and is hurried into acknowledgments which the facts do not warrant. Neither false statements nor confessions, therefore, afford any certain evidence of guilt when made under the excitement of an impending prosecution for crime."

In the last half of 1800 the English rule was that statements are deemed not voluntary and therefore inadmissible when they have been made in answer to questions put while in custody. In Section 844 of Vol. III, Wigmore on Evidence, the case of Rex v. Gavin, 15 Cox Cr. 656 is cited: "When a prisoner is in custody, the police have no right to ask him questions...A prisoner's mouth is closed after he is once given in charge, and he ought not to be asked anything."

"In section 847 of Vol. III, Wigmore on Evidence we read: "But about the same time as R v. Johnston (1864) the second form of rule made its appearance in England; i.e., any answers obtained by questions put by an officer to a person in custody were excluded; this rule was by most judges enforced in England, and (perhaps) in Canada from that time onwards." Citing footnote 10, 1905, R v. Knight & Thayer, 20 Cox Cr. 711 "Then a police officer has taken anyone into custody,----he ought not to question the prisoner...I am not aware of any distinct rule of evidence that if such improper questions are asked the answers to them are inadmissible, but ....in my opinion that is the right course to pursue."

1913, U.S. v. Frenn, N.Sc., 10 D.L.R. 452 (the practice of detectives interrogating a prisoner when in jail, and when no one else is present at the interview, should be discouraged.)"  
New Brunswick: 1924, R v. Goodwin (1924) 2 D.L.R. 362 (answers of a boy made at the police station; "the examination virtually partook of the nature of a cross-examination"; held inadmissible, after an elaborate argument by Powell, K.C. in a sensible opinion by McKeown, C.J.)"  
1931, R v. Price, 3 D.L.R. 155 (statements to a police officer, when under arrest, and no caution given, though a caution had been given by another officer at a prior interview, excluded)"  
1933 Quebec: Chepdeleine v. The King, (1935) 1. D.L.R. 805 (murder; the accused woman was daily interviewed by the police for nine days, when under arrest, without counsel; excluded.)"

All four of these persons were asked on Guam to swear to their statements made in Tokyo while held in custody. The theory as to confessions upon oath is that the oath necessarily involves a compulsion. This theory, "ignores the choice which the witness has to use his privilege and decline to answer, by this theory, the mere fact of the administration of the oath, in spite of the giving of a caution, excludes his statements." Footnote 3

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*James P. Kennedy June 1952*

"HH (4)"

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to Section 850, "Such seems to be the notion in the following cases of the preceding list: Smith's (introducing the doctrine), Mercer's, Tucker v. Perrow, Anon., and perhaps Owens before Gurney, B.; see its theory fully stated in the quotation from Jackson v. State, ante paragraph 843."

Wigmore on Evidence, Vol. 3, Section 850, Testimonial Communication: Confessions: During Legal Proceedings.

We cite the ruling laid down in Jackson v. State, 59 Miss. 312 found in Section 843, Testimonial Communication, Vol. III, Wigmore on Evidence, p. 285: "1879, Chalmers J., in Jackson v. State, 59 Miss 312, rejecting an examination as witness after a caution: The principle is that no statement made upon oath in a judicial investigation of a crime can ever be used against the party making it, in a prosecution of himself for the same crime; because the fact that he is under oath of itself operates as a compulsion upon him to tell the truth and the whole truth, and his statement, therefore, cannot be regarded as free and voluntary."

The Illinois case decided in 1905, Hoek v. People, 219 Ill 265, 76 N.E. 356; and People v. Buckmunster (1916) 274 Ill. 435 113 N.E. 713, both hold (confession made to the State's Attorney, excluded without pointing out any specific defect) footnote 1 Sec. 851 Vol. III, Wigmore on Evidence page 312: We cite these further cases:

"Federal: 1916 U.S. v. Rivera, 8 P.R. Fed. 401 (statements to postal superior without warning, but not under arrest excluded.)"

"1924, Zi ng Seng Wen v. U.S. 266 U.S. 1, 69 L. Ed. 131, 45 Sup. 1 (murder during 12 days of detention, the accused, who was ill was constantly interrogated; finally, he made a full confession; excluded, on the ground that there was compulsion in fact."

"1927, Charley Hee v. U.S. 1st C.C.A. 19 Fed. 2d 335 (interrogation of a Chinese immigrant); "

"1929, Davis v. U.S. 9th C.C.A., 32 Fed. 2d 860 (confession after being taken at midnight to the morgue to view the body; "I want you to give me a complete confession, " excluded;"

"California: 1910, People v. Loper, 159 Calif. 6 112 Par 720 (the "sweating process"; confession excluded."

"1911 People v. Borello, 161 Calif. 367, 119 Par 500 (An ordinary confession obtained by interrogation, peculiar only in the amount of profanity used by the sheriff; excluded)"

Colorado; 1923, Turner v People 73 Colo. 184, 214 Par 390 (Confession obtained by police interrogation, not admissible."

Columbia (Dist.): 1924, Perrygo v U.S. 55 D.C.A. 80, 2 Fed. 2d 181 (murder; a boy of 17, low in mentality, questioned continuously while ill, for an hour and a half, by four or five officers; confession excluded.)

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*James P. Kenny* Sec. U.S.K.

"HH (5)"

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Illinois, 1920, People v Vinci, 295 Ill. 419 129 N.E. 193 (answers made in response to continuous questioning in the State's Attorney's office excluded on the facts.)"

Iowa: 1922 State v Thomas, 193 Iowa 1004, 188 N.W. 689 (rape; confession to the sheriff under a "four-hour grilling," excluded.)"

1937, State v Henry, 223 Ia. 1241, 275 N.W. 10, 18 (questioning by the sheriff from 11 p.m. 'till noon next day.)"

Michigan: 1917 People v Brockett, 195 Michigan 169, 161 N.W. 991 (confession made after lengthy interrogation and while detained two nights in a cell without a bed, excluded)

1929, People v Cavanaugh, 246 Mich. 680, 225 N.W. 501 (rape)"

Tenn: 1937, Rounds v State, 171 Tenn. 511, 106 S.W. 2d 212 (murder; confession made after four days semi-continuous interrogation by a relay of police officers, excluded)"

Wisconsin: 1922, Lang v State, 178 Wise 114, 189 N.W. 558 (confession excluded on fact.)"

1943, Burns v District of Columbia, D.C. Mun. App. 34 Att. 2d 714 (vag-rancy; holding admissions made to officers improperly received, following McNabb v U.S.

Texas: 1944, Summers v State, 147 Tex. Cl. 519, 182 S.W. 2d 720, 722 (Krueger, J. : "We think the facts are sufficient to have created the impression on the mind of the appellant that he was under arrest. Hence the evidence should have been excluded.")

Federal: 1940 Chambers v State of Florida, 309 U.S. 227, 60 Sup. 472, 84 L. Ed. 716 (confession obtained by protracted questioning, held illegal, in the light of surrounding circumstances, citing Brown v State of Miss.

1943: Anderson v U.S., 318 U.S. 350, 63 Sup. 599, 87 L. Ed. 829 (incriminating statements procured as the result of prolonged interrogation excluded.)

1943, Gr. v U.S. 9th C.C.A., 136 Fed. 2d 878 (agent of German Government and failing to register as such an agent, 40 Stat. 226, 22 U.S.C.A. Sec. 233; length of time defendant questioned considered in conjunction with other circumstances rendered confession, inadmissible.)

1943 Runnels v U.S. 9th C.C.A. 138 Fed. 2d 346 (murder; admissions, procured by repeated questionings for a period of 17 days, excluded; McNabb v U.S. and Anderson v U.S. cited.)

1944: Ashcroft v State of Tenn., 322 U.S. 143, 64 Sup. 921 88 L. Ed. 1192 (confession in form of unsigned statement obtained after 36 hours of questioning without sleep or rest by relays of officers, experienced in-

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*James P. Kenny* *Gen. Coun.*

"HH (6)"

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investigators, and highly trained lawyers, excluded;")

1946 Ashcroft v U.S. 90 U.S. 576, 66 Sup. 544, 90 L Ed. 576.)

1944 U.S. v. Ruhl, D.C.D. Mo. 55 Fed. Suppl. 641 (Mitchell v U.S. supra followed.)

1945, Melinski v People of State of N.Y. 324 U.S. 401, 89 L. Ed. 1029, 65 Sup. 781 (murder; defendant was stripped and kept naked for several hours; he was not allowed to interview a lawyer, though he had asked to see one; use of confession obtained under these circumstances, among others, held denial of due process clause of 14th Amendment.)

Columbia (District): 1943, Mitchell v U.S. 78 D.C. Appl. 171, 138 Fed. 2d 426 (housebreaking and larceny; confession obtained after arrest and about a week before arraignment was held inadmissible; McNabb v U.S., Note 2, supra relied upon; reversed U.S. v Mitchell 32 U.S. 65, 64 Sup. 896, 88 L. Ed. 1140, supra)

Florida: 1945 Williams v State of Fla., 22 So. 2d 821 (murder; continuous questioning, etc., involuntary.)

North Carolina: 1944 State v Biggs, 224 N.C. 23, 29 S.E. 2d 121 (murder; confessions obtained after prolonged questioning of defendants by officers.)

The McNabb Case not only excluded the confession but Mr. Justice Frankfurter criticized the investigating and arresting officers. I cite the case as it is set forth under section 351, page 54, Supplement to Wigmore on Evidence, Vol. 3.,

Federal: 1943 McNabb v U.S., 318 U.S. 382, 63 Sup. 608, 87 L. Ed. 819 (Murder of an officer of the Alcohol Tax Unit of the Bureau of Internal Revenue engaged in the performance of his official duties, 18 U.S. C.A. 253; after arrest of defendants but prior to their being brought before a committing officer, they were put in a cell for fourteen hours; after which they were subjected to unremitting questioning for two days and denied aid of friends or benefit of counsel; incriminating statements, excluded; Frankfurter, J., (Sup.) 613: Quite apart from the Constitution, therefore, we are constrained to hold that the evidence elicited from the petitioners in the circumstances disclosed here must be excluded. For in their treatment of the petitioners the arresting officers assumed functions which Congress has explicitly denied them. They subjected the accused to the pressures of a procedure which is wholly incompatible with the vital but very restricted duties of the investigating and arresting officers of the Government and which tends to undermine the integrity of the criminal proceeding. Congress has explicitly commanded that 'It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States Commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or

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*James A. Kennedy* *Asst. U.S.*

"HH (7)"

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taking bail for trial....' 18 U.S.C.A. 599. Similarly, the Act of June 18, 1934, c. 595, 48 Stat. 1008, ...., 5 U.S.C.A. 300 e authorizing officers of the Federal Bureau of Investigation to make arrests, requires that 'the person arrested shall be immediately taken before a committing officer.' Compare also the Act of March 1, 1879, C. 125, 20 Stat. 327, 341, ...18 U.S.C.A. 593, which provides that when arrests are made of persons in the act of operating an illicit distillery, the arrested persons shall be taken forthwith before some judicial officer residing in the County where the arrests were made, or if none, in the County nearest to the place of arrest. Similar legislation, requiring that arrested persons be promptly taken before a committing authority, appears on the statute books of nearly all the states."

This opinion was interpreted by many courts to mean that in cases originating in Federal Courts a confession obtained from the accused prior to being brought before a committing officer was illegal. Moreover, many State Courts by analogy employed the rule thus laid down as a criterion in determining the legality of a confession under State practice."

Yet in spite of our objections and the many citations we gave in support of our objection to the introduction of these statements, the statements were admitted in evidence and will undoubtedly be considered by the Commission in arriving at its findings.

We object specifically to certain statements which if not explained are damaging to each of the accused. The statements were prepared at the command of prosecution investigators with the idea that these statements would be damaging to the affiants and would convict the affiant.

So in the statement said to be the statement of Onose, we find the following sentence: "The footing of Lieutenant Katsuyama was bad so I cautioned him about it."

This one sentence in Onose's statement is the reason he is charged with murder. The judge advocates have stated that this is all that is necessary to convict Onose of the charge of murder. Do they try to prove intent? No, only that Onose cautioned Katsuyama about his footing at the scene of the execution.

The judge advocates know that even if they have been able to get into evidence a coerced statement that they must corroborate this one point and they will conveniently forget about intent.

So their star witness, Shimojo the gunsoku, is brought to the witness stand. It is Shimojo who was ordered to go along from Division Headquarters and take pictures of the execution and he did take pictures, five in all.

But Shimojo couldn't even identify Katsuyama or Koichi. He had been told they were both accused and yet he couldn't identify them. He testified, "The one with the glasses on is Captain Koichi; the one next to him First Lieutenant Katsuyama." All he knew was names and the judge advocate

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*James P. Kennedy* Lieut. USA

"HH (8)"

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if you will remember tried to coach him by telling him if he couldn't see he should step down from the witness stand and go closer. There was nothing wrong with Shimojo's eyesight; it was his hearing that was defective as he testified. Shimojo just didn't know either Katsuyama or Koichi. His testimony that afternoon before and after the recess is very interesting.

Shimojo was a poor witness for the prosecution because he didn't even know whether Koichi and Katsuyama were at the scene of the execution before or after he arrived. Shimojo said: "When I first came to the scene I didn't notice them."

The judge advocate must get Koichi and Katsuyama identified by this witness, however, so he asks him: "After you noticed that Katsuyama and Koichi were at the scene, what happened?"

Again Shimojo is confused because he answers: "Katsuyama and Onose spoke to each other and Onose said to Katsuyama."

He still has Katsuyama ordering things to be done.

Remembering only the name Katsuyama, he testifies next regarding the position of Katsuyama with a sword. He further stated, "At this time Onose showed him how to cut."

Shimojo in answer to question 71 said: "Onose did not have a sword, but Onose was instructing him how to place his foot and how to swing his sword up and how to swing it down."

The court then adjourned for the day.

On cross-examination, Shimojo couldn't testify that Captain Koichi was the officer at the Koichi headquarters the evening before the execution. I refer you to Q. 123 - 127 put to Shimojo on cross-examination particularly Q. 126: "This officer that you can't identify. Did you ever see him again?"

Answer: "No, I haven't seen him since." Q. 127. "You didn't see him at the execution?" Answer: "No, I haven't. To this I am not very clear. But I testified that I did not see him at the scene. But when I saw him at the barracks of the Koichi unit I felt as though he was Katsuyama."

But Shimojo never did identify Koichi and Katsuyama because he did not recall clearly if Koichi wore glasses and he knew Katsuyama did not have glasses on the day of the execution. (See answers to Q. 169 and 170)

To Q. 181 he answered: "I don't recall seeing Captain Koichi there" when the prisoner was cut.

We tried to question Shimojo as to what Onose did at the scene and asked him Q. 184: "What do you recall seeing him do there?, but this question was objected to by the judge advocate on the ground that it was

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"HH (9)"

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repetitious. After his objection had been withdrawn Shimojo's answer was repetitious because he only repeated, "I saw Onose showing Katsuyama how to cut with the sword." Onose however was not in the picture Shimojo took of the cutting. He didn't show how to cut. He showed how to stand in the picture. But on this evidence and on this evidence only the judge advocates ask the Commission to find Onose guilty of murder.

But we ask, what of the criminal intent without which there can never be a crime and in the case of murder we call it "malice aforethought."

There are certain other allegations in the specification of the first charge against Onose. The judge advocate must prove them all: "wilfully, feloniously, with premeditation, and malice aforethought and without justifiable cause." It is necessary that the judge advocates prove all these allegations against Onose as well as against Koichi and Katsuyama.

Does he dare to say that he has proved all these necessary allegations and all are necessary before Onose can be convicted of murder.

We know that the judge advocate failed to prove the specification of murder against Onose even before Tsuchiya testified.

When Tsuchiya got through testifying there wasn't any doubt but that the judge advocate had failed to prove his case against Onose.

Remember the burden of proof is always with the prosecution. Onose is presumed innocent until proved guilty.

The prosecution based his guilt on one slender bit of evidence: that Onose said something to Katsuyama about how to stand. Does the judge advocate still maintain that Onose aided and abetted Katsuyama, that he directly participated in the execution? Does he still try to convince the Commission that Onose is a principal?

Let us look closely at Section 332 of the U. S. Criminal Code: "Whoever directly commits any act constituting an offense defined in any law of the United States or aids, abets, counsels, commands, induces or procures its commission is a principal."

What did Tsuchiya testify to? I shall read it slowly and carefully: "Concerning the point where Onose taught how to cut, there seemed to have been a question and so I would like to state all I know about this. First Kaufman was made to sit down at the spot of the execution with his back towards the sun. Shimojo wanted to take a picture of this and as the light was coming directly into the camera he wanted the position of Kaufman changed. The position of Kaufman was changed so he would face the sun and he was made to sit down. First Katsuyama's footing was firm, but as the position was changed he was not prepared so Onose coached him about his footing."

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*James P. Kennedy* *Test. USA*

"HH (10)"

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So it turns out that the act which Onose did was directly aiding Shimoje in taking the picture. The judge advocates will search in vain in the Hague Convention of 1907 or the Geneva Prisoners of War Convention of 1929 for any clause or even an implication which says it is an international crime and offense against the law and customs of war to take pictures of an execution. Nor will they find it is an international crime to aid another person in taking a picture of an execution.

After Tsuchiya had testified as he did, the following entry appears in the record: "Neither the accused, the judge advocates, nor the commission desired further to examine this witness."

We were satisfied of the innocence of Onose. The judge advocate didn't have anything to say then. By now he should be reconciled that there was only an intent on the part of Onose to see that Shimoje get the kind of a picture he wanted. The prosecution failed to prove any intent whatsoever for the act of Onose and Tsuchiya testified it was only a question of a picture and not a question of helping Katsuyama execute the prisoner.

We are sure that the Commission is firmly convinced that Onose is innocent.

The evidence proves Onose innocent; the Commission now need only formally acquit Onose of the charge of murder finding the charge not proved and Onose not guilty as charged according to the evidence the Commission does therefore acquit Onose of the charge of murder.

Why Tsuchiya was ever charged with murder or with any offense we would like to know.

The prosecution offered no evidence to prove Tsuchiya guilty in any way. The statement which was put into evidence as a confession of Tsuchiya is not a confession. Wigmore on Evidence, Vol. III, Sec. 821, page 238, defines a confession: "A confession is any acknowledgment in express words, by the accused in a criminal case, of the truth of the guilty fact charged or of some essential part of it."

Nowhere in his statement does Tsuchiya acknowledge he did any of acts charged in the specification of Charge I.

We object to the translation of a certain sentence in Tsuchiya's statement and he definitely cleared that up when Tsuchiya took the witness stand on the sixth day of the trial.

Tsuchiya testified: "The next morning when I went to the Naval Cemetery I saw Kaufman sitting down."

And why did he go to this Naval Cemetery?

Let him answer himself: "The day before the execution I was told by Onose to return Kaufman's belongings at the last minute, so I carried his orders out accordingly."

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*James P. Gray* Capt. USA

"HH (11)"

0356

According to his testimony Tsuchiya took no part in the execution and he was fifteen meters away when Kaufman was executed.

Tsuchiya was close enough, however, to see that Shimojo was taking pictures of the execution. Tsuchiya, however, took no pictures himself or did he participate in any way in the execution.

Tsuchiya should never have been indicted or charged with the crime. He should never have been joined with the three other accused.

This misjoinder of Tsuchiya however was a boomerang this time because it was Tsuchiya who remembered that Shimojo wanted Kaufman facing the sun so he could get a good picture. As Onose was responsible and charged with bringing back proof of the execution, he aided Shimojo in getting a picture. This as we have said is no crime even according to international law.

Not a single witness has testified that Tsuchiya participated in any way in this execution. We are most anxious to hear upon what the judge advocate is to base his argument and justify bringing Tsuchiya to trial for murder.

There is no justification for charging Tsuchiya with murder. He should be found not guilty and acquitted.

As to multiplicity of charges we have objected to this. Now that all the evidence is in it is clear that Charge II is based on the same act and only drawn and charged to provide for the exigencies of proof.

Koichi, if found guilty of Charge I, should then be found not guilty of Charge II and vice versa.

We refer the Commission to C.M.O. 2, 1932, p. 13, CMO-1-193 p. 12, CMO-4, 1925, p. 22.

We particularly call your attention to CMO-1, 1939, p. 14 wherein the J.A.G. of the Navy set forth the policy of the Navy Department in the case of multiplicity of charges.

The policy was set forth in CMO 10-1926, p. 8, and in CMO-8, 1927.

We have not seen the review by the J.A.G. Navy of the Tachibana war crimes trial held here at Guam, but whatever the ruling was on that case the Commission should consider it and be guided by it as a matter of policy.

As we have said this should have been the trial of Inoue and not of Koichi and Katsuyama.

Must they accept the responsibility for this execution which was planned and ordered by 14th Division Headquarters? Where is this General Inoue? Why do not the prosecution at least explain to the Commission the

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*James P. Keating* *Sent USA*

"HH (12)"

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present whereabouts of General Inoue and if he is dead say so.

Their own prosecution witnesses testified that General Inoue ordered the execution but the big question is where is Inoue?

Even the harsh Mosaic law demanded no more than an eye for an eye. Do the judge advocates also insist upon their pound of flesh. These are war crimes trials and it can well be said they are without precedent. Yet we should hearken to the principles of punishment.

"What Shall be Done with the War Criminals?" is the name of a little booklet prepared for The United States Armed Forces Institute by the American Historical Association August 1944. On page 38 there is a chapter "How Shall The Guilty Be Punished?":

"Many people believe that the United Nations either individually or jointly, should dispose of all Axis war criminals by shooting or hanging. A little reflection, however shows that this solution of the problem, though simple, might be contrary to the best interests of the peoples who have suffered from the Axis' cruelties. Apart from this the question has been raised whether capital punishment for most of the guilty is in harmony with scientific criminology and penology.

In the United States we regard every offender as an individual. His assets and liabilities are studied and a program is planned to make the most of his abilities, develop new ones, curb his bad habits, and gradually restore him to a useful and law-abiding place in society."

We believe this policy should be followed for the war criminals.

So what about these two little men who were forced to participate in the execution of Kaufman because Lieutenant General Inoue wanted to boost the morale of the Katsuyama Unit which had been practically wiped out by the American bombers?

Katsuyama and his men were ready to die at their posts but they were also eager to fight on. Their spirits were high and the morale was excellent. Katsuyama and Koichi had been seriously wounded, they still bear the scars with both of their ears badly disfigured, but they believed in the righteousness of their cause so fought on boldly.

They wanted no part in an execution of an American prisoner. It is too easy to stand here before this Commission and say that Koichi and Katsuyama should have bearded the lion in his den. Koichi and Katsuyama you say should have refused to carry out the general's orders. They should have been bold. You who say this know little of armies and less of the Japanese Army if you imagine it was the order of things that second lieutenants and captains refused to carry out the orders of a Lieutenant General.

Military organizations including the American Army are founded upon the principle of obedience to orders and responsibility of command and

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*James P. Kearney Lieut. USA*

"HH (13)"

0358



for the orders that superiors issue. We see it every day in our own American Army and Navy. It is so fundamental it needs no exposition: Rank and station carry with the position grave responsibilities. There is no analogy to this in civilian life.

Koichi and Katsuyama did not participate in this execution because they wanted to. Nor has it been proved that anyone was at the scene because they wanted to be. They were ordered to be there so they were there. Let us be realistic about it. Every Japanese didn't want war. Many were conscripted and many hated war.

You must believe these four when they say they were ordered to the things they admitted doing that day.

Let us realize that a military organization demands obedience. If the orders are illegal punish the person who gave the orders, who thought up the diabolical idea, and planned it all down to such details as taking pictures.

No, gentlemen, these are not the real criminals in this case.

The prosecution would magnify the position of Koichi and hold that because General Yamashita, Commanding General of the Fourteenth Army Group of the Imperial Japanese Army in the Philippine Islands was tried for failure to discharge his duty as commander to control the operations of the members of his command, then Koichi should also be tried. But Yamashita was the Commanding General in the Philippines and Lieutenant General Inoue was the Commanding General in the Palau. There the analogy stops for many reasons.

But we do not hold that the Yamashita case is good law. Mr. Justice Rutledge and Mr. Justice Murphy both dissented. Mr. Justice Murphy said "The recorded annals of warfare and the established principles of international law afford not the slightest precedent for such a charge. This indictment in effect permitted the Military Commission to make the crime whatever it willed, dependent upon its biased views as to petitioners' duties and his disregard thereof, a practice reminiscent of that pursued in certain less respected nations in recent years."

Mr. Justice Murphy further stated:

"War breeds atrocities. From the earliest conflicts of recorded history to the global struggles of modern times inhumanities, lust and pillage have been inevitable by-products of man's resort to force and arms. Unfortunately, such despicable acts have a dangerous tendency to call forth primitive impulses of vengeance and retaliation among victimized peoples. The satisfaction of such impulses in turn breeds resentment and fresh tension. Thus does the spiral of cruelty and hatred grow.

If we are ever to develop an orderly international community based upon a recognition of human dignity, it is of the utmost importance that

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*James P. Henry* *Gen. USA*

"HH (14)"

0359

the necessary punishment of those guilty of atrocities be as free as possible from the ugly stigma of revenge and vindictiveness. Justice must be tempered by compassion rather than by vengeance."

So in this present case we say that justice demands an explanation from the judge advocates as to "What of General Inoue?"

Justice for both Koichi and Katsuyama must be tempered with compassion.

The judge advocate has said that superior orders are no defense. How then does he explain paragraph 347 of the Rules of Land Warfare:

"Individuals of the armed forces will not be punished for these offenses (violations of the customs and laws of war) in case they are committed under the orders or sanction of their government or commanders."

The judge advocate knows of this rule, a rule still in effect in the American Army. He keeps saying the rule should be changed and that therefore this Commission should ignore the rule. But the rule is still in effect. It did not enter the American rules until 1914.

It is not enough that the judge advocate says the law should be changed. He says these two accused knew the order was illegal and therefore should be punished. But what law must be applied in order to determine illegality. "Normally the law to be applied in order to determine the illegality of the order that resulted in atrocities would have to be the law of the accused man's country. He could not be expected to know the law of the enemy nation that prosecutes him." -From "What Shall be Done with War Criminals?", FM 11 page 31. The prosecution failed to prove this point but this is beside the point because the American rule is still in effect that superior orders are a defense.

Rules of Land Warfare Basic Field Manual, FM 27-10, section 345.1 of chapter 11, Penalties for Violations of the Laws of War, "Individuals and organizations who violate accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defense or in mitigation of punishment. The person giving such orders may also be punished." -- By Order of the Secretary of War, G. C. Marshall, Chief of Staff. November 15, 1944.

So both Koichi and Katsuyama under the American rule are protected by reason of superior orders.

Surely in this case Justice must be tempered by compassion.

It was the judge advocate who introduced as evidence into the record the statement of Katsuyama. This statement shows who the real criminals in this case are.

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*James P. Henry* *Gen. USA*

"HH (15)"

0360



General Inoue and his headquarters staff were not satisfied that they had ordered Katsuyama to execute an American prisoner. Now they order him to commit suicide as part of their scheme to hide from the Americans the real facts in the case.

Impossible! No. The word of the general was law even if the war was over and Japan had been beaten. So Katsuyama reports to the general in full combat dress uniform. Staff Officer Yajima leads Katsuyama to a deserted hut in the jungle and there he tells him that since he had executed a prisoner by orders of the general, "as long as you are alive it will jeopardize the position of the Commanding General, Inoue." The general felt his responsibility now that the Americans were demanding an accounting for the prisoner.

So the orders are that you, Katsuyama, are to commit suicide in order to protect the General. Poor Katsuyama! Hadn't he been through enough.

It is hard for an American to believe but Katsuyama was so disciplined that he prepared to commit suicide because he was ordered to do so.

But Yajima stopped him, saying, "You are already dead!" Katsuyama was stripped of all his clothes. He was given other clothes and told, "From now you are Koyama, Mikio."

Then this new man, Koyama, was kept hidden away in the jungle living like an animal.

Katsuyama's clothes were put on a corpse and the corpse allowed to rot in the sun until it was beyond recognition. Then it is discovered that it is the corpse of Katsuyama who had murdered the American flyer Kaufman. That was the trumped-up story told to the Americans and they believed it. They made an official report as to this and Kaufman's next of kin were notified. The judge advocate even introduced all this into evidence.

Now the problem was to get Katsuyama back to Japan under his assumed name. Yajima took care of all this and took him back as his orderly. The records of Katsuyama were made to show his death by suicide and new records started for Katsuyama under the name of Koyama, and under that name he was demobilized.

Words cannot describe what Katsuyama went through hiding out as he was forced to do under an assumed name. But there was no money and so Katsuyama had to take a chance on being identified and he went to Tokyo to find work in order to live. He found work but his life was one of constant fear and dread.

It must have been a happy day when he was discovered for now he could tell all. He could tell how he had been made a victim of un-

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*James P. Kenny Lieut. USA*

"HH (16)"

0361



bridled power and cruelty. He told his story as best he could after two years of living in solitude, in dread and in fear and also bitter remorse for what he had done.

Although he told his story he was without friends and without the aid of counsel so his story only brought him more trouble.

He was thrown into Sugamo Prison, Tokyo, and then sent to Guam. Here he was put in solitary confinement and charged with murder.

He has been on trial in this courtroom for the murder of an American prisoner.

You may say why didn't he take the stand and tell his story? The miracle is that he can still talk and that his mind is not gone altogether. Since that day in May of 1945 Katsuyama hasn't known what it is to be a human being. The high command at Palau never accorded him any recognition of human dignity.

We agree there is the question, "What of Kaufman?" but there is also the question, "What of Katsuyama?" When you answer that question, you members of the Commission, we pray that your justice may be tempered by compassion rather than by vengeance.

So in this case of both Koichi and Katsuyama we ask that you apply the highest standards of justice. Stark retribution should not masquerade under the cloak of false legalism.

You can be magnanimous as to these four "little" men who are here charged with another man's crime.

Respectfully,

Martin E. Carlson,  
Commander, U. S. Naval Reserve.

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*James P. Kenny* *Legal USA*

"HH (17)"

0362

CLOSING ARGUMENT FOR THE PROSECUTION

In re: KOICHI, Hiroe, et al

By

Lieutenant Commander Joseph A. Regen, USN.

The judge advocate has no intention of re-arguing the admissibility of the confessions which are already in evidence. At the time of the introduction of these confessions there was lengthy argument by Commander Carlson, but the Commission did accept the confessions.

The judge advocate does not intend to answer the defense arguments of improper seizure of these accused, for that question was settled at the time the defense counsel objected to the jurisdiction of this Commission.

For the information of the defense counsel and the Commission, the judge advocate advises that Lieutenant General Inoue is presently confined to Sugamo Prison, Tokyo, Japan, and Lieutenant General Inoue will be brought to trial for his crimes at a time set by the Director War Crimes, Pacific Fleet.

As was brought out by the opening statement of Lieutenant Kenny, all of the statements made by the judge advocate in his opening address have been proved.

There is no point in repeating these facts and laboring the point. The Commission has heard the evidence and the evidence spells out guilt.

The main facts proven by the prosecution have not been rebutted by the defense. There never was any question but that General Inoue had by himself determined upon the death of the unfortunate Kaufman. The prosecution admitted this at the start of the case and the prosecution witnesses so testified. But merely because the idea was germinated by the general - Kaufman did not immediately die. While the general decided that Kaufman should die - these accused pursuant to his illegal order brought about the actual death of the American prisoner of war.

Inoue's words alone could not kill but the sword of Katsurama did almost sever Kaufman's head from his bound body.

The defense has not denied this but have contented themselves by insisting that because of the relative ranks all were helpless before the implacable general.

Once again in a War Crimes trial the essential facts of murder and guilt have not been controverted but the weak shield of superior orders has been raised by the accused -- and this shield should not be permitted to shelter them.

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*James I. Kenny Lieut. USA*

"II (1)"

0363

This defense of Superior Orders has been raised many times in preceding trials. Not only before this Commission but before other commissions in Japan and Europe. It was not accepted by the Nuremberg Tribunal; it has not been accepted by other commissions and it should not be accepted by this commission.

Koichi himself has admitted from the stand that he knew it was improper for Kaufman to be executed. That he knew even the purpose given for the execution would not be attained by it. Yet he also admitted that he was afraid to refuse or even remonstrate with the general when they were face to face. Koichi was afraid so Kaufman died - and now he desires to be excused from the consequences of his cringing obedience.

Without the efforts of Koichi the murder would not have come about. He was told by Inoue to make the arrangements and the Commission knows from his own testimony and the testimony of Shimojo and Tanaka how well he carried out his instructions.

Koichi has testified that Inoue himself named Katsuyama to be the sword wielder. It is a little difficult to believe this. Yajima's testimony does not bear it out - for Yajima says the order that Inoue gave was for the Koichi Anti-aircraft Unit to execute the prisoner. It is also a little difficult to believe that a Lieutenant General with a command of many thousands of personnel would be familiar with the names of men second lieutenants under his command. Koichi not only arranged the details of the execution but also designated the executioner.

There is no point in arguing the guilt of Katsuyama. He has confessed his part. His was the actual hand that carried out Inoue's order as relayed through Captain Koichi.

Onose is guilty of murder not only because he was a member of the execution party but more particularly because he participated in the murder by counseling Katsuyama in the correct method of using the sword and the manner in which he was to place his feet. The Commission may well believe Tsuchiya when he says that Onose cautioned Katsuyama concerning the taking of a picture. We do not quarrel with this statement for it does not contradict Shimojo's testimony that Onose showed Katsuyama how to stand and how to best use his sword. Onose's confession is also authority for the fact that he counselled Katsuyama just prior to the execution and is for this reason that the prosecution asks for his conviction.

The guilt or lack of guilt of Tsuchiya is a question of fact for the Commission. It is for the Commission to decide whether or not his being a member of the execution detail was such an act as to render him legally responsible as a principal. In the case of Koichi, Onose and Katsuyama - they were much more than mere members of the execution detail and they acted directly against the prisoner.

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*James P. Harvey* *Lawyer*

"II (2)"

0364



The facts of the case are undisputed. The law of the case is simple. Murder has been committed and the accused responsible should be punished.

That they acted under orders does not prevent their being found guilty. While their statements were moving and the arguments of their counsel long, their guilt has not been denied. Their only defense is nothing but a plea to the mercy of the Commission and might better have been made after the finding.

Let the Commission be merciful when it comes to the time of sentence but let the Commission be just at this time and by the findings again notify all interested peoples that murder under the guise of war will not go unpunished.

Respectfully,

Lieut. Joseph A. Regan  
Commander, USN.

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*James P. Kenny* *Lieut. USN*

"II (3)"

0365

I certify that this is an official report of nine (9) pages as submitted to me by William R. Gill, Captain, Infantry, investigating officer for the Legal Section, GHQ, SCAP.

Richard E. Radisill,  
Lieutenant Colonel, GNG,  
Chief, Investigation Division  
18 November 1947. Legal Section, GHQ, SCAP  
Report of Investigation Division, Legal Section, GHQ, SCAP

Inv. Div. No. 1349	OND No.	Report by: WILLIAM R. GILL Captain, Infantry
Title: Corporal Irving TOPP		

**Synopsis of facts:**

On 4 May 1945 Corporal Irving Topp, ASN 12177268, became Missing in Action over Koror Island, Palau. Wallace F. Kaufman, 2nd Lt., another crew member who escaped the crash, was murdered on Koror Island by Lt. KATSUYAMA, a Japanese Officer. Whereabouts and fate of TOPP have not been determined.

-2-

**DETAILS:**

**At Tokyo:**

This case is predicated on a check sheet dated 13 Dec 46 which has been received from the AG-FE requesting information concerning the fate of Corporal Irving Topp. This check sheet reads as follows:

GENERAL HEADQUARTERS  
UNITED STATES ARMY FORCES, PACIFIC

**CHECK SHEET**

(Do not remove from attached sheets)

File No.: AG 201-Topp, Irving Subject: Corporal Irving Topp  
TO

Note From: AG-FE To: Investigation Div, Date 13 December 1946  
No. Legal Sec, GHQ, SCAP

1. Attention is invited to the attached copy of letter received by the Commander-in-Chief, regarding the fate of Corporal Irving Topp, 12177268.

Distribution: 1 Pres  
1 OND (Encl)  
2 AG Casualty Branch  
2 Inv Div (File # 1349)  
3 OCQUN (Memorial Division)  
1 AGFE  
1 COM MARIANAS (Info.)

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*James P. Kenny* *Lieut. USA*

EXHIBIT 2 (1)

0366

2. Request any information available in your office upon which to base reply, attention being invited to the attached copy of reply to Mr. Topp.

2 Incls:

1. Ltr fr Mr A. Topp to Gen MacArthur
2. Ltr, GHQ AFPAC, to Mr Topp

/s/ R.C.U.

R.C.U.

1001 Eastern Parkway  
Brooklyn, New York  
December 4, 1946

General Douglass MacArthur  
A.P.O. 500  
c/o Postmaster  
San Francisco,  
California

Honorable General MacArthur:

My son Corporal Irving Topp, 12177268, is missing-in-action since May 4, 1945. He was shot down while on a bombing mission over Koror Island, Flau, in a B-24 and was the top turreter. A squadron of planes left Anguar to bomb Koror Island and while bombing the anti-aircraft installation on Koror the plane was hit by anti-aircraft after "Bombs Away." When the rest of the planes returned, the eye witnesses reported that the wing of the plane was seen to come off and one parachute open.

When the war was over and our Col. Fike negotiated the surrender of Palau Islands with the Japanese Col. Tada, it was learned that the Parachutist was picked up by the Japanese, taken to the anti-aircraft garrison and after being kept a prisoner for twenty days was shot there by a Japanese Officer, Lt. Katsuyama. This parachutist was later identified as Lt. Wallace Kaufman, the navigator of my son's plane.

I went several times to the War Dep't in Washington D.C. for an inquiry about my son and up to the present time Washington does not know what happened to the plane or to the rest of the 10 men of the plane. On March 20, 1946, Mr. Louis Kaufman, father of Lt. Wallace Kaufman, received an answer to one of his letters from you telling him that "the reason" why the Japanese officer killed his son, was that the Japanese Officer became enraged while viewing the scene of the crashed plane and therefore shot Lt. W. Kaufman. Now if there is a record that the crashed plane was seen twenty days after the accident occurred, what happened to the plane and where are the ten

-2-

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*James P. Brady Capt. USA*

EXHIBIT 1 (2)

0367



men that were in the plane? I also want to explain that this was the only plane lost over Koror throughout the entire war, so the plane Lt. Katsuyama viewed was without a doubt the plane my son was on. In as much as, there are captured records of the viewing of the scene of the crashed plane, where are reports of the men of the plane? I feel that if the Japanese Military Officials who were in charge of Koror Island at the time this accident occurred would be questioned regarding what happened to the plane and its crew, it may lead to a definite clue as to what happened to these unfortunate men, one of whom is my son.

I am enclosing a copy of the letter that Mr. Louis Kaufman received from you and I hope that you will insist upon an immediate interrogation of the Japanese Military men who were in charge of the anti-aircraft garrison and who were in charge of Koror Islands at the time this plane was shot down and during the time Lt. Kaufman was kept as a prisoner at the installation, at which time the plane was viewed.

I trust this will have your immediate attention and that I may have your reply regarding the outcome of the Japanese Military men's interrogation. Thank you.

Very respectfully yours,

A. Topp

C O P Y

23 March 1946

Dear Mr. Kaufman:

The Commander-in-Chief has asked me to acknowledge your letter of February 6, 1946, only recently received, concerning certain matters connected with the death of your son, Lt. Wallace F. Kaufman.

With the assistance derived from official Japanese Documents, it has been possible to locate the grave of your son and to have his body transferred to the United States Army Forces Cemetery. It has also been possible to confirm the fact that he was killed by Lt. Katsuyama in a fit of rage while they were viewing the scene of the plane crash, and that Lt. Katsuyama later committed suicide.

Up to the present time no evidence has been uncovered which would implicate any other Japanese in the murder of your son. Should any such evidence come to light, you may rest assured that prompt and severe action will be taken.

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*James L. Reany Lt. Col. USA*

EXHIBIT 1 (9)

0368

The Commander-in-Chief has asked me to reiterate his condolence to you in your great loss.

Yours very truly,

S. J. Chamberlin  
Major General, General Staff Corps  
Acting Chief of Staff

Mr. Louis Kaufman  
146 Madison Avenue  
New York 16, New York.

SPO 500  
14 December 1946

Mr. A. Topp  
1001 Eastern Parkway  
Brooklyn, New York

Dear Mr. Topp:

Your letter of 4 December 1946 to General MacArthur regarding further efforts to determine the fate of your son, Corporal Irving Topp, 12177268, has been referred to me for reply.

The matter is receiving attention, and you will be given a further reply as early as practicable.

Yours sincerely,

JOHN B. COOLEY  
Colonel, AGO  
Adjutant General

Inspection of CRD Files indicate that the following information is at hand concerning the murder of KAUFMAN another crew member. This information is recorded in CRD File # Pa 251:

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*James P. Keary* *Leut. USA*

EXHIBIT 1 (4)

0369

Restricted /s/ WRG  
C-O-N-F-I-D-E-N-T-I-A-L

NAVY NO. 3252  
AS:G-2:EMP-cal

HEADQUARTERS, ISLAND COMMAND PELELIU  
c/o FLEET POST OFFICE, SAN FRANCISCO, CALIF.

21 November 1945

RESTRICTED

From: Commanding General, Island Command Peleliu.  
To : 4719 Commanding Officer, 867th Bomber Squadron, 494th  
Bomber Group.

Subject: Case of Wallace F. Kaufman, 2nd Lt.

Enclosure: (A) Report of remains of Kaufman, Wallace, exhumed  
at Koror, 14 November 1945.  
(B) Report of Graves Registration Officer.  
(C) Wallet and contents thereof belonging to Kaufman,  
Wallace F., 2nd Lt.

1. From the report by General Sadao Inoue, Commanding  
General, Japanese Forces, Palau Area, on U. S. Prisoners of War, the  
following information is presented for your information: 2nd Lt.  
Kaufman was captured at Koror, first interned at Babelthuap, but on  
his own request was returned to Koror. While at Koror he became  
engaged in a conversation with 1st Lt. Katsuyama, an English Speaking  
Japanese Officer. 2nd Lt. Kaufman requested permission to see the  
place where he was shot down. On arriving at the location, Lt.  
Katsuyama became so angered at the scene of destruction that he took  
2nd Lt. Kaufman to a neighboring cemetery and killed him.

2. Lt. Katsuyama is reported by General Inoue to have  
committed suicide about August 24, 1945. Due to the absence of  
witnesses, other than Japanese, it has not been possible to verify  
Lt. Katsuyama's death.

3. No facilities are available at this command for  
handling personal effects of deceased army personnel. Therefore the  
wallet and contents belonging to 2nd Lt. Wallace F. Kaufman are  
forwarded herewith for your disposition.

/s/ F. O. Rogers  
/t/ F. O. Rogers

-----  
C-O-N-F-I-D-E-N-T-I-A-L  
Restricted WRG

-5-

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*James I. Henry* *Lawson* *WRG*

EXHIBIT 1 (5)

0370



Restricted /s/ WRG  
~~CONFIDENTIAL~~

U. S. NAVAL BASE HOSPITAL NO. 20  
c/o FLEET POST OFFICE  
SAN FRANCISCO, CALIF.

15 November 1945

RESTRICTED

From: Leonard Haking, Lt., (MC), USNR.  
To: Medical Officer in Command.  
Subject: Report on remains of KAUFMAN, Wallace, exhumed at  
Koror, 14 November 1945.  
Enclosure: (A) Dental Report.

1. Lt. Wright, Lt. Belgea, two other officers and I departed North Beach at 0715, 14 November 1945, arriving Koror approximately 1100. Lt. Wright arranged to have the party driven to the site of burial.

2. The grave of the deceased was found in a small Japanese cemetery, marked by a post having Japanese characters. At about four (4) feet, the skull was first encountered. This was face down and in proper relationship with the rest of the body as noted on further exposition of the remains. The skull and mandible were intact, but separate. Five (5) of the cervical vertebrae found were also intact and revealed no evidence of violence. All the other bones were found except those of one hand and wrist and most of the bones of the other hand and wrist. The shoes were intact and contained all of the bones of the ankles and feet. Central nervous system tissue was not yet completely decomposed.

From the remains exhumed, it was determined that the body was that of an adult male of short stature.

The dental findings as determined by Lt. P. Belgea, Jr., (DC), USNR, revealed #'s 6,7,8,9,10,21,22,23,24,25,26 missing but sockets present as would obtain in extractions of few days post-operatively.

As digging continued and shreds of clothes were brought up and examined, I found a zipper type leather wallet in one unopened pocket which contained four (4) American dollars, and identification papers belonging to Wallace Kaufman.

LEONARD HAKING

~~CONFIDENTIAL~~  
Restricted /s/ WRG

-6-

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*James A. Henry Capt. USN*

EXHIBIT 2 (6)

0377

REPORT OF BURIAL  
NAVMED-601 (3-45)

RESTRICTED /a/ WPG  
C-C-N-P-I-D-S-E-S-I-A-I

Ship or Station  
Attached at Time of Death Prisoner of War

Date report  
filled out 15 November, 1945

Copy of Identification Tag Name  
KAUFMAN, Wallace F.

None File or Sv No. Rank or Rate Branch of Service  
129696 F/O Army Air Corps

Cause of death  
Killed on Koror by Japanese, 24 May,  
1945 (Taken from intelligence report)

Place of Death  
Koror Island, Palau Islands

Name of next of kin (if known)  
Mrs. L. Kaufman

Address of Next of Kin.  
456 Schenectady Ave., Brooklyn,  
N.Y.

Date of Death  
24 May 1945 (Taken fr Intel Report)

Date of Burial  
15 November 1945 (Reinterred)

Name of Cemetery  
U.S.A.F. Cemetery Peleliu #1

Location of Cemetery  
Peleliu, Palau Islands

Grave Marker Type Plot No.  
Star of David 6

Row No. Grave No.  
11 158

Type of Religious Ceremony  
Jewish

Religion of Deceased  
Jewish.

List of Personal effects found on body  
and disposition of same  
(See atchd sheet for personal effects)

Means used to identify body:  
An Identification card was  
found with remains of body.  
Personal effects sent to CO,  
867th Bomber Squadron, 494th  
Bomber Group.

Identification data buried with body.

Report of burial buried with body (printed in pencil) enclosed in a  
metal container.

Body on left  
HOLDER, Emerald W.

Bodies buried on Either Side  
Rank or Rate File or Service No.  
Corp. 977394  
Grave No.  
157

Body on right  
Vacant

Person reporting Burial  
Joseph DAIGNEAULT

Rank or Rate  
PFC

Person Conducting Burial Rites  
E.H. HOWARD, Chaplain, Lt. Comdr.,  
USNR.

7

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*James P. Kenny* *Leut. USN*

"Exhibit 1 (7)"

In Reburial, Give Location of Previous Burial  
Grave was previously located on Koror,  
Palau Islands, removed 14 November 1945  
from Jap. Cemetery on Koror to U.S.A.F.  
Cemetery Palau No. 1 on 15 Nov 1945.

Verified and forwarded:

/s/ Jim S. Wright  
JIM S. WRIGHT,  
1st Lt. USMC,  
G.R.O.  
(Title)

RESTRICTED /s/ WRG  
~~CONFIDENTIAL~~

RESTRICTED /s/ WRG  
~~CONFIDENTIAL~~

15 November 1945.

REPORT OF BURIAL ON: KAUFMAN, Wallace F., F/O 129696, Army Air Corps.

List of Personal Effects:

- 1 Bill Fold (deteriorated) - zipper.
- 1 sheet personal stationery.
- 4 one (1) dollar bills.
- 1 five (5) dollar bill.
- 1 twenty (20) dollar bill.
- 1 War Dept. I.D. Card.
- 1 Officer Pay data card.
- 1 Immunization Register record.
- 4 Money Order receipts - Nos. 30672, 30674, 32510,  
32511.
- 1 pocket calendar
- 1 address; Vici Frye.
- 1 airmail postage stamp
- 1 deteriorated picture of man and woman.

~~CONFIDENTIAL~~  
RESTRICTED /s/ WRG

Inspection of PACUSA records indicate that the manifest of the  
crew is not available; however, it has been pointed out that only one  
of the men has escaped and that that surviving member was murdered.

It has further been pointed out that the plane in question was the  
only one to have crashed on Koror Island during the war.

8

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*James A. Kenney* *Lt. Col. USA*

"Exhibit 1 (8)"

0373



UNDEVELOPED LEADS:

The Tokyo Office -- At Tokyo -- will place a demand on the Japanese Government for a list of the addresses of the Japanese Personnel who were connected with the handling of Prisoners of War on Koror Island during 1945.

The Tokyo Office -- at Tokyo will place a demand on the Japanese Government for the present address of General Sadao INOUE, former commanding General of Koror Island, Palau.

The Tokyo Office -- at Tokyo -- will request thru Com Mariannas that an investigation on the Island be conducted to determine the whereabouts of the plane wreckage and the disposition of the remainder of the bodies.

The Tokyo Office -- at Tokyo -- will interrogate General Inoue, Sadao to determine the facts concerning the records pertaining to this incident.

P E N D I N G.

9

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*James A. Henry* *Lt. USA*

"Exhibit 1 (9)"

0374

**STATEMENT**

As it was over two and half years ago, there are points which I do not recall clearly.

Details of the date, time, action, and conversation, I have forgotten. I would like your understanding regarding this.

After the great American Task Force raid on the Palau in August 1944 until the end of the war, eight to twelve American planes continued to bomb our positions and establishments night and day. Around the beginning of May, 1945, we were bombed by about 200 planes in all for about ten days. By this bombing our anti-aircraft positions were almost completely destroyed. The KATSUYAMA Unit (1st company) was severely damaged leaving only one gun at the end of the raid. At the very end of this raid one large bomber was shot down. I later heard that one American prisoner was captured. (Heard he was captured by the natives).

In order to rebuild the damage done by the bombing, I had all the men work on rebuilding the position and on the other hand made plans for operations. Around the middle of May, this work was finished. It was when I was preparing to leave for the division to talk over the method of operation (I recall I was called by the division). Suddenly I received a direct telephone call from Commanding Officer DOI (At all times, except during time of battle, the anti-aircraft unit was attached to his unit. I was relayed by the Commanding Officer DOI the telephone call from the division.)

Contents of call by DOI as follows:

"The division is going to send the prisoner who was captured from the American plane shot down by the KATSUYAMA Unit the other day and they want him executed, so I told them that the anti-aircraft unit was in high spirit and that there was no necessity for it here, but they called back again." As I absolutely did not have this will and did not see any necessity of it and furthermore, I had no time and was against it, I clearly and definitely replied against it as follows:

"I am absolutely against it. The spirit of the men can not be increased by executing a prisoner. It has nothing to do with the spirit of the men. It is pitiful to execute an unresisting person and there are cases where the opposite phenomena occurs, and furthermore, there is not time."

Commanding Officer DOI was also against this execution; so our opinions matched. In a little while Commanding Officer DOI called again and said, "I relayed your opposition to the division headquarters, but they called again and want us to carry out the execution." Therefore, I again said what I said before and told him to relay as follows: "My unit is absolutely against it; so please refuse." After this I was called again; but refused clearly and definitely. Again I received a phone call from Commanding Officer DOI, and "The division called and said that they will have him executed by Lt. KATSUYAMA at the KATSUYAMA Unit; so relay this to KATSUYAMA." Therefore, I called KATSUYAMA over by phone and told him the contents of the phone call. At this time I told KATSUYAMA to refuse it, and as he was not in the mood to do it, he indicated his reluctance, but because the contents of the division's phone call was commanding and forceful, KATSUYAMA said, "If it is an absolute order I can not help it."

CERTIFIED TO BE A TRUE COPY

*James P. Kenny* *Lt. Col. USA*

"Exhibit 2 (1)"

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At this time I also relayed if it was possible to refuse, I would like it to be refused.

Thus at my departure I said, "When I go to the division, if the situation is refuseable, I will do my best to refuse," and left.

KATSUYAMA knows about the above also.

After I arrived at the division right away I talked with the head operation staff officer, Lt. Col. NAKAGAWA on the plan of the operation and this took all morning. Furthermore, from the rumors of the officers and men of the headquarter after my arrival and from the words relayed by the non-commissioned officers that everything was ready to escort the prisoner, I knew the absoluteness and decisiveness of the order. After the operation conference with the head staff officer, NAKAGAWA, and after chow, I went with him to the Commanding Officer of the division to report the battle situation and the plans for future operation. At which time, after listening to what we had to say, he said, "I will send the prisoner by escort company, so have KATSUYAMA execute him."

Once an order had been decided on and relayed down the line, there was nothing I could say. In other words, after we had stated our opinion clearly in the beginning and then as it was relayed down the line as a definite order, I absolutely could not further state my opinion when I thought of the strong and absolute orders of the ordinary day. (Ref: condition of that time, my position, and status).

I rested a while and planning to leave on the boat going to Koror that night, I departed. About 3 hours after I had reached the pier, the escort company with the prisoner with ONOSE in command arrived at the pier to get on the same boat. About one hour later, with official couriers of other units, the boat departed toward Koror during the night. In regard to the condition of the prisoner at that time as the prisoner was in the center of the escort group and as it was dark, I do not know what his condition was. Right after I arrived at the plateau of our headquarters around 12 o'clock at night, I had the adjutant, TANAKA, take care of the quarters for the escort company and relayed the contents of the division headquarter's order to Commanding Officer, DOI and Lt. KATSUYAMA. By talking it over with the escort company leader, adjutant TANAKA, and Lt. KATSUYAMA, we decided the execution would take place at the cemetery early next morning when the enemy planes came over the least, so that we could utilize the time when we were not fighting.

The next morning when I arrived at the cemetery, everyone was gathered there. The escort company leader, 2nd Lt. ONOSE, told the prisoner in English that he was to be executed by orders of the division and I relayed that he was to be executed by Lt. KATSUYAMA by orders of the division. I handed over my own personal towel to be used as a blindfold for the prisoner and had 2nd Lt. ONOSE give a cigarette to the prisoner, and while I was in a haste, the prisoner was executed by KATSUYAMA.

Paying respect to the man who died in action, Lt. KATSUYAMA and the adjutant, TANAKA, placed a grave mark and some flowers and the men were dismissed to carry on the day's duty. Already in the sky were 4 to 8 small planes attacking the establishments and positions. The escort company completed their duty and with the report of the execution went back that night. I had the adjutant report this to the Commanding Officer DOI.

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*James A. Henry* *WJA*

"Exhibit 2 (2)"





The above was carried out by strict orders and was not of our own accord. Before the order was decided on under the condition of that time I did all I could do and furthermore, after the execution was decided, I did what humane thing I was able to do as far as my position permitted.

After the war in regard to this the Commanding Officer DOI, said that we did the best we could do and that we tried our best to stop it. But as it was a strict order of our superior, and as it was against our will that we did it, he firmly believed that we were not guilty. When I think about the condition of that time, I firmly believe that we were not able to take any other action and believe in fair play.

17 Oct. 1947

Former Capt. I.J.A.  
KOICHI, Hiroe.

I Hiroe KOICHI, being duly sworn on oath, state that I have had read to me and understand the translation of the foregoing transcription of my statement dated the 17th day of October 1947 and consisting of three pages, and that it is the truth to the best of my knowledge and belief.

Kiroe KOICHI

Subscribed and sworn to before me this the 7th day of November 1947.

H. L. OGDEN,  
Commander, USN.

Guam, HI.

I, Frederick A. Savory, civilian interpreter, being duly sworn on oath, state that I truly translated the above statement and oath to the witness and that the witness thereupon in my presence affixed his signature thereto.

FREDERICK A. SAVORY  
Interpreter

Subscribed and sworn to before me this the 7th day of November 1947.

H.L. OGDEN,  
Commander, USN.

CERTIFIED TO BE A TRUE COPY  
*Jones P. Henry* *Lieut. USN*

"Exhibit 2 (3)"



STATEMENT OF KOICHI, HIROE, FORMER CAPTAIN, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 2".

"Exhibit 3"

0378

#### STATEMENT

In the latter part of October, 1944, I was sent as required duty personnel to the Korer Anti-aircraft Unit which was under the command of Captain KOICHI and was appointed company commander of the Korer Anti-aircraft Unit.

About six o'clock p.m. one day in the middle of May, 1945, I received a phone call from battalion headquarters requesting me to come to see Captain KOICHI, the battalion commander.

I reported immediately to the battalion commander's office. Captain KOICHI was alone in the room.

Thereupon I was informed as follows by Captain KOICHI: an order was received by telephone from the army group commander to decapitate one prisoner.

I replied to Captain KOICHI that we should refuse.

Captain KOICHI also concurred.

This was before Captain KOICHI left for army group headquarters that night concerning battle operations. I left Captain KOICHI and returned to the unit.

The following day late at night I received orders from battalion headquarters by telephone that I was to be at the entrance of the hospital by seven o'clock the following morning and await further orders. At seven o'clock the next morning I was waiting at the hospital entrance. Presently both Captain KOICHI and First Lieutenant ONOSE came there bringing one prisoner with them.

At that time KOICHI ordered me, "Decapitate the prisoner in accordance with the orders of the army group commander." Unable to oppose the order I decapitated THE the prisoner.

When it was over I reported to Captain KOICHI, the battalion commander, that it had been carried out.

Funeral prayers were offered at the grave of the prisoner and I returned to the unit.

One night after the war was over, in about the middle of August, I received orders by telephone from Lieutenant Colonel YAJIMA at army group headquarters that First Lieutenant KATSUYAMA was to pack his military gear and report to him. I departed immediately that night, arrived at Lieutenant Colonel YAJIMA's place about six o'clock the next morning and went to see him.

Lieutenant Colonel YAJIMA took me to a shack in the middle of a dense forest where there were no people and gave me the following orders. From this time on I acted according to the instructions of this same lieutenant colonel.

"In accordance with the orders of the commanding officer you decapitated an American prisoner. While you are alive the commanding officer is in a dangerous position. You will die for the sake of the commanding officer. Before that you will write and leave behind two notes (one addressed to the commanding officer and one to the higher authorities.)"

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*James P. Henry* *1st Lt. USX*

"Exhibit 4 (1)"





I thought this was an unlawful act but if it was for the sake of the commanding officer there was no room for dispute, so I wrote the two notes to be left behind and handed them to Lieutenant Colonel YAJIMA. Then Lieutenant Colonel YAJIMA continued further saying that First Lieutenant KATSUYAMA was thereby dead. Then he said, "You are to strip yourself of your military equipment, take off your uniform, put on your summer work clothes and from now on you will be called KOYAMA, Mikio."

Then I was instructed, "Henceforth, you must call your self KOYAMA, Mikio," and I lived in seclusion in one room of the shack. Here my freedom was completely restricted. From that time on, I spent five and a half months of very sad days hearing nothing of the affairs of the outside world.

On 15 February 1946, I was put on a Japanese coast defense vessel together with Lieutenant Colonel YAJIMA for evacuation from Palau. We reached the port of URAGA by the end of February. Then the first part of March I went to stay with an acquaintance of the lieutenant colonel in Gumma-ken, Gumma-gun, Nagamura, Yokobori and was engaged in farming in the same home.

During this period Lieutenant Colonel YAJIMA went to Tokyo many times, met Chief of Staff TADA, and requested the fund for concealment of KOYAMA, Mikio, which was promised immediately after the war. However, I was told that they handled words and being in very dire straits economically, they gave only a little money. This was the first time I learned of the plans for my concealment made just after the war by the commanding officer and the chief of staff.

I heard the story and thereby learned that when Lieutenant Colonel YAJIMA went to Tokyo on an official business trip, according to information from the commanding officer, as the registered domicile of KATSUYAMA had been erased he had been registered at Tokyo-to, Kojimachi-ku, 1 Chome, No. 6.

About twice Lieutenant Colonel YAJIMA mentioned quite strongly the following matters. Even though the commanding officer and the chief of staff were fine men, at present they were quite calmly and shamelessly acting unethically in their own behalf.

When I heard this I thought it was very unlikely and not to be believed. However, on the other hand I came to have a strong feeling that there was room for doubt.

In order to reduce the economic burden of Lieutenant Colonel YAJIMA somewhat, I obtained his permission and resolved to go to Tokyo, engage in manual labor and support myself.

In the middle of September, 1946, wearing ragged clothes, I departed from Gumma-ken alone and arrived one morning at Ueno Station. I got off the train and just at the time when everyone was going to work I started toward ASAKUSA to look for a job. On the way I got off the car and at SHIMO KURUMAZAKA-MACHI was engaged in conversation by a man who seemed to be a contractor. Then when I told him my state of affairs he said very kindly, "My name is UENOMOTO. Wouldn't you like to try working at my place. I decided to do so and went with Mr. UENOMOTO to a small building in FUKAGAWA-ku, HEIKYU-CHO, 1 Chome, No. 7, which was the premises of the UENOMOTO Contracting

CERTIFIED TO BE A TRUE COPY

*James P. Kessy* Lieut. VSN

"Exhibit 4 (2)"



Company. From that day on I was engaged in cleaning up the remains of war-time fires. I entered the small house of my employer which was on the premises and lived there until I entered Sugamo. I am truly grateful for the kindness I received from people and the true freedom I had as a member of community life.

There are no mistakes in the above.

5 September 1947.  
KATSUYAMA, Tetsuji  
Former First Lieutenant, IJA.

I hereby certify the foregoing to be a true and complete translation, to the best of my ability, of the original document in Japanese.

/s/ Frederick F. Tremain  
FREDERICK F. TREMAIN  
Lieutenant (jg) USNR  
Interpreter

CERTIFIED TO BE A TRUE COPY

*James A. Keary Lieut. USN*

"Exhibit 4 (3)"



I Tetsuji KATSUYAMA being duly sworn on oath, state that I have had read to me and understand the translation of the foregoing transcription of my statement dated the 5th day of September 1947 and consisting of three pages, and that it is the truth to the best of my knowledge and belief.

Katsuyama Tetsuji  
/s/ Katsuyama Tetsuji (In Japanese)  
Tetsuji KATSUYAMA

Subscribed and sworn to before me this the 7th day of November 1947.

/s/ H. L. Oden, Comdr., USN.

Guan, K. I.

I, Frederick A. Savory, civilian interpreter, being duly sworn on oath, state that I truly translated the above statement and oath to the witness and that the witness thereupon in my presence affixed his signature thereto.

/s/ Frederick A. Savory  
Interpreter.

Subscribed and sworn to before me this the 7th day of November 1947.

/s/ H. L. Oden, Comdr., USN.

CERTIFIED TO BE A TRUE COPY  
*James P. Keary* *Lieut. USN*

"Exhibit 4 (4)"

0388



STATEMENT OF KATSUYAMA, TETSUJI, FORMER FIRST LIEUTENANT, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 4."

"Exhibit 5"

0388

Statement concerning the escorting and execution of Second Lieutenant Kaufman and the surrounding circumstances.

OHNOSE, Ichiro /seal/  
Former Intelligence Officer  
Staff Section, 14th Division  
Headquarters.

Circumstances up to the departure from Babelthump upon orders to escort Second Lieutenant Kaufman from Babelthump to Koror.

One afternoon while Captain Koichi was talking with Staff Officer Yajima alone in Staff Officer Yajima's room I was told by Staff Officer Yajima to take with me Sergeant Major Tsuchiya and Shimojo, a gunsoku, who was in charge of photography, escort Second Lieutenant Kaufman to Koror Island and confirm the execution. At this time Staff Officer Yajima advised me to carry a pistol and shoot to kill if Second Lieutenant Kaufman should run away and to go and report to INOUE, the Commanding Officer.

As Chief of Staff TADA was sick at that time I reported only to INOUE, the Commanding Officer. The Commanding Officer gave orders to me, "If the officer of the anti-aircraft unit fails to decapitate the prisoner in front of a large group of his subordinates, and if it seems that he is backing down because he has lost his dignity, you will decapitate /TH - The prisoner/."

I took Sergeant Major TSUCHIYA and SHIMOJO, the gunsoku, with me, had Sergeant Major TSUCHIYA carry the pistol and a service sword and went to the kempeitai where Second Lieutenant Kaufman was being detained. Second Lieutenant Kaufman was being detained in a room with other criminals. As Captain NAKAMURA of the Kempeitai said he would give me one man from the Kempeis, I accepted his proposal, had the kempei take the end of the rope /TH which was tied/ to Second Lieutenant Kaufman and started off for the pier.

While we were walking he asked me if I could speak English. When I replied that I could speak a little he became very elated and told me that while he had been detained at the kempeitai he had compared the simple Japanese vocabulary which he had learned, "te," and "ashi," "kutsu," "me," "hand," /TH - "hand," and "foot," "shoes," "eyes," "nose," / etc with English.

Since at that time American planes were continually circling over Babelthump during the day, avoiding observation by them, we proceeded with great caution. On the way we stopped off at the Gasupan field storehouse, got some dry bread to give to 2nd Lieutenant Kaufman, gave him some dry bread and water and took a short rest. It was evening when we arrived at the wharf, but I recall that it was about an hour's time before the boat departed.

When we reached the wharf Captain Koichi and his orderly had already arrived.

At that time, fearing the air raids of the American forces, the wharf was built at Geramado Bay on the west side of Babelthump and the boat went back and forth to Koror periodically in the evening. Captain Koichi, ourselves and other passengers boarded this boat.

The boat arrived at the wharf on Koror Island without mishap on the

"Exhibit 6(1)"

CERTIFIED TO BE A TRUE COPY  
James P. Kennedy  
Kearney, N.J.



**Circumstances of the execution of 2nd Lieutenant Kaufman.**

It was growing dark when we arrived at the wharf on Koror. Guided by the non-commissioned officers and enlisted men from the Koichi unit who had just come out to meet Captain Koichi we started toward the barracks of the Koichi unit. Although 2nd Lieutenant Kaufman complained on the way that his feet hurt on account of sores from his shoes, naturally, as there was no means of conveyance, we continued to walk as we were. The Koichi unit was located at a spot about a thirty minute walk from the wharf. After we arrived at the Koichi unit we turned 2nd Lieutenant Kaufman over to the guards of the Koichi unit and the Kempeis returned to the kempeitai detachment on Koror. At the Koichi unit we had guards escort 2nd Lieutenant Kaufman and he was detained in the guard house.

I stayed in the unit commander's room. Early the next morning while I was eating breakfast with Captain Koichi, a report was made to Captain Koichi to the effect that preparations had been made. Therefore, after eating, the unit commander and I went together to the scene of execution. 2nd Lieutenant Kaufman had already been taken out by the guards and had arrived at the scene of execution.

I approached 2nd Lieutenant Kaufman and read to him the English which I had received from our colleague, 2nd Lieutenant Hamano, before we started out (words which meant, "We are sorry but according to the order of the commanding officer you have been sentenced to be executed.") As 2nd Lieutenant Kaufman asked in return, "Why," I pointed out the anti-aircraft positions and said in my poor English, (I don't know whether or not he understood what I meant), "The American forces have bombed those positions and many Japanese soldiers have died. Therefore, the Commanding Officer has given orders to kill you." He said, "Is war?" As I thought he said it to mean, "That is war isn't it?" I said, "You will be kill...is war," intending to express the meaning, "That you will be killed is also part of the war." He made a gesture as if to say there was nothing else to say.

I gave him a cigarette. While he was enjoying the smoke, a non-commissioned officer from near the hole was ordered to escort 2nd Lieutenant Kaufman and he was taken to the hole.

The execution was fixed for and carried out early in the morning when American airplane patrols were not very active, however, as news may have /TN - gotten out/ from the unit beforehand, a crowd of enlisted men had gathered to see the execution. After 2nd Lieutenant Kaufman sat down by the hole, Captain Koichi said to ask him if he wanted to be blindfolded or not. When I tried to ascertain this by gesticulation he nodded as if to say please put on a blindfold. With that I informed the guard to that effect and a blindfold was put on.

As the position of 1st Lieutenant Katsuyama's feet was bad I cautioned him about it and 1st Lieutenant Katsuyama once again measured the distance and took his position.

1st Lieutenant Katsuyama made 2nd Lieutenant Kaufman put his head forward with the back of his sword and when he /TN - Katsuyama/ measured his breathing 2nd Lieutenant Kaufman took one deep breath. When 1st Lieutenant Katsuyama swung his sword down the body of 2nd Lieutenant Kaufman, it fell into the hole. As the neck was cut about in half he died instantly. Shinoje, the civilian, took a few pictures of these circumstances.

CERTIFIED TO BE A TRUE COPY

*James P. Lenny* *Lieut USR*

"Exhibit 6(2)"





When the execution was over the hole was covered over immediately, flowers were presented and the unit as a whole saluted this grave.

I am sure it was 1st Lieutenant Tanaka who said "Let us put a cross on this grave later."

I told Captain Koichi that my duties were completed, bade him farewell, called on Colonel Doi with 1st Lieutenant Katsuyama and reported the nature of my duties and their completion. 1st Lieutenant Katsuyama also reported that the execution had been completed.

Then Colonel Doi asked 1st Lieutenant Katsuyama sarcastically, "Well, did you raise the morale?"

Circumstances following the execution of 2nd Lieutenant Kaufman.

In the evening of the day the execution of 2nd Lieutenant Kaufman was completed, I again returned to headquarters on Babelthump Island. I made a report to Staff Officer Yajima and to the commanding officer concerning the circumstances of the execution and reported the completion of my duties.

The pictures taken by Shimajo, the civilian, were finished later and I remember it seemed like they were shown to the commanding officer by Staff Officer Yajima.

Immediately after the war was over these pictures were burned up by Captain Watanabe.

4 August 1947.

The End.

I hereby certify the above to be a true and complete translation of the original statement written in Japanese to the best of my ability.

/s/ Frederick P. Tremayne  
FREDERICK P. TREMAYNE,  
Lieutenant (jg), U. S. Naval Reserve.  
Interpreter.

\* Appears in English in the original.

CERTIFIED TO BE A TRUE COPY  
*James P. Kenny* *Lt. Col. USA*

"Exhibit 6(3)"



I Ichiro ONOSE being duly sworn on oath, state that I have had read to me and understand the translation of the foregoing transcription of my statement dated the 4TH day of August, 1947, and consisting of three pages, and that it is the truth to the best of my knowledge and belief.

Onose Ichiro  
/s/ Onose Ichiro (In Japanese)

Subscribed and sworn to before me this the 7th day of November, 1947.

/s/ H. L. Onden, Comdr., USN.

Gunn, M.I.

I, Frederick A. Savory, civilian interpreter, being duly sworn on oath, state that I truly translated the above statement and oath to the witness and that the witness thereupon in my presence affixed his signature thereto.

/s/ Frederick A. Savory  
Interpreter.

Subscribed and sworn to before me this the 7th day of November, 1947.

/s/ H. L. Onden, Comdr., USN.

CERTIFIED TO BE A TRUE COPY  
*James P. Henry* *Lt Col USA*

"Exhibit 6(4)"



STATEMENT OF ONOSE, ICHIRO, FORMER SECOND LIEUTENANT, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 6."

"Exhibit 7"

0388



### STATEMENT

One day in June, 1945, orders came from Staff Officer YAJIMA to escort Kaufman to Koror. Three of us, Second Lieutenant ONOSE in charge, SHIMOJO, and myself, reported to YAJIMA and went to the Kampeitai. At the kampeitai we received Kaufman from Captain HAKANURA and one auxiliary kempai (name unknown) took the rope with which he was bound. We went over the mountain roads to Gasupan and waited at the Gasupan wharf until it grew dark. During this time we received dry bread from the Gasupan field storehouse and gave it to Kaufman. At this time Captain KOICHI, commander of the anti-aircraft unit, was at the wharf. We waited until dark, boarded a landing craft together and went to Marakaru pier. That night was a moonlit night and we walked along the road about three kilometers. Captain KOICHI, ONOSE, myself and SHIMOJO, auxiliary Kempai and Kaufman went east together on the highway and arrived at the headquarters of the anti-aircraft unit of the Koror battery about eleven o'clock. During this time I think that Kaufman was tired. Two or three times he complained that his legs hurt. However, it was night and moreover as there was a moon, the American planes were constantly overhead. No automobiles were in use so, comforting Kaufman, we went on. At the headquarters of the anti-aircraft unit we handed Kaufman over to enlisted men of the anti-aircraft unit. SHIMOJO and I rested in an underground shelter about half a kilometer away.

About eight o'clock the next morning we took Kaufman and went to the vicinity of the graveyard. That morning no planes flew over which was a rare occasion. We were able to proceed without interruption until the execution was over.

It seems that the news of Kaufman's execution was spread throughout the anti-aircraft units and to the navy dual purpose battery and large group of men came to watch.

ONOSE let Kaufman rest, gave him a cigarette and told him, "You will meet your fate." When Kaufman in a pitiful voice asked, "Why?" ONOSE explained the reason to him. I returned to Kaufman a Waltham watch and a picture of his mother (the articles left at the intelligence section when Kaufman was captured and interrogated.) Kaufman put on the wrist watch, opened the picture of his mother and looked at it intently. At that time SHIMOJO, the civilian, took pictures.

Next he was blindfolded and made to sit down facing the east in front of a hole which had been prepared. First Lieutenant KATSUYAMA drew his service sword, swung the sword about twice to get the feel of it, took his position and finally cut off the head of Kaufman. The head was not completely severed but was still attached to the body by the skin of the throat. The corpse fell into the hole in this condition. The enlisted men from the anti-aircraft unit undid the rope, buried the corpse as it was and placed flowers on top of the hole.

(May also be translated as: "About eight o'clock the next morning Kaufman was taken and - etc.")

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

VERIFIED TO BE A TRUE COPY

*James P. Kenny* *Lt. USA*

"Exhibit 8 (1)"



After that GHOSE, myself and SHIMOJO separated ourselves from the men of the anti-aircraft unit and the auxiliary hampers and went to Colonel DOI's place and reported the completion of our duties. When we finished supper we went to Marakuru wharf, waited for night to come, boarded the landing craft and returned to our unit.

8 September 1947.  
TSUCHIYA, Naohiko.

I hereby certify the above, consisting of one and one quarter type-written pages, to be a true and complete translation of the original document in Japanese, to the best of my ability.

FREDERICK F. TREMAYNE,  
Lieutenant, (jg) USNR,  
Interpreter.

I Naohiko TSUCHIYA, being duly sworn on oath, state that I have had read to me and understand the translation of the foregoing transcription of my statement dated the 8th day of September, 1947 and consisting of one and one quarter pages, and that it is the truth to the best of my knowledge and belief.

TSUCHIYA, NAOHICO

Subscribed and sworn to before me this the 8th day of November, 1947.

H. L. OGDEN,  
Commander, USN.

Oath, H. I.

I, Frederick A. Savory, civilian interpreter, being duly sworn on oath, state that I truly translated the above statement and oath to the witness and that the witness thereupon in my presence affixed his signature thereto.

FREDERICK A. SAVORY,  
Interpreter.

Subscribed and sworn to before me this the 8th day of November, 1947.

H. L. OGDEN,  
Commander, USN.

CERTIFIED TO BE A TRUE COPY

*James P. Kenny Lieut. USA*

"Exhibit 8 (2)"

0390

STATEMENT OF TSUCHIYA, NAOMIYO, FORMER SERGEANT MAJOR, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 8."

"Exhibit 9"

0398



**AFFIDAVIT FOR THE CHARACTER OF FOICHI, HIROE, FORMER CAPTAIN, IJA,  
BY NAKAGAWA, KIYOSHI, FORMER COLONEL, IJA.**

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 10(a)."

"Exhibit 10"

0392

AFFIDAVIT FOR THE CHARACTER OF KOICHI. Hiroo. FORMER CAPTAIN. IMPERIAL  
JAPANESE ARMY.

/s/ NAKAGAWA, Kiyoshi,  
Former Colonel,  
Staff Officer of the 14th Division,  
Imperial Japanese Army.

1. How I came to know Captain KOICHI.

On 26 July 1944, when Koror was bombed by the American Forces, and Major Yamagami, commanding officer of the anti-aircraft unit died in action, I tried to find his successor. Just at that time, I learned that Captain Koichi who was then in the hospital on account of his wounds was an expert of anti-aircraft, and I appointed him in place of Major Yamagami. I have known him since then.

2. The period of time that I have known Captain KOICHI:  
Since the end of July 1944.

3. His character.

(1) He had a firm sense of responsibility. He had a firm sense of responsibility so that the aim of the anti-aircraft fire was to shoot down planes. He was always opposed to the opinion of division headquarters that a reduction in our damage should be considered above all things. He had a strong will and he had to carry out anything about which he was convinced.

(2) He love his men and his men obeyed him well. In spite of difficult battle conditions and poor equipment and untrained members of his unit, he conducted operations with great merit. I think this was because he loved his men affectionately and obeyed his superiors sincerely. On 3 April 1945, Lieutenant General Inoue, the commanding general of the division, praised his merit and gave him a letter of commendation.

(3) He was righteous. He firmly opposed the execution of Second Lieutenant Kaufman from a humane point of view, but he could not resist an absolute order and was obliged to relay the orders to Katsuyama. I think it could not be helped because of the customs of the Japanese Forces.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. KERRICK, Jr.,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

CERTIFIED TO BE A TRUE COPY

*James P. Henry* *First. OSA*

EXHIBIT 10 (a)

0393

AFFIDAVIT FOR THE CHARACTER OF KOICHI, HIROE, BY DOI, AKIO, FORMER  
COLONEL, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 11(a)."

"Exhibit 11"

0000



AFFIDAVIT FOR THE CHARACTER OF FORMER CAPTAIN KOICHI.

/s/ DOI, Akio,  
Former Colonel, IJA.

1. He was the commanding officer of the privisional anti-aircraft battalion from November 1944 to the end of the war, and I met him more than ten times during that period. As he was not my direct subordinate, I did not see his service record or other documents so I have no reference, but I know the following from the talks I had with him and from his reputation among his subordinates.

2. His nature was mild and sincere, and he was full of sense of responsibility, so he was always loved by his subordinates.

3. Examples which show his good character.

(1) Originally, the privisional anti-aircraft battalion was organized by men picked from various units. As the unit suffered from great damage, it had to include those who were conscripted on Palau for emergency purposes, so the quality of soldiers became poorer. The unit was poorly equipped. In spite of these unfavorable circumstances, he trained his men day and night and his unit fought most bravely. I think this was because he was a man of responsibility as a commanding officer and his men relied upon him very much.

(2) I would like to state in connection with this case that he was such a mild man that he agreed with my opinion as to the execution of Second Lieutenant Kaufman on Koror and was opposed to the execution. I heard that he often told his men that he had opposed to the execution.

(3) Although he was obliged to execute Second Lieutenant Kaufman according to the orders of Commanding General Inoue, he sympathized with Kaufman very much because he was of such a good character. I heard that he cleaned his grave and prayed before it several times.

(4) He was very responsible in nature. Therefore, although he was very much opposed to the execution in his heart, he could not resist the strict orders as a mere captain when he received them directly from Commanding General Inoue. I believe he cried out against doing this in his heart when he had to obey the orders and ordered his men to do the execution.

I certify the above to be a true and complete translation of the original petition to be best of my ability.

EUGENE E. KERRICK, Jr.,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

CERTIFIED TO BE A TRUE COPY

*James P. Kerry Lieut. USN*

EXHIBIT 11 (a)

0344

AFFIDAVIT FOR THE CHARACTER OF KOICHI, HIROE, FORMER CAPTAIN, IJA,  
BY WATANABE, TOSHIO, FORMER CAPTAIN, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 12(a)."

"Exhibit 12"

0398

AFFIDAVIT FOR THE CHARACTER OF FORMER CAPTAIN KOICHI. Hiras.

1. How I came to know him.

When Captain KOICHI was appointed commanding officer of the anti-aircraft company, I learned that he was in the 55th class at the Academy, one year senior to me. When I visited him at the anti-aircraft unit on Arakabesan Island after the great task force attack, I came to know him well and after that we became intimate friends as we were both academy graduates.

2. His character.

a. He was a person with a great sense of responsibility.

During the raid in March 1945, he was wounded but he did not enter the hospital but stayed at his position commanding operations and bolstering the morale.

b. He was a man with a strong sense of obedience.

He always obeyed orders and cast aside his opposition.

c. He was kind.

He taught me many things always with kindness and care and guided me as his junior. He was a man with a sympathetic heart and was always gentle to others.

d. He was an outstanding officer.

Though his unit was a provisionally assembled one with insufficient equipment, he commanded it in a masterful manner and fought until the last.

All his men had great confidence in him.

/s/ WATANABE, Toshio,  
Former Captain, IJA,  
14th Division Headquarters.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. KERRICK, Jr.,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

CERTIFIED TO BE A TRUE COPY

*James A. Kennedy* Lieut. USN

EXHIBIT 12 (a)





AFFIDAVIT AS TO THE CHARACTER OF KOICHI, HIROE, FORMER CAPTAIN, IJA,  
BY HAISHI, NOBUO, FORMER FIRST LIEUTENANT, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 13 (a)."

"Exhibit 13"

0398

AFFIDAVIT AS TO THE CHARACTER OF KOICHI, Nisei, FORMER CAPTAIN, IJA.

/s/ HAISHI, Nobuo,  
Former First Lieutenant, IJA.

1. How I came to know him.

I was detached to the anti-aircraft unit as the First company commander on September 15, 1944, and Captain KOICHI became the battalion commander. From this time I came to know him.

2. His character.

He was a gentle person and very kind. Even when the battle situation became severe, he always judged impartially and never lost his sense of benevolence and went the wrong way.

I shall explain this by some examples. In the present Kaufman incident he considered it and found that it was not the right thing so he opposed it by telephone many times. His character is evident from this fact. Even though he carried out the execution by orders of headquarters I believe he regretted it very much. I say this because, I have heard that after the execution he went to visit the grave many times and ordered it to be cleaned.

After a fierce battle, he would phone or come to my company and ask about the damage and casualties and the food conditions. He would always give his share of tobacco to the men, so apart from the military set-up he was deeply respected by all of his men. This was a great factor in our being united as one. Since I learned about the present case, I have felt the greatest sympathy for him. I testify to his character and pray for your lenient judgment.

3. I further wish to add that he is the eldest in the family. He lost his father and his family is in a pitiable situation. I pray that he will be released soon.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. KERRICK, Jr.,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

CERTIFIED TO BE A TRUE COPY

*James P. Kenny Test. WA*

EXHIBIT 13 (a)



AFFIDAVIT AS TO THE CHARACTER OF KOICHI, HIROE, FORMER CAPTAIN, IJA,  
BY TANAKA, MASAO, FORMER C.O. OF THIRD COMPANY, KOICHI UNIT.

Original document in Japanese appended to original record. Certified  
translation appended herewith marked "Exhibit 14(a)".

"Exhibit 14"

0400



AFFIDAVIT AS TO THE CHARACTER OF KOICHI. Miroc. FORMER CAPTAIN. IJA.

/s/ TANAKA, Masao  
Former C.O. of 3rd Company, Koichi Unit.

1. How I came to know him.

When I was the commanding officer of the 3rd company of the provisional anti-aircraft unit, our battalion commander, Major Yamaguchi, was killed in action on July 26, 1944; and as his successor Captain KOICHI took over the battalion and from that time I came to know him.

2. His character.

Captain KOICHI was a particularly quiet and gentle man. In the service for six years I never met a kinder and gentler man than he. Here are some examples.

(a) The anti-aircraft unit was a provisional unit consisting of men from all units. Until the end of the war 150 men, about half of the unit, were killed, but in spite of this the reason that the unit was able to fight on courageously was because of the kind and gentle character of Captain Koichi. All the men were glad to die for him.

(b) When a soldier made a mistake he would never use violence against him but would quietly reason with him.

(c) He had his meals with his orderly and ate what the men did. This practice may sound natural and proper to the person in the American forces, but in the Japanese army this is seen only seldom. Despite the fact that Palau was short of food, the difference between the officers and men was great. But Captain Koichi did as his men did, and this was one of the greatest factors that united this unit.

(d) The supply of tobacco from headquarters was meager so Captain Koichi refrained from smoking and gave it to his men.

(e) He was definitely opposed to executing the prisoner when he was relayed the message of headquarters from Doi Unit.

(f) After the execution and after I became his adjutant I was ordered to clean the grave many times.

(g) Captain Koichi himself went to visit the grave of the prisoner and offered flowers.

Taking into consideration the above points, I believe there is not a man who is as kind and gentle as Captain Koichi. I was conscripted into the army so I am about 13 years older than Captain Koichi but I respected him from the bottom of my heart.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

CERTIFIED TO BE A TRUE COPY

*James P. Henry* *Lieut. USN*

EUGENE E. KERRICK, Jr.,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

"Exhibit 14(a)"



AFFIDAVIT AS TO THE CHARACTER OF KATSUYAMA, TETSUJI, FORMER FIRST  
LIEUTENANT, IJA, BY DOI, AKIO, FORMER COLONEL, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 15(a)".

"Exhibit 15"

0402

CHARACTER EVIDENCE FOR KATSUYAMA, FORMER FIRST LIEUTENANT.

/s/ DOI, Akio,  
Former Colonel, IJA.

1. From about November 1944 until the end of the war while First Lieutenant KATSUYAMA served as company commander of the Provisional Anti-aircraft Battalion, I met and talked with him more than ten times, so I do not know him thoroughly, but what I know him is as follows:

2. Character. He was of a gentle and bright nature and was very dutiful and was looked up to by his subordinates.

3. Examples which shows his character.

a. The Koror Provisional Anti-aircraft Battalion continued fighting day and night until the end of the war. Among these anti-aircraft companies, Katsuyama's company was the best. His unit shot down the most planes and at the same time received the most damage, but he always had control of his men and furthermore his subordinates trusted their company commander, and they worked as one; so they were able to obtain such victories. In spite of the fact that he was seriously burned and was not able to walk, he tried to hide his wounds and took command. He fought bravely until the end of the war. He was able to do this from his strong sense of duty and the trust which his subordinates put upon him.

4. In regard to the incident of this case I think the reason why he had to carry out the execution of Second Lieutenant Kaufman was that he was obliged to take the position of an executioner by orders of his supreme commander and by his dutiful nature. He had to obey the orders absolutely as a Japanese soldier.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. KERNICK, Jr.,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

CERTIFIED TO BE A TRUE COPY

*James P. Kennedy* *Lieut. USA*

EXHIBIT 15 (a)

0403



AFFIDAVIT AS TO THE CHARACTER OF KATSUYAMA, TETSUJI, FORMER FIRST  
LIEUTENANT, IJA, BY NAKAGAWA, FORMER COLONEL, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 16(a)".

"Exhibit 16"

0404

CHARACTER EVIDENCE OF KATSUYAMA, FORMER FIRST LIEUTENANT.

/s/ NAKAGAWA  
Former Colonel, IJA,  
Former 14th Division Staff Officer.

1. How I came to know First Lieutenant KATSUYAMA.

On October 1944 when the anti-aircraft unit on Koror was strengthened, it became necessary to select an excellent officer with good character. I came to know him when he was thus selected to take up duty at the anti-aircraft unit notwithstanding the requests of the commanding officer of the 59th Infantry Regiment.

2. The period I have known KATSUYAMA.  
Since the latter part of October 1944.

3. In regard to his character, etc.

(1) He had a strong sense of responsibility. At the beginning of 1945 the Americans dropped oil bombs on the Katsuyama position and in spite of the fact that he was wounded he stayed on and continued to command the firing of the guns.

(2) He was very humane. He suffered under the poor food situation with his men, and he took the sole responsibility when he let his men get food by using scarce hand grenades to fish. His subordinates all served him as though he were their father.

(3) He had a strong sense of obedience. Because he was very excellent while an NCO, he entered the Army Academy and he took positive action in regard to obedience.

In regard to Kaufman's execution too, his inherent nature of obedience exceeded the thoughts of humanity.

I certify the above to be a true and complete translation of the original petition to the best of my knowledge.

EUGENE E. KERRICK, Jr.,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

CERTIFIED TO BE A TRUE COPY

*James P. Kenny* *Lt. Col. USA*

EXHIBIT 16 (a)

0408

AFFIDAVIT AS TO THE CHARACTER OF KATSUYAMA, TETSUJI, FORMER SECOND  
LIEUTENANT, 2JA, BY WATANABE, TOSHIO, FORMER CAPTAIN, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 17(a)".

"Exhibit 17"

0408



AFFIDAVIT FOR THE CHARACTER OF KATSUYAMA, Tetsui, FORMER SECOND LIEUTENANT,  
IMPERIAL JAPANESE ARMY.

/s/ WATANABE, Toshio,  
Former Captain,  
Attached to the 14th Division  
Headquarters, Imperial Japanese Army.

1. How I came to know him.

Second Lieutenant Katsuyama graduated from the Army Academy in 1943 as a cadet, and was attached to the 20th Artillery Regiment. Just at that time I was an officer of the same regiment, and I came to know him as one who graduated from the Army Academy like me.

2. His Character.

(1) He was full of a sense of responsibility.

(a) Around February 1945, the anti-aircraft unit was seriously bombed by petroleum bombs dropped from American planes and Second Lieutenant Katsuyama was seriously wounded. Since he knew his heavy responsibility as a commanding officer, he did not leave his position and continued his operational command.

(b) After the end of the war, they tried to conceal Katsuyama. Katsuyama took his responsibility and tried to commit suicide but it was stopped by Yajima and me.

(c) When he was away from his unit and hiding in the jungle, he was always worrying about his unit which had lost its commanding officer.

(2) He was humane.

When the food conditions on Palau became very bad, he did fishing with explosives by his own decision, making up his mind that he would take all the responsibility if anything might happen on account of that, and tried to improve food conditions in his company. He had the same meal as his men and never complained about it. He shared the hardships with his men.

(3) He was an excellent officer.

After serving as a non-commissioned officer, he entered the Army Academy and was appointed an officer. When he was attached to the 2nd Company, Artillery Battalion, 59th Infantry Regiment, his Company Commander, Captain Maruyama admired him as a most reliable platoon leader, and regretted it when he was transferred to an anti-aircraft unit.

(b) After he was transferred to an anti-aircraft unit, he became skillful in firing anti-aircraft guns in a few months, and he was very skillful.

(4) He was very obedient.

When he was transferred from an artillery unit to an anti-aircraft unit he looked dissatisfied of it. But whenever he received orders, though they were against his will, he was willing to carry them out with complaint.

(5) He prayed for the repose of the soul of Second Lieutenant Kaufman. After he went into the jungle to hide himself, he had such an attitude like an enlightened priest.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

CERTIFIED TO BE A TRUE COPY

*James P. Keary* *Lt. Col. USA*

EUGENE E. KERRICK, Naval Reserve,  
Lieutenant, U. S. J. R.,  
Interpreter.

EXHIBIT 17 (a)

0407

AFFIDAVIT AS TO THE CHARACTER OF NATSUYAMA, TETSUJI, FORMER ~~SECOND~~  
LIEUTENANT, IJA, BY HAISHI, NOBUO, FORMER FIRST LIEUTENANT, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 18(a)".

"Exhibit 18"

0408

AFFIDAVIT AS TO THE CHARACTER OF KATSUYAMA, Tetsui. FORMER C.O. OF THE 2ND COMPANY, KOROR ANTI-AIRCRAFT UNIT.

1. How I came to know him.

On September 15, 1944, First Lieutenant KATSUYAMA was detached to the Koror battery and I was sent to the Arakebesan emplacement. On October 1 of the same year I was appointed commanding officer of the 1st company and he was appointed commanding officer of the 2nd company so from that time on I came to know him.

2. His character.

He was a serious minded person, and a man who practiced what he said. He had a strong sense of obedience. I shall give a few examples of his character.

After the severe bombing in February 1945, food became scarce and each unit engaged in farming in its spare time. At this time the headquarters put out an order to practice bayonet charges but my company did not do this. But I heard that the Katsuyama Unit practiced it by overcoming all difficulties. It was not an easy thing for the anti-aircraft unit to fight, farm and besides train the men in bayonet charges. From this, it can be seen that he was a man of practicability and a man of obedience.

As regards the present incident of the prisoner Kaufman, I have heard that he was opposed to it at first but in the end could not help but obey the orders of his superior.

When I think of his feelings and his sufferings, I have the greatest sympathy for him.

I pray that you will judge him most impartially and be lenient with him.

/s/ HAISHI, Nobuo,  
Former First Lieutenant, IJA.

CERTIFIED TO BE A TRUE COPY

*James P. Henry Lieut. USA*

EXHIBIT 18 (a)

0409



AFFIDAVIT AS TO THE CHARACTER OF KATSUYAMA, TETSUJI, FORMER SECOND  
LIEUTENANT, IJA, BY TANAKA, MASAO, FORMER FIRST LIEUTENANT, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 19(a)".

"Exhibit 19"

0480

AFFIDAVIT AS TO THE CHARACTER OF KATSUYAMA, Tetsui, FORMER FIRST LIEUTENANT,  
IJA.

/s/ TANAKA, Masao,  
Former C.O. 3rd Company, Koichi Unit,  
Former First Lieutenant, IJA.

1. How I came to know him.

When I was the commanding officer of the 3rd company of the provisional anti-aircraft unit, he came and took over the duty as company commander of the second company and from that time I came to know him.

2. His character.

He was a kind person with a strong sense of obedience to his superiors.

When headquarters issued an order to train the men in bayonet charges in December 1944, the other units did not do it because of battle duty and farming. But the Katsuyama unit did what it was told, and obeyed the orders of the superior. When headquarters ordered the prisoner to be executed, he, along with us, was opposed to it. When he carried out the execution it was against his will and he only did it because he was a man with a strong sense of obedience. That he was a man of kindness and feeling toward his men can be seen from the fact that his unit was united and bravely fought to the end even though his unit sustained the greatest casualties. Particularly, the fact that he visited the grave of the prisoner twice proved that he was a man of benevolent feelings.

I certify the above to be a true and complete translation of the original petition to best of my ability.

EUGENE E. KERRICK, Jr.,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

CERTIFIED TO BE A TRUE COPY

*James A. Henry Lieut. USN*

EXHIBIT 19 (a)



AFFIDAVIT AS TO THE CHARACTER OF ONOSE, ICHIRO, FORMER SECOND  
LIEUTENANT, IJA, BY NAKAGAWA, KIYOSHI, FORMER COLONEL, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 20(a)".

"Exhibit 20"

0412



AFFIDAVIT AS TO THE CHARACTER OF ONOSE, ICHIRO, FORMER SECOND LIEUTENANT, IMPERIAL JAPANESE ARMY.

/s/ NAKAGAWA, Kiyoshi  
Former Colonel,  
Staff Officer of the 14th  
Division,  
Imperial Japanese Army.

1. How I came to know Second Lieutenant Onose.

In 1944, when the 14th Division Headquarters arrived on Koror, I heard there was an excellent officer who pleaded to enter the Intelligence Section with a letter written with blood. I knew afterwards that this man was Second Lieutenant Onose.

2. The period of time that I have known him.

Since 24 April 1944.

3. His character.

(1) He was full of a sense of responsibility and was positive in everything. He was such a positive man as to volunteer to enter the Army with a letter written with blood. He was earnest in his work and even forgot to take his meals. His strong sense of responsibility was admitted, and he was appointed a member of a party which had a duty of setting up a reconnaissance station on Marakal, and he assisted Captain Sakamoto, the chief of the party, very well.

(2) He was of cheerful character and was relied on by his superiors and comrades. His bright character made his superiors and comrades merry, and he was a very benevolent person to his subordinates. He was loved by his superiors.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. KERRICK, Jr.,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

CERTIFIED TO BE A TRUE COPY

*James I. Kenny Lieut. USN*

"Exhibit 20(a)"

0488

AFFIDAVIT AS TO THE CHARACTER OF ONOSE, ICHIRO, FORMER SECOND  
LIEUTENANT, IJA, BY WATANABE, TOSHIO, FORMER CAPTAIN, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 21(a)(1)" and "Exhibit 21(a)(2)".

"Exhibit 21"

0488

AFFIDAVIT AS TO THE CHARACTER OF ONOSE, ICHIRO, FORMER SECOND LIEUTENANT, IMPERIAL JAPANESE ARMY.

1. How I came to know him.

Before the 14th Division was reorganized and sent to the South Seas area, Second Lieutenant Onose was attached to the 20th Field Artillery Regiment where I also had duty at that time. He was at this time still a cadet but was in the same group of officers as I. When we were attached to the 14th Division, we were both intelligence officers, so we worked and had quarters together until the end of the war, so I am sure that I am one person who knows about his character well.

2. His character.

(a) He was kind. His attitude toward American prisoners was always gentleman-like, and when he wanted to smoke during interrogation he always offered a cigarette, though he himself did not have many, to the prisoner.

(b) When his intimate friend cadet Nakazawa died in action at Peililiu, he praised him, saying, "He was a fine man, a man who I regret to see die." After that, whenever he mentioned Nakazawa, he had tears in his eyes.

(c) He gave away his personal ration of tobacco and other foods to the enlisted men of the intelligence section and suffered together with them under the inconvenient living and poor food conditions.

(d) After Kaufman was executed, he always praised him saying, "Kaufman was a fine officer; I respect him," and he always prayed for the repose of Kaufman's soul.

(e) He looked after his orderly with great care and gained great confidence from his men.

3. He was an outstanding technical officer and had a strong sense of responsibility.

(a) When Captain Sakamoto of the 15th Regiment left for Makarakaru Island in October 1944 in order to collect information, Second Lieutenant Onose was sent from the intelligence section to accompany him, and accomplished this difficult mission. Captain Sakamoto praised him, saying, "If I hadn't had Onose with me, it would have been difficult to accomplish the mission."

(b) When Onose was ordered to supervise the loading of armament on the transport ship "NOTO-MARU" upon the departure of the 14th Division Headquarters from Port Arthur, he exerted himself in this duty day and night, and finished the work in due time. He was greatly praised by the Commanding Officer of the 2nd Infantry Regiment, Colonel Nakagawa.

CERTIFIED TO BE A TRUE COPY

*James P. Kennedy Capt. USA*

"Exhibit 21(a)(1)"

0489



(c) The manner in which he executed his duty at the intelligence section was excellent, and there was hardly any occasion when faults were pointed out in his work by Lieutenant General Inoue, Chief of Staff Tada, Staff Officer Yajima and other officers.

(d) Because the food was very bad and on top of that he had to work hard, his health failed and he had to enter the hospital again and again. Even while hospitalized he used to say things in regard to his duties while asleep and made the nurses cry.

4. He was very religious.

His family was strongly adhered to "Michiren" religion and he was greatly influenced by this and he used to say in regard to other religions as follows: "All religions are the same in the end. I can understand Christianity very well." "Fate is absolute and I can not oppose this fate." He was a person who always was normal.

5. Other facts.

(a) When the officers of the intelligence section gathered and talked, he would give out an opinion that Japan might lose in face of the superior American operational plans, but he never said such a thing in front of superiors or subordinates.

(b) He expressed regrets very much saying, "Confronted by the strong character of Lieutenant General Inoue, and Chief of Staff Tada, no opinion no matter what it is can be expressed."

/s/ WATANABE, Toshio

I certify the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. FERRICK, Jr.,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

CERTIFIED TO BE A TRUE COPY

*James P. Kenny* *Lieut. USN*

"Exhibit 21(a)(2)"



AFFIDAVIT AS TO THE CHARACTER OF ONOSE, ICHIRO, FORMER SECOND LIEUTENANT, IJA, BY YAJIMA, TOSHIKIO, FORMER LT. COLONEL, IJA.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 22(a)(1)" and "Exhibit 22(a)(2)".

"Exhibit 22"

0488

AFFIDAVIT AS TO THE CHARACTER OF ONOSE, ICHIRO, FORMER SECOND LIEUTENANT, IMPERIAL JAPANESE ARMY.

/s/ YAJIMA, Toshihiko

1. My relation with Onose started around the latter part of June, 1944, when I undertook additional duties of the intelligence section for the former officer, Major Machida who left for Japan. From then until the end of the war for more than a year I worked with him at the intelligence section. During this time, as he was an excellent officer, I trusted him very much.

2. He has a very strong sense of responsibility. I will give one or two examples.

(a) Around October, 1944, when the Americans had already taken Peililiu, the division sent out a good reconnaissance post with Captain Sakamoto as leader to "Makaraku" Island near Peililiu and had it gather information. Second Lieutenant Onose was a member of this party. This island was always under bombardment and bombing of the Americans but he was a very good assistant to Captain Sakamoto under this difficult condition and he in turn assisted my work because of it.

(b) In September, 1944, with the knowledge that the Americans were definitely planning to land on Peililiu, the division put an advanced command post on "Arukoku" mountain on Bebelthump Island. He went with me to this post and this is the time that we as an intelligence section worked the hardest. For about one month we worked hardly without rest or sleep, but he took positive steps in assisting me; so I was able to carry on without any great mishap during this time.

3. He has a strong sense of sympathy. From the standpoint of our duty, we had more opportunity than others to meet prisoners, but he always looked at them with sympathy and treated them with sympathy. He sympathized with the inconvenient life Second Lieutenant Kaufman had to bear in the imperfect place of confinement at the Kempoitai, so he frequently gave him part of his own food and provisions (milk, dry biscuit, cigarettes, etc.).

Furthermore, he was one of the persons who were against execution of prisoners and he regreted very much that there was nothing we could do against the absolute orders of the Division Commander. Furthermore, after he saw the high character of Second Lieutenant Kaufman, he was one of the persons who praised the outstandingness of the American officers.

4. He was a man of positive action. He was the one who usually expressed important opinions on my work. And nearly all these opinions were right; therefore, I usually listened to his opinions. The positions of the lookout posts on Bebelthump were set up by his experienced opinion.

CERTIFIED TO BE A TRUE COPY

*James P. Keady* *Lt. Col.*

"Exhibit 22(a)(1)"

0448



5. He had a strong spirit of self-sacrifice. Great danger was involved to advance the reconnaissance post to "Marakuru" Island, which I have stated before. One person from the intelligence section had to go, but no one was willing to go. At this time he himself went on this mission.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. KERRICK, Jr.,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

CERTIFIED TO BE A TRUE COPY

*James P. Keary* *Encl. BK*

"Exhibit 22(a)(2)"

0488

AFFIDAVIT AS TO THE CHARACTER OF ONOSE, ICHIRO, FORMER SECOND  
LIEUTENANT, IJA, BY SHINOJO, MITSUNARU, FORMER PHOTOGRAPHER (GUNZOKU)  
ATTACHED TO 14TH DIVISION HEADQUARTERS.

Original document in Japanese appended to the original record. Certified translation appended herewith marked "Exhibit 23(a)".

"Exhibit 23"

0420

AFFIDAVIT AS TO THE CHARACTER OF CHOSE, ICHIRO, FORMER SECOND  
LIEUTENANT, IMPERIAL JAPANESE ARMY.

/s/ SHIMOJO, Mitsuharu  
Gunsoku photographer attached  
to the 14th Division Headquarters.

1. How I came to know him.

From the time I was attached to the photography squad of the intelligence section after being transferred to the 14th Division Headquarters from the Akatsuki Unit in December 1944, I came to know him and from that time until the end of the war we served together.

2. His character.

When I was first transferred to the photography room of the intelligence section, he was the one who looked after me. He would never raise his voice at me when I made a mistake. When I was depressed by some harsh words said to me by others, he would come to me and console me. When I developed pictures in the laboratory he would come and give me cigarettes and other things which comforted me. When we were in the intelligence room he often gave us cigarettes, so all the enlisted men respected him. When I went on trips he was the one who saw to it that I was taken care of. He was a very kind officer and I had not forgotten about him after I returned to Japan.

I certify the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. KERRICK, Jr.,  
Lieutenant, U. S. Naval Reserve,  
Interpreter.

CERTIFIED TO BE A TRUE COPY

*James D. Kenny* *Law. USK*

"Exhibit 23(a)"

0428



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

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

Serial:

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; CinC PacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinC PacFlt 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, SHIMODOJO and an enlisted man from the 14th Division Kempeitai, name unknown, with ONOSE in charge was ordered to take KAUFMAN from BABELTHUAP to KOROR for execution by KOICHI and other designated members of his command. ONOSE's orders directed him to return KAUFMAN's personal belongings to him and to personally execute KAUFMAN should the other persons designated fail to do so - he was to see that the execution of KAUFMAN did not fail. All members of this party knew before leaving BABELTHUAP that KAUFMAN was to be executed. They escorted him to KOROR. After arrival in KOROR a conference, attended by KOICHI, ONOSE, KATSUYAMA, TSUCHIYA and others was held. At this conference the time and place of KAUFMAN's execution was discussed. The next morning at or about 0700 the 24th of May 1944 at a graveyard on KOROR where a grave had been dug KOICHI, ONOSE, KATSUYAMA, TSUCHIYA and others assembled with KAUFMAN in custody, in the presence of about thirty to fifty other members of KOICHI's command. KOICHI was in general charge. ONOSE informed KAUFMAN that he was to be executed. TSUCHIYA, who had assisted in escorting KAUFMAN from BABELTHUAP to KOROR, was present to render such assistance and perform such acts as ONOSE might require and in accordance with ONOSE's orders did in fact immediately prior to the execution deliver to KAUFMAN his personal belongings, being photographed by the execution party photographer while so doing. KAUFMAN was then placed near the grave for execution. ONOSE instructed KATSUYAMA relative to the technique of execution. KATSUYAMA beheaded KAUFMAN with his sword on the order of KOICHI.

On the above facts the commission found the specification of the first charge "proved in part, proved except the words 'TSUCHIYA, Neehike, then a sergeant major, IJA,' which words are not proved," as to accused KOICHI, KATSUYAMA, and ONOSE. The commission found the specification "not proved"

*James P. Kenny Lieut USN*



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UNITED STATES PACIFIC FLEET  
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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 OHOSE 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, M.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, M.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. 136, M.C. & B.).

As stated above accused TSUCHIYA was a member of an escorting party of four persons commanded by accused OHOSE which took KAUFMAN from the Kampeitai, 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 OHOSE whose mission it was from the outset to assure KAUFMAN's execution. He attended OHOSE 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 OHOSE. He attended the conference with OHOSE the night before the execution at which the time and place of the execution was discussed and announced. He went with OHOSE the next morning and was present at the execution. Immediately prior to the execution he delivered to KAUFMAN his personal effects in compliance with OHOSE'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 OHOSE 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 OHOSE 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. TAMEICHI, 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

*Jose P. Henry* *1st Lt. USA*



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actually commits the offense or does some act which forms part of the offense or assists in the actual commission of the offense or of any act which forms part thereof, or directly or indirectly counsels or procures any person to commit the offense or to do any act forming a part thereof or who aids one who has committed the offense, knowing that he has committed it, for the purpose of preventing his apprehension or conviction" (Sec. 72, Miller on Crim. Law).

In the instant case it is clear that TSUCHIYA did not counsel, procure or command anyone to commit the murder of KAUFMAN or himself strike the blow that killed KAUFMAN. He was present at the execution but his mere acquiescence or approval would not be sufficient to constitute him an accessory before the fact (a principal) (Rev. of case Lt. M. YOSHIOKA, et al, dated 20 Mar. 1946). The remaining status, which he might occupy making him a responsible party to the murder of KAUFMAN, is that of an aider and abettor. This he unquestionably was. He had assisted in escorting KAUFMAN from BANKEI-THUAP to KUROR 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 KUROR and carrying out orders of ONOSE at the scene of execution, intended to do so if it became necessary (see generally, Wharton's Crim. Law (12th Ed.) pp. 327 - 364). He was a party to the community of unlawful purpose at the time the act was committed. In such circumstances it is unnecessary to show that he expressly authorized the others to do the act (Sec. 75(c), Mil. Crim. Law, p. 233).

It is, in my opinion, clearly intended by the Potsdam Declaration of 26 July 1945 wherein it states, ".....stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners, ....." that all aiders and abettors in the murder of our prisoners of war should be punished. In this connection many pronouncements have been made by Allied statesmen as to whom would be punished for war crimes (War Criminals - Their Prosecution and Punishment by Sheldon Glueck, p. 191). Both President Roosevelt and Prime Minister Churchill on 24 March 1944 repeated themselves in proclaiming punishment for war criminals. Churchill included not only the miscreants but also their agents, and Roosevelt promised the subordinates and functionaries as well as the leaders having a part in war crime acts would be punished. But even before this the United States Senate unanimously adopted the concurrent resolution presented by Senator Barkley to the effect that "the dictates of humanity and honorable conduct in war demand that this innumerable 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).

*Jane A. Keeney* *Lead 250*

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UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

20 JUN 1948

Serial: 3103

Subject to the above remarks the proceedings, in the foregoing case of KOICHI, Hiroe, KATSUYAMA, Tetsuji, ONOSE, Ichiro and TSUCHIYA, Nachiko 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, Nachiko, who was acquitted, was released from arrest and returned to Japan.

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

CERTIFIED TO BE A TRUE COPY  
James A. Henry - Capt. USN

0425

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

Cinopacflt File  
A17-35

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

18 APR 1948

Serial 1040

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The record is, in conformity with Appendix D-14, Naval Courts and Boards, 1937, and Chief of Naval Operations serial OLP22 of 28 November 1945, transmitted to the Judge Advocate General of the Navy to be revised and recorded.

**DEWITT C. RAMSEY  
Admiral, U. S. Navy,  
Commander in Chief Pacific  
and United States Pacific Fleet.**

To: Secretary of the Navy (Office of the Judge Advocate General).  
Re: Record of proceedings of a Military Commission in the cases of KOICHI, Hiroe, KATSUYAMA, Tetsuji, ONOSE, Ichiro and TSUCHIYA, Naohiko.

Copies to:  
ComMarianas  
Cinopacflt War Crimes Officer, Guam.

0428

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

Cinopacflt File  
A17-25

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

18 APR 1948

Serial 1049

Cinopacflt does not concur with the convening authority in his comments on the acquittal of TSUCHIYA. It is the prerogative and duty of the court to weigh the evidence presented to it (Naval Courts and Boards, Sections 304, 305). The Navy Department has repeatedly held in effect that the court itself having personally heard the witnesses testify, is ordinarily more competent to arrive at the facts than is the reviewing authority (Court Martial Order 10, 1931, 15, 16). After a court, acting as the judge of facts has arrived at a finding as a result of its determination of the facts established by the evidence, the question for the reviewing authority is whether there is sufficient evidence to support such a finding, not whether an opposite finding would have been justified (Court Martial Order 4, 1930, 7). Where, as in this case, the evidence is sufficient when "weighed" to support the findings of the court, no error is committed even though the conclusions reached by the court are erroneous in the mind of the convening authority (Court Martial Orders 4, 1937, 17; 4, 1935, 5, 6; 3, 1944, 436). In the instant case, it is considered that while under orders to accompany the execution party, TSUCHIYA's position as an enlisted man in a party of officers precluded a positive refusal to proceed with the party. In as much as TSUCHIYA himself by word or deed committed no act which made him a participant in the actual murder, it is not considered that presentation of the personal effects to the deceased at the scene of the execution makes TSUCHIYA an accessory, any more than the cameraman who took a picture of the presentation.

Upon the face of the pleadings, the offense alleged under Charge II and specifications 1 and 2 thereunder were preferred to provide for the exigencies of proof (Naval Courts and Boards, Section 19). In accordance with the Judge Advocate General's action (OO-TACHIBANA, Yoshio, et al/A17-20 I(3-19-47 HJH: mas 154578) approved by the Secretary of the Navy 18 July 1947, (JAG:I:RAS: f1d A17-20/00(6-25-47) 154578), the findings on Charge II and specifications 1 and 2 thereunder as to the accused KOICHI might be set aside. However, as the conviction on this charge and the specifications thereunder are legal, it is considered that any action to set them aside should be taken by the final reviewing authority.

Subject to the foregoing, the proceedings, findings of guilty and sentences in the foregoing case of KOICHI, Hiroe, KATSUYAMA, Tetsuji, ONOSE, Ichiro, and TSUCHIYA, Naohiko, and the action of the convening authority thereon, are approved.

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