

YAMAMOTO, KAZUHARU of al. (16 FEB 1948)

(163117)
PART 5 OF 6

0760

FINAL ARGUMENT FOR THE DEFENSE OF

THE ACCUSED

YAMAMOTO, Kazuharu

EZURE, Shigeru

HAYASHI, Umeji

SAGARA, Masashiro

and

UCHIDA, Fumio.

Delivered by Defense Counsel

Mr. KUNATA, Hideo.

on

March 22, 1948.

"SSS(1)"

0761

CONTENTS:

PAGE:

PART I. CONCERNING SPECIFICATIONS 1 and 2 OF CHARGE I:

- (1) In behalf of the accused, HAYASHI, Umeji and the accused, SAGARA, Masashiro..... 3
- (2) In behalf of the accused, EZURE, Shigeru and the accused, UCHIDA, Fumio..... 4
- (3) In behalf of the accused, YAMAMOTO, Kazuharu 10

PART II. CONCERNING SPECIFICATIONS 3 and 4 OF CHARGE I:

- (1) Concerning the accused, YAMAMOTO'S duty to control his subordinates..... 15
- (2) Concerning the accused, YAMAMOTO'S duty to protect the seven civilians..... 17

PART III. CONCERNING SPECIFICATION OF CHARGE II:

- (1) Is Martial Law Retrospective?..... 20
- (2) Has this Military Commission jurisdiction over these offenses in case Martial Law is retrospective?..... 23

"SSS(2)"

0762

May it please the Commission:

I will argue in behalf of five accused, namely, YAMAMOTO, Kazuharu, EZURE, Shigeru, HAYASHI, Umeji, SAGARA, Masashiro and UCHIDA, Fumio, among the twenty accused in this case. My argument consists of three parts; in Part I, I will argue with regard to murder alleged in specifications 1 and 2 of Charge I; in Part II, with regard to the accused YAMAMOTO'S neglect of duty alleged in specifications 3 and 4 of Charge I, and lastly in Part III, with regard to the crime in violation of article 199 of the Criminal Code of Japan alleged in the specification of Charge II.

PART I: CONCERNING SPECIFICATIONS 1 and 2 OF CHARGE I:

(1) In behalf of the accused, HAYASHI, Umeji and SAGARA, Masashiro.

In the evidence produced by the prosecution, the testimony of witness, ROMAN THMETUCHL above referred to the accused HAYASHI and SAGARA. The witness ROMAN THMETUCHL, a native employee engaged by the South Seas Kempeitai at the time of the incident, took the stand on the tenth day of the trial and testified that in the evening of that day he saw through the opening in the window up in front of his quarters Commanding Officer Lieutenant Colonel MIYAZAKI and the members of the Kempeitai, and that he recalled seeing the accused HAYASHI and SAGARA among them but was not sure of it. Since, as he has testified that he got a glance through a slight opening in the window at dusk, the testimony of this witness not only with regard to the accused HAYASHI and SAGARA but also with regard to the other persons whom he said he saw in the gathering is highly unreliable, and it must be said that the portion of his testimony relating to the assembly, does not merit credibility.

To controvert the above, the accused HAYASHI took the witness stand on his own behalf on the sixteenth day of the trial and clearly stated that he did not go to the scene of the execution because he was in bed in his quarters all day long unable to walk as a wound caused by stepping on a nail when he had gone to KOROR to gather some building materials about a week prior to the incident, developed a suppuration.

This testimony of HAYASHI is in no way a mere self-serving statement. HAYASHI'S testimony is unequivocally corroborated by the testimony of defense witness GOMI, RISAKU. Not only defense witness GOMI, but three witnesses for the prosecution have acknowledged, this fact with one accord. That is, witnesses for the prosecution, NAKAMURA, Kazuo, YAMADA, Kiyoshi, and TAKAHASHI, Genji, all have testified in cross-examination that the accused HAYASHI at the time of the incident was confined to his bed in the barracks because he hurt his foot by stepping on a nail. Particularly, witness TAKAHASHI testified, "A few days prior to the incident HAYASHI had gone to KOROR to collect building material. At that time he returned with a nail in the bottom of his foot. The wound caused by this nail resulted in a suppuration and he suffered from it. At that time, corpsman sergeant HONGAMA was hospitalized and I treated HAYASHI'S wound." He clearly explained why the accused HAYASHI had not participated in the execution of the missionaries and others.

"SSS(3)"

Thus, the evidence that the accused HAYASHI did participate in the execution is very weak, while the evidence that HAYASHI did not participate in the execution is overwhelming, substantial and merits high credibility. Consequently, as it has now become evident beyond the remotest doubt that the accused HAYASHI did not participate in the execution of the missionaries and others, I am firmly convinced that the accused HAYASHI is not guilty of murder alleged in specifications 1 and 2 of Charge I and the specification of Charge II.

Next, the accused SAGARA taking the witness stand on his own behalf on the sixteenth day of the trial, testified that he did not participate in the execution of the missionaries and others, because on the day of this incident he had the road look out duty and was on duty near GASUPAN HIGHWAY near the Kempeitai, while the majority of the members of the Kempeitai had gone to the scene of the execution - from 1800 to 2200.

This testimony of SAGARA is not a mere self-serving statement either. Witnesses for the prosecution YAMADA, Kiyoshi, TAKAHASHI, Genji, and IMIZUMI, Keishiro have all acknowledged in cross-examination that the accused SAGARA had the road look out duty on the day of the incident. That is, witness YAMADA in answer to one of the questions, namely, "Do you recall SAGARA'S name in this connection?" replied, "I think SAGARA was on road look out duty." Witness TAKAHASHI when asked, "You testified just now that there was one person told to remain on duty and that one was you. But you mean that there was one other person besides you who was on duty. By your reply you meant that there was one other person besides you who was on duty," he replied, "That is so." Then asked in the next question "Who was this other person?", he answered "It was Superior Private SAGARA." Since witness TAKAHASHI remained at the unit as the non commissioned officer on duty that day while the majority of the unit members had gone to the scene of the execution, we must admit this testimony of TAKAHASHI merits high credibility. Lastly, the witness IMIZUMI, Keishiro, in answer to one question, namely, "Other than the day duty personnel, were there any other duty personnel who had to remain at the barracks?", he replied, "As I recall I believe there was also a road lookout duty." Then in the next question when he was asked, "Do you know who had the roadlookout on the day of the incident?", he responded, "When I came out from the small path, out into the road, I recall seeing Superior Private SAGARA standing on the left of me." This testimony of IMIZUMI is definite and clear. Thus, it is evident without the slightest doubt from the above cited testimony of the prosecution witnesses that the accused SAGARA did not participate in the execution of the missionaries and others, having remained at the unit on road look out duty at the time of the incident. I, therefore, maintain that the accused SAGARA is "not guilty" of murder alleged in Specifications 1 and 2 of Charge I, and in the specification of Charge II.

(2) In behalf of the accused, EZURE, Shigeru and the accused UCHIDA, Fumio.

The accused, EZURE and UCHIDA went to the scene of the execution of the six missionaries and the HONDONERO family; but both accused had already been excluded from the teams in charge of the missionaries and others, as EZURE and UCHIDA were at the scene of the execution as orderlies for Second Lieutenant SANO and Detachment Commander NAKAMURA respectively. This fact has been proved beyond reasonable doubt by the testimony of both of these accused and by the testimony of prosecution witnesses, SANO, Giichi (with regard to the accused EZURE), YAMADA, Kiyoshi (with regard to the accused UCHIDA) and IMIZUMI, Keishiro (with regard to both of these accused.)

"SSS(4)"

Therefore, their duties were exclusively to transmit the orders of NAKAMURA or SANO to their recipients. SANO, however, was not assigned any special duty concerning the execution (Defense witness SANO - question 6) and therefore, he went to the scene only because he had been ordered by Commanding Officer MIYAZAKI to come along as a spectator (witness EZURE question 68); so it was not necessary for SANO to transmit any order, nor as a matter of fact, did he transmit any order through EZURE (Defense witness SANO question 7). NAKAMURA was the officer in charge of carrying out the execution at the scene, but according to the testimony of the accused UCHIDA such was the situation at the scene of the execution that the recipient could directly receive orders from the person who gave the orders; so his orders were directly given to the recipient and there was no necessity for the orderly to transmit them, nor as a matter of fact did UCHIDA transmit any order of NAKAMURA. Thus, the accused, EZURE and UCHIDA as the orderlies for NAKAMURA and SANO respectively, did not in any way participate in the execution.

Mere presence at the scene of a crime does not, in itself, constitute participation in it. American references concerning this point state as follows: First, Wharton's Criminal Law; Volume I, Section 246, states: "Merely witnessing a crime, without intervention, does not make a person a party to its commission, unless his interference was a duty, and his noninterference was designed by him and operated as an encouragement to or protection of the perpetrator." Furthermore, American Jurisprudence, Volume 26, Homicide, Section 60 states: "One who is merely present and sees that a homicide is about to be committed, and yet in no manner interferes, is not thereby deemed to participate in the commission of the offense. Failure to prevent the homicide, or tacit assent to, silent acquiescence in, secret approval of, or consent to the act by one present, generally does not make him guilty, where there is no previous understanding, although as to the consent there are some statements to the contrary." Lastly, Clark and Marshall's, A Treatise on the Law of Crimes, Section 167, states: "To render one guilty as principal in the second degree, he must in some way participate in the commission of the offense, by aiding or abetting the actual perpetrator of the deed. Mere presence at the time of offense is committed, and acquiescence or failure to make any effort to prevent its commission or to apprehend the offender, is not enough." These accused who were only subordinates, could not have had any legal duty to prevent the commission of the alleged crime, which was ordered by their superior, Commanding Officer MIYAZAKI and commanded by their superior, Detachment Commander NAKAMURA; furthermore, with regard to the crime committed under such circumstances, the presence of these accused at the scene who were mere lowly soldiers, could not have operated as an encouragement to or protection of the perpetrator. Therefore, the accused cannot be guilty as participants in the alleged crime only because they were present at the scene, unless the fact has been proved that the accused themselves perpetrated the crime, or committed some overt act to instigate, encourage, aid or abet the perpetrator. However, since the accused, EZURE was told by Commanding Officer MIYAZAKI when he assembled in front of the Kempeitai Barracks on the day of the incident that "in accordance with orders of Division Headquarters the missionaries will be executed," the accused proceeded to the scene of the execution knowing that the missionaries were to be executed. Therefore, opposition may be raised at this point that since he went to the scene with the knowledge that a crime was going to be committed, he is guilty as an accomplice.. But, as Clark and Marshall, clearly states in their "Treatise on the Law of Crimes" already cited, "Mere knowledge of the offense and mental approval is not enough to render a person a principal in the second degree," (IBID, Section 163, page 201.)

"SSS(5)"

0765

Let us now examine whether these accused did any overt act which can be conceived as constituting participation in a crime during the execution in question. It is too obvious that they were not the executioners, that is, perpetrators of the crime, because they were not members of the execution teams. In order to hold a non perpetrator liable for an act done by a perpetrator, he must have done some overt act in order to instigate, encourage, aid or abet the perpetrator, as I have mentioned above.

The acts that can be recognized as done by these accused, from the time they left the Kempeitai until they returned to their unit, on the day of the incident, as shown by the evidence produced before this court, are, with regard to the accused EZURE, follow:

(a) He carried the belongings of the missionaries from their quarters to the trucks waiting on the GALSUPAN HIGHWAY, by orders of Commanding Officer MIYAZAKI.

(b) He carried on his back, by order of Second Lieutenant SANO, one of the victims - a five year old boy, for about fifteen meters where the road was bad, between GALSUPAN HEIGHTS where they got off the truck and the scene of the execution.

(c) He helped by Second Lieutenant SANO's orders, in burying work after the execution.

With regard to the accused, UCHIDA, his acts are identical with the above (a) and (c).

Does the above enumerated acts constitute aiding or abetting in a crime? Black's Law Dictionary, Third Edition, defines "Aid and Abets" as, "That kind of connection with the commission of a crime which, at common law, rendered the person guilty as a principal in the second degree. It consists in being present at the time and place, and doing some act to render aid to the actual perpetrator of the crime, though without taking a direct share in its commission." In short, "aid or abet" means to do some act which helps the perpetrator without sharing in the perpetration of the offense. In other words, it is an act to facilitate the consummation of an offense. Therefore, it must be done prior to the perpetration of the offense being commenced, or during the course of perpetration. It goes without saying that in this sense, to have helped in the work of burying after the execution was over, does not constitute "aiding" or "abetting" in a crime. In American and English law there is a concept "accessory after the fact," but this idea, after all, deals with misprision or the crime of concealing criminals, that is, a case in which a person who receives, relieves, comforts, or assists another with knowledge but it does not in any way consist of helping in the work of burial after murder is committed.

Next, let us look into the act of carrying the belongings of the missionaries and others. Since the accused, UCHIDA, has testified that he did not know that the missionaries and others would be executed because he was not present at the first assembly when Commanding Officer MIYAZAKI transmitted the order of executing the missionaries, but rather thought that they were going to be evacuated, there cannot be any recognizable criminal intent on his part when he carried the belongings of the missionaries and others; so there is no problem with regard to this point.

The same holds true with the accused, EZURE who knew that the missionaries were going to be executed when he carried the missionaries' belongings; because, the act of carrying the missionaries' belongings has no bearing upon carrying out the execution. Since the execution could have

"SSS(6)"

0766

very well been carried out by taking only the missionaries and others to the scene without their belongings, the mere act of carrying their belongings, absolutely cannot be regarded as having facilitated the carrying out of this execution. Therefore, this act also does not constitute "aiding" or "abetting" in the consummation of the offense.

Then, does the act of carrying the child about fifteen meters on the way to the scene, constitute "aiding" in the offense? This question is related to Charge II, but I shall argue it here, for convenience's sake. With regard to this point the accused EZURE took the witness stand on his own behalf on the eighteenth day of the trial and in reply to the cross examination by the judge advocate and re-direct examination by the defense counsel, testified to the effect that the child could not walk on the way, for about fifteen meters, because the grass was high; Second Lieutenant SANO seeing this said, "Can't you see that the child can't walk? It's a pity. Carry him on your back," so as EZURE also had the same feeling, he carried the child on his back, but he did not know for sure whether the child was going to be executed or not. (Reference: Questions: # 83, # 174, # 175, #176, # 216, # 217, and #220.) According to this testimony of EZURE, he did not have the slightest intent of "aiding" in the execution when he carried the child on his back; he merely did the act because he saw that the child was in difficulty and carried him on his back as he was unable to repress his pitiful feeling toward the child in difficulty. That is, there existed no criminal intent on his part with regard to this point.

Assuming that there remains an inference that the accused EZURE could not have been unaware that the said child would be executed, we cannot say as yet that his act of carrying the child facilitated the consummation of the offense, because, there exists no reasonable causality between his act and the consummation of the offense. That is, even if the accused had not carried the child on his back, the child would have walked by himself to the scene taking perhaps a little more time; and again, even if the accused had not carried him and proceeded, so the act of carrying the child could not have facilitated the execution.

Generally speaking, effects (consequences) arising from a certain act would spread infinitely. There is a popular saying among the jurists of Japan that, "When the wind blows, cat's skin sells well." This saying satirizes the ridiculous nature of some theory of causality (the so-called condition theory), but causality in the legal sense is not so far-fetched as this. If we should speak of this theory of causality with regard to criminal law, an effect (consequence) of a certain act means only an effect (consequence) having bearing upon the constitution of an offense. Though there are numerous and varied theories of causality in criminal law, the theory of adequate causality is regarded as the most and valid influential. This theory holds that among the various conditions which oppose the effect (consequence), the conditions possessing such nature as in general from our daily experience causes a certain effect are the only ones said to have causality with regard to such effect (consequence.)

In other words, this theory excludes such an effect (consequence) as regarded as mere coincidence from the legal point of view from all the effects (consequences) arising from a certain act; and selecting only the legally (unlawfulness and responsibility) important effects (consequences), attempt to recognize causality between the act and the effect. With reference to an American treatise concerning causality, American Jurisprudence: Volume 26, Homicide Section 50 states: "To warrant a conviction for homicide, the death must be the natural and probable consequence of the unlawful act,....."

"SSS(7)"

The term "natural and probable consequence" therein found, I believe, is approximately the same as the theory of adequate causality mentioned above. Our daily experience does not warrant a judgment that if the accused had not carried the child, the child would not have been executed; therefore, there is no adequate causality between/act of carrying the child by the accused and the fact that the child was executed. Consequently, this act also, does not constitute "aiding" in the consummation of the offense.

With regard to the accused UCHIDA, other than the point which I have mentioned previously, there is a statement in his confession which is liable to be misunderstood. It reads, "I walked down about where the unit commander was, up to the second or third man from the right (as the person, used to transmit the orders of the unit commander and the detachment commander.)" The accused, UCHIDA took the stand on his own behalf and explained this point as follows: "I was merely giving my general duties at the scene of the execution. I was not there for the purpose of relaying orders specifically nor when I was walking between Commanding Officer MIYAZAKI and Detachment Commander NAKAMURA was I relaying orders.", and he further explained as, "When I wrote, 'I walked to a place in the rear where the officers were,' as a reason for having been free to walk about, I put this in parenthesis that as a person used to transmit the orders of the Unit Commander and Detachment Commander as an explanatory note for my being free to walk about at the scene." In short, this statement in his confession, does not mean that he walked about in order to transmit the specific orders of the commanding officer and the detachment officer at the scene, but that he was free to walk about the scene because he was the orderly for Detachment Commander NAKAMURA, of different status from the others. This explanation is, I believe, satisfactory, and there is no need of discussing this point any further.

Lastly, I am constrained to say a few words with regard to the testimony of prosecution witness IMAIZUMI, Keishiro wherein he said, "As to the others who were not on the teams the commanding officer told them that since the missionaries might make an escape - guard the area." This point of IMAIZUMI'S testimony was not clear to the end, whether MIYAZAKI'S words were directed to all persons, or only to the SUMIDA UNIT personnel, or to the orderlies and SUMIDA UNIT men excluding the members of the teams. But finally, in answer to the question by the President of the Commission, he replied what he believed to be correct, was that "MIYAZAKI ordered all those not on teams or others will act as guards in case these missionaries attempt to escape." According to this testimony by witness IMAIZUMI, orderlies such as the accused EZURE and IMAIZUMI, were also included among those to whom this order of MIYAZAKI was addressed. When the accused, EZURE and UCHIDA took the stand, both however testified in cross examination by the judge advocate that these words were addressed to all who were present and not any particular party in the group, and moreover, that it was not an order but that MIYAZAKI drew everyone's attention to this point. According to the above testimony of the accused EZURE and UCHIDA, they were not assigned to guard against the escape of the missionaries. Moreover, the member of the teams assigned to the missionaries and others, followed and escorted them after alighting from the trucks at GASUPAN HEIGHTS until arriving at the scene, so the execution teams were those who were in charge of guarding to prevent the missionaries' escape. It is inconceivable and beyond our

"SSS(8)"

0768

common knowledge to believe that MIYAZAKI would further impose duties upon the others besides the members of the teams to guard against the missionaries' escape. After all, it is proper and reasonable to regard these words of MIYAZAKI as caution against the missionaries' escape vaguely addressed to all. Consequently, we cannot conceive that the accused EZURE and UCHIDA were made to participate in this execution by these words of MIYAZAKI.

Therefore, as stated in American Jurisprudence, Volume 26, Homicide Section - 60: "In the absence of preconcept or conspiracy the inactive presence of the accused, with intent to render aid if necessary is not sufficient," the accused EZURE and UCHIDA who did not do anything at all in connection with the execution at the scene, cannot be held responsible for murder, because of the mere fact that they were present at the scene of the execution.

We must, however, take notice of the following statement which follows the above cited portion of the American Jurisprudence which reads: "..... although in some cases, the rule is qualified by holding the inactive presence, with intent to render aid if necessary, sufficient if the principal knew of the presence with intent to aid." Clark and Marshall also has a statement worthy of notice which reads: "It is not necessary, however, that actual physical aid shall be given. It is enough to make one a principal in the second degree if he is present in concert with the actual perpetrator of the offense, for the purpose of assisting if necessary, or of watching and preventing interference or detection, or for the purpose of encouragement." (Clark and Marshall, Ibid, Section 167, page 214.) Though it has hardly been proved who the actual perpetrators were in the present case, in view of this opinion, the persons who were assigned to the execution teams, even though some of them may not have shot the missionaries, may not, perhaps, be absolved from responsibility as principals in the second degree. In spite of that, those who were mere spectators such as the accused EZURE and UCHIDA, are not to be held responsible as principals or accessories. They are still innocent.

Among the persons who went to the scene of the execution, there is a vast difference in status between the persons who were assigned to a team charged with a missionary, and those who went to the scene as orderlies for officers. The former by being assigned to a team were,

as a matter of course, imposed with the duty of carrying out the execution. Whereas, the latter had merely the duty to transmit the orders of the officers to whom they were attached; and the fact that they were assigned as orderlies does not immediately mean their participation in the execution. Rather, by being assigned as orderlies, they were excluded from the teams in charge of the execution. In other words, by being orderlies they were excused from the duty of carrying out the execution,

If by reason of an accident happening to a person in charge of the execution caused by some unforeseen occurrence at the scene, MIYAZAKI had ordered the accused EZURE or UCHIDA to substitute for him in the execution, they would have had to obey this order, because both were subordinates of MIYAZAKI. But in order to assign them to the execution, there must have been another specific order to this effect, other than the order assigning them as orderlies. During the course of this execution, however, they did not receive any specific order assigning them to the execution. Consequently, they were not members of the execution teams when they left the Kempeitai nor were they included in the teams at the scene until the execution was over. In other words, the accused EZURE and UCHIDA were both wanting in the so-called "Intent to render aid if necessary," or "the purpose of assisting if necessary" cited above. It is believed that for this same reason the judge advocate did not indict SANO, Gichi and IMAIZUMI, Keishiro who likewise knowingly went to the scene. Therefore, the accused EZURE and UCHIDA who were in a likewise position, should not be held responsible.

"SSS(9)"

Consequently, the accused EZURE and UCHIDA are of the firm belief that as to Specifications 1 and 2 of Charge I, and as to the specification of Charge II, they are "not guilty."

(3) In behalf of the accused YAMAMOTO, Kazuharu.

Although much has been said about the accused YAMAMOTO, Kazuharu and the SUMIDA UNIT in the course of this trial, the most important points as to the accused YAMAMOTO are, I believe, as follows:

(a) Besides lending out two trucks (of course, one had already been assigned to the Kempeitai) that he himself went to the scene of the execution with the members of the Kempeitai.

(b) When the accused YAMAMOTO came to know that the missionaries were to be executed, and

(c) How the men of the SUMIDA UNIT participated in the said execution at the scene.

In the following, I shall advance my argument with regard to these three points.

(a) Why did the accused YAMAMOTO go to the scene of the execution?

The accused YAMAMOTO'S testimony was the only evidence produced before this court which explained this point. YAMAMOTO took the witness stand on his own behalf on the nineteenth day of the trial and testified with regard to this point, in summary, as follows:

In the morning of the day of the incident, Adjutant ICHIKAWA of the KEMPEITAI visited YAMAMOTO and requested the loan of two trucks. When YAMAMOTO asked about the use of the trucks, ICHIKAWA replied that they were going to be used to escort spies. YAMAMOTO replied he was willing to lend them the trucks, but inquired at the same time about the authorization from Division Headquarters which was necessary for his unit to lend out vehicles. ICHIKAWA replied that arrangements had already been made with Division Headquarters and that the said authorization would come through presently. After ICHIKAWA had left, YAMAMOTO promptly sent a messenger to a company, and had them prepare one truck. He waited for the arrival of the division authorization, but saw no sign of it when the designated time, 1800, came. Since the Unit Commander Major SUMIDA was absent from the unit that day, YAMAMOTO was uneasy in view of his responsibility as adjutant, about lending out vehicles without authorization from the division, so around 1800 he left his office and proceeded towards the GASUPAN HIGHWAY about thirty meters away. There he met the commanding officer of the Kempeitai, Lieutenant Colonel MIYAZAKI. MIYAZAKI then said, "As we are going to use the trucks today, in accordance with the orders of Division Headquarters, the authorization will come without fail. If it should not come, I'll assume the responsibility, so don't worry." YAMAMOTO still felt uneasy about the matter, and after exchanging a few words with MIYAZAKI decided to accompany him.

According to the above explanation of the accused YAMAMOTO, it was a grave responsibility on his part as adjutant to Commanding Officer SUMIDA, to lend out vehicles and personnel (driver and assistant driver) without the authorization of Division Headquarters while Commanding Officer SUMIDA was absent; so in order to fulfill his responsibility he accompanied the commanding officer of the Kempeitai to the scene of the execution. This action on the part of YAMAMOTO was only natural, and his explanation is sufficient to warrant our understanding.

"SSS(10)"

0770

(b) When did the accused YAMAMOTO come to know that the missionaries were to be executed?

With regard to this point also, there is no evidence other than the accused YAMAMOTO'S testimony; so let us weigh his testimony. In reply to the cross examination by the judge advocate, he replied as follows; as this is an important point I shall cite directly from the record:

"123. Q. When did you first learn that these people were going to be executed?

A. MIYAZAKI after ordering air raid look outs ^{to} take up their positions, we advanced into the jungle, and I think it was then that I questioned him, 'What are you going to do?'. At first he did not answer and when I repeated the question he said, 'You will see when you get there,' and when I pressed him again he seemed to get angry and said, 'We are going to knock them off.'"

According to this testimony by the accused YAMAMOTO, he first knew about the execution of the missionaries and others while he was proceeding in the jungle on the way to the scene, after getting off the truck at GASUPAN HEIGHTS. Is this testimony true? When ICHIKAWA requested the loan of trucks, he stated that they were to be used to escort spies and did not reveal the true purpose. Perhaps MIYAZAKI did not disclose his intention to YAMAMOTO when he first met him on GASUPAN Road (at least there is no evidence that he did,) because as it is clearly shown by the testimony of the accused EZURE and a few other witnesses, MIYAZAKI had repeatedly warned his subordinates at the assembly and also on the way to the missionaries' house not to have the missionaries detect his intention of executing them. None of MIYAZAKI'S subordinates also who were all cautioned to conceal this purpose, must have told YAMAMOTO about it. While on the way to the scene, YAMAMOTO was sitting in the assistant driver's seat apart from the members of the Kempeitai, so he must have had no chance to speak either to MIYAZAKI or to his subordinates during this time. Thus, we must admit, that the accused YAMAMOTO'S testimony in which he stated that he did not know MIYAZAKI'S intention to execute the missionaries and others until he questioned MIYAZAKI on the way to the scene in the jungle is justified.

Since YAMAMOTO knew of the missionaries' execution prior to its taking place, and since the vehicles that he had loaned out were used for the execution and his act resulted in aiding MIYAZAKI'S offense, it is believed that YAMAMOTO should have remonstrated with MIYAZAKI and stopped the execution the moment he was aware of the true state of affairs, if he truly wanted to withdraw from having any part in the execution. Such an argument is duly expected with regards to this point, particularly so when the accused YAMAMOTO has claimed that he had accompanied MIYAZAKI in view of his responsibility towards Commanding Officer SUMIDA. Such an argument is only natural, and logical. But it would have been most difficult, almost impossible from common sense of Japanese (I am not in a position to speak about the attitude of an American) for YAMAMOTO who had been thinking all the way that the vehicles were to escort spies, then suddenly told near the scene of the execution that the missionaries were going to be executed, to say, "That is not the way I understood it. In that case I should not have loaned you the vehicles. I will immediately turn back with them." Particularly is it true, when we consider the fact that MIYAZAKI was a superior officer of another unit, but nevertheless was YAMAMOTO'S superior. As a Japanese military man who had been inculcated throughout his military life with the precept "implicit obedience to superior order" YAMAMOTO could not have possibly taken such an attitude unless he had the courage of a true benevolent person who would "sacrifice himself to realize perfect virtue" as Confucius would put it. Law is not made for the benevolent, but for the worldly. There cannot be any law anticipating from YAMAMOTO who is but a worldly being the acts of a man of true virtue. I, therefore, believe that YAMAMOTO is not to be legally blamed as regards to this point, also.

"SSS(11)"

In relation to this point, there still remains the problem of his taking with him armed men from his unit. While there is great variance in the testimony of the various witnesses with regard to the number of SUMIDA UNIT men who went to the scene that day, it is obvious that the testimony of the accused YAMAMOTO and witness KUMAGAI, Satoshi both of the SUMIDA UNIT merits higher credibility than that of the witnesses of the Kempeitai as regards this point, because the men from the SUMIDA UNIT are better qualified to testify as to the activities of that unit that night than men from an entirely different unit, the Kempeitai. According to the testimony of the accused YAMAMOTO and the witness KUMAGAI, the men of the SUMIDA UNIT who were at the scene that night besides YAMAMOTO and KUMAGAI, were NAMEKAWA, Genji, two drivers and one assistant driver - six persons in all. Among these men KUMAGAI was the orderly for YAMAMOTO and it was customary in the Japanese Army that an orderly accompany the officer whenever he went out. NAMEKAWA, Genji went along as an assistant driver, so this is also natural. Thus, there was not a single unnecessary man who went to the scene or its vicinity along with YAMAMOTO.

With regard to the point that the SUMIDA men were armed, it is considered all too natural for a soldier to carry his rifle when he went out of his barracks under the prevailing battle conditions, when the enemy bombings were constant and intense and landing invasion was imminent. I, therefore, believe that further argument is not necessary with regard to this point.

(c) How did the men of the SUMIDA UNIT come to participate in the execution of the missionaries?

The evidence produced in this court concerning this point is divergent and wanting in unity. Witness NAKAMURA, Kazuo in direct examination by the judge advocate replied: "Then Commanding Officer MIYAZAKI said to First Lieutenant YAMAMOTO, 'I will turn over the right half to the SUMIDA UNIT, do have them shoot.'" Then he says: "Soon after Commanding Officer MIYAZAKI said this, First Lieutenant ICHIKAWA told YAMAMOTO as follows: 'I ask you to take care of the four from the right.'" He relayed this to YAMAMOTO. When the same witness was asked in cross examination, "Who ordered these members of the SUMIDA UNIT to shoot?", he answered, "I do not remember." Then in the next question when he was asked, "Did MIYAZAKI order them to shoot?", he answered, "Commanding Officer MIYAZAKI gave the order."

Then, Witness SANO, Giichi, replied in the redirect examination "Commanding Officer MIYAZAKI said to Captain YAMAMOTO, 'Since it is the order of the Division Headquarters, have them shoot,' and YAMAMOTO at the scene of the execution had them shoot." Then to the question "After MIYAZAKI said this to YAMAMOTO, did you see YAMAMOTO do anything?", witness SANO replied, "I saw YAMAMOTO say to the men that he had brought to the scene, 'You and you shoot!'"

Furthermore, witness KUMAGAI, Satoshi, testified in direct examination by the judge advocate as follows: "The Commanding Officer was talking with adjutant YAMAMOTO. He was saying that it was by orders of the Division Headquarters and for the SUMIDA UNIT to place some men at his disposal." "And when adjutant YAMAMOTO was silent, Colonel MIYAZAKI repeated the same demand." "After this repeated urging, YAMAMOTO turned around and said, 'It can't be helped. NAMEKAWA, step forward.'"

According to the testimony of the above three witnesses it seems as if the accused YAMAMOTO'S will was interposed when the SUMIDA UNIT men participated in the execution.

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As against the above, the accused YAMAMOTO took the stand on his own behalf and testified in direct examination as follows: "Touching NAMEKAWA, one of the SUMIDA men, on the shoulder, MIYAZAKI said, 'We will ask the SUMIDA UNIT men to help in the execution.'" "I was shocked when MIYAZAKI made the request for assistance, and I replied that 'I must refuse that men from my unit, which is a transportation unit, participate in accordance with your request.'" "Even though I am the adjutant of the SUMIDA UNIT I have no authority to order SUMIDA men to assist." After two or three questions and answers to the same effect were repeated, he further testified as follows: "Colonel MIYAZAKI, touching NAMEKAWA'S shoulder, said, 'This is by orders of Division Headquarters. Do you mean to say that you are not going to obey these Division Headquarters orders? We are in the face of the enemy, you fool!'" and then "MIYAZAKI pushed NAMEKAWA forward telling him to shoot."

According to the above testimony of YAMAMOTO, he repeatedly refused when MIYAZAKI asked him to have the SUMIDA UNIT men take part in the execution. Despite his repeated refusal, MIYAZAKI ignored his protest and objection, and forced NAMEKAWA into the execution.

If the accused YAMAMOTO had testified to this effect for the first time in this court room, it might be regarded as his mere self serving declaration. But, long before he had the benefit of counsel, he had already to this effect stated in his statement submitted to the prosecution on the 23rd day of January of this year, which reads as follows: "When MIYAZAKI tapped NAMEKAWA'S shoulder and saying 'You', rushed him forward, just at the same time, Commanding Officer MIYAZAKI gave the order 'Fire'." I believe this statement definitely proves that YAMAMOTO'S above cited testimony was not a mere self serving statement.

Moreover, even prosecution witness IMAIZUMI, Keishiro on direct examination testified to the following effect: "When Lieutenant Colonel MIYAZAKI said to Adjutant YAMAMOTO of the SUMIDA UNIT, 'Won't you have your men of the SUMIDA UNIT shoot also?' YAMAMOTO said something and then after that he said, 'I would like the Kempeitai to do it.'" Then Captain NAKAMURA went over to Adjutant YAMAMOTO and asked some of his men to come out but he was refused by the adjutant, so then the commanding officer went over to the adjutant and said, 'Since this is by the orders of Division Headquarters there is nothing to worry about', and MIYAZAKI then faced the men of the SUMIDA UNIT and spoke to them. After that two men of the SUMIDA UNIT came forward."

This testimony of IMAIZUMI is in complete accord with that of the accused YAMAMOTO. Particularly, as IMAIZUMI accompanied MIYAZAKI that day as his orderly, his testimony merits the highest credibility so far as the actions of MIYAZAKI are concerned. Furthermore, it is obvious that YAMAMOTO did not think of this after listening to IMAIZUMI'S testimony, because YAMAMOTO had already expressed this in his statement submitted to the judge advocate dated 23 January of this year.

We may safely conclude that the testimony of the accused YAMAMOTO backed by the testimony of such a credible and material witness as IMAIZUMI is true over the counter testimony by the other prosecution witnesses.

The circumstances being as testified to by the accused himself, he cannot be held responsible for the participation of the SUMIDA UNIT men in the execution.

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An argument may be raised, however, to the effect that YAMAMOTO still cannot be absolved from responsibility as senior officer present from the SUMIDA UNIT at the scene, because he left his subordinates to the free disposal of MIYAZAKI and did not take positive steps to check NAMEKAWA when he was about to participate, even though NAMEKAWA's participation was due to the coercion on the part of MIYAZAKI and no will of YAMAMOTO was interposed. This argument is reasonable, and as a matter of fact, the judge advocate asked the accused in his cross examination, "Did you tell him (NAMEKAWA) not to participate in this execution?", to this YAMAMOTO briefly answered, "I didn't have a chance to stop him." YAMAMOTO'S statement which was cited above, however, explains more clearly and concretely the circumstances at the time. That is YAMAMOTO states, "When MIYAZAKI tapped NAMEKAWA's shoulder and saying 'You' and rushed him forward, just at the same time, Commanding Officer MIYAZAKI gave the order 'Fire!', so there was not even a split second between the two instances. In Paragraph four (4) of the same statement he states further to explain this point in detail: "If there had been time, I believe the subject of stopping it could have been brought out, but there was no such chance at all. Moreover, as he (MIYAZAKI) was the Commanding Officer of another unit and as he was a superior officer, nothing can be done by a person from another unit."

Under such pressing circumstances who could expect the accused YAMAMOTO to check NAMEKAWA'S participation? In other words, would it not be pressing YAMAMOTO for the impossible to impose upon him the duty of checking NAMEKAWA from participating in the execution? We ask your impartial and penetrating observation with regard to this point.

Furthermore, in relation to the above point, there is a portion in the statement made by the accused EZURE which reads, "I remember an officer from the SUMIDA UNIT was talking with the unit commander asking that the shooting be done in order to test the courage of the young soldiers." However, as it is stated in Section 186 of Naval Courts and Boards, "Admissions of one joint conspirator are available against others -- Foundation must be laid by either direct or circumstantial evidence sufficient to establish prima facie the fact of conspiracy between the parties, unless the judge advocate states that conspiracy will later appear from evidence to be adduced." and also in American Jurisprudence, Volume 26 Homicide, section 381 clearly states: "Clearly, an admission by one person is not evidence against another just because it happens that they are co-defendants. The mere fact that two defendants are being tried for an offense is not sufficient to render in a confession made by one of them admissible against the other. When conspiracy is established, everything said, written, or done by any of the conspirators during the progress of the conspiracy and in execution or furtherance of the purpose thereof is deemed to have been said, done or written by everyone of them and may be proved against each other. The foregoing general principles have been applied many times in prosecution for homicide. The existence of a conspiracy to commit murder operates to render the declaration of one of the conspirators admissible against another charged with the murder, even though the declarant is not on trial, but only in so far as they are statements made in furtherance of the conspiracy. Proof of the existence of a conspiracy and the participation therein of the accused is requisite to the admissibility against the accused of a declaration as one made by a conspirator." So a statement made by one accused detrimental to another is inadmissible as evidence in the present case where no allegation of conspiracy is claimed. Only when EZURE testifies to the same effect as

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0774

written in his statement, that portion of his statement would be competent evidence. Thus, the judge advocate persistently pursued this point in his cross examination when the accused EZURE took the witness stand. In spite of this persistent questioning, the accused EZURE maintained his testimony throughout, stating, "That was a mistake in my recollection. It was the reverse. The Commanding Officer, MIYAZAKI, said to the officer from the SUMIDA UNIT, 'Since your unit is a transportation outfit you don't have much chance to shoot, so have your men shoot.'" Then finally, when the accused EZURE was asked by the President of the Commission to what portion of the statement he referred when he said he had made a grave mistake, he answered that he had the Commanding Officer MIYAZAKI and the officer of the SUMIDA UNIT reversed in relation to the conversation of having the SUMIDA men shoot. Consequently, as EZURE testified to the contrary throughout while on the witness stand with regard to the above cited portion of his statement, this portion cannot be admitted as evidence any longer, irrespective of EZURE'S testimony being given weight or not, and I am of the firm conviction that the criminal responsibility of the accused, YAMAMOTO, cannot be decided upon the basis of this portion of EZURE'S statement.

Therefore, I hold, on the grounds stated above, that the accused YAMAMOTO is not guilty as to Specifications 1 and 2 of Charge I and the specification of Charge II based upon the same facts as the former.

PART II. CONCERNING SPECIFICATIONS 3 and 4 OF CHARGE I:

In this part of my argument, I shall argue concerning the accused YAMAMOTO'S neglect of duty as alleged in specifications 3 and 4 of Charge I.

(1) Concerning the accused YAMAMOTO'S duty to control his subordinates.

In specifications 3 and 4 of Charge I the accused YAMAMOTO is charged with neglect of duty in that YAMAMOTO, while senior officer present from the SUMIDA UNIT at the scene, failed to discharge his duty to control the operations of co-defendant KAWAGUCHI, Tabei, NAMEKAWA, Genji and others, names to the relator unknown, permitting the aforesaid unlawfully to kill seven civilians.

There is much variance between the various witnesses as to the number of SUMIDA UNIT men who participated in the execution of the missionaries and others. Witness NAKANURA, Kazuo testified, "The four from the right were shot by the SUMIDA UNIT"; witness SANO, Gichi testified, "I saw two or three men of the SUMIDA UNIT shoot the missionaries"; witness IMIZUMI, Keishiro testified, "After two men from the SUMIDA UNIT came out, they went to the far end of the line and relieved the two Kempeis that were there."

As against the above testimony, the accused YAMAMOTO testified to the effect that, that the persons from the SUMIDA UNIT who boarded the truck and proceeded to GLSUPAN HEIGHTS, were YAMAMOTO, his orderly KUMAGAI, Satoshi, assistant driver NAMEKAWA, Genji, two drivers and one assistant driver - six persons in all. Three persons among them were ordered by Commanding Officer MIYAZAKI to stand air raid look out when they arrived at GLSUPAN HEIGHTS, so the remaining were KUMAGAI, NAMEKAWA and YAMAMOTO were the only ones who actually went to the scene, and NAMEKAWA was the only SUMIDA man who was ordered by Commanding Officer MIYAZAKI to shoot.

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Moreover, witness KUMAGAI, Satoshi, likewise a SUMIDA UNIT man testified: "NAMEKAWA and I attached ourselves to the adjutant (meaning Adjutant YAMAMOTO)." "I saw NAMEKAWA step forward." "After stepping forward he went, I think, toward the extreme right, and admitted that NAMEKAWA was the only SUMIDA UNIT person who participated in the missionaries' execution. Though it is left to the discretion of the members of the commission to decide which part of the inconsistent testimony merits credibility, we hold that NAMEKAWA was the only SUMIDA UNIT man who participated in the missionaries' execution, because we believe, from our common sense that the men from the SUMIDA UNIT are able to testify far more accurately than those from the Kempeitai as regards the actions of the SUMIDA UNIT men. In other words, we maintain that actually there were no "other members of the said unit, names to the relators unknown" as alleged in Specification 3 of Charge I.

Next, as regards the co-defendant KAWAGUCHI, Wahei, there is no room for controversy that he was a SUMIDA UNIT man by the evidence adduced before this court, that he was once detached from the SUMIDA UNIT to the Kempeitai serving as the driver of Detachment Commander NAKAMURA'S sedan, and that KAWAGUCHI went to the scene of the execution. The problem is whether he went to the scene that day as a member of the SUMIDA UNIT or as a member of the Kempeitai. The evidence produced in this court is not always in agreement as regards this point also. First witness NAKAMURA, Kazuo testified, "Before this time, KAWAGUCHI came to the Kempeitai as a driver but I recall at this time he went back to SUMIDA UNIT." The witness SANO, Giichi, testified: "I recall that he was driving for the commanding officer of the First Detachment while we were on KOROR but when we came to BABELTHUAP I recall that he went back to the SUMIDA UNIT." Witness YAMADA, Kiyoshi, then testified: "I think it was at the second assembly on the GASUPAN HIGHWAY that KAWAGUCHI joined the execution party." As if KAWAGUCHI joined the execution party as a member of the SUMIDA UNIT.

In contrary to the above, prosecution witness IMAIZUMI, Keishiro testified: "KAWAGUCHI belonged to the SUMIDA UNIT but at this time I recall that he had come from the KEMPEITAI." I have already shown that the testimony of both the accused YAMAMOTO and witness KUMAGAI denied the fact that KAWAGUCHI had gone from the SUMIDA UNIT. KAWAGUCHI himself states in his statement that ordered by Captain NAKAMURA to accompany him that night, he went to the scene of the execution. So it is quite indifferent to KAWAGUCHI whether he went to the scene of the execution as a member of the Kempeitai or as a member of the SUMIDA UNIT, he cannot have given a false statement in regard to this point. Consequently, there is no longer any room for argument that KAWAGUCHI had gone to the scene of the execution as a member of the KEMPEITAI.

As KAWAGUCHI was not a subordinate of the accused YAMAMOTO on the day of the execution, YAMAMOTO had no responsibility to control the actions of KAWAGUCHI. Even assuming that YAMAMOTO had this responsibility, there is no reason to hold YAMAMOTO responsible for KAWAGUCHI'S actions because there has been no evidence adduced that KAWAGUCHI was even assigned to the execution team, not to speak of his shooting the missionaries and others.

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Thus, the problem of the accused YAMAMOTO'S duty to control his subordinates has come down to his duty over the actions of NAMEKAWA, Genji alone. Formally speaking, this question concerning NAMEKAWA also, was outside the control and supervision of the accused YAMAMOTO because, as testified by YAMAMOTO, the authorization as to the use of the truck issued by the Division Headquarters read: "Commanding Officer SUMIDA will despatch one truck including the driver and assistant driver to the Kempeitai, and place them under the command of the commanding officer of the Kempeitai", and NAMEKAWA, being an assistant driver of one of the trucks that day, came under the command of Commanding Officer MIYAZAKI, and was not under the control and supervision of YAMAMOTO, though it would have been different if YAMAMOTO'S orderly KUMAGAI had participated in the execution. Then again, substantively speaking, the reason for NAMEKAWA'S participation in the execution, as indicated in the portion of my argument concerning Specifications 1 and 2 of Charge I, was because MIYAZAKI directly gave an order to NAMEKAWA and forced him to participate, ignoring YAMAMOTO who, in the least, did not interpose his will against NAMEKAWA'S participation which was done within a hair-breadth of time so it was impossible for YAMAMOTO to check his action.

I, therefore, maintain from the above grounds that the accused YAMAMOTO is "not guilty" of specification 3 of charge I.

(2) CONCERNING THE ACCUSED YAMAMOTO'S DUTY TO PROTECT THE SEVEN CIVILIANS.

In Specification 4 of Charge I, the accused YAMAMOTO is charged with neglect of duty in that he failed to protect seven civilians permitting them to be unlawfully killed by the members of the Japanese armed forces.

However, is there any duty on the part of the accused YAMAMOTO to protect these seven civilians? It has been clearly brought out by witnesses YAJIMA, Toshihiko and SANO, Giichi that these seven civilians were under the protection and surveillance of the South Seas Kempeitai. Witness YAJIMA testified to the effect that these civilians had formerly been under the protection of the South Seas Government, but it became difficult for the South Seas Government to protect them because of the tense war conditions, so the South Seas Government requested the civilians to be transferred to the custody of Division Headquarters which in turn had the South Seas Kempeitai protect and watch them. Furthermore, in cross examination by defense counsel, witness SANO when asked: "Explain how these missionaries and employee came to be under custody at the Kempeitai?", replied in a very roundabout manner, which in part reads: "About the middle of August 1944, the Kempeitai received a request from a Japanese force near the place where these two missionaries (formerly residing in KOROR then evacuated from KOROR to BABELTHUAP) were living stating that they would like these missionaries to be moved to some other place. At that time as these foreigners were under the protection of the western branch of the South Seas Government, the Kempeitai made a request to the Western Branch of the South Seas Government to make some arrangements to have these missionaries moved to some other place for it had been requested from the unit stationed there that they be moved. Soon after this, the Kempeitai received an order from Division Headquarters to have these missionaries assembled in one place and for the Kempeitai to protect and guard them."

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From the above cited testimony, it is evident that the civilians were under the protection of the South Seas Kempetai. The responsibility of protecting them, therefore, rested upon MIYAZAKI. Furthermore, it is also clear without minutely referring to the evidence that the execution of the missionaries and others was chiefly done by the members of the Kempetai under the direct command of Lieutenant Colonel MIYAZAKI. It goes without saying that the accused YAMAMOTO had no authority to control the actions of the members of the Kempetai. It is an uncontroversial fact that Commanding Officer MIYAZAKI was the supreme commander at the scene of the execution and that NAMEKAWA was the only SUMIDA UNIT man who killed a missionary among the victims. We may be able to understand the reason if the accused YAMAMOTO were held responsible in that he had violated his duty of protecting the one missionary which NAMEKAWA had shot; but it is beyond our remotest understanding for the judge advocate to hold the accused YAMAMOTO responsible for the allegation in this specification that he violated his duty to protect seven civilians.

With regard to the one missionary which NAMEKAWA killed, I have already explained in great detail the circumstances under which he came to be assigned to the missionary. I wish, however, to reiterate that NAMEKAWA'S action was by order of MIYAZAKI without YAMAMOTO'S

will being interposed in the least, without YAMAMOTO having chance to check NAMEKAWA because it happened within a moment of time, and over the objection and protest of YAMAMOTO. Consequently, there exists no violation of duty to protect the seven civilians on the part of the accused YAMAMOTO.

I, therefore, maintain for the reasons stated above that the accused YAMAMOTO is "not guilty" as to Specification 4 of Charge I.

PART III. CONCERNING THE SPECIFICATION OF CHARGE II.

In the specification of Charge II these accused are charged with the murder of ten civilians and alleged therein: "This in violation of effective law, especially Article 199 of the Criminal Code of Japan." The main reason for the judge advocate to have charged the same facts as alleged in Specifications 1 and 2 of Charge I, again in Charge II, as violation of Article 199 of the Criminal Code of Japan, it seems, was because they considered that the offenses against the three victims, FILAMINA UNTALAN HONDONERO, BALTAZAR UNTALAN HONDONERO and CAROLINE UNTALAN HONDONERO among the ten victims does not constitute a war crime, but are nothing but ordinary murder owing to the fact that they were natives, inhabitants of YAP ISLAND. The reason for also including the offenses against the remaining seven victims in the specification was, in consideration that it might result so that the accused might not escape punishment for the violation of the criminal code of Japan, even if found not guilty of a war crime in case the nationalities of the victims were not established - that is, they have provided for the contingency in the evidence.

Since the Criminal Code of Japan, like any other law of Japan, was enacted by the authority of the legislative power of Japan as a function of her sovereignty it is evident that the Japanese courts alone, can apply it; and such an American court as this Military Commission can not do so. The judge advocate, however, must have reasonable grounds to have asked an American court, such as this Military Commission, to apply the Criminal Code of Japan. We have found this ground in the facts of which the judge advocate requested the Commission to take judicial notice of - that is, item 2 through 10. The intention of the judge advocate could be summarized as follows:

WSSS(16)*

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The League of Nations on 17 December 1920 granted to Japan a Class "C" mandate over all the former German Islands situated in the Pacific Ocean and lying north of the equator; and under an ordinance (No. 26) for the Treatment of Judicial Affairs in the South Seas Islands, enacted in 1923, the Criminal Code of Japan was the effective law in the mandated islands at the time of this incident. On or about 15 September 1944, a portion of the Palau Islands was occupied by the armed forces of the United States and a Military Government was proclaimed by Chester W. NIMITZ, Fleet Admiral, U. S. Navy, Commander in Chief, United States Pacific Fleet and Pacific Ocean Area, and subsequently Proclamations to the People of the Caroline Islands were issued by and under the authority of Chester W. NIMITZ, Fleet Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Area, and Military Governor of the Caroline Islands.

Article IV of the above proclamation (No. 2) provides: "Any person who commits an act which violates any provision of the Japanese Penal Code in effect in these islands prior to the occupation by the forces under my command, or the provisions of native law customary in the island, may, at the discretion of the Military Governor or under his authority, be brought to trial before an Exceptional Military Court....."; and Section 3 Article II of Proclamation No. 3, states that such "Exceptional Military Courts shall have jurisdiction over: (a) All offenses against the laws and usages of war; and (b) All offenses under any proclamation, order or regulation issued under Authority of my Military Government; and (c) Any offenses under the local laws of the West Caroline Islands occupied by the United States Forces....."

Then, in accordance with Article II of the Trusteeship Agreement for the former Japanese mandated islands approved by the Security Council of the United Nations on 2 April 1947 and by the United States Government on 18 July 1947, the United States was designated as the administering authority of the Trust Territory comprising the islands of the Marshalls, Carolines, and Marianas Groups; thus the Military Government previously proclaimed by Admiral NIMITZ was terminated on 18 July 1947 by executive order of the President of the United States, and a civil administration of these islands was instituted under the responsibility of the Secretary of the Navy. Article II of Proclamation No. 1 to the People of the Trust Territory of the Pacific Islands, issued by L. E. DENFELD, Admiral, U. S. Navy, Commander in Chief, Pacific and U. S. Pacific Fleet, and High Commissioner of the Trust Territory by designation of the President of the United States, provides: that by its terms continue in force and effect, "all proclamations, regulations, ordinances and orders of the former military government." Thus, the judge advocate contended that the Criminal Code of Japan is still the effective law of these territories.

In view of the above reasoning, there is no doubt that the Criminal Code of Japan still has effect in the United States Trust Territory in the Pacific Islands; and we also do not attempt to deny this fact. In the following, however, I wish to scrutinize whether the Criminal Code of Japan is applicable to the alleged offenses of these accused, and even assuming that it is, whether

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0779

this Military Commission convened at Commander Marianas, Guam, M.I., can punish those accused in accordance with that Criminal Code of Japan.

(1) IS MARTIAL LAW RETROSPECTIVE?

There is no room for controversy that the Criminal Code of Japan was in force in accordance with Imperial Ordinance (no. 26) for the Treatment of Judicial Affairs in the South Seas Island, enacted in 1923, over Babelthup Island, Palau Islands, where the offenses were committed, and on 18 September 1944 when the offenses occurred. The above Imperial Ordinance, however, was effective as long as Japan exercised her sovereignty over the said island, but once Japan lost her sovereignty over the place by surrendering to the Allied Powers in August (the 14th) 1945 and by the subsequent occupation of the said island by the American forces, the above imperial ordinance lost its effect; and consequently the Criminal Code of Japan was no longer effective as the law of Japan. The only reason why the Criminal Code of Japan is still effective today in the United States Trust Territory in the Pacific Islands including Babelthup, is because of the above cited Proclamations of Admiral NIMITZ and the Proclamation of Admiral DENFELD which recognized the continued effect of the former. In other words, the Criminal Code of Japan is no longer effective as the law of Japan, but as the local law of the United States in the Trust Territories of the Pacific Islands. Though its substance is identical with the Criminal Code of Japan, the source from which the effect of the law is secured, is quite different between the time when the alleged offenses were committed and the time after the occupation by the American forces. The very reason for the Judge Advocate to have asked this Commission, an American court, to apply this law, I believe, is attributed to the fact that he, too, acknowledges this as the local law of the United States. Otherwise, there would be no reason for requesting an American Military Commission to apply the Criminal Code of Japan as a law of Japan.

Then, when does the Criminal Code of Japan as an American local law, become effective? Needless to say, it became effective when Admiral NIMITZ issued the proclamation in Babelthup, after the occupation of the American Forces. This is quite evident, in view of Article 9 of Proclamation No. 2, and Article 10 of Proclamation No. 3, which have already been cited in the above. That is, both Articles specifically provide that: "this proclamation will become effective in each or part thereof within the occupied territory on the date of its first publication." It seems to me that the judge advocate interpreted this provision, that if, one or more islands in a group were occupied and proclamation issued thereon, the proclamation would be effective on the other islands in the group which have not yet been occupied, and since this proclamation was announced on Peleliu Islands, among the Palau Group after being occupied by the American Forces, he considered that the proclamation would also be effective in Babelthup and the other islands of the Palau Group which were not yet occupied, and thus requested judicial notice to be taken of the fact that on or about September 15, 1944 the Palau Islands were occupied by the armed forces of the United States. This intention of the judge advocate was revealed when he gave comment upon the request of the President of the Commission on this sixth item of the judicial notice. It can be readily conceived that this interpretation of the judge advocate was overlooked what constituted the objective basis for making the issuance of the proclamation possible, was impertinent and erroneous, when we recall the legal sense of the word "occupation." Article 42 of Regulations respecting

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the laws and customs of land, Annex to Hague Convention of 18 October 1907 provides: "Territory is considered occupied when actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and is in a position to assert itself." In view of this provision, occupation must be accompanied by actual control of forces, it does not assume legal effect by mere proclamation of occupation, just as if mere declaration of blockade is not enough for maritime blockade without actual control over a certain body of water by actual naval force to effectuate the blockade.

The President of the Commission promptly noticed this point and took judicial notice after amending the said item to read: "That on or about September 15, 1944 a portion of the Palau Islands was occupied by the armed forces of the United States We wish to express our highest respect to the penetrating observation of the President and the impartial attitude of the Members of the Commission as indicated with regard to this item of the judicial notice.

In view of the above, there is no room for doubt that the above proclamations became effective, as far as Babelthup is concerned, from the date the said proclamations were made public on Babelthup after being occupied by the American forces. To interpret the articles of the above mentioned NIMITZ proclamation as such, and in such manner only, is in conformity with the universal legislative policy of modern civilized countries which prohibits retroactive criminal legislation, and in harmony with the fundamental principles of modern interpretative criminal jurisprudence which denies retrospective effect in criminal law. The Constitution of the United States specifically provides in Paragraph Three, Section Nine of Article I thereof as follows: "no.....ex post facto law shall be passed," and in Paragraph One of Section Ten of the same article as: "state shall pass no ex post facto law" and prohibits any retrospective punishment law to be enacted by the Federal or State Congress. Therefore, Article 9 of Proclamation No. 2 and Article 10 of Proclamation No. 3 already mentioned are proper and natural provisions materializing this spirit of the Constitution of the United States.

An "ex post facto law", within the meaning of this prohibition, is "one which, in its operation, makes that criminal which was not so at the time the action was performed, or which increases the punishment, or, in short, which, in relation to the offense or its consequences, alters the situation of a party, to his disadvantage." In other words, this prohibition in the constitution clearly prevents the legislatures from punishing as a crime an act previously committed, and which was innocent or not punishable when committed, and from aggravating an offense previously committed.

At this point, an argument may be raised that as regards offenses such as murder, which has hitherto been invariably deemed as crime in every human society irrespective of time and place, there is no injustice in recognizing retrospective effect so long as punishment is not increased. In order to decide upon this point, it is necessary that we look back into the Hague Convention, Regulations respecting laws and usages of war on land, Article 43 which is the legal source upon which the NIMITZ proclamation is laid. Article 43 reads: "The authority of the power of the State having passed de facto into the hands of the occupant, the latter shall do all in his power to restore, and ensure, as far as possible, public order and safety, respecting at the same time, unless absolutely

prevented, the laws in force in the country." Charles G. FENWICK, professor of Bryn Mawr College, in interpreting this article states as follows: (C.G. FENWICK, International Law, page 486): "An obligation is therefore imposed upon the belligerent to maintain the existing civil and criminal law insofar as is compatible with the existence of a state of war and the safety of the Army of occupation. Such new measures as may be enacted in accordance with the necessities of the abnormal situation possesses in respect to the citizen body, the force of law and their observance may be secured by the imposition of such penalties as the occupant may deem necessary.....The authority thus set up by a belligerent in occupied territory and the acts done in the pursuance of it are technically designated as "Military Government", while the law enforced by the Military Government is known as "Martial Law." Professor OPPENHEIM'S interpretation of the same article is as follows: (OPPENHEIM'S International Law, Vol. II, section 169, Rights and Duties in general of the Occupant, pages 341-342) "As the occupant actually exercises authority and as the legitimate Government is prevented from exercising its authority, the occupant acquires a temporary right of administration over the territory and its inhabitant; and all legitimate steps he takes in the exercise of this right must be recognized by the legitimate Government after occupation has ceased In carrying it (the administration of the occupant) out the occupant is totally independent of the constitution and the laws of the territory, since occupation is an aim of warfare, and the maintenance and safety of his forces, and the purpose of war, stand in the foreground of his interest, and must be promoted under all circumstances and conditions. (Underscore supplied by Defense Counsel.) But, although as regards the safety of his army and the purpose of war the occupant is vested with an almost absolute power, as he is not the sovereign of the territory he has no right to make changes in the law, or in the administration, other than those which are temporarily necessitated by his interest in the maintenance and safety of his army and the realization of the purpose of war."

Though an armed force of a certain country occupies a portion of the enemy territory, the said territory does not immediately become the territory of the occupant. The question as regards such territory is ultimately decided in the Peace Treaty. This temporary nature of the occupation imposes various limitations on the exercise of power on the part of the occupant. The above mentioned article (43) is one of such limitations imposed. The objective of the occupant to exercise its authority is, as evident in the explanations of FENWICK and OPPENHEIM cited above, to maintain the safety of its armed forces and to restore public order in the occupied territory and stability of the livelihood of the inhabitants. Needless to say, offenses committed prior to the occupation, have no bearing upon the safety of the occupying power; nor has it hardly any effect upon the public order of the occupied territory and the livelihood of the inhabitants after the occupation. In view of the above purpose of the occupant to exercise its authority in the occupied territory, there is not the slightest necessity of recognizing retroactive effect in martial law by going to the extent of disregarding the fundamental idea of criminal law of the modern civilized countries. Therefore, WINTHROP in his "Military Law and Precedents", second edition, section 1906, pages 837-838 states: - "Jurisdiction - as to time, An offense, to be brought within the cognizance of a military commission, must have been committed within the period of the war or of the exercise of military government or martial law. As in the ordinary criminal law one cannot legally be punished for what is not an offense at the time of the sentence, so a military commission cannot (in the absence of specific statutory authority,) legally assume jurisdiction of, or impose a punishment for, an offense committed either before or after

the war or other exigency authorizing the exercise of military power. Thus, a military commander, in the exercise of Military Government over enemy's territory occupied by his army cannot, with whatever good intention, legally bring to trial before military commission ordered by him offenders whose crimes were committed prior to the occupation.

(2) HAS THIS MILITARY COMMISSION JURISDICTION OVER THESE OFFENSES IN CASE MARTIAL LAW IS RETROSPECTIVE?

Even if we concede this point and admitting retrospective effect in martial law in the above mentioned NIMITZ Proclamations, say that even the offenses committed prior to the occupation of Babelthup by the American forces, are punishable by the Criminal Code of Japan which was proclaimed to have continued effect after the occupation in accordance with the above proclamations, can this military commission take cognizance of such offenses? Definitely Not!!!!!! I shall explain the reason for this in the following.

Proclamation No. 3 issued by Admiral NIMITZ deals with Exceptional Military Courts and Article II, Section 3, (b), thereof, provides: "Exceptional Military Commission shall have jurisdiction over all offenses under any proclamation, order or regulation issued under the authority of my Military Government." This military commission, I believe, is one of such Exceptional Military Courts established upon the basis of the Proclamation by Admiral NIMITZ. The reason for providing in paragraph 3 of the precept for Military Commission as: "The military commission shall be competent to try all offenses within the jurisdiction of exceptional military courts, I believe, cannot mean anything but this.

Let us, however, look back and consider to whom the above proclamations are addressed. Needless to say, they are addressed to the People of the West Caroline Islands (former Japanese mandated Pacific Islands.) Can these accused very well be included among these inhabitants? These accused should simultaneously become prisoners of war at the time when the above proclamations of Admiral NIMITZ became effective over Babelthup, Palau Islands, that is, when Babelthup was occupied by the American forces. On the other hand, the time when these accused were released from the status of prisoners of war, was, when they left Babelthup for Japan to be demobilized. That is, these accused could not have possibly acquired the status of inhabitants of Babelthup Island even for a single day. A prisoner of war has a peculiar status under international law and his legal status greatly differs from that of an inhabitant of an occupied territory. The above proclamations of Admiral NIMITZ are in no way oblivious of this peculiar status of a prisoner of war. That is, Proclamation No. 2, Article I, Section 2 provides: "Jurisdiction over person Jurisdiction of every Exceptional Military Court shall extend to all persons in the area except (c) prisoners of war.", and clearly sets aside prisoners of war outside of the jurisdiction of the Exceptional Military Court. Thus, with respect to the present case, this Military Commission as an Exceptional Military Court, has absolutely no jurisdiction over these accused. If this Military Commission as an Exceptional Military Court, can try these accused who had been prisoners of war and who having been once released from the status of prisoners, were demobilized and became Japanese citizens, there would be no necessity of further adding scrupulously to paragraph 3 of the precept for a Military Commission the portion: "It shall have jurisdiction over all

"SSS(23)"

0783

Japanese nationals and others who worked with, were employed by or served in connection with the former Japanese Imperial Government.", because the Exceptional Military Court is also vested with jurisdiction concerning offenses in violation of the laws and customs of war. (Reference above cited proclamation No. 2, Article II, section 3, (a)) Although likewise referred to in paragraph 3 of the precept, the jurisdiction of the Exceptional Military Court and the jurisdiction over all Japanese nationals and others who worked with, were employed by or served in connection with the former Japanese Imperial Government, consists of entirely different legal sources. The former is based upon the authority conferred by international law as an effect of occupation, and has its source in the Hague Convention respecting land warfare, article 43 and the above NIMITZ proclamations which is based upon this convention. It may try offenses against the laws and customs of war; but war crimes in this sense are those committed under continued hostilities after the occupation and such war crimes are cognizable and punishable in order to secure the safety of the occupation forces. On the other hand, the latter is the authority to be able to try and punish war crimes after the termination of hostilities, and is the authority to try and punish war crimes with new signification which has entirely developed during the course of the present war. It is based upon the Potsdam Declaration, particularly section 10 thereof, and the United States' Initial Post-Surrender Policy for Japan, particularly Part III Political, b. war criminals and others, which is based upon the Potsdam Declaration.

As we have seen in the above, this Military Commission has dual character totally different in nature. It seems, therefore, that this commission operates in some cases as an Exceptional Military Court, and in other as war crime court of new signification. Such an attitude as functioning at first as a court to try war crimes in the new sense and when this fails, attempting to operate as an Exceptional Military Court under the same procedure with regard to the same accused and same offense should not in any way be allowed in a court of a constitutional state.

Law is a measure of the value of a person's act; and as its proper nature it must be constant and invariable. To try to measure a certain thing with another ruler with a different unit of measure because the first ruler did not produce the desired results, should not be allowed. Law is not such a dubious thing. Herein, lies the authority of law. Law is not such a convenient and mutable thing. Herein, we find the stability of law. What would be left, if authority and stability were stripped from law? Justice would no longer exist there, and frivolous opportunism would only prevail.

I am without the slightest doubt that Honorable President and the Members of the Commission will listen to my foregoing argument and decide most impartially. With this, I shall conclude my last argument in this court.

Since assuming my present duty in June of last year, throughout the past ten months, I have by your kind guidance and suggestion studied and familiarized myself to some extent with the procedure and laws of your country, for which I wish to avail myself of this opportunity to express my sincere gratitude,

Respectfully,

KUNATA, Hideo.

I hereby certify the foregoing twenty-four (24) typewritten pages, to be a true and complete English translation of the original Japanese argument written in Japanese to the best of my ability.

Eugene E. Kerrick, Junior
EUGENE E. KERRICK, JUNIOR
Lieutenant, U. S. Naval Reserve,
Interpreter.

"SSS(24)"

0784

被告市川、石山、杉本、一宮、尾崎、玉本及
横山。対スル辯論

昭和二十三年三月二十二日

辯護人 佐藤 毅

委員長並。委員各位。

本辯護人、本裁判。起訴セラル被告二十名中、市川少尉、石
山曹長、杉本曹長、一宮軍曹、尾崎軍曹、玉本軍曹、及横山軍曹等。
七名。爲。辯論セントスルモノデアリマス。

本辯護人、順序トシテ先ツ予一部。於テ本法廷。提メサ
ル諸証拠。基キ是等七名、被告。関係アル一般的事実、及被
告、行爲ヲ検討シ、予二部。於テ是等、被告ガ尚疑サレタル起
訴及罪狀項目。依リ罰セラルベキモノナリヤ否ヤ。就テ論ゼントス
モノデアリマス。

第 一 部

第一章 證據。基キ一般的事実、検討。

一、處刑。關スル上官、命令

宣教師其他、處刑。關スル命令ガ集國司令部カラ發セラレ
タ命令デアル事。關シテハ、檢事側証人矢島俊彦ガ之ヲ否定シタ
構ラズ、他、檢事側証人、中村教夫、佐野義一、山田清、高橋源
治及今泉慶四郎ガ其、旨宮崎中佐カラ聞カサレタコトヲ本委員会

(1)

"TTT(1)"

0785

= 於テ明言シタ事。依ツテ事實デアルト推定サル得ルデアリマス
元來上官ノ命令デアル以上、其ノ命令者ガ官崎中佐デポート。集団司令
官デポート。命令ノ權威ニ差違、アルベキモ、デハアリマセヌガ、受令者ノ
立場カラスバ、夫レガ全地ニ於ケル最高指揮官ノ命令デアル場合ニ
ハ、絶対ニ動カスコト、出来ナイ極メテ重要ナル命令デアルト判断スルガ
當然デアリマス。殊ニ受令者ガ報告等、如キ。少尉又ハ下士官ノ如キ
下級者ノ場合ニ於テ然リデアリマス。

二、事件當時ノ戦況

事件當時、ペリリエー島ハ既ニ攻略サレ、パラオ本島ニ對スル
爆撃ガ連日熾烈デアリ、米軍、パラオ本島ニ對スル上陸ガ目前ニ迫
リ居タト判断サレ居タコトハ、檢事側証人、中村、佐野、及、高橋ノ
證言ニ依ツテ之ヲ親知スルオカ出来マス。殊ニ中村ハ質問125ニ
答ヘテ當時、爆撃ガ熾烈デ、殆ド常ニ防空壕内ニ入ッテ居タト述
ベ又、憲兵隊ノ情報係デアリ且ツ常ニ集団司令部ト連絡ニ當ッテ居
タ証人佐野ハ、八月末、米軍ガパラオニ上陸スル旨ノ情報ニ接シ居
タト證言シ居リマス。

至此、距離ニ相メテ優勢ト米軍ガ居リ、某處カラ連日熾
烈ト爆撃ヲ受テ居タ状況ニ於テ、孤島ニ孤立無援デアリツタ日本軍、
總員ガ當時、危急存亡ノ状態ニアリト判断シタコトハ極メテ當然ノ
トデアリマス。

三、處刑ノ理由

如何ナル理由ニ依ツテ宣教師達ガ處刑サレルニ至ツタカニ就
テ、處刑決定者側ノ證據ヲ得ルニイハルニ明瞭デアリマセヌ。

(2)

"TTT(2)"

0786

然レテ本事件ノ被害等ヲ裁クニ當リテハ、上級者ニ於テ如何ル正當ナル理由ニ依リ處刑ガ決定セラルカ、又合法的ナ手續ニ依リテ行ハレタルカ否カ、重要ト問題ナリマセヌ。問題ハ被害等ガコノ處刑ノ理由ヲ上官カラ何ト聞カセラルカ、又之ヲ聞カセラル時ニ、如何ニ之ヲ判断シ得タルカニ在リデアリマス。

検事側証人 中村ハ、宮崎中佐カラ戦況逼迫ニテ米軍、上陸ガ目前ニ迫リテ、スパイノ嫌疑ナル宣教師連ガ處刑サレルゾト云ハレタト證言シマス。検事側証人 佐野ハ戦況逼迫時、己ノ情ナキ軍事上ノ措置トシテ處刑サレルヲ針デアルコトヲ宮崎中佐カラ云ハレタト證言シマス。而シテ實際ニ、前節ニ述ベタル如キ戦況下ニ在リテ斯カル理由ヲ聞カセラル部下トシテハ、其ノ命令ノ法的理非ヲ正シク判断シ得テアリマセラルカ、正シク判断シ得ルカワノガ、当時ノ状況ニ於テハ至當デアルト云フベキデアリマス。

四、本處刑ニ参加シ命ゼラル憲兵隊ノ人員

検事側証人 佐野ハ直接証言ニ於テ、憲兵隊將校參集、際宮崎中佐ガ次ノ命令ヲ下シタト證言シテ居リマス。即チ當直勤務者及病人以外ノ全憲兵及補助憲兵ガコノ處刑ニ行ク様ニ命ゼラルトス。検事側証人 山田清ハ、當日當直員、一人デアルヲ拘ラス。後半ノ受持デアルヲ崗傷上、處刑ニ参加スルコトヲ命ゼラルト證言シマス。全シテ検事側証人 高橋輝次ハ、處刑ノ間、隊内ニ残留ニテ居タモノ、當直デアル後、及相良上等兵、並ニ病人ノミデアルト證言シテ居リマス。是等ノ證言ニ依リ、本處刑ハ、憲兵隊全体ノ作業デアルヲ、最少限度、當直員及病人以外ノ憲兵及補助憲兵、全員ガ、否應ナレニ、之ニ参加セシラルコトガ明瞭デアリマス。

(3)

"TTT(3)"

五、被告等。課セララル任務

(イ)市川、任務

被告市川の彼、口供書。於テ事件当日、午前、憲兵隊特校が隊長宮崎中佐、室ニ召集セシメラル時、宮崎カラ次、任務ヲ受ケタト述ベテ居リマス。即チ、(1)車輛ニ台及ニヤベル、準備。(2)隊内機密、保持。(3)職務、下士官ヲ第一分隊長、指揮ヲ受ケシメルコト、ミデアリマス。

検事側証人、中村及佐野ニ。副官デアリシ市川ハ、自動車及資料、準備ヲナスコトヲ命ゼラレタ証言ニテ居リマス。是等、証拠ニ依ツテ明瞭ニ通、被告市川ガ本處刑事件。於テ課セララル任務ハ、極メテ輕微ナモノデアリシガアリマス。

(ロ)石山外五名、下士官、課セララル任務

憲兵下士官デアリシ被告石山外五名ハ、多数、證據、示ス通、当日隊内。於ル總員集合。於テ宮崎中佐立會、下ニ。中村中尉カラ各々補助憲兵一名ト組ミ、宣教師各一人、處刑ヲ担当スルコトヲ命ゼラレシデアリマス。即チ是等被告ハ、射撃隊、一員ヲ命ゼラレシデアリマスガ、當時、状況ニ於テ、彼等ガコノ任務カラ逃レルコトハ、全然不可能デアリシガアリマス。

六、處刑現場ニ於ル指揮官。

處刑現場ニ於テ、宮崎中佐ガ全般、指揮ヲ執リ、第一分隊長列シ中村中尉ガ直接射撃隊、指揮ヲ執ツコトハ、多数、証人、証言及被告、口供書、何レ一致スル所デアリ。疑無イ事實デアリマス。

(ハ)

"TTT(4)"

0788

第二章 各報告が本處刑事事件に於ける行為

一、報告市川・岡田

本法廷・於て報告市川・対し多ク、證言ヲナシ者ハ、檢事側證人中村アリマシ。彼ハ市川ガ隊員、トラック乗車時、シヤベルヲ補助憲兵ニ渡シ、市川ガ處刑、現場テローソクヲ宮崎、佐野ニ渡シ、宮崎、拳銃ヲ受取ツテ中村准尉又ハ横山軍曹ニ渡シ、住田部隊、兵隊ニ射撃スル様ニ宮崎ガ述べタ後、市川ガ全様、オハ山本中尉ニ話シテ證言ニテ居リマス。

然レ、中村、彼カラ証人台ニ立ツテ証人ハ一トシテ彼、是等、證言ヲ追証シカツノミナラス、却テ之ト反對、證言ヲシテ居リマス。中村、證言中ニ信用出来ナイ或多ク、證言ノアツタコハ委員各位、充分氣付カルコトト思ヒマス。

市川ガ補助憲兵ニシヤベルヲ渡シト云フ中村、證言ハ、檢事側證人高橋ガ直接訊問ニ於テ、補助憲兵ガ何カ支給サルハ見ナイ。彼等自身テ本部宿舍、下ハ月魁ヲ取りニ行ツタ旨答ヘタコト反証ニ依ツテ覆サレテ居リマス。

市川ガ處刑、現場テ宮崎中尉、佐野中尉ニローソクヲ渡シト云フ中村、證言ハ、佐野ニ依ツテ支持サレテ居リマセヌ。

宮崎中尉、拳銃ヲ市川ガ受取ツテ中村准尉又ハ横山軍曹ニ渡シト云フ中村、證言ハ、証人佐野及今泉ガ、宮崎ガ直接彼、ピストルヲ中村准尉ニ渡シト證言シタコトニ依ツテ完全ニ覆サレテ居リマス。

住田部隊、兵隊ヲ射撃参加セシムル宮崎、言フ市川ガ縛返シテ山本ニ傳ヘタト、中村、證言ニ依リ、今泉、明確ニ證言ニ依リ

(5)

"TTT(5)"

0789

誤デアルトガ立証セテ居リマス。即チ今泉、宮崎ト山本ト、筒・入ツテ
住田部隊ノ兵・射ツコトヲ山本ニ述ベタルハ、中村自象デアツテオツ明言
シマシ。当時射撃指揮官デアツタ中村ガ宮崎、命ヲ山本ニ傳ヘタメ
デアリ。射撃ニ何等関係、ナシ市川ガ口ヲ出スベキモノデナシコトハ、何人
モ了解シ且信ジ得ルモノデアリマセウ。以上、外ニハ、証人今泉ガ
處刑ノ現場デ、市川ガ口・ソクヲ持ツテ居ルヲ見タト証言シマシ。ミデア
ツテ、報告市川ガ本處刑事仲ニ於テ主役ヲ演ジタト云フコトニ就テハ
何等、證據ハ譽ゲラレナカツ。之ト反対ニ、証人佐野、山田、今泉ハ何
レモ、報告市川ノ現場デハ唯見テ居ラゲデアツテ、何モシテ居ナイト
ヲ明瞭ニ証言シマシ。

以上、證據ヲ綜合スルニ、報告市川、当日、行方ハ、本辯護
人ガ叢ニ述ベタル如ク、彼ガ當日午前宮崎中流カウ命ゼラレタ後、任
務ノ範圍ヲカシメ出テ居ラヌ。即チ車輛ヲ準備スルコトガ實際ト、彼ノ
唯一ノ仕事デアツタコトガ明瞭デアリマス。

成程、彼ハ處刑ノ現場デ燈火ヲ持ツカモ知レマセ、然レ夜有
ニ燈火ヲ持ツコトハ、誰ニモ必要且普通ノコトデアリマス。又彼ノ保持シ
ロ・ソクハ、コノ處刑ニハ何等直接関係シテ居ラナイデアリマス。何トナ
レバ、報告中、数名ガ處刑現場、周圍ヲ宣聲口供書ニ添付シタメ
ニ依レバ、射撃隊ヲ照ス爲ニ必要ナ燈火ハ、射撃隊ニ近接シテ何人
カニ依ツテ保持セラルテ居リ、報告市川ハ射撃隊カラ離レタ所ニ立ツテ
居タコトヲ示シテ居ルカラデアリマス。

二、被告石山ニ関シ

檢事側証人佐野、山田、今泉及辯護側証人江連ガ報告
石山、處刑現場ニ居タコトヲ証言シマシガ、特ニ彼ガ何ヲナシタカニ就

(6)

"TTT(6)"

0790

の供述書出来て居る。

被告石山自身は彼、宣誓の供書に於て、彼が宣教師、一人を担当せしめ、之を射撃セントリタコトヲ認め居る。然るに、當時、瞬間躊躇して居る間、後方へ居た人、多分宮崎中佐が之を射つた述べて居ります。之を追證する證據ハアリマセヌが、兎に角、彼が射撃隊、一員デアツタ事ハ事實デアリマセウ。

三、被告杉本ニ関し。

憲兵隊員デアル検事側証人、全部ハ被告杉本が處刑、現場へ居たコトヲ証言シ、彼自身も宣誓の供書中、之ヲ認め居ります。然るに、彼ハ、射撃前、佐田部隊ノ兵ト交代し射撃セズニ終つた宣誓の供書中述べて居り、之ハ辯護側証人、西田文雄、反對証言ニ於て追證ハ出来テアリマス。

四、被告一宮ニ関し。

證據ノ示ス通、被告一宮も亦、射撃隊ノ一員デアリ。現場ニ赴いたコトハ事實デアリマス。然るに、彼が宮崎中佐ノ号令デピストルヲ發射セントリタ時、ピストルニ故障ヲ生じ發射出来ずカツタコト、ソレヲ彼ノ代リ、他ノ者が射つたコトハ事實デプロー。何トナレバ一宮が彼、宣誓の供書ニ書いたコトハ事實ニ関し、検事側証人、佐野が直接証言ニ於て一宮が拳銃ニ故障ヲ生じ、宮崎中佐カラ叱られた事ヲ覺えて居る。ソレヲ其ノ射撃機ヲミテ宮崎中佐が射つた追證して居るカラデアリマス。

五、被告尾崎ニ関し。

(7)

"TTT(7)"

彼と前者と全様 射撃隊ノ一員トシ現場ニ赴イタガ現場ニ於テ何ヲ爲シタカニ就テハ明瞭デハナイ。

六. 被告玉本ニ関シ

相被告江連ハ彼ノ宣誓口供書中ニ玉本ガ三番目ノ被害者ヲ射ツト述ベタガ一オ。彼ノ証人言ニ於テ玉本ノ射ツコトハ確カデハナク夫ノ記憶ガスル程度デアルト證言ニマシタ。被告玉本ノ射ツコトハ確實デハナイカニ免レ角。射撃隊ノ一員デアツタコトハ事實ヲアリマス。

七. 被告横山ニ関シ

被告横山ハ彼ノ宣誓口供書中ニ處刑現場ニ於ケル彼自身ノ行動ヲ最モ率直ニ述ベ。加之何人ニ最モ嫌ルデアロー所ノ女ノ處刑ヲ担当セシメラレタコトヲ隠サズニ述ベテ居リマス。從テ彼ガ何トカニ述レタイト考ヘタガ述レル途ニナク劇當ヲラレシ被害者ヲ担当シタ。然レ彼ノ胸ガツカヘテ手ガ震ヘ。発射シタガ被害者ニ命中ニシタコトハ彼ノ宣誓口供書中ニ述ベタコトニ事實デアリマセウ。此ノ事ハ相被告杉本ガ彼ノ宣誓口供書中ニ「話ニ依レバ横山軍曹ハ土人ヲ担当シタガ彼ノ射チ損シソレテ中村准尉ガ射チ残りヲ射ツタ」ト述ベテ居リ。又檢事側証人山田ガ横山ノ担当シタ子供ノ泣キ出シノヲ宮崎中佐又ハ中村准尉ガ射ツタト証言シタコトニ依ツテ支持セテ居マス。

以上ヲ綜合スルニ被告石山乃至横山ノ六名ノ下士官ガ夫々補助憲兵一名ト組ンテ被害者一名死シ處刑ヲ劇當テラレシ射撃隊ノ一員デアツタコト及處刑ノ現場ニ赴イタ事ハ事實デアリマセウ。然レテ茲ニ注目スベキ重要ナル事實ハ是等下士官ノ處刑ニ関シ宮崎中佐

(8)

"TTT(8)"

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及中村中尉、完全ナル統制下ニ置カレ、集合、組、編成、携行品、乗車
出發、下車、捕縛、懸ケ外ニ及射撃等一切、行動ハ官崎又ハ中村
ノ命令ニ依ツテ爲サレタメ、テプルオテアリマス。之ハ本要員會ニ提出
サレタ總ベテ、証拠、明ニ示ス所デアリテ論議、余地、無イ所デ
アリマス

第二部

市川以下七名、被告ハ何レ第一起訴戦争法規及慣習
違反、第一、第二ニ罪狀項目、又第二ニ起訴殺人罪ニ依ツテ起訴サレタ
テアリマスガ、以下本辯護人ハ第一部ニ於テ檢討シ一般的事實及
各被告ノ行爲ニ基テ、被告等ガ問題サレル罪ニ該當スルヤ否ヤニ就テ
論ゼントスルメ、アリマス。而シテ第一ニ起訴ニ就テハ、全條、鎌田辯護
人ガ既ニ詳シニ論ジテ居リ是ハ本辯護人、坦當ニ被告ニ就テハ
全條ヲアリテ本辯護人ハ主トシテ第一起訴戦争法規及慣習違
反ニ關シ論ジヨウト思ヒマス

第一章 第一起訴 戦争法規及慣習違反ニ就テ

一、本事件ニ就テ宣教師及傭人家族合計十名、一人々ガ假令如
理由ガアリタセヨ、正當ナル手續ニ無ク處刑サレタコトハ誠ニ遺憾
アリマス。特ニ犠牲者ガ宣教師及女子供デアルガ故ニ、一層遺憾

(9)

"TTT(9)"

性者：対して深甚、哀悼、意ヲ表スルモノアリマス 本辯護人ハ反
證ヲ舉ゲ得ナキ故ニ本處刑事件ガ非合法ナルモノアリ。戦争法規
及慣習ニ違反シタルモノアリトハ孰ラハ何等異議ヲ扶ケモノハアリ
マセズ。然レ問題ハ本法廷ニ在リテ被告等ガ戦争法規及慣
習違反ノ罪ニ依ツテ罰セラルベキモノカ否カニ在リテアリマス。本辯
護人ハ本事件当時世界各国ニ行ハル戦争犯罪處罰ニ關スル
特殊ノ方針又ハ規定ニ基テ被告等ノ尚疑サレル罪ニ依ツテ罰セ
ラルベキモノト主張スルモノアリマス

然レハ戦争犯罪處罰ニ關スル特殊ノ方針トハ何ゾヤ

元來戦争ニ於テハ人ヲ殺スルヲ屈敵ノ一主要手段トシ又指
揮官、命令ニ依ツテ行動スル特性ヲ有シ居ル關係上、從來世界各
國共ニ戦争法規及慣習違反ノ行為ヲ罰スル方針ハ一般ノ民間ノ法理
觀念トハ若干異ツルモノアリ。國際法學說ニ於テモ各國ニ於ケル軍事
犯罪ニ關テ特殊ノ處罰方針又ハ規定ガ設ケラレテ來タリテアリマス
本辯護人ハ先づ茲ニ事件當時行ハレ居ル是等ノ方針又ハ規定ヲ
検討シヨウト思ヒマス

(A) 先づ1940年版米國 "The Rules of Land Warfare of the War Depart-
ment of the United States" 347節ニハ次ノ如ク記載サレテ居リマス

『軍隊又ハ個人ノ彼等ガ彼等ノ政府又ハ指揮官、命令又ハ認
可ニ依ツテ犯シタル罪ニ對シテハ罰セラルベキ。斯ル命令又ハ指揮官
共、行為又ハ共、許可又ハ彼等ノ軍隊ニ依ツテ爲カル行為ニ對シテ逮捕
サレタ敵國ニ依ツテ處罰サレルモノ』

(B) 1943年ニ米國國務省カ行ハル Digest of International

(70)

"TTT(10)"

0794

Law 575 節 = 上記、文章ヲ掲ゲテ居ル

(C) 米国防軍省カヲ刊行セリシ "Military Law and Precedents" 2nd Ed.
1, 297 頁 "OBEDIENCE TO ORDERS" 此項 = 次ノ一節ガ掲ゲラレテ居マス

『平時 = 於テハ合法的トハ認メラレタイデフロリ所、命令ヲ受テ
モ戰時 = 在ツテハ戦争ノ法規及慣習 = 保証セラレ居ルモトシテ、之ヲ服従
シテ部下 = 對シテ安全ナル保護ヲ提供スルデフロリ』

即チ、米國 = 於テハ軍隊内、於テモ國際法、觀察 = 於テモ戰
時上官、命令 = 従フ爲メ部下、行爲ハ先ガ平時 = 在ツテハ假令
非合法トハ如キ行爲ヲ受テモ戦争犯罪トシテ罰セラレタイコトガ明示
セラレテ居ル、デフロリマス

(D) 米國、國際法學者 Sheldon Glueck、著書 "War Criminals" 148
頁 = 次ノ如ク述ベテ居マス 『戰時兵、不合法トハレキ所、命令 =
従フコト = 對シヨリ大ナル保護ヲ受ケベキデアル。特 = 現実、戦斗最
中デアル場合 = 兵 = 對スル軍紀ハ、ソルガ一層嚴格デナレバナラヌ。何ト
ナレバ其、命令、合法性ヲ疑フコト云フ根據ノ下 = 服従シカツコトナラハ
全中隊又ハ聯隊、爲 = 非常 = 重大ノ結果ヲ負フン得ルカラデアル』ト。

(E) 英國陸軍、Manual of Military Law 1929 年版 341 頁 "The
Punishment of War Crime"、項 = 次ノ如ク述ベテ居マス

『然レモ注意スベキ重要ナル事ハ軍隊、一員ガ戦争 = 榮ル法規 = 違反
スル行爲ヲナレモ、ソルガ政府又ハ上官カラ命ゼラレシ場合 = 在ツテハソ
ル戦争犯罪ハナラヌ。ソレヲ敵 = 依テ罰セラレタイ。敵國ハ斯カル命令
= 對シテ責任アル役人又ハ指揮官ヲ捕メテ之ヲ罰スルコトガ出来ル』

(11)

"TTT(11)"

0795

又全書、153頁ハ「多ク、場合、命令ガ執カレト云フ事實」、部下ニ
犯意、無かつタコトヲ証スルデポー。ソレヲ實際ニハ、刑事訴訟
カヲ釋放サレルガ普通デアルト述ベテ居マス

(F) 国際法、構成スル Oppenheim, International Law (5th Ed.)
Vol II, 244頁ニ、「戦争ニ関スル法規、違反ハ、ソレガ交戦国政府ノ
命令ニ依リ行ハル場合ニ於テハ、戦争犯罪デアル。若シ軍隊、一員ノ復
讐、政府ノ命令ニ依リテ違反シタ場合ニ、復讐ハ戦争犯罪ニ非ズ
テ敵ニ依リ罰セラルイデポー」ト述ベテ居マス

(G) 日本ニ於テハ陸海軍兵ニ特ニ戦争犯罪、處罰ニ関シ教示シ或ハ
規定セラルヘン何モアリマセズ。唯日本ニ於テハ上官ノ命令ニ
對シテハ常ニ絶対服従スルヲ要求サレ、陸軍刑法第五十七條
ニ於テ上官ノ命令ニ服従シタ者ハ嚴罰ニ處セラル。特ニ戦時ニ
於テ之ガ嚴重ナルガ規定セラルト居ルデアリマス

ソレヲ綜合スルニ本處刑事事件當時ニ於テ日本、陸軍刑法ハ
勿論、米國及英國ノ軍ノ教範ニ於テハ國際法學說ニ於テハ上官ノ
命令ニ依リテ行ハル戦争ニ関スル法規慣習違反ニ就テ部下ヲ罰シ
タ方針又ハ規定デアルコトハ明瞭デアリマス

本辯護人ハ茲ニ1942年10月7日國際聯合戦争犯罪
調査委員會ノ設立ニ關連シテ米國ルーズベルト大統領、高シ次
ノ如キ注目スベキ聲明ヲ引用シ度ト思ヒマス

「集國報復ニ對シテハ本政府或ハ我々外協同シテ居ル他ノ政府
ノ意圖スル所デハナシ。多数ノ無辜ノ民ニ對シテ組織的殺害及凡

(12)

"TTT(12)"

0796

此基督教の教義・違反の残虐行為=對に責任ある首謀者=對
に正当且確實に處罰、加へラル。オガ我々、意圖スル所ヲアルコト
之=依ツテ本弁護人、聯合國、戦争犯罪人處罰=炭スル最高方針
、責任ある首謀者ヲ罰スルデワテ、凡ユル事件炭傷者ヲ罰セトス
ルモ、デイト云フコトヲ了解シ且ツ斯ク信ズルモ、デアリマス
本事件、報告、如キ極メテ低ク階級、將校及下士官デワテ、全ク上
官、命令=従ヒ且上官、完全トル統制下=行動シタ者、從來各國
ヲ行ハル方針及米國大統領、意圖カラ見テモ、尚疑サシキ罪=依リ
罰セラルベキデ、ナリ。釋放サルベキデ、アルト主張スルモ、デアリマス。

一、本弁護人、上述ノ所論=對ニ檢事側、戦争法規及慣習違
反ノ罪=對ニ上官、命令ノ弁護=ナラヌ。總ビテ、前者ガ罰セラル、カ
現在、定説デアルト云フカモ知レマセヌ。
成程最近=花ル米軍、教範モ、國際法學說モ本弁護人ガ前
節=述ビタモノトハ異リ。上官、命令=依ツテ行動シタ部下トモモ、
罰セラルル如ク改訂サレテ居リマス。

米國陸軍1944年刊行 "The Rules of Land Warfare" Basic
Field Manual FM-27-10 Section 345 戦争法規違反=對ニ處罰
ノ項=、次ノ如ク記載サレテ居マス。『戦争法規及慣習=違反
シタ行為ガ上官、命令又ハ政府ノ認可、依ツテ爲サント云フ事、
處罰サレル=當ワテ弁護トシ或ハ處罰、減刑、何レカ=考慮サレデ、
一ヨト。然レモ、今般範=記載サレテ居ル如ク、1944年11月15日
米陸軍參謀總長=依ツテ、公布サレタモ、デワテ本事件ニ対、ナリ
マス。

(13)

"TTT(13)"

0797

Oppenheim, International Law Vol II 2nd ed. 第2版 = 戦争犯罪
處罰 = 同項が次、如く其、内容ヲ改訂サレマシク。

『戦争』 = 同法規カ交戦国、政府又ハ個々、交戦国指揮官、命令 =
依ツテ違反サシト云フ事ハ其、尚、行爲カ戦争犯罪デアルト云フ性
格ヲ阻却シテ、又、原則トシテ犯罪者ハ損害ヲ被ツ交戦国 = 依ツテ
罰セラルルカ免ラレタイト。

然レ此、改訂セ第2版改訂、序言 = 1944年8月トリ全書ガ刊行サ
シ、1944年秋迄、申デリマス。

即チ、改訂サシ方針或ハ教示、本事件迄 = ナラカ行ハルル様。
トワシモデリマス。

從來正式 = 禁セラルル行爲ト規定サレテ行爲ヲ罰スル
トハ正義 = 反スモデリマス。何トナレバ、法律スルホ = 依ツテ、行爲、
法律酌結果ヲ任意 = 変更スルホ = ナラカデリマス。尤、故、本弁護
人ハ、現在、2、處罰方針ヲ過去 = 溯ツテ適用シテ本件、被告等ヲ
罰セラルルホ、不當デアルト主張スルモデリマス。

三 假 = 現在行ハルル處罰方針ガ適用サルト決定カ外ニ
シテ、是等、方針或ハ学説ヲ仔細 = 検討スルハ、本件被告等、行爲ハ處
罰カ免除サレ得ルデリマス。

(A) 只今引用シタ1944年11月、米國、The Rules of Land Warfare =
「上官、命令 = 従ツテ行ハルル行爲」、弁護ヒテ考慮サレテポー
ト述ベテ居マス。

(B) Oppenheim, International Law 6th Ed. 第253節 "The plea of

(14)

"TTT(14)"

0798

Superior Orders", 頃中 = 『戦争犯罪, 管轄 = 欲し上官, 命令ト云
7 申立ヲ受ケテ法廷ニ, 明 = 非合法ナリ軍, 命令 = 対ニ服従"軍隊
ノ各員, 義務ナルソノ軍隊, 一員 = 対ニ戦争軍紀, 状況下 = 於テ
受領シテ命令ノ法的價值ヲ慎重ニ評量スルヲ期待シ得ナリ……
……中略…… 斯ノ如キ状況ハ多分其ノ行爲ヲ戦争犯罪ト
云フ者カラ免レシムルニ充分デポー』ト述ベテ居マス

第一節 = 述ベタ如ク敵ガ明日ニ上陸スルカモ知ラナイト云フ
逼迫シテ戦況下ニ於テ最高指揮官カラスパイ嫌疑アリト云ハル
宣教師違ハテ刑サレト云ハルカキトキニ是等下士官共ニ受ケタ命令
ノ法的價值ヲ評量スルヲ期待シ得ナリマセリカ。嚴格ニ戦争
軍紀及逼迫シテ戦況下ニ於テ軍事上ノ必要性ト云フ大キキ環境的
重圧ノ下ニ是等報告ガ斯カル判断ヲ得ナリト云フカワタリテモ之ハ当然,
トデハアリマスマイカ。

(C) Mr. Robert Jackson 氏, 著書 "The Nurnberg Case" = 依リ
1945 年 11 月 21 日 独乙ニルビング法廷ニ於テ米國首席検事 Robert
Jackson 氏, 米國ヲ代表スル冒頭陳述中, 一節 "The law of indi-
vidual responsibility" ナル頃中ニ次ノ如ク述ベテ居リマス

『犯罪行爲ヲ犯シテ上官ノ命令ノ下ニ隠レル者ハ出来ナリ』ト述ベ
タ後ニ『勿論我々ハ人ノ行爲ノ法的結果ヲ裁クニ當ツテ其ノ行爲ナ
リ時ノ状況ヲ無視スベキデアルト主張シテ射撃隊ノ一員デアル
兵ニハ處刑ノ合法性ヲ振スルヲ期待スル者ハ出来ナリ』ト述ベテ居マス

本件ノ報告石山以下横山, 六名ハ射撃隊ノ一員デアルヲ示シ
マス。証據ヲ示ス通彼等ハ宍峠中隊及中村中隊時, 完全ニ統制下ニ在
リテ個人ノ思慮分別ヲ働カス余地ハ全然ナク全ク機械的ニ行動セシ

(15)

"TTT(15)"

メラシテアリマス。Mr Robert Jackson 氏ニ斯ノ如キ状況下ニ置カ
ル射撃隊ノ一員ニ對シテ這個人的責任ヲ追究シテ之ヲ處罰スベキア
ルトハ主張シテ居ラナイデアリマス。

叙上ノ所論ニ依リ市川以下七名、被告ガ尙疑ハレル者一
起許戦争法規ハ慣習違反ノ罪ニ依リテ處罰サルベキニ非スト云フ
本弁護人、所論ニ就テ委員長此ノ委員各位ニ充分即賢察ガ
願ハソト信ズルイデアリマス。

第二章 第一 起訴 殺人罪。

被告等ノ第一起訴ニ於テ被害者十名ヲ殺害シノ行為
ガ日本刑法第九十九條ニ違反シテ居ルト云フ事ニ依リテ討論
セラルラス。

然レモ第一起訴ニ就テハ全條鐵田弁護人ガ詳細論
述ニ通リテアリ。今此ノ所論ハ市川以下七名、被告ニ對シテモ
其ノ儘適用サルモテアリテ本弁護人ガ今更ニ茲ニ之ヲ加ヘ
テ要カナイテ省略シマス。

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結 論

終り=本辯護人「既述の所」要約シ、特=次、=其ヲ強調シ度
イト思ヒマス。

(一)軍隊ノ一員ノ行爲ガ認めラル戦争法規、違反トナルコト
デアリマス。上官ノ命令=従フ爲メノ場合=ハ、相手方交戦国=依
ツテ罰セラルト云フコトガ本事件当時何レノ國ニ於テモ行ハレ居
タ原則デアリマス。殊=本件被告等ハ、日本陸軍刑法=依リ上官ノ
命=従ハナイ場合ハ、重罪=處セラルコトノミヲ教ヘラレ、上官ノ命=服
シタ行爲=就テ罰セラルト云フコトハ、全然教ヘラレセズ知リタカ
タデアリマス。其ノ右=採用サレタ原則=従フ是等無智ノ被告等ヲ
罰スルコトハ、正当デハアリマセヌ。

(二)量=3月17日、ルーズベルト大統領、戦争犯罪處罰=関シ聯合國
政府、意圖「集团的報復」=頼ラタスル=非ズシテ責任ナル首謀者=
対シ正当且確實ナル処罰ヲ加ヘンコトヲデプロート云フ聲明及 Mr.
Robert Jackson、射撃隊ノ一員=迄個人責任ヲ追求スルデハ
ナシト云フ所論ハ、本被告等ヲ裁ク=当リ充分考慮カレタ事デアリマス。

委員長並=委員各位。

本辯護人ハ上述ノ論據=基キ本委員会ガ市川、石山、
杉本、宮尾、王本及横山、七名、被告ヲ内証カタル第一起訴
及第二起訴=依テ罰セラルザランコトヲ恭々シク懇願スル次第デアリマス。

(17)

(終)

"TTT(17)"

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FINAL ARGUMENT FOR THE ACCUSED - ICHIKAWA, Yokichi; ISHIYAMA, Zenzo;
SUGIMOTO, Takeji; ICHIMURA, Masao; OZAKI, Katsutoshi; TANAMOTO, Tadashi
and YOKOYAMA, Kyohisa, delivered by defense counsel Mr. SANAGI, SADAMU at
Guam, Marianas Islands on 23 March 1948.

Your Honor the President and the Members of the Commission:

I, as their defense counsel wish to argue on behalf of Second Lieutenant
ICHIKAWA, Sergeant Major ISHIYAMA, Sergeant Major SUGIMOTO, Sergeant ICHI-
MURA, Sergeant OZAKI, Sergeant TANAMOTO, and Sergeant YOKOYAMA, seven of
the twenty accused charged in this case.

As a method of procedure it is desired first to discuss the general
facts and the actions of the accused pertaining to these seven defendants
on the basis of the evidence submitted to this court in Part I. In Part II
I wish to argue on whether these accused should be convicted according to
the charges and specifications with which they are charged.

PART I

CHAPTER I Examination of general facts on the basis of evidence.

1. Superior Order relative to the execution.

Despite the fact that the Prosecution witness YAJIMA, Toshihiko denied
that the order concerning the execution of the missionaries and others was
an order issued by Division Headquarters it may be deduced to have been such
from the clear testimony of the other prosecution witnesses, NAKAMURA, Kazuo,
SANO, Giichi, YAMADA, Kiyoshi, TAKAHASHI, Genji, and IMAIZUMI, Keishiro that
they heard words to that effect from Lieutenant Colonel MIYAZAKI.

Insofar as it was a superior order there should be no difference
in the authoritativeness of the order whether the man issuing it were
Lieutenant Colonel Miyazaki or the Commander-in-Chief of the Division,
but viewing it from the standpoint of the recipient of the order it is only
natural to judge it to be of vital importance and absolutely irrevocable when
coming from the Supreme Commander of his area.

Especially is this true when the recipients of the order were second
lieutenants and noncommissioned officers as was the case of these defendants.

2. War situation at the time of the incident.

At the time of the incident Peleliu Island was under siege, the main
island of the Palaus was being subjected to severe daily bombings, and a
landing of American forces on Babelthup judged imminent. The above may be
gleaned from the testimony of the prosecution witnesses, NAKAMURA, SANO and
TAKAHASHI. In particular, NAKAMURA, in answer to question 125 has replied
that they were almost constantly inside air raid shelters because of the
intensity of the bombing about that time and SANO, who was in charge of
information at the Kempeitai and maintained constant liaison with Division
Headquarters testified that he had received intelligence to the effect that
United States forces would be landing on Palau towards the end of August.

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It is most natural that all personnel of the Japanese forces at that time isolated on a solitary island and alienated from all succor and exposed to severe daily bombings from extremely powerful American forces in very close proximity, deduced that they were in a most precarious situation where their very existences were at stake.

3. Reason for the execution.

It is not clear what reasons motivated the execution of the missionaries and others, because of the impossibility of securing evidence from those who determined the execution.

However, in judging the defendants in this case, what justifiable reasons decided the superior officers to do the execution or whether they followed rational procedure in carrying it out do not constitute grave issues. The problem is in what form did these accused hear the reasons for the execution of their superiors and in what manner they were able to assess them on hearing them.

The prosecution witness NAKAMURA, Kazuo, testified that he was told by Lieutenant Colonel MIYAZAKI that the war situation was urgent, that landing of American forces faced them, and that missionaries suspected as spies were to be executed. The prosecution witness SANO, has also testified that he was told by Lieutenant Colonel MIYAZAKI that in view of the urgent war situation the policy of execution was an unavoidable military measure. Now, could these subordinates, finding themselves in a war situation as previously described and being told such reasons, have accurately assessed the legal propriety of the order? It should be said that it was most natural under the circumstances of that time that they could not have correctly judged.

4. Personnel of the Kempeitai who were ordered to participate in the execution.

The prosecution witness SANO has testified in direct examination that Lieutenant Colonel MIYAZAKI at the Kempeitai officers' meeting gave the order, that all Kempei and auxiliary Kempei excluding the duty and sick personnel go to the execution. The prosecution witness YAMADA, Kiyoshi has testified that despite the fact that he was on day duty that day he was ordered to participate in the execution because his duty was for the latter half of the night. Again, prosecution witness TAKAHASHI, Genji has testified that the only persons remaining at the barracks during the time of the execution were himself and Superior Private SAGARA, the day duty men, and the sick personnel. It is clear from this testimony that this execution was an assignment for all personnel of the Kempeitai excluding the minimum of day duty and sick personnel and that all Kempeis and auxiliary Kempeis were made to participate in it without alternative.

5. Duties assigned to the defendants, etc.

(a) ICHIKAWA'S duty.

The defendant, ICHIKAWA, in his affidavit has stated that on the morning of the incident when the officers of the Kempeitai were assembled in Lieutenant Colonel MIYAZAKI's room he was assigned the following duties by MIYAZAKI: namely, (1) to prepare two trucks and shovels, (2) to maintain secrecy within the Kempeitai, (3) to subordinate the noncommissioned officers of the General Affairs Section to the command of the First Detachment Commander.

Both prosecution witnesses NAKAMURA and SANO have testified that ICHIKAWA who was adjutant was ordered to prepare the trucks and materials. As is made clear by this testimony the duties assigned to the defendant ICHIKAWA in the present incident were of an extremely light nature.

(b) Duties assigned to ISHIYAMA and the five other noncommissioned officers.

As much of the testimony shows that Kempei noncommissioned officers' ISHIYAMA and the five other defendants, were ordered by First Lieutenant

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NAKAMURA in the presence of Lieutenant Colonel MIYAZAKI at the general assembly held within the Kempeitai compound on that day each to team with one auxiliary Kempei and take charge of the execution of one missionary. In short, they were ordered to become members of a firing squad. Under the conditions then prevailing they could not possibly evade this duty imposed on them.

6. The person in command at the scene of the execution.

It is an indisputable fact backed by the unanimity of the testimony of many witnesses and the sworn affidavits of the defendants that at the scene of the execution, Lieutenant Colonel MIYAZAKI had the over all command, and that First Detachment Commander NAKAMURA had direct command of the firing squad.

CHAPTER II. The acts of the various defendants in the present case.

1. Concerning defendant ICHIKAWA.

The witness who testified at length on the defendant ICHIKAWA was the prosecution witness NAKAMURA. He testified that ICHIKAWA handed the shovels to the auxiliary Kempeis when members of the Kempeitai were boarding the trucks, that ICHIKAWA handed the candles to MIYAZAKI and SANO at the scene of the execution, that receiving MIYAZAKI's pistol ICHIKAWA handed it either to Warrant Officer NAKAMURA or Sergeant YOKOYAMA, that after MIYAZAKI had told the Sumida Unit men to shoot, ICHIKAWA said the same thing to First Lieutenant YAMAMOTO.

However, none of the witnesses who took the stand after NAKAMURA have verified his testimony. On the contrary they have testified to the opposite. I believe that members of the commission were fully made aware of several instances in his testimony which could not be given credibility.

The testimony of NAKAMURA that ICHIKAWA handed out shovels to the auxiliary Kempeis has been broken down by the counter-testimony of the prosecution witness TAKAHASHI given in the course of the direct examination: "I did not see the auxiliary Kempeis being issued anything. They went themselves to the Headquarters' Barracks to pick up the shovels."

NAKAMURA's testimony that ICHIKAWA at the scene of the execution handed candles to the Commanding Officer, Lieutenant Colonel MIYAZAKI, and Second Lieutenant SANO, is not supported by SANO's testimony.

NAKAMURA's testimony that ICHIKAWA received Lieutenant Colonel MIYAZAKI's pistol and handed it to either Warrant Officer NAKAMURA or Sergeant YOKOYAMA is completely contravened by witnesses SANO and IMAIZUMI, who have clearly stated that MIYAZAKI directly handed his pistol to Warrant Officer NAKAMURA.

It has been proved by the clear and accurate testimony of IMAIZUMI that NAKAMURA's testimony to the effect that ICHIKAWA repeated MIYAZAKI's words that the Sumida Unit soldiers participate in the shooting to YAMAMOTO was in error. In short, IMAIZUMI, has stated that it was NAKAMURA himself who thrust himself between MIYAZAKI and YAMAMOTO and told the latter about the Sumida Unit men taking part in the shooting.

It is plausible and creditable to all that it was NAKAMURA, then the officer in charge of the shooting, who relayed the order of MIYAZAKI to YAMAMOTO and it was no place for ICHIKAWA, who was in no way connected with the shooting, to open his mouth. Besides the above, we have the testimony of the witness IMAIZUMI that merely ICHIKAWA held a candle at the scene of the execution. No evidence has been submitted to show that the defendant ICHIKAWA played a leading role in the present case. On the contrary witnesses SANO, YAMADA, IMAIZUMI, all clearly testified that the defendant ICHIKAWA merely looked on at the scene of the execution.

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Putting together the above evidence, the acts of the defendant ICHIKAWA on the day of the incident do not at all transgress the scope of his duties which were given him that morning by Lieutenant Colonel MIYAZAKI, and as previously delineated by defense counsel. In short, it is clear that his only duty in actual fact was the preparation of the trucks.

True, he may have held a light at the scene of the execution. But it is not only a necessary but an ordinary thing that a person carry a light at night. Moreover, his having carried a light did not have any direct bearing on this execution, because according to the diagrams of the scene of the execution attached to the sworn affidavits of several of the defendants the lights used to illuminate and held close, the firing squad were held by some other persons, because these diagrams show that the defendant ICHIKAWA was standing at a place removed from the firing squad.

2. Concerning the defendant ISHIYAMA.

The prosecution witnesses, SANO, YAMADA, and IMIZUMI, and the defense witness EZURE all testified that ISHIYAMA was at the scene of the execution but no testimony as to what he did there could be produced.

The defendant ISHIYAMA himself has recognized in his sworn affidavit that he was ordered with the charge of one missionary and that he was about to shoot him, but that while he was hesitating at the point of firing, somebody behind him, probably Lieutenant Colonel MIYAZAKI shot the victim. There is no evidence to corroborate this, but it is most probably a fact that he was at all events a member of the firing squad.

3. Concerning the defendant SUGIMOTO.

All the prosecution witnesses who were members of the Kempeitai have testified that the defendant SUGIMOTO was at the scene of the execution and he himself has attested to the fact in his sworn affidavit. However, he has stated in his sworn affidavit that he was relieved by a soldier of the Sumida Unit before the firing and that the execution ended without his having fired. This has been further corroborated by the defense witness UCHIDA, Fumio in his cross-examination.

4. Concerning the defendant ICHIMIYA.

Exactly as the evidence shows, it is a fact that the defendant ICHIMIYA went to the scene of the execution as a member of the firing squad. However, it is probably also a fact that when he tried to fire his pistol at the command from MIYAZAKI, he was unable to do so because of some trouble with his pistol. Because, concerning this fact which ICHIMIYA wrote in his sworn affidavit, the prosecution witness, SANO, remembered in his direct examination that ICHIMIYA was scolded by Lieutenant Colonel MIYAZAKI because he had trouble with his pistol, and because he went on to testify that MIYAZAKI shot the victim who had thus been missed being shot.

5. Concerning the defendant OZAKI.

As those previously mentioned did go to the scene of the execution as a member of the firing squad. However, it is not clear what he did at the scene of the execution.

6. Concerning the defendant TAMAMOTO.

His co-defendant EZURE stated in his sworn affidavit that TAMAMOTO shot the third victim; but on the other hand when on the witness stand he testified that he was not certain whether TAMAMOTO did shoot, but that he had only a vague recollection. Although it is not certain that the defendant TAMAMOTO did fire, it is a fact that he was a member of the firing squad.

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7. Concerning the defendant YOKOYAMA.

The defendant YOKOYAMA in his sworn affidavit most frankly stated his own actions at the scene of the execution. Moreover he stated, without holding anything back, the fact that he was ordered to take charge of the execution of the woman, a charge which would be most disliked by anyone.

Consequently he tried to think of some way of evading the charge, but as there was no such way, he assumed the charge assigned him. However, he has stated in his sworn affidavit that his heart was full, his hand trembled, and when he fired his shot missed the victim. This too, is probably true. This fact is supported by the sworn affidavit of SUGIMOTO wherein it is stated: "From what I heard Sergeant YOKOYAMA was charged with a native but because he missed the victim, Warrant Officer NAKAMURA shot her off," and by prosecution witness YAMADA who testified that the child taken in charge by YOKOYAMA began to cry and that either Lieutenant Colonel MIYAZAKI or Warrant Officer NAKAMURA shot it.

In putting together all the above it may be assumed as fact that the defendants from ISHIYAMA through YOKOYAMA, six noncommissioned officers were each teamed with one auxiliary Kempei; assigned one victim, that they were members of the firing squad and that they went to the scene of the execution.

However, the noteworthy and important fact here is that these noncommissioned officers were placed under complete control of Lieutenant Colonel MIYAZAKI and Lieutenant NAKAMURA in connection with the execution and that their every act including assembly, organization of teams, arms, and other material taken, boarding of trucks, starting, alighting from trucks, tying up of prisoners, untying of same, and their shooting was carried out in accordance with orders from either MIYAZAKI or NAKAMURA.

This point has been clearly shown by all the evidence submitted to the commission and leave no room for argument.

PART II

The seven defendants headed by ICHIKAWA have each of them been charged with the first and second specifications of Charge I - "Violation of the law and customs of war," and Charge II - namely, "Murder." Defense counsel will argue on whether the crimes alleged are applicable to these defendants on the basis of the general facts and actions of the defendants discussed in Part I.

On Charge II, my co-counsel, Mr. KURATA, has already argued in detail, and as these arguments apply to the clients under my charge, I desire to argue in the main on Charge I, "Violation of the law and customs of war."

CHAPTER I on Charge I, "Violation of the law and customs of war."

1. I sincerely deplore the fact that the missionaries and the family of their employee totalling ten persons in all were executed in this incident without proper procedure, whatever good reasons there may have been. Especially as the victims were missionaries, a woman and two children do I express my deepest sympathy for the victims. Because I cannot offer counter-evidence, I do not in any way object to the present execution incident being considered improper and in "violation of the law and customs of war."

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However, the problem here is whether the prisoners arrayed at the bar should be punished for the crime of "violation of the law and customs of war." I, as defense counsel, aver that the defendants are "not guilty" of the crime with which they are charged on the basis of the special policies or regulations relative to the punishment of war crimes which were valid in all nations of the world at the time of this incident.

What then is the special policy relative to punishment of war crimes?

Fundamentally, to kill was considered one of the main means of overcoming the enemy in war and this was characterized and furthermore by the fact that all such action was conducted by orders of commanding officers, the policy of punishing acts in "violation of the law and customs of war" in all nations of the world in the past was different in certain respects from the general civilian legal outlook. Consequently, in theories of international law and in the military manuals of the various nations special punitive policies and regulations were established. Defense Counsel desires to study here these policies and regulations in effect at the time of the incident.

(a) In the first place, the following appears in paragraph 347 of "The Rules of Land Warfare of the War Department of the United States," 1940 edition. "Individuals of the armed forces will not be punished for these offenses in case they are committed under the orders or sanction of their government or commanders. The commander ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall."

(b) The "Digest of International Law" paragraph 575, issued by the Department of State of the United States in 1943 also quoted the above.

(c) The following paragraph is found under the heading, "Obedience to orders" in the second edition of "Military Law and Precedents", page 297, published by the "War Department of the United States:" "It may be added that an order which might not be regarded as legal in time of peace, may furnish to the inferior obeying it a complete defence in time of war, as being warranted by the laws and usages of war."

In short, it is clearly shown that in the United States, within the armed forces as well as from the International Law viewpoint, an act committed by a subordinate in time of war in pursuance of superior orders, even though it constitutes an illegal act in time of peace, will not be punishable as a war crime.

(d) The American scholar on International Law, Sheldon Glueck in his book "War Criminals" writes the following on page 148: "In time of war a soldier ought to receive greater protection for obeying an order that turns out to be unlawful; for at that time especially during a period of active hostilities, the discipline of a soldier should be more severe because failure to obey an order on the ground of doubt as to its legality could have very serious consequences for an entire company or regiment."

(e) Page 341 of "Manual of Military Law" 1929 edition of the British Army reads as follows: "It is important, however, to note that members of the armed forces who commit such violations of the recognized rules of warfare as are ordered by their government or by their commanders, are not war criminals and cannot therefore be punished by the enemy. He may punish the officials or commanders responsible for such orders if they fall into his hands."

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The same book on page 163 has the following: "In most cases the fact of the orders having been given would no doubt prove the innocent intent of the subordinate, and lead in practice to his acquittal on a criminal charge."

(f) The authority on International Law Oppenheim writes in his "International Law" Fifth Edition, Volume II, page 244: "Violation of rules regarding warfare are war crimes only when committed without an order of the belligerent government concerned. If members of the armed forces commit violations by order of their government they are not war criminals, and may not be punished by the enemy."

(g) There are no specific instructions or regulations regarding punishment of war crimes either in the Navy or Army in Japan. Only, in Japan absolute obedience to superior orders at all times is demanded and Clause 57 of "Military Criminal Law" states that "those who do not obey the orders of their superiors will be severely punished." It is ruled that the punishment be especially severe during war time.

Piecing together the above, it becomes clear that at the time of this incident, according to American and British Military manuals and International law theories, and needless to say according to Japanese Military Criminal Law, it was the policy or the regulation that subordinates be not punished for violation of the law and customs of warfare when they acted on superior orders.

Defense counsel here desires to quote the following noteworthy statement made by President of the United States Roosevelt on October 7, 1942 in connection with the establishment of the United Nations War Crimes Investigation Committee: "It is not the intention of this government or of the governments associated with us to resort to mass reprisals. It is our intention that just and sure punishment shall be meted out to the ring-leaders responsible for the organized murder of thousands of innocent persons and the commission of atrocities which have violated every tenet of the Christian Faith."

Defense counsel interprets and firmly believes this to mean that the supreme policy of the United Nations in the Punishment of War Criminals is to punish the responsible ring-leaders and not to punish all and sundry connected with the incident.

The defendants in this case, officers of very low rank and non-commissioned officers who were obedient to superior orders and who acted under the absolute control of their superiors should not, I submit, be punished for the crimes with which they are charged even in the light of the policy heretofore followed in all nations and of the intent of the President of the United States, but be released.

2. In reply to defense counsel's arguments given above, the prosecution may say that superior orders do not constitute a defense for violation of the law and customs of war and that the recognized theory at present is that everyone be punished. True, the recent military manuals and theories of international law read differently from the arguments presented by defense counsel in the foregoing chapters, and they have been revised to state that even subordinates acting under superior orders be made punishable.

"The Rules of Land Warfare" Basic Field Manual FM 27-10 issued by the War Department in 1944, Section 345, reads as follows: "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."

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However, this was promulgated on November 15, 1944 by the Chief of Staff of the United States Army, as stated in the same manual and after the incident.

The substance of the clause on punishment of war crimes in Oppenheim's International Law Volume II was also revised in its sixth edition to the following:

"The fact that a rule of warfare has been violated in pursuance of an order of the belligerent government or of an individual belligerent commander does not deprive the act in question of its character as a war crime; neither does it, in principle, confer upon the perpetrator immunity from punishment by the injured belligerent."

However, this revision was made as stated in the foreword to the revised sixth edition in August of 1944, which was issued after the autumn of 1944. In short, the revised policy or teaching was effectuated after the present incident.

Up to the present it has been and even now it is unjust to punish an act which prior to its commission was not officially prohibited, because to do so would be to change, arbitrarily, the legal consequences of an act.

Hence, defense counsel submits that it is inappropriate that the presently valid policy of punishment be applied retroactively and that the defendants in this case be punished according to that policy.

3. Even presuming that it is decided to apply the presently valid policy of punishment, a close examination of these policies and academic theories will show that the acts of the defendants in this case may be exempted from punishment.

(a) The American "Rules of Land Warfare" of November 1944 which Defense Counsel just quoted states that acts done pursuant to order of a superior may be considered for defense.

(b) Oppenheim's International Law sixth edition, Clause 253 on The Plea of Superior Orders contains the following passage: "Undoubtedly, a court confronted with the plea of superior orders adduced in jurisdiction of a war crime is bound to take into consideration the fact that obedience to military orders, not obviously unlawful, is the duty of every member of the armed forces and that the latter cannot, in condition of war discipline, be expected to weigh scrupulously the legal merit of the order received;..... Such circumstances are probably in themselves sufficient to divest the act of the stigma of a war crime."

Could it be expected that these noncommissioned officers were able to weigh the legal merit of the order when they were told by the Supreme Commander that the missionaries said to suspected of espionage were to be executed under most adverse war conditions when the landings of the enemy were expected at any time as related in Chapter II?

It is not only natural if these defendants were unable to form such judgment because of the strict front line discipline and because of the great pressure of environment in the form of military necessity under adverse circumstances of war.

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(c) The following passage may be found in the chapter titled "The Law of Individual Responsibility" of the opening statement for the United States of America by Robert H. JACKSON, Chief Counsel for the United States at the Palace of Justice, Nuremberg, Germany, November 21, 1945, reprinted in Robert H. JACKSON's book, "The Nuremberg Case."

".....That one who has committed criminal act may not take refuge in superior orders....." "Of course, we do not argue that the circumstances under which one commits an act should be disregarded in judging its legal effect. A conscripted private on a firing squad cannot expect to hold an inquest on the validity of the execution."

The six defendants in this case from ISHIYAMA to YOKOYAMA were members of the firing squad. And just as the evidence shows they were under the absolute control of Colonel MIYAZAKI, and granted no margin for individual discretion, and made to move and act completely like machines. Even Mr. Robert JACKSON does not maintain that individual responsibility be pursued and made punishable for a member of a firing squad placed under circumstances such as prevailed in this incident.

Defense counsel is convinced that full and wise consideration of the President and Members of the Commission be granted his contention that through the arguments given above the seven defendants headed by ICHIKAWA should not be punished for "Violation of the law and customs of war" with which they are charged in Charge I.

CHAPTER II. Charge II On the crime of "murder".

The defendants were further indicted in Charge II with "Violation of Clause 199 of the Criminal Code of Japan" for their act of murdering ten victims.

However, my co-counsel, Mr. KUNIKIDA has argued on Charge II in detail and as these arguments apply as they stand to the seven defendants headed by ICHIKAWA, defense counsel discovering no need to add anything further on this count will be omitted.

CONCLUSION:

In closing, defense counsel, summing up important points in the foregoing desires to stress the following two points.

(1) It was a principle valid in all nations at the time of this incident that even if an act of a member of the armed forces were in violation of recognized rules of warfare, if such were committed in pursuance of superior orders it was not punishable by the enemy belligerent. Especially, the defendants in this case were taught only the precept that they would be severely punished if they did not obey superior orders in the Japanese Army Criminal Law and did not know let alone taught that they would be punished for acts of obeying superior orders. It is not appropriate that these ignorant defendants be punished in accordance with a principle accepted after the fact.

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(2) Defense counsel believes that especial and full consideration be given, in judging the defendants in this case to the statement of President Roosevelt cited above that the intention of the governments of the Allied Powers concerning the punishment of war crimes is not resort to mass reprisals but the just and sure punishment of the ring-leaders and Justice Robert JACKSON's argument that individual responsibility will not be questioned even to the members of a firing squad.

Mr. President and Members of the Commission, defense counsel humbly requests that the Commission on the basis of the above arguments not punish ICHIKAWA, Yokichi, ISHIYAMA, Zensho, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, and YOKOYAMA, Kyohisa on Charges I and II, for the violation of which they are held suspect.

Respectfully,
Sanagi, Sadami.

I hereby certify the foregoing, consisting of nine and one quarter (9 1/4) typewritten pages, to be a true and complete translation, to the best of my ability, of the original document in Japanese.


EUGENE E. KERRICK, JUNIOR,
Lieutenant, U. S. Naval Reserve,
Interpreter.

"UUU(10)"

辯論

辯護人 唐澤 高美

委員長並委員各位

本辯護人、宜教師等處刑事件ニヨリ起訴
セタ山本一右以下一九名、被告中、藤石義男、
川口和平、安藤福五、日高金之助、伊藤光之、
中村治郎、山本春吉、岡村銀太郎、八名、
被告ニ對シ辯論ヲセントスルモノデアール。

今日逆横事側ニヨリテ主張サレ立證セントシタ
クト、之等八名、被告ハ何レモ本件処刑、
現場ニ居タト云フ事デアール。

然レ乍ラ之等被告、或一部、者ニ関シテハ
処刑、現場ニ居タト云フ事スラ立證ニ得
ナカツタ。又処刑、現場ニ居テハ、役割ヲ
演ジタルが故ニ有罪ナリト立證ニ得ナカツタ。
私ハ先ヅ之等、被告ニソキ個々ニ論ジ而シ
テ最後ニ之等被告、全部ニソキ一指コテ論
ジ度イト思フ。

第一 藤石義男、爲メニ

被告藤石が本件ニ於テ如何ナル役割ヲ演
ジタカ、横事側、立證ニヨリテ全く不明瞭デ
アール。

藤石、本件犯罪、行ハレタ時在軍兵隊内ニ
残留シテ居テ、処刑現場ニ出立所ニテ居テ、
横事側ニ於テ被告藤石ニ對シテ彼が処刑
現場ニ居タト、証人、証人、中村数丈、証言
唯一ツデアール。コノ外ニ相被告江連、自白書
中、処刑現場、園面、同コノ相被告市川、

、自白書ニ同様、趣旨が述べられている。然し、
相被害者江連、彼自身、爲メに証人召ニ立ツた際、
此、点々明解ニ否定した。而して又、彼、被害者
孫谷ヲ同面ニ記入した経緯ニツイテ詳細
ニ記言し、彼自身、記憶ニ基礎付ケて、
記載ニ了るにツテ記言した、である。
又、相被害者市川、自白書ニツイテ、彼、コノ点
ヲ記言する機会がなかった。抑々自白書ハ、ソレヲ
書くた者自身ニ関スル点ニツイテ、記述した、効果
ハ、他人ノ事ニ関スル事項ニツイテ、記述した、効果
ノツイテ、余々論ぜられて、從テ敢テ此、点ヲ論
議シヤト、思ひ、
ハ、唯一、証人、証人市川、証言である。
証人市川、記言ヲ詳細ニ検討して、一ツ、傾向ヲ
察知するに、出来ぬ。即チ自己、責任ヲ極力回避
して、この傾向である。
コノ点も、端的ニ現れた、点ハ、大判準備計画ニ関スル
点ト、大判現場ニ於ける指揮、点ト、及現場ニ於ける
者、指名である。コノ中、島内、大判現場ニ於ける者、
指名、点ニ関スル、記言ヲ見ると、實に、兵下工作、及
神田、兵八名ヲ擧ゲた、点。即チ杉本、一宮、
玉本、横山、江連、孫谷、川口、岡村である。
コノ八名、中、彼、令隊ニ属し、直接彼、部下である
者、僅カ一宮、岡村、二名ニ退き、他、
杉本、玉本、横山、江連、孫谷、本部ニ属し、川口、
彼、記憶ニ及ば、既ニ佐田部隊へ移つた、点。
即チ通常、記憶力ヲ以て、自分ト特別、関

係ニアル者ニツイテ先ヅソノ記憶ハ先行スルノカモ
 能ハス。然ルニ中村ハ本部ニ居スル者ヲ自己ノ
 部下ニシテ以上ニ記憶ニテ居ルノデアリ。コレハ彼ノ
 他ノ部分ニ在ル証言ト関係セシメテ考ヘルナラハ
 容易ニソノ指信ニ得バヤルヤル事ヲ理解ニ得ル
 ナラン。従テ本部ニ居テ中村ハ被害者森谷ガ中村
 ニ指名セラルトハ左程意ニ介スル要ナシ
 斯ク見ラ来ルト。被害者森谷ガ又利多日現場ニ居
 タト、証人ハ全ク皆無トナルノミナラズ寧ろ現場
 ニ行カセタ事ガ明瞭トナル。之ヲ被害者側ノ犯人
 今泉ハ証言カラ先ヅ検討シテ見ヤル
 又ツ同犯人ニ對スル被害者側ノ直接証言ニ在ラ
 今泉ハ三回ニ亘ル集合、名出席者、右ヲ挙
 ゲタ。然ルニソノ三回、集合中何レ、集合ニ在テモ
 彼ハ森谷ノ名ヲ挙ゲテ中ナシ。ノミナラズ果敢
 側、又証言問ニ在テ被害者森谷ニ問ニテハ
 ナ、如キ問答ガ在リセタノデアリ。即チ
 問。市川サ尉、集合デアツタ森谷ハ組ノ一員デ、
 ナカッタカ
 答。彼ハ組ハ編入セシマッタト思フ
 問。何故森谷ハ組ニ編入セシナカッタカ知ラセタカ
 答。知、記憶デハ彼ハ現場ハ来テ居ラナカッタカ
 組ハ入ラナカッタト思フ
 問。何故彼ガ現場ハ行カセタカ知ラセタカ
 答。彼ハ病院カラ帰ツタバカデアツタ
 ト証言ニ在リデアリ。被害者森谷ニ問ニテモ今泉ハ
 証言ハ殆ド確定的ナ証人デアツテ之ヲ覆ス如キ
 証人ハ他ニ全ク見エラナシ

更ニ注目セネハナラヌ証言ニ 証人山田ノ証言デアリ
彼ノ最初集合ニ於テハ 漆谷ヲ見タト 証言エタ。然レ
現場ニ於テハ 彼ノ漆谷ヲ見タ記憶ニ ナイト 証言エテ
居ルデアル。其レ漆谷ガ現場ニ居タトセバ 当然
山田ノ記憶ニ 残ル筈デアル。然レニ 漆谷ヲ見タ記
憶ガ ナイト、 証言ニ 明ラカニ 彼ノ居テザリシトイフ 明
瞭ニシタマフト 判断セラル。 其他 佐野、高橋、何
レモ 漆谷ニツイテハ 記憶 ナイト 証言エテ中ニ
叙上ノ各証人ニ 照シラシテ 被告漆谷ガ 処刑ニ参加シ
タマフコトニ 動カシ 難イ事 実ト 信ス。 百歩譲
リ 假ニ 漆谷ガ 現場ニ居タト 假定シテモ、 單ニソシ
クデアラハ 刑事上ノ 責任ノ 發生スル 根據ニハナライ。
証人 中村ノ 証言ヲ 採甲シタトシテモ 單ニ 現場ニ居タト
言フナクデアラハ、 処刑隊、 一員デアタト 認定スル
下ニ 絶対ニ 出来ナイ。
然レヤ、 假ニ 假定論ヲ 被告漆谷ノ 爲メニ 述べルコトニ 全
ク 無役ナラトデアル。 処刑現場ニモ 行カナカッタ。 被
告 漆谷ノ 当然 第一起訴。 オニ 起訴 共ニ
無 罪デアリ。

第二被告 川口 和平、爲メニ

被告 川口ガ 本件 処刑 時 南洋軍 憲兵隊ニ 配属サシテ
居タカ、 或ハ 佐田 部隊、 一員トシテ 受刑、 現場ニ 居タモ
イカ。 被告 川口 自身ニトシテハ、 左程 重要ナ 問題
デナイ。 従テ 和ハ 川口 自身ノ 書イタ 自白書ニハ
軍 憲兵隊ニ 配属セラレ居リ。 中村 大尉ノ 命令ニヨリ
同 大尉、 傳令トシテ 現場ニ 行ツタト 述ベテ 居ル
ト、 指摘スルニ 止メル。

川口ニトテ重要ナ事ニ処テ、現場ニ於テ如何ナル役割
ヲ演ジタカト云フ事アリ。 検事側ニミテ証人トシテ
提出セシムル川口自身ノ自白書ニ

“中央ノ約七米後方ニローソクヲ持ツテ居タ
ト述べシ中ニ、コノ外ニ被告川口ガ起訴サレシ如キ
事由ニ就見セザルを得ナシ。 且モ川口ガ処刑ノ現場ニ
於テローソクヲ持ツテ居タト云フ事實ニ對シテハ
敢テ又對セザルモデナイト。 此等諸君ガ注意セズニ
テラス事ニ、ヤル事實ガ果シテ犯罪ヲ構成スル程
重要ナ要素ヲ持ツテ中ノヤ否ヤ。 又被告川口ガ
如何ナル認識ノ下ニローソクヲ持ツテ中ノカト云フ事デ
アル。 殊ニ後方ニ居テハ慎重ナル検討ヲ要スル
問題デアリ。 刑事上ノ責任ヲ個人ニ在ルニ爲メニ、ソノ
人ノ意思ガ可罰的ナ結果、發生ヲ意欲シソノ
意欲ニ基テテ何等カノ行為ガ外面ニ表現セラレネ
バナラナシ。

被告川口ガローソクヲ持ツテ居タト云フ事實ノミヲ
捕ハ、彼ニ殺人ニ對スル援助アリト即断スベト。 余
クニモ皮相ナ見解タルノ誤ヲ覺シナシ。

川口ガ現場デローソクヲ持ツテ居タノハ、彼自身ノ
認識タラスレバ、闇夜ニ“当然、アトニ居スル”而モ彼
自白書ニミレバ七米後方ニ於テ立ツテ居タト述べラレ
テ中ノカト云フ。 明ラニ処刑ノ實施ヲ可能ナラシムル爲ニ
所持シテ居タモト理解スベト。 出来ナシ。 若シ
川口ガソノローソクノ光ヲ以テ処刑遂行ヲ援助セシト
數テ云フハ、射撃者ノ傍ニ於テ照明シタ事デアリ。
然レニ、彼ガ七米後方ニ立ツテ居タト云フ事實ニ
明ラニ、彼ニ処刑援助ノ意思ナキヲテテ諸君ガ

兄。彼が點火セルローソクヲ持ツテ居テ、言フ事ヲ以テ
直ニ父利援助、犯意アリト認定スルト、到底
不可能デアロウ。
相被告杉本、自白書中ニ、ローソクハ名人一本宛
支給サレテ述べエテ居ルが、若シ然ツトスレバ、ロー
ソクヲ所持セルバ、其々以テ特ニ川口ニ對シ父利
ニ援助スルト主張スルト、不可能デアロウ。又實
際問題トシテ、ローソク、如キ微少ナ光が開放セラ
レタ野原ニ於テ幾程ノ效果ガアロウカ。吾々
通常、知識経験ヲ以テシテ、到底コノローソク、
光が父利、遂行ヲ容易ナラセメタト、考へ得ヤウモナ
ク、被告川口、爲メニ彼が何事モ父利ヲ援助セシ
テローソクヲ持ツタ事デナイ事及コノローソク、光
ハ何事モ父利ヲ容易ナラセメタ事デナイ事ヲ主張シ
彼、爲メニ第一起訴、ヤニ起訴若シ無罪ト、
御利益アリトヲ要求スル。

第三安藤福五、爲メニ

検事側、立証ニ於テ被告安藤が父利、現場ニ居
タト言フ証人、唯、一ツモナリ。

僅カ証人高橋、証言中、第二回目、集合後即チ
道路上、集合、際安藤、居タ事ヲ記憶スル
言フ証言ガ、ミデアウテ他ニ全く記憶セザン。

安藤が父利、現場ニ居タカ否カラモ立証ニ得ズ
ニテ如何ニシテ彼ヲ本件ニ有罪ナリト認定スル

事ガ出来ヤウ。ノミナラズ、証人今泉、証言ニ
ミルト。安藤ヲ何処カで見タ様ヲ記憶カスル

然レ現場ニ於テハ、ハッキリシタ記憶ガナイ。ト

証言の更ニ又証人山田、弁護側、及対証問の際
安藤、現場ニ居タドウカト、問ニ對シ覺エガナ
イト答ヘテナル。以上、被告ニヨリテ、到底被告
安藤が現場ニ居タト認定スルコト、不可能デアロウ
然レテ弁護側ニ於テ被告自身、為メニ証人台ニ立ツ
内田並江連、何レモ安藤が現場ニ居タト証言シテ
以上各証言ヲ如何ニ解釋シ何レヲ以テ眞實ナルト利
断スルカハ全ク委員各位、御判断ニ待ツ、外、ナイ
然レテ又假ニ安藤が処刑、現場ニ居タト假定
スルモ之ニヨリテ直々ニ彼が本件ニ有罪ナルト認定スル
コト、不可能ナル。彼が本件処刑隊、一員デアラウト、
証人、何モナイ。又彼が処刑、現場ニ居テ斯ク、如キ
行為ヲ為スルコトニヨリテ処刑ヲ援助シタト、証人モナイ。
甚クモ被告側ハ被告安藤ニ對シ正當ナル疑ヒヲ起
テ立証シ得タト主張スルコト、出来ナイデアロウ。
單ニ現場ニ居タト云フだけ、理由デアラウハ刑事責任ヲ
負ハシメ得ザイト云フ事ハ、法律上ニ於ケル過去ノ事
件ニ於テ確立セラレテ判例ト謂ヒ得ヤウ。
又確定ニヨリテ安藤が処刑隊、一員デアルト認定スル
コト、豫証、原則ニ及ビ許セナイデアル。
果シテ然ラバ被告安藤、本件処刑ニツイテ、何等
刑罰上、責任ヲ負フベキ理由ガナイ。而シテ彼、為メニ
第一起訴第二起訴共ニ無罪ヲ主張スル。

第四 日向金助 伊藤光之 中村治郎 岡村銀太郎

、島々ニ

以上四名、被告ニシテ、事實具全ク同一ニテ、敢テ之ヲ各々個々ニ論ズル必要ナキ爲メ、コニ一括シテ論ビ度イト思フ。

即チ之等四名、被告、何レモ各自、自白書ニ於テ組ニ編入セシメ憲兵下士官ト組ニテ自白シテ申シ、デアル。従而、~~被告等~~事實ヲ争ヒ反對セントスルモノデナイ。

又之等、被告が如何ニシテ組ニ編入セラレタカハ、検事側、諸証人若シテ被告、自白書等ニヨリ略々明白デアル。此コ、組ノ編成が憲兵隊ヲ出発スル時ニ既ニ作ラセ居タモノカ、或ハ又処刑現場ニ到着シテ際ニ作ラセタモノカハ、証人ニヨリテモデアル。然レ何レニモ司令隊長中村大尉、直接指揮命令ニヨリテ作ラセタモノカハ、争ハ余地ナシ。

即チ被告等、何レモ各自、自覚的意志ニヨリテコノ組ニ編入セラレタモノデナイ。彼等がコノ組ニ編入セシメラレタハ、全ク彼等ノ上意ノ意思ニヨリテ編入セラレタモノデアラ。彼等ニシテコノ上意ノ意思ハ全ク偶然、思ハ合ヒニ違ヤナシ。人ノ偶然、思ハ合ヒニヨリテ刑事責任ヲ負ハシメラレ、トガムデアロウカ。

一併、之等四名、被告等違ト單ナル見解者ト、間ニ如何ナル實質的差異ヲ認ムコトが出来ルカ。若シ假ニ之等、被告が自ラ申シテコノ組ニ編入シテ又利、遂行ヲ可能ナラシメタリト假定セバ、勿論刑事責任ヲ負ハネバウ。然レ單ナル見解者トシテ全然果シ然ニテラ本件被告等、場合ニ於テハ、ノ、兩者、間ニ實質的差異ヲ認めヤキ理由、

9
之ヲ見出ストハ困難デアリ。過去、どう、事件ニ於テ
罪ナル見學者ト命令ニヨリ出セメ者トテ咄別
シ出セメ者、ミ刑事責任ヲホメラ中ニ事柄、相
当批判ノ余地ガ多イト思フ。寧ロ和ニ命令ニヨリ
テ偶然、機會ニ参加セメラレタ者、見學者ト同
様刑事上ノ責任ヲ免除スベキト考ヘル。
若シ吾々が吾々、死刑ニ得テ偶然、事象ニヨリテ而
モ之ヲ阻止ニ得ル事象ニヨリテ尚且刑事上ノ責任
ヲ負ハネバテラストミナラバ吾々、一日トミテ安眠
ナル社會生活ヲ想像ケトハ不可能デアロウ。
之等四名、被害等、佐野、五井、今泉等トミテ全ク
同様ノ状態、下ニアツ。只中村大尉、命令ト云フ
他、意思ガ介入シテ結果ミテ又偶々、命令ガ之等
ノ被害、頭上ニ降リカ、ツマデデアリ。斯ノ偶然ノ可憐ニ
ヨリ形式的ニ、刑事責任ヲホケトハ明ラニ正義
ノ實現ニ貢獻セムトハ考ヘラレナイ。何故ニ之等四名
ノ被害ガ特別ニ有罪ヲ認定セラルベキ實質的理由
ガアロウカ。若シ之等、組ニ入ツタ被害者、然リ現場
ニ在テ特ニ何等カ、行動ヲ爲シテ利、遂行ヲ援助
シタトセバ他、名トシテ刑事責任ヲ免レルトハ
出来ニアロウ。然レバ今日迄を決定ニ踏出セラレタ諸
証ニヨリハ彼等ガ特ニカ、ル行為ヲ爲シタト謂フ
事實ハ一度モ示シテカ。
只注意セネバナラヌ事、相被出横山、自白書中
"子供ヲ射ツタハ岡村デアツタダロウト思フ"ト
述ベエテ中ニ然ラエレハ彼ノ想像デアツテ明
確ナル記憶ニヨルモノデナイ。一方岡村自身ノ自
白書ニテ此ノ矢ヲ見ルニ彼ハ"射要シナカッタ"ト

述べたように、前二モ一書セル如ク、自白書ハソノ自
白セル者ニトシテ証憑能力ハ有ルガ、共謀ニ基カザ
ル以上他、相被告ニツイテハソシガナイ。従テ岡村
自白書ニ関スル事ハ、彼、自白書ニ重キラホ
メネバナラナイ。

果シテ然ラバ彼等が組ニ編入セシラ居タカラト
言フ特ニ罰スベキ根據ハ見出シ得ナイ。

核事例ハ組ニ編入セシタ者ハ、唯、彼等が何、
行動ヲ為サノクトモソノ組ニ処刑スベキ任務ヲ
負ハシラ居タ以上、処刑ニ対シテ責任が有ル。假ニ
射ツトアリナクモソノ組ニ在ケル相手が処刑ヲ遂
行シ得タツタ時ハ、当然、処刑スベキ運命ニアツタ
ノデアラカラ共同ノ責任デアルト言フカモ知ラナイ。

成ル程尤モナ事カモ知ラナイ。然レソノ様ナ解釋
スルトモ、之等組ニ編入セシタ者ハ、ミ、責任
デハナイ。現場ニ居タ者ハ、總テ責任ヲ負ハネ
バナラヌ事ニナル、デアルニイカ。

和ハ叙上ノ理由ニヨリ、之等四名、補助憲兵が持
ニ他ト比較シテ処罰セラルベキ理由ハナシト確信ス
之等、名被告ハ、何レモ二十代、青年デアツテ前途有
為ナ者、ミデアル。而モ四名共、何レモ曲居村ニ生レ純
朴ナ環境ノ下ニ成長シ今日ニ於テハ、何レモ曲居村ニ於
テ主動的地位ニアル者、ミデアル。此細ナ事實ヲ
捕メ彼等ニ長イ拘禁生活ラセタル事ハ、實、
正義、實現ニハナラナイ。一日モ早ク之等、被告が家
庭ニ歸リ敗戦後、日本ノ農業発展ノ為貢獻
得ル様御配慮アエトラヤニ懇願スルモデアル。

第五出右本春吉、爲メニ

被告名本が本宜教師等々刑事事件ニシ、又刑除、
一頁トシテ参加ニタト、証人、今日迄、あつたニ提
出せしナかつ。右被告、自白書日が検事側ニ
ヨツテ証人トシテ提出せしメ、デアレが被告名本、
陳述書、提出せしナかつ。

彼、頭初、取調以來終始一貫本件犯罪ニ参加セズ
又犯罪現場ヘモ行かなかつ、自述ベラ来タ、デアル。

こゝを拘ラズ、彼が本件被告トシテ起訴セシメ重
要ナ理由、何故ニ犯罪、現場ヘ行かなかつ、又ソ、

間、何ラコト申タカニツイテ明確ニ説明シ得ナかつ、カ
デアロウ。数多い被告中、コノ名本程記憶力、

乏シイ爲ニ、ナリ。尋常小學校、ミテ卒業セシ充分
ナル教養ヲ受ケテ居テ、彼ニ、昭和十九年九月当時

ノ事ヲ誰モ充分納得出来ル様ニ説明スルコト、困
難デアロウ。然レが故ニ彼、敢テ証人ト立ツベク都

度ニナかつ、デアレ。

然レ検事側、証人山田今泉及朱護側ニ於テ立ツ
証人、三名、証人、被告名本、犯罪、現場ニ居タト

証言シタ、デアレ。之等、証言ヲ採用スルカ否カ、各員
各位、御判断ニ付ツ、ナリ。

唯聊カ議論、付スル、前ニ述べタル如ク、單ニ犯罪、
現場ニ居タト言フナク、証人、以テシテ、有罪ヲ認

定スルコト、不可能デアレ。假ニ名本が犯罪、現場ニ
居タト假定シテモ、彼が現場ニ於テ何ニカ犯罪ニ付

スル援助ヲシタカ、或ハ全然何もシナかつ、カ何レニ
モ断定スルコト、出来ヌ。刑事裁判ニ於テ、想像ヤ

推定ヲ以テ裁判ニ付ナイ。右國何レノ刑事

裁判ニ於テモ確立セシメテ原則デアリ。又ハル想像ヤ
推定ヲ以テ人ヲ大罰ニシテ實例ニ何レノ國ノ法制史上
ニモテ推定ノ許サレル場合ニ種々テ限ラセテ罰則ヲ
アツテ海軍律ニ於テモ亦明示セラレテヤル。
從テ被告山本が処刑ノ現場ニ居タウトスルモ之ヲ
以テ直々ニ彼が処刑隊ノ一員デアツト認定スルコ
トハ不可能デアル。尠クモ校事側ハ被告山本ニ
對シ正當ナル疑ヒヲ起ヘラ立証シ得タト主張ス
ツトハ出来ナイデアロウ。私ハハル曖昧ナル証據
ヲ以テ之ハ到底本件ニ於テ山本が有罪ナリ
ト認定シ得ナイトテ固ク信ズルモデアル。
仍テ被告山本ハ第一起訴第二起訴共ニ
無罪デアル。

取テ私ハ以上ヨリ各被告ノ個々ノ責ニテ論ジタデアルが
更ニ之等被告ヲ一括シ殊ニ大刑ノ現場ニ居テ被告ノ為
メニ辯論ヲ進メヤウ。

本件大刑が第十四師團司令部、命令ニヨリ南洋軍憲兵隊
長宮崎中佐、直接指揮下ニ行ハルモ、アハト言フ
兵ハ各証人ヨリ最早爭ツ余地ナイ。

又之等兵ハ被告中川ヲ除ク他、七名ハ何レモ階
級ノ低イ補助憲兵トシテ南洋軍憲兵隊ニ配属セラレ
宮崎中佐、指揮下ニアツタトモ爭ツ余地ナイ。

取テ斯如キ階級ノ低イ補助憲兵等ハ彼等、直
接上官タル宮崎中佐ヨリ命セラレルガマニ大刑現場
ニ出席シタトが果シテ犯罪ヲ構成スルデアロウカ。

換言スレバ上官、命令ニ基イテ違法行為殊ニ
犯罪行為ヲ行ツ部下ハ戦争犯罪人トシテ責任ヲ

負つか？ 此ノ問題ニ諸國、立法例ニ於テモ差異
ガアリ又學者、學說ニ於テモ幾多議論、存スト
ロデアル。今是等ヲ立法例ヤ學說ヲ引用シテ一
批判檢討スル旨ハナイガ 是等、大体三種ニ分類ス
ルトが出来ヤウ。

先ヅ第一ハ上官ノ命令ニ部下ニ對シテ絶對的拘禁力
ヲ有スルカヲ上官ノ命令ヲ受ケタ部下、常ニ之ニ
服從シテレバナライ。其ハ代リ上官ノ命令ニ從テ行動
シタ部下ニ當リニ責任ハナイ トモノ事デアル

ヲ莫ク明ラカニ宣言シテ中ニ立法例ハ一九一四年米國、
陸戰條規第三六六條デアル 即チ

“軍隊ニ屬スル個人ハ政府又ハ上官ノ命令又ハ裁可
ニヨリテ犯シタ罪ニ對シテ罰サレトコトナイ。カ、
行爲ヲ犯ストテ命ジタ指揮官又ハ自己ノ權限下ニ
アル部隊ガヤル行爲ヲ犯シタ場合ソノ部隊、指揮
官ハ彼ガ捕獲セラレタ交戰國ニヨリテ罰サレデラ
ト規定シテ中ニ

然レウ此ノ見解ニ從テ假令違法ナル上官ノ命令デモ
シニ從テ行動シタ部下ニ絶對ニ責任ガナイトスルト
彼等ハ安シク遠慮ナク戰爭法規慣例違反ノ行
爲ヲ行フ危險性ヲ生ジ リイデハ廣ク戰爭犯罪、
行ハル可能性ガアル。固ヨリ命令ヲ與ヘタ上官ニ責任
ガアリ敵ニ捕ヘラレタトモ、戰爭犯罪人トシテ罰サレ
ル。然レ上官ハ直接ニ戰闘ニ從事スツト甚ク從
テ敵ニ捕ヘラレトモ亦殆ンドナイ。爲メニ上官、特ニ
上級ノ上官、責任ヲ問ヒ之ヲ処罰スル可能性ハ實
際ナイ。若レ部下ニ責任ガナイトスルト 結局ハ上官
モ部下モ實際ニ於テ処罰セナイトナル。斯クテハ戰

、法現慣例違反が容易ニ行ハレ戦時國際法、違
斗ヲ確保スルコト、困難ナル。故ニ苟モ戦争
犯罪ヲ処罰セントスル以上、此、見解ニ之ヲ採用シ得ナ
クニ第三、第一、見解トハ全ク反対ニ部下ハ常ニ上官、
命令ヲ審査スル權利ヲ義務ト有シ違法ナ上官、命
令ニ対シテ、部下ハ服従、義務ヲ有シテトスルノヤル
此、學說ハ、莫知然、結果トシテ若シ上官、違法命令
ニ服従シテ部下ハ常ニソレニ對シテ責任ヲ負ハネバラス
事トナル然レウ部下ガ自己、解釋ニ依ツテ常ニ上官、
命令ヲ審査シ其意見ニヨリ何時デモ命令ニ對シ服従
ヲ拒絶シ得ルトスルナラバ命令、效果ハ全ク皆無トナリ
行政ニ於ケル命令系統、秩序ヲ紊ル行政事務、
正常ニ運行ヲ阻害スルコトナル軍紀、維持ヲ失、
命脈トスル軍隊ニ於テ特ニ然、トスル
シ故ニ此、説モ亦適當デナ
ソコデ以上ニツ、見解カラ生ズル不當ナル結果ヲ避ケンガ爲
ニ第三、學說ガ生ジタ、デアル。コノ學說ハ上官、命令、拘
束力、標準ヲソレニ内在スル瑕疵ガ重大デ且外觀上明白
デアルヤ否ヤニ關シテ、重大ナ外觀上明白ナ瑕疵ハ、内
在スル命令ニ付テハ部下ハ自ラ、審査ト判断ニ基キテ
服従ヲ拒絶シ得ルハ輕微ナ疑ハシイ程度、瑕疵ガ内在
スルニ過ギテ命令ハ一應部トヲ拘束スルモノトシ部下ハ
自ラ其、適否ヲ審査スル權限ヲ之ニ服従スベキデアル
然ラバ如何ナル程度、瑕疵ガ存スル場合ニソノ命令ヲ
拒絶シ得ルカト云ヘバ結局通常、常識アル人、合理
的判断ニ據テ違法ト認メラレシ命令ニ對シテ、服従ヲ
拒絶シ得ルハ事通常ト認メラレシ命令ニ服従セトバ
ナラヌ。此ノ實ニ關シ、クラーク・マニヤル、犯罪法論七二部

強制又、命令ノ項、

「一見タダデハ不法デアルト言フアが明カニ合フナイ
命令が上官カラ一兵ニ與ヘラシメトキソノ兵隊ニ服従
スル資格ヲ有シ且ナル命令ニ彼ノ命令ニ保護スル
ト論述セラシ又アメリカ法律學ニ六卷殺人ノ項ニ
「第七ニ部陸海軍ニ勤務シテ居ル人
國家、陸海軍ニ勤務シテ居ル人ノ役、仕事、任務ニ從
テ行動スル場合一般ニ民間人ヲ支配スル法則ト非常
ニ異ナル法則ニヨリ支配サレシ此ノ事、殺人ト断定セラ
レシ犯罪ニツイテ正シク當面散タル一兵隊ノ彼が上官
ノ命ニヨリテ行動シテ言フ可實ニタヨルアが出来
然レノレ自身不法ノ命令、戰爭法規並ニ慣習ニヨ
リ正當化ケラシイ。又通常、常識又、理解力ヲ
有スル人ガ命令が與ヘラシメ直後直ケニシテ不法デア
ラガナル程度實質的ニ不法ノ命令、殺人罪ニ對シ何
等ノ保護ヲ提供シナイ但シ彼が起訴セラシベキ行
為ガ法律上ソノ罪ヲ構成スルニ必要ノ要素ヲ有シテ
タナケレバナラナイ」

ト述べラレテ中ニ

又同ジクアメリカ法律學三六卷軍隊ノ項ニ「第三ニ部

「命令ニ從テ爲サレタ行為

上官ノ命令ニ從テ爲サレタ行為、刑事訴追ニ於テハ、
ナル行為ニヨリ損害ニ對スル民事訴訟、法則ガ
適用サレシ軍隊ノ上官ガ彼ノ部下、士官又ハ兵ニ與
ヘタ命令ニ部下ニヨリ服従セラシネバテラス刑事訴追
ニ於テ部下ヲ古ん分保護スルデアロウ。然レナル命令、
不法性ガ一見余リニモ明瞭デアラフ通常、常識又
「理解力ヲ有スル人ハソノ命令ヲ與ヘラルルヤ否ヤソ、

不考性ヲ知ルコトが出来る様ナモノデアツタ場合、此限ッデ
ナ、此ノ莫ニ関シ、命令ニ服従シタ場合、部下ハ上官ト
異ナル地位ニ立ツ。ソレヲ喫ヘルコトが不法デアレ如キ命令
ヲ行ツタ責任ヲ免レ得ルノデアレ。

又オープンハイム、其ノ著者、國際法第二卷ニ五三節ニ於テ
“交戦國政府又ハ交戦國ノ指揮官、命令ニヨリ戦争
法規が侵及セラレタト言フ事實員ハ問題、行為ハナ
ソ、戦争犯罪トシテ、性祐ヲ奪フモノデアライ。又犯罪
者が被害ヲ受ケタ交戦國ニ対罰サレルコトヲ免除
スルモノデアライ。

軍隊ノ教習ニ於テ又、著者ニヨリ異ナル見解が屢
屢採用サレタ。然レシガ健全ナル法律原則ヲ基
ニシテ中ムト見ルコトハ困難デアレ。疑ヒモナク、戦争犯
罪ヲ正當ゾクン爲引記セラレタ上官ノ命令ノ抗弁ニ
直面シタ裁判所ハ、次ノ事實ヲ考慮ニ入レナクシバナ
ライ。即チ一見シテ不法デアライ軍隊ノ命令ニ従ツタ
軍隊ノ人々ノ任務デアルト。戦争状態ニ於ケル軍紀、
下ニアツタ兵ハ受ケタ命令、法律的價值ヲ慎重ニ
評價出来ナイコト。戦争法規ハ屢々喰違フヲサルト。
及上官ノ命令がナクシバ戦争犯罪トナル行為が報復
ノ手段ト看做セル命令ニ対スル服従ニヨリ行ハレタモ
知ライコト。デアレ。

斯ル状態ハ多クソレ自身ソノ行為ヲ戦争犯罪、
汚名カラ免レシメルデアロウ。

要之ニ以上、諸説ハ外觀上一見シテ違法ナイトが明瞭
ダリ、通常、知識ト理解力ヲ有スル人ナラバ直クニ其、違法
ナイトヲ知リ得ル様ナ命令ニ服従スベキデアライ。若シ
服従スルナラバ責任ヲ負ハネビナラヌトスルノデアレ。

以上ニミテ上官ノ命令、下官ニ對スル何種ノ力如何、問題ニ

現在第三説が支配的ナ様ニ思ハレシ

米國、一九一四年、陸戰法規が近時 マーシャル參謀長ニヨ
リ改訂セラル

「一般ニ認メテ中ノ戰爭法規並ニ慣習ニ違反シテ個人
又ニ國體ハソノ違反ニ對シテ罰せラル然レテ下ラ訴ハル
行為が上官ノ命令又ニ政府ノ裁可ニ從テ行ハレタトミ
テ事實上ハ有罪ノ決定ニ當リ弁護トシテ又ニ刑、減刑
為ニ考慮ニ入ラレシカ、ル命令ヲ下シテ人モ亦罰せラル
トナツタ、モ斯ル思想、雅稱ニ由ルテデアロウ

由來當國軍法委員會ニ於テノミナラス一般ニ戰爭
裁判、法ニ於テ、極東國際軍事裁判所條例第六
條、

「何時ナルトモ問ハズ被告人が保有シタ官務上ノ地位若ニ
被告人が自己ノ政府又ニ上司ノ命令ニ從テ行動シタ事實
ハ何レモソレ自体當該被告人ヲソノ問擬セシタ犯罪ニ
對スル責任ヲ更シサセニ足ラナイモノトスル。但シ斯様ナ
事情ハ本裁判所ニ於テ正義ノ要求上必要ガアルト認
メタ場合ニハ刑、輕減ノ為メニ考慮スル」トガ出スル

ト言フ規定ニ依據シテ戰爭裁判ニ於テハ上官ノ命令ニ
何等ノ免罪ニナラヌ。ソレハセイセイ刑罰輕減ノ事由トシテ
考慮サレニ過ギナイ。トサレタナル様アル。然レテ此ノ
規定ハ果シテ現今ノ通説タル前記第三説ヲ排除シテ
第二説ヲ採用シタモノデアラウカ。

私ニハソウハ思フナシ 吾々ハ此ノ條文中、ソレ自体
ト言フ言葉ニ注意セバナラヌ。上官ノ命令ハソレ自体
ソレニ基キテ爲シタ行為ニ對スル責任ヲ更ゼムルニ
足ラヌト言フストハ被告ノ單ナル、命令ハ上官ノ命令

ニ従テ行動スルタカラ責任がナインダシ ト云フ主張
ヲ認メナイト云フニ過ギナイデアラウ畢竟前記第一
説ヲ採ルニ至ラデアル。ケニモ其、刑法概論(五三
六年カ二五版八頁)デ述ベラ居ル様ニ、不法命令ヲ
誤テ違法デアント信ジ且ソウ信スルコトニ合理性、アル
場合、責任ヲ受レル。トスル議論ト相合シヌチデ
ハナイデアル。ニールンベルグ國際軍事裁判所モ其、判決
ニ於テ同裁判所條例第八條、

“被告が政府又ハ上官、命令ニ従テ行為シタト云フ事實
ハ彼ラニテ責任カラ受レヌメナイ。然レ減刑ニ際シ考慮
セラル”

ト、規定ニ付キ次ノ様ナ注目スベキ解釋ヲ明ラカニシテモ、
“此、章、規定、各國家、法律ト一致シテ中ル兵隊ハ國際法
ニ違反スル如キ殺害又ハ虐待ヲ命ゼラレタト云フト、斯ル残
虐行為、年護トシテ認メラレナイ。然レ本條例、規定スル如
命令、減刑ニ際シテ主張出来ル各國、刑法ニ於テ犯罪、程度ヲ
決定スルニ便、テスト、命令、存在デナク道德的ニ選擇ガ
事實上可能ケラカ石カデアル”ト

此、見解ニ従ヘバ上官、絶対的ニ命令ノ下ニ行動シ行為ス時、
諸般事情ニ鑑ミシテ外、行動ヲ取リ得ナカク部下、其、
行為ニ付テハ責任ハナシト云フニ至ラデアル。何トナレバ彼ニ、
他、行動ヲ取ル道德的選擇、余地ハナイデアラウ何人モ彼
(部下)ニ對シテシテ外、行動ヲ取ラト期待シ得ナイカデアル。
故ニ我、硬東軍事裁判所條例第六條ニヨリ上官、命令、
ニ對シテ部下、其、被告、年護トナラナイトスル意味、
上官、命令ニ對シテ部下ガ之ヲ批判シ模範ヲ加フベキ可能性
アル場合ニ於ケル上官、命令ヲ意味スルチデアラウ何等命令
全ニ對シテ道德的選擇、余地ナイ場合、被告、年護トシテ

作用に被告がこれ無罪ならしむるを、ト確信スル

之ヲ本件ニ付ラ見ルニ本件犯罪が被告等、上官南洋
憲兵隊長宮崎中佐、命令ニ依リ同宮崎中佐、直接
指揮監督ノ下ニ行ハシタモノナルヲ、中村敬夫、佐野義一
其他多ク、証人、証言ニ照ラシテ、莫ク疑ヒモナイ

而モ昭和十九年九月十八日頃本件犯罪、行ハタ當時ニ在ケル
パラオ諸島、戦況ニツイテ、案ホズルニ

時既にサイパン、マニラ、玉碎シ中部太平洋方面ニ在リ日本
軍、敗色、日ト云ニ進ニテ更ニパラオ諸島、一箇タルペリ
ュー島モ早ヤ米軍、蹂躪セラレトコロナツタゲアル

書面命令タヌ間断ナキ米軍隊、糧食ト糧食並兵
器兵食、日ニ増大シ又一方内地ト、交通ハ全ク杜絶シテ

ババタフ島ニアテ本件被告等、何レモ恐怖ト焦燥ニ日
ヲ送り、朝ニ生ラ得バ夕ニ死スモ計ヲ難イ状況下ニアツ

デス。按事側、証人中村敬夫、佐野義一、証言中ニ
於テコ、問、情況、詳細ニ証言セラレ中心殊ニ証人中村ハ

米軍側、反対疑問ニ在ラタ時、戦況、何デアツカト、問ニ
答シ（問答一ニ五ノ答）

空襲が激シ、テ各々何時モ防空壕ニ入ツテ居テ、食事
ヲスル時一寸出ル位デアツタソノ時アサモ空襲被セタデ

殆ンド防空壕ニ入ツテ居テ、他、島、我軍、部隊、
兵、全滅シ、宮崎隊長カラマイト、ソレテ宮崎、キレ

シテ中ニ據ニ和モ米軍が近い内ニコノ島ニ上陸スルヲ
ト思フタ、ト証言ニテ中ル

叙上、如キ急迫セシ戦況ニ関聯ニテ更ニ被告等、本件犯罪
者ハスバ行爲、嫌疑有アレト宮崎隊長ヨリ言ハ

シタデアレ。斯如キ情事、下ニ宮崎隊長、本件被告
等ニ對シ、集團司令部、命令ニヨリ宣教師等ヲ処スル

命令は、デーン

彼等斯の諸般、事情を考慮ニテ之等、被告が宮崎隊長、命令を違法ナリト判断ニテ之等、彼等ニ責メベキ過失が有る否やを検討セバナラナリ。

又斯の命令ニ対シテ被告等が道徳的選択、余地が有るナカ否やを無検討セバナラナリ。

事件及刑、命令を發シテ派、集團司令部デーンと宮崎隊長、訓示シテ。事件被告等殊ニ下級下士官並

補助憲兵等が、集團司令部、命令を違法ナリト判断スベキ理由を發見スル。到底可能、デーンと云フ

中部太平洋方面陸軍最高司令部ニ於テ如何ナル経緯ニ基キヤ、命令を發シタリ。到底被告等、

知ル由モナリデアン。更ニコノ集團命令ヲ彼等、直接上官トシテ當ニ尊敬ト信頼ヲ得テ居テ、宮崎隊長

ヨリ達セシタ、デアン。ミナラズ、前述セル如キ急迫セル状況下トスベキ嫌疑有デアルト、ニツ、事柄、寧ろ本

命令、正當性ヲ基礎ヅケルニ役立ツタ事柄デアン。事件被告等ニカ、命令ニ服従セル以外、行動ヲ期待

スル。到底不可能ナリデアン。又彼等ガ、命令ヲ一見ニテ不法ナル命令デアリ。又明白ナル外觀的瑕疵アリ

命令デナイト信ジテ服従シタリト付テ責メベキ過失アリト解スル。不可能デアン。

更ニ又之等、被告が宮崎隊長ヨリ及刑、命令を達セシテ、次デ中村各隊長ヨリ細部ニ亘ル計劃ヲ言渡サ

レタ時、彼等ニコノ命令ニ対スル道徳的選択、余地、到底認め得ベクモナリ。以上詳述セル如ク、事件被告等

ニコノ及刑命令ヲ明白ト重大ト瑕疵アリトニテ之ニ服従セザリトテ期待スル。全ク不可能ヲ強イニ

事ニ与ミイフコトヲ解出来タト確信スル

人ニ不可能ヲ要求シテ以テ正義が實現ニ得ラル、
モトニ考ヘ得バクモイ。

和：叙上、論曰ニヨリテ被告等、ソノ刑事責任ナキ
が故ニ無罪釋放セラレテ然ルベキモト信ズル

結 語

以上論述ミテ和、和論ハ之ヲ要約スレバ、

右被告ニツイテ極事例ニ正當ナル疑ヒヲ起セテ立証ニ得ナク

寧ロ一部、被告ニツイテ、処刑現場ニテ行カナカフコトが明白
ニセシメテアル。

又一部、被告、如ク処刑現場ニ行キ更ニ各処刑隊ノ一員ニ加
入セシメテ有ハ上作、絶対命令ニ対シテ之ヲ作罷スベキ如何

ナル手段ヲモ得テ得ナカフ。従テカハ被告ニツイテハソノ
刑事上ノ責任ヲ求ム得ナイト言フ事デス。

本事件ヲ概観シテ見テ本件補助憲兵等ニ処刑、刑事
責任ヲ追追スルト「余」ニモ戦争裁判、名ニソグロナイ

極事例ハ「吾々正義、實現ノ爲メニ之等、有テ処刑
スルト言フ。然レハ所謂正義ハ人ニ不可能ト事迄モ

之ヲ要求スルコトデアロウカ 和：決シテソウハ思ハナシ。
通常ノ人ニ誰ニデモ可能クカラコソ、ソコニ正義が生ズ

ハデアリ。即チ正義ノ要求スル限度ハ人ノ可能性、限度
ニ等シイ。唯ソノ可能ナル限度ヲ如何ナル標準ニ依テ

判断スルト言フ事ハ各國ノ風俗習慣、教育文化、
程度ニヨリテ多ク、差異ハ生ズルカモ知レシ。

戦争裁判ニ依テハ正義ノ實現ハ人ノ不可能ナイトモ
要求スルコトデアルト。考ヘ得バクモイ。本件補助憲兵

等ニ対シ宜教師等ノ処刑ニ関スル刑事責任ヲ求ムコト
ハ將ニ不可能ヲ強イルコトデアリ。

24

本弁論、後半ニ於テ纏々述ベタ如ク之等、神助憲兵等ニ到底官崎隊長ノ命令ヲ拒否シ得ベクモナラズ又拒否シ得ベカラザリシ事ニツイテ責ニ歸スベキ事由モナカラス。カハル被害者ニ對シ命令ニ服従ミタリガ即チ正義ノ要求ニ及ビタリデアルトニテ又罰スルトハ是レ正義ノ實ニ貢獻スルモデアルトハ多クナシ。而ガ斯ク言フタカラトテ上官ノ命令ハ常に下官ノ責任ヲ受レシムデアルトノ意味デナイト。

勿論極東軍事裁判所條例第六條中、上官ノ命令ニシテ自體犯罪ヲ受レシムデアイト、規定ハ正義ノ實ニ貢獻スルヲ阻ムデアイト。唯ハ、タノ規定ヲ細心ニ考察シ、如何ナル場合デモ上官ノ命令ハ下官ノ責任ヲ受レシムナイト形式的ニ解釋スルコトガ誤ラデアイト言フ、ミデアイト。カハル誤リノ解釋ガ使フニ戦争裁判ノ範圍ヲ廣大セシメテ中ノデハ事件ニ於ケル神助憲兵、ヤキム即チ之デアロウ。又モアレ、宜教師及通譯ノ家族ヲ殺害シタリトツイテ、深甚ナル陳謝ノ意ヲ表スルデアルト。限リタ一部ノ者、責任ニミタカハル行為、爲サレタ事、誠ニ同國人トシテ被害者ト共ニ悔恨、情ヲ禁ズシ得ナイ。

然レ之等、過誤ニツイテ及博ルルベキ對價ハ事件被害者ニボラベキデアイト。

戰勝國ガ戰敗國ニ對シ加フル制裁ハソノ權力ヲ以テセバ欲ラ成ラザルハナイデアロウ。又一方慈悲ト寛大トラ思ミ與ヘタトモ自由デアラウ。

委員各位モ風ト太陽、童謡ヲ御存知ノ事ト思フ。旅人、外套ヲ脱ガシメルガ。風ト太陽ガ競争ミタ。最初ニ風ガ試ミタ。其ノ旅人ノ風ガ強ク吹ケバ吹ケ程風ノ身ニツケテ遂ニ風ハ失敗ミタ。之ニ及ビ太陽ハ龍



うカナ暖イ陽一光ヲ次テ窓男ニ施シ、外套ヲ脱ガシ事
 が出テ、遂ニ太陽、勝タトナリ。トエロク、ゆめヲアビ
 コノ童話、教フル如ク。限クナキ愛コソ如何ナリ
 権力ニシテ勝ル。

香三員長並香口員各位

トウカ、之等を被告、島々ニ暖イ太陽、如キ如ク
愛ヲ世ニ賜フ下ヲ如ニ都ヒ知、亦論ヲ終ル。

白 敬

昭和二十三年三月二十五日

爭護人權 澤同美

ARGUMENT FOR THE DEFENSE

In the case of YAMAMOTO, Kazuharu, et als.

Delivered by

Mr. Takami Karasawa

May it please the commission:

I will deliver this argument in behalf of eight accused, namely, FUJITANI, Yoshio; KAWAGUCHI, Wphei; ANDO, Fukuichi; HIDAKA, Kinnosuke; ITO; Mitsuyuki; NAKAMURA, Jiro; IWAMOTO, Harukishi, and OKAMURA, Gintaro, who are among the twenty accused in the case of YAMAMOTO, Kazuharu, et als, charged with participating in the execution of the missionaries.

The judge advocate has maintained and attempted to prove that all of these eight accused were present at the scene of the execution in this case. However, as to some of these accused, the judge advocate failed even to prove that they were at the scene of the execution, while as to others he failed to prove that they took any part in the execution, rendering them guilty in this case.

I shall argue first in behalf of each of these accused and then for all of them together.

1. In behalf of FUJITANI, Yoshio:

With the proof of the prosecution as presented it is totally vague and uncertain what part the accused Fujitani played in this case.

That night when the alleged crime was committed Fujitani remained in the Kempeitai and was not present at the scene of the execution.

The only evidence produced by the prosecution, which showed that the accused Fujitani was then at the scene of the execution, was the testimony of witness Nakamura, Kazuo. Other than this, the same thing was indicated in the diagram of co-defendant Esure's confession and was stated in the confession of co-defendant Ichikawa. Co-defendant Esure, however, clearly denied this point when he took the witness stand in his own behalf. He referred to the circumstances under which he wrote down the name of Fujitani in the diagram, and testified that the entry was not based upon his own memory.

Then how about the confession of co-defendant Ichikawa? He had no chance to testify as to this point. Generally speaking, a confession is admissible as evidence so far as it concerns the portion relating to the party who wrote it, and it has been frequently argued that a confession which relates to the matter of other persons is not admissible as evidence. Therefore, I do not intend to argue further as regards this point.

Consequently, the only evidence regarding the presence of Fujitani at the scene of the execution was the testimony of witness Nakamura. When we closely examine the testimony of witness Nakamura, we will notice a tendency that he is endeavoring to avoid the responsibility which he should take.

"WWW(1)"

0835

His testimony which most clearly shows this tendency is that part concerning the preparation of the execution, that concerning the command at the scene of the execution, and that concerning the names of those who were at the scene. According to his testimony, he named eight Kempeis and assistant Kempeis who were present at the scene of the execution, namely Sugimoto, Ichimiya, Tamamoto, Yckoyama, Ezure, Fujitani, Kawaguchi and Okamura.

Among these eight persons, only Ichimiya and Okamura belonged to his detachment and were his direct subordinates. The others, Sugimoto, Yokoyama, Ezure, Tamamoto, and Fujitani, were attached to the headquarters; and Kawaguchi, according to his recollection, already had returned to the Sumida Unit at that time.

With regard to our normal retentiveness, our memory is clearer about those with whom we have special relation than toward those who were not so related. Nakamura, however, recollected the headquarters personnel better than his own subordinates. When we compare this matter with the other part of his testimony, we shall easily find out that his testimony is incredible. Therefore, we need not give much weight to his testimony in which he named the accused Fujitani as a member of headquarters.

Thus we find that there is no evidence showing the accused Fujitani was present at the scene of the execution that day. Rather, it is clear that he was not at the scene.

Let us further examine this point in connection with the testimony of prosecution witness Imaizumi. On direct examination of the judge advocate, he named the persons present at each of the three assemblies, and yet he did not name Fujitani as being present at either of these three assemblies. Besides, when he was cross-examined by the accused, he testified concerning Fujitani as follows:

"Q. Was Fujitani, who was Second Lieutenant Ichikawa's orderly, not on one of the teams?

A. I think he was not assigned to a team.

Q. Do you know why Fujitani was not assigned to a team?

A. As I recall, I believe the reason for this was because he was not at the scene.

Q. Do you know why he was not at the scene?

A. As I recall, he had just returned from the hospital."

This testimony of Imaizumi is almost decisive evidence concerning the accused Fujitani, and there is no other evidence which tends to disprove it.

Other evidence worthy of attention is the testimony of witness Yamada. He testified that he saw Fujitani at the first assembly, but that he had no recollection of seeing him at the scene of the execution. If Fujitani had been present at the scene of the execution, Yamada should have remembered it. So the testimony that he does not recall seeing him at the scene may allow us to conclude that Fujitani was not at the scene. Both Sano and Takahashi, besides the above testimony, testified that they had no recollection concerning Fujitani.

In view of the above evidence, it is an uncontradicted fact that Fuji-

tani did not participate in the execution. Even if we assume that Fujitani was at the scene, his mere presence at the scene cannot be sufficient ground to hold him criminally responsible. Even if we accept the testimony of Nakamura, Fujitani's mere presence at the scene does not lead to the conclusion that he was a member of the execution party. Therefore, it is entirely useless to create such an assumption against the accused Fujitani.

Fujitani, who did not even go to the scene of the execution, should be acquitted of both Charge I and Charge II.

2. In behalf of the accused KAWAGUCHI, Wahei:

Whether the accused Kawaguchi was a member of the South Seas Kempeitai at the time of the incident, or was he present at the scene as a member of the Sumida Unit is not an important question for the accused Kawaguchi himself. So I shall only point out that he has stated in his confession that he was then attached to the Kempeitai and went to the scene as the orderly of Captain Nakamura according to his orders. The material question as regards Kawaguchi is what part he played at the scene of the execution.

In his own confession, which was introduced into evidence by the prosecution, he testified, "I was holding a candle about seven meters behind and in the center." But there is no other fact with which Kawaguchi might be charged.

I have no intention to controvert the fact that Kawaguchi was present at the scene of the execution, holding a candle. We must consider, however, whether such an act can be so important as to constitute a crime, and also what intent or cognizance Kawaguchi had when he was holding the candle.

The latter is especially worth our careful examination. In order to impose a criminal responsibility upon an individual, it is necessary that through intent he sought to effect an occurrence of a certain punishable result and that a certain act is done according to such intent.

It is a very superficial conclusion to say that Kawaguchi was assisting the murder because he was holding a candle.

According to Kawaguchi's own understanding, it was only natural for him to hold a candle in a dark night. According to his confession, since he was standing about seven meters behind, we can not interpret his act evidently made the performance of the execution possible by what he did. If Kawaguchi desired to assist the performance of the execution by the light of his candle, he would have held the light right beside the persons who fired, but the fact that he was standing seven meters away to the rear clearly shows that he had no intention of assisting the execution. Thus it is impossible to immediately determine that he had the intent to assist in the execution from the fact that he was holding a lighted candle. In the confession of his co-defendant Sugimoto, it is stated that everyone was furnished a candle. If that is true, it is impossible to maintain that Kawaguchi was assisting the execution only because he was holding a candle. As a matter of fact, how much illuminating effect has a faint light of a candle in an open clearing? From our common sense and ordinary experience, we can not conceive that such light from a candle made it easier to perform the execution.

"WWW(3)"

0837

In behalf of the accused Kawaguchi, I hold that he had no intention to assist the execution when he held that candle and that this candle light did not make the performance of the execution easier at all. I request that the accused Kawaguchi be found not guilty to both Charge I and II.

3. In behalf of the accused ANDO, Fukuichi:

There is not a single bit of evidence of the prosecution which shows that the accused Ando was present at the scene of the execution. Witness Takahashi only testified that he recalled Ando being present at the second assembly, the assembly on the road, and there is no other evidence at all. Without proving whether Ando was present at the scene of the execution, how can the judge advocate allege that he is guilty in this case? Besides, witness Imaizumi testified, "I have a recollection that I saw him somewhere," but "At the scene I have no definite recollection." Furthermore, witness Yamada, when he was cross-examined by the defense as to whether Ando was at the scene, answered that he had no recollection.

According to the above cited evidence, it is impossible to determine that the accused Ando was at the scene.

However, defense witnesses Uchida and Ezure who took the stand in their own behalf, testified that Ando was at the scene. I think it is entirely up to the commission to consider this testimony and decide which is true.

But, even if we assume that Ando was at the scene of the execution, it is still impossible to determine that he is guilty in this case on account of his presence. There is no evidence to show that he was a member of the execution party in this case. There is no evidence either to show that Ando did any act at the scene to assist the execution. The judge advocate cannot maintain that he has proved the guilt of the accused Ando beyond a reasonable doubt.

Many cases tried in this court before, we may say, have established a precedent that mere presence at the scene of the execution does not impose criminal responsibility upon a person. To assume that Ando was a member of the execution party is against the rules of evidence and is not permissible.

Therefore, there is no ground that the accused Ando must be criminally responsible for the execution in this case.

I hold, in behalf of him, that he is not guilty of both Charge I and II.

4. In behalf of HIDAKA, Kinnosuke; ITO, Mitsuyuki; NAKAMURA, Jiro, and OKAMURA, Gintaro,

Since the facts concerning the above four accused are entirely identical and there is no necessity to argue separately, I will argue in behalf of them en bloc.

All of these four accused stated in their confessions that they were assigned to teams with Kempei noncommissioned officers. Therefore, I shall neither argue nor oppose this point.

"WWW(4)"

0838

Now, how were these accused assigned to teams? This question is clearly answered by the testimony of prosecution's witnesses and the confessions of these accused themselves. But as to whether the teams were organized when they departed from the Kempeitai, or when they arrived at the scene of the execution, this testimony and their confessions are not always identical. Nevertheless, it is uncontradicted that these teams were formed by the direct orders and command of Detachment Commander, Captain Nakamura.

That is to say, that all of these accused were not teamed up voluntarily, but were teamed up entirely by the will of their superior officers. As for themselves, this will of the officer was beyond their control. Can a matter which is beyond one's control make one criminally liable?

As a matter of fact, can we find any substantial difference between these four accused and mere onlookers? If these accused had entered the teams of their own accord in order to perform the execution, then they should be criminally responsible. In such case they would be entirely different from mere onlookers. However, so far as these accused are concerned, there is no substantial differentiation between the two.

In many previous trial precise distinctions were made between spectators and those who were given orders, and the latter only were held criminally responsible for what they did. These precedents, I believe, are not without criticism. I rather think that even those who accidentally were ordered to participate should be free from the criminal responsibility, as those who attended as spectators.

If we are held criminally responsible for incidents caused by accidental events which we can not anticipate or prevent to occur, it will be impossible for us to lead a peaceful social life even for a single day.

The positions of these four accused are like those of Sano, Tamanoi, Imaizumi, etc.; the only difference is caused by the interposition of a will of another person, that is the order of Captain Nakamura, which happened to fall upon these accused. The seeking of criminal responsibility according to such accidental circumstances does not contribute to the realization of justice. Can there be any substantial ground to determine the guilt of these four particular accused? If a person who was a member of a team did a certain act at the scene to assist the consummation of the execution, he can be separated from the others in order to be accused of his criminal responsibility. However, the evidence introduced in this court has never shown that they did such specific acts.

But the point we must note is the fact that co-defendant Yokoyama has stated in his confession as follows: "I believe it may have been Okamura who shot the child." This, however, is merely Yokoyama's conjecture and not his definite recollection. On the other hand, Okamura states in his own confession: "I did not shoot." A confession, as I have already stated, is competent evidence only to the party who made it, and cannot be binding upon another person unless there is conspiracy. Therefore, we must give more weight to Okamura's own confession with regard to matters pertaining to him.

Their being members of the teams, too, can not be a ground for their punishment. The judge advocate may insist that those members of the teams, although they did nothing at the scene, are responsible for the execution, since the teams had a duty to execute, that they were to perform the execution if their partners had failed to do it, and that both of the members

of the teams are collectively responsible for the execution. Of course, I am not denying that such aspect is not feasible. But if such a view is taken, the responsible persons were not only the members of these teams but every person who was present at the scene.

For the above mentioned reason, I believe that there is no ground to render these four assistant Kempeis particularly punishable compared with the others.

These accused are all in their twenties and are promising young men. All four were born in farming villages and were brought up under simple and humble environments. They are now in leading positions in each of their villages.

True justice is not realized by pointing out a trifling fault and imposing upon them confinements of many years. I beg your reconsideration and that you will send them home as soon as possible and give them a chance to contribute to the development of agriculture in post-war Japan.

5. In behalf of IWAMOTO, Harukichi:

There has been no evidence introduced in this court that the accused Iwamoto participated in the execution of the missionaries as a member of the execution party. Although the statements of each accused were introduced into evidence, that of the accused Iwamoto was not.

From the beginning of the investigation, he has maintained throughout that he did neither participate in the alleged crime in this case nor go to the scene of the execution. In spite of that, he has been charged as an accused in this case. The important reason for his indictment is, as I believe, that he could not give a clear explanation as to why he did not go to the scene of the execution and what he was doing during that time.

Among many defendants, no one has so poor a memory as Iwamoto. As he graduated only from grammar school and had no sufficient education, it is quite difficult for him to explain what had happened in September, 1944, to convince anybody. Thus, he did not desire to take the witness stand.

However, prosecution's witnesses, Yamada and Imaizumi, and defense witness Esure testified that Iwamoto was present at the scene of the execution. I think it is entirely up to the commission whether or not this testimony is to be given weight.

The argument is, as I mentioned before, that a mere presence at the scene of the execution is not sufficient to find him guilty. Even if we assume that Iwamoto was at the scene of the execution, we can not determine that he aided in the performance of the execution or he did nothing at all. It is an established principle in the criminal cases of any country that a criminal case can not be tried by conjecture or inference, and there is no judicial precedent in the history of the judicial system of any country that a person was punished by such conjecture or inference. Inference or conjecture is permissible only within a very strict limitation, as is provided in Naval Courts and Boards. Therefore, if Iwamoto was present at the scene of the execution, no one can determine that he was a member of the execution party.

At least, the judge advocate will be unable to claim that he has proved the guilt of the accused Iwamoto beyond reasonable doubt. I firmly believe that Iwamoto in this case can not be found guilty by such vague evidence. I hold, therefore, that Iwamoto is not guilty of Charge I and II.

I have argued in the above in behalf of each of the accused specifically; I will now continue to argue in behalf of all the accused, en bloc, who were present at the scene of the execution, particularly these eight defendants.

The evidence showed that this execution was carried out under the direct command of Colonel Miyazaki, the commanding officer of the South Seas Military Police, by orders of 14th Division Headquarters, and we need not argue any further concerning that point.

It is also uncontradicted that all of these eight accused, except Kawaguchi, were low-ranking auxiliary Kempeis, attached to the Kempeitai under the command of Colonel Miyazaki. Now, the mere presence of these low-ranking assistant Kempeis at the scene of the execution in accordance with the orders of their immediate superior, Commanding Officer Miyazaki, is it sufficient to constitute a crime? In other words, are soldiers who have committed unlawful acts, especially criminal acts, in accordance with orders of their superior, responsible as war criminals?

Different views are taken of this problem in legislation of various nations, and this problem is still a subject of discussion among scholars of jurisprudence. I have no time to enumerate this legislation and the theories right now, and examine and criticize them, but I believe these views can be classified in three categories:

According to the first view, orders of superiors are absolutely binding on their subordinates, and whenever subordinates receive their orders they must obey them, but the subordinates who acted in accordance with orders of their superiors are never held responsible for what they did.

An express provision concerning this point is Article 366 of Rules of Land Warfare, 1914, which reads:

"Individuals of the armed forces will not be punished for these offenses in case they are committed under the orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall."

If, however, according to this view, subordinates are not absolutely responsible for their acts committed in accordance with orders of their superiors, there arises a danger that they will violate laws and customs of war without hesitation, thus tending to increase the possibility of war crimes. The officers who gave such orders are, of course, responsible and will be punished when they are held captive by the belligerent. Superior officers, however, seldom have direct participation in battles, so still less is the chance of their capture. Therefore, there is little actual possibility to accuse and punish these superiors, especially, high ranking officers. If subordinates have no responsibility, both they and their officers will not be punished after all. Thus the laws and customs of war will easily be violated, and it will become difficult to maintain

"WWW(7)"

strict observation of the international law in time of war.

Therefore, if war crimes are to be punished at all, this first view can not be adopted.

The second view is entirely different from the first one, that is, subordinates have the right and duty to examine orders of their superiors and that they have no obligation to obey unlawful orders. As the natural conclusion of this theory, subordinates who obeyed unlawful orders of his superiors, are always responsible for their act. However, if subordinates can always refuse to obey orders because of their opinion and interpretation gained from examining his superior's orders, the effect of order will be lost. Undoubtedly, the administrative chain of command will be disordered and normal performance of administration will not be achieved. Especially is this true in the military where discipline is regarded as its life-blood.

Therefore this view too, is not appropriate.

In order to avoid improper results caused by the above two views, we have a third theory. According to this theory a superior order is not binding upon the subordinates if its defect is so apparent that a man of ordinary sense and understanding would know as soon as he heard the order read or given that it was illegal. If an order has a grave and apparent illegality on its face, a subordinate receiving such an order may refuse to obey it according to his own discretion. But if its illegality is not apparent on its face, it is binding on the subordinate who has then no right to judge the illegality, and cannot refuse it. Then to what extent must an order be illegal in order for it to be refused by a subordinate? If the illegality can be understood by a man of ordinary sense and understanding he can refuse the order, while if he recognizes it to be legal he should obey it.

Clark and Marshall, A Treatise on the Law of Crimes, reads: "Section 71. Compulsion or Command... An order given by an officer to his private, which does not expressly and clearly show on its face its own illegality, the soldier is entitled to obey and such order is his full protection."

Section 72, 26 American Jurisprudence, Homicide, provides: "Persons in Military or Naval Service. - Persons in the military or naval service of a nation, when acting in the line of their duty, are governed by very different rules from those governing citizens generally. This is true with respect to the crime predicable of homicide. The private soldier may rely on the fact that he is acting pursuant to the orders of a superior officer. But an order which is illegal itself, and not justified by the rules and usages of war, or which is in its substance, clearly illegal, so that a man of ordinary sense and understanding would know as soon as he heard the order read or given that it was illegal, will afford no protection for a homicide, provided the act with which he may be charged has all the ingredients in it which may be necessary to constitute the same a crime in law."

36 American Jurisprudence, Military; Section 123, states: "Acts done pursuant to Orders. - In criminal prosecution for acts done in obedience to orders of a superior officer the same rule is applied as in a civil suit for damage for such acts, and an order given by a military officer to a subordinate officer or private soldier should be obeyed by the subordinate and will fully protect him in a criminal prosecution, unless the illegality of such order is so clearly shown on its face that a man of ordinary sense and understanding would have known when he heard it read or given that it was illegal. In this regard a subordinate stands in different position from his

"WWW(8)"

0842

superior when he obeys, and may be absolved from liability for executing an order which it was criminal to give."

Oppenheim says in Section 253 of his International Law, Vol. 2: "The fact that a rule of warfare has been violated in pursuance of an order of the belligerent government or of an individual belligerent commander does not deprive the act in question of its character as a war crime; neither does it, in principle, confer upon the perpetrator immunity from punishment by the injured belligerent. A different view has occasionally been adopted in military manuals and by writers, but it difficult to regard it as expressing a sound legal principle. Undoubtedly, a court confronted with the plea of superior orders adduced in justification of a war crime is bound to take into consideration the fact that obedience to military orders, not obviously unlawful, is the duty of every member of the armed forces and that the latter cannot, in conditions of war discipline, be expected to weigh scrupulously the legal merits of the order received; that rules of warfare are often controversial; and that an act otherwise amounting to a war crime may have been executed in obedience to orders conceived as a measure of reprisal. Such circumstances are probably in themselves sufficient to divest the act of the stigma of a war crime."

In short, according to the various quotations I have cited above, an order which is so clearly illegal on its face that a man of ordinary sense and understanding would have known its illegality should not be obeyed. If a subordinate obeys such an order he should take responsibility for what he did.

It seems to me that the third view is the prevailing one with regards to the binding of superior orders toward the subordinates.

The American Rule of Land Warfare, 1914, has lately been revised by Chief of Staff Marshall, and is now as follows:

"Individuals and organizations who violated 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."

I think this is due to the transition of thought regards this point,

Not only this military commission but war criminal courts in general have taken the view that orders of superiors can not be a defense, but that it may be considered in mitigation of punishment, as Article 6 of the Charter of International Military Tribunal for the Far East reads: "Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires."

Then, does this provision apply the second view, instead of the present established principle, the third view?

To this question, we answer in the negative. We should take notice of the words "of itself" found in this provision. That an accused acted

"WWW(9)"

0843

pursuant to order of a superior shall not, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged means that a mere pleading of an accused that he is not responsible because he acted pursuant to orders of his superior can not be an excuse. That is to say, this provision is after all a negation of the first view cited above. Therefore, this provision is not inconsistent with the assertion of Kenny in his Outline of Criminal Law (Ibid., 15th ed. 1936 p. 8), "If an accused believes by mistake that an illegal order is legal, and if there is reasonable grounds for his belief, he is free from responsibility!"

The Nuremberg International Military Tribunal, upon its decision set forth a remarkable interpretation of Article 8 of the Charter, "The fact that the defendant acted pursuant to order of his government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment." It announced, "The provisions of this charter are in conformity with the laws of all nations. That a soldier was ordered to kill or torture in violation of the international law of war has never been recognized as a defense to such acts of brutality, though, as the Charter here provides, the order may be urged in mitigation of the punishment. The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible."

According to this view, a subordinate soldier who acted in obedience to absolute orders of his superior and who could not act otherwise in view of various circumstances at that time is not responsible for what he did. Because the moral choice for him to take other actions are in fact impossible and no one can expect him to act otherwise.

I believe that the meaning of Article 6, Charter of the International Military Tribunal for the Far East, that an order of superior officer can not be defense, is as follows:

If there is a possibility that a subordinate can criticize and judge the order of his superior, it can not be his protection. But if there is no room for moral choice of the order given to the soldier, the order operates as the defense of the accused and will free him from guilt.

Now, let us look back to this case. As Nakamura, Kazuo; Sano, Giichi; and many other witnesses testified, it is uncontradicted that the crime in this case was committed by orders of, and under the direct command and supervision of, Colonel Miyazaki, the commanding officer of the South Seas Kempetai, who was the superior officer of the accused.

In addition to that, how were the battle conditions on Palau Islands, at the time of the commission of the crime in this case, namely on or about 18 September, 1944?

At that time, the Japanese forces on Saipan and Tinian were annihilated, and the outlook of the battle in the Middle Pacific became unfavorable for Japan day by day. Peleliu Island, which is one of the Palau Islands, had already been invaded by the American forces. American planes constantly bombed these islands day and night; shortage of provisions and ammunition became serious; communications to and from Japan were completely cut

"WWW(10)"

0844

off. On Babelthuap, these accused were possessed with fear and desperation. Morning found them still alive but who could foretell that death would not be their fate before night. The conditions were such.

These circumstances are fully described in the testimony of prosecution's witnesses, Nakamura, Kazuo and Sano, Giichi. Especially, witness Nakamura, when he was cross-examined by the defense what was the battle condition at that time, testified: (Answer to Q. 125) "The air raids were very furious and we were always in the air raid shelter. We only came out for a little while to eat, but even at these times we were raided, so most of the time we were in the air raid shelter. I heard from Commanding Officer Miyazaki that the forces on other islands were completely wiped out, so as Commanding Officer Miyazaki said, I felt that the American forces would land here in the near future."

Under such critical battle conditions, these accused were told by Commanding Officer Miyazaki that the victims in this case were spy suspects. The background of this incident was such when the commanding officer, Miyazaki, gave orders to the accused in this case that these missionaries were to be executed by orders of Division Headquarters.

In view of these various circumstances, we must make an examination to see if there was any fault on the part of these accused when they judged that the orders of Commanding Officer Miyazaki were legal.

We must also make an examination to see if there was any possibility of moral choice of such orders given to these accused.

Commanding Officer Miyazaki stated in an address that the orders for the execution originated from Division Headquarters.

The accused in this case, especially low ranking noncommissioned officers and auxiliary Kempeis, were hardly in a position to search for any ground for the legality of the orders, the orders given by Division Headquarters. These accused could not have known under what circumstances the Army Headquarters of the Middle Pacific Command issued such orders. Besides, this division order was given to them by Commanding Officer Miyazaki, whom they had respected and trusted as their immediate superior. Furthermore, the above mentioned urgent battle condition and the fact that they were spy suspects tended to justify the orders. It is almost impossible that there was any blameworthy mistake on the part of these accused when they believed that there was no grave and clear illegality on the face of these orders and obeyed them.

And once again, when they were given these orders for the execution by Commanding Officer Miyazaki, and were told the detailed instructions from Detachment Commander Nakamura, they had no alternative of moral choice in regard to these orders.

I believe you have understood that it was quite impossible to expect these accused to find out any clear, grave illegality in the execution orders and refuse to obey them. No one can think that justice can be realized by forcing the impossible upon a person.

For the reasons I have mentioned above, I maintain that the accused had no criminal responsibility so that they should be acquitted.

In conclusion:

The judge advocate could not prove the guilt of each accused beyond reasonable doubt, and it was even made clear that some of the accused did

"WWW(11)"

0845

not go to the scene of the execution.

The other accused who were made to go to the scene of the execution and who were teamed up had not any means to resist absolute orders of their superior. We cannot therefore impose criminal responsibility of this incident upon these defendants.

Having viewed this case, I believe it is a travesty on the name of war crimes trial to prosecute these auxiliary Kempeis for criminal responsibility because of the execution.

The judge advocate has often said that these persons should be punished in order to realize justice. But does justice require a person to do impossible things? I do not believe so. The quality of justice consists of the fact that it can be done and practiced by any ordinary person. That is to say, the limit of requirement of justice is equal to that of human capacity. Then what is the standard limit of his capacity? I think there may be some difference according to customs, habits, education, and civilization of various countries.

No one can think that the realization of justice in war crimes trials is to demand a person do the impossible. To burden the assistant Kempeis in this case with the criminal responsibility for the execution of the missionaries is just forcing them to do the impossible.

As I have often stated in the latter part of my argument, these assistant Kempeis just could not refuse to obey the orders of Commanding Officer Miyazaki. There was no blamable reason on their part that they could not refuse. I can not believe it contributes to the realization of justice to punish these accused for their obedience to orders by saying that it is in violation of the requirements of justice. I do not mean by my contention that superior orders can always be protection for subordinate soldiers.

Article 6, Charters of the International Military Tribunal for the Far East: "The fact that an accused acted pursuant to order...shall of itself not be sufficient to free such accused from responsibility..." does not prevent the realization of justice. I mean that it is a mistake to take it for a golden rule and give a conventional interpretation thereof that a superior order shall, in any case, not free such accused from responsibility, because such a misinterpretation is enlarging the scope of war criminal trials in vain. I think that the punishment of the assistant Kempeis in this case would be one instance of such vain attempt.

However, I regret and must apologize for the killing of these missionaries, the interpreter and his family. I, together with the accused, am very regretful that such acts were committed by the wills of certain Japanese. But the expiation which should be paid for these misconducts should not be imposed upon these accused.

A victorious nation with its power can impose freely any punishment upon a defeated nation, while on the other hand they can freely employ benevolence and tolerance.

I believe you are familiar with the allegorical story of "Wind and Sun"

"www(12)"

0846


Once upon a time, Wind and Sun had a competition to cause a man who was travelling along a road to take off his overcoat. Wind tried first, but the harder he blew the tighter the man held the overcoat on and he failed at last. Then Sun with his bright warm sunshine easily took off his overcoat.

As this tale teaches us, an infinite love is mightier than any power.

Gentlemen of the commission, in concluding my argument, I sincerely hope that you will be as benevolent and warm toward these accused as the Sun.

/s/ Takami Karasawa,
Counsel for the Accused.

I hereby certify the foregoing, consisting of twelve and one quarter typewritten pages, to be a true and complete translation, to the best of my ability, of the original document in Japanese.


EUGENE E. KERRICK, Jr.,
Lieutenant, U.S. Naval Reserve,
Interpreter.

"WWW(13)"

0847

FINAL ARGUMENT

in behalf of the accused YAMAMOTO, Kazuharu, et als.

Delivered by

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

Headquarters Command, Commander Marianas,
Guam, Marianas Islands.

March 23, 1948.

May it please the Commission:

On January 31, 1948 it was decided that these twenty accused were to be tried for the execution of ten persons. The ten persons were executed on Babelthump Island on or about September 18, 1944, more than three and one half years ago. But is this any reason that the persons responsible for this execution are not the accused and are not being tried for the killing of the ten persons?

The investigation no doubt showed that teams of two persons were ordered to guard each of the prisoners. There was some evidence even introduced to this effect. As to the number of persons who were detailed as guards, there is some conflict of testimony and therefore there must have been some conflict as to this point in the investigation. However, since the prosecution were alleging ten victims and there was mention of teams of two persons, it followed that there must be twenty accused. Consistent with what was committed in the name!

The evidence showed there were two children, one so small it was carried by its mother on her back. I believe this is the Japanese custom, for a mother to carry her children on her back. So that it was surely not necessary or logical that two persons be detailed as guards over a child strapped to and carried on its mother's back.

But the persons responsible, the war criminals, are not on trial. These twenty are accused of the killing of ten persons and let us look at the evidence against them.

The evidence shows no justification for bringing to trial four of these accused, namely: Hayashi, Umeji, who was sick in his bed at the time; Sagara, Masashiro, who was on duty as a lookout at the time of the incident which took place in the jungle more than an hour's ride by truck from the Kempetai headquarters; Iwamoto, Harukichi, who was also on duty; and Fujitani, Yoshio, who had been at the hospital attending a sick Kempetai for more than a month.

Only fourteen of these accused wrote statements implicating the other accused, so that there were only the statements or affidavits of fourteen of these accused put into evidence by the judge advocate. There were no confessions introduced into evidence against six of these accused, namely: Yamamoto, Tadashi; Fujitani, Yoshio; Ando, Fuguchi; Hayashi, Umeji; Iwamoto, Harukichi; and Sagara, Masashiro. And why not?

"XXX(1)"

0848

Does the judge advocate say that these six accused did not write statements, as did the fourteen accused? No. These six accused also made written statements. It is most certainly true that the judge advocate need not introduce any statements of accused into evidence, and we objected to the seventeen statements made by fourteen of these accused being admitted into evidence, but since he didn't introduce the statements which Yamamoto, Fuitani, Ando, Hayashi, Yamamoto, and Sagara made, we feel that the judge advocate should offer some explanation for not doing so, and for bringing them to trial, unless the evidence is strong and cogent against these six accused that they committed the crime charged.

Let us look at the evidence first as against these six accused.

First, as to the evidence contained in the seventeen statements admitted into evidence against the fourteen makers and/or affiants, and to prove the corpus delicti, and as evidence against each of twenty accused.

We did object to the introduction into evidence of the alleged confessions of Yokoyama (Exhibit 6), of Ezure (Exhibit 7), of Hoshida (Exhibit 8), of Ishiyama (Exhibit 9), of Sugimoto (Exhibit 10), of Saito (Exhibit 11), of Hidaka (Exhibit 12), of Yokoyama (Exhibit 13), of Okamura (Exhibit 14), of Nakamura (Exhibit 15), of Kawasuchi (Exhibit 16), of Ichikawa (Exhibit 17), of Ichimura (Exhibit 18), of Yamamoto (Exhibit 19), of Ito (Exhibit 20), of Yamamoto (Exhibit 22), of Otsuki (Exhibit 23), but following the opinion of the judge advocate given to the commission in open court the commission ruled we could not object to the contents of these alleged confessions, but we were limited to comment as to the contents of these documents when making our final arguments. The judge advocate asked that the documents be admitted not only as evidence against the makers of the documents, but as against all the other nineteen accused. The judge advocate in his argument reiterated his opinion that all confessions should be so considered by the commission in arriving at their findings.

We objected that the alleged confessions should not be admitted as evidence against any of the nineteen co-defendants. We would have liked to have had time to look up the court martial order which we hereby cite as our authority for not admitting the alleged confession of one defendant against any of his co-defendants. This is the law not only in the Navy courts, but in all law courts of the United States.

C.M.O. 5-1947 at page 109-111: "A General court martial convicted seven accused, personnel of the Japanese military service, tried in joinder, of the charge of 'murder.' The evidence disclosed that the body of One Y, a Japanese civilian alleged to have been murdered by the seven accused, each and together, was found lying in a ditch near his home in a Japanese civilian compound on Tinian Island...."

"At the trial, after pleas of not guilty had been entered to the charge and to the specification by each of the accused, the judge advocate offered in evidence an extrajudicial confession of each of the accused confessing a part in the murder. Each of the accused objected to their admission into evidence on the ground that it was obtained under the influence of a superior officer. The court excluded the confession of O, but admitted into evidence the confessions of the remaining six accused.

"The record disclosed the circumstances surrounding the making of the

"XXV(2)"

confessions to be as follows: the two Japanese officers who surrendered with the accused were promised by an investigating officer and commanding officer of the Military Government that they would be sent home if they solved the case; the accused, O, was interrogated by the two Japanese officers in an abandoned house with no other witnesses present and obtained information implicating the six other accused; the same officers then questioned I, N. and M in private and S, T, and L in the presence of an investigating officer; the confessions were written by each accused and the signing witnesses; about two months later each accused acknowledged his confession as voluntary at a re-witnessing.

"A confession, to be admissible as evidence, must be affirmatively shown to have been entirely voluntary on the part of the accused (N.C. & B., Sec 174). Moreover, the burden is upon the side wishing to introduce a confession to show that it was voluntarily made (N.C. & B., Sec 177). Furthermore, the statements of a conspirator, made after the common design is accomplished or abandoned, are not admissible against his co-conspirators, except statements made in furtherance of an escape. (N.C. & B., Sec 186).

"Sometime after their questioning of each of the accused, and before trial, the two Japanese officers were returned to Japan, and therefore were unavailable for examination at the trial as to the circumstances surrounding their obtaining each of the confessions. In view of the promise made by the commanding officer of the military government administration to return them to Japan if they solved the case, these Japanese officers had a strong motive to secure confessions from the accused irrespective of their guilt, and should have been retained as necessary witnesses until each of the accused had been brought to trial. Under the circumstances, the facts in the record were insufficient to indicate that the confessions were in a legal sense "voluntary."

"Accordingly, the court erred in admitting into evidence the confessions of I, N. M, S. T, and L, which were not satisfactorily shown by the prosecution to have been voluntarily made. It further erred in convicting O on the evidence contained in the confessions of co-conspirators after the object of the conspiracy had been accomplished. Since the other evidence adduced by the prosecution was insufficient to sustain the conviction of each accused, the findings on the charge and the specification thereunder, and the sentences, and the action of the convening authority thereon in the case of each accused were set aside. (File: MM Iwase, Eiichi et al/A17-20, 9 April 1947)."

This was a trial involving Japanese prisoners of war and certainly the same rules of evidence and the same law should apply in trying these twenty accused. None of the seventeen alleged confessions should be admitted against any of the co-defendants. To do so according to this Court Martial Order 5-1947 is in error;

C.M.O. 9-1947 (Sept. 1947) at p. 269 holds that the voluntary nature of a confession must be established before introduction.

C.M.O. 2-1943 is hereby cited as to the admissibility of confessions made to persons in authority; (C.M.O. 2-1 43, pp 66, 67) "CONFESSIONS. Admissibility: Made to person in position of authority. During a general court martial trial a written confession was received in evidence over the objection of the accused. The evidence clearly

"XXX(3)"

0850

showed that the alleged confession was obtained while the conduct of the accused was the subject of investigation. The investigating officer prepared and dictated the confession, incorporating therein 'the substance of our interview' as well as other information which he had in his possession. He included therein an assertion that the statement was voluntarily made without any threats or promises having been used. All witnesses who testified as to the conditions under which the confession was obtained agreed that the accused was encouraged and advised to tell the truth. The investigating officer himself testified that he told the accused the truth was the more desirable procedure in any situation. Confessions made by enlisted men to officers or petty officers, though not shown to have been made under influence of threats or promises, should, nevertheless, in view of the military relations of the parties, be received with caution. The statement appearing in the paper that the accused confessed voluntarily without any threats or promises having been used is not conclusive that the confession was, as a matter of fact, voluntary.⁶³ 'The requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat. A confession is voluntary in law if, and only if, it was, in fact, voluntarily made.'⁶⁴ Advice or encouragement to an accused that he tell the truth, in itself, is generally considered sufficient to operate on the mind of an accused person and to induce either hope or fear or both.⁶⁵ Since the evidence, aside from the confession, was not sufficient to establish a prima facie case as to either of the two specifications found proved under the charge, the findings on the charge and specifications thereunder and the sentences were set aside. (File: MM--Tombs, Buford A/A17-20, April 30 and May 26, 1943.)"

⁶³ N.C.&B., sec 174.

⁶⁴ Wan v. U.S., 266 U.S. 1, 14.

⁶⁵ C.M.O.'s 12-1931, 13-14; 11-1932, 6-7."

Two naval officers, Lieutenant Kenny, the judge advocate of this trial, and Commander Ogden, an investigator in the War Crimes Office, Commander Marianas, Guam, both testified regarding the taking of affidavits by which they said the persons who had made statements in Tokyo now incorporated these statements into an affidavit made here on Guam. All affiants were held in solitary confinement here at Guam at the time and both the officers interviewed them as officers of the United States Navy. Commander Ogden and Lieutenant Kenny were both persons in authority at the time they took these affidavits. The affiants were still being investigated and no charges had been preferred against them.

In this case the judge advocate has taken the statements made while these persons were held in confinement at Sugamo Prison and attempted to incorporate them into an affidavit made here on Guam. Knowing nothing of the circumstances surrounding the taking of the statements at Sugamo and not producing any witnesses who could testify as to the circumstances at Sugamo Prison, the judge advocate testified he made no promises or inducements or any threats, so if he made no promises or inducements or threats, then none were made at Sugamo Prison, Tokyo. This does not follow. And we maintain it is incumbent upon the prosecution to prove that the original statement made at Sugamo Prison was made voluntarily. They have not done so.

In C.M.O. 2-1947 (Feb) p. 26, the court ruled that the oral confession made to the civilian police was involuntary and inadmissible (N.C.&B., sec. 174, C.M.O.'s 2, 1944, 266; 2, 1943, 66)....

"XX(4)"

"In the presence and at the request of his commanding officer, the accused dictated a written confession. At this time, the accused was informed of his rights and no promises, threats, or other duress were evident from the record... The court ruled that this written confession was admissible."

"The Judge Advocate General, Navy Department, however, held: 'There a confession which is obtained by methods that render it involuntary is followed by a subsequent confession, a presumption arises that the latter confession was motivated by the same considerations, even though made to a different person than the one to whom the first was made, and the burden is on the prosecution to show that the undue influence that produced the first confession had been removed prior to the subsequent confession. It was not shown in this case that the threats made by a civilian police had ceased to operate in the mind of the accused at the time he signed the written confession (Mangum v. U.S., 289 Fed. 213; State v. Ellis, 294 Mo. 269, 242 S.W. 952; 24 L.R.A. 689; C.M.O. 9-1945, 386). Under the circumstances in this case, the second confession was not free from the atmosphere of undue influence and threats that made the first confession inadmissible. The whole confession technique used here constituted one single continuing transaction. Therefore the court erred in admitting the written confession. Lyons v. Oklahoma, 322 U.S. 596; Mangum v. U.S., 289 Fed. 213; State v. Ellis, 249 Mo. 269, 242 S.W. 952, 24 L.R.A. 689)."

So the Judge Advocate General of the Navy ruled: "Inasmuch as the evidence independent of the extra-judicial written confession hereinabove determined to be inadmissible was insufficient to establish a prima facie case supporting the charge and specification preferred against the accused, the findings and sentence, and the action of the convening authority thereon, were set aside. (File: MM-Wyatt, Roland/A17-20, 4 Nov. 1946)."

On the thirteenth day of the trial the judge advocate offered "into evidence the confessions of the accused Yokoyama, Uchida, Hidaka, Ezure, Ishiyama, and two statements of Sugimoto." Shortly after the noon recess, "the judge advocate requested permission to offer in evidence seven additional statements, namely, those of Ichikawa, Yokichi; Ichimiya, Masao; Yamamoto, Kazuharu; Yokoyama, Kyohisa; Okamura, Gintaro; Nakamura, Jiro; and Kawaguchi, Wahei."

"Mr Kuwata, a counsel for the accused moved that the commission grant the accused one hour in which to study the documents offered by the judge advocate in evidence in order to allow time to prepare an objection to their being admitted into evidence." We are sure the commission would have granted our request because just to read over hurriedly fourteen documents would require at least an hour, but the judge advocate objected to even granting us one hour. "The judge advocate replied, pointing out that the accused could object only to the admissibility of these documents in evidence and not as to their content." He went on to explain that the only question was whether the documents were made voluntarily and he had proved they were all made voluntarily so no time should be given the defense.

The commission announced the motion for one hour's recess was not warranted. We did get a chance to object, but never did get an opportunity to even read these alleged confessions before they were admitted and read into evidence, and we had no chance to interpose an objection to the contents of the documents.

"XXX(5)"

0852

Our objection was denied and the documents were all admitted into evidence, not only against the affiants, but against all the other nineteen accused and also to prove the corpus delicti.

I should like to call the commission's attention to C.M.O. 11-1947 (Nov.) pp 382, 383: "A general court martial convicted three accused, tried in joinder, of the charge of 'Conspiracy'... As to the three accused, the prosecution offered in evidence voluntary written extrajudicial statements made by each of the accused individually. Each statement, which implicated one or more of the accused, was made and signed out of the presence of the others, and none of them assented to the admissions of any other. The court admitted these documents over objection."

The Judge Advocate General of the Navy stated: "It was noted that counsel for the accused, in his argument, correctly stated that the admissions of each accused could be considered by the court only against the particular accused who made it, inasmuch as the admissions were made after the termination of the conspiracy. In his closing argument the judge advocate advised the court that each statement could be applied without restriction against all of the accused, and quoted from Wigmore on Evidence to the same effect. The passages which the judge advocate quoted (3rd Edition, Sections 1077 and 1079) concern either civil cases or criminal conspiracies where the admissions are made in pursuance of the conspiracy, and have no application to the case at hand. The applicable section of Wigmore is section 1076 (Admissions of other parties to the litigation;... Confessions of a Co-Defendant), which the judge advocate failed to read to the court. The principle therein set forth is covered in Naval Courts and Boards, Section 186."

In the next paragraph the Judge Advocate General, Navy Department, clearly and unequivocally defines the status and duty of the judge advocate of a Navy court:

"The judge advocate should exercise care not to make misstatements of the applicable law in his argument, because of his status as adviser to the court in matters of fact and of law and because of his duty to safeguard the ends of justice (C.M.O. 7-1932, 15). It is improper for either the judge advocate or counsel for the accused to misstate any matter of law in an argument, but on matters about which authorities differ, a party may properly state only the views favorable to his side (N.C.&B., sec. 422). In the instant case the authorities did not differ on the rule of law that the acts and statements of a conspirator made after the common design is accomplished or abandoned, are not admissible against the other conspirators. (N.C.&B., sec 186; Wigmore 3 ed., sec. 1076; Wharton, 11th ed., sec. 722)."

To say that the alleged confessions cannot be admitted against any of the other nineteen accused according to the above citations and all of the alleged confessions should be stricken from the record on the initiative of the Commission at this time. There should not be one law for Americans and another law for Japanese who are tried in American courts.

All of the confessions implicate others of the accused. We point out several instances such as: Ezure's confession (Exhibit 7) which implicates Tamamoto, and men of the Sumida Unit, and Lieutenant Yamamoto; Uchida's confession (Exhibit 8) which implicates enlisted men from the Sumida Unit; Sugimoto's confession (Exhibit 10) implicates Ichikawa,

"XXX(6)"

0853

Tamamoto, Yokoyama, Ishiyama, Ichimiya, Ozaki, Ezure, Sumida Unit men, and Lieutenant Yamamoto.

Sugimoto's confession (Exhibit 11) which implicates Ichikawa, Takahashi not sure (Takahashi as a prosecution witness testified he did not go), Yokoyama, Tamamoto, Ichiyama, Ozaki, Yamamoto, a few enlisted men from the Sumida Unit.

Hidaka's confession (Exhibit 12) which implicates Yokoyama.

Yokoyama's confession (Exhibit 13) which implicates Tamamoto and Okamura.

Okamura's confession (Exhibit 14) which implicates Ezure, Adjutant Ichikawa, Yokoyama, Tamamoto, not clear as to Fujitani, Ando, Sagara, Nakamura, Imamoto, Uchida, Ito, Hidaka, Hayashi. Sugimoto and Ichimiya are also named. In fact, Okamura names everyone who was ever attached to the Kempeitai and explains that, "Corporal Baba was dead at this time and was not present. Baba died with Sergeant Ikushima at Koror from the explosion of a mine laid by the army." Sergeant Ozaki and Sergeant Takahashi he is also not clear on.

Sergeant Major Ishiyama is the person whom he does not recall being there at the execution. He thinks soldiers from the Sumida Unit were guarding. Nakamura's confession (Exhibit 15) which implicates Ichikawa, Ozaki, Ando, Uchida, Ito, and the Adjutant of the Sumida Unit.

Kawaguchi's confession (Exhibit 16) which implicates Ichimiya, and Yamamoto.

Ichikawa, Yokichi's confession (Exhibit 17) which implicated Sugimoto and/or Yokoyama (it was either one of them that Ichikawa says he ordered to go to help police), Yamamoto, two or three soldiers from the Sumida Unit (Ichikawa says, "I do not recall but I heard later that there were two or three soldiers from the Sumida Unit"). He says, "I think almost all of the Kempeis and deputy Kempeis were present." Sergeant Yokoyama, Okamura, Fujitani; five or six soldiers of the Sumida Unit. This confession is not a confession but a declaration against the other co-defendants and should never have been admitted. Having been admitted it should be stricken.

Ichimiya, Masao's confession (Exhibit 18) names personnel of the unit including Ichikawa, Sugimoto, Tamamoto, Yokoyama, Ishiyama, and Ozaki; ten enlisted men of the Sumida Unit had rifles (this is clearly self-serving and an attempt by the Kempei to pass off some responsibility on to the Sumida Unit.)

Yamamoto's statement (Exhibit 19) which implicates adjutant Ichikawa.

Ito's confession (Exhibit 20) which implicates Ozaki, one officer, and four or five enlisted men from some other unit.

Yamamoto's statement (Exhibit 22) implicates Adjutant Ichikawa of the Kempeitai.

The alleged confession of Ozaki (Exhibit 23) which implicates

"XXX(7)"

0854

five or six persons from the Sumida Unit; Sugimoto, Ishiyama, and Yokoyama.

Articles IV, V, and VI of the Constitution of the United States makes no distinction between Japanese and Americans.

The alleged confessions now evidence in this case contain much hearsay, much opinion and the statements of these "Kompei," show ~~back~~ and a definite pattern of blaming the Sumida Unit men for doing the shooting. Some of the affiants think there were as many as ten Sumida Unit men present. Testimony from the witness stand proves there were only two known Sumida Unit men at the scene. Lieutenant Yamamoto testified that his orderly, Kumagai, accompanied him and one of the assistant driver, Namekawa, was ordered to go along to the scene. The two drivers and one other assistant driver were ordered to remain with the two trucks by Colonel Miyazaki.

No evidence was submitted that Kawaguchi, the Sumida Unit man detailed to the Kempeitai as a driver for Lieutenant Nakamura, did anything at the scene. And yet Ichimiya in his alleged confession says "at the time of our departure, I went with an enlisted man whose name I do not remember. He came to the road with me at the rear of the rank. Two trucks were there. Ten enlisted men of the Sumida Unit had rifles."

Does anyone who has listened to this trial believe that Ichimiya saw ten enlisted men from the Sumida Unit with rifles?

Such evidence has no place in a court of law notwithstanding what the SCAP rules permit. We do object to the contents of Ichimiya's statement as evidence and to the contents of all seventeen documents said to be confessions of fourteen of these accused. The judge advocate introduced two documents of Yamamoto, Sugimoto, and Yokoyama, and one each from eleven other accused.

We particularly object to such statements as are contained in Sugimoto's statements, "The above personnel are men whom I believe I saw either on the way to the scene or in the trucks." He listed 19 names and stated, "five or six enlisted men," those from the Sumida Unit.

We object to the statement, "With my own eyes I saw soldiers of the Sumida Unit execute." This is testimony by one not even accused of the crime at the time of his confession against persons from another unit, the Sumida Unit. Without counsel the affiant makes statements against other persons but doesn't name them. It is most prejudicial to all men of the Sumida Unit and Lieutenant Yamamoto. The affiant further says, "When I reminisced with my buddies." Clearly this is not men from the Sumida Unit but the Kempei. It is self-serving and should not be permitted.

The affiant further states: "I heard" and "According to the stories, they were saying.." To permit this kind of evidence is contrary to all the known rules of evidence. Court martial orders are replete and would be quoted if time permitted adequate preparation to bear out and substantiate our objection that Sugimoto's affidavit and statement should not be admitted into evidence because of hearsay, opinion evidence, sheer conjecture, self-serving statements, and be-

"XX(8)"

0855

cause it contains testimony against persons now joined with him as co-defendants.

"We maintain that once these statements, affidavits, and other documents are admitted into evidence they are then in evidence and the damage of allowing improper evidence has already been done. Such damage is irreparable. It is of little consequence that we even move to strike the documents once they are admitted.

In the statement with a date 17 March, Sugamo Prison, Sugimoto makes statements against his co-defendant Ichikawa: "I believe." "I also think." "My memories of that time are not very clear, but I think in general." "I am not absolutely clear about the executioners in each team but since..." To allow such evidence is contrary to the rules of evidence and we object on the ground of hearsay, that it is opinion, that it is guessing, and that it is self-serving.

Ishiyama's statement contains such things as, "I am prone to forget things;" "On the ship on the way home it happened that I showed signs of mental derangement... That is to say, I entered the National Hospital at Uraga. I still don't know what kind of things I did on the ship;" "I think;" Yet his statement is admitted into evidence to prove the corpus delicti, and to convict Ishiyama and the other nineteen accused. We pleaded Ichiyama insane but our plea in bar was denied. To now make him testify against himself, and the other nineteen without benefit of counsel, is most unfortunate and prejudicial to his substantive rights.

The Constitution of the United States of America, the 4th Amendment reads: "The right of the people to be secure" And the 5th Amendment reads: "No person shall be held to answer for a capital or otherwise infamous crime." And the Sixth Amendment reads: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial,...; to be confronted with the witness against him."

This is the Constitution and this is the law, the American law under which this Navy convened Military Commission is operating. Supreme Commander Allied Powers or no other person can change this, our American Constitution, which protects all persons, not only Americans, from tyranny and oppression.

We cannot believe that it was the intent of the Supreme Commander Allied Powers to take away from these accused Japanese the rights guaranteed by the Constitution of the United States of America, and would like the judge advocate to be specific. We object to the judge stating that the procedure he has followed and the law he cites allowing confessions to be introduced against co-defendants is allowed by the relaxed SCAP rules. Specifically, what is this SCAP rule, and what court has approved such a rule? And so it is with arrest of these accused without warrant. Just what is the SCAP rule that allows?

Remember there were no confessions introduced against six of these accused: Tamamoto, Tadashi; Fujitani, Yoshio; Ando, Fukuichi; Hayashi, Umeji; Iudamoto, Haurkichi; and Sagara, Masashiro.

How can there be conviction of these six accused against whom there is no confession introduced and little if any evidence? Many of the accused, several of whom in their statements denied that they were even at the scene, did not take the stand. This procedure is in accord with what the Judge Advocate General of the Navy said in

"XXX(9)"

0856

Court Martial Order 3-1944. We cite this C.M.O. 3-1944: "Confessions: Court criticised for convicting accused solely upon his extrajudicial confession and statement on the stand. The accused pleaded not guilty to two specifications alleging theft and was convicted by a summary court martial. The evidence introduced by the prosecution in support of the offenses alleged in the specifications consisted only of sworn statements in the form of questions and answers, made by the accused to his commanding officer. In one statement the accused admitted taking the money and watch from an enlisted man of the Army. The prosecution then rested without calling witnesses or introducing any other evidence. The prosecution, at the time it rested, had not introduced sufficient evidence to convict the accused of theft, since it did not introduce, as it should have done, any evidence tending to corroborate his confession. Other than the confession there was no evidence whatsoever that the alleged thefts ever were committed. An accused may not be convicted on his extrajudicial confession alone. It must be corroborated by some independent evidence (N.C.&B., sec. 176). Had the defense introduced no evidence the court necessarily would have had to acquit the accused because of the lack of evidence to support any other finding. The accused, however, took the stand at his own request and in his own behalf. His testimony, by way of judicial admissions, upon his own examination, was sufficient to support the conviction. The procedure followed by the recorder and the counsel for the accused and permitted by the court in this case was highly irregular and indicated a lack of their respective duties in connection with the trial. It amounted to the accused being deprived of the defense he was entitled to have and, in effect, to being opposed by two prosecutors. The accused by his plea of not guilty called upon the prosecution to prove all the averments of the specification preferred against him. Furthermore, the accused was entitled to be confronted with the witnesses against him and to have opportunity to cross-examine them face to face. Until the prosecution had shown by proper evidence that the alleged offense had been committed, and that the accused, having the requisite criminal intent, committed it, the accused was not required to produce any evidence whatever. The recorder, by failing to confront the accused with witness for the prosecution and to introduce otherwise sufficient evidence after a plea of not guilty to establish a prima facie case, was derelict in his duty to the Government. Counsel for the accused by permitting the accused to take the stand and in the absence of such evidence thus allowing him to convict himself on his own testimony, failed in his duty to protect the accused's interests. If the procedure followed in this case were allowed to pass unnoticed, it would tend to destroy the confidence which an enlisted man should feel in the competency of an officer to represent him as counsel before a court martial. Regardless, therefore, of the guilt of the accused, the findings and sentence, and the action of the reviewing authorities were set aside (C.M.O.'s 12, 1922, 7; 1, 1931, 31; 7, 1931, 18-19; 2, 1939, 205; 1, 1942, 157; 4, 1943, 20-21) (File: MM/Williams, George W/A17-21, 4 December 1944)."

At the time these twenty accused were arrested in Japan, none of them were accused of the crime for which they are now being tried. Most of them were held in solitary confinement for many months before they were ever served with the charges and specifications on February 2, 1948. These twenty accused persons were all extradited from Japan to Guam without charges being preferred against them. Not until February 2, 1948 on Guam were any of these persons accused of this crime. Such a procedure is at variance, yes, in contradiction, to Article 43,

"XXX(10)"

0857

Articles for the Government of the United States Navy. In C.M.O. 11-1947 the Judge Advocate General, Navy Department, lays down the rule of procedure to be followed at the time of arrest. We quote from C.M.O. 11-1947: In C.M.O. 11-1947 it was held: "Article 43, Articles for the Government of the Navy, provides that the person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest; and no other charges than these so furnished shall be urged against him at the trial, unless it shall appear to the court that intelligence of such other charge had not reached the officer ordering the court when the accused was put under arrest, or that some witness material to the support of such charges was at that time absent and can be produced at the trial; in which case reasonable time shall be given to the accused to make his defense against such new charge."

As to the accused Hayashi, Umeji, the defense brought down from Japan Gomi, Risaku, who testified on the sixteenth day of the trial that while the assistant Kempeis were away from their barracks attending the execution of the missionaries, Hayashi was in bed, unable to walk, because of a wound caused by stepping on a nail about a week previous. See answers to Questions 16, 17, 18, 18, and 20.

Hayashi himself then took the witness stand. He testified that he was the orderly to Captain Nakamura, but that about September 10, 1944, he hurt his foot and had to be relieved of duty. Uchida relieved him as Captain Nakamura's orderly. See answer to Q. 6.

Hayashi further testified that he was in bed all that day when the missionaries were executed. He didn't attend any of the assemblies. He was sick with yellow jaundice after the wound on his foot healed and was therefore sick in bed until about October 1, 1944. See his answers to Q. 13, 14, 15, and 20, particularly the answer to Q. 14: "At that time I was suffering from a very high fever and it seemed I had dozed off and I did not know about this assembly, but late that night when the assistant Kempeis came back (I do not recall exactly, but I think it was leading private Esure who said there was a general assembly and that the missionaries were executed.) Therefore I knew about this."

On cross-examination Hayashi replied that he was definitely sure he didn't attend the general assembly that day, and that he was definitely sure he didn't attend the execution of the missionaries and the Honden-ero family. See answer to Q. 29 and 30.

Hayashi testified he denied attending the execution at the time he was investigated in Tokyo. He even wrote a statement to this effect. See answers to Q. 39, 40, 41, and 42.

We ask that the commission find Hayashi, Umeji not guilty of specification 1 and 2 of Charge I, and not guilty of the specification of Charge II.

We ask that the commission fully acquit Hayashi, Umeji of the charge of violation of the law and customs of war, and fully acquit him of the charge of murder.

Although Sagara, Masashiro had the duty as a road lookout at the Kempeitai Headquarters that evening, he too is charged with the murder of ten persons.

"XXX(11)"

0858

Sagara, Masashiro we say, and not Sagara, Seishiro, as he was originally charged. How is it that he, too, is charged when not a single witness testified Sagara was even at the scene of the execution?

On January 21, 1948 the police called him on the phone and told him to come to the Sakai-machi police station. At the police station they told him to be ready to go to the Home Ministry Office in Tokyo the next day. So on the next day, January 22, 1948, a policeman from his village came and without any warrant of arrest took him to Tokyo. At Tokyo he was questioned and although he insisted that his name was Sagara, Masashiro and not Sagara, Seishiro, and that he was not guilty of any crime, nevertheless he was sent to Sugamo Prison, Tokyo, and there held without any warrant of arrest. No charges were preferred against him. On January 29, 1948, he was sent by plane to Guam and immediately upon arriving here he was put into solitary confinement.

On February 2, 1948 he was for the first time served with charges and specifications, still under the name of Sagara, Seishiro, although he insisted this was not his name. He was then for the first time told that he could have counsel.

On the sixteenth day of this trial Sagara, Masashiro took the stand as a witness in his own behalf. He testified that he had duty at the Kempeitai headquarters as a road lookout during the time of the execution. In his answer to Q. 13 Sagara says: "I did not participate in the execution because I was assigned to road lookout duty on that day."

By Q. 14 he was asked: "Then how do you know that the execution was carried out?" Sagara answered: "I know that the execution was carried out because on that day when I was standing on duty as road lookout at the Gasupan Highway in front of the Kempeitai quarters I saw Commanding Officer Miyazaki with many members of the Kempeitai leave the barracks. Further, because after they all returned I heard from someone whose name I have forgotten (I heard from no one in particular) that the missionaries had been executed." Sagara testified he was on duty that night from six o'clock until ten o'clock. See answers to Q. 18 and 19.

Sagara isn't guilty of the crime charged. We ask that the commission find him not guilty of specifications 1 and 2 of Charge I and of the specification of Charge II. We ask that the commission fully acquit Sagara, Masashiro of the charge of violation of the law and customs of war and of the charge of murder.

Then there is Iwamoto, Harukichi, who came to Guam on December 10, 1947 as a prosecution witness. He has always denied that he was even at the scene of the execution. He pleaded "Not guilty" to the charges and specifications. On January 28, 1948 he was suddenly and without any explanation put into solitary confinement. Not until February 2, 1948 was he for the first time charged with a crime when he was served with the charges and specifications. Is it any wonder that he is confused, anxious and concerned.

You may ask, why didn't he take the witness stand then, and deny that he was even present at the execution? We remind you that it isn't necessary that an accused prove that he is innocent. Under our American court procedure a person is considered innocent until he is proven guilty. There has been no evidence to convict Iwamoto.

"XXX(12)"

0859

We again remind the commission of what the Judge Advocate General Navy Department said in C.M.O. 3-1944. In that case the accused did take the stand after the introduction by the prosecution of sworn statements in the form of questions and answers made by the accused. The Judge Advocate General, Navy Department, said: "The prosecution, at the time it rested, had not introduced sufficient evidence to convict the accused of theft since it did not introduce, as it should have done, any evidence tending to corroborate his confession. Other than the confession there was no evidence whatsoever that the alleged thefts ever were committed. An accused may not be convicted on his extrajudicial confession alone. It must be corroborated by some independent evidence (N.C.&B. sec 176). Had the defense introduced no evidence the court necessarily would have had to acquit the accused because of the lack of evidence to support any other finding. The accused, however, took the stand at his own request and in his own behalf. His testimony, by way of judicial admissions, upon his own examination, was sufficient to support the conviction. The procedure followed by the recorder and the counsel for the accused and permitted by the court in this case was highly irregular and indicated a lack of their respective duties in connection with the trial. It amounted to the accused being deprived of the defense he was entitled to have and, in effect, to being opposed by two prosecutors. The accused by his plea of not guilty called upon the prosecution to prove all the averments of the specification preferred against him. Furthermore, the accused was entitled to be confronted with the witnesses against him and to have opportunity to cross-examine them face to face. Until the prosecution had shown by proper evidence that the alleged offense had been committed and that the accused, having the requisite criminal intent, committed it, the accused was not required to produce any evidence whatever. The recorder, by failing to confront the accused with witness for the prosecution and to introduce otherwise sufficient evidence after a plea of not guilty to establish a prima facie case, was derelict in his duty to the Government. Counsel for the accused, by permitting the accused to take the stand in the absence of such evidence, thus allowing him to convict himself on his own testimony, failed in his duty to protect the accused's interests. If the procedure followed in this case were allowed to pass unnoticed, it would tend to destroy the confidence which an enlisted man should feel in the competency of an officer to represent him as counsel before a court martial. Regardless, therefore, of the guilt of the accused, the findings and sentence, and the action of the reviewing authorities were set aside (C.M.O.'s 12, 1922, 7; 1, 1931, 31; 7, 1931, 18-19; 2, 1939, 205; 1, 1942, 157; 4, 1943, 20-21) (File MM/Williams, George W/A17-21, 4 December 1944)."

In the alleged confession of Okamura (Exhibit 14) Okamura writes: "My recollection as to the assistant Kempeis at the entrance of the assistant Kempeis' barracks near the road is not clear, but I recall it as follows: Corporal Ezure, Leading Private Fujitani, Superior Private Ando, Superior Private Gomi, Superior Private Sagara, Superior Private Nakamura, Superior Private Iwamoto, Private First Class Kawashima, Superior Private Uchida... I do not know whether the following persons came from the barracks near the office of the headquarters. They were: Corporal Imaizumi, Corporal Hidaka, Superior Private Hayashi."

Gentlemen of the commission, that is the kind of evidence the prosecution asks you to convict Iwamoto on. We have cited the rule of evidence which holds that a confession is not good as against the confessor.

It is true the prosecution had a witness who testified against Iwamoto. But what a witness -- Yamada, who had been tried and found guilty of murder by this same commission, and who admitted he was at

"XXX(13)"

0860

the scene of this execution and was ordered to shoot one of the victims. (See answers to Q. 54, 101, 278, 284).

Yamada testified he saw Iwamoto at an assembly, the so-called first assembly, at about 3 p.m. that day (See answer to Q. 35, 230, 231). But after this assembly, Yamada says everyone returned to their quarters. He said Iwamoto was present at the scene of the execution (See answer to Q. 64 wherein he names eighteen persons as being at the scene of the execution). This prosecution witness cannot remember that Ando, Fujitani, Hayashi, or Sagara was present at the scene of the execution (See answers to Q. 81, 82, 83, 84, and 133).

It was Yamada who had the day duty that day from 5 p.m. until 8 a.m. the next morning, and who was supposed to actually stand duty from midnight until 8 a.m., but was so tired out after he had attended the execution that he asked to be excused from his so-called day duty that night from midnight until 8 a.m., and he was excused, but doesn't remember who stood his duty. (See his answers to Q. 87, 88, 89, 90, 91, 92, 97, 201, 204).

Yamada remembers he was ordered to shoot with his pistol at the execution by Captain Nakamura (See his answer to Q. 279, 280, 283).

Yamada couldn't testify that Iwamoto did anything at the scene. He was asked Q. 185: "What did Iwamoto do at the scene?" Answer: "I have no recollection."

Gentlemen of the commission, on that bit of evidence by a person whom you have found guilty of murder and sentenced, you are asked to find Iwamoto guilty of murder. Yamada cannot testify that Iwamoto did a single thing at the execution. How is it that Yamada is the only prosecution witness who says Iwamoto was at the scene of the execution. Not another prosecution witness testified that Iwamoto was at the scene. We hold that the prosecution have not introduced a single word of testimony or evidence even to show that Iwamoto did an overt act. They have not shown that Iwamoto had a criminal intent or had malice aforethought.

In view of the lack of evidence against him, remembering that Iwamoto doesn't have to take the stand to prove his innocence, we ask that the commission find Iwamoto not guilty of specifications 1 and 2 of Charge I and not guilty of the specification of Charge II, and that the commission does therefore acquit Iwamoto of the crime of violation of the law and customs of war and of the crime of murder.

Fujitani, Yoshio is also accused of murder, although in his case also there was no so-called confession introduced by the judge advocate. N.C.&B., sec 158 reads: "If there is a reasonable doubt as to the guilt of the accused, he must be acquitted. The judge advocate as in the case of Iwamoto had a written statement from Fujitani, but didn't offer it into evidence. This fact, together with the very scanty bit of evidence against Fujitani, creates a reasonable doubt as to the guilt of Fujitani.

C.M.O. 5-1921 quotes Clark and Marshall in The Law of Crimes, stating: "The distinguishing characteristic of murder is malice aforethought.... And if a man voluntarily and wilfully does an act, the natural and probable consequence of which is to cause another's death, an intent to kill will be presumed."

"XXX(14)"

The evidence shows that all the enlisted men who did attend the execution were ordered to attend the execution. There was no wilful act on their part. In fact, the testimony shows that they were reluctant to go but this was a military organization and the enlisted men were ordered, yes, were ordered, to go to the execution.

Did Colonel Miyazaki ask for volunteers? No! He issued the order and persons not on watch or sick or otherwise excused went along.

This case is not analagous to a lynching mob and it in no way resembles a mob. These persons were ordered to attend. Those that did attend were all subject to Colonel Miyazaki's orders and he became responsible for their actions when he issued orders to shoot and they shot. But these accused did not become responsible for his actions simply because they were at the scene. Remember, it is was Colonel Miyazaki who gave the orders that night, not any of these accused, especially persons who were only spectators ordered to be there.

Then when there is a reasonable doubt that one of these accused, Fujitani, was even there, as to Fujitani there must be an acquittal.

The judge advocate hasn't much evidence against the accused Fujitani. Only Captain Nakamura said Fujitani was at the scene of the execution, but he didn't say Fujitani was a member of one of the teams. It was the witness Captain Nakamura, against whom everybody else testified that he is was who walked up and down the line ordering men to shoot to kill the missionaries and the other victims. Captain Nakamura has already been tried and sentenced for a similar execution and has previously testified against enlisted men of his own detachment, men whom he as an officer ordered to do the very things he now testified they did.

The evidence in this case clearly shows that Captain Nakamura should be tried for this execution and not these enlisted men.

Even were the commission to believe Nakamura that Fujitani was at the scene, it cannot convict Fujitani of the murder of ten persons. There has been no proof that Fujitani had the necessary criminal intent or that he had malice aforethought.

Imizumi, Keishiro testified that Fujitani wasn't at the scene because he had just returned from the hospital (See answer to Q, 212, 213.).

It is a strange law that the judge advocate advances and a new theory he advances when he asks the commission to find Fujitani guilty of murder because Captain Nakamura says Fujitani was at the scene of the execution, an execution at which he, Captain Nakamura, and Colonel Miyazaki gave all the orders.

We shall stick by the rule that the courts have followed for hundreds of years and is still the law in all the American courts that we know about; the rule set forth in Section 153 of N.C.&B. : "If there is a reasonable doubt as to the guilt of the accused, he must be acquitted.

Specifically, Mr. Judge Advocate, what is the relaxed SCAP rule which changes this rule and by which you ask the commission to find Fujitani guilty of murder?

"XXX(15)"

0862

We say that according to the evidence Fujitani should be acquitted.

Then there is Ando. Ando is blind in one eye. There was no confession of Ando's introduced by the judge advocate. Two of the prosecution witnesses, Imaizumi and Yamada, asked leading questions by the judge advocate, testified they had no recollection of Ando being at the scene. And yet the judge advocate asks that Ando be found guilty of murder. We say when there is a reasonable doubt and the evidence leaves a reasonable doubt that Ando was even at the scene of the execution, that the commission should find Ando not guilty and should acquit him.

Nor did the judge advocate introduce any confession against Tamamoto. He evidently relies on the testimony of Lieutenant Sano, who testified that Tamamoto was at the scene of the execution, because Lieutenant Sano ordered him to go to the scene.

We take issue with the judge advocate when he states to the commission that the law is that all persons who were at this scene of the execution must be found guilty of murder. Let him cite a single case to this effect or a ruling of law. There must be some overt act. None has been proved.

What of the charges and specifications. Tamamoto isn't just charged with being present. The specifications read: "did wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, by shooting with firearms."

These are the allegations not only against Tamamoto but against all twenty accused. It isn't enough, we maintain, that the judge advocate just prove that these accused were at the scene, when these accused are charged with doing an overt act.

The prosecution hasn't proved that Tamamoto did a single overt act at the scene of the execution. We ask that the commission find Tamamoto, Tadashi not guilty and acquit him of the charge of murder and of the violation of Article 199 of the Criminal Code of Japan, and violation of the law and customs of war.

Instead of trying Colonel Miyazaki and Captain Nakamura for this crime, the prosecution decided that the adjutant of the Kompeitai and the adjutant of the Sumida Unit should be joined with these eighteen enlisted men, notwithstanding that both these officers were staff officers and in any army or navy had no command responsibility. This fact is so well known to all military men that we should not even have to mention it. Yet the judge advocate has likened the adjutant of the Sumida Unit to that Japanese general, General Tomoyuki Yamashita, and likened the responsibility of Lieutenant Yamamoto, a staff officer, to the same command responsibility as General Yamashita. We have made repeated attempts to get Lieutenant General Inoue as a defense witness knowing he was here on Guam. It is difficult for us to understand why the prosecution do not call Lieutenant General Inoue, who was the Commanding General in the Palau Islands at the time of this incident, as a prosecution witness or as a witness of the court in order that we might have the facts testified to by a witness who should know something about these alleged spies and why they were executed.

"XXX(16)"

0863

At least General Inoue could testify as to who had a command responsibility in the Palau Islands, comparable to General Yamashita's -- he, General Inoue, or the adjutant of the Kempeitai, Lieutenant Ichikawa, or the adjutant of the Sumida Unit, Lieutenant Yamamoto.

Lieutenant Ichikawa does not deny that he was at the scene of the execution. He was there because he was the adjutant of the Kempeitai and his commanding officer, Colonel Miyazaki, ordered him to be there.

Lieutenant Yamamoto testified he couldn't say who was on the other end of the telephone when someone from the Kempeitai called him and asked for the use of a truck.

Lieutenant Yamamoto did, however, testify that Adjutant Ichikawa came over to see him about the use of the trucks to escort spies. But Ichikawa came to the Sumida Unit in the capacity of a staff officer. He only carried a message from his chief, Colonel Miyazaki, to the transportation battalion, the Sumida Unit.

We take issue with judge advocate when he says the adjutant, Ichikawa, made plans for the execution; he made preliminary plans not for execution but for the trucks. Evidence shows missionaries took personal belongings with them in the truck. This shows plainly the missionaries were not on their way to their execution but to a place of safety. How can anyone know what Colonel Miyazaki had in mind? It is true the evidence shows that Colonel Miyazaki said the missionaries must be executed because they were spies and that the execution had been ordered by Division Headquarters. But all this evidence is only hearsay. It is but what these persons think they heard some three and one half years ago and when they say that Colonel Miyazaki said something they do what all persons do: they put their own interpretation on the words.

Why, as we have said, doesn't the prosecution put on the stand or make available as a witness the Commanding General of the 14th Division and the Commanding General of the Palau Islands? He can testify who it was that planned this. It surely wasn't Ichikawa.

The judge advocate has asked this commission to find Ichikawa guilty of murder because he went over to the Sumida Unit and asked for a truck. But Ichikawa didn't ask for this truck in his own name. He said that his commanding officer, Colonel Miyazaki, was requesting the use of two trucks.

Lieutenant Yamamoto told Ichikawa this wasn't enough. It was necessary that Division Headquarters approve the request and that Division Headquarters order the Sumida Unit to provide the trucks. If there is any doubt the judge advocate can call the Commanding General of the 14th Division, Lieutenant General Inoue, or his chief of staff, Colonel Tada.

There should be no doubt on this point because Lieutenant Yamamoto testified that when he returned that night he found the Division Headquarters' order on his desk. This order read as follows: "On September 18, 1944, at 1800, the commanding officer of the Sumida Unit will dispatch one truck with driver and assistant driver to the Kempeitai and place them under the orders of the commanding officer of the Kempeitai. (See answer to Q. 75 on the nineteenth day).

"XXX(17)"

So we say that Lieutenant Ichikawa did not do an overt act when he relayed Colonel Miyazaki's request for the use of a truck nor did Lieutenant Ichikawa do an overt act when he went along to the scene of the execution. Lieutenant Ichikawa did not pass on any orders that night. The only persons to give orders that night were the commanding officer, Colonel Miyazaki, and the officer in charge of the First Detachment, Captain Nakamura.

Lieutenant Ichikawa is, as are the other nineteen accused, charged with wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, that he did assault, strike, kill, and cause to be killed, by shooting with firearms. This is what is alleged and this is what must be proved as to Lieutenant Ichikawa.

The ten victims didn't die because Lieutenant Ichikawa went over to the Sumida Unit and asked for the use of trucks. They didn't die because Ichikawa attended the execution.

Gentlemen of the commission, do not allow the judge advocate to confuse you. Persons were executed that night and they were killed because Colonel Miyazaki and Captain Nakamura ordered members of the Kempeitai to shoot. No one was killed because Lieutenant Ichikawa was there or because he held a candle. There must be an overt act and Lieutenant Ichikawa did not commit an overt act that night.

We ask that the commission remember the difference and the distinction in the Japanese law between the crime of wounding and the crime of murder. On page 149 and on page 48 of Sebald's book, The Criminal Code of Japan is cited the case 72 S.C. 9428, which reads: "The crime of wounding and the crime of murder are not only not provided for in the same article, but differ in criminal nature, one being a crime against life and the other a crime against the person. Therefore, the two crimes cannot be dealt with as two consecutive acts falling under the same criminal category."

But the judge advocate says in effect, disregard Japanese law even if you are trying these accused for violation of Article 199 of the Criminal Code of Japan because you tried and convicted Inoue, Fumio and Furuki, Hidasaku for violation of Article 199 and those cases have been approved. This is prejudicial to the rights of all of these accused. If the commission is to have made available to it the review of similar cases tried by this same commission and such approvals and reviews are denied to the defense counsel, we maintain that such a procedure is to the prejudice of these twenty accused.

We have yet to see the remarks of the convening authority, the remarks of the Commander in Chief, Pacific Fleet, or the ruling of the Judge Advocate General, Navy Department, on a single of these war crimes trials here at Guam.

We hold that it is most prejudicial, therefore, for the judge advocate to call the commission's attention to any ruling or any remarks of the convening authority or the reviewing authority without making available the complete review to the defense counsel.

Such a procedure is more prejudicial than the procedure requested by the judge advocate regarding classified matter on the first day of the trial. I read from the record of the first day of the trial: "The judge advocate requested that the commission approve the procedure

"XXX(18)"

0865

wherein classified dispatches are referred to during the course of the proceedings of this commission, reference only to the content and substance of these dispatches would be made in open court."

We hold that if this commission is to have available any matter to be used by them in determining the guilt or innocence of any or all of these twenty accused that this material should also be made available to defense counsel, and it should be put into evidence.

Let there be no mistake about the issues in this case or as to what the prosecution must prove, prove beyond a reasonable doubt. In the case of Lieutenant Ichikawa the prosecution have not proved what they alleged and we ask that Lieutenant Ichikawa be found not guilty and that the commission acquit Ichikawa, Yokichi.

Then there is Lieutenant Yamamoto, Kazuharu, whom the judge advocate characterizes as having more knowledge than he admits. Lieutenant Yamamoto pleaded not guilty and he took the stand to refute the innuendoes and the opinions, exaggerations, and deliberate falsehoods that some of these Kempeitai made in their confessions against the men of the Sumida Unit. If Lieutenant Yamamoto didn't tell all it is only because the judge advocate objected to him telling more. Although Lieutenant Yamamoto's personal declaration is not evidence, the commission heard it and they observed Lieutenant Yamamoto these twenty some days in court and heard him and saw him on the witness stand.

Are we more concerned with convictions in this court than with justice? Because it was decided to try Lieutenant Yamamoto for this crime and for failure to control Japanese personnel and failure to protect the victims of the execution, instead of trying Colonel Miyazaki and Captain Nakamura that doesn't make Lieutenant Yamamoto guilty.

It doesn't give Lieutenant Yamamoto, the adjutant of a transportation unit, the status and command authority and responsibility of General Yamashita, because the judge advocate says so.

The judge advocate would further confuse the commission by saying all the guilty are not joined in this trial. He would infer that if the commission would only find all twenty of these accused guilty then others will be tried at a later date.

Gentlemen of the commission, how long does the prosecution want to investigate this one incident? It happened more than three and one half years ago. There is a statute of limitations in criminal cases.

In Wharton's Criminal Procedure, Vol. 1, Section 367, we read that the statute of limitations is to be liberally applied as to the defendant; "Statute of limitations construction to be liberal to defendant." On page 45 we read this regarding such statutes in criminal cases: "Here the State is the grantor, surrendering by act of grace its rights to prosecute, and declaring the offense to be no longer the subject of prosecution. The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace but because the very existence of the statute is a recognition

"XXX(19)"

0866

tion and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned it fixed and positive periods in which it destroys proofs of guilt(2)." Plunkett of which it said by Lord Broughman (Works, etc., Edinb. ed. of 1872, IV 341) that "It can not be too much admired for the perfect appropriateness of the figure, its striking and complete resemblance as well as its raising before us an image previously familiar to the mind in all particulars, except its connection with the subject for which it is so unexpectedly but naturally introduced;" "Time," so runs this celebrated passage, "with his scythe in his hand, is ever mowing down the evidence of title; wherefore the wisdom of the law plants in his other hand the hour glass, by which he metes out the periods of that possession that shall supply the place of the monuments his scythe has destroyed."

In other words, the defense of the statute of limitations is one not merely of technical process, to be grudgingly applied, but of right and wise reason, and, therefore, to be generously dispensed. The same thought is to be found in another great orator, Demosthenes, pro Phorm. ed. Reiske, p. 952:

"Independently of these views, it must be remembered that delay in instituting prosecutions is not only productive of expense to the State but of peril to public justice in the attenuation and distortion even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt, and that statutes enforcing such promptitude should be vigorously maintained. They are not merely acts of grace but checks imposed by the state upon itself to exact vigilant activity from its subalterns, and to secure for criminal trials the best evidence that can be obtained."

It was decided that it was to be Lieutenant Yamamoto and not Captain Nakamura who was to be the chief offender at this trial.

Let that be the issue, then. Was it Lieutenant Yamamoto who made possible the killing of these victims or was it Colonel Miyazaki and his henchman, Captain Nakamura?

Gentlemen of the commission, those missionary spies would have been killed that night whether or not Lieutenant Yamamoto carried out Division Headquarters orders and sent over a truck to the Kempeitai. That wasn't the overt act. That isn't what Lieutenant Yamamoto is charged with doing. Look at the charges against him. Without hearing the evidence one would think it was Lieutenant Yamamoto who gave the orders, he it was who killed and he it was who had a duty to protect these persons and who failed to control the executioners and failed to protect the missionaries. And why? All because someone decides to try Lieutenant Yamamoto instead of Captain Nakamura for this crime.

But I say to you that unless the evidence shows that Lieutenant Yamamoto did an overt act, did what he is charged with doing, that you cannot find him guilty of murder and that unless the evidence shows Lieutenant Yamamoto, a staff officer of a transportation unit, had a duty to protect and a duty to control, that you cannot find him guilty of neglect of duty.

Not a single witness could testify that Lieutenant Yamamoto did a single act at the scene of the execution. In fact there is testimony

"XXX(20)"

that Lieutenant Yamamoto tried to persuade Colonel Miyazaki not to carry out the execution, but that if it was a lawful execution then it was police work and not something that should be done by a member of the Sumida Unit, a transportation company.

The prosecution introduced an alleged confession of Lieutenant Yamamoto into evidence. We weren't even allowed to object to the contents of this document. The commission remembers well the dramatic revelation that the document had been translated incorrectly.

Lieutenant Yamamoto was testifying to the effect that Colonel Miyazaki had tapped Namekawa, one of the two Sumida Unit men, on the shoulder and said: "This guy will shoot."

Lieutenant Sano, a prosecution witness testified on the sixth day of the trial to Question 285: "Weren't the men of the Sumida Unit who were at the scene under the command of Lieutenant Colonel Miyazaki?"

Answer by Lieutenant Sano: "Yes, they were." Captain Nakamura, another prosecution witness, answered that Colonel Miyazaki was in command at the scene of the execution. See answer to Q. 205 on the 4th Day. Nakamura testified that Commanding Officer Miyazaki gave the order to shoot to the Sumida Unit men. See answer to Q. 288.

Imaizumi, Keishiro, a prosecution witness, testified on the 11th day of this trial that Lieutenant Yamamoto refused to approve the order of Colonel Miyazaki that Sumida Unit men shoot. Lieutenant Yamamoto also refused to assent to the order of Captain Nakamura that the Sumida Unit men shoot. See answers to Q. 120, 122, 123, 125.

Imaizumi, Keishiro, a prosecution witness, testified on the 12th day that Colonel Miyazaki ordered the two men from the Sumida Unit to step forward. See Answers to Q. 294 and 295.

Kumagai, Satoshi, a prosecution witness, testified that Lieutenant Yamamoto did not shoot at the scene. See answer to Q. 84. Neither did Yamamoto hold a candle (See answer to Q. 86). Kumagai testified that Lieutenant Yamamoto did not do anything at the scene. See answer to Q. 92.

Ezure, Shigeru, testifying as a witness in his own behalf, on cross-examination said that Colonel Miyazaki ordered Lieutenant Yamamoto to have Sumida Unit men shoot, but Lieutenant Yamamoto refused. See answers to Q. 129, 130, 131.

This Colonel Miyazaki directly told the men nearby, "You shoot!" See answer to Q. 133, and only one or two men stepped forward.

These men, as far as Ezure knew, at that time were only men from another unit. He didn't know from what unit. See answer to Q. 187, 188.

Lieutenant Yamamoto took the stand as a witness in his own behalf on the 18th day of the trial. He explained how it was that he came to go with one of the trucks to the scene of the execution. He was troubled that he had received no written orders from the Division Headquarters for the use of the truck by the Kempeitai that night; so he went out to the highway about thirty meters from his office where the

"XXX(21)"

0868

trucks were supposed to be. There he met Colonel Miyazaki who began to berate him because the truck was late. Lieutenant Yamamoto told Colonel Miyazaki that no written orders had as yet come from the Division Headquarters for the use of the trucks by the Kempeitai. Colonel Miyazaki was very angry and told Lieutenant Yamamoto not to worry about such a detail and when Lieutenant Yamamoto persisted in this matter Colonel Miyazaki ordered him to stop quibbling and come along. See answers to Q. 26 through 36, inclusive.

Lieutenant Yamamoto testified that there were two drivers, two assistant drivers, one orderly, and himself there on the highway from the Sumida Unit. So there were only the regularly assigned Sumida Unit men to the trucks and Lieutenant Yamamoto's orderly, seeing him leave his office, followed along with him.

It was on orders of Colonel Miyazaki that the two trucks started out. Colonel Miyazaki took complete charge of the trucks and the drivers. This was in accordance with the usual Division Headquarters' orders when a truck was assigned to another unit. See answer to Q. 39; 42, 75.

When the trucks stopped, Colonel Miyazaki, completely in charge, ordered three Sumida Unit men to remain with the two trucks and everyone else to follow him. Lieutenant Yamamoto, his orderly, and a Sumida Unit man by the name of Namekawa, followed along. See answer to Q. 46. When they stopped in a clearing Miyazaki again giving the orders, touching Namekawa said: "We will ask the Sumida Unit men to help in the execution." See answer to Q. 50.

Lieutenant Yamamoto, shocked at this, said to Colonel Miyazaki: "I must refuse that men from my unit, which is a transportation unit, participate in accordance with your request. Even though I am the adjutant of the Sumida Unit, I have no authority to order Sumida Unit men to assist you."

Miyazaki was to have his way, and notwithstanding the repeated objections of Lieutenant Yamamoto, Colonel Miyazaki, touching Namekawa's shoulder, said: "This is by order of Division Headquarters. Do you men to say you are not going to obey these Division Headquarters orders? We are in the face of the enemy, you fool." Miyazaki then pushed Namekawa forward, telling him to shoot. See answers to Q. 52, 54, 55, 56.

Lieutenant Yamamoto testified he did not fire nor did he shoot, nor did he kill, nor did he receive orders to shoot, nor did he kill anyone that night. See answers to Q. 64 and 65.

Neither was Lieutenant Yamamoto in charge of the execution or in charge of the Sumida Unit men that night at the execution.

To Q. 66, Lieutenant Yamamoto answered: "The men from the Sumida Unit who were there that night were Namekawa and Kumagai and they were under the command of Colonel Miyazaki. On that night I was placed in such a position as to be subordinate to the exacting orders of Colonel Miyazaki."

Remember Lieutenant Yamamoto was the adjutant of a transportation

"XXX(22)"

battalion of 800 men. He didn't even know Kawaguchi was a Sumida Unit man that night. Kawaguchi had been assigned to duty at the Kempeitai and came under the command of Colonel Miyazaki. So did the drivers and assistant drivers who came with the two trucks that night. So did Lieutenant Yamamoto and his orderly.

Since Lieutenant Yamamoto did no overt act that night and since he protested the use of Namakawa, he, Lieutenant Yamamoto, is guiltless. There has been no showing that he had malice toward these victims. Quite to the contrary he felt only pity for them.

Lieutenant Yamamoto was in a precarious situation that night. He is in just as precarious a situation now.

Because he did nothing to aid in the execution, did no overt act, and had no criminal intent, his conscience is clear. He knows he is guiltless. You gentlemen of the commission, reaffirm his faith in justice, in American justice. Find him not guilty on all counts. Acquit him fully of the charges.

The Japanese counsel have covered so fully the lack of evidence against the other accused, Ishiyama, Sugimoto, Ichimiya, Ozaki, Yokoyama, Kawaguchi, Hidaka, Ito, Nakamura, and Okamura, that I will only add that it would be in keeping with the policy of trial of war criminals if you acquitted all twenty of these accused, particularly since there has been no evidence that a single one of these accused did an overt act, whereby any of the ten victims came to his death.

This execution was carried out by a military organization headed by Colonel Miyazaki, who was the duly ordered commanding officer. Of the twenty accused here being tried for the execution there are only two very junior officers, one the adjutant of the Sumida Unit, First Lieutenant Yamamoto, Kazuharu, and the other the adjutant of the Kempeitai, Second Lieutenant Ichikawa, Yokichi. The other eighteen accused are all enlisted men, most of them conscripted for the war and therefore very low rated enlisted men. In Section 1079(b), Wigmore on Evidence, 3rd edition, Extrajudicial Admissions, the rule of evidence is based on a question purely of criminal law: "Where the alleged conspiracy was carried into effect by the acts of a mob or other riotous assembly or seditious society, the defendant whose instigation and leadership are proved becomes liable for the mob's acts, and thus the conduct and statements of any and all persons in the mob, whether identified or not, become a proper subject of consideration; and a field of somewhat indefinite extent is opened."

And what of this present case. The evidence is clear that Colonel Miyazaki and not any of these twenty accused was the person at whose instigation the execution was carried out and his leadership was never questioned, because he was the commanding officer of the Kempeitai. These twenty, with the exception of the two lieutenants, are all enlisted men. All twenty defendants were subject to Colonel Miyazaki's orders. He was the leader. Colonel Miyazaki was liable for the acts of these defendants, if they did act, and the conduct and statements of any and/or all twenty defendants are a proper subject of consideration as to Colonel Miyazaki, but not as to each other,

"XXX(23)"

0870

In Section 1076, Wigmore on Evidence, Wigmore explains very clearly why neither confessions or testimony are admitted against a co-defendant unless there is a privity of obligation or of title.

"The situation has often been obscured by the circumstances that the co-party's admissions are received against himself, and that they are sometimes received also against the other co-party because of a privity of obligation or of title (on the principle of PP 1077 ff). But it is not by virtue of the person's relation to the litigation that this can be done; it must be because of some privity of title or of obligation, which would indeed have admitted the statements even had the declarant not been made a co-party."

Wigmore cites the ruling of Mr. Justice Humphrey in the Trial of Mrs. Rattenbury and Stover (Notable British Trials Series) in 1935: "I will tell the jury now, if you like, but I have not a shadow of doubt they thoroughly understand it. Members of the jury, documents written by A in the absence of B are never evidence against B, merely because B happens to be sitting in the dock and is being tried with A. Statements made by A under these circumstances are not admissible against B for the same reason. Therefore, when evidence of this sort is being given, whether for the prosecution or defense, of some statement made by one of the persons in the absence of the other, you will understand that statement is evidence in regard to-- I do not say for or against, it does not matter -- that particular person who made the statement. It is not evidence against his or her co-defender."

"The principle is particularly illustrated by the rule in regard to the admissions of a co-defendant in a criminal case; here it has always been conceded that the admissions of one is receivable against himself only; (citing in footnote 10 the following cases: England 1664, Tong's Case, Kelyng 18.

Canada: Ontario: 1931 Harris v. Harris (1931) 4D.L.R. 933 (divorce for adultery).

United States: Hawaii: 1902, Terr. v. Castro, 14 Haw. 131 (adultery).

Iowa: 1924 State v. Martin, 199 Iowa, 643, 200 N.W. 213 (adultery).

Massachusetts: 1868, Com. v. Thompson, 99 Mass. 444.

Minnesota: 1928, State v. Allison, 175 Minn. 218, 220 N.W. 563.

Penn.: 1930, Com. v. Epps, 298, Pa. 377, 148 Atl. 523.

Philippine Islands: 1903, U.S. v. Caligan, 2 P.I. 433; 1906, U.S. v. Paete, 6 P.I. 105; 1906, U.S. v. Manalo, 6 P.I. 364; 1098, U.S. v. Estabillo, 8 P.I. 674; 1922, U.S. v. Vega, 43 P.I. 41; 1924, People

v. Tabuche, 46 P.I. 28; 1924, People v. Manalo, 46 P.I. 572; 1925,

People v. Durante, 47 P.I. 654, 658; 1924, People v. Orenciada, 47

P.I. 970, 975; 1927, People v. Bande, 50 P.I. 37 (murder.) and

thus where A's confession for example, implicates also a co-defendant B, it is allowed to be read against A, under express instructions to the jury not to consider it as affecting B; and some judges at one time favored the practice of omitting the name of B, or any other co-defendant, in the proof of the confession." Footnote 11 states that the cases are collected post paragraph 2100 because they are concerned primarily with the principle of completeness, there discussed."

In the pocket supplement P.1076 on page 31, there are listed seven cases where the co-parties or confessions of a co-defendant were excluded.

Canada: Ontario: 1941 Re Fox Johnson & Co. (1942)(HC) 2 D.L.R. 784 (prior examination of officers in Bankruptcy Court held inadmissible in proceeding against corporation).

Canada: Manitoba: 1941, Birsneck v. Hollingsworth, (1941) 4 D.L.R. 178 (personal injuries; Co-defendant's answers on discovery, not admissible).

United States: Federal: 1939, Napier v. Bossard, 2nd C.C.A., 102 Fed. 2d 467 (death of pedestrian struck by taxi, which had collided with truck; deposition of taxi driver, defendant, taken at instance of plaintiff, excluded after quoting portion of Paragraph 304 of the New York Civil Practice

"XXX(24)"

Act; L. Hand J., 468. Literally, it is true that Ragone's deposition was that of a party taken at the instance of an adverse party; but plainly it was not competent against Bossard as an admission; and, if competent at all, it was as testimony, for Ragone was not a party to the controversy in which it was used -- the plaintiff's suit against Bossard").

Arizona: 1940, Bristol v. Moser, 55 Ariz. 185, 99 Pac. 2d 706, 709 (Lockwood, J.: "It is true that the admission of one defendant may be offered in evidence or gainst a co-defendant and whose interest in the transaction is the same, but when the interest or liability of the co-parties is several, the admission of one is not competent against the others").

Iowa: 1940, Graham v. Williams, 228 Ia. 1261; 293 N.W. 562 (to establish ownership of note and mortgage; admission of nominal party defendant, after he had lost all right, title and interest in note and mortgage, held inadmissible against co-defendant).

New York: 1944, Framer v. Travellers' Insurance Co., Misc., 46 N.Y. Suppl. 2d 167, 168 (Bonaparth, J.: "An admission by one defendant, not joined in interest with the others, is evidence against the one that makes it but not against the others who happen to be co-defendants. Under such circumstances, the court must instruct the jury as to its limited use and effect; "citing above text).

Puerto Rico: 1935, People v. Coto, 48 P.R. 142 (admissions of a co-defendant not testifying, excluded).

New Hampshire: 1946, State v. Capp, --N.H., 46 Atl. 2d 119 (stealing lumber; declaration of co-defendant made months after offense was committed, and not in the presence of defendant, excluded).

C.M.O. 5-1945, p. 192, reiterates the law regarding conviction by confession: "It is a well established principle of law that an accused may not be convicted on his extrajudicial confession alone. Independent evidence is required to corroborate the confession (N.C.&B., Secs. 149, 176; C.M.O. 2-1943, 66, 68; 1-1942, 118, 164)."

Gentlemen of the commission you have listened patiently throughout the twenty-some days of this trial, the trial of twenty little men for a war crime. You have heard the prosecution witnesses, three of them officers, all trying hard to absolve themselves of any responsibility for the incident and perfectly willing to let these twenty little men shoulder all the responsibility.

The judge advocate agrees that the real culprit isn't being tried for this offense. Colonel Miyazaki, the judge advocate says, is dead, so he cannot be tried; and Captain Nakamura has already been tried for two other crimes and sentenced to hang, and therefore he isn't being tried. And so we try twenty little men for other men's crimes. Some of these twenty were not even at the scene.

As to these twenty accused, they are not the war criminals. They were but twenty innocent persons who had no criminal intent, most of them boys who had been conscripted for the war. These twenty all moved at the command of Colonel Miyazaki. They had no malice; they had no criminal intent. Many of these boys had come to know the missionaries and liked them. They looked upon the missionaries as their friends.

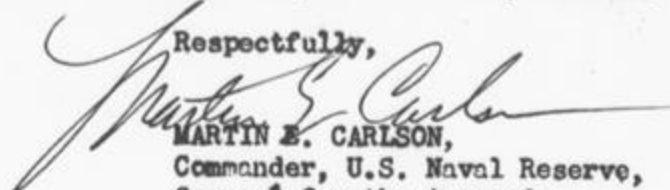
"XXX(25)"

Do you think that they could, therefore, willingly, with premeditation and malice aforethought kill them?

Some of these twenty accused may have been ordered to shoot. Yes, some were ordered to shoot. But none of them have been proved to have shot. Why? Because although they were ordered to shoot they just couldn't kill their friends and they avoided doing so. Pistols jammed! There were misfires! The evidence shows that Colonel Miyazaki was forced to shoot many of the victims and that Warrant Officer Nakamura shot others.

Because of the lack of evidence, and in keeping with the policy to punish only the war criminals, the persons who ordered the killings and who were responsible, we ask that the commission acquit all twenty accused!

Respectfully,


MARTIN E. CARLSON,
Commander, U.S. Naval Reserve,
Counsel for the Accused.

0873

CLOSING ARGUMENT FOR THE PROSECUTION

Delivered by

Lieutenant Commander Joseph A. Rogan, USN.

24 March 1948

If it please the commission:

As the judge advocate advised the commission in his opening statement though there are many defendants, their number would not complicate the case and their number has not.

It was the contention of the prosecution that all twenty of these accused were guilty of the murder of the Hondonoro family and of the six unfortunate missionaries. But the proof did not meet the expectations of the prosecution, and in the case of two of the accused, Hayashi and Sagara, it is extremely doubtful that their guilt has been established beyond a reasonable doubt. However, there is no doubt in the minds of the prosecution concerning the guilt of the remaining eighteen. Their guilt has been established and the prosecution has no qualms in asking the commission by its findings to confirm their guilt and to hold them responsible for their actions on that 18th day of September, 1944.

In a criminal prosecution, as this case is, the obligation is upon the prosecution to prove its case beyond a reasonable doubt. What is a reasonable doubt? There is almost as much confusion in the law concerning a proper definition as there is concerning the term malice. According to Black's Law Dictionary, Third Edition, "It does not mean a mere possible doubt, because everything relating to human affairs, depending on moral evidence, is open to some possible or imaginary doubt." Thus proof 'beyond a reasonable doubt' is not beyond all possible or imaginary doubt but such proof as precludes every reasonable hypothesis except that which it tends to support. A "reasonable doubt" is such a doubt as would cause a reasonable and prudent man in the gravest and more important affairs of life to pause and hesitate to act upon the truth of the matter charged. But a reasonable doubt is not a mere possibility of innocence, nor a caprice, shadow or speculation as to innocence not arising out of the evidence or the want of it." (State v. Perkins, 21 N.M. 135). A reasonable doubt is such a doubt as an upright man might entertain in an honest investigation after truth. (Peterson v. State, 47 Ga. 524(5)). A "reasonable doubt" is one for which a reason can be given. (Louis Ding v. U.S. (C.C.A.) 246 F. 80). Some jurisdictions say, "The term needs no definition." (324 Ill. 224). And in Oklahoma, a court has said, "The expression 'reasonable doubt' is its own best definition." (12 A.R.L. Cr. 417).

In the present case there can be no reasonable doubt except in the case of Sagara and Hayashi that all these accused were members of an execution party.

By this time the commission is quite familiar with the often-used definition of murder. From Naval Courts and Boards comes the simplest one: Section 53: "Murder is the unlawful killing of a human being with malice

"YYY(1)"

0874

aforethought." What does malice mean? Malice is the doing of a wrongful act intentionally, without just cause or excuse. (Nelson v. Nelson (C.C.A.) 296 F. 369). Malice in the law of murder, means that condition of mind which prompts one to take the life of another without just cause or provocation. (State v. Moynihan 93 N.J. Law 253). In the definition of "murder," malice aforethought exists where the person doing the act which causes death has an intention to cause death or grievous bodily harm to any person (whether the person is actually killed or not) or to commit any felony whatever, or has the knowledge that the act will probably cause the death of or grievous bodily harm to some person, although he does not desire it, or even wishes that it may not be caused. (Steph. Crim. Dig. 144) The words "malice aforethought" long ago acquired in law a settled meaning, somewhat different from the popular one. In their legal sense they do not import an actual intention to kill the deceased. The idea is not spite or malevolence to the deceased in particular, but evil design in general, the dictate of a wicked, depraved and malignant heart; not premeditated personal hatred or revenge towards the person killed, but that kind of unlawful purpose which, if persevered in, must produce mischief. (State v. Pile, 49 N.H. 399, 6 Am. Rep. 533). Surely in this case, the commission can recognize that the unlawful purpose was persevered in and the mischief, to use a very mild word, was produced.

As the prosecution explained in its opening statement, no attempt would be made to point out the actual persons who fired the fatal shots into the bound bodies of the victims, and no attempt was made. But merely because the prosecution witnesses did not give the names of the actual weapon users, there has been no failure in the proof of the guilt of these eighteen accused. It was the contention of the prosecution, as it is now, that all of these accused are guilty of murder even though some of them only fired the shots. Were only the persons who fired the guilty ones, then there would have been little point in indicting all eighteen of these accused, for the evidence is clear that not all of these accused used weapons. No, they didn't all use weapons, but these eighteen are all just as guilty as though they had each put a pistol or rifle bullet into the heads of the ten victims. For all eighteen were members of an execution party.

As the commission well knows, one can be guilty of a murder though one uses no weapon at all, and one may even be found guilty of murder though the person be not even present at the scene of the murder. Over the passage of years the courts and the legislatures have by their actions showed that any participation, however slight, in a murder renders one responsible for that murder. There is no such thing in the law as slight or little participation when it comes to being guilty in relation to murder. If one in any way aids or abets in a murder one is guilty. To speak of slight participation in a murder is as incongruous as to say that an animal is slightly pregnant. It is all or nothing when it comes to being guilty. The degree of participation may only be considered in relation to the amount of punishment to be assigned, after the findings of guilty. And this is correct, for life is precious the world over, and no one has the right to take life and escape unscathed from punishment regardless of the reasons that motivated them in the act of unlawfully taking life.

"YYY(2)"

From the arguments of defense counsel, they would have the court believe that only the weapon users should be found guilty. And why? Because they aren't known. The prosecution isn't interested in which of these accused used weapons, and it is fortunate that the prosecution theory is not so limiting as the defense. For who used weapons? Certainly not these accused. They have said it from the stand. They have said it in their statements. They have said it in the arguments of defense counsel. Certainly none of these accused fired the fatal shots. Anyone definitely on the firing line was relieved by some persons unknown. Yokoyama shot, but he missed. Ishiyama's pistol misfired. However, it has never been the prosecution's belief that only the teams can be considered as being guilty of the murder. All eighteen of these accused are guilty and so they should be found, because they were all members of an execution party.

Let me read to the commission from 26 American Jurisprudence; pp 197 and 198: "According to the common-law refinements, participants in crime are either principals or accessories. Principals are divided into two degrees, and accessories, depending upon whether their participation precedes or succeeds the fact of death, are denominated accessories before the fact, and accessories after the fact. Principals of the first degree are persons who do the homicidal act, either in person or through an innocent agent, and principals of the second degree are those who are present, lending their countenance, aid, encouragement, or other mental aid, while another does the act. Accessories include persons who in some manner are connected with a crime, either before or after its perpetration, but who are not present at the time the crime is committed. However, the common-law distinctions between principals in the first and second degrees and accessories before the fact have been very generally abolished by statutes which provide that all persons concerned in the commission of any felony, whether directly committing the act or aiding and abetting its commission, although not present, shall be indicted, tried, and punished as principals. The early rules, however, as well as the statutory modifications thereof, have been applied in prosecutions for homicide. Under the modern law, he who is present at a homicide, aiding and abetting, is guilty of the homicide as a principal. He is a principal even though another does the killing. Presence, either actual or constructive, where coupled with an aiding or abetting, a counseling, inciting, hiring, or in any manner assisting in the commission of a felony will make a person a principal in the offense."

Mr. Kuwata, in his argument, quoted from 26 American Jurisprudence, Section 60, that, "In the absence of preconcert or conspiracy, the inactive presence of the accused, with intent to render aid if necessary, is not sufficient." But the remainder of that sentence goes on, "although in some cases, the rule is qualified by holding the inactive presence, with intent to render aid if necessary, sufficient if the principal knew of the presence with intent to aid." 12 A.L.R. 282. And who can doubt that all present were aware that each one would aid as was necessary.

"Aid" and "abet" are nearly synonymous terms as generally used; but strictly speaking, the former term does not imply guilty knowledge or felonious intent, whereas the word "abet" includes knowledge of the wrongful purpose and counsel and encouragement in the commission of the crime. (Black's Law Dictionary, Third Edition, People v. Dolo, 122 Cal. 486).

"YYY(3)"

0876

Section 550 of the U. S. Criminal Code exemplifies the statements made above, that the common law view has been changed. It states: "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."

Those who advise, encourage, aid, or abet the killing of another are as guilty as though they take the person's life with their own hands." (Johnson v. U.S. 157 U.S. 320).

The principles of law in this case are as have been given above, and the commission should utilize these principles in arriving at their findings.

In all cases the law is usually clear, but the difficulty comes about through fitting the facts to the law.

This commission has heard many cases. In some, the deeds have been even stranger than the murders complained of in this case. In others, the proof has been more direct and of a greater compelling nature, but this case should be viewed on its own facts and the commission should not view it through jaundiced eyes.

What are the facts in this case? Simply that eighteen or more men went out one evening with the express design of unlawfully executing ten individuals. And they accomplished this design. As has been pointed out by my colleague, Mr. Kenny, they all had knowledge of what was to be done and they all aided in some manner. Some cry, like Yamamoto and Uchida, that they went along without knowing what was involved in the going. The commission, as military and naval officers of many years service, can readily understand from their own experience how untrue is such a claim. Individuals, much less members of the military are invariably curious and it is most unlikely that either Yamamoto or Uchida moved very far that night without assuaging their curiosity. The commission is not bound to believe Yamamoto and Uchida merely because they exercised their prerogative to be witnesses in their own behalf. In the case of Uchida, he at least was on the truck containing Sano and Miyazaki; and as the evidence showed, several times during the ride Miyazaki cautioned all present not to let the missionaries know that they were going to be executed. Esure, one of the accused, testified to this. It is most probable that Uchida knew, at least from this, what was involved.

Yamamoto was an officer concerned with the despatching of over one hundred and fifty trucks. The Kempeitai was only one hundred meters away from the Sumida Unit, yet Yamamoto would have you believe that it was his concern over one truck that led him to accompany the execution party, for one of the two trucks had already been assigned to the Kempeitai. Does this seem credible to the commission? In his statement, Yamamoto wrote down that he requested permission from Miyazaki to accompany the party. From the stand he claimed that he went along only because he was ordered by Miyazaki. Yamamoto knew what was involved before he ever left the Sumida Unit, for he told his orderly, Kumagai, that they were going to escort spies. It is most probable that Yamamoto knew that the execution was to be performed and he desired to participate, else why should he volunteer to accompany the already large

"YYY(4)"

0877

execution party and bring Sumida men with him.

In judging a case of this kind, where the only witnesses are fellow nationals of the accused, the commission can hardly expect a complete and accurate account of the doings of each of the accused. We produced many witnesses, nearly all of whom were present that night in September. They testified, but not as fully as they might have. Nakamura surely played a more important role in the execution than he was willing to admit from the stand. Yet he told the truth, when the telling didn't involve himself, for he was corroborated by other witnesses; and from Nakamura you hear nothing of Yamamoto's supposedly brave stand against Miyazaki.

The defense has asked why weren't Sano and Imaizumi and the other Japanese witnesses also tried for their participation? Why try Ezure, the orderly, and not Sano, the officer. And if Uchida, the orderly of Nakamura, is to be tried, why not Imaizumi, the orderly for Miyazaki? We agree that as far as actions are concerned they might all well have been tried. Sano and Imaizumi could have been tried for they, along with Nakamura, are also responsible for the murder, for they also aided and abetted. But if anyone was to be punished for the murders, as indeed we hope these eighteen will be, the prosecution must place its cases before the commission. Sano and Imaizumi were not included as accused because they admitted the facts and the prosecution needed witnesses. And after all, isn't any question of their guilt completely irrelevant? Saying others are guilty, and we admit they are, in no way contradicts our claim that these eighteen who are accused are also guilty. This is surely not a case when the claim of guilty can only be raised against persons not present in court. No, we admit that others are equally guilty, but we also insist that these eighteen are not thereby excused. There were no spectators in connection with this case. They were all members of an execution party.

Once again the claim of "superior orders" has been raised, as it is in nearly all of these trials. We have admitted that superior orders were involved, for Miyazaki was a lieutenant colonel and we do believe that the idea of the execution came from the headquarters of Lieutenant General Inoue. But superior orders, as the commission well knows, is no defense in a war crimes trial. It was not accepted in Nuremberg, it was not accepted in prior trials before this commission, and it should not be accepted here. It is an element to be considered, not in the findings, but in the sentences to be allocated.

SCAP rules provide: "The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to orders of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires." Note from this that there is no statement that superior orders of themselves are a defense. There are no qualifying words; the statement is clear. Superior orders are no defense.

In this case the accused cannot even claim that they didn't know that the order was illegal. The missionaries were in the custody of the Kempeitai and had been for some time. The members of the Kempeitai had guarded them, and Commander Carlson even says were friendly to them. The members of the Kempeitai knew with whom they were dealing

"YYY(5)"

0878

and they also knew the reason for the execution. The reason given for the execution was not that the missionaries were spies or dangerous but that an American landing was imminent and therefore the missionaries should be executed.

Imaisumi testified: "Q. 25. Lieutenant Colonel Miyazaki said the following: 'The American forces have landed on Peleliu and conditions are such that they may attempt a landing on Babelthuap. By orders of Division Headquarters the missionaries will be executed.'"

Ezure said in his confession: "We were instructed what to take in regard to the incident of the murder of the missionaries."

Sugimoto in his statement said: "We were told by Miyazaki we are going to dispose of the missionaries and not to tell anyone else of this affair."

Yokoyama said in his statement that at the assembly they were told to shoot the missionaries in the back of the head.

Ichikawa in his statement said: "I recall that on that day, by orders of the commanding officer, the noncommissioned officers and deputy Kempeis of the headquarters were assembled and the commanding officer gave words in regard to the losing battle and one's attitude toward this, and the disposal of the missionaries."

They all knew the reason for the execution and they must have known that the order was improper. And as a concluding factor, remember that two of the victims were children under the age of five--one so young its mother carried it on her back. How could an order to execute a baby be legal?

The refusal of courts and commissions to accept that defense is proper, for rarely are crimes committed directly by high ranking officers not acting through subordinates, and quite possibly, if the subordinates exercised due discretion, even though the choice might have been hard, the crimes would not have been committed. Let the commission remember their plea of superior orders. But let the commission also remember that Ichikawa and Yamamoto were officers and in the particular case of Yamamoto, since he was of a different unit, he did have some discretion. Remember how Uchida and Ezure claimed that Miyazaki would not give them orders directly, but only through their officers? And yet Yamamoto claimed that when it came to the Sumida men, he was ignored and the orders given directly by Miyazaki to privates in a different unit. We hold with Ezure and Uchida that in the Japanese army, as in the American armed forces, where there is an intermediate officer present, the senior officer does not deal directly with privates, and, therefore, Yamamoto, by saying, "You and you," and "It can't be helped, Namekawa," surely neither controlled the Sumida men nor protected the victims. He was the senior officer present of the Sumida men and he didn't have to follow the directions of the Kempeitai leader.

In this case, the prosecution has no qualms in stating that all eighteen of these accused are guilty--all except Hayashi and Sagara. Lieutenant Kenny pointed out what the evidence showed concerning their presence and their deeds. But even more, they can all be found guilty, for if nothing else, and there were other things, they all acted as

"YYY(6)"

guards that night. Imazumi told the commission, and he was corroborated by the accused themselves, that Miyazaki had ordered that the prisoners were to be guarded and they were not to be permitted to escape. This alone would be sufficient to constitute them aiders and abettors, and this, coupled with all that went before, is sufficient to warrant what the prosecution urges, a finding of guilty of all eighteen.

It was 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 unarmed prisoners of war and those taken prisoner as an incident to the 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, reported themselves in proclaiming punishment for war criminals. Churchill included not only the miscreants but also their agents; and Roosevelt promised that the subordinates and functionaries as well as the leaders having a part in war crime acts would be punished. But even before this, the United States Senate unanimously adopted the concurrent resolution presented by Senator Barkley to the effect that: "The dictates of humanity and honorable conduct in war demand that this inexcusable slaughter and mistreatment shall cease and that it is the sense of this Congress that those guilty, directly or indirectly, of these criminal acts shall be held accountable and punished in a manner commensurate with the offenses for which they are responsible." (Cong. Rec. Senate, 9 March 1943, p. 1773).

Can this commission believe that these men are not the agents of miscreants? That these men are not the subordinates and functionaries talked of by President Roosevelt? That these men are not guilty directly or indirectly of the death of the ten innocent victims, two of them children?

We doubt the commission can so believe and we therefore urge that the commission find these eighteen guilty. The death of the ten should be vindicated, and again the world should be advised that though the deed may take place on a dark night in a lonely far away place, in time a war crime will and must be paid for.

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

"YYY(7)"

0880

U. S. NAVAL HOSPITAL, NAVY NO. 926
GUAM, M. I.

9 February 1948

To: Medical Officer, Marine Barracks, Guam, M. I.

Subj: ISHIYAMA, Zenzo Ex-Sgt Major, Imperial Japanese Army

1. The subject man was interviewed and examined at the War Crimes Stockade at the request of the Marine Barracks Medical Officer this date. Interviewed with the aid of two interpreters. No information concerning the request for the examination was given.

2. The subject for examination is polite and cooperative. Face is without change of expression.

3. According to his own statements he is a 45 year old Sgt. Major in the Imperial Japanese Army.. Has been on Guam since 20 January, 1948. He has been confined since September, 1947. States that he has been charged in connection with an alleged War Crime. Maintains that he is innocent and feels that he will get a fair trial.

4. He complains of a tingling sensation over the back of his neck and the occiput; particularly on the left. This has been continuous since he had typhus in December, 1944. He has no other physical complaints. His only other complaint is that he is at times slow in remembering detail and in making up his mind. He gives a history of being sick enroute back to Japan in January, 1946. Was hospitalized about one week after his ship returned to Japan. He is unable to state what his illness at that time was. States that he suffered and could not remember anything for a few days. These questions were answered promptly and to the point.

5. There is no evidence of delusion or hallucinations. Affect is appropriate to the situation. Orientated. Memory apparently intact except for a few days aboard ship, 1946. No evidence of defective judgement.

6. General physical and neurological examination are essentially normal except for slight swaying to the left in the Romberg test and a sharply demarcated area of hyperesthesia over occiput which extends almost to the external ear on the right.

7. IMPRESSION: I find no evidence of psychosis or lack of responsibility or ability to cooperate in his own defense. Lumbar puncture and Skull X-Rays are indicated as further workup.

R. E. Switzer
R. E. SWITZER
Lt. MC, U.S.N.

(Enclosure F)

"Exhibit 1"

0881

U. S. NAVAL HOSPITAL, NAVY NO. 926
GUAM, M. I.

9 February 1948

To: Medical Officer, Marine Barracks, Guam, M. I.

Subj: FUJITANI, Yoshio Ex-Leading Private, Imperial Japanese Army

1. The subject named man examined at the War Crimes Stockade this date at the request of the Marine Barracks Medical Officer.

2. No information was available except that the subject tried to hang himself on 28 January, 1948. He has been on Phenobarbital grains one and half at bed time and grains one half every morning. Interviewed through two interpreters.

3. The subject is polite and cooperative. No show of emotion on face. He complains only of a tired feeling which has been persistent about ten days.

4. According to the subject he is a 28 year old Leading Private in the Imperial Japanese Army. He has been on Guam for 28 days and was under confinement about three months prior to this. He states that he is confined in connection with the missionary incident. It is alleged that he took part in a murder. His answers are rather slow but are coherent and to the point. He appears to study his answer a time in order to say exactly what he means. When asked directly why he tried to kill himself he gave a long detailed narrative of the events leading up to his being brought to Guam for trial. States that he became depressed because he was afraid that he made statements that might implicate friends and that he was worried about what his family would think. He denies that he wants to kill himself now. States that he felt "agony" when attempt was frustrated and does not want to die now. He persists in his plea of innocence; that he was a duty soldier on that particular day. Admits that his rifle was borrowed by another man at the time. He admits that it is logical that he is a suspect under the circumstances. Thinks he will receive a fair trial.

5. No evidence of hallucinations or delusions. Affect is in keeping with the situation. Well orientated. Judgement is apparently intact now.

6. General physical and neurological examination are essentially negative through out.

7. IMPRESSION: It is my opinion that this man is not psychotic from the findings of this short interview and examination. There is no evidence of depression or suicidal intent at this time. It is my impression that he had a reactive depression based on situational factors.

R. E. Switzer
R. E. SWITZER
Lt. MC, U.S.N.

(Enclosure D)

"Exhibit 2"

0883



P. ELIAS FERNANDEZ

Nació en Vegahian (León) el 13 de diciembre de 1880. Ingresó en la Compañía el 7 de diciembre de 1908 y marchó a la Misión en 1926



P. BERNARDO DE LA ESPRIELLA

Nació en Pasto (Colombia) el 22 de agosto de 1889. Ingresó en la Compañía el 5 de agosto de 1910 y en octubre de 1926 marchó a la Misión



H. FRANCISCO HERNANDEZ

Nació en Zafra (Badajoz) el 28 de octubre de 1887. Ingresó en la Compañía el 9 de octubre de 1912 y en octubre de 1921 marchó a la Misión



P. LUIS BLANCO SUAREZ

Nació en Las Palmas (Canarias) el 19 de Abril de 1896. Ingresó en la Compañía el 20 de Junio de 1915 y el 20 de Diciembre de 1932 marchó a la Misión



P. MARINO DE LA HOZ

Nació en Joatilla de las Matas (León) el 7 de agosto de 1886. Ingresó en la Compañía el 27 de Julio de 1903 y marchó a la Misión en 1921



H. EMILIO VILLAR

Nació en Villarejo del Valle (Avila) el 5 de abril de 1893. Ingresó en la Compañía el 7 de Octubre de 1911 y en 1921 marchó a la Misión

"Exhibit 3."

0885

of a reply, refer to Initials
and No.

Op21C-pd
Serial 3693P21

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



6 NOV 1947

From: Chief of Naval Operations.
To: Commander Marianas.
Subj: Spanish Priests executed by the Japanese.
Ref: (a) ComMarianas disp 160127 of Sep 1947 to CNO.
(b) CNO disp 191545 of Sep 1947 to ComMarianas.
(c) CNO ser 481P21 of 19 Sep 1947 to Apostolic Delegate,
Wash. D. C.
Encl: (A) Apostolic Delegate Wash D C ltr 272/45-6 of 20 Oct 1947 to
Vadm McCrea and enclosures thereto.

1. Reference (a) requested information concerning nationality, citizenship and other information regarding status and positions at time of death of six Catholic Priests. Reference (b) furnished available information concerning Bernardo de la Espriella. Reference (c) requested the Apostolic Delegate, Washington, D. C. to ascertain the desired information concerning the other five priests.

2. Enclosure (A) which is the Apostolic Delegate's reply to reference (c) is forwarded herewith for such action as you may deem appropriate.

J. L. McCrea

JOHN L. MCCREA

CC: CinCPac (with list of priests killed by Japanese - a part of encl (A))
Deputy Chief of Naval Operations (administration)

EXHIBIT 4 (1)

0887



UNITED STATES OF AMERICA

3339 MASSACHUSETTS AVENUE
WASHINGTON 8, D. C.

Nº 272 /45 - G.

THIS NO. SHOULD BE PREFIXED TO THE ANSWER

October 30, 1947.

Vice Admiral John L. McCrea, U.S.N.
Deputy Chief of Naval Operations
Navy Department
Washington, D. C.

My dear Admiral McCrea:

With reference to your letter of September 19, 1947, I am enclosing information about the Missionary Fathers Elias Fernandez, Marine de la Hoz, Emilio Villar, Luis Blanco y Suarez and Francisco Hernandez. This information was transmitted to me by the Apostolic Nuncio in Madrid, Spain. If further details are required, I shall be pleased to assist in attempting to secure them.

With sentiments of esteem and every best wish, I remain

Sincerely yours,

A. G. Cicognani

Archbishop of Ladices
Apostolic Delegate

8 NOV 1947

Enclosure (A)

10/31/47
EXHIBIT 4 (2)

798

0889

1932

Wm. L. Garrison

КА ЧӨРӨ ВҖУҖЛЫҖ КӨСЧӨВ:

WENTWORTH, B. C.
HALL REVEREND
REVEREND SPIRIT OF HUMANITY OBSERVATIONS
ALICE WENTWORTH TOWN F. M. SLOAN, D.D.M.

OGFOPOL 20² 1984

THIS MO' PHOTO BE TAKEN AT THE MUSEUM

No 335 142 - 0.

CHILD SERIES OF YPERICIN

WASHINGTON 8 D C
3333 PENNSYLVANIA AVE

PHOTOLOGIC DETECTION



0890

= C O P Y =

RELACION DE RELIGIOSOS MUERTOS POR LOS
JAPONESES

FERNANDEZ GONZALEZ, Elias

Nació el año 1880, en Vegamian (León). Profesó el año 1908, en Carrión de los Condes (Palencia) Institución, en la Compañía de Jesús. Después de sus estudios fue destinado a Santiago de Cuba (Cuba). El año 1926 pasó a la Misión de Palaos (I. Carolinas) siendo asesinado en Korreor (Carolinas).

Se mostró incansable en la evangelización de aquellas islas, visitando la de leprosos mientras se lo permitieron. Fue preso por las autoridades Japonesas, y asesinado por los soldados.

Dió su vida llena de méritos y trabajos.

DE LA HOZ, Marino

Nació en 1886, en Joarilla de la Mata (León). Profesó el año 1903. Estudió en Carrión de los Condes (Palencia) Institución, en la Compañía de Jesús. Fue destinado a la Misión de Palaos el año 1921.

Asesinado por los Japoneses en Korreor (I. Carolinas).

Este misionero sufrió muchos naufragios en recorrer las islas del Archipiélago en pequeñas embarcaciones.

VILLAR, Emilio

Nació el año 1893, en Villarejo del Valle (Avila). Profesó el año 1911. Noviciado de Carrión de los Condes (Palencia) Institución, en la Compañía de Jesús.

Fue destinado a I. Carolinas el año 1921. Fue asesinado por los Japoneses el año 1944 en Korreor (I. Carolinas).

BLANCO Y SUAREZ, Luis

Nació el año 1896 en Las Palmas (I. Canarias). Profesó el año 1915. Estudió en Granada, Colg. Areneros Madrid y Sarriá Barcelona Institución Compañía de Jesús. Fue destinado a I. Carolinas el año 1932.

Asesinado por los Japoneses en Yap el año 1944.

HERNANDEZ Y ESCUDERO, Francisco

Nació el 28 de Octubre de 1887 en Zafra (Badajóz). Profesó el año 1912 en Granada. Noviciado de Cartuja (Granada) Institución Compañía de Jesús. Condición Hermano.

Marchó a la Misión de I. Marshall y Truk el año 1921. Fue destinado a Yap (I. Carolinas) donde hizo votos. Le detuvieron y trasladaron a Palaos, donde después de muchos sufrimientos, murió decapitado por los Japoneses, el año 1944.

"EXHIBIT 4 (3)"

0892

LIST OF MEMBERS OF RELIGIOUS ORDERS KILLED BY THE JAPANESE

FERNANDEZ GONZALEZ, Elias

Born in 1880, at Vegamian (Leon). Entered the Order in 1908, at Carrion de los Condes (Palencia). Institution: Society of Jesus. After completing his studies he was sent to Santiago de Cuba (Cuba). In 1926 he was transferred to the Mission of Palaos (Caroline Islands). Killed at Korreor (Carolines).

He was tireless in his missionary work and intensely devoted to the task of bringing the Gospel to the islands. He visited the lepers as long as he was permitted to do so. He was taken in custody by the Japanese authorities and was killed by the soldiers.

He gave his life full of devotion and work.

DE LA HOZ, Marino

Born in 1886, at Joarilla de la Mata (Leon). Entered the Order in 1903. Studied at Carrion de los Condes (Palencia). Institution: Society of Jesus. Was sent to the Mission of Palaos in 1921.

Killed by the Japanese in Korreor (Caroline Islands).

This missionary suffered many shipwrecks while going about in small boats, visiting the various islands of the Archipelago.

VILLAR, Emilio

Born in 1893, at Villarego del Valle (Avila). Entered the Order in 1911. Novitiate at Carrion de los Condes (Palencia). Institution: Society of Jesus.

Was sent to the Caroline Islands in 1921. Was killed by the Japanese in 1944 at Korreor (Caroline Islands).

BLANCO Y SUAREZ, Luis

Born in 1896, at Las Palmas (Canary Islands). Entered the Order in 1915. Studied at Grandada, Areneros College, Madrid, and Barria College, Barcelona. Institution: Society of Jesus. Was sent to the

"EXHIBIT 4 (4)"

0894

Caroline Island in 1932.

Killed by the Japanese on Yap in 1944.

HERNANDEZ Y ESCUDERO, Francisco

Born 28 October 1887, at Zafra (Badajoz). Entered the Order in 1912 at Granada. Novitiate of Cartuja (Granada). Institution: Society of Jesus. Rank: Brother.

Went to the Marshall Islands and Truk Mission in 1921. Was sent to Yap (Carolines), where he was ordained. Was taken in custody and taken to Palaos, where after enduring much suffering he was decapitated by the Japanese in 1944.

Op3204
Original language: Spanish
Translated by: J. Hensoldt
Date: 5 November 1947

"EXHIBIT 4 (6)"

0896

AFFIDAVIT

PONAPE ISLAND } ss.
Caroline Islands

I, Hyginio Berganza, formerly Apostolic Administrator of the Roman Catholic Vicariate of the Caroline, Marianas and Marshall Islands, being duly sworn according to law, do depose and say:

That from March 31, 1939 to December 1942, I served as Apostolic Administrator of the Roman Catholic Vicariate of the Carolines, Marianas and Marshalls, in the Western Pacific, which included Koror Island, Yap Island, Saipan, Tinian, Rota (not Guam), Truk, Ponape, Nukunor, Kapingamarangi, and all the Marshall Islands. My duties as Apostolic Administrator included the Ecclesiastical administration and direction of Catholic life and activities in the above named areas.

That from 1935 until January 1946, I served as Regular Superior of all Jesuit Priests and Brothers acting as missionaries in the same areas mentioned in above paragraph. My duties as Jesuit Superior included the immediate administration and supervision of the entire Catholic missionary personnel, male, in these above mentioned islands. All male missionaries therein were Jesuit Priests or Brothers.

During the period of my combined administrations, Fathers BLANCO Y SUAREZ, DE LA ESPRIELLA, DE LA HOZ, FERNANDEZ GONZALEZ, and Brothers HERNANDEZ Y ESCUDERO and VILLAR served under me in this area. The following information concerning them is true and correct:

Luis BLANCO Y SUAREZ, Catholic Priest, Jesuit, Spanish national, resident of Yap Island,

Bernardo DE LA ESPRIELLA, Catholic Priest, Jesuit, Colombian national, resident of Yap Island,

Marino DE LA HOZ, Catholic Priest, Jesuit, Spanish national, resident of Koror Island,

Elias FERNANDEZ GONZALEZ, Catholic Priest, Jesuit, Spanish national, resident of Koror Island,

Francisco HERNANDEZ Y ESCUDERO, Catholic Brother, Jesuit, Spanish national, resident of Yap Island,

Emilio VILLAR, Catholic Brother, Jesuit, Spanish national, resident of Koror Island.

(S E A L)

Hyginio Berganza
Hyginio Berganza
Pastor, Catholic Church, Colony,
Ponape, Caroline Islands

Subscribed and sworn to before me this 12th day of February 1948 at
The Civil Administration Unit, Ponape Island, Caroline Islands.

W.D. Mooney
W.D. MOONEY, LTJG, USNR

"EXHIBIT (5)"

0898

供述書

本籍地 香川県三豊郡紀伊村大字木之郷

七〇番地ノ一

現住所 右全

横山匡壽

大正八年十一月二十日生

私の本書ニ依リスペイン宣教師等ノ銃殺

事件ニ係申述ヘマス

一 本件は昭和十九年七月八月ダッタト思ヒマスガ

「ガスパン」台上ノ密林ノ中ニ於テ行ハレマシタ

一 私の当日夕刻命令ニ依リ當時隊ノ糧秣

庫ノ外ニ集令致シマシタ

此処ニ於テ隊長（宮崎中佐）ヨリ「スペイン

昭和 年 月 日

"Exhibit 6(1)"

宣教師船殺ノ命令ヲ受ケタノテアリマス、
要命石ニ同行ノ者ニ從テ宿營地前道路ニ
トラックニ乗車ニ出發致シマシタ
「カスバ」要國橋ノ処ニ於テ一應停車
待ツテ居リマス「カスバ」ニ宣教師達カ多
マシタノテ之ヲ同乗サセ「カスバ」ノ台上ニ登
テ行キマシタ
一 現地ニ百米位ノ処ヲ「トラック」ニ停車致シマシタ
一 此処テ全員下車致シマシタ
一 此ノ時何トカレテ之ヲ避ケタイト思ヒマシ
一 最後迄残ツテ居タノテ「カスバ」本島現住民、
一 様ニ思ヒタ「カスバ」一名カ残リマシタカラ仕方ナ
一 之ヲ密林内ニ同行致シマシタ

"Exhibit 6(2)"

0900

No.

昭和 年 月 日

一 現場ニハ既ニ壕カ掘ラレテアリマシタ
私ハ先着ノ者ニナラツテセテ壕ニ向ツテ座ラセ
マシタヘソレテ私ハ目ヲツムリ其ノ右ノ命令ヲ
待ツタノデアリマス
宣教師等ハ呪文ヲ唱ヘテ居リマシタガ其
レカラ暫クシテ隊長ヲツタト思ヒマスガ射テ
ト云フ號令カカハリマシタノテ私ハ所持シテ
居タ十四年式拳銃ヲ取出シ女カラニ米位
離レタ処カラ射專致シマシタカ何ダカ胸カ
一杯ニナリ午カフルツテ彈丸ハアタリマセンテ
シタ
其ノ時女ハ子供ヲ背負ツテ居リマシタカ銃声
ニ驚イタノカ其ノ子供カ急ニ泣出しマシタ

"Exhibit 6(3)"

0901

私ハ此ノ泣声ヲ聞イテ急ニ可相ニナリニ、三歩後
ニサガリマシタ
其ノ時直横ヨ居タ者（小銃ヲ持ツ居タ者）カ
小銃ヲ子供ヲ射專致シマシタ其ノ時女ハ後ニ倒
レマシタ
一
其レカラ私ハ眞先ニ密林ヨリ出テ皆ノ者ノ出テ
来ルノヲ待ツテ居リマシタ
右供述致シマス

昭和二十二年五月五日

供述人

横山匡壽

"Exhibit 6(4)"

0902

昭和23年1月27日私が作り且ツ書いた頁ヨリ成ル上記
日本語ノ陳述書ヲ讀ミ直シマシタ。

昭和23年5月5日私が作ツタ上記ノ陳述書ハ私が知り
且ツ信ジテナル限り眞実且ツ正確ナルコト及ビゴノ陳述書
ヲ作ラセルタメ如何ナルキニモ何ラ約束又ハ脅迫ヲ受ケ
ナカッタコトヲ茲ニ誓ヒマス。

横山 匡壽

Subscribed and sworn to before me this 28th day of January,
1948, at Guam, Marianas Islands.

James P. Keamy
Lieut. - USN

Guam, M.I.

I, Fredrick A. Savary, 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.

Fredrick A. Savary
Interpreter.

I, 横山 匡壽, have reread the foregoing state-
ment consisting of 4 pages in Japanese, made and written by me
on the 5 day of May, 1947.

I hereby swear that said foregoing statement made on the 5
day of May, 1947 is true and correct to the best of my
knowledge and belief; and that no promises or threats were made at
any time in order to induce me to make these statements.

横山 匡壽

"Exhibit 6(5)"

0903

AFFIDAVIT

Place of registration: Kagawa-ken,
Mitoyo-gun, Kii-mura,
Oasa-Kinogo,
670-1 banchi

Present address: Same as above

YUKOYAMA, Kyohisa
Born on 30 November 1919

In this document I will tell about the case of the shooting of the Spanish missionaries and others.

1. I believe the incident happened in July or August 1944. It was carried out in the middle of a dense forest on Gasupan Hill.
2. That day in the evening I fell in according to orders at the place which was the unit provisions storehouse at that time. There we received orders from the unit commander (Lieutenant Colonel MIYAZAKI) for the shooting of the missionaries.
3. After receiving the orders I followed along with the rest who were going. We got into trucks and departed from the road in front of the billet.
4. We stopped first at the Aikoku Bridge in Gasupan and as the Spanish missionaries came after we had waited a while, we had them climb aboard and ascended Gaspan Hill.

The trucks stopped at a place about 200 meters from the scene. At this place all personnel got off. At this time I thought I would like to get away from this somehow or other and I remained behind until the very last. However, as there was one woman (I thought she was a native of that island) left over, there was no way out of it and I accompanied her into the forest.

5. A hole had already been dug at the scene.

Following the example of those who arrived first I faced the woman toward the hole and had her squat down. Then I closed my eyes and waited for the next order.

The missionaries were chanting and presently the unit commander, I believe, gave the order to fire. Therefore I took out the model 14 pistol which I owned and fired from a place about two meters away from the woman. However, at that moment I was filled with emotion, my hand trembled and the bullet missed the woman.

At that time the woman was carrying a child on her back and, surprised at the rifle fire, that child suddenly began to cry. Hearing the crying I suddenly felt that it was very pitiful and withdrew two or three steps.

Then someone who was right alongside of me (someone who had a rifle) shot the child with a rifle. At that moment the woman fell backwards.

I was the first to leave the forest after that and I waited

"Exhibit 6(a)(1)"

0904

for everyone to come out.

I make my affidavit as above.

5 May 1947

Person making the affidavit - TOKOYAMA, Kyohisa.

I hereby certify the foregoing to be a true and complete translation, to the best of my ability, of the original document in Japanese.

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve,
Interpreter.

"Exhibit 6(a)(2)"

0905

同日十五時頃、宣教師、散害事件、事、聞、命令等、
「セ、」が十六時頃隊長室＝憲兵、＝集合、
「セ、」補連補即、兵、何事、事件、発生、
緊張、兵、令、待期、
全員集合、中、隊長、宣教師、
事件、聞、組、隊、携行品、等、指示、

携行品、

彈薬、五人、五時

補給、各人、一

集合、日時、場所

二、橋道、上

同日、二十時

細、五時、指示、命令

「セ、」時、和、佐野、時、傳令、今、隊長、

隊長、傳令、
各人、命令、組、分、担、其、準備、

「セ、」時刻、セ、集合、地、集合、

其、時、中、隊長、以下、組、隊、成、
補、計、人、員、十五、六、人、隊長、張、

携行品、監、
隊長、副、佐野、時、後、等、先、後、

今、隊長、隨、行、

「セ、」橋、宣教師、在、地、

「セ、」橋、宣教師、在、地、

「セ、」橋、宣教師、在、地、

「セ、」橋、宣教師、在、地、

"Exhibit 7(1)"

0906

途中隊長副官佐野少尉 談合ニ依リト 先方ニ
(宣教師)行テ事、内容ヲ掌知セシニ據ニト
「此道ニモ注意カシ、約二十分程ヲ」宣教師ノ住宅
ニ着キテ、夜分不意、訪問ニ 大要ヲ
驚キテ様子ヲ云フカ、隊長や副官 佐野少尉
カ次、様ニ事ヲ申シテ云フ
戦況状況ハ悪化スルニ付 現地ニテハ 危険 状態
ニ依リト 明朝頃ニ 敵、機動部隊ハ上陸スルニ
今晚憲兵隊ト共ニ カビノ山ト 園ノ 森林ニ 待避
スルカラ 女中女ト 身同シキニ 至リ 何故ニ 此ニ據
ニ 三、四十分後ニ 憲兵隊、ト云フカ事ニカフ
ト 宣教師 驚キ 非常ニ 喜ビニ 何故ニ
此ニ據ニヤ 土庫間 ト云フカ事ニカフ、
私モ手傳ツテ 積込ニシテ 宣教師ヲ 荷物ト
共ニ 塔乗セテ 隊長以下 同車ニ 塔乗 同車
ニ 塔乗スルニ 憲兵 補官、八九名ト記憶 スル
即時 此ニ 出發シテ 進行中、カビノ山ト 地
表ニ 於テ 同シク 故障 約一時間程 停車 後
出發シ、故障 位置 寧約五〇米 前方 地帯ニ
先着、ト云フカ事ニカフ
其ノ後ニ 山崎ニ 行テ 難シクニテ 目的地
ニ 到着スルニ 下車 命ニ 依リ 下車 荷物等ヲ
下ニ 降スルニ 宣教師ヲ 先頭ニ 憲兵 補官

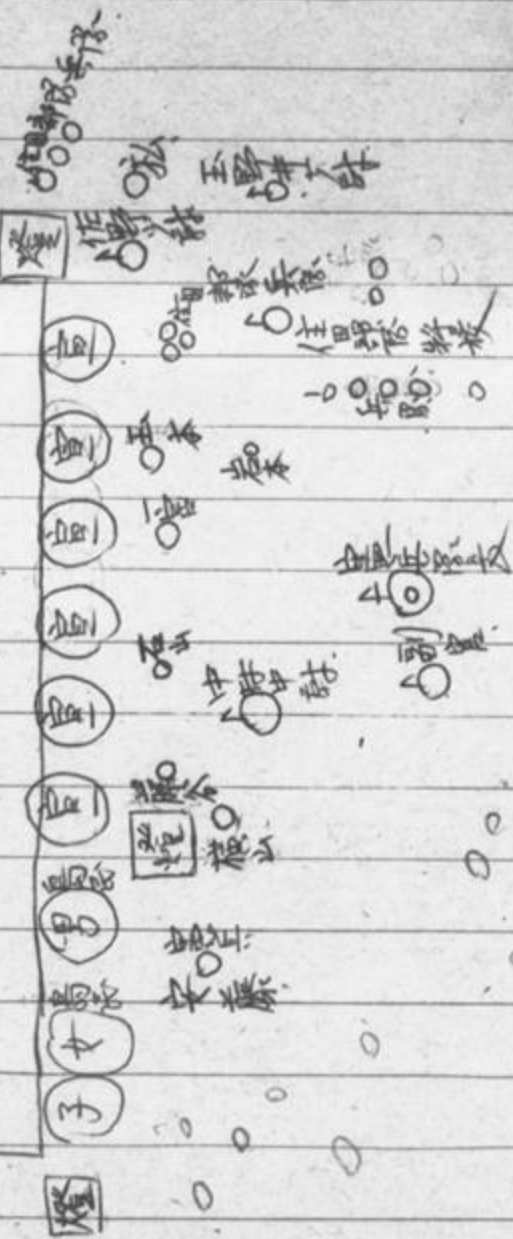
"Exhibit 7(2)"

0907

部隊、兵隊の左右に付、約十米程前進せしむるに、無
言で憲兵が宣教師を逮捕せしむ。同時隊長が死
刑にせしむるに渡りし。佐野少尉命令せしむ、子供を肩
に持ちし。隊長佐野少尉最後死せしむ。
約七、八分後、刑場に着きし。并、令隊長が先頭。
刑場、西より北に生じ、死刑台あり、注意、西女領等、
指すに、隊長命令せしむ、抗殺、續中、令隊長
、射、命令せしむ、銃撃年数等、同時、死、壕
中、生じし。北、三番目、生じし。マ、
居、一番左端、お母、二、肩、し、中、北、
生じし。三番目、西、軍曹、北、
補助憲兵、命令せしむ、抗殺しし。
佐田部隊、三、兵、右端、宣教師、銃殺
佐田部隊、将校、初年兵、度胸、試、射、し、
是、隊長、話、合、し、事、記憶、し、
其、後、令隊長、槍死
佐野少尉、五所井少尉、佐田部隊、兵隊、四、五、名
九、等、右端、燈、附近、オ、し、
右端、燈、地、兵、刑場、し、少、小、高、丘、し、
憲兵隊長、副官、中央、後、方、に、居、令隊長
中村中尉、直接、刑場、指揮、し、
雖、小、補助憲兵、埋葬、作業、せ、
中村中尉、指す、甚、事、現場、徹底的、

Exhibit 7(3)

4
別紙



"Exhibit 7(4)"

0909

此等事、全真、一時事、現出、年、限、
之、松、古、時、記憶、并、説、如、之、
別、紙、要、因、私、之、記憶、範圍、ア、リ、ス、
以上、

此、記、之、書、カ、ミ、ル、事、松、之、記憶、残、リ、開、
其、意、ア、リ、ス、

昭和二十九年九月十二日

江連

共(通)

昭和22年1月27日私が作り且ツ書いた6頁ヨリ成ル上記
日本語ノ陳述書ヲ讀ミ直シマシタ。

昭和22年1月13日私が作り且ツ上記ノ陳述書ハ私が知り
且ツ信ジテナル所ニ眞実且ツ正確ナルコト及ビゴノ陳述書
ヲ作ラセルタメ如何ナルキニモ何ラ約束又ハ脅迫ヲ受ケ
ナカッタコトヲ茲ニ誓ヒマス。

江 連 茂

Subscribed and sworn to before me this 28th day of January,
1948, at Guam, Marianas Islands.

James P. Kenny
Lieut. VSN

Guam, M.I.

I, Frederick A. Savory, 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.

I, 江 連 茂, have reread the foregoing state-
ment consisting of 6 pages in Japanese, made and written by me
on the 13th day of September, 1947.

I hereby swear that said foregoing statement made on the 13th
day of September, 1947 is true and correct to the best of my
knowledge and belief; and that no promises or threats were made at
any time in order to induce me to make those statements.

江 連 茂

"Exhibit 7(6)"

0911

STATEMENT

There were no orders, etc., relating to the incident of the murder of the missionaries about 1500 of that day but at 1600 there was an assembly of Kempeis only at the unit commander's room. We auxiliary Kempeis waited tensely in our quarters as we surmised the inception of the incident. However, about 1700 of the same day there was an assembly of everyone and we were instructed by the detachment commanding officer, NAKAMURA, as to the organization of the group and what to take in regard to the incident of the murder of the missionaries.

As to what to take: Five rounds for each person. One rope for each person.

Time and place of assembly: On the road of Misuzu Bridge at 2000 on that day.

The order was to the effect that details would be given at the time of departure. We were told at this time that I was to be the orderly for Second Lieutenant SANO and Leading Private IMAIZUMI orderly for the unit commander, MIYAZAKI. Each individual began his preparations according to orders and division of labor. Soon the time approached. At the time we assembled at the assembly point, when the group under detachment commanding officer, NAKAMURA, was organized, there was a total of fifteen or sixteen Kempeis and auxiliary Kempeis. The detachment commanding officer inspected our uniforms and what we had.

The unit commander, the adjutant and Second Lieutenant SANO approached on foot and started out. Leading Private IMAIZUMI and I followed. On the way from Misuzu Bridge to where the missionaries lived (about fifteen kilometers) we were warned by the conversation of the unit commander, the adjutant and Second Lieutenant SANO as we were going ahead to the missionaries not to let them know of what was to happen. In about twenty minutes when we arrived at the missionaries' quarters, it seemed that they were quite astonished at the sudden evening visit. The unit commander, the adjutant and Second Lieutenant SANO said in effect the following:

"Because the war conditions are bad, it is dangerous here. According to intelligence, about tomorrow morning it seems an enemy task force will land. As you will take shelter in the forrest on Gasupan Daijo (hill) with the Kempeitai this evening, pack up only those necessary things around you immediately. Thirty or forty minutes later a Kempeitai truck will come." ut

The missionaries were greatly joyed and while they were packing, at about 2100, the trucks came. I helped and loaded the gear. The missionaries were put aboard with their gear. The unit commander and others inferior to him boarded the same trucks. I remember eight or nine Kempeis and auxiliary Kempeis. Then we left that place immediately. While we were on our way, at Gasupan Daijo, the truck broke down. After it was stopped for about an hour, it started. The truck which had started ahead was at the point about five hundred meters ahead of the point at which the other truck had broken down.

Then the two trucks went on all together. Soon they came to the point which was our objective. We got off at the order to get off. We also took off the gear, etc. When we advanced about twenty meters with the missionaries

at the front and the Kempeis and auxiliary Kempeis to the left and right, the Kempei silently arrested the missionaries. At the same time the unit commander told them they would be executed. Having been given orders by Second Lieutenant SANO, I took a child on my back. The unit commander and Second Lieutenant SANO were at the very end. After seven or eight minutes when we came to the place of execution, the detachment commander caused them to be seated from the right facing the place of execution in order. He gave instructions as to the cautions and details just before the execution. By order of the unit commander the shooting followed. With the order of the detachment commander to shoot at the same time as several shots and sounds, they almost all fell into the grave. The third from the right remained seated as he was. Because the baby on the back of the mother at the far left end was crying the third one was shot by Sergeant TAMAMOTO, and the baby by an auxiliary Kempei by orders. Two or three men of the Sumida Unit shot the missionary on the left end. I remember an officer of the Sumida Unit was talking with the unit commander asking that the shooting be done in order to test the courage of the young soldiers. Then the squad leader examined the corpses.

. Second Lieutenant SANO, Second Lieutenant TAMANOI, four or five men from the Sumida Unit and I were near the light at the right end. The point at the right end of the light and the place of execution were slightly high ground. The Kempei unit commander and adjutant were at the center rear. The detachment commander officer, First Lieutenant NAKAMURA was directly in command of the place of execution. In the work of burial by almost all the auxiliary Kempeis and by directions of the adjutant and First Lieutenant NAKAMURA the spot was thoroughly camouflaged. At the end all persons left the scene about one thirty and returned to their units. My memory at that time is as I have stated above. The sketch on another piece of paper is limited to my memory above.

What I have written above is the truth according to what I remember.

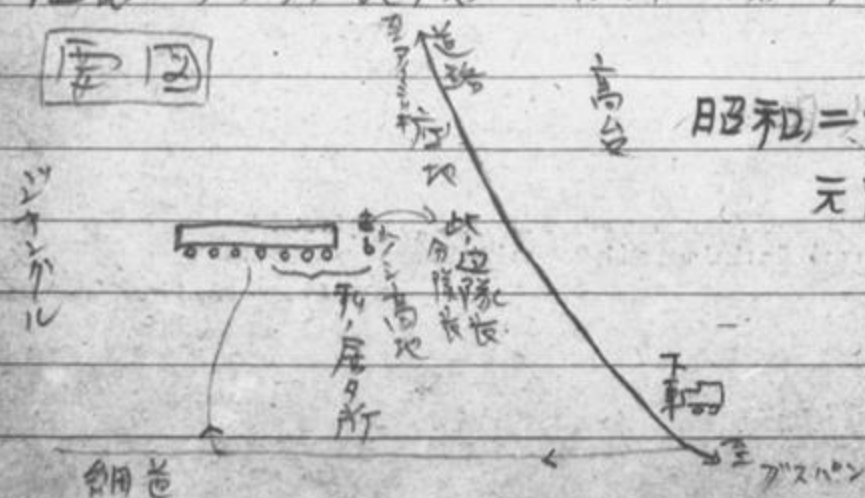
September 13, 1947

/s/ EZURE, Shigeru.

0914

八月日ハ、確實ニ判明シセシガ十月廿日頃便便ヲ帰ルト同僚ノ補遺ニ
 今晚宣教師ノ人達ヲ危ナキ所ニ疎開カナル爲ニ全員「ミ」ヲ豫備ニ
 集合スル稱話ヲ爲シテ「夕」後整列ヲ行ハシメタ
 ソレヨリ、トラック二台ニ乗車シ隊長、連シテ來タ宣教師ノ人等後車ニ乗リテ
 車ノ走ル通リ方ヲシテ所約ノ一時間位カツタ時車カ止リマシタ
 所ガ「フロント」死人、ニ本ムカイタリマシタ、テ「變」ニ思フテ居リマシタ隊長カ
 何カ話シマシタ宣教師ノ人達「黙」シテイマシタ ソレテ「憲兵」カ
 一名ツ、ソキマシテ線ヨリ「作」ソレニ補遺カ二名位ツツツ「イ」テ初メ
 テ銃「殺」ト云フ事ガ判明シマシタ「私」ハ後オノ將校達ノ附近ノ所ヲ
 歩行「現場」ニ至リマシタ短形ノ「穴」カ有リマシタソレニ一列
 ニ宣教師ノ人達カ並ビマシタ連シテ來タ「憲兵」カ「何」テソ「後」ニ補遺
 カ立ビマシタ「私」ハ其ノ所隊長附近ヨリ右ヨリニ三名位マシ
 「同」ヲ歩行居リマシタ（隊長並ニ全隊長ノ命令伝達ノタメ用入トシテ）
 ソレテ隊長ノ射テノ命令ニヨリ射ツタト記憶シマス（又、所他部隊ノ兵隊ガ
 終リテ「私」ハ皆「補遺」ト共ニ後片付マシテ歸リマシタ 其ノ後、終戦ニ至リ
 テカラ隊長ヨリ此ノ事件ニ関シテハ「絶」好ニ「口」外セヌ事集合サセラル
 注意ガアツタト記憶シマス。外ニ関シテハ「解」リマセン

図12



昭和二十三年九月九日

元陸軍一等兵

内田文雄

"Exhibit 8(1)"

昭和23年1月27日私が作り且ツ書いた一頁ヨリ成ル上記
日本語ノ陳述書ヲ讀ミ直シマシタ。

昭和22年9月9日私が作ツタ上記ノ陳述書ハ私が知り
且ツ信ジテナル以リ眞実且ツ正確ナルト及ビコノ陳述書
ヲ作ラセルタメ如何ナルキニモ何ラ約束又ハ脅迫ヲ受ケ
ナカッタコトヲ茲ニ誓ヒマス。

内田文雄

Subscribed and sworn to before me this 28th day of January,
1948, at Guam, Marianas Islands.

James P. Kenny
Lieut. J.S.N.

Guam, M.I.

I, Frederick A. Savory, 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.

I, Fu 内田文雄, have reread the foregoing state-
ment consisting of 1 pages in Japanese, made and written by me
on the 9th day of September, 1947.

I hereby swear that said foregoing statement made on the 9th
day of September, 1947 is true and correct to the best of my
knowledge and belief; and that no promises or threats were made at
any time in order to induce me to make these statements.

内田文雄

"Exhibit 8(2)"

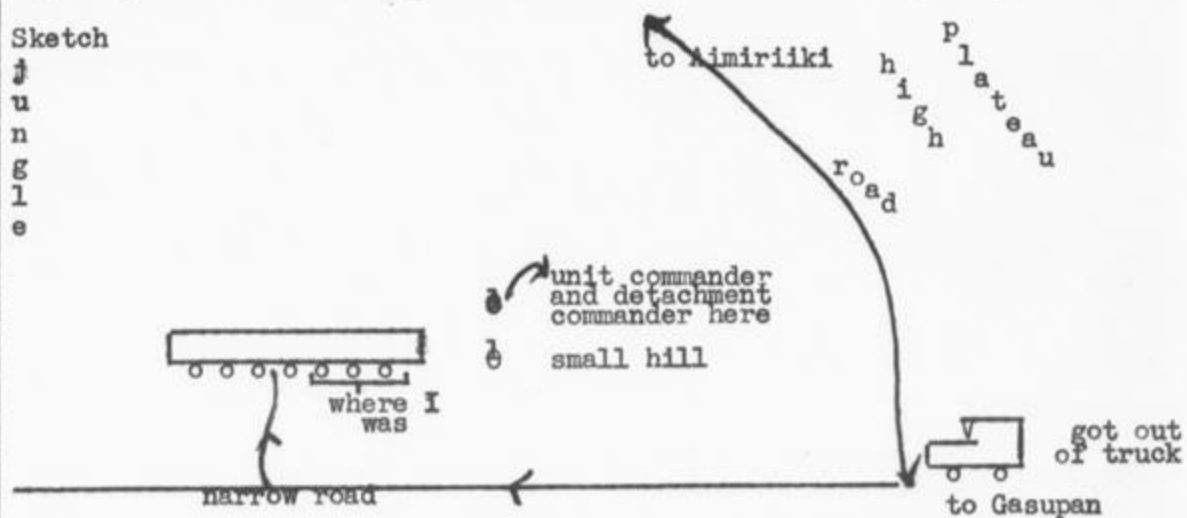
0917

I am not clear as to the date but around the middle of October as I was returning from work I was told by a fellow auxiliary kempei that as we were going to evacuate the missionaries to a place that was not dangerous all personnel were to assemble near the MISUZU Bridge. Therefore, I ate supper hurriedly and went to formation.

After that we got into two trucks, loaded the missionaries whom the unit commander brought into the rear truck and the trucks went as trucks go. After about an hour, the trucks stopped. There was the pungent odor of corpses around and I thought it strange. When the unit commander said something the missionaries remained quiet. Then the kempeis took charge of them, one /TN. kempei/ to each /TN. missionary/ and bound them with rope. Then the auxiliary kempeis, about two to each /TN. missionary/ took over and for the first time the fact that it was a shooting became clear. I walked to a place in the rear near where the officers were. When I reached the spot and looked on there was a large oblong hole. The missionaries were lined up by it in one line. The kempeis who had brought them were there and behind them the auxiliary kempeis were lined up by it in one line. I walked down about where the unit commander was up to the second or third man from the right (as the person used to transmit the orders of the unit commander and the detachment commander). Then I recall that in accordance with the order of the unit commander to fire, they shot (I recall that four or five enlisted men from another unit shot). When it was over, everyone, namely all of the auxiliary kempeis together, cleaned up the remains and returned. After the war was over, I recall that we were assembled and warned by the unit commander not to divulge anything at all concerning this affair. I do not know anything else.

Sketch

Sketch
J
u
n
g
l
e



9 September 1947.
UCHIDA, Fumio,
Former Private First Class, IJA.

I hereby certify the foregoing to be a true and complete translation, to the best of my ability, of the original document in Japanese.

Frederick F. Tremayne
FREDERICK F. TREMAYNE,
Lieutenant (jg) U. S. Naval Reserve
Interpreter.

"Exhibit 8(a)"

0918

私は昭和十九年三月頃まで「A型」
バスターミナルに在りし時、同年三月中通商院
を退院し、その翌年、後援印の
痛みを感ぜし物志を懐く國に居る事
昨も老翁の如く調へに調へ、頂く様
な事が出来ませず遺憾に思つて居る事
仰せに依りて、存に歸り、ゆくりを以て
「見」も矢張り「まおつ」といふ事、不
記憶を呼び起す事、又出来ません
今更私が引もつて、迷惑をなす
「あはれ」も「まじ」から此、矢張り
しんじやくしてやつて下さる御預の申上
法に出来るだけ構うは、この事を書
きます。

"Exhibit 9(1)"

09 19

(2)

の事件。ある日、据野の

カスバのみな橋街道に派遣隊の
位置したのは昭和十九年五月から七月
中頃までであった。その夜間、晝
間の空爆がはかしく、困った時、そ
の頃、私も健康を病み、休
養をとり、それ、と、軍方は、中
知の通、一四年の区別が、た、く、い、も、署
い、て、従、て、事件の日、は、何、何、日、と
は、思、出、せ、ま、せ、な、派遣隊の位置、し
て、は、た、だ、に、問題、は、あ、ま、い、七、月
た、た、か、(月、た、た、か、も、あ、ま、い、ま、い、
か、

は、その時に自動車に乗った

夕方の事、した、た、た、い、と、急、ぎ、に、出
た、ら、中、村、に、尉、は、言、つ、た、の、で、急、ぎ、に、
出、た、と、い、う、事、で、自、動、車、が、来、て、停、ま、り、た
から、その、地、に、乗、つ、て、三、四、百、米、程、

"Exhibit 9(2)"

0920

3 行くと自動車からとまっていた私等
 は自動車の上に乗りたまへ、待つて居る
 と十人位の人を乗つけし中村大尉
 等は元の自動車に乗りましたので
 それを一語に話上を通せられ、森の
 近く自動車から止まりました。車に
 乗った人々から私は二番目の男
 について後手はしほり支に安まらな
 たらぬかと感じたものもほしかったが誰
 かはさうわがしませんでした。そして他のふり
 に坐らせました昔聞いた時に、宮崎隊
 長が中村大尉だしたが、うしろ言つた
 様に思ひますそのはりや、私かも
 ぐくくして居ましたので後の示から
 私の^{（母の）に似て人}にうちましたので、前の方の
 みえその人は二つがうました。後頭
 痛をうたれましたので、私のか
 うしたのは宮崎隊長だと思ひま

0921

4 現場隊は彼の方に居たので、記憶があまりないからと云う

申又自前を返して歸り来た

(2) その時に現場に行つたものは誰と誰が私の隣に誰が居たか

此の事についてよく覚えてゐるが、矢張書き出した通りだと云ふ事も出来

(3) 羽部。命令も現場指揮であつたので、記憶はあまりない

(4) 私のうたなは、証人として出た時に、現場には居たものゝ、名前も覚えてゐたので、よく覚えてゐるが、まさしくそれで私がうたなといふ

事を証人としてあらわす事は出来ず、うたなは、うたなといふ命になつて居たので、うたなも同様です。然し、うたなといふ事は、

"Exhibit 9(4)"

0922

私には自信があります。今例へ
たとひ証拠がないうちでも良心
的に万全にしております

(5) 私の被疑状の情状を
呈する様になつた事案も
帰還途中の舟にも乗起さ
ず浦賀についた同船した人々
からも後れで歸定したのびり
ゆき浦賀の國主病院に入院し
て居たので船中こんな事
をしたが今でもやめさせ

られた尉や市川中尉や小久保
中尉もや家の事と思ひます
家へ歸つても半中位は居るが
といふ事にはなれな 今も
なつた方でありませう

"Exhibit 9(5)"

0923

6. 以上の通りで現案がある
由よりなるものは新にせず
からんが故に其も新案に
下す事せずと致す。

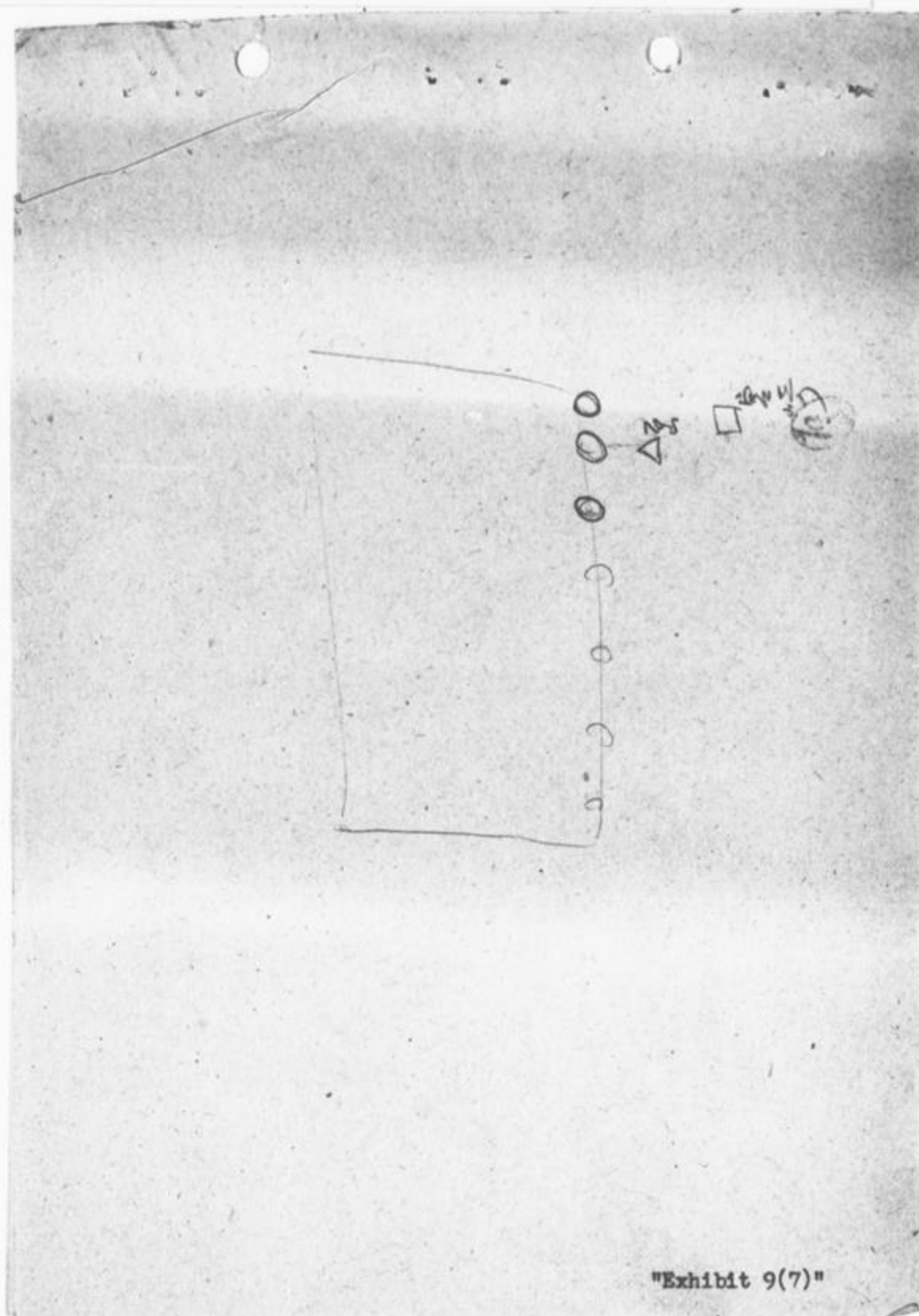
宣 誓

右の通り事毎に問を起さず
を宣誓致しす

昭和二十二年四月二十二日

石山 善吉 蔵

京都府依賀郡下田町二丁目二番一



0925

昭和23年2月27日私が作り且書いた7頁ヨリ成ル上記
日本語ノ陳述書ヲ讀ミ直シマシタ。

昭和22年4月23日私が作ツタ上記ノ陳述書ハ私が知リ
且信ジテナル所ニ眞実且正正確ナルト及ビコノ陳述書
ヲ作ラセルタメ如何ナルキニモ何ラ約束又ハ脅迫ヲ受ケ
ナカッタコトヲ茲ニ誓ヒマス。

石山善藏

Subscribed and sworn to before me this 28th day of January,
1948, at Guam, Marianas Islands.

James J. Kennedy
Lieut. J.S.V.

Guam, M.I.

I, Frederick A. Savory, 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.

I, 石山善藏, have reread the foregoing state-
ment consisting of 7 pages in Japanese, made and written by me
on the 23 day of April, 1947.

I hereby swear that said foregoing statement made on the 23
day of April, 1947 is true and correct to the best of my
knowledge and belief; and that no promises or threats were made at
any time in order to induce me to make those statements.

石山善藏

"Exhibit 9(8)"

0926

Around the end of December, 1944, I contracted "A" type paratyphoid. I was discharged from the hospital around the middle of February the following year. However, since then the back of my head hurts and I am prone to forget things. I think it is deplorable that I was unable to give convincing replies to your investigation yesterday. According to your instructions I returned to the hotel and thought these things over carefully but was only able to recall vague memories. Furthermore, as I have no intention of telling lies or causing you any trouble, I request that you please give me some consideration on this point. Next I will write the facts as well as I can.

1. Date and Outline of the Incident.

The detachment took up their position near the Misuzu Bridge in Gasupan from May, 1944, to about the middle of December. This was a difficult period with the day and night air raids becoming more and more severe. During this time also my health was failing and I was in the habit of resting. As you know, there is no distinction in the seasons in the south and it is always hot. Consequently I do not recall the day or month of the affair. However, there is no mistake in the fact that it was during the time the detachment had taken up their position TN. at Misuzubashi. I am not certain whether it was July or August but it was in the evening. As Captain NAKAMURA said, "Arm yourselves and come out to the road," we went out to the road. As trucks had already come we got in and when we had gone three or four hundred meters the trucks stopped. We waited on top of the trucks as we were. Then about ten persons were brought out and Captain NAKAMURA had them get into the trucks. We were all carried together to the hill and the truck stopped near a woods. As each of us was to take charge of one person, I took charge of the second man, bound his hands behind him and made him walk ahead of me. There were also some men carrying lights but I don't know exactly who they were. Then TN. the persons we brought with us were made to squat down on the edge of a hole. I recall that when everyone had gathered either Unit Commander MIYAZAKI or Captain NAKAMURA said, "Shoot." At that instant, as I was hesitating, somebody in back of me shot the man of whom I was in charge. Thereupon, he fell forward and rolled over. He was shot in the back of the head. I believe the one who did my part of the shooting was Unit Commander MIYAZAKI. I recall this because Unit Commander MIYAZAKI was in back of me. After it was over everybody covered TN. the hole with dirt, got on the trucks again and returned.

2. Who were the people who went to the scene at that time? Who was next to me? I have carefully considered these things but, as I wrote before, I truly cannot recall them.

3. As for the detailed orders, too, since the commands were given on the scene I do not remember them one by one.

4. I tried to recall the names of those who were next to me thinking they could prove I didn't shoot but I just haven't any idea who they were. Therefore, if it is not sufficient proof that I say I didn't shoot, it is the same as TN. if I were one of those who shot. However, I am confident of the fact that I did not shoot. Now, even though there is no proof that I did not shoot, my conscience is clear.

On the ship on the way home it happened that I showed signs of mental derangements and when we landed at URAGA I was sent home after the others who were on the same ship. That is to say, I entered the national hospital at URAGA. I still don't know what kind of things I did on the ship.

I think Captain NAKAMURA, First Lieutenant ICHIKAWA, and Warrant Officer KOKUBO also know about this. Even after I returned home I lived in a dream for half a year. I am getting better now.

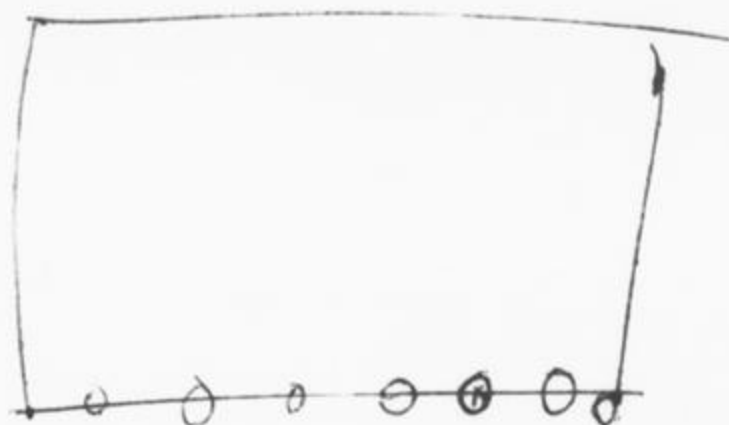
Because, as mentioned above, I have no bad intentions of withholding any information, I beg that you please take this point into consideration.

Oath

I swear that the above is true and that there are no mistakes.

23 April 1947.

ISHIYAMA, Jinzo
Kyoto-shi, Fushimi-ku,
Kyo-machi, Ni-chome,
242-1.



△ ISHIYAMA

□ MIYAZAKI

I hereby certify the foregoing to be a true and complete translation,
to the best of my ability, of the original document in Japanese.

Frederick F. Tremayne
FREDERICK F. TREMAYNE,
Lieutenant (junior grade),
United States Naval Reserve,
Interpreter.

昭和二十二年

三月十七日 東京 警察 十一

陳述書 *Chakaji Sugimoto*

一、詳細に市川刑官が知らせて居ります
(東京市川区)

二、私力知って居るに限る申上ります

四日時 昭和十九年七八月頃、夜(ハクニ島針中)

四場所 ガスパン台 上南方約三千米位

(別紙要図参照)

四現場へ行った者

隊長 中佐 宮崎有恒

副官 少尉 市川英吉

時方隊長 村松野義一 時方係長 村松周保

庶務 曹長 杉本武治 軍務 曹長 杉本武治(?)

軍務 曹長 杉本武治 軍務 曹長 杉本武治

"Exhibit 10(1)"

0930

第一軍司令部

中尉 中村 敬夫

軍務 一宮正雄

大尉 中村 芳太郎

常任 中村 芳太郎

軍務 尾崎 俊成

山田 清

佐長 中川 武夫 (???) 判知トナリ

補佐 佐々 若干名 (海軍市川少尉 兼 知シアリ)

佐田 邦彦 山本 中尉 (判知) (自動車部隊)

兵 若干名

自動車 二台

命令ハ直接 官邸 中佐 (隊長) より下達サレタルガ

目的ハ現場ニ行クマデ判リマセンデシタ

宣教師及島民ハ当時 南極館ニ居リマシタ

本道路と二自動車ヲ置キ
 宮崎中佐ト第一隊長中村中尉カ宣教師、宿舎ニ行き
 全員ヲ連レテ来ラレ自動車ニ乗セマシタ
 途中マデハ自動車ヲ行キツレカラハ目的地マデハ一名ノ
 宣教師トシニ名免附添ウテ行キマシタ
 私ハ其時ハ第三組ト言フデ補中憲兵(氏名ハ忘レマシタ)
 ト二人デ前カラ三番目ヲ位置シテ現場マデ行ク
 現場ニウイタラ右カラ一組ニ組ニ組四組五組ト言フ
 奥合ニ構ヒマシタ
 其外デハジメテ隊長(宮崎中佐)ヨリ命令サレマシタ
 カ右ヨリ一組ニ組ニ組ハ住日部隊ノ兵隊ニ実施サ
 るル様ニ命令サレマシタノデ私ハ其場所カラ二、三

十二行

"Exhibit 10(2)"

0932

米後退シロソウヲ右手ニ持ツテ見テ居リマシタ
市川少尉モ我カラニミテ米置レタ場所ニロソウヲ持ツ
テ見テ居リマシタ
私が直撃ニ手ヲ下シテハ居ラナイト云フ事ハ調ヘテ
行クト立證サレルコトデス
又當時ノ模様才互ノ関係位置等記憶シテ居リ
マシタ^{ハ大抵}別紙ノ通りデス
全部処分が終ツテカラ帰隊致シマシタ
以上ノ通りテ我ハ現場ニハ一掃ニ行ツタガデス
松ハ本件事實ニ関シ否定スル理由ハ全クナイン
デスカ

上官^ヤ中岡^ヤ同僚(友人)ニ対シ友情ニ於テ忍ビ

5
208

得々カワタ譯テスガ

然レ市川少尉(副官)ヨリ口述者(自筆)が提
出サレテ居ルノデ最早之次上取調官ニ付シ
手教ヲ煩シテハ不サレタ悟リ茲ニ真相ヲ陳述
シタ次第デス

現場一般周囲の裏面ヲ見テ下サイ

○参考

一市川副官(市川少尉)ハ隊長ノ輔佐役デアリ
テコト隊長が問 違フテ行動スル場合ハ之ニ答ス
ル意見ヲ述ベル事ガあるト思ヒマス
又他ノ幹部等第一中隊中にお教テ付
伏野君一持お留セモソウアノト考ヘマス

十二行

"Exhibit 10(3)"

0934

般一圖

「私達下級者い言ッタクテ問題ニシテ是レナリ
決定シタルト云々今トナワテ下達サレルデアツク
現場」



至大和村

至アミミキ坂上場

7
 104

一、日時、記憶の判明トシテニカ関係位置ハ左圖ノ様ニ
思ヒマス

ニ、右ヨリ三番目
マデノ距離約
ノ距離
以下各員が
実施シマシタ

三、各組ノ実施者ニ
ツイテハ判明トシテ
ンガ
右ヨリ三番目マデ
身障ガヤリタマデ
利ノ以外ニ実施
シテイ者ガアリマス
ニ名アゲマス

穴

○実施者(一)

○実施者(二)

○実施者(三)

○実施者(四)

○実施者(五)

○実施者(六)

○実施者(七)

○実施者(八)

○実施者(九)

○実施者(十)

○実施者(十一)

○実施者(十二)

○実施者(十三)

○実施者(十四)

○実施者(十五)

○実施者(十六)

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○実施者(九十九)

○実施者(一百)

十二行

"Exhibit 10(4)"

松平

0937

昭和~~22~~²³年~~8~~²⁷月~~×~~²⁷日私が作り且ツ書いた頁ヨリ成ル上記
日本語ノ陳述書ヲ讀ミ直シマシタ。

昭和~~22~~²³年~~3~~²⁷月~~17~~²⁷日私が作ツタ上記ノ陳述書ハ私が知
用ツ信ジテナル所ニ眞実且ツ正確ナルコト及ビゴノ陳述書
ヲ作ラセルタメ如何ナルキニモ何ラ約束又ハ脅迫ヲ受ケ
ナカッタコトヲ茲ニ誓ヒマス。

杉本武治

Subscribed and sworn to before me this 28th day of January,
1948, at Guam, Marianas Islands.

James J. Kenny
Lieut. JSN

Guam, M.I.

I, Frederick A. Savory, 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.

I, 杉本武治, have reread the foregoing state-
ment consisting of 8 pages in Japanese, made and written by me
on the 17 day of March, 1947.

I hereby swear that said foregoing statement made on the 17
day of March, 1947 is true and correct to the best of my
knowledge and belief; and that no promises or threats were made at
any time in order to induce me to make these statements.

杉本武治

"Exhibit 10(5)"

0938

17 March
Sugamo Prison

AFFIDAVIT

Sgt. Major SUGIMOTO, Takeji
(Headquarters, South Seas Kempetai)

1. Adjutant ICHIKAWA knows the details.
2. I will tell as much as I know.
 - a) Date and time - One night in July or August 1944 (during the battle of Peleliu).
 - b) Place - Gasupan Hill, about 3,000 meters to the south (refer to outline map on separate paper).
 - c) Persons who went to the scene:

Unit Commander - Lieutenant Colonel MIYAZAKI, Aritsune;
Adjutant - 2nd Lieutenant ICHIKAWA, Yokichi;
Head of Special Police - 2nd Lieutenant SANO, Giichi;
Special Police - Warrant Officer AJIOKA, Misao;
General Affairs - Sergeant Major SUGIMOTO, Takeji;
Sergeant TAKAHASHI, Genji (?) not sure;
Sergeant YOKOYAMA, Kyohisa;
Sergeant TAMAMOTO, Tadashi

No. 1 Detachment Commander - 1st Lieutenant NAKAMURA, Kazuo;
Sergeant ICHIMIYA, Masao;
Warrant Officer NAKAMURA, Yoshitaro;
Sergeant Major KOKUBO, Chihisa;
Sergeant OZAKI, Katsutoshi;
Sergeant YAMADA, Kiyoshi;
Corporal NAKAGAWA, Takeo (?)
not sure;

Auxiliary Kempeis - a few (2nd Lieutenant ICHIKAWA knows the details);

Sumida Unit - 1st Lt. YAMAMOTO (adjutant) (Motor Unit)
A few enlisted men.
Two trucks.

The orders were given out directly by Lieutenant Colonel MIYAZAKI (unit commander) but we did not know their purpose until we went to the scene.

The missionaries and the natives were in the Nantaku barracks at that time.

The trucks were on the main road.

Lieutenant-Colonel MIYAZAKI and 1st Lieutenant NAKAMURA, No. 1 Detachment Commander, went to the missionaries' barracks, brought all of them back and loaded them on the trucks.

We went part way in the trucks and then two men accompanied each missionary to the place where we were going.

At that time as I was in what was called the No. 3 Team, two of us, one auxiliary kempei (I have forgotten his name) and myself, went to the scene third in line from the front.

When we arrived at the scene we were lined up from the right in teams, Team No. 1, Team No. 2, Team No. 3, Team No. 4, Team No. 5, etc.

There, for the first time we received orders from the unit commander (Lieutenant Colonel MIYAZAKI) that the enlisted men from the Sumida Unit were to carry out /TN - the execution/ for the No. 1 team, the No. 2 team and the No. 3 team, counting from the right. Therefore I withdrew two or three meters from that place and looked on holding a candle in my right hand. 2nd Lieutenant ICHIKAWA was also holding a candle and looking on from a spot about two or three meters away from me.

If the case is thoroughly investigated it will be proved that I did not participate directly.

I do not remember the exact appearance of the scene or our relative positions but it was generally as shown on the separate paper.

After the entire execution was over we returned to the unit.

As shown above, I only went to the scene with everyone. There is absolutely no reason for me to have denied these facts except that out of friendship for my buddies and superior officers, I could not bear /TN - to reveal them/.

However, since a statement (written in his hand) has been presented by 2nd Lieutenant ICHIKAWA (the adjutant), I realize it would now be wrong to cause the investigator any more trouble and so I have told the truth.

Please look at the map of the general location.

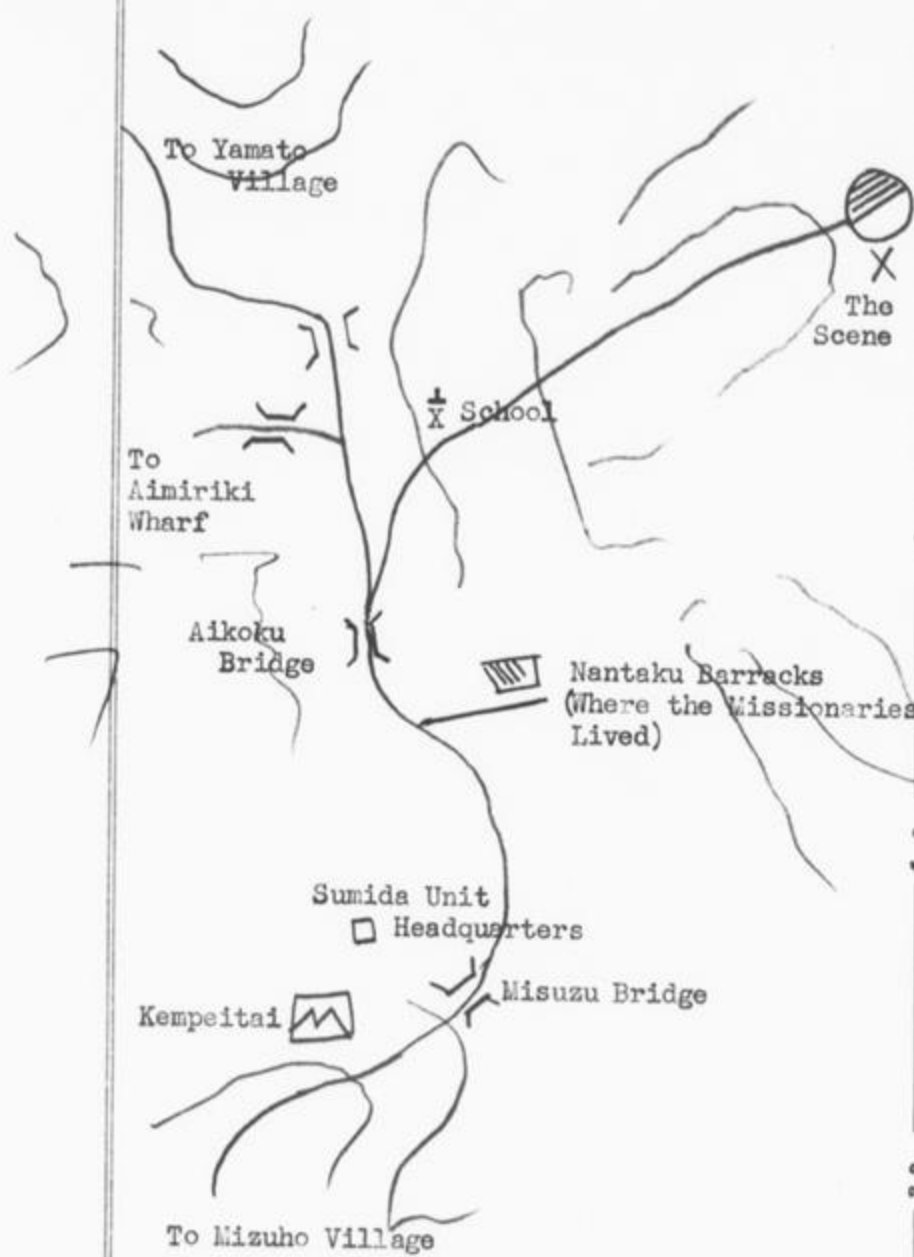
Reference

1. Adjutant ICHIKAWA (ICHIKAWA, Yokichi) was the unit commander's assistant and when the unit commander made a mistake in his actions I believe he could voice his opinion against it.

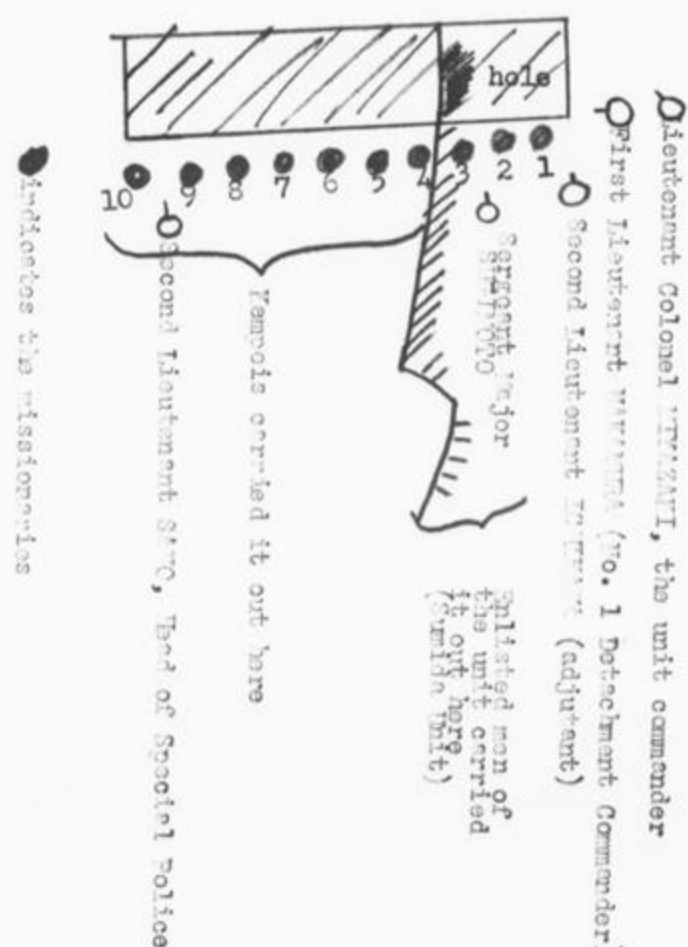
I also think the other leaders, No. 1 Detachment Commander 1st Lieutenant NAKAMURA, Kazuo, and Head of Special Police SANO, Giichi were able to do the same thing.

2. When we low ranking men said anything we were not taken seriously. From the standpoint of decision, orders were made up and passed on to us.

Map of General Locations



1. My memories of that time are not very clear but I think, in general, the relative positions were as they are in the following map.
2. Up to the third man from the right were members of the motor transport unit. From there on down the line, kempeis carried out the execution.
3. I am not absolutely clear about the executioners in each team, but since enlisted men who carried it out up to the third man from the right there were two other T.N. kempeis besides myself who did not take part in carrying out the execution.



I saw with my own eyes:

Warrant Officer NAKAMURA (NAKAMURA, Yoshitaro) execute with Lieutenant Colonel MIYAZAKI's pistol and the enlisted men of the unit execute with rifles;

Lieutenant Colonel MIYAZAKI (unit commander) shoot last to make sure they were dead.

As for the rest, since it was done by candle light because it was dark, I was unable to see very far. For the details please investigate Adjutant ICHIKAWA (ICHIKAWA, Yokichi).

Reference:

1. On account of the intense airraids there was quite a food shortage going on at that time.
2. Unit Commander MIYAZAKI's nerves seemed to be on edge on account of the advances on Peleliu Island.

I hereby certify the foregoing to be a true and complete translation, to the best of my ability, of the original document in Japanese.

Frederick F. Fremayne
Frederick F. Fremayne,
Lieutenant (junior grade),
United States Naval Reserve,
Interpreter.

御取調件、関して詳細に記し、通り申上げます

大記

一日時 昭和十九年七八月頃夜（当時ベトナム戦争中）

二場所 パラオ本島カスパン台上

三編成人員

小隊長隊関係

隊長中佐宮崎有恒

特高係

副官少尉市川忠吉

軍曹 玉本 忠

特高係長

灰粉係

少尉 佐野義一

曹長 杉本武治

主計見習士官玉野井浩

軍曹 横山重壽

主計准尉 畠山芳人

昭和 年 月 日

"Exhibit 11(1)"

0944

12

No. 2

昭和 年 月 日

第一憲兵隊長

中尉 中村 敦夫

准尉 中村 芳太郎

曹長 小久保 干尋

石山 善藏

軍曹 宮 正雄

尾崎 健敏

兵長 永田 義盛

補部憲兵

今泉 兵長

川崎 一等兵

江連 兵長

中村 上等兵

以下不詳

(山田 部隊 (自動車部隊))

自動車 武台

山本 副官

及兵 五十六名

(兵 小銃携行)

"Exhibit 11(2)"

0945

43

No. 3

以上ノ人員ハ私が現場ニ行ク途中、又ハ自動車エニテ
見タト思フ者デアリマス

(●)人員ハ余リ年月ヲ経過シテ居ルバテ多少相異セル箇
所モアルヤモ知ラセシ故他ノ人達ニシテ調査ニ上判定下サイ

由前後ノ模様

前記日時ノ午後(野間不詳)市川別荘ヨリ突然
今カラ名ヲ呼バレタモノハ集金スル様ニ達セラレ私ハ集
金致シマシタ

其処へ隊長が来ラレテ警備員ハ前列ニ補助警備員ハ
後列ニ並ブ様ニ命ゼラレ更ニ右ヨリ番隊ヲササゲタ後
番隊一番ハ一組ニ番ハ二組(以下同様)ニ編成サレ
ベシタ

昭和 年 月 日

"Exhibit 11(3)"

0946

No. 4

204

私ハ其ノ時ニ番目カ三番目ニ居リマシタ
私ノ後列ハ川島一等兵デアリマシタノデ川島一等兵ト紐ミ
合セトナル

隊長ハ其ノ時ハ目的ハ達スルコトナリ各組ノ補塞ハ捕縄
ヲ準備シタ食後今整列シタ者ハ全員集合スルコト
各人ノ服装ハ武装トス

而シテ一同解散スル

第二面目(夕食後)スルト隊長ヨリ

一、宣教師ヲ処分スル

二、各組ハ宣教師ガ自動車ヨリ下車シタ順序ニ

之ニ附添イ現場ニテ連行スル事

其ノ際宣教師ヲ用意セル捕縄ニテ捕ルコト

三、事件ハ他責セサルコト

昭和 年 月 日

"Exhibit 11(4)"

0947

405

No. 5

昭和 年 月 日

四 現場ニ於ケル方法ニ就テ、現地ニテ指示スル

以テヲ口達サレシタ

別ニ市川別室ハ第一回目集會ガアリ第二回目集會

ニテモ同ニ隊長ヲ自動車準備、スコップ等ヲ

準備スルニ言ハレテ之等ヲ準備致シタ

尚モ此ハ口達一ニ記述スレタリ(マッケー館舎)

一 同隊ヲ出發シタハ夕刻(日没後)デシタ

私達一行ガ本道路上ニハルト既ニ住田別室ノ山本

別室及名隊五七名ガ中銃ヲ持ッテ道路ノ左側

(住田別室入口)ニ待ッテ居リタ

其ノ中自動車(便乗)ガニ台乗マシタノデコレニ便乗

宜教師ノ館舎(南館館舎)ニ向フ館舎附近ニテ

自動車ハ本道路上ニ停車シ私達ハ自動車力

"Exhibit 11(5)"

0948

106

106

昭和 年 月 日

ラ下車シテ結ッテ居ル所ニ言ヒテ下車シテ結ッテ居リマシタ
隊長ト中村少隊長(中村教夫)ニ人デ宣教師ノ一行ヲ
自動車ノ所ニ連シテ参リマシタ
宣教師ノ一行ハ各人ト荷物ヲ持ッテ自動車ニ乗車シ
シマシタソレカラ私達ハ其ノ車ニ乗車シ現地ニ向ヒマシタ
現場ヨリニミヨネ平平デ自動車カラ全部下車シマシタ
其ノ時前ニ隊長ヲ連シテアノ通りノ私ト川島ノ等々ハ
ニ番目カニ番目ニ下車シタ人ノ後ニ附添イマシタ
スルナ川島ノ等々ハ用意セシ捕縄ニテ捕リマシタ
ソレカラ先頭(中村教夫)ノ後ヲ歩イテ行キマシタ途中
暗イノデ道ニ迷ッタリシテ目的地ニ到着スル
現場ニ到着スルト既ニ穴ハ掘ッテアリマシタ
穴ノ前ニ宣教師ハ坐イラサレ隊長ハスペイン語ニテ何カ

"Exhibit 11(6)"

0949

107

2

言ハシマシタ

其ノ際隊長ハ佐田部隊ノ各隊ニモ第一組ヲサシ組ニテ
ハ實施サセル様ニ本副官ヲ通ジテ言ハシマシタノデ私ハ早
速ニ退ッテ「ロソク」ヲ持ッテ見テ居リマシタ

方時市川副官モ「ロソク」ヲ持ッテ私ノ右方向ニ監督
シテ居リマシタ

現場ニ於ケル射撃ハ全團ハ中村中尉ガ實施シマシタ
現場ニ於ケル各人ノ関係位置ハ略ニ別圖ノ通りデアリマス

私が目撃シタハ佐田部隊ノ各隊ハ實施スル場合ト

隊長及中村中尉ガ最後ニ實施シタ場合デアリマス

隊長ハ当日ハ大型小型ニ挺ノ霰銃ヲ持ッテ行キマシタ

中村中尉ハ霰銃ハ隊長ノ大型霰銃ヲ實施サレマシタ

昭和 年 月 日

"Exhibit 11(7)"

0950

1108

No. 8

昭和 年 月 日

處分ヲ終了シテカラ中村ヲ射指揮ニテ補助要兵
ガエラカケテ居リマシタ
帰隊シタハ相方違イ時間デシタ(時間不詳)
當時私ハ同僚ニ付シ
「私ハヤラナイデ実実ニ哀カシタ」
ト述懐シテ居リマシタ
夏後横山軍曹ハトモニ氣持が悪カシタ、
詰ニ依テ横山軍曹ハ島民ノ人ヲ担任シタガ強ガソレタノ
デ其ノ残ヲ中村准尉サンガ實施シタト云ツテ居リマシタ
翌日中村准尉ハ久保善長尾崎等軍曹ガ宣教師
ノ遺品ヨリ燧都レテ居ルト云フ事ヲ聞キマシタ
以上ノ事實ニ関レテ終戦後隊長より若シ親バガ
マツタ場合ハ再デフイリッピン経由ニテ歸ヘシタト答

"Exhibit 11(8)"

109

No. 2

昭和 年 月 日

少佐

四月十九日

茲ニ宜シク致シマス

元南洋軍兵隊本部

陸軍軍務局長 杉本武治

ハル様ニ嚴令サレシク
本件實施ニ付スル計画ハ總テ部長ニ於テ為サ
レタ旨後日ニサウテ聞カサマシク

右ニ通テ相達アリマセン

"Exhibit 11(9)"

0952

No. 10

(富貴性宜教訓之語を何言に之を修養)

... 官邸在江北道三子住前隊副官(山生村)可通三子
每兩和隊各隊七家稅七路二分今夕

○中有數人

○山本平尉(佐田松樹別當)

① 平三六 (平三六)

附推好

Q7

○

○

Q.

④ 4

01

C. E.

Q.

9

杉本町長力推選して良才屋々佳留
杉本町長ハ書籍ヲ三冊目ヨリ与ヘシク

板要長，比例六

林無忌

已修 1

玉女泉，喉下咽上之文

○ 从野、野、此、通、元、亨

一樓分書部：史部、子部、集部

(吾組捕知事は、全部は、ソウな花の計、
シヤリテ、現捕ニ於て、コレ大の、サセ、セ、
、

八、各組：第一軍兵一名、補給車兵一名、付之附隊、以之爲二名。

二、名將殺，信譽，實施中。子毛部下之強弱，不為多少者。

サレハコトヲズレテ一定ノ主眼ヲセシメテ秘ノ記憶ニテ居ル範圍ヲ

$\frac{1}{x} = x^{-1}$

4. 三番目二丁、住田部隊、各隊分實施 各七丁ノ (右三)

"Exhibit 11(10)"

0953

昭和23年1月22日私が作り且ツ書いた10頁ヨリ成ル上記
日本語ノ陳述書ヲ讀ミ直シマシタ。

昭和23年4月19日私が作ツタ上記ノ陳述書ハ私が知り
且ツ信ジテナル所ニ眞実且ツ正確ナル所及ビコノ陳述書
ヲ作ラセルタメ如何ナルキニモ何ラ約束又ハ脅迫ヲ受ケ
ナカッタコトヲ茲ニ誓ヒマス。

杉本武治

Subscribed and sworn to before me this 28th day of January,
1948, at Guam, Marianas Islands.

James P. Kenny
Lieut. USA

Guam, M.I.

I, Frederick A. Savory, 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.

I, 杉本武治, have reread the foregoing state-
ment consisting of 10 pages in Japanese, made and written by me
on the 19 day of April, 1947.

I hereby swear that said foregoing statement made on the 19
day of April, 1947 is true and correct to the best of my
knowledge and belief; and that no promises or threats were made at
any time in order to induce me to make these statements.

杉本武治

"Exhibit 11(11)"

0954

In the following statement I will relate the details concerning the case under investigation.

1. Date and Time - One night in July or August, 1944 (battle of Peleliu Island was in progress at that time).
2. Place - Gasupan Hill, Palau Island
3. Organization and Personnel

A) Members of the kempeitai:

Unit Commander Lieutenant Colonel MIYAZAKI, Artisuna;
Adjutant Second Lieutenant ICHIKAWA, Yokichi;
Head of Special Police Second Lieutenant SANO, Giichi;
Probationary Intendence Officer TAMANOI, Hiroshi;
Intendence Warrant Officer HATAKEYAMA, Yoshito.

Members of Special Police:

Sergeant TAMAMOTO, Tadashi.

Member of General Affairs Department:

Sergeant YOKOYAMA, Kyohisa.

No. 1 Kempeitai Detachment Commander First Lieutenant
NAKAMURA, Kasuo;
Warrant Officer NAKAMURA, Yoshitaro;
Sergeant Major KOKUBO, Chihiro;
Sergeant Major ISHIYAMA, Jinso;
Sergeant ICHIMIYA, Masao;
Sergeant OZAKI, Katsutoshi;
Corporal HAGATOME, Yoshimori.

Auxiliary Kempeis:

Leading Private IMAIZUMI;
Leading Private HZURE;
Private First Class KAWASHIMA;
Superior Private NAKAMURA;

Rest unknown.

B) Samida Unit (Motor Transport Unit)

Two trucks
Adjutant YAMAMOTO and five or six enlisted men (enlisted men carried rifles).

The above personnel are men whom I believe I saw either on the way to the scene or in the trucks.

Since a number of years have passed there may be some errors in the personnel. Therefore, please make your decision after investigating the other men.

4. Sequence of Events.

In the afternoon of the date written above (hour unknown) Adjutant ICHIKAWA announced unexpectedly that those whose names were called would fall in and I fell in.

The unit commander came to that place, gave orders for the kempels to line up in front and the auxiliary kempels in the rear, gave us numbers counting from the right and after that formed us as follows: number ones would be Team Number One, number twos would be Team Number Two (threes fours and fives and so on in the same manner).

At that time I was either second or third.

As Private First Class KAWASHIMA was in the line behind me I paired up with Private First Class KAWASHIMA.

At that time the unit commander did not announce the purpose of this. The auxiliary kempels were to prepare ropes. All these men who were formed at the time would fall in after the evening meal. The uniform for each man would include arms.

Then everybody fell out.

When we assembled for the second time (after the evening meal) we were notified by the unit commander to the following effect:

1. We were going to dispose of the missionaries.
2. Each team will take charge of a missionary in the order in which the missionaries get off the trucks and accompany him to the scene.
3. Not to tell anybody else of this affair.
4. We would be instructed at the spot concerning the measures to be used at the scene.

At the first assembly, Adjutant ICHIKAWA was told by the unit commander to have trucks ready and to have shovels, etc., prepared. He made these preparations in time for the second assembly.

Each man was provided with one candle (including one match).

It was evening when we all left the unit together (after sunset).

When our party came out on the main road Adjutant YAMAMOTO and five or six men from the Sumida Unit who were carrying rifles were already there waiting on the left hand side of the road (entrance to the Sumida Unit).

As two trucks had already come we got into these and went towards the missionaries barracks (Mantaku Barracks). The trucks stopped on the main road near the barracks and, as we were told to get out of the trucks and wait, we got out of the trucks and waited. The unit commander and Detachment Commander HAKAMURA (HAKAMURA, Kazuo) brought the party of missionaries to the trucks themselves.

Each man in the party of missionaries carried his baggage in his hand and got into a truck. After that we got into that truck and started for the scene.

About two or three hundred meters from the scene all personnel got off the truck.

At that time, as had been announced by the unit commander previously, Private First Class KAWASHIMA and myself took charge of the man who got out second or third.

Then Private First Class KAWASHIMA tied him up with the rope he had provided.

After that we waited behind the lead-off man (Warrant Officer HAKAMURA). We arrived at our destination after having had a great deal of difficulty finding the road on the way because it was dark.

When we arrived on the scene a hole had already been dug.

The missionaries were made to squat down in front of the hole and the unit commander said something in Spanish.

At that moment through Adjutant YAMAMOTO the unit commander said to have the soldiers of the Sumida Unit carry out the execution from team one through team three. Therefore, I immediately stepped back and looked on holding a candle.

At that time Adjutant ICHIKAWA was also holding a candle and was supervising the affair on my right.

At the scene, First Lieutenant HAKAMURA gave the signal to fire. The position of each man involved at the scene is roughly as drawn in the sketch.

With my own eyes I saw the soldiers of the Sumida Unit execute and lastly, the unit commander and Warrant Officer HAKAMURA execute.

That day the unit commander brought two pistols, a large type one and a small type one. Warrant Officer HAKAMURA experimentally executed with the unit commander's small type pistol.

When the execution was over the auxiliary kampeis covered /TN. the missionaries/ over with dirt under the direction of First Lieutenant HAKAMURA.

It was rather late when we got back to the unit (time unknown).

At that time, when I reminisced with my buddies I said, "It was very fortunate that I did not shoot."

After that Sergeant YOKOYAMA felt absolutely terrible.

According to the stories, they were saying that Sergeant YOKOYAMA had charge of a native but his bullet had missed and therefore Warrant Officer HAKAMURA executed the remaining one. I heard that the next day Warrant Officer HAKAMURA, Sergeant Major KOKUBO, Sergeant OZAKI and others burned the remaining belongings of the missionaries.

In regard to the above facts, after the war was over we were given strict orders by the unit commander to say that they were sent back via the Philippines in case there was any investigation.

Some days later I heard that the plans for the carrying out of this execution were all made by the unit commander.

There are no errors in the above.

Formerly stationed at
South Seas Kempetai Headquarters,
Kampai Sergeant Major, IJA
SUGIMOTO, Takeji.
19 April.

"Exhibit 11(a)(3)"

1. I do not remember the position of Probationary Intendence Officer TAMANOI.
2. I also do not remember the positions of Sergeant Major ISHIYAMA, Sergeant OZAKI, and Corporal NAGATOME.

(Position from which Lieutenant Colonel MIYAZAKI said something to the Missionaries in Spanish.)

Lieutenant Colonel MIYAZAKI was in this vicinity and through the adjutant of the Sumida Unit (First Lieutenant YAMAMOTO) gave orders for the soldiers of the Sumida Unit to execute.

First Lieutenant NAKAMURA, Kazuo

First Lieutenant YAMAMOTO (adjutant of the Sumida Unit)

Second Lieutenant ICHIKAWA (Kempeitai adjutant)

1. Warrant Officer NAKAMURA

2. Position to which Sergeant Major SUGIMOTO withdrew and looked on. Sergeant Major was either Second or Third.

3.

On the left of Sergeant Major SUGIMOTO

4.

Sergeant Major KOKUBO
Sergeant ICHIMIYA

5.

I believe Sergeant TAMAMOTO came in this position

6.

7.

Second Lieutenant SANO was in this vicinity

8.

Sergeant YOKOYAMA was in this vicinity.

9.

(The auxiliary kempei member of each team possessed one candle each and lit them at the scene.)

1. In each team one kempei and one auxiliary kempei was in attendance.
2. As each officer was supervising his subordinates during the carrying out of the execution and more or less moved about to each place, their positions were not fixed; but in general, I believe they were as shown on the diagram.
3. The position of the member of each team who took part in carrying out the execution in general is also as shown on the diagram.
4. As far as the third position, soldiers of the Sumida Unit executed (from the right).

"Exhibit 11(a)(4)"

0958

I hereby certify the foregoing, consisting of three (3) type-written pages and one (1) sketch map, to be a true and complete translation, to the best of my ability, of the original document in Japanese.

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve,
Interpreter.

"Exhibit 11(a)(5)"

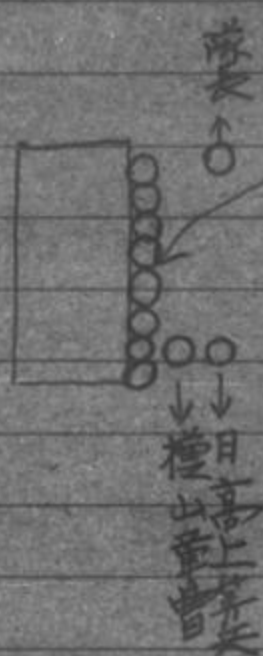
0959

昭和十九年十月半頃、思ヒマス分隊長、命令ニテ
空襲ガ激シクナツタカラ、ガスパレニ居ルセンキョウレ
ヲヒナシサセルト言ッテ憲兵及補助憲兵ガ
ニ台ノトラックニ分乗サセラルマツル自分ハ本当ニ
ヒナシサセル事ト思ヒマシタ分隊長、命令
ニテセンキョウレノ居ル處ニ行キマシタ其ノ時
分隊長ハ此處デハ空襲デ危イカラ安全ナ
所ニヒナシサセルト言ツタノヲ聞キマシタ
ソレカラニ台ノ自動車ニ分乗シマシタガスパレニ
行キマシタソコデ自動車カラ降りマシテ
センキョウレノ後ニ憲兵ガ一名ツキ付キマ
シタ私ハ其ノ時横山車番ノ後ニ付キマシタ
マガテ憲兵ガ縄ヲカケマシタソレテ現場
ニ付キマシタ現場ニ行ッテ見ルト長サニ間
中一間位ト思フ穴ガ掘ッテ有リマシタ
其ノ前ニ一例ニ座ラセタヲ見マシタソノ時私
ハ横山車番ノ後ニ居リマシタカ隊長、命令
有ル前ニ私ハあまり近付危イト思ヒマシタ右
ノ方ニ行キマシタ其ノ時隊長ハ右後ノ方ニ
居ツト記憶シマスガソコデウテノ命令ヲ下
シマシタ其ノ時発射ハ大体同時位ト記憶ヲ
致シテ居リマス

"Exhibit 12(1)"

0960

其レカラ隊長ノ命令ニテ後、殆末ヲ致シマシタ
ソレテ全員ニテ歸リマシタ 歸路ハ自動車ト記
憶レテ居リマス



上記、事實ニ相違アリマセン

昭和二十二年九月九日

日高金之助 (印)

"Exhibit 12(2)"

0961

昭和二十三年三月二日私が作り且ツ書いた三頁ヨリ成ル上記
日本語ノ陳述書ヲ讀ミ直シマシタ。

昭和二十三年九月二日私が作ツタ上記ノ陳述書ハ私が知り
且ツ信ジテナル限り眞実且ツ正確ナルコト及ビコノ陳述書
ヲ作ラセルタメ如何ナルキニモ何ラノ約束又ハ脅迫ヲ受ケ
ナカッタコトヲ茲ニ誓ヒマス。

----- 日 高 金 之 助 -----

Subscribed and sworn to before me this 1st day of February,
1948, at Guam, Marianas Islands.

James P. Kenney
Lieut. USN

Guam, M.I.

I, Cyrus T. Kennedy, 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.

Cyrus T. Kennedy
Interpreter. Stosick

I, _____, have reread the foregoing state-
ment consisting of _____ pages in Japanese, made and written by me
on the _____ day of _____, 194_____.

I hereby swear that said foregoing statement made on the _____
day of _____, 194_____ is true and correct to the best of my
knowledge and belief; and that no promises or threats were made at
any time in order to induce me to make these statements.

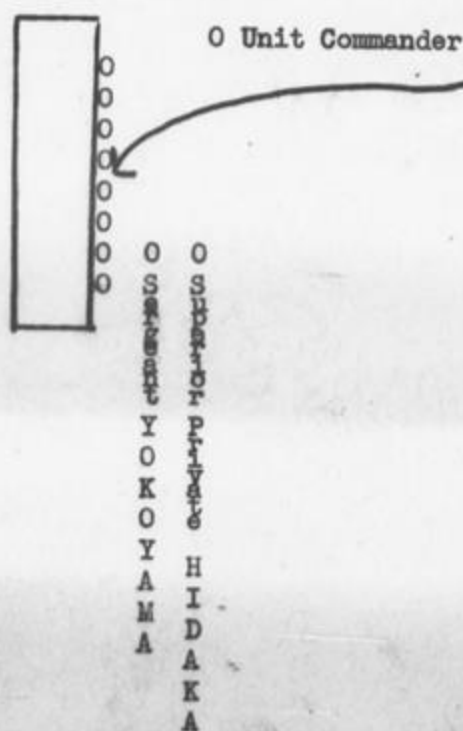
"Exhibit 12(3)"

0962

I think it was about the middle of October, 1944. We were told that by order of the detachment commander we were to move the missionaries on GASUPAN to a safe place because the air raids had become severe. The kempeis and auxiliary kempeis were loaded into two trucks. I honestly thought we were going to move them to a place of safety. At the order of the detachment commander we went to the place where the missionaries were. Then I heard the detachment commander say that as the air raids here were dangerous we will move you to a safe place.

After that they got in the trucks and we went to GASUPAN Hill. There we got out of the trucks and one the kempeis followed behind the missionaries, one kempei to each missionary. At that time I followed Sergeant YOKOYAMA. Presently, the kempeis tied the missionaries with a rope and we went to the scene. When we got to the place and looked around, a hole had been dug which I think was about twelve feet long and six feet wide. I saw them ~~TN~~ the missionaries/ being made to sit down in front of it in one line. At that time I was behind Sergeant YOKOYAMA but, thinking it was dangerous to be too close, I moved over to the right before the orders of the unit commander were given. I recall that at that time the unit commander was in the rear and to the right and from there he gave the order to fire, I remember that then the firing took place at about the same instant.

After that, at the order of the unit commander, the final dispositions were made and all personnel returned. I recall that the trip back was made in the trucks.



The above facts are without error.

9 September 1947

HIDAKA, Kinnosuke

I hereby certify that the foregoing is a true and complete translation,
to the best of my ability, of the original document in Japanese.

Frederick F. Tremayne
FREDERICK F. TREMAYNE,
Lieutenant (JG), USNR
Interpreter.

- 2 -

"Exhibit 12(a)(2)"

0964

傳述書

本籍 香川県三豊郡紀伊村大字木之郷

六七番地ノ一

現住所 石 全

横山 匡 喜

大正八年十一月二十日生

私ハ本書ヲ以テ「スペイン」宣教師射殺事件ニ

付申上ケマス

一 本件ハ昭和十九年ノ七月頃タツト思ヒ

マスガ「ガスパン」ムロニ於テ行ハレマシタ

一 当日ノ夕刻私ハ舍内ニ居リマシタラ唯タカヨク

憶エテ居リマセンガ宿舍ノ外テ「直」糧秣庫

ノ外ニ集合ト云フ命令ヲ傳ヘテ來タ者ガア

昭和 年 月 日

"Exhibit 13(1)"

0965

documented from character 招

四ノ路入

No. 3

昭和 年 月 日

リマシカラ糧秣庫ノ前ニ集合致シマシタ
集合位置別紙^四ニ
此処ニ於テ隊長^カヲ
スル命令ヲ受ケマシタ
此ノ時後頭部ヲ射害セヨト云ハレマシタ
私ハ其ハレカラ軍装ヲ整ヘ皆ノ者ニ從ヒ宿舍
ヨリ百米程離レタ道路上^(カ)ニ^カスパンヨリ瑞穂^ニ
通ス^ニニ出マシタラトラックガニ輛準備サ
レテアリマシタ私ハニ輛目ノトラックニ乗車致
シマシタガ一輛目ノトラックハ先ニ出^ニマシマ
シタニ輛目ノトラックハ少シ後レテ出發シ
マシタ(同乗車中ニハ佐野少尉、玉本軍曹
等^ニカ居タノデハ無^ニイカト思フ)

"Exhibit 13(2)"

No. 3

昭和 年 月 日

一、ガスパン愛國橋ノ処ニ於テ一應停車致シ
マシタ 暫ク待ツテ居リマスト宣教師達
カ(一輛目ノトラックニ乗車シテ居タ者デハ
ナイカト思フガ暗夜ノ事ヲ判ラヌ
ニ連シラレテ來マシタカラ私ハ之ヲ同乗サセ
マシタラフトラックハ直ニ出發 ガスパンノ台上
ニ登ツテ行キマシタ
一、現場ニ百米位ノ処テ停車一同此処テ下
車致シマシタ 此ノ時私ハ何トカシテ之ヲ
避ケ様ト思ヒ最後迄残ツテ居リマシタ
ガ女一人カ残リマシタカラ仕方ナク先行者
ニ從ヒ之ヲ密林中ニ同行致シマシタ
一、現場ニハ塙カ堀ラレテ居リマシタ 私ハ先

"Exhibit 13(3)"

0967

拊

三朝

日

0968

No. 6

昭和
年
月
日

昭和二十二年五月七日

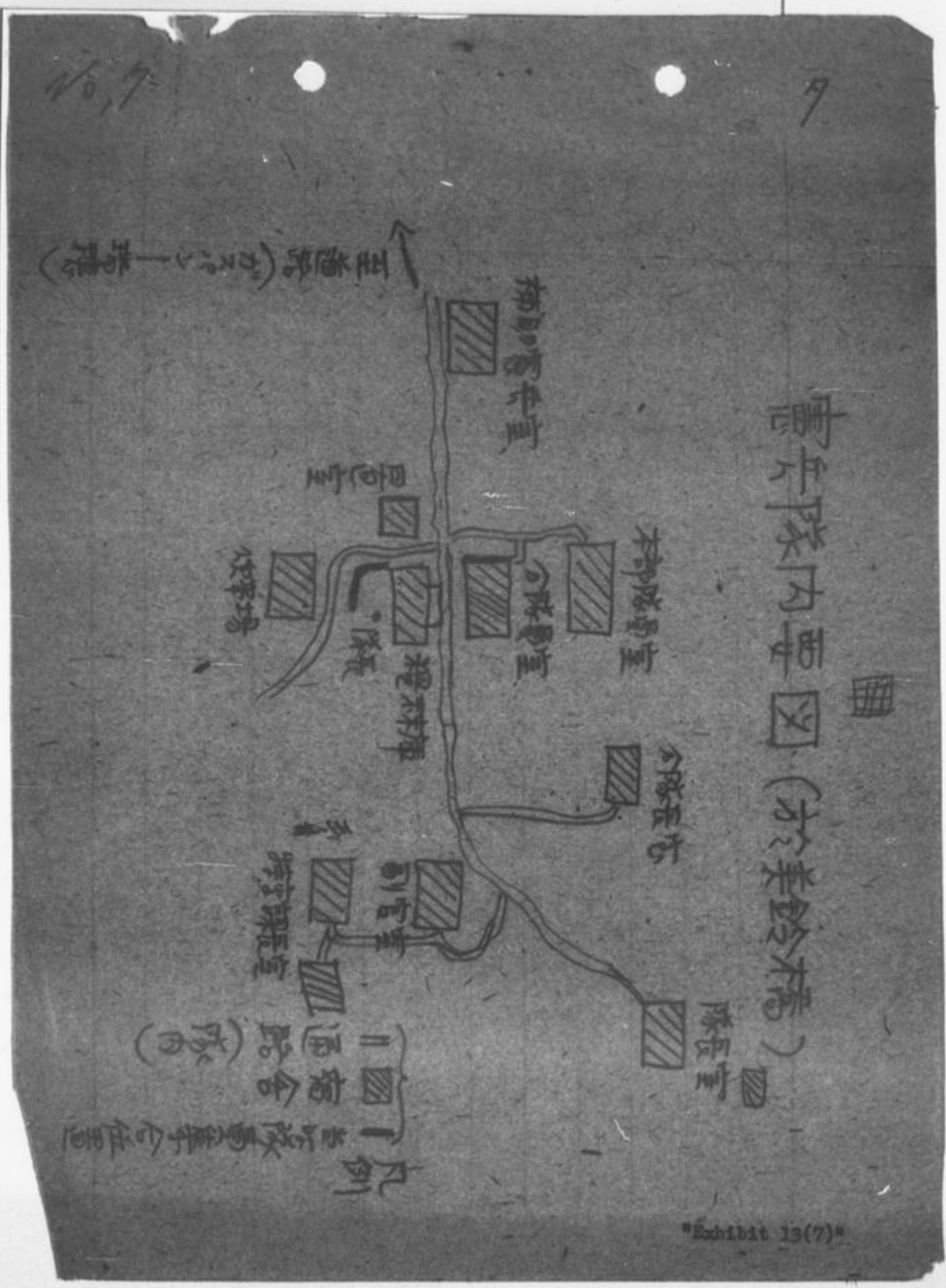
供証人

横山匡壽

「私い其レカラ直憲林ヲ出テ皆ノ者ノ出テ
来ルノヲ待ツテ居リマシタ

"Exhibit 13(6)"

0970



"Exhibit 13(7)"

昭和23年1月27日私が作り且ツ書いた7頁ヨリ成ル上記
日本語ノ陳述書ヲ讀ミ直シマシタ。

昭和23年1月27日私が作ツタ上記ノ陳述書ハ私が知り
且ツ信ジテナル限リ眞実且ツ正確ナルコト及ビコノ陳述書
ヲ作ラセルタメ如何ナルキニモ何ラ約束又ハ脅迫ヲ受ケ
ナカッタコトヲ茲ニ誓ヒマス。

横山匡壽

Subscribed and sworn to before me this 28th day of January,
1948, at Guam, Marianas Islands.

James P. Kenney
Lieut. USN

Guam, M.I.

I, Frederick A. Savory, 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.

I, 横山匡壽, have reread the foregoing state-
ment consisting of 7 pages in Japanese, made and written by me
on the 7 day of May, 1947.

I hereby swear that said foregoing statement made on the 7
day of May, 1947 is true and correct to the best of my
knowledge and belief; and that no promises or threats were made at
any time in order to induce me to make those statements.

横山匡壽

"Exhibit 13(8)"

0972

AFFIDAVIT

Place of registration: Kagawa-ken, Mitoyo-gun,
Ki-mura, Oaza-Kinogo
670-1 banchi

Present address: Same as above

YOKOYAMA, Kyohisa,
Born on 20 November 1919.

With this document I will tell about the case of the shooting of the Spanish missionaries.

1. I believe this incident happened around July or August 1944. It was carried out on Gasupan Hill.
2. While I was in the barracks that evening somebody came, I don't remember exactly who it was, and from outside the barracks passed on the order to fall in immediately at the provisions storehouse. Therefore I fell in in front of the provisions storehouse.

The position of the formation is on a separate paper.

Here we received orders from the unit commander, Lieutenant Colonel MIYAZAKI, to shoot the Spanish missionaries.

At this time we were told to shoot them in the back of the head.

3. After that I adjusted my equipment and went with everybody else to the road (it went from Gasupan to Misuho) which was about 100 meters from the barracks. When we got to the road two trucks were there ready and waiting. I got into the second truck and the first truck started on ahead. The second truck departed a little later. (I believe Second Lieutenant SANO and Sergeant TAMAMOTO were among those who got on the same truck.)
4. We stopped first at Aikoku Bridge in Gasupan. After we had waited a little while the missionaries were brought out (I think /TH. they were brought out by/ the men in the first truck but it was dark and I don't know). Therefore I had them get in with us and the truck departed immediately and went up Gasupan Hill.
5. The trucks stopped at a spot about two hundred meters from the scene and we all got off together. At this time I thought I would try and get away from this somehow or other and remained behind until the very last. However, as there was one woman left over, there was no way out of it and following the men who had gone on ahead I accompanied her into the forest.
6. A hole had already been dug at the scene. Following the example of the men who had gone on ahead, I had her face the hole and squat down. Then I closed my eyes and awaited the orders which were to follow.

At that time it seems to me the missionaries were chanting but presently the order to fire was given by the unit commander.

(Considering the direction of his voice, I believe the unit commander was nearby on the right.)

There being no way out of it, I drew my model 14 pistol and from a spot which I believe was about two meters from the woman I aimed at the back of her head. However, at this time I was filled with emotion and my hand shook. I fired but the bullet missed.

At that time the child which the woman was carrying on her back started to cry.

At this time I suddenly felt great compassion for the child and took two or three steps back.

(At this time I believe the unit commander ordered an auxiliary kempei to shoot those who were still alive.)

At the same time that I stepped back there were two or three rifle shots.

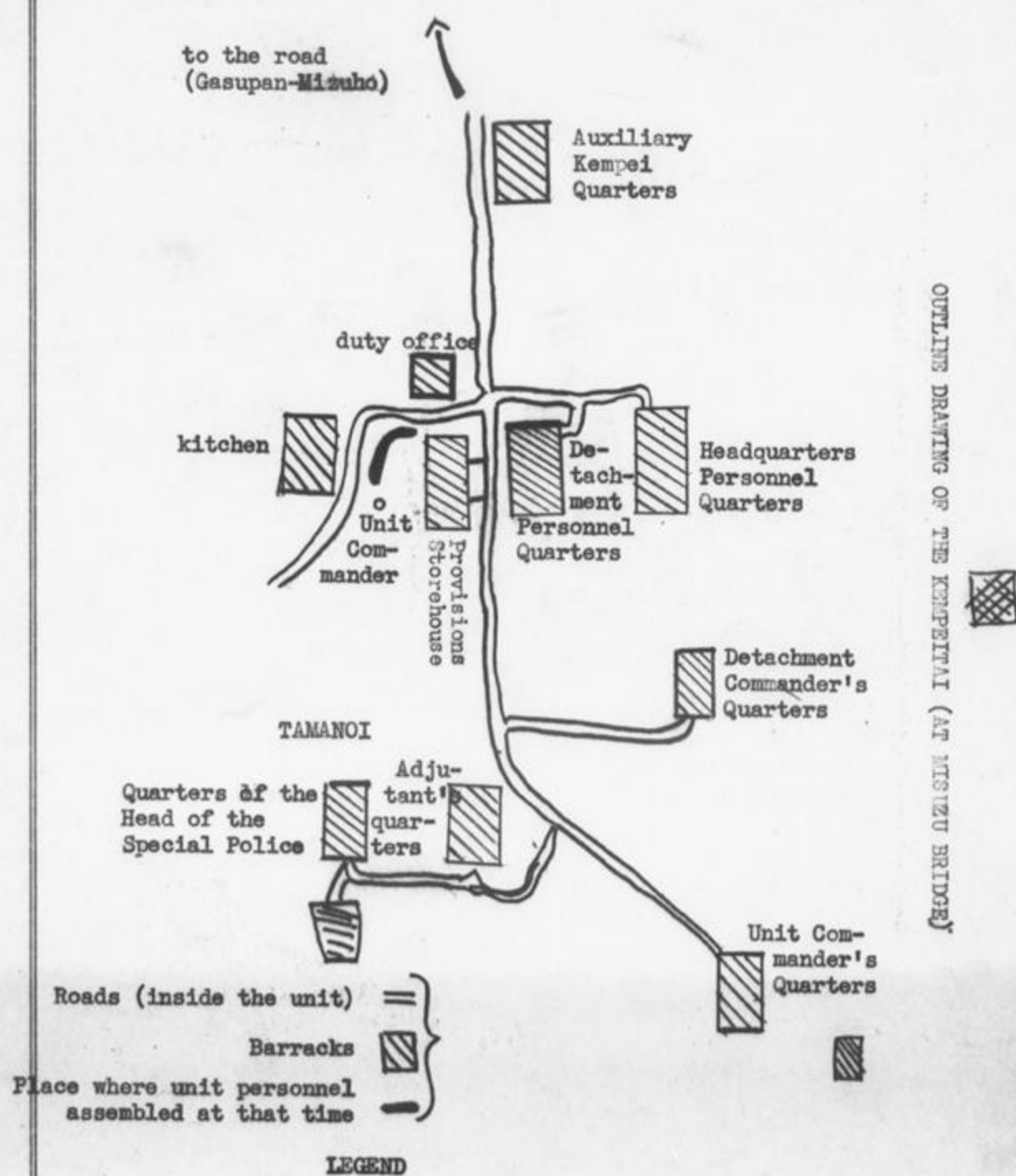
The man who was right next to me also shot the child with a rifle.

At this moment the women fell over backwards for the first time.

(Considering everything, I believe it may have been OKAMURA who shot the child.)

7. I immediately left the forest after that and waited for everyone to come out.

No. 7



"Exhibit 13(a)(3)"

0975

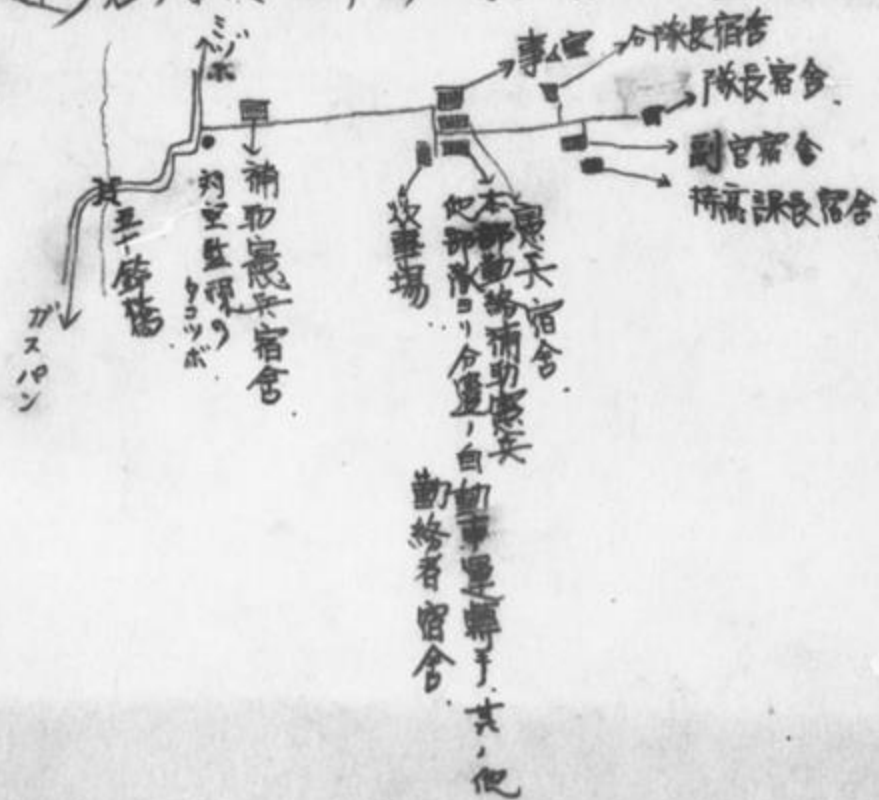
I hereby certify the foregoing, consisting of two (2) typewritten pages and one (1) sketch map, to be a true and complete translation, to the best of my ability, of the original document in Japanese.

Frederick F. Tremayne
Frederick F. Tremayne,
Lieutenant (junior grade),
United States Naval Reserve,
Interpreter.

"Exhibit 13(a)(4)"

0976

私が退院しまして十日程過ぎました頃と思えます。
 南洋地方在住の宣教師の處刑事件がありました。
 私は退院して間もない事なので、仕事は対空監視につくのが
 仕事のみにて、他の勤務にはつきませんでした。宣教師處刑の
 当日私は対空監視の勤務に従事して居りました。日時は忘れ
 てしまっていて想ひ出せません。前の葉嶋の拘置所にて提出しました
 口述書のなかで記した日は、調査官が教つて日時を記しました。
 確かな事件は又月下旬とおぼへ居ります。
 先づ私達の居りました五十鈴橋の宿舎の圖を記しておきます。



"Exhibit 14(1)"

處刑当日、私は、対空監視の勤務に従事して居りました。
 夕方、ペリリウ島から米軍の航空機が来なくなる頃、補助憲兵は集合を命ぜ
 られました。江連伍長が事室に行つて命令を受け来て集合しました。それ
 憲兵が(將校を)とて、準士官が(兵)とて、残りの兵士は引率して
 対空監視の所を通つて道路に並みました。此の時自動車(トラック)がや
 ってきました。佐田部隊のトラックと見えました。
 出発後、10分位過ぎたから対空監視の場を降りたので、事室
 に報告し、宿舎に帰りました。宿舎には一人も残って居りませんでした。
 補助憲兵の服装は小銃を持った武装でした。私が宿舎に帰りました。
 10分位過ぎたから、隊長殿を初め憲兵が来ました。宿舎のあたりをまわ
 り、入口の所に、隊長どのがのぞかれました。そこに残って居るのは誰だ
 と、申されましたので、私は、岡村上等兵ですと答へました。なぜゆがと
 申されましたので、私は、退院に来てばかりで身体がよくありませんから
 対空監視について居るだけですと答へました。皆が行つたのに貴様
 だけ身体が悪いからと残って居るのかあるが、装具を一つ一つに
 と強ひて語調で命令せられたので、黙って居て、装具を
 一つ一つと脱ぎました。此の時一諸に乗った人々は
 隊長殿、副官殿、横山軍曹、玉本軍曹殿などが記憶に残って
 居ります。トラックに乗って行きました。もと分隊長殿と副官殿の
 入つて居りました。(多分南洋タクの社宅と思ひます)家のところで止
 ました。社宅の前をみると、先には補助憲兵の乗ったトラックに軍
 師が降りこんで居りました。それで私達の前からトラックが先
 へて處刑場に行きました。

3.
補助憲兵の宿舎 道に近い出口の所に居りましたのを記憶が
完全ではありませんが覚えておきますと、

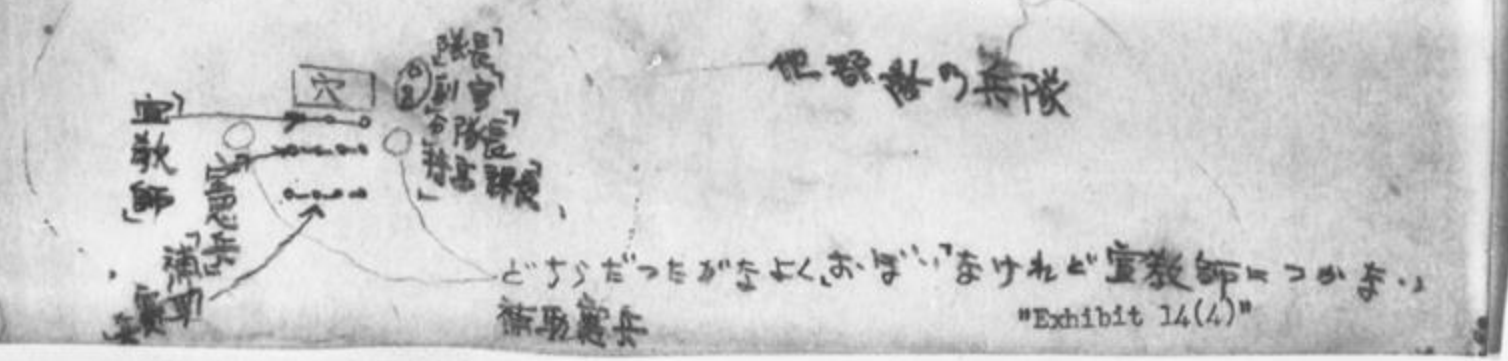
江連伍長、藤谷兵長、安藤上ト兵、五味上ト兵、相良上ト兵、
中村上ト兵、岩本上ト兵、川島上ト兵、内田上ト兵
名前を忘れましたがもう一名の上ト兵(茨城県出身 水戸＝軍隊)
と私が 次のものは本部事務室の所の宿舎でたかまが解りません
今泉伍長、日高兵長、林上ト兵、

馬場兵長は此の時すでに死んで居りました居りませんでした
馬場は幾島軍曹殿とコロールに居って、軍でアセッテ居ました
水雷にががって、亡くなりました

途中、案外時間早く来て処刑場に着きました 着いた時は
もう暗くなって居りました、トラックから下車して、右、宣教師
が下車しました 憲兵隊長(宮城中佐殿)の命令で憲兵が
宣教師に一人づつ着きまして、それに補助憲兵が一人づつ着いて
組まってくるように命ぜられ、連補助憲兵はつきま
き組まってくるのが、終つてから、隊長殿が宣教師に向つて
英語で申しました、(申し英語は死刑を宣告したのだと、
其の場でいたが、あとでたつたが、誰だったかなが教へてくれました)
そして後、隊長殿の命令で現場にゆきました、現場はトラック
の所から一寸とはなれ森のなかで居りました。

"Exhibit 14(3)"

現場についで、宣教師が穴の所に坐りました。そしておいて
を初めました。隊長どのが小銃でうつつと「ヨダン」が出るが
危い、けんじう(ピストル)で打たせようと言われ、命令されて
憲兵がうたました、私は気が小さいので見るのが気が悪う、
下をいって居ました。憲兵が打つたのが大勢が順次よく解りませんが
順次よくでいた、小銃のおとははしませんで、清野憲兵は
射撃の練習場にはいる、私を射うまい、
この現場に穴の所に宣教師が坐りんだのを見ると、穴は長方形
かと思ひます。私は横山軍曹どのと一諸君をいって一番奥の所に
憲兵が宣教師についたと記憶して居るのは、中村連尉殿がおります
連尉殿は隊長殿が穴の所に宣教師がおいて居る時、自分の
小銃、ピストルを出されて、俺が自決用には掛つて居る此のけんじう
で打つと申されて渡しました
それから玉本軍曹、杉本曹長、一宮曹長、横山軍曹どのなどです
それから居た方々に記憶して居る人は、尾崎軍曹、高橋軍曹、
私の記憶にない人は石川曹長、外の憲兵はどうか解りません。
現場を想ひながらで圖に記してみます。



圖に記しますやうな配置であります。補給憲兵で憲兵と組んだのは図にかくんだが、記憶ありません。つかまいて居ったものは川島一兵衛、兵隊に取次記憶して居りますが外にも居ると思ひます。宣教師が幾人いたか記憶ありません。中に、女の人と子供が居ったようです。大きく警戒して居った兵隊は多分佐田部隊のものかと思ひます。

處刑終りまして土をかけよとの命令で穴もうめて途中時間
を取りまして、おそく歸りました。

私達兵隊は小銃は朝晩手入れするが部隊の時からは
不文律です、小銃は私達兵隊の魂(カシ)であり、~~銃~~であり
よおして天皇陛下よりのあづかりものであり、国民の汗の結晶と
敬いられ来た小銃の手入れは兵隊たるものの常であります
その翌日補助憲兵は憲兵のけんがうの手入れをさせられた
梅野其の他憲兵隊に来て居りましたものの事は解りません

以上記述した3事は神に誓ひまして訂正ありません
人事を記しましてペンを止めます 12月20日 補助憲兵当時
陸軍上兵 岡村銀太郎

"Exhibit 14(5)"

昭和23年1月27日私が作り且ツ書いた五頁ヨリ成ル上記
日本語ノ陳述書ヲ讀ミ直シマシタ。

昭和23年12月20日私が作ツタ上記ノ陳述書ハ私が知リ
且ツ信ジテナル限り眞実且ツ正確ナルコト及ビコノ陳述書
ヲ作ラセルタメ如何ナルキニモ何ラ約束又ハ脅迫ヲ受ケ
ナカッタコトヲ茲ニ誓ヒマス。

岡村 銀太郎

Subscribed and sworn to before me this 28th day of January,
1948, at Guam, Marianas Islands.

James P. Kenny
Lieut. JG

Guam, M.I.

I, Frederick A. Savory, 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.

I, 岡村 銀太郎, have reread the foregoing state-
ment consisting of 5 pages in Japanese, made and written by me
on the 20th day of December, 1947.

I hereby swear that said foregoing statement made on the 20th
day of December, 1947 is true and correct to the best of my
knowledge and belief; and that no promises or threats were made at
any time in order to induce me to make those statements.

岡村 銀太郎

"Exhibit 14(6)"

0982

YAMAMOTO, KAZUHARU et al. (16 FEB 1948)

(163117)
PART 6 OF 6

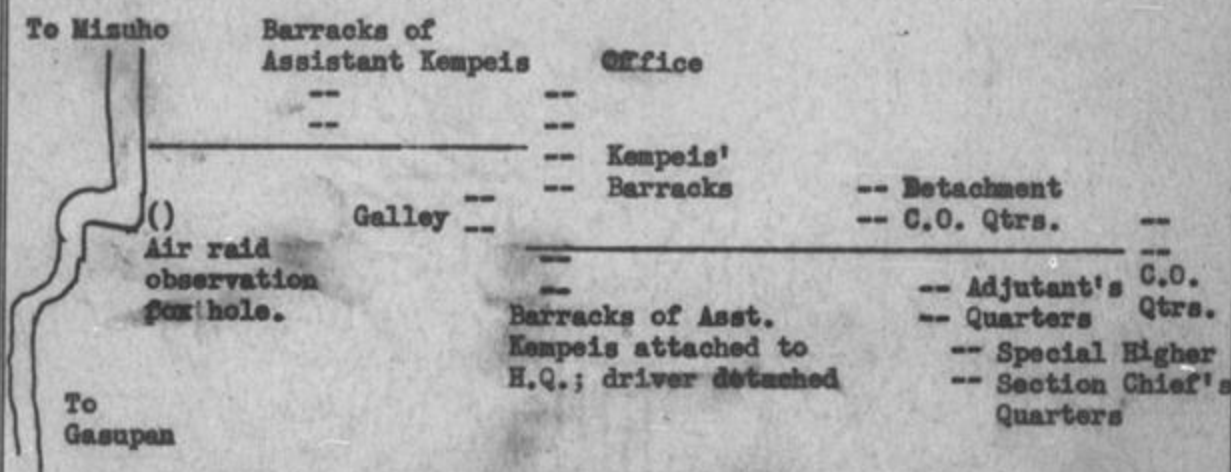
0983

STATEMENT

I think it was about ten days after I was released from the hospital. There was the execution incident of the missionaries living in the South Sea area.

As I had just come out of the hospital my only duty was as air raid observer, and did not participate in other work. On the day of the execution of the missionaries, I was on duty as an air raid observer. I have forgotten the date and time and can not recall it. The date which I wrote in the statement I submitted at Sugamo Prison was the date I was told by the investigator. I definitely recall the incident took place around the latter part of September.

First I will draw a sketch of our barracks at Kuzubashi.



On the day of the execution I was on duty as air raid observer. Around evening when the American planes stopped coming from Peleliu, the assistant Kempeis were ordered to assemble. Corporal (?) Ezura went to the office and received the orders and had them assembled. They were then led by a Kempei (I do not recall whether it was an officer or a warrant officer) and passing near the air raid observation point went out on the road. At this time a truck came. I thought it was a truck of the Sumida Unit.

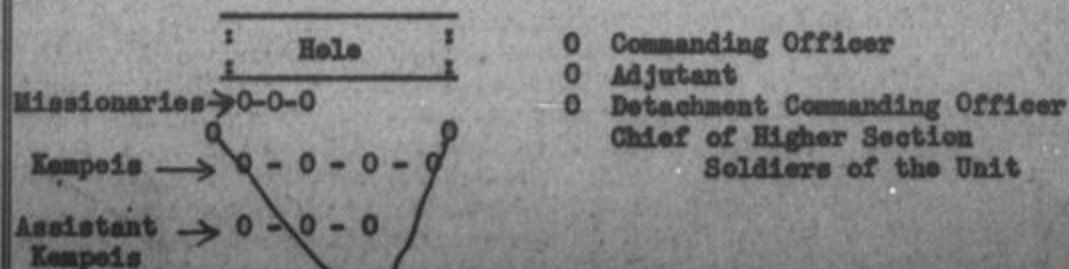
About ten minutes after they left, as it was time for the air raid observer to quit, I reported to the office and went back to my barracks. There was no one left in the barracks. The dress of the Kempeis was armed dress with rifles. About ten minutes after I returned to my barracks, the commanding officer and other Kempeis came. They passed by the side of the barracks and came to the entrance and the commanding officer looked in and said, "Who's the one staying there?" so I answered, "Superior Private Okamura, Sir." Then he said, "Why didn't you go?" so I answered, "I just got out of the hospital and as my health is not very well yet I am at the air raid observation post." Then he ordered me, "There is no reason why you stay behind because of ill health when everyone has gone. Put on your arms and come along with us." As I was roughly ordered, I became frightened; so I hurriedly armed myself and followed. I recall that the persons who got on the truck together at this time were: Commanding Officer, Adjutant, Sergeant Yokoyama, Sergeant Tamamoto. We went along on the truck and stopped when we came to the house where the Detachment Commander and the adjutant formerly lived (probably it was a home of the South Sea Development Co.). I looked toward the home and saw missionaries getting on the truck which left first with the assistant Kempeis. Therefore our truck took the lead and went to the scene of the execution.

My recollection as to the assistant Kempeis at the entrance of the assistant Kempeis' barracks near the road is not clear, but I recall it, as follows: Corporal Esure, Leading Private Fujitani, Superior Private Ando, Superior Private Gomi, Superior Private Sagara, Superior Private Nakamura, Superior Private Iwamoto, Private First Class Kawashima, Superior Private Uchida. I forget the name of one more Superior Private (I remember his name so I will write it in Superior Private Ito (comes from the Second Regiment at Mito, Ibaragi-ken) and myself. I do not know whether the following persons came from the barracks near the office of the headquarters. They are: Corporal Imaizumi, Corporal Hidaka, Superior Private Hayashi.

Corporal Baba was dead at this time and was not present. Baba died with Sergeant Ikushima at Koror from the explosion of a mine laid by the army.

We took quite some time and reached the scene of the execution. When we arrived it was already dark. After we got off the truck, the missionaries got off. By orders of Kempeitai Commanding Officer (Lieutenant Colonel Miyasaki) one Kempei was placed to each missionary. Also, we assistant Kempeis were ordered to group in pairs with the Kempeis, one assistant Kempei took his place with each missionary. After everyone finished pairing off, the commanding officer spoke to the missionaries in English. (I was told by someone I do not remember whether it was at the scene or later that the English was the pronouncing of their death sentence). After this, by orders of the commanding officer, we went to the scene. The scene was in the woods a little distant from the trucks. We reached the scene and the missionaries sat by the hole and started to pray. The commanding officer said, "If the rifles are used, ricochet shots will result and it is dangerous; so let them fire with their pistols." He ordered thus and the Kempeis shot. Because I was timid, I felt sick to watch it; so I kept my eyes on the ground. I do not know clearly whether the Kempeis shot all at once or separately, but I think it was separately. As I did not hear any rifle shots, I presume and finally believe that the assistant Kempeis did not shoot. I did not shoot.

At the scene as the missionaries lined up along the hole, I presume the hole was oblong in shape. As I was paired with Sergeant Yokoyama, we were at the end. Among Kempeis whom I recall pairing with the missionaries, Warrant Officer Nakamura was one of them. When the missionaries were praying, the warrant officer was with the commanding officer near the hole, and he took out a small private pistol and, saying, "Shoot with this pistol which I carry for suicide," handed it to him (T.N. the warrant officer). Other than him there were: Sergeant Tamamoto, Sergeant Major Sugimoto, Sergeant Major Ichimura, and Sergeant Yokoyama. Other than this the persons whom I seem to recall are: Sergeant Ozaki, and Sergeant Takahashi. The person whom I do not recall being there is Sergeant Major Ishiyama. I do not know about the other Kempeis. I will try to recollect the scene and make a sketch.



I do not recall definitely which side, but there was an assistant Kempei who was not grouped with the missionaries.

The layout was as I have shown in the above sketch. I do not recall who the assistant Kempeis were who paired with the Kempeis. I recall that Superior Private Kawashima (15th Infantry Regiment) was not paired, but I think there were others (T/N - who were also not paired). I do not recall how many missionaries there were. I feel that there were a woman and children (a child) among them. I think the soldiers who were spread out and guarding were probably the soldiers of the Sumida Unit. After the execution was over, by orders to cover up with dirt, the hole was covered, and we took quite some time on our way back; so we came back quite late.

After we got back, as usual, we cleaned our rifles which were wet with evening dew, and ate our supper.

It was the (common law) custom for us soldiers to clean our rifles morning and night from when we were still at the unit. We have been taught that the rifle was our (soldier's) spirit, our mirror, an article intrusted to us by the Emperor, and that it was the result of the hard work of our people. It is not unusual that the soldier cleans his rifle. It is a usual routine. The next day the assistant Kempeis were made to clean the pistols of the Kempeis. I do not know as to Umeno and others who were at the Kempeitai.

I will write that I swear by God that there is no mistake in what I wrote above and stop my pen.

20 December 1947.

/s/ Assistant Kempei,
Former Superior Private, IJA.
OKAMURA, Gintaro.

I hereby certify the foregoing, consisting of three typewritten pages, to be a true and complete translation of the original Japanese document, to the best of my ability.

Eugene E. Kerrick, Jr.
EUGENE E. KERRICK, Jr.,
Lieutenant, U.S. Naval Reserve,
Interpreter.

中、村治郎

九月何日か「気候」々食後二日直「氏名」
が宿舎ニ来リシニ直ニ武装ニ生不舎(場并)
気候ニ合隊長(中村敏夫中尉)ニ引替セリ
テ道路ニ出シテ所自動車ニ台来ニ居リテ
稽。附近大ニ思ヒテ其。時隊長(宮崎中佐)副官(市
川少尉)持高隊長(佐野少尉)中村準尉、尾崎曹長
宇藤上等兵、川嶋一等兵、内田一等兵、伊藤上等兵
等、確ニ気候有リテ其、他気候アリセ。
隊長命令テ上車間ヲ取テ発車ニテリテ
カスバニ部隊ニ参リテ時停車ニ令隊長
下車ニ五人ヲ引率ニテ宣教師定、方、
行テ暫ク後宣教師ヲ連テ参リテ
其、時宣教師は借物ヲ持テ居リテ引
越カト思ヒテ宣教師ニ台、自動車ニ令来ニ
私、来ニ居リテ自動車前カ後カ気候ニ
隊長、命令テ発車ニ由良部隊台ニ通リ
兵器勤務隊手前。区。其、止テ停車
全員下車ニシテ宣教師手前ニ向テ一列縦隊
ニ成テ其、時宣教師ニ憲兵補助憲兵各一名
ヲ憲兵ニ補綴ヲ付テ其後隊長カ「アヤ」
語テ言テ其、利ニテ

"Exhibit 15(1)"

0987

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2

下車、際荷物、全部自動車、中ニ置キ、居リマシタ
下車時、運轉員ニ住田部隊副官が居リマシタ、ツ見マ
シタ

下車、後憲兵が稱賛ヲ得タ(時銃殺スニ付ナト私
思ヒマシタ)カニ、中、間違テ、出立前ニ、^{隊長(金栗副官)}
其、時、相手、憲兵、氏名憶ナシ

間モ無ク隊長ノ命令ヲ前進シニ。米位前進ニ付
カト思ハル所ヨリ右側ノ森林ニ入り森林、中、人
ツラ間モナク現場ニ集マシタ

現場ニ、^{遺体} 森サニ米位ノ穴が掘ツテありマシ
タ

現場ニ集マスト宣教師ヲ^{...} 因、發ニ拉セ
分隊長ノ命令ヲ憲兵、稱賛ヲ解マシタ

其、時、女子供ノ左ノ方ニ居リマシタ

其、時、宣教師、後ニ憲兵(將校ヲ含ム)其、後ニ
補助憲兵が並ビマシタ、^{...}

私ノ居リマシタ場所(隣ノ者、憶ナシ)

前ニ居リマシタ憲兵ニ、憶アリマシタ

右ノ方ニ知ラナイ者(住田部隊兵)が居リマシタ三人

隊長ノ命令ヲ分隊長ノ命令ヲ憲兵、住田部
隊、兵、が射タマシタ、憲兵、ビストル、住田部隊兵、に

Exhibit 15(2)

0900

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9

其、時、憲兵が射撃ニシテ者ありンシタ。時、隊長が補助憲兵ニ命令ニ付、隊長附近ニ居リシヲ三嶋一騎兵ニ方前射ト命令ニ付シタ。三嶋は彈ヲ入レテ射ク。其、夜、宿舎ニ歸リ、負持が要カシタト云ハカリ、小銃ヲ入テニテ居ル所見メシタ。子供ヲ射タニテ、ハナキト思ヒマス。終リメニニカフ、全員ニ埋^葬ニテ(將校除キ)判^別ニタイ森ニ偽装(草、木、花)ニテ自動車ニ歸リマシタ。

隊 = 歸り集合 (隊長宿舎前附近) の男 2 人

隊長カヲ 秘密ニ付テ ~~事情~~ 有リ 宿金ニカヘズ

有一日宜教師、物品ヲ整理シテ居ル、介儀實(氏名辨
憶ナシ)ヲ見マシメ、(中村波聲)氣果懷テ了)

其數日後、(日懷一)々方宿舎、修葺、木
道路、何側ニ取リ行キマシテ、中ニ境、
「トニ」^リ、許ニ具鑄、^レ「サ」^リナシタ

$$P_{\text{tot}} = P_{\text{ref}} - \frac{1}{2} \rho \int_{\text{ref}}^{\text{tot}} H^2 dx + \frac{1}{2} \rho \int_{\text{ref}}^{\text{tot}} \frac{1}{H^2} dx$$

拾ツテ末ニテ其ノ後時計ヲ付ケテ持ツテ居リテ

9. 計分隊、上官(氏名憶+)三、其七八宜教師、号切

タ事件がバレルトイカン置イテ来イト言はレ私ハ

ア、イ、ウ、エ、オ、カ、キ、ク、ケ、コ、サ、シ、ス、セ、ソ、タ、チ、ツ、テ、ト、ナ、ニ、ノ、ネ、ド、デ、ト、チ、ツ、テ、ト、ナ、ニ、ノ、ネ、ド、デ

"Exhibit 15(3)"

0989

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宜折言

以上三枚に書きまゝの事は良し「抄書」事實に
ある事を宜折言致します。

昭和二十三年十二月十三日

中村 治郎

"Exhibit 15(4)"

0990

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