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HEADQUARTERS EIGHTH ARMY  
United States Army  
Office of the Staff Judge Advocate

Yokohama, Japan  
21 July 1949

UNITED STATES OF AMERICA VS JIRO HAMAMOTO

Review of the Staff Judge Advocate

1. The attached record of trial of the case of Jiro Hamamoto tried at Yokohama, Japan, from 27 December 1948 to 3 January 1949, by a Military Commission appointed by paragraph 1, Special Orders No. 287, Headquarters Eighth Army, United States Army, dated 24 December 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused.

|  |   |
|--|---|
| NAME: Jiro Hamamoto  | DATE OF CONFINEMENT: 17 November 1948               |
| AGE: 34  | DATE OF ARRAIGNMENT: 27 December 1948               |
| RESIDENCE: 82 Banchi, Yuyama, Fukube-Mura, Iwami-Gun, Tottori-Ken.                           | PLACE OF TRIAL: Yokohama, Japan                     |
| MARITAL STATUS: Married  | PERIOD OF TRIAL: 27 December 1948 to 3 January 1949 |
| RELATIVES: Wife, daughter, father, 2 brothers, sister.                                       | DATE OF SENTENCE: 3 January 1949                    |
| EDUCATION: Graduated primary school  | SENTENCE: CHL for fifteen (15) years                |
| VOCATION: Assistant Driver.  | CLEMENCY RECOMMENDED BY COMMISSION: No              |
| MILITARY CAREER: Conscripted Jan 1936; demobilized Aug 1945; highest rank - warrant officer. |   |

2. Synopsis of Charges, Pleas, Findings and Legal Sufficiency:

| <u>Charge and Specification:</u>   | <u>Pleas</u> | <u>Findings</u>   | <u>Legally Sustained</u> |
|--|--------------|---|--------------------------|
| Ch: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War. | NG           | G   | Yes                      |
| Sp 1: That on or about 20 July 1945 the accused did willfully and unlawfully kill an unidentified American PW by shooting him.                           | NG           | G,<br>excepting the words "willfully and" substituting therefor the words "in compliance with orders from his superior officer participate as a member of a firing squad that did". Of the excepted words Not Guilty. Of the substituted words, Guilty. | Yes                      |
| Sp 2: That on or about 3 August 1945 the accused did willfully and unlawfully kill an unidentified American PW by shooting him.                          | NG           | G,<br>excepting the words "willfully and" substituting therefor the words "in compliance with orders from his superior officer". Of the excepted words, NG. Of the substituted words, G.  | Yes                      |

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Sp 3: That on or about 15 August 1945 the accused did willfully and unlawfully cause the deaths of two unidentified American PW's by ordering, permitting, and directing his military subordinate, Tomokichi Hamada, to decapitate the two said American PW's.

NG

G,

Yes

excepting the words "willfully and" substituting therefor the words "in compliance with orders from his superior officer." Of the excepted words, NG. Of the substituted words, G.

Sp 4: That on or about 15 August 1945 the accused did willfully and unlawfully kill an unidentified American PW by shooting him.

NG

G,

Yes

excepting the words "willfully and" substituting the words "in compliance with orders from his superior officer." Of the excepted words, NG. Of the substituted words, G.

3. Summary of the Evidence:

a. For the Prosecution:

As to Specification 1: (About 20 July 1945 at Shinodayama Military Maneuver Grounds, Osaka, Japan, the accused did, in compliance with orders from his superior officer, participate as a member of a firing squad that did unlawfully kill an unidentified American Prisoner of War by shooting him - as qualified by findings.)

The Central District Kenpei Tai carried out the second execution of American fliers at Shinodayama Training Grounds in Osaka on Army orders about 20 July 1945. Between ten and fifteen American airmen were executed. Major Shiuchi designated Master Sergeant Hamamoto and others as members of the execution squad. Lt. Col. Fujioka told them to fire at the head or heart of each airman. Fujioka read the sentence of death for indiscriminate bombing and gave the order to fire. Fujioka also ordered them to bury the airmen. (Ex 1, 2, 3, 4, 5 (p 3, 4), 6 (p 3-5), 9 (p 20-22), 13, 14). Former Major Shiuchi, the accused's superior officer corroborated the foregoing in Exhibits 3 and 6. With reference to these statements, he testified in court that Hamamoto was his subordinate at the Osaka Kenpei Tai. About fifteen American airmen were executed (R 31). Hamamoto was a member of the firing squad by his orders (R 32).

As to Specification 2: (About 3 August 1945 at the Jonan. Firing Range, Osaka, Japan, the accused did, in compliance with orders from his superior officer, kill an unidentified American Prisoner of War by shooting him - as qualified by findings.)

This execution was in early August 1945. About fifteen American airmen were shot. The accused was one of the executioners. The execution was pursuant to orders of Lt. Col. Fujioka and Major Shiuchi. (Exs 4, 5 (p 5, 6), 6 (p 5-7), 7, 8, 9 (p 22-24), 18 (p 1-3), 19 (p 2, 3)). A statement of the accused was admitted into evidence in which he said in part that he participated in the execution of captured airmen for the first time when an execution took place at the Jonan Firing Range. He was a member of the execution squad and remembered shooting and killing an airman. Lt. Col. Fujioka gave the order to fire (Ex 12, p 2, 3). He did not know why airmen were executed without being tried by a military tribunal (Ibid, p 7). Shiuchi testified that accused acted as an executioner by his orders. The accused never volunteered to be an executioner. Evertime he executed a prisoner, he did so because he was ordered (R 34). Fujioka testified that the accused was one of the executioners because he was ordered to participate (R 24, 25).

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As to Specifications 3 and 4: (About 15 August 1945 at the Sanadayama Military Cemetery, Osaka, Japan, the accused did, in compliance with orders from his superior officer, unlawfully cause the deaths of two unidentified American Prisoners of War by ordering and permitting his subordinate, Tomekichi Hamada, to decapitate the said prisoners - as qualified by findings.)

(About 15 August 1945 at the Sanadayama Military Cemetery, Osaka, Japan, the accused did, in compliance with orders from his superior officer, unlawfully kill an unidentified American Prisoner of War by shooting him - as qualified by findings.)

Shiuchi stated that about 1100 hours on 15 August 1945, Lt. Col. Fujioka ordered him to execute the remaining airmen. It was known that the Emperor's Rescript on surrender would be proclaimed at 1200 hours that day. He (Shiuchi) told Sugiura to take charge of the matter. Sugiura was short of men so he ordered Hamamoto to assist him. He heard the Emperor's broadcast in the commander's office at noon. He was busy preparing to send his family back to Yamanashi, so did not receive a report of the execution. Later, he heard that two of the airmen had been decapitated. He did not give such an order. "I had understood that they were shot to death as in the previous executions." (Ex 6, p 8, 9). Shiuchi testified in the Okido et al Case (No. 328) that he ordered Hamamoto to command the men to carry out the executions. After the executions had been completed, he received a report from Hamamoto to that effect (Ex 18, p 2). This was before the Emperor's broadcast (Ibid, p 4). He ordered Hamamoto to take charge. He did not tell either Sugiura or Hamamoto to carry out the execution by beheading (Ibid, p 6). Shiuchi testified in court that the execution took place on 15 August 1945 at Sanadayama Cemetery (R 34). He talked first to Sugiura and Hamamoto but finally gave the order to Hamamoto. Hamamoto was senior to Sugiura. He issued the same order to Hamamoto that he issued to Sugiura (R 35). He told Capt. Takayama to send two men to assist in the execution. Whomever he (Shiuchi) selected as an executioner had to carry out his order (R 36). No one volunteered to be an executioner. He did not issue instructions regarding the method of execution. Since Hamamoto was senior to Sugiura, he issued the order to Hamamoto. If Hamamoto had not been present, he would have sent someone else and the execution would have been carried out on that day (R 37). A written order for execution was not given to Hamamoto. He heard that Hamamoto instructed Mori, the interpreter, to read an order of execution such as was read at previous executions. Yasuo Wada stated that he heard from the accused that the execution was carried out on the morning of 15 August 1945 (Ex 9, p 25). Fujioka testified in the Okido Case (No. 328) that after he entered Sugamo, he heard that Hamamoto was in command of the execution, that Hamamoto fired a pistol, and that Hamada "had committed beheadings." (Ex 17). Fujioka testified in court that Major Shiuchi was his subordinate (R 21). He identified the accused in court. The accused was also his subordinate (R 22). The accused had nothing to do with ordering the execution. Hamamoto was a warrant officer at the time. When he (Fujioka) gave the order to Shiuchi, he did not specify the method of execution. The executioners could not have refused to obey the order of execution (R 26).

Another witness in the Okido et al case (supra) testified that Hamamoto told him what to do (Ex 11, p 4). Warrant Officer Wada had instructed him to report to Hamamoto. Hamamoto was in command (Ibid, p 5, 6). Saburo Takashima also testified that the accused was in command. He had heard that "since the early date of the Occupation Hamamoto has been a fugitive from the Occupation Forces." He was certain that the execution took place after the Emperor's broadcast (Ibid, p 9). He remembered stating that Hamamoto asked Capt. Takayama whether he should take a pistol or sword and Takayama answered, "Either will do." He saw Hamada behead an airman. Warrant Officer Hamamoto ordered Hamada to execute the flier (Ibid, p 11). Takao Mori testified in the Okido case that Hamada was wearing a sword. Hamada did not volunteer to execute the fliers. Hamamoto gave Hamada the order to behead (Ibid, p 16). He imagined that Warrant Officer Hamamoto decided to use beheading as a method of execution. He heard the accused state that "it is dangerous to shoot anyone here." For this reason, Hamamoto ordered the first two men to be beheaded. Because Hamada started feeling bad, he could no longer continue. "This is purely my imagination, but I think

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that it might be possible that each one of the remaining fliers was put in the hole and shot." (Ibid, p 20).

The accused previously stated (Ex 12) that he participated in another execution of airmen on 15 August 1945. It was after the Emperor's broadcast. He heard on 14 August 1945 that Japan had lost the war (p 3). Shiuchi ordered him to assist Warrant Officer Sugiura, and added "At this moment the Allied Forces are off the coast of Wakayama and the situation is such that we don't know when they will come here, so go quickly." He listened to the broadcast of the surrender (p 4). Then they went to Sanadayama Cemetery by truck, and arrived there about 1300 hours. Hamada was among those present. He saw Hamada behead one of the airmen. "Everyone at that time was in an excited mood and was anxious to finish the executions as quickly as possible. There were many persons at the executions who asked to be allowed to kill an airman. I was one of them. These requests were not due to curiosity about killing but arose from the feeling of spiritual confusion resulting from the realization that we had been defeated. Because of these circumstances, these executions were neither formal nor orderly, as in the case of those carried out at the Jonan Firing Range. In other words, they were not performed one by one in accordance with the orders of a leader. As I stated previously, everyone was for himself in doing the job with the desire to finish it as quickly as possible. I shot one of them" (p 5). "The captured goods which would burn was set afire, and the rest was buried with the bodies. I assisted in hauling the goods to the spot where they were buried. From what I can recall, I was not in command at the scene. Although I was the senior officer there, I was merely told by Major Shiuchi to help, and was not ordered to assume the responsibility of carrying out the executions. In particular, Major Shiuchi's remark to me, 'Sugiura is making the preparations to execute the remaining airmen so, etc.' is evidence that the Major had already ordered Sugiura to take charge of the execution. Although both Sugiura and I were promoted to warrant officers on 1 August 1945, since my name appeared first on the order, I was his senior. \* \* The Administrative Work Subsection was not directly concerned with airmen. Therefore, W.O. Sugiura was the highest ranking person among those from the Field Work Subsection who were present at the execution ground. I may be responsible as the highest ranking person at the scene, but I was not in command, nor was the main responsibility delegated to me. Thus, since the personnel who were engaged in field work actually took care of the handling of the airmen, and the senior officer of the Field Work Subsection had received orders from his superior, I think the person in charge at the scene would naturally have to be Sugiura. Although I helped with the work at the scene of execution, I had no intention of giving orders to others, nor did I do any such thing. \* \* Other than these, I have not heard of any other such incidents. As to why other airmen beside these two (Nelson and Augunas) were executed by the Kempei Tai without being tried by military tribunal, I know nothing about it at all." (p 6, 7).

Tonekichi Hamada stated in Exhibit 15:

"On 15 August 1945, at about 1130 hours (the time is not definite), while I was putting documents in order, Capt. Takayama said to M/Sgt. Takashima and me, 'PW crew members are going to be executed by the Foreign Nationals Affairs Section of the Central District Kempeitai Headquarters. Our section has been ordered by Major Shiuchi to send two members as executioners. You two men go with the men from the Foreign National Affairs Section, and carry out the execution.' I asked whether the execution was to be done with a pistol or a Japanese sword, and he replied that it didn't matter. I took the sword which was behind me, and went to the main floor. Someone said, 'There is to be a broadcast by the Emperor, so let us listen to it before we go.' Everyone agreed and we listened to the broadcast. The recording of the Imperial Rescript was not very clear and was not understandable. However, we did interpret the meaning to cease hostilities. Everyone argued, 'That cannot be the Emperor's will.' 'It is a trick.' 'It couldn't be. I and, I think, M/Sgt. Takashima said, 'If the war is over, it won't be necessary to carry out the execution.' Everyone left after someone said, 'If we spare these PW, previous incidents will be exposed, so we must carry out the execution. Besides, it is an order, and, therefore, we absolutely must carry it out.' I said, 'If it is an order, we must carry it out,' and departed. We rode on a passing truck, and went to the headquarters in front of the broadcasting station.

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"4. Circumstances at the time of the execution.

Upon arrival at the headquarters, the officer in charge (name unknown) drove the truck around. A person from the headquarters' Foreign Nationals Affairs Section escorted six or seven blindfolded PsW, with both arms bound in back, from the guardhouse, and placed them on the truck. A parachute or tent was placed over them so the public would not see them. We also crawled under the cover, and the truck started moving. When the truck stopped, we got off and realized that we were at a cemetery. An oblong pit had been dug at the site of the execution. I learned that this was the Sanadayama Cemetery. WO Hamamoto issued an order to me, 'You carry out the first execution with a Japanese sword.' Someone had one of the PsW sit down by the edge of the pit. As WO Hamamoto told, 'Kill him,' I struck with the sword with all my mind and spirit so that there would be no mistake. It was a splendid work. Everyone, including WO Hamamoto admired me, saying that the sword was good but it was carried out with extraordinary skill. WO Hamamoto ordered me to execute one more PW, and when someone brought another PW and made him sit down, I executed him in the same manner without a mishap. I felt slightly dizzy after executing two persons by myself, so sat down. Four or five PsW were either standing or sitting (I do not definitely recall which) at the side of the pit, as if ordered by either WO Hamamoto or WO Sugiura. Four or five executioners, with pistols in their hands, lined up behind them. Then either WO Hamamoto or WO Sugiura gave the order to fire, and the execution was carried out by simultaneous fire. \* \*

"5. My emotional state immediately after the execution.

When I was ordered to carry out the execution, I could not protest in any way. After returning to the section and to my home, and upon quietly thinking over the happenings, the cruelty of the order astonished me" (p 2-4).

Masamoto Nakano stated in Exhibit 16:

"In August 1945 on the 15th day about 10 o'clock, I met Major Shiuchi at the entrance of Kempei Tai Headquarters. He said 'everybody is busy. What are you doing? Everyone must help.' He did not mention what was to be done. So I got on a truck which was standing at the back entrance of the building. Hamamoto, Sugiura, Mori, Morimoto, Onishi, Hamada, Matsuda also got on the truck. When I met Major Shiuchi he and Colonel Fujioka were leaving the Kempei Tai Building. I don't know where they were going. I think W/O Hamamoto was in charge of the group. When I started to get on the truck, W/O Sugiura asked me why I was there and I told him Major Shiuchi had told me to go and help. I saw Hamada had a sword at that time. The flyers, five in number, were already on the truck at that time. They were blindfolded and their hands were tied. They were wearing American flying clothing, maybe they were without shoes. \* \* Onishi took the first flyer to the grave. Hamada was waiting in the immediate vicinity of the grave and I saw Hamada raise his sword and strike the flyer at the base of the neck. The body fell into the grave instantly. I was guarding the remaining four flyers. There was no doctor present or minister or priest. I think Onishi took the second flyer to the grave and I saw Hamada repeat the execution. I walked with the three fliers to the grave and Hamamoto told Onishi to tell them to kneel at the graves. Hamamoto took a pistol and killed two flyers. There was three executions with pistols but one failed to fire and Hamamoto shot twice" (p 3).

Takeda testified in the Okido Case (Ex 19) that he wished to change his statement he had previously made so that it would read that the execution took place on the morning of the 15th of August instead of 16 or 17 August. His previous statement was in error (p 3). Sugiura was assisting at the place where the articles were being burned (p 4).

Takayama testified in the Okido Case (Ex 19) that when Hamada left his office on the morning of the 15th of August, he did not ask whether he should take a sword or a gun nor did he (Takayama) say anything to him about taking a sword. Hamada reported promptly upon his return. Hamada and Takashima returned about the time of the Emperor's broadcast (p 6). He did previously state that he thought they returned about 1500 hours (p 8). Hamada told him that he had been ordered by Warrant Officer Hamamoto to participate in the execution and therefore he had done

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so. Hamada also stated that Hamamoto had told him to carry out the execution with a sword (p 9). Hamada, an accused, did not testify in the Okido Case (p 10).

Wada, an accused, testified in the Okido Case (Ex 20) that in a previous statement he did say that he heard about the execution at 4 p.m. but he did not state that the execution occurred at 4 p.m. (p 2). Sugiura, also an accused, testified in the Okido Case that he saw Hamada execute two airmen by order of Warrant Officer Hamamoto (p 8). The other airmen were executed under Hamamoto's orders. Hamamoto took command at the actual site. "I (Sugiura) was not at the actual site." He did not see Hamamoto shoot any of the airmen. Some of the articles that would not burn were buried with the fliers (p 9). Everything was completed a little after 11:00. They left the cemetery about 11:30 and arrived at the Itoman building ten or fifteen minutes before 1200 hours. He did state during an interrogation that he heard the Emperor's speech before the fliers were executed. He went to Sanadayama Cemetery in the afternoon of 16 August 1945 (p 10). He was ordered to go by Lt. Col. Fujioka, and to "remove all traces of evidence." As to the previous executions at Shinodayama and at Jonan Firing Range "we went in civilian clothing." Only Fujioka and Shiuchi wore full military dress. Some wore fatigue clothes. It depended upon the individual himself (p 11).

b. For the Defense:

The accused, having been advised of his rights (R 2, 3, 44), elected to take the stand and testify under oath.

He served with the Osaka Kempoi Tai from March 1943 until 16 August 1945. He was a master sergeant until 1 August 1945 when he was promoted to warrant officer. The first execution he was connected with took place about the end of July 1945 at the Jonan Firing Range (R 46). Major Shiuchi instructed him to be one of the executioners. Lt. Col. Fujioka gave the order to fire. He shot an airman.

As to the last execution: At about 1000 hours on 15 August 1945, he was in Bamba-Cho. He heard a broadcast stating that there would be an important radio broadcast by the Emperor at noon. On the previous day, he heard that Japan might surrender. He reported to his unit in the Itoman Building. Major Shiuchi, Capt. Takayama and others were there. Warrant Officer Sugiura was also there. Major Shiuchi gave him the following order: "Warrant Officer Sugiura is making preparations for the execution of the airmen now. You go along and help too" (R 47). Shiuchi also stated that the Allied Forces were already in Wakayama and might come to Osaka at any moment, therefore, they were to perform the execution as quickly as possible. It was almost time for the Emperor's broadcast. He listened to the broadcast with Sugiura. Thereafter, they went to Sanadayama with the prisoners and captured material. He unloaded the captured goods, then walked to the site of the execution. When he returned, the goods were being burned. "I thought that we will have to burn these items as quickly as possible so that our actions will not leak outside. \*\* While I was doing this, I heard a funny splashing noise near the pit. When I looked that way I saw that one of the airmen had been beheaded and that blood was spouting from his neck. This was the first time that I had seen such a shocking sight since my birth and therefore I could not turn to look that way for a while. While I was continuing to burn the captured goods I believe it was Warrant Officer Sugiura, although I am not sure -- While I was continuing to burn the captured goods someone called me. I believe it was Warrant Officer Sugiura who had called me but I am not definite. By that time I feel as though the prisoner of war had already been brought in front of the pit. When I went there Sugiura said something like 'Nobody wants to fire.' I felt that he was asking me to do it. I did not think that it was proper for them to ask me to shoot when there were so many of the Foreign Section personnel there who should do it. Therefore I was displeased. However, I thought it over. I knew that killing was something nobody wanted to do. I could understand everyone's feelings. However, it was also a fact that this order which had been received from the superiors must be followed. Moreover I thought of what Major Shiuchi said at the unit headquarters that the occupation forces might at any moment come to Osaka and felt that it was an imminent situation. This was something somebody had to do and I was the senior ranking member at the actual site, and to demand of the lower ranking members to do something that they did not want to do was not such a good attitude to take on the part of the person making the demand. As an

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individual I did not want to do any killing. However, when I thought of the absolute order which had to be obeyed I made up my mind that I will have to do it. It is not clear in my mind whether I picked up a pistol which was lying there or that someone brought a pistol to me. I believe that Master Sergeant Mori read the execution order and as soon as he finished reading the execution order I fired. However, that point is not too clear in my mind and I can not say it definitely" (R 48).

Warrant Officer Sugiura was in charge of the execution. He never ordered any of the other men to execute a prisoner by beheading or shooting. Sugiura was promoted to warrant officer on 1 August 1945, the same time as he.

He never attended an execution at Shinodayama. As to his previous statement: (Ex 12) After he was arrested he had not slept for two days and nights and was brought to Sugano. He was not given a chance to rest before being investigated. He had received the physical shock of being arrested and was physically spent. He was excited and his mind was confused. Because of this, there were many portions which he made up himself and also many misconceptions on his part (R 50). He told the investigator that the statement may contain many misconceptions and that he would like an opportunity to reconsider it. The investigator told him to sign it and he would be given a chance to correct any errors. He did not make the necessary corrections: He would like to make some corrections now. He would like to correct the sentence which says there were many persons at the executions who asked to be allowed to kill an airman (p 5). "This sentence is contrary to my intention." The accused then asked for and received time to make some notes (R 51). (Forty minutes later the court reconvened.) He would like to strike the sentence which begins "there were many persons who asked to be allowed to kill. \* \* " When he was interrogated as to whether he was one of the executioners at that execution, this sentence was merely a portion of the answer. He is ashamed now that he mentioned the physical condition of the participants. It does not mean that these persons desired and asked to execute the airmen. When he was interrogated by the investigator, he did not clearly remember if he was one of the executioners, so he told him it seemed that he was one of the executioners and yet on the other hand, it seemed that he was not. The investigator then said that Shimizu (Nakano) had stated that one of the executioners had a gun jam and he (the accused) took his place. The investigator told him that it was more or less definitely established that he was an executioner. He told the investigator that he could not state definitely (R 52). Later, he thought that if he were to say that many requested to be allowed to kill an airman, his position would be cleared. "I therefore told the investigator that perhaps I believed that as there were many persons at the execution who asked to be allowed to kill the airmen, I did not have to do any killing myself." Later, he felt sorry for his cowardly attitude and told the investigator that ". . . it was not that way. I was just mentioning the atmosphere which existed at the execution at that time. \* \* When the writing of the statement proceeded up to this point, I was told to write, 'There were many persons at the executions who asked to be allowed to kill an airman.' At that time I told them that I did not want to write these words down because these were not the true facts. Then the investigator said, 'Well, isn't it all right to write this sentence down because in the last sentence you will be writing the phrase, (Not due to curiosity about killing but due to the feeling at the site of executions).' I still hesitated to write that sentence down because I still felt that was not the truth. However, I was pressed with various reasons and arguments and finally feeling that I could make the correction later on I wrote down the sentence. However, he (the investigator) did not grant me the request (to make the corrections). Therefore, it was under shameful circumstances that I made a statement with regard to the spiritual conditions of the persons there." (R 53)

He never volunteered to kill an airman (R 53). He did not believe the corrections would have a great bearing on the case. "My feeling for wanting to make corrections is strong because at the time I made the statement, my state of mind was not normal and now when I look over it and find such minor errors, I would like to make the correction" (R 54).

He would like to make a further correction of his statement (Exhibit 12) where it says that Hamada wanted to do this because he had brought his own sword with him. The investigator suggested to him that the reason Hamada took the

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sword with him was because he wanted to do the executing, and he therefore told the investigator that it could have been so. "When this statement was written this way I was greatly surprised." He felt sorry for Hamada for saying such a thing (R 55). Some of the names he mentioned in his statement may be erroneous.

He served two years as clerk to a lawyer. In the Kenpei Tai he received a general idea about law and how to investigate crime. He was apprehended in November 1948 in Nagasaki Prefecture (R 56). He had been using the name of Tadashi Nakano. He had previously used the names Kawai and Tanaka. It is true that he was registered under his real name at Fukube Village in Tottori Prefecture, but he had been hiding out in various places until the time of his arrest. He was arrested by the Japanese Police on 14 November 1948 at the request of the occupation forces (R 57). There was a screen between him and the investigator when he wrote his statement. The investigator could not enter his side of the room (R 59). He did state to the investigator that he had tried to tell the truth to the best of his recollection and there was no use saying anything further. Prior to that he told the investigator that he wanted to correct the part which says "There were those who requested that they be allowed," etc. "However, the investigator said 'Isn't it all right to leave it as it is because you have in the next sentence, (It was not through curiosity that they wanted to kill but because of), etc?'" (R 60). The airmen who were shot were lined up. He did not know who gave the instructions. Three airmen were shot. He (the accused) Sugiura and another person were the executioners (R 61).

Exhibit A contains certain specifications from the Okido Case (No. 328). Hamada is charged with the two beheadings involved in this case. Sugiura is charged with the executions of five prisoners of war on 15 August 1945 by ordering his subordinates to decapitate two and shoot three of them. Shiuchi and Fujioka are likewise charged with these five executions. Nagatomo, Anjo and Okido are charged with command responsibility for the same deaths.

In rebuttal, at the request of the prosecution, the commission took judicial notice of the following extracts from the military laws of Japan (Chapter 4, Article 57):

"Anyone who objects to and disobeys orders of superiors is to be punished as follows:

- (1) In cases of before an enemy - he shall be punished by death or imprisonment for life or over ten years.
- (2) In cases of military operations or in territories under martial rule - he shall be punished by an imprisonment between one and seven years.
- (3) In cases of other circumstances - he shall be punished by an imprisonment of less than two years." (R 62).

#### 4. Opinion:

The commission was constituted by proper authority and had jurisdiction of the accused and of the offenses charged.

As to Specification 1: Although the accused denied that he was present at the execution there is sufficient evidence to establish that he was present and did participate in the execution (Exs 1-6, 9, 13, 14, 20).

As to Specification 2: The accused admitted and the proof establishes that he shot an airman (Exs 4-9, 12, 19, 20).

As to Specifications 3 and 4: The evidence establishes that the accused was in command of the execution. The accused admitted that he personally shot an airman (R 48; Ex 12). He further admitted that the execution occurred after the announcement of Japan's surrender. (Ibid). This last execution was utterly undisciplined. Furthermore, the evidence shows that if Hamamoto did not voluntarily



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execute the airman himself, he certainly had the moral choice of refusing to execute the airman. His statement that he was not in charge is not considered credible. He made the following admissions: "The next thing that I recall is watching Hamada behead one of the airmen. However, I do not remember any further details. Hamada wanted to do this because he had brought his own sword with him. Since it was after the Emperor's broadcast and it was after the news had been received that the Allied Forces would land at any time, everyone at that time was in an excited mood and was anxious to finish the executions as quickly as possible. There were many persons at the executions who asked to be allowed to kill an airman. I was one of them. These requests were not due to curiosity about killing but arose from the feeling of spiritual confusion resulting from the realization that we had been defeated. Because of these circumstances, these executions were neither formal nor orderly, as in the case of those carried out at the Jonan Firing Range. In other words they were not performed one by one in accordance with the orders of a leader. As I stated previously, everyone was for himself in doing the job with the desire to finish it as quickly as possible. I shot one of them. \* \* \* As to why other airmen beside these two (Nelson and Augunas) were executed by the KEMPEITAI without being tried by military tribunal, I know nothing about it at all." (Ex 12, pp 5, 7).

"When I went there Sugiura said something like 'Nobody wants to fire.' I felt that he was asking me to do it. I did not think that it was proper for them to ask me to shoot when there were so many of the Foreign Section personnel there who should do it. Therefore, I was displeased. However, I thought it over. I knew that killing was something nobody wanted to do. I could understand everyone's feelings. However, it was also a fact that this order which had been received from the superiors must be followed. Moreover I thought of what Major Shiuchi said at the unit headquarters that the occupation forces might at any moment come to Osaka and felt that it was an imminent situation. This was something somebody had to do and I was the senior ranking member at the actual site, and to demand of the lower ranking members to do something that they did not want to do was not such a good attitude to take on the part of the person making the demand." (R 48)

All of the executions were performed pursuant to superior orders. After the surrender he fled, and lived under different aliases until he was apprehended. He was not apprehended until 14 November 1948 when he was arrested by the Japanese police. He helped to conceal evidence of the last execution.

The following points among others were raised in the brief filed by the defense: (1) By deleting the word "willfully" the commission exonerated the accused of criminal intent and thereby acquitted him. (2) Defense counsel prejudiced the rights of the accused in final argument when he changed the plea of the accused in effect from not guilty to guilty; and also because he failed to call necessary witnesses. As to (1) such a finding was upheld in the Uchiyama Case (No. 123, pp 24, 25, 51). As to (2), after first contending that the deletion of the word "willfully" in effect acquitted the accused, it is somewhat inconsistent for the defense to state that when counsel offered to plead guilty as to certain specifications provided the word "willfully" was deleted (R 73), he thereby in effect changed the plea of accused from not guilty to guilty. Furthermore, it is considered that in view of the serious nature of the charges, the results achieved are indicative of a very able defense.

5. Recommendations:

It is recommended that the findings and sentence of the commission should be approved. Since the accused was confined on 17 November 1948 and was sentenced 3 January 1949, he is not entitled to any remission of sentence.

6. Action:

Form of action designed to carry the above recommendation into effect is attached.

CYRIL E. MORRISON  
 Reviewer  
 Judge Advocate Section

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I concur in general.

Defense counsel admitted technical guilt as to Specification 2 (R-72) and Specification 4(R-73). The accused was not a laymen so far as law is concerned. He served two years as clerk to a Japanese lawyer. While in the Kempei Tai he had been given a general idea of law and was taught how to investigate crime. (R-56) He had heard that two airmen (Nelson and Augunas) who had been sent from the Kempei Tai to the military tribunal of the Central District Army, were sentenced to death and executed. He did not know why the other airmen were killed without trial by military tribunal. (Exhibit 12, p 7). He should have been put on notice that the homicides were illegal. He made no inquiry as to legality, nor did he object to taking part. The maximum penalty for disobedience of legal orders at that time was less than two years imprisonment. (R.62). The accused admitted that the last homicides (Specifications 3 and 4) took place after the surrender. He further stated that he heard on 14 August 1945 that Japan had lost the war. (Exhibit 12, p 3). Yet he did not only fail to object to participation in the patently illegal killings, but the proof indicates he shot an airman voluntarily, and was in fact in command. Hamada, under his command, killed two airmen by beheading them. The legal method of execution in the Japanese Army was by shooting. The homicide by sword rather than by the legal method of firearms is a signpost of illegality (Okada, No. 289, p 91). Every homicide is presumed to be unlawful (Iwasaki, No. 319). The accused helped to conceal evidence of the crime. After the surrender he fled and lived under several aliases. He was not apprehended until 14 November 1948. The foregoing is indicative of a feeling of guilt.

ALLAN R. BROWNE  
Lt Colonel JAGC  
Army Judge Advocate

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