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

Yokohama, Japan
1 February 1949

UNITED STATES OF AMERICA VS KENJI HIRANO

Review of the Staff Judge Advocate

1. The attached record of trial of the case of Kenji Hirano at Yokohama, Japan, from 7 April 1948 to 19 April 1948 by a Military Commission appointed by paragraph 2, Special Orders No. 75, Headquarters Eighth Army, dated 1 April 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Kenji Hirano	DATE OF CONFINEMENT: 28 November 1947
AGE: 29	DATE OF ARRAIGNMENT: 7 April 1948
RESIDENCE: Saitama-Ken, Kita-Saitama-Gun, Kawamata-Mura Oaza Inago 1 Banchi	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 7 to 19 April 1948
RELATIVES: Wife, daughter, father, mother.	DATE OF SENTENCE: 19 April 1948
EDUCATION: Keio University, Medical College Graduate	SENTENCE: CHL for life
OCCUPATION: Surgeon	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: 1 yr. in the Imperial Japanese Army. Highest rank attained, 1st Lt. Demobilized-30 Nov 1945	

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

<u>Charge and Specifications</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: 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: On or about 19 March 1945, accused did unlawfully fail to discharge his duty by failing, neglecting and refusing to provide Jack D. Krone, a wounded American POW, with available medicines, medical care and attention, and hospitalization, thereby accentuating the pain, suffering and misery of said POW.	NG	NG	---

Sp 2: On or about 20 March 1945, accused did willfully and unlawfully kill Jack F. Krone, an American POW, by injecting poison into the said POW.

NG

G

Yes

Sp 3: On or about 20 April 1945, accused did willfully and unlawfully kill William Henry Osborn, an American POW, by injecting poison into said POW.

NG

G

Yes

3. Summary of the Evidence

a. For the Prosecution

General: The accused was identified as Kenji Hirano, a first lieutenant in the Medical Corps of the Japanese Army, assigned to the Eastern District Army Medical Section between 11 February 1945 and 30 November 1945. (Ex 10, R 9, 46, 77-81).

As to Specification 1: Not Guilty.

As to Specifications 2 and 3:

(1) Corporal Jack I. Krone, an American air crewman, was reported missing in action over Tokyo on March 10, 1945 (Ex 1). Since being reported missing in action, he had not been returned to the United States alive (R 57, 58). Pursuant to instructions for the handling of downed airmen (Ex 9, p 2), Corporal Krone was imprisoned at the Tokyo Kempei Tai Headquarters (R 10, 43, Ex 6 and 11). He was suffering from severe burns and his body was covered with scabs and pus, which gave off a vile odor (R 43, Ex 6, 8, 10).

Due to Krone's serious physical condition, Sgt. Yanagizawa of the Kempei Tai called the Eastern District Army Staff Section and requested a doctor be sent to administer treatment and hospitalization (Ex 6). Sgt. Matsumoto of the Army Staff Section received this call and stated to Yanagizawa, "It would be well to dispose of him in the same manner used previously." (referring to the March 10th incident) (R 24, 48, Ex 6). Yanagizawa, without hanging up the phone, reported the call to Lt. Motokawa (R 24, Ex 6), who took over the conversation (R 24) and was told by Sgt. Matsumoto that he (Matsumoto) had been ordered by Staff Officer Ichinohe of the Eastern District Army Operations Department to convey to the Kempei Tai that since it was impossible to hospitalize the crew member in question, why not execute him at the Foreign Language School, as had been done in the previous incident of March 10th (R 48, Ex 8, p 1). Lt. Motokawa reported this call to his superiors, as requested by Matsumoto, and was advised by them to call Eastern District Army Headquarters and refuse their suggestion (Ex 8). Lt. Motokawa called Matsumoto and transmitted his superiors' decision concerning the flier and Matsumoto told him that he would pass that decision on to the staff officer (Ex 8). Nothing further was heard from the Operations Department of the Eastern District Army Headquarters (Ex 8). No doctor came that day nor did one come within two or three days (Ex 6). Sometime before midnight of 19 May 1945, Kempei Tai duty officer called the Army Medical Section, requesting a doctor be sent to treat a seriously injured flier (R 23, Ex 6, 8). Lt. Hirano, the accused, was the duty

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officer at the Army Medical Section and received this call (Ex 10). After receiving this call, Lt. Hirano immediately went to the cell block in the Kempei Tai Headquarters and found an American flier suffering from second and third degree burns all over his body. His pulse was feeble but he was conscious enough to give his name (Ex 10). Hirano treated the patient and returned to his headquarters (Ex 10). The next day, March 20, at about 1300, another call came from the Kempei Tai requesting a doctor to treat a patient (Ex 6 and 10). Hirano was again sent on this call. Upon his arrival at the Kempei Tai Headquarters, he stated that he met the person in charge of the Counter Espionage Section who, in company with some enlisted men, carried him to the cell he had visited the night before (Ex 10). Lt. Motokawa states that Hirano came to his headquarters and was talking to Sgt. Yanagizawa when he (Motokawa) came in the office (Ex 6, p 2; 8, p 3). Hirano told him that Eastern District Army Headquarters decided to take over the crew member and that they would use an injection and that he (Hirano) had brought some morphine with him (Ex 8, p 3). Lt. Motokawa did not agree with Hirano. Hirano said, "After receiving charge of the crewman I will do it and I have received orders from the authorities concerning this matter." (Ex 8, p 4). According to Hirano, he had consulted Capt. Sonobe (Ex 8, p 4). Lt. Motokawa, after his conversation with Hirano, sought the advice of his superior, Lt. Col. Fosaka, who after conferring with the Commander, Colonel Otani, advised Motokawa to turn the prisoner over and ordered that someone should witness the transfer (Ex 8, p 4). Lt. Motokawa then instructed Sgt. Yanagizawa to turn the prisoner over to Hirano (R 56, Ex 6, p 2; Ex 8, p 4). Yanagizawa, with some enlisted men, took Hirano to the cell block (Ex 6, p 2). The patient was transferred to an adjoining empty room (Ex 6, 8, 10). He was in a dazed condition and his pulse was feeble. From his physical condition, it did not look like he would live very long (Ex 10). To ease the patient's suffering, Hirano gave him two injections of morphine (Ex 8, 10, R 52). A little while after administering the morphine, someone in the Kempei Tai (Hirano thought it was an officer) said, "Please kill him right away. It would be better to end this matter quickly. Give him potassium cyanide!" (Ex 10). Motokawa stated that it was not he who gave such an order nor did he hear such an order given by anyone else (R 48, 49). Potassium cyanide was obtained from the Kempei Tai dispensary. Motokawa stated that at the request of Hirano he went to the dispensary and obtained the potassium cyanide (R 52, 55, 56, Ex 6, 8). Hirano stated that an enlisted man brought it (Ex 10). Hirano injected the poison into the body of Jack P. Krone, killing him immediately (Ex 6, 8, 10, R 26). Hirano was then told to make out a death certificate. He obtained Krone's full name and advised the Kempei Tai that he would make out a death certificate later and returned to the Medical Section (Ex 10). Hirano notified his headquarters of the death of Krone but did not state that he had administered poison and that Krone had died as a result thereof (Ex 10). Two or three days later, Hirano furnished Sgt. Kobayashi with a piece of paper on which was written the name of Jack P. Krone (Ex 10, 11, R 83). Sgt. Kobayashi made out the death certificate on Krone and pursuant to instructions from Hirano wrote in the space "Cause of Death"--second and third degree burns (R 83, 84, Ex 10, 11). Hirano affixed his signature and seal to the death certificate (Ex 10, 11).

(2) Sgt. William H. Osborne, an American air crewman, was reported missing in action over Tokyo on 2 April 1945 (Ex 2). Since being reported missing in action he has not been returned to the United States alive (R 57, 58). In the latter part of April 1945, Sgt. Osborne along with other American fliers was imprisoned at the Tokyo Kempei Tai Headquarters (Ex 4). Osborne was shot down over Tokyo on 2 April 1945 and suffered severe burns to his lower extremities and up until 16 April had received no medical attention whatsoever and was in a dying condition (Ex 4).

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On or about 18 April 1945, the Eastern District Army Medical Section received a call from the Tokyo Kempei Tai Headquarters requesting a doctor to treat a patient (Ex 6, p 3; 10, p 3). The accused Hirano was dispatched on this call and reported to the Kempei Tai Headquarters where he talked with Lt. Toyama and Sgt. Yanagizawa (Ex 6, p 3; Ex 10, p 3). He was directed to the cell block where the prisoners were interned. Before his arrival at the cell block the patient had been removed to an empty room within the building (Ex 4, 7) and was lying down. He was suffering from second and third degree burns and was half alive (Ex 4, 10). Hirano stated that he was going to treat the prisoner but someone, who he thought was Toyama, said, "The last one didn't die when you gave him a morphine injection. Give this one potassium cyanide right away." (Ex 10). Hirano took a hypodermic needle from the beaker in Hoshino's hand and gave the prisoner an injection of potassium cyanide, causing instant death (Ex 6, 7, 10). A certificate of death was prepared (Ex 3) and signed by the accused, Hirano. Hirano instructed that the cause of death be listed as second and third degree burns (Ex 10). The accused returned to his headquarters, reported that he had treated the B-29 crew member and that he had died. He did not mention injecting the poison (Ex 10).

b. For the Defense

At the conclusion of the evidence for the prosecution, the defense moved for a finding of not guilty as to Specification 1. The court, in closed session, found the defendant not guilty of Specification 1; therefore, the evidence for the defense will be confined to Specifications 2 and 3.

(1) Shoji Kono, a witness for the defense, testified that he was a doctor in the Japanese Army for about thirty years and that his last rank was major general in the Medical Section, that in the Spring of 1945 he was assigned to the Eastern District Army Medical Department as Chief of the Medical Section of that Army (R 70). He stated that diagnosis and treatment of sick patients within the Kempei Tai was handled by the medical officer on duty with the Kempei Tai but in the absence of such officer his department occasionally sent officers to treat patients (R 76). The accused Hirano was a member of his command (R 77). He knew Hirano went to the Kempei Tai to treat patients twice in 1945 (R 77). He did not know whether Hirano received any instructions from a member of the Medical Department before he went to the Kempei Tai to treat patients (R 77). He stated that Hirano was a young medical officer who had just graduated from a medical school and was new in the Medical Section and it was his opinion that Hirano usually obeyed what other officers belonging to other sections ordered him to do. He stated that Hirano, not being accustomed to army life, obeyed the orders from his superior officer (R 78). He knew that there was a medical officer assigned to the Kempei Tai all the time and his name was Major Morisue of the Medical Section. He believed that the accused Hirano was sent to treat patients in Major Morisue's absence. He stated that the Kempei Tai was a police unit in the Army and was quite different from other units and whenever one visited the Kempei Tai, he felt the pressure on him. Therefore, anyone, especially young persons, tended to obey orders issued by the unit (R 79).

(2) Jimgoro Ariga, a witness for the defense, testified that he served in the Japanese Army from 1920 to the end of November 1945; that he was assigned to the Kempei Tai in 1931 and

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served until the latter part of November 1945. He served as a lieutenant colonel at the Tokyo Kempei Tai General Headquarters until 26 March 1945. During his service with the Kempei Tai they had in their possession some captive fliers, for the purpose of investigation (R 87). He had not seen the actual treatment administered to the Allied captives but stated there was a medical officer assigned to the Tokyo General Headquarters and the Tokyo Kempei Tai and he presumed that this medical officer administered treatment to such captives whenever necessary (R 88). He had instructed enlisted men and lower ranking officers on the purpose of the Kempei Tai and in the course of that instruction he had discussed with them the power of this organization to punish people (R 88, 89). He became a member of the Kempei Tai as an Infantry captain and at that time the Kempei Tai seemed very disagreeable and fearful, and generally among the lower officers and enlisted men the Kempei Tai was something rather powerful and difficult to approve (R 89, 90). The Kempei Tai did not have the power to direct a medical officer in the treatment of a patient (R 90) but could only express a desire. If the medical officer did not comply with that desire, the Kempei Tai had no power to punish him (R 90). He did not know if there was a general policy which advocated killing prisoners or military personnel who were injured beyond hope of recovery (R 91).

(3) Hiroshi Fuwa, a witness for the defense, testified that he was a former member of the Japanese Army, was commissioned a second lieutenant in 1927 and attained the rank of colonel (R 93). He was assigned to the Eastern Area District Army from 15 June 1945 until the end of the war and while assigned there was a staff officer of that Headquarters (R 93). As such staff officer, he was familiar with the procedure for handling captured fliers. When the B-29 fliers were taken captive, they would be brought to the Kempei Tai from the front where the fliers were captured, and in accordance with an agreement previously made they would be investigated and after the investigation it would be determined whether the fliers had violated any Articles of War. If, after the investigation, it was found that the flier did not violate any Articles of War he would be sent to a prisoner of war camp. If found guilty of violating any Articles of War, he would be processed to be tried before a military court (R 94). He did not know of any flier ever being tried by a military court within the Eastern Area District Army. Such a court was set up by the Eastern District Army Headquarters but was never placed in operation (R 94). He knew of a document setting forth the agreement between the Kempei Tai and Eastern District Army Headquarters as to the handling of downed airmen but he did not know where that document was. He thought that it had been burned (R 94, 95). He knew the procedure as to medical treatment of these prisoners. He knew the procedure to be that if the Kempei Tai could not secure enough hands in treating the captured fliers they would call the Eastern District Army Headquarters for assistance. However, he did not mean to infer that the primary duty of treating the captured fliers was in the hands of the Eastern District Army Headquarters. It was the primary duty of the Kempei Tai. He stated that an officer of the Kempei Tai could not direct a medical officer of the Eastern District Army Headquarters as to the medical treatment administered to the patient (R 99).

(4) It was stipulated by and between the prosecution and defense that if the Reverend Peter Shukutani were present as a witness he would testify that at the time of the Krone incident that Krone was not in a cell in a wooden barracks outside of the

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Kempei Tai building but rather in a cell inside of the Kempei Tai building and was taken from this cell inside the building to the back yard and then was taken into a room at the end of a wooden barracks.

(5) Kiyoshi Kajiya, a witness for the defense, testified that he was a former member of the Japanese Army, and as such was assigned to the Tokyo Kempei Tai Headquarters where he worked in the Foreign Affairs Section as a Kempei Tai corporal. He did not know at the time, but later learned of an incident occurring about the middle of March which had involved an American flier (R 101). Around 10 March he heard of an incident where an American flier was buried alive (R 101). Not long after this incident, he heard a conversation between Lt. Motokawa and Yanagizawa involving another American flier (R 101). To the best of his recollection, this conversation took place the latter part of March (R 101). Motokawa was talking to Yanagizawa and stated "Injection is much easier." (R 102). The two were talking in such low voices he could hardly hear them but did hear the statement made that potassium cyanide was more simple and faster (R 102). The two were making gestures as if talking about the beating of the heart (R 102). He personally knew of one incident around June or July when a flier was injected with potassium cyanide (R 102). He did not know the accused Hirano (R 102). He did not make out a death certificate on Krone nor did he ever see one in the office (R 103). He did recall that in the Headquarters they kept a name list of the prisoners of war and when one died his name was crossed out with red ink (R 103). At the time he saw the list, two or three names had been marked off but he did not recall seeing the name of Krone (R 103).

(6) Shoichiro Matsumoto, a witness for the defense, testified that he was a former member of the Japanese Army (R 104). In March and April of 1945 he was assigned to the Staff Section of the Eastern District Army Headquarters as a master sergeant (R 104). He had no recollection of a telephone conversation during March of 1945 where it was testified that he relayed the statement "To as you did before." to the Kempei Tai as regards the disposition of a captured flier (R 104). His duties with the Eastern District Army Headquarters were as a clerk and doing liaison work between Army Headquarters and the Kempei Tai (R 104). His immediate superior was Major Hiranaka, who was the one officer in Army Headquarters concerned with the Kempei Tai prisoners, American fliers (R 104). On occasions, he did have contact with Yanagizawa at the Kempei Tai. He did not recall whether or not Yanagizawa had called him on the telephone regarding medical attention for prisoners at the Kempei Tai (R 105). He did not recall anyone in the Kempei Tai requesting medical aid for prisoners (R 105). If he had received such a call, the procedure was to report the call to Major Hiranaka and await his instructions (R 105). He did recall a telephone call from the Kempei Tai around 10 March requesting instructions from the Eastern District Army Headquarters as to what should be done with a badly injured flier. As pertains to the March 10th incident, he did not recall any request for medical aid to the flier but did recall a request to the Eastern District Army Headquarters as to what disposition should be made of the flier (R 106). The disposition of the flier in the 10th of March incident took place under the orders of the staff officer of the Eastern District Army.

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(7) Toshio Kamino, a witness for the defense, testified that he was a former member of the Japanese Army (R 108) and that as such member he was assigned to the Eastern District Army Headquarters in March 1945 as a lieutenant colonel (R 108). He stated, regarding an alleged telephone conversation with the Kempei Tai when they requested medical aid for an injured flier as has been testified to in this case, he did not make the statement "tie the victim to a pine tree." (R 108).

(8) Sadakichi Hoshino, a witness for the defense, stated that he was a former member of the Japanese Army and in March and April of 1945 was assigned as a sergeant in the medical corps to the dispensary of the Kempei Tai General Headquarters (R 111). He had no recollection of bringing any poison that was later injected into an American flier by the name of Osborne as has been testified to in this case (R 111-112). On examination by the commission, he stated that since he had not seen it he did not know whether or not the dispensary contained potassium cyanide (R 112). He stated that the dispensary had shelves that could be locked and in those shelves were kept medicines for daily use and poisons. The shelves were always locked (R 112). These medicines and poisons were always issued on a prescription by a doctor (R 112). He did not know the accused Hirano (R 113). He knew the layout of the Kempei Tai detention cells, referred to as Kempei Tai stables. He had gone to the temporary treatment room several times (R 113). To the question, "Have you ever seen an injection given?" he stated that he had no definite recollection, but he thought he recalled seeing an injection being made by a medical officer whom he did not know (R 113).

(9) For the purpose of showing the code of conduct governing members of the Japanese Armed Forces, the defense introduced as its Exhibit B the "Imperial Precepts of the Soldiers and Sailors" (R 115). As authority for the Court to consider, the defense introduced as Exhibit C a brief on superior orders taken from Case Number 154, United States vs Toshino, and also read pertinent parts of it into the record (R 115). As authority for the Court to consider, the defense introduced as its Exhibit D a review in the case of United States vs Nakamura, which brief contained the opinion of the Board of Review and Colonel Franklin P. Shaw's dissenting opinion. The defense read into the record Paragraph 8, Page 9 (R 115). As Exhibit E the defense introduced and read into evidence an affidavit of Colonel Masaichi Murakami which was a discussion on orders and obedience as practiced in the Japanese Army (R 116). As a precedent for punishment in similar or like cases, the defense introduced for the consideration of the Court and as Exhibit F the specifications and findings in the case of United States vs Fujito, Fozumi, Uchida, Ueda, and Yokoyama (R 116). As a precedent for punishment in similar or like cases, the defense introduced as its Exhibit G the charge, specifications and findings in the case of United States vs Ueda, No. 154 (R 116).

(10) The accused Kenji Hirano, after being advised as to his rights as a witness, elected to take the stand and testify under oath in his own behalf (R 117). He stated that he was twenty-nine years old (R 117). He went to Keio University Medical School where he graduated on September 30, 1944 (R 118). He entered the Japanese Army on October 10, 1944 as a medical sergeant and later became a first lieutenant in the same corps (R 118). He was assigned to the Eastern Area District Army in the medical department (R 118). He was duty officer of the medical department. Around March 20th and at about twelve o'clock that night, he received a phone call from the Kempei Tai requesting that he come and diagnose a patient (R 118-119). He went to the Kempei Tai and there found a patient

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suffering from burns over the entire body and in a very weakened condition (R 119). He gave the patient an injection and warned the duty officer of the patient's critical condition and advised that he must receive good care (R 119). He did not bandage any of the patient's burns because in his opinion the patient's condition was such that he did not believe any treatment he administered would save his life (R 119). To move the patient around in order to bandage the burns would only add to his suffering. He did not apply salve to the burns because it could not save his life and would only add to his suffering (R 119). The next day a clerk in the medical section received another call from the Kempei Tai for a doctor (R 119). Lt. Colonel Kobayakawa, the senior member of the medical department, ordered Eirano to make this call (R 119). He went to the Foreign Affairs Section of the Kempei Tai Headquarters and talked with a major or a lieutenant colonel who told him the Kempei Tai medical officer was absent and ordered him to diagnose a patient. He was told further that the officer in charge would lead him to the place where the patient was confined (R 119). He thought it was Nemoto or Motokawa who went along with him (R 119). In addition to either Nemoto or Motokawa, Yanagizawa, the interpreter Kobayashi and three or four other soldiers accompanied him (R 119). He and this group went to a cell located in the basement of the Kempei Tai General Headquarters; and as he started in the cell, he thought it was Yanagizawa who told him that it would be better to transfer the patient to a place where treatment would be easier. After looking into the cell, which was dark and lacked ventilation, he too decided it was best to transfer the patient (R 119). The patient was transferred to a wooden hut near the river (R 119). Upon examining the patient, he found out that it was the same person he had treated the night before (R 119). After examining the patient, he noticed he was in a more weakened condition and suffering very much (R 119). He gave the patient a hypodermic injection of morphine, waited a few minutes, and seeing that the patient was still suffering gave him another injection of morphine, after which the patient's suffering seemed relieved (R 120). The patient seemed to be in a sleep so he prepared to return to his headquarters (R 120). Then either Nemoto or Motokawa asked him how long the patient would live. He advised them that due to his condition he could live only a few hours (R 120). Either Nemoto or Motokawa told him that the patient had to be disposed of by late afternoon and that he would have to kill him immediately (R 120). He refused the order saying that, as a doctor, he could not do such a thing (R 120). He was told that the order was from the section chief and that soldiers were waiting for the disposal of the patient and he was strongly ordered to kill him (R 120). He believed the section chief they referred to was the Foreign Affairs Section chief (R 120). Either Nemoto or Motokawa ordered one of the soldiers to bring potassium cyanide (R 120). The soldier returned with the tube containing the white crystal-like substance and gave it to Nemoto or Motokawa (R 120). He dissolved the crystal with water and injected it into the arm of the patient who died within a few seconds (R 120). He then went to the Kempei Tai Foreign Affairs Section where, he thought, it was Yanagizawa who requested him to make out a death certificate (R 120). He secured the patient's name and told them that he would make out a death certificate later (R 120). At his headquarters he gave Sgt. Kobayashi the patient's name verbally and requested him to prepare the death certificate (R 120). The name of the Patient was Jack Ioc Krone (R 120). He prepared the death certificate and sent it to the Kempei Tai and was told that a death certificate had already been made in the name of the Kempei Tai medical officer and his certificate was not necessary (R 122-123). He then threw away the death certificate he had prepared (R 123). He stated that while in medical school he had had no

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training in military discipline or the organization of the Army (R 121). Upon his graduation from medical school, he did not take the Hippocratic oath or any other oath (R 121). He recalls that either Nemoto or Motokawa was present with him on the occasion of injecting poison into the flier (R 121). Only one of the two was present (R 121). He did not know the names of anyone in the Kempei Tai when he went there to treat a patient. The only names of members of the Kempei Tai that he remembers are Nemoto or Motokawa, Yanagizawa and Interpreter Kobayashi (R 122). Upon his return to his medical headquarters, he reported to his superior, Lt. Colonel Kobayakawa, that he had been to the Kempei Tai and treated a patient. The patient was in a serious physical condition. He was requested by the Kempei Tai that the patient be given an injection and killed. He injected him as requested and he died (R 122). He was ordered by his superior that since the patient's condition was such that he could not have lived, he should report to the departmental chief, General Kono, that he had administered treatment to the patient, and despite such treatment he died (R 122). He reported to General Kono as instructed, not mentioning that he had poisoned the flier (R 122). After examining the patient it was his belief that his life could not be saved and that he would live only a few hours (R 122). Around the middle of April he was again ordered to go to the Kempei Tai to treat a patient (R 123). He went to the Kempei Tai Headquarters where he talked briefly with Toyama, who told him that there was a badly-injured patient that needed treatment and requested him to render such treatment since the Kempei Tai medical officer was absent (R 123). He went to the hut near the river with Toyama, Yanagizawa, Kobayashi and three or four soldiers (R 123). He found the patient suffering from burns over almost his entire body. The burns were infected, held pus and gave off a vile odor. He was also in a dazed condition (R 123). Toyama ordered the soldiers to remove the patient to the extreme end of the hut (R 123). Toyama then ordered him to inject poison into the patient and kill him (R 123). He told Toyama as a medical officer he could not do it (R 123). Toyama said it wasn't necessary to give PW's treatment, and since this patient was too weak to be interrogated, he should be killed (R 124). Toyama ordered one of the soldiers to get the poison, and the soldier brought back a test tube containing a white crystal-like substance which he gave to Toyama (R 124). Toyama then ordered Hirano to inject that into the patient (R 124). After dissolving the poison in water, Hirano then injected it into the patient's arm killing him. He then went to the Kempei Tai and signed a death certificate and placed his seal thereon (R 124). He reported to his superior, Lt. Colonel Kobayakawa, that the patient was in a weakened condition and one of the Kempei Tais had ordered him to kill him by means of injecting poison into his body (R 124). His superior told him to report the death to the department chief, but ordered him to state that the patient died after treatment and not to report that he had killed the patient (R 124). This he did. Hirano stated on cross examination that he had studied English and later taught it (R 126); that when he first attended Krone, he did not talk with him in English nor did he ask him his name (R 127). He first learned his name was Jack Ioc Krone from Interpreter Kobayashi on the occasion of his first visit to treat him (R 129). He knew it was unlawful to kill the flier by poisonous injection, and he refused at first but killed him after the officer told him the section chief ordered that the flier be killed (R 129). He did not contact any of his medical corps superiors before injecting poison into the fliers (R 129). With reference to the incident involving Krone, he denied telling the prosecutor at the time of making his statement in Sugamo Prison, Prosecution Exhibit 10, that "he didn't know who ordered him to kill Krone but thought it was an officer" (R 129). He stated that at the time of making his statement concerning this incident, Prosecution Exhibit 10, he stated that either Nemoto or Motokawa told him

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that the section chief ordered him to kill the flier (R 129). With reference to the incident in April involving Osborne, he stated that he was jittery when he made his statement to the prosecutor, Prosecution Exhibit 10, and did not know exactly whether or not he stated, "I was going to treat him but someone said 'the last one didn't die when you gave him the morphine injection. Give this one potassium cyanide right away.'" (R 129-130). He stated that his statement to the prosecutor concerning this incident was "that Toyama told him that the patient was very critical and could not even be interrogated so ordered me to kill the flier" (R 132). Before injecting Osborne with poison, he did not contact any of his superiors in the medical department after he received an order to kill him (R 132). He later learned the name of the second victim that he injected was Osborne (R 132). He was rather hazy and didn't remember what was written on the death certificate of Osborne. However, he placed his signature and seal thereon (R 132). He attended a meeting in 1946 at Eastern District Army Headquarters, the purpose of which was to determine who had the responsibility of the care of enemy fliers--the Army headquarters or the Kempei Tai. He did not at that time reveal that he had poisoned any fliers (R 133). Although urged to give detailed information, his statements at the meeting were untruthful (R 133). He did not reveal the truth because the story would go back to the past again (R 133-134). He was interrogated two or three times and at none of these interrogations did he reveal that he had poisoned any American fliers (R 134). In his letter to Mr. Inouye in October 1946, in which he described his treatment of Krone and Osborne, he did not reveal that he had poisoned the fliers at the Kempei Tai (R 134). He did not state the truth in his letter because it would involve other people and bring them difficulty (R 134-135). He stated in his letter to Mr. Inouye concerning the treatment of Osborne that he gave a camphor injection, but the pulse was still weak. Again after thirty minutes another camphor injection was administered with no results. He watched the development and the patient finally died (R 134). He stated that he thought that he injected camphor because in treating burns there isn't much difference whether morphine is administered or camphor. He just wrote down vaguely for at that time he didn't pay much attention to such a small item (R 140). He felt, after being given the order to kill the fliers, that if he did not comply with such order he would be looked upon as a traitor or un-Japanese and that the Kempei Tai might revenge him for such act or they might put him in the cell (R 139).

(11) For the purpose of showing that others will be tried for contributing to the death of Krone and Osborne and also tried for ordering and directing Hirano to Kill Krone and Osborne, the defense read into the record some of the charges and specifications in the case of the United States vs Fujino, Toyama, Nemoto and Wachi (R 141-142).

4. Opinion

The accused was tried under three specifications. There were seventeen exhibits, eleven for the prosecution and six for the defense. There were fourteen witnesses who testified, four for the prosecution and ten for the defense.

The record is legally sufficient to support the findings of the commission. The commission was constituted by proper authority and had jurisdiction over the accused and of the offenses charged. There is no evidence that the accused was not sane at the

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time of the commission of the alleged acts or at the time of trial. The accused was given a fair trial, was ably defended, and cooperated in his own defense. He took the stand as a witness in his own behalf after being warned of his rights.

At the conclusion of the evidence for the prosecution, the defense moved to strike Specification 2 or for a finding of not guilty thereof (R 65). It is claimed in support of said motion that there is not enough evidence introduced by the prosecution to prove the guilt of the accused beyond a reasonable doubt, except the confession of the accused, and that the prosecution has failed to prove the corpus delicti.

There is sufficient evidence in the record, if believed, to corroborate the confession of the accused. Likewise, there is sufficient evidence to establish the corpus delicti. The commission is entitled to judge the credibility of the witnesses and the weight and importance to be given to the testimony of each; therefore, the commission was not in error in overruling the motion of the defense.

The able brief filed on behalf of the accused by the defense counsel has been considered. There is only one point in defense's brief that should be discussed; namely, the right of Major Elmer L. Vanzant, one of the members of the commission, to sit as such member after being convicted by general court martial. This point has been ably discussed in Case Locket No. 253, Kitamura.

5. Recommendations

a. Findings

(1) The finding of guilty of all specifications and charge should be approved.

b. Clemency

(1) Numerous petitions for clemency were filed and considered.

c. Sentence

(1) The accused committed an act which is shocking to the conscience of civilized society. The despicableness of his act is more pronounced in that he, as a doctor, was sent, not to kill but to administer aid and treatment to two seriously ill and helpless air crewmen. It was not only his professional duty (Case Locket No. 265, Ichinoe and others) but his legal duty to administer what treatment he could to relieve their pain and suffering and save their lives if possible. When he disregarded this duty and injected poison into their bodies to kill them, he committed a diabolical crime for which the death sentence would have been appropriate punishment. For that reason, no reduction of the life sentence imposed by the commission is recommended.

6. Action

A form of action designed to carry the above recommendations into effect is attached hereto.

WALTER P. RITCHIE
Lt. Colonel JAG
Reviewer

attached

I concur in general. The assertion of need of **Euthanasia** (mercy killing) is not supported by convincing evidence that the victims were in extremis or requested death. The proof indicates that the killings were to avoid troublesome medical care--for convenience not mercy. Even if they were actuated by kindness towards or pity for the worst hated of the enemy -- the flyer -- no legal defense or justification in civilized law of modern times appears.

ALLAN R BROWNE
Lt Col, JAGC
Army Judge Advocate

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