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

Yokohama, Japan
17 December 1948

UNITED STATES OF AMERICA VS MASUTARO IWASAKI

Review of the Staff Judge Advocate

1. The attached record of trial of Masutaro Iwasaki at Yokohama, Japan, tried from 10 May 1948 to 19 May 1948, by a Military Commission appointed by paragraph 13, Special Orders No. 102, Headquarters Eighth Army, United States Army, dated 5 May 1948, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Masutaro Iwasaki	DATE OF CONFINEMENT: 16 March 1948
AGE: 39	DATE OF ARRAIGNMENT: 10 May 1948
RESIDENCE: City of Tokyo, Shinagawa-ku, Gotanda, No. 1-267	PLACE OF TRIAL: Yokohama, Japan
RELATIVES: Father, mother, two brothers, sister, three children	PERIOD OF TRIAL: 10 May 1948 to 19 May 1948
EDUCATION: 13 years schooling	DATE OF SENTENCE: 19 May 1948
VOCATION: Carpenter	SENTENCE: CHL for fifteen (15) years
MILITARY CAREER: Served in Imperial Japanese Army 13½ years, highest rank attained, major.	CLEMENCY RECOMMENDED BY COMMISSION: No

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 and its Allies, and Japan; did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: (As amended, R 4) In or about August, 1943, accused did willfully and unlawfully order and permit Japanese soldiers under his command to mistreat Armand Toussaint, also known as Thomas Toussaint, an American PW, by beating and by otherwise abusing him.	NG	G	No
Sp 2: (As amended, R 4, 19) In or about August, 1943, the accused did unlawfully and willfully order and permit Japanese soldiers under his command to kill Armand Toussaint, also known as Thomas Toussaint, an American PW, by bayoneting.	NG	G	Yes

3. Summary of the Evidence:

a. For the Prosecution:

The accused, Masutaro Iwasaki, was a captain in the Japanese Imperial Army assigned for duty as Company Commander, Second Company, Sixteenth Reconnaissance Regiment, Sixteenth Division, with headquarters at San Jose, Mindoro Island,

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Philippine Islands, from in or about April 1942 to in or about August 1943. The violations of the Laws and Customs of War in the instant case occurred in or about the months of June, July, or August 1943 at or near the place above set forth.

As to Specifications 1 and 2: Accused was charged in Specification 1, as amended (R 4), with ordering and permitting Japanese soldiers under his command to beat and otherwise abuse one Thomas Toussaint, also known as Armand Toussaint, an American Prisoner of War; and under Specification 2, as amended (R 4, 19), with ordering and permitting Japanese soldiers under his command to willfully and unlawfully kill the said prisoner of war, Toussaint, by bayoneting him. Thirteen affidavits, including three by the accused, and the testimony of three witnesses, were offered to establish the charge and specifications.

Juan Y. Beltran in his affidavit (Ex 2) stated: - Japanese troops entered San Jose in April 1942, and Americans who had been there, fled to the mountains and were later evacuated to Panay. Toussaint had been ill with malaria and was too weak to accompany them. He remained behind and joined the guerrilla forces under Major Garcia, a Filipino national, and was active in guerrilla work. Affiant heard that Toussaint was captured by the Japanese, was beaten and tortured and finally killed.

Enrique Perez in his affidavits (Exs 3 and 4) stated: - Toussaint was brought into the garrison in August 1943, with his hands tied. He had no marks or bruises apparent on his person at that time. The next morning he was interrogated by accused (NOTE: In Exhibit 4, taken in August 1947, the witness states that Toussaint was beaten by three soldiers during this interview. In Exhibit 3, taken in October 1947, he mentions no beatings during the interrogation by accused, but mentions beatings inflicted upon the prisoner by three soldiers during a subsequent interrogation by one Lieutenant Ono, a platoon leader in the company, whose photograph he identified.) He states that the prisoner was beaten by the soldiers, with clubs, for about two hours during this questioning. The prisoner revealed the fact that certain tools had been buried at a nearby air strip, and was taken there, where the tools were recovered and brought back to camp. The following day, accused left the garrison on a field trip. Later that day, Sergeant Shiomi, whose photograph the witness identified, gave the prisoner a severe beating, while in an intoxicated condition. He kicked and beat the prisoner with a club. Accused returned and saw the prisoner and noticed his condition. Later on the same day, Sergeant Shiomi, carrying a sword, and a detail of soldiers, carrying guns and picks and shovels, put the prisoner on a truck and drove away with him. In about two hours the truck returned without the prisoner and the witness never saw him again. This occurrence took place four days after the prisoner arrived at the garrison, and the witness states that the accused was present at the time thereof.

Venancio Mapili in his affidavits (Exs 5 and 6) stated: - In August 1943, he saw the prisoner at the San Jose Garrison, and saw him severely beaten and kicked by Japanese soldiers whose names he does not know. He saw the prisoner being taken away toward the river in a truck by a squad of soldiers under Sergeant Shiomi's command, and never saw Toussaint again. Later, he was told by a soldier that the prisoner had been killed. He states that the prisoner was taken away five days after his arrival at the garrison.

Jose L. Garcia, in his affidavit (Ex 7), stated: - Toussaint joined him in April 1942 and assisted him in the organization of a guerrilla movement, acting as his executive officer. In 1943, Toussaint, who suffered from recurring malaria, was too ill to carry on and was left behind during a retreat. Affiant later heard from his agents that he (Toussaint) had been captured and taken to San Jose, where he was beaten, tortured, and later bayoneted to death.

Rosario Alconga, in her affidavit (Ex 8) stated: - She saw Toussaint at the air strip at the time the tools were dug up and that he appeared sick and weak. She stated that about a week later, Sergeant Shiomi, while under the influence of liquor, beat and tortured the prisoner severely. The next day the prisoner was again severely beaten by Shiomi, and five other soldiers, for about two hours. Following this beating, they loaded Toussaint into a cart and took

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him to the river bank where they forced him to dig a grave. He was then bayoneted twice and fell into the open grave which was then covered up. Shiomi was the only Japanese participant that she could identify.

Jose P. Pendon in his affidavit (Ex 9) states that he saw Shiomi, who was under the influence of liquor, severely beat, kick, and torture Toussaint. He states that accused was not at the garrison at the time of this occurrence.

Accused, Iwasaki, in his affidavits (Exs 10, 11, 12) stated: - That he was the commander of the Second Company, 16th Regiment, and at the end of June 1943 was in the field on a mission to pacify or capture guerrillas. Lt. Okuda, commanding a special pursuit unit, was operating in the same area and captured Toussaint. Both units returned to the garrison soon thereafter. He thinks Okuda questioned the prisoner the night of arrival and later Okuda told accused of the tools buried at the airstrip. Two days after his arrival, he prepared to leave on another mission, intending to take the prisoner along to be turned over to regimental headquarters. Before he left, he received an unsigned telegram from regimental headquarters, addressed to "San Jose Garrison Unit" ordering the execution of the prisoner. He ordered Sergeant Horiuchi to carry out this order; (NOTE: In his testimony, he changes this statement and substitutes Shiomi for Horiuchi,) (R 183, 184, 187), and departed from the post thirty minutes thereafter. No order was given as to the method of execution. He thinks that the prisoner was executed that same day. Toussaint was given no trial prior to execution. He states that he was compelled to give the execution order by reason of superior orders from regiment and that he later told the regimental commander that the prisoner had been executed in accordance with the regimental order. In his absence, Sergeant Shiomi was in command of the post. Before his departure, and while Toussaint was in custody, he noticed that the prisoner gave evidence of having been beaten. He discovered that Shiomi was the offender and severely reprimanded him. Accused received orders to return to Japan while on this last expedition. He returned to the garrison, packed his equipment, and departed the next morning, on or about 9 August 1943.

Feliciano Guillero, in his affidavit (Ex 14), states that Toussaint was brought into the garrison about the middle of August 1943. He saw Shiomi give the prisoner a severe beating after which Shiomi, with six or seven soldiers, took him to the river. Affiant later heard that the prisoner had been bayoneted.

The witness, Ono, testified that he arrived on Mindoro in 1942 at which time the island was occupied by the Japanese Army (R 34). Guerrillas were operating in the mountains spreading anti-Japanese propaganda. They wore no distinctive uniform (R 35). Four or five Japanese had been killed by guerrillas on different occasions (R 36). The mission of the Second Company to which he was assigned, was to either capture the guerrillas or induce them to surrender (R 36). According to orders, captured guerrillas were sent for investigation to the company, and from there to regiment and ultimately to division if they were of any importance (R 47). If unimportant, they were disarmed and released (R 36). In the latter part of June 1943, he met accused and Lt. Okuda in the field and Toussaint was then in custody (R 25). They all returned to San Jose where the prisoner was turned over to the guard (R 26). At that time, the prisoner was thin and weak, but bore no bruises or wounds (R 27). He departed the following day and did not see accused again until August when the latter was enroute to Japan. At that time, accused stated that Horiuchi had executed Toussaint (R 28). In September 1943, Shiomi told him that he had been in charge of the detail which recovered the tools from the airstrip (R 31).

The witness, Hibi, testified that he arrived in the Philippines in August 1942 and was assigned as Commanding Officer of the 16th Regiment with headquarters at Calapan, Mindoro. Accused was commanding officer of the Second Company of said regiment (R 51). Mindoro was occupied by the Japanese Army in 1943 (R 70) and there were no organized American forces on the island at that time (R 67). There was guerrilla activity under the leadership of Garcia (R 59). They attacked soldiers, spread subversive propaganda, and in general, obstructed the Japanese occupation (R 57). Captured guerrillas, if important, were sent for investigation, from company, through regiment, to division. If not important, they were released. A captured guerrilla was entitled to a military trial

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before punishment (R 62, 64). Accused was not a regular army officer and was not very aggressive, and ordinarily he would not act on a matter of importance without instructions from higher authority (R 63). He had no recollection of receiving a telegram reporting the capture of an American prisoner. He denied absolutely ever having wired an order to execute Toussaint, or any other American prisoner (R 52). He had no recollection of a discussion with accused relative to the execution of Toussaint. The first time he heard of the matter was at the Legal Section in Tokyo after the war (R 53). If accused ordered or permitted the torture and execution of Toussaint, his conduct would be contrary to orders and would be illegal (R 65). Accused was relieved of his command and returned to Japan in August 1943 (R 52).

The witness, Shiomi, stated that the American prisoner was captured during the summer of 1943 at which time accused was commanding his unit (R 219). He never saw any marks or bruises on the prisoner, nor did he ever strike or abuse him. He denies that he was in charge of the execution detail (R 220). He believes that Horiuchi was in charge of that detail. The witness took command of the headquarters squad while accused was away (R 223). He returned to the garrison the day before the execution, from a field trip, and was confined to bed with malaria. The accused departed on a mission the morning the prisoner was killed. Later that day, Horiuchi told him Toussaint had been killed. That was his first knowledge of the fact. He was senior in rank to Horiuchi at the time (R 224). He does not know who issued the execution order but thinks that it must have been either accused or Okuda. The execution of an American prisoner was an important matter and neither of these officers could have issued such an order without superior orders (R 221). The prisoner was held at the garrison for about twenty days before being executed (R 219). He has no recollection of having beaten the prisoner, nor of having been reprimanded by accused for so doing (R 224).

b. For the Defense:

Yoshiji Yamamoto, a private first class, assigned for duty to Lieutenant Okuda's Special Pursuit Unit, testified that his unit was directly under the command of Division and was not under accused's command (R 88). The Special Pursuit Unit was organized to seek out and capture Garcia and his guerrillas (R 86). In the spring and summer of 1943, Japanese troops were being attacked by guerrillas (R 83). He was present when the American prisoner (Toussaint) was captured during May or June of 1943, at which time the prisoner was sick and was unable to walk without assistance. The day following his capture, Toussaint was sent to San Jose (R 86). The prisoner remained at San Jose for a period of approximately twenty days, during which time the accused was present off and on, for four or five days (R 87). He saw an armed detail, under Sergeant Horiuchi, depart from the post with Toussaint (R 89). On the following day, he heard that Toussaint had been executed and that Lieutenant Okuda had ordered same (R 90). The accused was not in the garrison on the day Toussaint was executed (R 96). He heard that Sergeant Shiomi had been reprimanded by accused for beating Toussaint (R 98). At the time of his capture, Toussaint was not carrying a gun (R 103).

Yoshitsugi Hiroshima, a sergeant in accused's company, testified that Japanese troops were being attacked and killed by guerrillas and that their bodies were some times mutilated (R 109). He saw Toussaint shortly after the latter was captured (R 105) and later at San Jose in the guardroom. When the accused was absent from the post, Shiomi usually assumed command (R 108). He heard that Shiomi had been reprimanded by accused and punished by being confined to quarters for one week for beating Toussaint (R 109, 112). He later heard that Toussaint had been killed.

Shigeru Hayashi, a superior private in accused's company, testified that the Special Pursuit Unit under Lieutenant Okuda was formed under Division, to capture Garcia and his guerrillas, who were attacking Japanese troops and obstructing the occupation (R 116). These guerrillas often mutilated the bodies of captive or slain soldiers. Sergeant Shiomi usually assumed command of the company in the absence of accused (R 117). The accused was not present at the headquarters when the tools, buried at the air strip, were recovered (R 124). The witness was present on the occasion that Sergeant Shiomi became intoxicated and assaulted Toussaint. He saw the prisoner the following day and noticed that