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

Yokohama, Japan
21 February 1949

UNITED STATES OF AMERICA VS TAICHI ITO

Review of the Staff Judge Advocate

1. The attached record of trial of the case of Taichi Ito at Yokohama, Japan, tried from 27 September 1948 to 7 October 1948, by a Military Commission appointed by paragraph 1, Special Orders No. 217, Headquarters Eighth Army, United States Army, APO 343, dated 24 September 1948, as amended by paragraph 4, Special Orders No. 217, Headquarters Eighth Army, dated 24 September 1948, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

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| NAME: Taichi Ito | DATE OF CONFINEMENT: 13 July 1948 |
| AGE: 49 | DATE OF ARRAIGNMENT: 27 September 1948 |
| RESIDENCE: Shizuoka-Ken, Shuuchi-Gun, Kananyashiki 855 Banchi | PLACE OF TRIAL: Yokohama, Japan |
| MARITAL STATUS: Married | PERIOD OF TRIAL: 27 September 1948 to 7 October 1948 |
| RELATIVES: Three children, one brother, two sisters | DATE OF SENTENCE: 7 October 1948 |
| EDUCATION: Six years elementary school | SENTENCE: CHL for one (1) year |
| VOCATION: Metal worker (post-war) | CLEMENCY RECOMMENDED BY COMMISSION: No |
| MILITARY CAREER: Entered army 1920 and remained on active duty until the end of the current war. Commission, 2nd Lt. December 1935; highest rank attained, Major. | |

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

| <u>Charges and Specifications:</u> | <u>Pleas</u> | <u>Findings</u> | <u>Legally Sustained</u> |
|--|--------------|--|--------------------------|
| Charge: Accused at the time and place set forth in the specification hereto attached and during 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: That between about 1 December 1943 and about 31 December 1943, at or near Maika Bougainville Island, the accused Taichi Ito then and there being the Commander of the Military Police of the 17th Imperial Japanese Army, did willfully and unlawfully cause the death of Major Sidney F. Wharton, | NG | G except the words "willfully and", and the word "cause" substituting for the latter exception the words "contribute to". Of the excepted words Not Guilty and of the substituted words Guilty. | Yes. |

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an American prisoner of war, by ordering and permitting his subordinates to kill the said Major Sidney F. Wharton by decapitation.

3. Summary of the Evidence:

Preliminary Remarks: On 24 September 1948 the commission sustained a motion by the prosecution for a severance of Sadatoshi Sakamoto, and thus Taichi Ito is the sole accused in this trial.

a. For the Prosecution:

The record of this trial discloses that the accused Taichi Ito is charged as a war criminal for the alleged violation of the Laws and Customs of War during time of war between the United States of America, its Allies and Dependencies, and Japan.

The specification against Taichi Ito avers action that occurred at Maika, Bougainville Island while the accused was in command of the Kempei Tai of the 17th Imperial Japanese Army on that Island.

As to the Specification: The accused Taichi Ito was the Commander of the 17th Army Kempei Tai at Maika, Bougainville Island during December 1943 with jurisdiction over the Branch Kempei Tai at Ereventa (Ex. 1, p 1; Ex. 12, ps 2 and 3) where Major Wharton, an American prisoner of war, was incarcerated (Ex. 12, p 7).

The accused gave Lt. Fukaya, his subordinate commander at the Ereventa Kempei Tai (Ex. 1, p 1), an oral order to execute Major Wharton in the latter part of December 1943 (Ex. 2, p 4; Ex. 12, p 9).

Major Wharton was beheaded during the latter part of December 1943 in the jungle a few kilometers west of the 17th Army Kempei Tai, Maika, Bougainville, by Sergeant Major Sakamoto (Ex. 2, p 1; Ex. 7, ps 6 and 8; Ex. 8).

Sergeant Major Sakamoto was a member of the 17th Army Kempei Tai Headquarters under the direct command of the accused (R 61, Ex 12, p 11).

Lieutenant Fukaya had no authority to issue orders to Sergeant Major Sakamoto (Ex. 1, p 2, R 111), and he gave no order whatsoever that Major Wharton should be executed (R 61).

Major Wharton was a model prisoner who was neither court-martialed nor accused of any offenses which might justify a trial by court-martial (R 109, Ex. 12, p 10).

The accused lied about an alleged escape by Major Wharton and told his subordinates and Lieutenant Colonel Miyakawa, if questioned, to say that Wharton had escaped (Ex. 6, p 15; Ex. 7, p. 2; Ex. 12, ps 9 and 13).

The immediate superior of the accused, Lieutenant Colonel Miyakawa, Intelligence Officer of the 17th Army, testified that the order to execute Major Wharton came from higher headquarters and that he transmitted that order to the accused, but he admitted lying 53 times in answer to questions pertaining to the alleged escape of Major Wharton (Ex. 6, ps 15 and 17).

Neither Lieutenant General Akinaga, Chief of Staff to the Commander of the 17th Army, Bougainville, in December 1943, nor Lieutenant Noboru, who handled all messages from higher headquarters for Lieutenant Miyakawa, ever saw or heard of any order to execute Major Wharton (Ex. 4, p 1; Ex. 11, p 2).

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b. For the Defense: Lieutenant Colonel Mitsuo Sugino, Staff Officer in the Communication Section of 17th Army Headquarters (R 77) testified that Lieutenant Colonel Miyakawa was Chief of the Intelligence Section of the 17th Army in 1943, in charge of prisoner of war matters, and that any orders received from the Commanding General in the Wharton incident would be passed on by Miyakawa to the accused (R 78). In 1944 Miyakawa told Sugino that Major Wharton was executed on orders of the Commanding General (R 80). He did not believe the accused acted on his own initiative in the Wharton execution (R 82). He believed that the false report made to the Australians came down from the Commanding General (R 82). He had no personal knowledge of any order for the execution of Major Wharton (R 86).

The accused Taichi Ito, after having been duly advised of his rights, elected to take the stand and testify under oath (R 92). He testified in part, that:

He was assigned as Kempei Tai Commander of the 17th Army at the end of October 1943 and served as such until the cessation of hostilities, with his headquarters at Ereventa, Bougainville Island (R 94). The Commanding General of the 17th Army in 1943 was Lieutenant General Hyakutaki (R 94). Lieutenant Fukaya was his Sub-Unit Kempei Tai Commander at Ereventa and Second Lieutenant Watanabe was his Sub-Unit Commander at Tarlena (R 95). Major Wharton was executed in December 1943, and he heard that the execution took place at a distance of about 600 meters from the 17th Army Headquarters (R 96). General Imamura, commanding the 8th Area Army at Rabaul, was the immediate superior of General Hyakutaki, Commanding General of the 17th Army (R 96). Generally, matters regarding prisoners of war would come down from the Commanding General of the 17th Army to his Chief of Staff and then to Lieutenant Colonel Miyakawa, Staff Officer in charge of Intelligence, and the immediate superior of the accused (R 96). The Commanding General of the 17th Army issued oral orders for the execution of the two fliers in Tarlena in December 1943, and also oral orders for the execution of Major Wharton (R 97). The accused transmitted the order of execution in the Tarlena case to Lieutenant Watanabe by wire (R 97). In the case of the order of execution of Major Wharton, he transmitted that order to Lieutenant Fukaya at Rabaul (R 98). At Rabaul in June 1946, the accused was acquitted by an Australian Commission on the charge of transmitting the order of execution of the two American fliers to Lieutenant Watanabe in the Tarlena case (R 98). It was the duty of the Headquarters of the Kempei Tai to transmit orders of the Commanding General of the 17th Army and his policies to the lower field units of Kempei Tai and also to transmit to the Intelligence Officer, Lieutenant Colonel Miyakawa, reports of the lower field units to the Commanding General (R 98). Lieutenant Colonel Miyakawa had complete jurisdiction of captured prisoners of the 17th Army and it was his duty to transmit to the accused orders and policies of the Commanding General with regard to prisoners of war (R 99). After interrogation, it was the practice of the 17th Army to send prisoners of war to Rabaul. He heard that Major Wharton was supposed to be sent to Rabaul, but instead, Wharton was executed at Ereventa (R 99). Lieutenant Colonel Miyakawa called the accused and told him that by order of the Commanding General, Major Wharton would be executed and that Kempei Tai would carry out that order, that no ships were available to send Major Wharton to Rabaul and because an all-out attack planned at Tarlena would require use of all soldiers, no one would be available to guard this prisoner, and if he escaped there would be dire consequences (R 100). This order was transmitted to Lieutenant Fukaya by the accused. He heard from someone at Headquarters that Wharton was executed, and later he requested Lieutenant Fukaya to submit a report on the execution and explain why he had not done so before (R 100). The accused left the details of the execution of Major Wharton up to Lieutenant Fukaya (R 101). The accused made an oral report of the execution to Lieutenant Colonel Miyakawa (R 102).

Defense's Exhibit A consists of an affidavit of Noboru Nishino. It states that Nishino was a Lieutenant in the Intelligence Staff Section of

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the 17th Army under Lieutenant Colonel Miyakawa, and he assisted in interpreting, translating and filing of captured American documents and also assisted Miyakawa, who handled all prisoner of war matters for the Commanding General of the 17th Army (p 1). Miyakawa generally received prisoner of war orders directly from the Commanding General and the accused received orders from Miyakawa, and Lieutenant Fukaya took orders from the accused (p 2). Miyakawa sent several messages about Wharton to Tokyo, and later the 17th Army was ordered to send Wharton to Tokyo (p 3). Prisoners would be sent first to Rabaul and then to Tokyo (p 4). The accused would not on his own initiative order Lieutenant Fukaya to execute Major Wharton (p 5). Nishino stated that he was present when Miyakawa ordered the accused to execute Major Wharton, and it was his opinion that Miyakawa could not order such an execution without orders from the Commanding General, but he had no knowledge as to whether such an order was given to Miyakawa (p 6).

Exhibit B is the affidavit of Masakane Suzuki. It states that he was with the Ereventa Kempei Tai Branch in 1943 and that his main duty was interpreting. The function of the 17th Army Kempei Tai Headquarters was to transmit orders and policies of the Commanding General of the 17th Army to Branch Field Units and to submit orders from these units to the Commanding General. The accused received orders from Miyakawa (p 1). It was commonly known that Major Wharton was to be sent to Tokyo, but instead he was beheaded. Suzuki believed the Commanding General thought Wharton knew of the landing of American forces at Torokina (p 2). The accused told Suzuki that the Staff Section intended to send a false report to the Australian Army to the effect that Wharton had escaped and later announced that this report had been sent and that all should remember only that Major Wharton had escaped and never been captured (p 4).

Exhibit C is a copy of the proceedings of the Australian Commission which tried the accused in June 1946 at Rabaul and acquitted him of the charge of transmitting to the Tarlene Kempei Tai the order to execute the two fliers.

Exhibit D is an abstract from the case of United States of America VS Oshima Sato, in which the transmitter of an unlawful military order to execute by beheading an American prisoner of war flier was not charged and tried, although he testified as a witness at the trial.

4. Opinion:

The commission was constituted by proper authority and had jurisdiction of the accused and the offenses charged. There is no evidence that the accused was insane or otherwise incompetent at the time of the trial or at the time of the alleged offenses. Insanity was not an issue.

The offense of which the accused was found guilty was a violation of International Laws governing the treatment of prisoners of war. There is sufficient evidence to support the findings and justify the sentence of the commission.

The sentence of the accused is considered lenient for the crime committed. There were no mitigating circumstances for the offenses committed. The findings and sentence of the commission should be approved.

5. Recommendation:

It is recommended that the sentence of the accused be approved.

The accused was sentenced to confinement at hard labor for one year. There were no recommendations for clemency by any members of the commission.

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