

〈翻 訳〉

## ‘A True Account of a Condemned Prisoner up until his Execution’,<sup>1</sup> by Sakamoto Toshio<sup>2</sup>

C. J. A. Lister

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### **Surely not an Order for an Execution.**

It had turned 5:00 p.m. on 22<sup>nd</sup> December 2001. The staff member who took the call said to the Senior Correctional Treatment Officer B,

“Mr. B, the Head of the Treatment<sup>3</sup> Division wants to see you.”

“The Head of the Treatment Division?”

B got up from his seat and looked around the office. Neither the Chief nor the Supervisor was there. B was in charge of the solitary cells.

“Roll call is over, right?”

“Yes. All 531 are present and correct,” the Officer in charge of clerical work in the Treatment Division replied. When meeting an officer of higher rank, the one of lower rank never fails to report the number of inmates.

“531 present and correct.”

B repeated the current number of prisoners and left the office.

Several metres ahead, standing in front of the office of the Head of the Treatment Division was the Supplies Manager. Under his arm he was carrying large-sized work-related journals. Then and there B stood still and followed him with his eyes as he knocked on the door, turned the doorknob and entered the room. He had an unpleasant premonition.

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1 The translated passage is a part of Chapter 1 (pages 15~38) of *Shikei no Subete* (Everything about the Death Penalty) Bungei Shunju: 2006

2 Sakamoto Toshio (born 1947) was a career prison warder working in various detention houses and prisons from 1967 onwards.

3 ‘Treatment’ refers to treatment of offenders.

Tomorrow and the day after being holidays, the Emperor's Birthday followed by Christmas Eve, B had decided to take his children on an outing. He had already notified the office that he would be spending a day and night away from home and had made all preparations. The only thing remaining for him to do was return home.

"B, it has arrived."

Immediately reacting to the words of the Head of the Treatment Division, B said,

"When?"

"The 27<sup>th</sup>."

For government employees, the 28<sup>th</sup> is the final business day of the year. As for the 27<sup>th</sup>, that is the day for making preparations for the new year, doing such things as a full-scale cleaning, filing documents etc.

Why after being pressed for time with all this extra end of year work should we have to do this as well, B thought?

He did not voice his feelings but even he was aware that he looked displeased.

The key officers, the Head of the Treatment Division, the Chief and the Supplies Manager, sitting at the meeting table turned their eyes on him. It seemed that everyone was having unpleasant feelings.

"It's Y, right?"

"That's right."

The Head of the Treatment Division nodded.

Below the Governor, there were no people with experience of this among the current higher-level employees. B understood that the key officers were all present and were relying on him. Properly speaking he should be eager to meet everyone's expectations but just this time he couldn't feel that way.

Note: Ranks in the Treatment Division are as follows: the Head of the Treatment Division; Chief; Supervisor; General Staff (Senior Warder; Warder)

## **The Bobbing Corpse**

On New Year's Eve 1983 a corpse was discovered bobbing up and down on the surface of the sea inside the bay. On the body were a large number of marks, the result of blows. The face had also suffered severe damage. The murdered person was a male money lender, who was 39 years at the time of his death. The investigation headquar-

ters deduced that the murderer was Y, an executive of a transport company, who had borrowed a large sum of money from the victim, and opened their investigation. In the course of their examination of witnesses, as a result of the confession of an employee of the company, X, the whole story of the murder in which he was an accomplice of Y, became clear.

Y, who had resolved to murder the man pressing him to repay his loan, lured the victim out to go fishing on December 25<sup>th</sup>. Starting to fish on a quayside, Y and X waited for their moment, beat the victim to death with an iron bar and attaching an anchor to the dead body, abandoned it in the sea.

However this was not the only crime, which the pair committed. There are many crimes committed by individuals, which have proved impossible to solve. However in the case of crimes committed by more than one person, it is sometimes the case that the criminal is exposed after his accomplice confesses. Whether he does this from a sense of wanting to repent or out of self-interest, wishing to receive a lighter punishment, in either case, the truth about past crimes is often brought to light by the confessions of accomplices. As a result of X's confessions, one after another past murders were brought to light.

In November 1979, Y together with his acquaintance X, who at the time was 20, planned to murder someone, make it look like an accidental death and fraudulently claim the insurance money. Luring the man to go out with them on a boat fishing at night, one kilometre out in the open sea, they pushed him overboard and he drowned. However the police concluded that the man's death was a suicide and the pair's plan to collect the insurance money was frustrated.

And then in January 1983, Y, wanting to fraudulently collect the insurance money from an insured employee instructed X to murder his colleague D who at the time was 30. X said to D "Let's take a break" at a quiet spot on a national highway. Once the car had stopped he murdered D by beating him to death with an iron bar from outside the car. Pushing the car with the body inside over into the bottom of a ravine he made it look like an accident. The police concluded that it was an accident and in time the pair succeeded in defrauding the insurance company out of the money.

## The Minister of Justice Gives the Order for the Execution.

Originating as a report from the public prosecutor's office, the matter of the execution is examined within the Ministry of Justice and after being circulated to the departments concerned is submitted via the Chief Secretary, Under-Secretary and Vice Minister to the Minister of Justice for approval. The number of seals stamped on the draft document is no less than 30.

Y and X were charged with three counts of murder amongst other charges and the prosecutor proposed the death penalty. The ruling of the first trial was given in 1985. They were sentenced to death at district court N. After this their appeal to the high court N was dismissed and furthermore Y's final appeal was rejected by the Supreme Court and his death penalty was finalized in 1993. X's death sentence was finalized without any final appeal to the Supreme Court and he was sent to the gallows in 1998.

Including the prosecutor who proposes the death penalty, the judges who hand down the death sentence, the bureaucrats who stamp their seals in a row on the draft order of execution and the Minister, there are more than 100 people involved. None of these people set one foot inside the execution chamber<sup>4</sup>. They are complete outsiders. Even though it is the Minister who signs her name and affixes her seal to the death warrant, she probably does not have the acute feeling of depriving a person of his life with her hand<sup>5</sup>.

From the window of the Minister's office in the modern high-rise Building 6 of the combined government offices in Kasumigaseki, the Imperial Palace, Marunouchi and the whole of Hibiya can be seen. Can it be possible to imagine the dark, damp place of execution<sup>6</sup> while looking at such a view?

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4 On 28<sup>th</sup> July 2010, Justice Minister Chiba Keiko became the first Justice Minister to attend an execution. (Japan Times 29/7/2010)

5 Considering that the number of executions is so few, notwithstanding the fact that there are a large number of people involved in the decision to execute, as the person with the final authority to either authorize or deny the execution, I don't see how the majority of Justice Ministers (perhaps with the exception of Hatoyama Kunio, the so-called 'Grim Reaper', who "solemnly" [*shukushukuto*] signed a record number of 13 death warrants during his one year in office, the most since the mid 1970s) could fail to have the acute feeling of depriving a person of his life with his / her hand, no matter what their personal opinion about capital punishment was.

6 This description does not appear to match the colour photo of the execution chamber at the Tokyo Detention House on page 1 of the Japan Times of 28/8/2010.

A dark basement.

Air that never moves, which is as cold as ice.

A plain wood coffin carried in secretly, out of deference to others.

A thick, nylon rope, striking for its unusual whiteness.

The white gloves of a prison officer in full-dress uniform.

The chaplain's vestments.

A picture of the Virgin Mary and a figure of Christ on the cross.

The cries of the condemned prisoner.

The rustling of clothes accompanying movement to the gallows.

The ear-splitting sound of screaming.

The spraying of body fluids.

The body at the point of death hanging in midair.

The dead body laid out on a stretcher after death has been confirmed.

The investigation of the facts by the prosecutor.

The cleaning of the corpse.

The placing of the body in the coffin.

The offering of flowers.

The taking out of the dead body to the mortuary.

The preaching in front of the coffin. (A funeral within the walls of the detention house involves the key officers below the Governor as well as the Warders in charge of the cells etc. and the other parties concerned gathering to hold a service for the repose of the soul of the dead prisoner.)

If I could have the Minister envisage any single one of these things, some of the people who are at the place of execution would also be brought to her mind.

### **Why the Anomalous Year-End Execution?**

Since in the first place they make us carry out an execution at this kind of period at the end of the year, they are probably not considering the situation at all.

"Y has many supporters. He is a famous death row inmate so afterwards if it doesn't bring trouble it will be good, however we should not be so optimistic."

"The media will be bothersome. We have to sufficiently review countermeasures."

The key officers who usually did their best to unconditionally obey their superiors'

orders, this time seemed to be reluctant.

At the time when one's thoughts are once again bound to be on seeing the new year in, one has to carry out an execution. It is really unpleasant.

While bringing to mind Y's appearance, B said, "Y himself thinks he will not be executed this year."

Looking at B, the Chief said "Up to the middle of this month every day he has been sending out final letters. I can't bear it."

Y, who every day was continuing to send two letters taking a philosophic view to people on the outside such as relatives or his lawyer wrote, "It is becoming dangerous. Such a kind of rumour is going around. There is some talk that there will be an execution. Since something has changed in the expressions of the people in charge I am prepared for the fact that this may be it and am writing letters to everyone. I think that when I go to the gallows, I'd like to do so in a way so as not to dishonour myself."

The content of letters being sent and received is always censored. The prison officer assigned to the job of censor, records the main points on the correspondence list and attaching it to the letter, submits it through me to the Chief for his decision on whether to approve it or not.

The Chief feels both suspicion and mental anguish in the process of making his decision. It is unlikely that any of the guards ever said "There's going to be an execution soon." Y had probably sounded out someone on the subject.

B thought that if he could answer confidently he would like to say to him, "You don't need to worry yet." Even he is unquestionably a living human and B thought that he would like to treat him as a human who is going to continue to live. He didn't even want to look the condemned prisoner who might be executed at any time, in the eye, much less to have a conversation with him. B didn't want the words, which he exchanged with him to be the man's final words. Even making the rounds of the cells he automatically tried to step noiselessly and hurry past the cell. Condemned prisoners undoubtedly give off a special aura right before their execution.

More than a month before, confidential information is received by the Governor of the Detention House from a high-ranking official in the Corrections Department of the Ministry of Justice. There is a phone call to the effect that since the execution proposal is now being passed around, it will probably be soon. Nobody had any idea when 'soon' would be but it ended up just before Christmas.

“The person in question thought that he would be executed by about the 20<sup>th</sup>, didn't he? In his room it is said that it seemed like that it was probably O.K. with him whenever he departed from this life. He had arranged his room in apple-pie order, everything from his books to his articles for daily use. He had left notes saying who he wished his personal belongings to be given to, right down to his chopsticks. However it was said that the 27<sup>th</sup> would probably be the date for execution. Right after Christmas and a few days later would be the New Year. Can't anything be done about it?”

B said this looking at the Head of the Treatment Division. The tone of his voice gradually became higher and higher and by the end he was shouting. Anger at the order for an execution at this unreasonable time, the final days of the year, was now being directed at the highest-ranked person, the Head of the Treatment Division. However even he felt the same way. He folded his arms across his chest, pursed his lips and merely nodded.

### **Warders at Detention Houses are Murderers.**

The following morning B was holding the steering wheel of his minivan. As planned he was going on an outing with his wife and two boys who were both in primary school.

In answer to the key officers who were worried about whether it was O.K. not to begin preparations over the two-day holiday, B had said, “It's a public holiday followed by Christmas Eve. Let's leave it.” Experience is a terrible thing. The more experience you accumulate, the more the preparatory work for the execution will be assigned to you, without people giving it a second thought.

For B, Y's execution would be the fourth he had assisted in. He was regarded as someone able to do a job and deeply trusted by his superiors. He had been in charge of condemned prisoners for a long time. Faces of many colleagues came to mind. When there had been trouble they had disappeared from his workplace before he had realized it. B thought that provided that you can get the same salary, if you don't need to feign ignorance of infractions of rules by prisoners by seeing no evil, hearing no evil and speaking no evil and don't need to skulk about trying to avoid trouble, it would be better to avoid this kind of work.

B didn't like to think about the deep-seated grudge harbored by the dead person and the evil consequences of depriving someone of his life by execution but both his father

and mother had died one after the other while they were in their sixties.

It was after his first experience of execution that he had moved out of the official residence for detention house employees. Right after the execution a group calling themselves citizens against capital punishment approached the official residence yelling angrily in chorus so that the children inside could hear, “Detention house warders are murderers. Tell your fathers. Stop killing people. Capital punishment is murder by the state.”

Though the group call themselves human rights activists they have no understanding of human rights. In the official residence there are wives and children who know nothing about executions. When B looked at the sleeping faces of his infant sons he had felt strongly that he was no longer able to live in the official residence.

He had told his wife on three occasions that he had had nothing to do with previous executions. This time too when the article about the execution appeared in the paper, B was afraid she would ask again. His reply would be the same. He would say, “It isn’t my turn yet.” And she would reply, “Really?”

He expected that she would look at him with a smiling face mixed with something more complex. Listening to the children’s happy voices, he hoped and prayed that no terrible disaster would befall his wife and children.

### **Where are the Condemned Prisoners.**

Japan’s criminal detention institutions consist of prisons, which house people convicted of crimes and detention houses which accommodate suspects and defendants. However condemned prisoners are accommodated in detention houses in the same location as the respective high court (with the exception of Takamatsu). The numbers of the various criminal detention institutions are as follows:

<u>Prisons</u>	<u>Main</u>	67	<u>Sub</u>	6
Adult prisons	Main	50	Sub	4
Juvenile prisons	Main	8		
Women’s prisons	Main	5	Sub	2
Medical prisons	Main	4		



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<u>Detention houses</u>	<u>Main</u>	7	<u>Sub</u>	110
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Of the above total, those

housing condemned prisoners	Main	5	Sub	2
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Actual numbers and locations of condemned prisoners

As of March 1<sup>st</sup> 2006 there were 82 condemned prisoners.

The detention houses which accommodate condemned prisoners and the current  
population of the latter.

<u>Detention House</u>	<u>Number of Condemned Prisoners</u>	<u>Prefecture in which the First Trial was Held</u>
Sapporo	1	Hokkaido
Sendai	4	Aomori, Iwate, Miyagi, Akita, Yamagata, Fukushima
Tokyo	43 (including 2 women)	Tochigi, Ibaraki, Gumma, Saitama, Chiba, Tokyo, Kanagawa, Niigata, Yamanashi, Nagano, Shizuoka
Nagoya	5 (including 1 woman)	Toyama, Ishikawa, Fukui, Gifu, Aichi, Mie
Osaka	20 (including 1 woman)	Shiga, Kyoto, Osaka, Hyogo, Wakayama, Tokushima, Kagawa, Ehime, Kochi
Hiroshima	1	Tottori, Shimane, Okayama, Hiroshima, Yamaguchi
Fukuoka	8	Fukuoka, Saga, Nagasaki, Oita, Kumamoto, Kagoshima, Okinawa

### **The Depression Suffered by the Person in Charge of the Condemned Cells.**

On December 25<sup>th</sup> the Senior Correctional Treatment Officer B was at work as usual.

He made the rounds of the cells endeavouring to look cheerful. He was being careful not to diverge from either his usual manner of walking or speaking. Although both his heart and feet felt heavy, checking his watch he entered condemned prisoner Y's cell at precisely 9:00 a.m. Since he had been assigned the condemned prisoners for his morning rounds, he was being careful not to vary the time by even a minute.

F Wing, which contains 33 solitary cells, houses among others, condemned prisoners, whose sentences have not yet been finalized and those whose sentences have already been finalized. These are the cells where B's feet felt heaviest when doing his rounds.

Senior Warder S who was in charge of the cells stepped up and gave a salute. B returned his salute.

"Reporting all 28 present and correct."

"Roger."

S and B once again exchanged salutes.

"Sir."

"Yes..."

B turned his eyes away from Senior Warder S. What met his eyes was the row of cell doors, no different from usual. Perhaps there was still a hint of Christmas Eve lingering in the air. There was a peaceful atmosphere surrounding the cells. The acute chilly silence like ice forming, which had been there until last week had disappeared. Both S and he were aware of this. The inmates straining to hear the footsteps of the warder doing his rounds. They had been thinking that this would be the morning that Y would be led off to his execution. It had been a silence produced by such a kind of anticipation in the onlookers. This morning there was a completely different, more relaxed atmosphere. It appeared that the rumour of an execution was false. B walked around looking into the cells one after another. The first cell was empty. From the second cell came a voice of greeting as if the person inside could not wait to speak.

"Merry Christmas, Sir."

Y was standing with a smile by the window.

"Merry Christmas," B responded with a smile.

"I never thought that I would still be here at Christmas. It is by the grace of Jesus."

"That's right. You finished your new painting, didn't you?"

"Yes. Thank you very much."

"Today I guess you'll be getting cake."

B said this facing Senior Warder S. He didn't want Y to see his uneasiness. He wanted to move on from Y's cell as soon as possible.

"Yes."

"Be grateful for it," B said and left Y's cell behind him.

Cake on Christmas Day is a time-honoured custom. It is a present to all of the inmates from the detention house. This year after lunch, short cake, hot tea and one mandarin orange were supposed to be distributed.

B walked around slowly looking into each cell. Cell 33 at the end was also empty. S stood in front of him and opened the door leading out of the corridor containing the cells and saw him out into the connecting corridor.

"Will it be carried out before the end of the year?" S said, following B from behind.

Senior Warder S probably felt there was something different in the behaviour of the Chief and of the Head of the Treatment Division. The person in charge of F Wing (the condemned prisoners' cells) has the most painful, grueling and stressful of posts. Successive generations of such people have all exhausted themselves both mentally and physically. Unable to complete their two-year term of duty, the number of such warders who are reassigned is not small. They are damaged mentally and physically by superiors who they do not trust and are squeezed between superiors and inmates, both of whom are irresponsible.

Deep black hair becomes white.

They suffer from stomach ulcers.

Depression sets in.

Some even attempt suicide.

Before coming here and being promoted to Head, B had had experience of being in charge of a prison factory and couldn't remember how many times he had felt vexed at the unreasonableness of his superiors. Nobody could understand Senior Warder S's anxiety better than him.

"It looks like it'll be the 27<sup>th</sup>. I will definitely let you know. I'm counting on you."

"After all .... The most troubling thing is being kept in the dark. I have to deal with him face-to-face every day. We laugh and cry together. Are you going to tell the person who's not here what you know?"

"S."

B patted S on the shoulder and then left. He didn't say that he understood because he

didn't. He understood better than the Chief or the Head of the Treatment Division. But he probably did not understand even one tenth of what S did.

While he was doing his rounds of the women's section, the wireless came on. The Warden in charge of the Women's Section reported to him that the Chief said that he had to go up to the Treatment Division.

B thanked him.

B saluted a young female warder. She had gone to university with the dream of becoming a teacher, but as she didn't have any connections either on the local board of education or in the prefectural assembly, she hadn't become a teacher in her hometown but had instead become a prison officer. Although her dream was broken, wishing to make the best use of the pedagogy and psychology, which she had learned in university, she was trying as hard as she could to rehabilitate adult females who had committed crimes.

The first time that this woman had asked B a question was when she asked about F, a female condemned prisoner.

F had had difficulty in raising capital for her company so she carried out a kidnapping for ransom. Wishing to keep the love of her business partner who had a wife and child, she kidnapped a young woman but failed to get the ransom, which she had demanded. She strangled the woman after sending her to sleep with a narcotic. It was a crime in which the fact that the death was painless was the sole consolation for the victim and her surviving family.

"Sir. Why did F receive the death penalty? If she can get the death penalty, I don't think it would be strange if half of the inmates of this prison were also condemned to death, do you?"

B did not know what answer to make but looked her in the eye and said,

"I feel the same way as you. I'm happy to meet those under me who I can consider this matter with."

What she said was undoubtedly right. Female inmates who had been caught with amphetamines would throw everything away to get hold of drugs. There are some women in prison for the crime of child abuse called injury resulting in death, who didn't even feed their babies milk. However there are many who have lost their humanity because of amphetamines, to say nothing of their maternal instincts.

There are only four female death row inmates in the whole country. With a single

word from this new unblemished warder who had begun working in this women's section of the prison where one of the four resided, B felt that his mind had been purified.

He went into the office of the women's section and picked up the receiver.

"Please wait for another thirty minutes. I cannot very well stop my usual rounds."

"What do you mean?" The Chief's tone became harsh. "Can't you follow my orders?"

He was probably angry.

"If I don't do my work as usual, things might not go according to plan the day after tomorrow."

"I don't think you need to be so cautious. The Governor is waiting. Come immediately. Everyone here hates this. A problematic atmosphere is spreading. If this leaks to the outside, we will be besieged by the media. Please come here as quickly as possible."

"O.K." Without waiting for the Chief's reply, B replaced the receiver. An unprecedented execution at the year's end. Moreover Y was a condemned prisoner who was being supported by a group of citizens chanting, "Down with the death penalty" as well as others including religious groups.

I don't know when it became like this but the execution itself is carried out in secret behind the scenes, just like stabbing someone in the back. Even if it is argued that the death penalty is a legitimate performance of a person's duty conducted in strict secrecy, it is a punishment, which deprives a person of his life. Even in normal times the work is not something that a person can talk about or feel proud about and when he sees how it is carried out he will feel concerned that he seems to be doing something utterly wrong. Each prison officer will feel in his bones that it is he alone who does not want to take part. When he leaves his job, he may assert this or that principle. Therefore the selection of personnel must be carried out carefully. If this is not done at the last moment in such a way as to avoid arousing suspicion, there will be trouble.

### **Selection of Personnel to Carry out the Execution.**

At this time in the office of the Head of the Treatment Division, the Chief and the Supervisor of the Security Personnel bring in files containing top-secret personnel records and self-evaluation reports which all staff have to write every year and they set

about selecting personnel for the execution.

In short even though all such institutions are called detention houses, their sizes vary. Since there are a variety of institutions, from large ones employing in excess of 500 officers in the treatment division to small ones employing 100 odd, the conditions for selection vary from institution to institution. However the decision rests strictly with the governor of the institution alone. If a governor cares about the men under his charge he will probably give the instruction, "As far as possible assign the key officers with the rank of Head or above to the execution." There are other governors who entrust the head of the treatment division with full powers saying, "Make suitable arrangements." A governor who fears mistakes may say, "Let's arm ourselves with those who have experience."

Besides detention houses, which house a large number of death row inmates and carry out many executions will have their own criteria. The things which all of these detention houses have in common is that the staff having the rank of head or above have all been appointed as government officers and those in charge of walking the condemned prisoner to the execution chamber and pressing the buttons are chosen in rotation from guards and prison officers with more than 10 years experience.

"First of all how many staff do we need? What do you think, Chief?"

"I was wondering whether it would be O.K. to have the same number as last time" he replied.

On being directed to do so by the Chief, the Supervisor distributed a copy of a plan of the building.

Five officers to escort the prisoner to the execution chamber.

Five guards in the passageway – one posted at each strategic point.

(To be stationed 10 minutes prior to the escort of the prisoner to isolate the entire route.)

Allotment of work related to the execution (carried out by those in charge of the escort and those guarding the passageway)

Three people at the place of execution on the 1<sup>st</sup> floor (excluding the key officers).

Three people to push the buttons to carry out the execution.

Two people in the underground room.

Two guards at the entrance.

Others

One extra guard at the front gate.

"There will be a total of ten people at the place of execution. We key officers will probably number five. I wonder whether such a large number is necessary."

"Absolutely no mistakes will be allowed. Since Y's body is expected to be claimed, even if the situation becomes violent, we must retain control so that people do not get injured. The best way to do this is to have a lot of staff on duty."

"We cannot make any mistake. Hmm."

The Head of the Treatment Division had thought that it would be better to carry out the execution smoothly with as few people as possible but since he also would not permit anyone to be injured, he nodded approval to the Chief's suggestion.

"If we have B supervise the escort of Y to the execution chamber, that means we will need nine others, doesn't it?"

"I was thinking of choosing them from among the guards and those of senior warder rank or above."

"If we use the guards each time, won't there be some people who are picked time and again?"

"I will suggest two names in each case and then I think I'd like to ask the Governor for his opinion: whether he considers it better to use those with experience or not. The guards probably think that it is their job and I don't think there would be a complaint even if someone was told to do the job two or three times in succession."

"Perhaps you're right."

None of the three people at the place of execution will have had any experience. If B were here now, his opinion would probably be "It is an unpleasant job which if a person has done it once he will not want to do it a second time."

### **The Witnesses to an Execution.**

According to the law (i.e. criminal law) it is only stipulated that the place of execution be a penal institution. Regarding those permitted to carry out the execution, nothing is stipulated. Since executions are carried out in penal institutions, it comes about that the staff of these places do the job. The only people designated by law (the Criminal Procedure Act) are the witnesses.

A public prosecutor.

A secretary of the public prosecutor's office.

The governor of the penal institution or his proxy.

Why in the case of the governor of the penal institution is a proxy permitted? The reason he doesn't need to attend himself is that no high-ranking government official is required to take part in an execution. Since it is not specified that the public prosecutor in attendance be the top of the public prosecutors office, any prosecutor will do.

The law dates back to 1907. At that time prison governors had a special status. It was a time when judges, public prosecutors as well as high-ranking government officials became prison governors. It used to be said that the carrying out of the punishment to kill the wickedest among criminals was best left to subordinates.

The special status of the governor of penal institutions (both prisons and detention houses) continued until the end of the war. The present personnel structure in which anyone can become governor as long as they are prison officers dates from the end of the war in August 1945. Rather than this being a result of democratization, it would be more accurate to say that the post of governor has been downgraded. Since then the personnel structure has been one in which neither governors of prisons or detention houses ever look up to public prosecutors holding high office in the Ministry of Justice.

### **Translator's Note**

The text has been translated into British English thus for example I have used '1<sup>st</sup> Floor' in place of the equivalent '2<sup>nd</sup> Floor' in American English or Japanese and 'condemned prisoner' instead of 'death row inmate' etc. In the past few months there have been some very interesting events, which may influence how the debate about Japan's continued use of capital punishment develops. Briefly they have been as follows: (1) Chiba Keiko, a lawyer and outspoken critic of Japan's continued use of capital punishment before becoming Justice Minister in Hatoyama Yukio's government in September 2009, after 10 months in office signed her first and only death warrants for two prisoners and attended their executions at the Tokyo Detention House on 28<sup>th</sup> July 2010. It is not clear why she signed the death warrants, although she stated that it was part of her job to do so. In the past there have been some Justice Ministers who have not signed any death warrants during their tenure and some of these have gone on record to say that they would decline to do so on moral or religious grounds. The reason she gave for attending the execution was that it was her responsibility to see with her own eyes what she had



ordered and to confirm that it was carried out properly. This sense of responsibility is in stark contrast to that of one of her predecessors, Hatoyama Kunio, who proposed scrapping the need for the signature of the Justice Minister as 'no one wants to put his signature on an execution order.' (Japan Times 26/9/2008) (2) Justice Minister Chiba lost her seat in the Upper House election on 11<sup>th</sup> July 2010. (3) After attending the executions Justice Minister Chiba announced on the same day that she would (a) allow the media to view an execution chamber (which subsequently occurred on 27/8/2010) and (b) set up a study group on capital punishment. (Japan Times 29/7/2010). It is interesting to speculate on what deals may have been made between Justice Minister Chiba and the bureaucrats in her Ministry in order for the above events to have occurred. Anyway however the debate proceeds from here I believe it is a positive thing for any democratic government and its bureaucracy to strive for as high a level of transparency as possible. Clearly there is still room for greater openness in both the administration of the death penalty, the penal system and indeed the whole criminal justice system as is borne out by the recent arrest of the elite prosecutor, Maeda Tsunehiko for evidence-tampering, not to mention the subsequent attempt by his superiors to cover-up his crime. Hopefully this case will finally mobilize the political will required to bring about long-called-for reforms such as the mandating of complete recording of all interrogations of suspects.