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COPY

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate
APO 343

Yokohama, Japan
10 June 1946

Case No. 9

UNITED STATES OF AMERICA VE YUHICHI SAKAMOTO

REVIEW OF THE STAFF JUDGE ADVOCATE

1. The attached record of the trial by Military Commission, appointed by paragraph 2, S.O. 36, Headquarters Eighth Army dated 6 February 1946 and amended by paragraph 3, S.O. 40, Headquarters Eighth Army dated 11 February 1946, having been referred to the Staff Judge Advocate this review of the record with an opinion and recommendation relating thereto is submitted for the consideration of the Commanding General of the Eighth Army of the United States.

PERSONAL DATA CONCERNING ACCUSED

Name	Yuhichi Sakamoto
Age	40 (approximation)
Residence	Nagasaki-ken, Kite Takaki Gun, Moriyama Mura, 2204
Marital Status	Married, two children
Other Relations	Not shown
Education	Not shown
Vocation	Army P.O.W. Camp
Service	18 years in the Japanese Army as an enlisted man and officer.

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

<u>Charges and Specifications</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Between 1 January 1943 and 1 September 1945 at P.O.W. Camps Number 1, Fukuoka and Number 2, Miyata Mawhi, Japan, accused, a member of the Imperial Japanese Army and commanding officer of said camps, committed and permitted members of his command to commit cruel and brutal atrocities against Allied P.O.W.'s which contributed to numerous deaths in violation of the laws and customs of war.	N.G.	Guilty except the word "numerous"; of the excepted word Not Guilty	Yes
Spec. 1: Mistreated and tortured Pfc. Tom Holland, at P.O.W. Camp Number 1 by beating with a saber in December 1944.	N.G.	G	Yes
Spec. 2: Mistreated and tortured numerous Allied P.O.W.'s at Camp Number 1 by striking them with various instruments and there by contributing to the deaths of many between 1 January 1943 and 30 June 1945	M.G.	Guilty except the words "thereby contributing to the deaths of Allied prisoners of war"; of the excepted words Not Guilty	Yes

(Review of the Staff Judge Advocate, cont'd)

<u>Charge and Specifications</u>	<u>Plea</u>	<u>Findings</u>	<u>Legally Sustained</u>
Spec. 3: Unlawfully failed to distribute Red Cross supplies at P.O.W. Camp Number 1 between 1 January 1943 and 30 June 1945, thereby contributing to the deaths of numerous Allied P.O.W.'s.	N.G.	Guilty except the words "thereby contributing to the death of numerous prisoners of war"; of the excepted words	Yes Not Guilty
Spec. 4: Mistreated and humiliated American prisoners at P.O.W. Camp Number 1 or 2 April 1945 by forcing them to attend and entertain at a party celebrating the death of President Roosevelt.	N.G.	N.G.	
Spec. 5: Failed to furnish adequate medical care, food, clothing and sanitary facilities at P.O.W. Camp Number 1 between 1 January 1943 and 30 June 1945, thereby contributing to the deaths of numerous Allied P.O.W.'s	N.G.	Guilty, except the words "and clothing and proper sanitary conditions"; and the word "numerous"; of the excepted words	Yes Not Guilty
Spec. 6: Between 1 January 1943 and 30 June 1945 at P.O.W. Camp Number 1 permitted members of his command to commit a following atrocities:			
(a) In January or February 1945 Hajime Honda tortured and killed Cpl. William C. Iverson by beating and kicking.	N.G.	G	Yes
(b) On 4 December 1944 Hajime Honda mistreated and tortured three American and one Dutch P.O.W.'s thereby causing the deaths of two of them	N.G.	N.G.	
(c) Between 1 January 1944 and 1 May 1945 Pvt. Masato Hada mistreated and contributed to the deaths of numerous sick P.O.W.'s by beating and abusing them and denying them medical supplies.	N.G.	G	Yes
(d) In January 1944 Sergeant Masakatsu Hosumi beat and jujitsued William A Hensen, a P.O.W.	N.G.	Guilty except the words "and throwing him with the use of jujitsu"; of the excepted words	Yes Not Guilty
(e) Between 1 January 1943 and 30 June 1945 members of his command beat numerous Allied P.O.W.'s with various instruments.	N.G.	G	Yes

(Review of the Staff Judge Advocate, cont'd)

<u>Charges and Specifications</u>	<u>Plea</u>	<u>Findings</u>	<u>Legally Sustained</u>
Spec. 7: From 1 July 1945 to 1 September 1945 at P.O.W. Camp Number 9 accused brutally struck numerous Allied prisoners with various instruments.	N.G.	Guilty, except the words "with various instruments thereby contributing to the deaths of various prisoners of war"; of the excepted words	Yes Not Guilty
Spec. 8: On 18 August 1945 accused permitted Sergeant Kichie Kurihara to beat and abuse certain P.O.W.'s	N.G.	Motion for finding of Not Guilty granted	

SENTENCE: Confinement for life.

3. The record of trial in this case comes to this headquarters for appellate review, the primary function of which is to assure that the accused has been accorded the rights and protection to which he is entitled as a war criminal on trial before a military commission.

4. EVIDENCE: Briefly summarized the competent evidence is to the following effect:

a. For the prosecution:

Captain Yahichi Sakamoto of the Imperial Japanese Army commanded Prisoner of War Camps Number 1 and Number 9 located respectively at Fukuoka and Miyate Machi, Kyushu, Japan, from 1 January 1943 to 1 September 1945 (R 9, 10, Stipulation). During his 28-month period of duty at Camp Number 1, which terminated on 8 May 1945, more than 133 Allied Prisoners of War died of a total of 900 therein confined, while an unascertained number of deaths occurred at Camp Number 9 between May and December 1945 (R 113, Ex. 46).

As to Specification 1: In December 1944 at Camp Number 1, Marine Pfc. Tom Holland was severely beaten with a saber by accused for allegedly stealing radishes, suffering injuries resulting in his inability to walk for several days following the beating (Ex. 9).

As to Specification 2: From 1 January 1944 to about 30 June 1945 at Camp Number 1, accused beat many prisoners with clubs, picks, sabers and other instruments in order to force them to work harder or because of their refusal to answer his questions (R 109, Ex. 11, 12, 35). He repeatedly struck one American who admitted a theft after 17 prisoners had been confined for 24 hours without food until the one confessed (R 77, 78). He kicked and clubbed another group of seven who reportedly refused to work (R 79) while six prisoners accused of begging rice in a nearby Korean village were beaten with a bamboo club and confined for four days on half rations (R 94).

As to Specification 3: From April 1944 to June 1945 Red Cross boxes arriving at Camp Number 1 were rarely distributed and even the few actually received by the prisoners were stripped of food, medicine and clothing (Ex. 10, 12, 13, 16, 42). Guards and interpreters frequently converted foodstuffs and clothing to their personal use while medical supplies were removed, distributed and stored in nearby towns for use in the event of air raid casualties and never made available to prisoners of war (R 96, 100, 103).

(Review of the Staff Judge Advocate (cont'd))

As to Specification 4: On 12 April 1945 at Camp Number 1 several Americans were brought before a gathering of drunken Japanese celebrating the death of President Roosevelt to entertain them with singing and story-telling (R 16).

As to Specification 5: At Camp Number 1 medicine was not dispensed to sick prisoners by Japanese camp doctors while American doctors who attempted to alleviate their suffering were refused requested medical supplies (Ex. 10, 12, 36). Some prisoners were forced to work in waist-deep water during icy weather (Ex. 10, 36, 37). But windows and doors were kept open during winter months and the prisoners prohibited from building fires to obtain warmth (Ex. 13, 16, 37). For minor rule infractions prisoners were confined to the "dog box," a slatted structure in which they were exposed to the elements and unable to stand erect, one American dying after a few days of such confinement (Ex. 14, 26). Only one open, insect-covered latrine was provided for the prisoners and a single tub furnished the sole bathing facilities available to 400 men (Ex. 16, 21, 37). Insufficient food was furnished the prisoners, most of whom were continually hungry, and highly prevalent malnutrition, beriberi, pneumonia and dysentery resulted in numerous deaths (Ex. 16, 36, 37). More than fifth of a group of 180 prisoners died from preventable causes during a 90-day period in early 1945 (Ex. 37). While the weight of one prisoner declined from 250 to 125 pounds during his confinement (Ex. 40).

As to Specification 6a: In February 1945 Marine Corporal William C. Iverson, after violating a "no smoking" regulation, was forced to assume a horizontal position with only his fingers and toes touching the snow-covered ground and was severely beaten with clubs and lengths of pipe and kicked in the face and testicles by Hajime Honda, a camp guard, for more than an hour until he lost consciousness (Ex. 27-33). The American medical officer at the camp, who described Iverson's prior physical condition as "fair", treated him after the beating but he died before he could be hospitalized (Ex. 50).

As to Specification 6b: No evidence submitted.

As to Specification 6c: Pvt. Masato Hada, medical orderly at Camp Number 1, daily tore up prescriptions issued by Japanese doctors to the prisoners and severely beat those who were ill, forcing many to strenuously exercise and hold buckets of water over their heads for long periods while standing in the sun (Ex. 11, 50). Many of the sick died as a result of this mistreatment and lack of medicine (Ex. 11), and the American medical officer was forced to falsely certify the causes of death (Ex. 50). Hada, who testified as a prosecution witness, admitted his mistreatment of prisoners but asserted that he was ordered by the Japanese doctor to punish those who feigned illness or were late for formations (R 49-52, 71).

As to Specification 6d: In January 1944 at Camp Number 1 William A. Hensen, an American prisoner suffering from an arm infection, was ordered from his bed and beaten by Sergeant Masakatsu Hosumi, a guard (Ex. 11).

As to Specification 6e: From 17 January 1944 to 5 September 1945 accused permitted Japanese guards and interpreters to apply jujitsu treatment to prisoners and beat them with shovels, picks, clubs, and other instruments (R 51, 52, 107, Ex. 11, 27, 35). The beatings were intensified and administered on the slightest pretext following periodic lectures by accused to the camp guards (Ex. 15, 27). Collective punishment was frequently imposed on large groups of prisoners for petty misbehavior by one of them, while groups of Japanese vicilians were often invited to visit the camp and witness the "tough" conduct of the guards (Ex. 16, 18, 35). Many beatings and clubbings were personally ordered by accused and administered in his presence (R 76, 92).

(Review of the Staff Judge Advocate, cont'd)

As to Specification 7: In two voluntary statements made to a war crimes investigator prior to the trial, accused declared that on at least ten occasions he beat prisoners charged with theft or minor violations of regulations at Camp Number 9, admitting that he knew his actions were wrongful and in violation of the terms of the Geneva Convention (R 37, 38, Ex. 43). He repeatedly clubbed two Dutch prisoners suspected of the theft of a pair of trousers, sentencing them to 15 days solitary confinement where one was fed only once each three days (R 37, Ex. 43).

As to Specification 8: On 19 August 1945 Sergeant Kichie Kuihara, a guard at Camp Number 9, on hearing reports of the Japanese surrender offer, assembled a group of allied prisoners of war and beat six of them (R 37, Ex. 44).

b. For the Defense:

Accused, after being duly advised of his rights as a witness, elected to testify in substance that while commanding Camp Number 1, he struck with his fist and palm more than 20 prisoners of war who were accused of theft or disobedience of orders (R 187, 210) and also beat four prisoners several times each with dueling sticks and bamboo poles (R 187, 214, 217). This form of punishment was the general practice in the Japanese army when minor breaches of discipline occurred, and it was his belief that a similar custom prevailed in other armies (R 186, 187, Ex. B). He did not observe guards under his command beating any prisoners and in fact had issued specific instructions forbidding such actions (R 188, 189, 206, 211). Camp guards Honda, Hada and Hosume mistreated no prisoners to his knowledge (R 222). Twelve or thirteen prisoners were given solitary confinement but only one placed on severely reduced rations (R 189, 190, 207). Considerable quantities of Red Cross supplies were stored in the camp for emergency use, and not distributed to the prisoners by order of accused's superior officer (R 192). One hundred ninety-three prisoners received in early 1945 were all ill and in need of medical care, many of them being unable to walk (R 195). Requisitions of accused for medical supplies were unfilled and his attempts to purchase adequate quantities at nearby drug stores were only partially successful (R 195, 204). Prisoners were given the daily food ration specified in Japanese Army Regulations and extra rations were issued to those who were ill (R 196, 197, 208). Many were inadequately clothed on their arrival but were subsequently issued blankets, clothing and shoes (R 202, 203, 209). Ample living space was provided in each barracks and six latrine buildings were available to prisoners (R 203).

In a written statement introduced in evidence during the progress of the trial accused reiterated his belief that the customary method of punishing trivial offenses on the part of military personnel was by beating the offenders (R 197, Ex. B). The Japanese press, public, and military authorities were extremely critical of any treatment of war prisoners that bordered on leniency and it was even necessary for accused to conceal from onlooking Japanese the actual amounts of food issued to prisoners (R 197, 199, Ex. B).

Three other defense witnesses testified in substance that only two or three prisoners were treated by the camp doctor at Camp Number 1 between 7 May 1944 and 25 February 1945 who showed signs of having been beaten or clubbed (R 158, 162). The camp under command of accused received their proportionate shares of Red Cross supplies although available quantities were insufficient, while certain medical supplies were removed and ordered stored by higher authority for future emergency use (R 143, 171).

)Review of the Staff Judge Advocate, cont'd).

On the day of President Roosevelt's death a farewell party for a camp guard had been planned (R 62, 63) and the Japanese, believing that the prisoners were not in possession of the news, informed them that they could give a "concert" at the party (R 124). The accused was neither present nor had knowledge of the incident and the Japanese apologized to the prisoners when they learned that they were aware of the President's death (R 124).

The commander of all prison camps in the Fukuoka area testified that the daily prisoner food ration was determined by Army Regulations and was not subject to the discretion of accused or other individual camp commanders (R 140). Prisoners in confinement received a considerably reduced ration under those regulations (R 141). The general food shortage in Japan during the war reduced the supply available for prisoners of war (R 153).

Two hundred sick prisoners, most of them unable to walk and badly weakened by a long sea voyage from the Philippines in the course of which four ships were sunk under them by airplane and submarine attacks, were sent to Camp Number 1 in early 1945 (R 144, 152, 160, 164, 177). Virtually all suffered severely from fatigue and malnutrition and more than fifty died from disease and wounds shortly after their arrival (R 152, 164, 177). Medical supplies were requisitioned by both accused and the camp doctor at Camp Number 1 but insufficient quantities were received (R 160, 166, 167). Camp funds were used to purchase medicine at nearby civilian drug stores (R 161).

Sanitary facilities at Camp Number 1 were unsatisfactory but were the best that could be provided under conditions existing in the camp (R 163). Accused made certain improvements at the suggestion of the camp doctor (R 163) who testified that in his opinion accused did nothing that caused or contributed to the death of any prisoner of war (R 174). Only patients deemed physically fit by the Japanese and American camp doctors were sent out for calisthenics and exercise periods (R 162). Private Hada, medical orderly, did not tear up prescriptions or beat or otherwise mistreat prisoners of war, according to the Japanese camp doctor (R 172).

5. OPINION:

Accused stands convicted of the beating, torture and mistreatment of allied prisoners of war and the unlawful failure to discharge his duty as an army commander by permitting members of his command to commit cruel and brutal atrocities against prisoners of war, which actions resulted in the death of numerous prisoners under his control.

Sakamoto, as commanding officer of Prisoner of War Camps Number 1 and Number 9 during the periods alleged, with authority to control the activities of his subordinates, bears corresponding responsibility for their illegal actions. While unrelated, isolated instances of brutality or mistreatment of prisoners of war by subordinates without the knowledge or consent of their commander do not bring the latter within the scope of the doctrine of command responsibility, the multiplicity of such incidents and their almost daily recurrence in the present case leave no doubt that accused knew or should have known of them and nevertheless failed to take steps for their prevention. The parole testimony of two Japanese guards, twenty affidavits and ex parte statements of former prisoners, of war, and the admissions of accused conclusively establish the systematic beating, clubbing, kicking and other mistreatment of large numbers of prisoners without justification. One American, Corporal Iverson, unquestionably died as a direct result of a brutal beating, and similar mistreatment contributed to the deaths of many others who were already weakened by disease, wounds and malnutrition.

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(Review of the Staff Judge Advocate, con t'd).

The proof shows that accused bears more than a command responsibility for the brutalities occurring in the camps. He admits direct and active participation in numerous beatings and clubbings, although attempting to minimize the severity of his treatment. Prosecution testimony, however, contradicts his testimony in this regard, showing frequent instances of cruel and inhuman conduct on his part. The assertion of accused that he believed such treatment to be the practice in other armies, even if believed, does not constitute a valid defense but is merely a matter to be considered in mitigation of punishment.

Although the allegations of refusal to provide adequate food and medical supplies, forcing ill prisoners to work and to undergo strenuous exercises and the withholding of Red Cross supplies are the subject of conflicting evidence, the Commission, as the trier of fact, was fully justified in its conclusion of guilt. The findings of not guilty as to specifications 4, 6b and 8 were likewise warranted by the evidence.

Although one member of the commission recommended reduction of the sentence, it is nevertheless deemed legal and appropriate to the offenses. This office is therefore constrained to recommend that clemency be not extended.

6. RECOMMENDATIONS:

It is accordingly recommended that the sentence of confinement for life be approved and ordered executed. A form of action designed to carry the foregoing recommendation into effect is hereto attached for your consideration.

/s/ JAMES A. BYRUM
JAMES A. BYRUM
1st Lieutenant, J.A.G.D.,
Assistant Staff Judge Advocate.

I Concur:

/s/ ALLAN R. BROWNE
ALLAN R. BROWNE
Lt. Colonel, J.A.G.D.,
Staff Judge Advocate.

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HEADQUARTERS EIGHTH ARMY
United States Army
APO 943

Yokohama, Japan
June 1946

In the foregoing case of Yuhichi Sakamoto, formerly captain of the Imperial Japanese Army, the sentence is approved and will be duly executed. The Sugamo Prison, Tokyo, Honshu, Japan, is designated as the place of confinement, or elsewhere as the Supreme Commander for the Allied Powers, or other proper authority, may direct.

/s/ R. L. EICHELEBERGER
R. L. EICHELEBERGER
Lieutenant General, USA,
Commanding.

CERTIFIED TRUE COPY

/s/ Frank M. Winston
FRANK M. WINSTON
1st Lt. QMC.

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

Yokohama, Japan
18 October 1948

UNITED STATES OF AMERICA VS MASATO HADA

Review of the Staff Judge Advocate

1. The attached record of trial of Masato Hada at Yokohama, Japan, from 28 January 1947 to 3 February 1947, by a Military Commission appointed by paragraph 10, Special Orders No. 19, Headquarters Eighth Army, United States Army, dated 23 January 1947, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Masato Hada	DATE OF CONFINEMENT: 24 December 1945
AGE: 31	DATE OF ARRAIGNMENT: 28 January 1947
RESIDENCE: Kyushu, Japan	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 28 January 1947 to 3 February 1947
RELATIVES: Wife; children, but number not shown	DATE OF SENTENCE: 3 December 1947
EDUCATION: Primary school graduate	SENTENCE: CHL for life
VOCATION: Locomotive repairman	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Inducted in Army in August 1942; highest rating Leading Private; received training as medical orderly; assigned Fukuoka Branch Camp No. 1, 1 December 1943.	

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

<u>Charges and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: (As amended. R 5) That between 1 December 1943 and 31 August 1945, at Fukuoka Prisoner of War Camp Number One, Fukuoka Area, Kyushu, Japan, accused, then a Private in the Armed Forces of Japan, a nation then at war with the United States of America and its Allies, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: That on or about the 18th day of November, 1944, the accused did willfully and unlawfully, mistreat, abuse and beat Captain Harm Ensing, a Dutch Prisoner of War.	NG	G	Yes
Sp 2: (As amended. R 5) That between 1 January 1944 and 31 August 1945, the accused, as medical orderly at said Camp, did willfully and unlawfully withhold and refuse to issue and provide available medical supplies to numerous Allied Prisoners of War, who were then ill, diseased, disabled or otherwise in need of such medical supplies, thereby causing them great suffering and contributing to the death of many of them.	NG	G	Yes, in part

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Sp 3: (As amended. R 5) That between 1 January 1944 and 31 August 1945, the accused did willfully and unlawfully misappropriate, withhold and convert to his own use Red Cross supplies intended for the use and benefit of Allied Prisoners of War.	NG	G	Yes
Sp 4: (As amended. R 5) That between 1 January 1944 and 31 August 1945, the accused did willfully and unlawfully mistreat and torture numerous Allied Prisoners of War, by forcing weak and ill prisoners to engage in exercises when physically unfit to do so; by requiring prisoners to hold buckets of water over their heads for long periods of time; by beating and otherwise abusing them; thereby causing them great suffering and pain, and contributing to the death of a number of them.	NG	G	Yes, in part
Add Sp 1: That on or about 10 March 1945 the accused did willfully and unlawfully mistreat and abuse James M. Carey, an American Prisoner of War, by refusing to admit him to the hospital at a time when he was seriously ill.	NG	G	Yes
Add Sp 2: That between 1 February 1945 and 21 March 1945, the accused did willfully and unlawfully mistreat and abuse Peter W. Hansen, an American Prisoner of War, by beating him and by forcing him to engage in calisthenics when he was seriously ill, thereby contributing to his death.	NG	G	Yes
Add Sp 3: That between 1 December 1944 and 24 January 1945, the accused did willfully and unlawfully mistreat and abuse Gordon W. Lohman, an American Prisoner of War, by beating him and by forcing him to engage in calisthenics when he was seriously ill, thereby contributing to his death.	NG	G	Yes
Add Sp 4: That between 1 December 1944 and 9 February 1945, the accused did willfully and unlawfully mistreat and abuse Jack Dickens, a British Prisoner of War, by beating him and by forcing him to engage in calisthenics when he was seriously ill, thereby contributing to his death.	NG	G	Yes
Add Sp 5: That between 1 December 1944 and 22 January 1945, the accused did willfully and unlawfully mistreat and abuse Thomas Alfred Lyalle, a British Prisoner of War, by beating him and by forcing him to engage in calisthenics when he was seriously ill, thereby contributing to his death.	NG	G	Yes

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Add Sp 6: That between 1 January 1945 and 2 August 1945, the accused did willfully and unlawfully mistreat and abuse Thomas Hustwick, a British Prisoner of War, by beating him and by forcing him to engage in calisthenics when he was seriously ill, thereby contributing to his death. NG G Yes

Add Sp 7: That between 1 February 1945 and 28 July 1945, the accused did willfully and unlawfully mistreat and abuse Peter Alexander Sims, an Australian Prisoner of War, by beating him and by forcing him to engage in calisthenics when he was seriously ill, thereby contributing to his death. NG G Yes

Add Sp 8: That between 1 December 1944 and 13 January 1945, the accused did willfully and unlawfully mistreat and abuse Henry Gottlieb, an American Prisoner of War, by beating him and by forcing him to engage in calisthenics when he was seriously ill, thereby contributing to his death. NG G Yes

Add Sp 9: That between 1 December 1944 and 19 December 1944, the accused did willfully and unlawfully mistreat and abuse Albert S. Williams, an American Prisoner of War, by refusing to admit him to the hospital and by beating him when he was seriously sick, thereby contributing to his death. NG G Yes, in part

3. Summary of the Evidence:

a. For the Prosecution:

As to Specification 1: Capt. Harm Ensing, a Dutch medical officer and a doctor in the camp, stated that on 18 November 1944 he requested sulfadiazine powders for a Dutch patient and Japanese Dr. Kendo ordered additional issuance of two grams and three doses of one gram every six hours. Accused, in charge of the medical stores, was issuing a smaller dosage and refused to issue additional amounts until the following morning, whereupon witness spoke to Dr. Kendo who reprimanded the accused. Accused became very resentful and after dinner witness was summoned to the dispensary and he was beaten by accused and Hashimoto. "I was beaten horribly on my back, buttocks and legs. At last I declared I could stand it no longer but still they were going on. My muscles were all bruised and the skin was discolored on buttocks and legs. I fainted during roll call parade that night and for days I was walking with the utmost difficulty." (PX 5).

(PX 10, J. F. de Wijn, a Dutch medical officer and PW Doctor)
Sometimes Captain Ensing got a thrashing for complaining about accused's delay in filling prescriptions.

As to Specification 2: (PX 1, Jack Wolf, American civilian) Accused had charge of the pharmacy. He would tear up prescriptions and never issue medicine to you. Many men had died.

(PX 4, Samuel Swift, American civilian) Our medical privileges were further abused when the male nurse tore up prescriptions given for the prisoners by Dr. Kostocki.

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(PX 6, Capt. William Wallace, British medical officer and PW doctor) Accused would not issue prescriptions advised by the PW medical officer although the drugs were under his care, and by his refusal he was directly responsible for the deaths of many men.

(PX 7, Frederick Chilton, British PW) Accused frequently used to tear up medical prescriptions sent to him by the four Allied camp doctors although the drugs were available, and I consider he was directly responsible for the deaths of many men through these actions.

(PX 8, Colonel William D. North, American PW) When the Japanese doctor would prescribe medicine, accused would delay filling prescriptions and issuing the medicine.

(PX 10, Jan F. de Wijn) When Japanese doctor prescribed certain medicine, due to the accused it generally took two or three days before these were obtained.

(PX 11, Peter French, British Sergeant) On one occasion I heard Captain Wallace of the R.M.C. ask accused for a supply of sulfa powder. Accused refused to give him any of the powder.

(PX 2, Major Walter Kostecki, American medical officer and PW doctor) Accused called upon him to identify specific items of Red Cross medical supplies but these were at no time issued to him or other prisoners. The doctor-prisoners pooled their own funds and gave sums to the accused with which he procured required medicines. In addition, he paid accused from ten to thirty yen per month out of his own pocket to fill his prescriptions more quickly. Before and even after this arrangement accused made it a practice to tear up a number of prescriptions daily. In June and July of 1944 accused went through Kostecki's pile of prescriptions and tore them up at will, many times acting the part of the medical authority who felt that certain items were not necessary. He saw medical, surgical, and dental items stored by the Japanese. When he requested any of these items, request was refused. Such requests went through accused.

As to Specification 3: (PX 2, Kostecki) Accompanied accused to Fukuoka in one instance and acted as carrier of cans of Red Cross milk. Another time saw accused gorging himself on Red Cross food items in plain view of prisoners of war at the camp.

(PX 9, Harry Lucas, British Sergeant) Red Cross food was stolen by the accused.

(PX 10, de Wijn) Accused stole considerable amounts of Red Cross articles intended for the prisoners of war which were in his charge. When PW's took charge, of 112 tins of milk only 57 remained. There was also a shortage of tins of cheese or butter. Saw with his own eyes the accused's consumption of these articles.

(PX 11, French) The accused was in charge of Red Cross supplies at this camp and withheld their distribution to the prisoners.

As to Specification 4: (PX 1, Jack Wolf) Well and sick men were forced to exercise at the end of the day. If they could not carry on for thirty minutes, accused would walk around with a large stick and beat them black and blue. Many sick men died due to these punishments. Some men were forced by accused to stand in the sun holding a bucket of water over their heads with their arms extended for hours.

(PX 2, Kostecki) Prisoners of war, including patients in the hospital that were able to get up, were required to do calisthenics under accused's direction, he making the decision as to which patients were able to exercise, overruling the PW doctor's opinion. Accused would beat those exercising with a long bamboo replica of a Samurai sword about their heads, legs, and bodies.

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Beatings were administered many times to weak and seriously ill prisoners. Weaker prisoners of war were required by accused to run around the compound until they fell exhausted. These calisthenics were a contributing factor in the death of some of the prisoners.

(PX 6, Wallace) Accused forced six patients to perform strenuous physical exercises with the result that three died. He beat sick men with bamboo poles on many occasions.

(PX 7, Chilton) On one occasion he remembers accused ordering sick men from the hospital to take part in physical exercises ordered for the rest of the camp, which exercises were quite strenuous and some of these patients were old men between fifty and sixty, some with hernias.

(PX 8, North) One morning at roll call without provocation he was selected out of about 800 men and given a "good slapping" by the accused.

(PX 10, de Wijn) Accused behaved inhumanly to the sick. If seven sick men turned up for examination he would consider that too many and would beat or kick three or four back to work. He hit patients at random with a cudgel and often forced sick prisoners to take part in gymnastics in the morning although they were obviously unfit, however, none of these caused any deaths. Although a doctor, he was forced to clean water closets and do washing up, although there were sufficient male nurses.

(PX 20, James Carey, American Sergeant) Accused beat, stomped upon and kicked him when he attempted to get Williams, another PW, admitted to the hospital.

(PX 21, Tanoue Kinzo, Japanese clerical employee at the camp) On several occasions saw accused giving exercises to the prisoners of war and saw prisoners forced to hold buckets of water over their head for long periods of time; also, saw accused striking these prisoners during the exercises with a cane.

As to Additional Specification 1: (PX 20, Carey) On or about 10 March 1945 he had a temperature of 104 degrees and for three days tried to get accused to admit him to the hospital. This was refused, and he had to work loading and unloading boxcars. On the third day he collapsed at work and had to be carried to the hospital by some of the other prisoners.

As to Additional Specifications 2, 3, 4, 5 and 8: (PX 2, Kostecki) "In my opinion these calisthenics required of the prisoners, directed by Masato HADA and sometimes witnessed by the commanding officer, Yuhichi SAKAMOTO, were a contributing factor in the death of some of the prisoners. The weaker prisoners who were subjected to these brutal calisthenics and who later died included the following Americans: G. W. Lohman, U. S. Navy, Fernandina, Florida; Hank Gottlieb and Peter W. Hansen, both civilians, prisoners taken by the Japanese at Wake Island. All of these men after a series of these daily calisthenics became so sick that it was impossible for them to stand it any longer. They were held in the hospital a short period of time, in some cases a week, and then died. Some Englishmen who died under the same circumstances were as follows: Trooper T. Hustwick, 7877969, Wallingford, England, who died 2 August 1945; Gunner J. Dickens, 1700323, of Rushden, Northampton, England, who died February 9, 1945; Gunner A. T. Lyalle, 18333000, of Bristol, England, who died January 22, 1945; and also one Australian, S Sgt P. A. Sims, NX-50743 of New South Wales, Australia, who died July 28, 1945."

As to Additional Specification 6: (PX 20, Carey) He and Hustwick were good friends, working together at the supply depot. In May or June 1945 a train with soy bean oil came in and prisoners stole portions thereof to put in their food. Hustwick and fourteen others were apprehended in the act and they were all beaten and confined in the guardhouse for about a week. When he came out of the guardhouse he was in bad condition and some other prisoners took

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Hustwick to the dispensary. They were met there by accused and he refused to give Hustwick any treatment. He struck Hustwick several times across the face with a small riding crop. He had to go back to work and did so all day. He had to be carried back to camp that night and was put in the hospital and died the following morning. His death was due to the beating he received, his starvation in the guardhouse, and the fact that the accused refused to have him admitted to the hospital.

(PX 2, Kostecki) Accused forced Hustwick to engage in calisthenics while possessing symptoms of dizziness and fainting; that these calisthenics were a definite factor in causing his death three days later.

As to Additional Specification 7: See Additional Specification 2, above:

Accused was responsible for physical training in the camp. During the winter months, December 1944 through February 1945, witness and other prisoners had to have physical training daily. Simms was suffering from chills in the stomach and told accused he was ill, but accused told him to go to parade, and as Simms made his way to the parade ground accused started to bash him with a stick. Simms was unable to do physical training and on numerous subsequent occasions he was bashed for not being able to perform. About six weeks after the first bashing he went to the hospital with beriberi and did not recover. (PX 11, French).

As to Additional Specification 9: (PX 20, Carey) Witness lived in the same barracks with Williams who died about the first of the year in 1945. Williams had badly swollen legs and Carey and other prisoners helped him over to the dispensary to get him admitted to the hospital. Accused struck Williams several times in the face with his fists, knocked him to the ground, and then stomped and kicked him with his hobnailed shoes. Accused also struck the witness with his fists and kicked him and stomped upon him. Williams had to be helped back to the barracks. The following day he and a group of other prisoners went back to the dispensary and begged accused to admit Williams to the hospital as they knew Williams was dying. Accused cursed them and refused admission. On the third day they went to the dispensary again and accused again flew into a rage, but a Japanese doctor happened to come in at that time and he admitted Williams to the hospital, but it was too late to save his life. Williams was admitted to the hospital at 7 P.M. and died at 11 P.M. the same night.

b. For the Defense:

Yuhichi Sakamoto, serving a life sentence, testified under oath. He was commandant of the camp involved from 1 January 1943 to 7 May 1945. Medical section of the camp was in charge of the Japanese medical officer, next in command being a Japanese medical NCO, and under him a Japanese medical orderly. He knows the accused, who arrived in October or November 1943 and who was there up until the time the witness left in May 1945. Accused worked in the camp as a medical orderly. Relative to the procedure of admission of a prisoner into the dispensary or hospital, the prisoner of war NCO living nearest to the prospective patient was to be first informed. He then contacted the accused at the dispensary and had the patient examined by the Japanese medical officer, who would diagnose and decide upon the nature of treatment, giving this information to the prisoner of war NCO. Allied prisoner of war medical officers cooperated and examined patients together. Accused had no authority to issue medicine when requested by a prisoner of war doctor. During accused's tour of duty he sometimes was the only orderly. At other times there were one and sometimes two other orderlies. Accused did not have authority to admit or discharge patients from the hospital. He conducted physical exercises, the patients participating being those who were passed by the medical officer, accused not having anything to say concerning which patients were or were not to be exercised. Whenever witness was present at exercises, he never saw the accused strike a prisoner, nor were any reports made to him that such had occurred. Witness never saw prisoners standing, holding buckets of water over their head. No complaints were made that accused tore up prescriptions. Accused was diligent and worked for the sake of the prisoners. Witness knows Kostecki,

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but it is not true wherein Kostecki stated that the witness saw accused beating prisoners or condoned it. No Dutch doctor ever complained to the witness that accused had beaten him (R. 57-61). Upon questioning by the Commission the witness stated that the duties of accused as medical orderly were under orders of the medical officer--the giving of medicine to patients and filling out of prescription slips, that only the medical officer had authority to transfer patients from the dispensary to the hospital and accused was never delegated that authority (R. 66-67).

Tozo Maekawa, a doctor by profession, commissioned in the Japanese Army in 1942, was on duty at the camp involved for about two and one-half months from February through April 1944 (R. 75). Accused was one of his assistants, aiding in the examinations of patients, such as procuring instruments, medicines, the filling out of diagnosis reports and prescription slips at the order of the witness. Accused had no authority on his own initiative to admit patients to, or discharge them from the hospital. When a prisoner of war doctor requested medicine, the witness was first contacted and if he acquiesced, the prescription would be filled. If the witness was absent, the prisoner of war doctor requested directly to the NCO or, in his absence, accused would comply with the request (R. 69-70). Accused did not speak English, and prescriptions written in English would have to be translated. There was a shortage of medicines in the camp and accused would sometimes go to Fukuoka to attempt to get some. During witness' tour of duty, prisoners were not exercised (R. 73). Red Cross and all medical supplies were all used at all times. No prisoners died while the witness was stationed at the camp (R. 81).

Kazuo Danno, a doctor by profession, was stationed at the camp from the latter part of February 1945 until 15 May 1945, being in charge of medical matters. Accused was one of his subordinates, his immediate superior being Sergeant Kiyohara, who was the NCO in charge of the medical department. During witness' stay at the camp accused did not have much to do with medical matters, performing liaison work between this camp and the Main Camp; was away from the camp for the entire morning every day. In addition, he also took the dental patients to Fukuoka every other day. Sick call was held about nine or ten in the morning. Prisoner of war doctors would examine first, then witness and Allied doctor would confer. If medicine was deemed necessary, the prisoner of war doctor filled out the prescription in English or Latin by means of symbols. Witness would translate into Japanese and give the prescription to the medical orderly, and the orderly would issue the medicine. Accused did not have authority to fill prescriptions, issue medicine or equipment without permission of one of his superiors. Accused had no authority to admit patients or discharge them from the hospital. Witness never saw accused tear up requests or prescriptions for medicine; never heard of it, nor was it ever reported to him. Prisoners did not exercise or do calisthenics until about April when the weather warmed, and started so doing of their own volition, under the leadership of a prisoner of war medical orderly. He never saw accused strike or beat a prisoner nor was such ever reported to him. He signed death certificates and ascertained the cause of death stated by the Allied doctors, and what appears on the death certificates signed by him reflects the actual cause of death (R 83-86). He never saw prisoners exercising on cold days nor did he ever see accused leading exercises (R 91). Between 12 February and 21 March 1945 he never saw hospital patients being exercised (R 96).

Hiroshi Nobe, the next witness, became a member of the Japanese Army in June 1943 and was assigned to the camp involved on 17 April 1944 as Pfc doing office liaison work, carrying documents from this camp to Fukuoka Main Camp. He remained at the camp for about one year and knew accused from July until August 1944. Accused conducted exercises for about fifteen minutes about nine each morning when the weather was good. The exercise grounds were located near where he passed and therefore he could see the patients engaging in calisthenics. He never saw accused strike or beat any prisoners nor did he ever see prisoners holding buckets of water over their heads. (R 100-102).

Testimony given by Dr. Kanda, from the Sakamoto Case, Docket No. 10, was read into the record by the defense. While witness was at the camp, death

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certificates were made out by himself and one of the prisoner of war doctors, the true cause of death being therein inserted. No prisoner of war doctor was compelled to sign a false certificate. He knew the accused, who had charge of medicine. Accused prepared the prescriptions under the doctor's instructions and, in conjunction with the prisoner of war medic, he gave it to patients. Witness stated he never ordered accused to tear up prescriptions, never saw him tear up prescriptions, nor did any of the prisoners complain to him relative to the accused tearing up prescriptions; never saw accused strike any patients or force them to hold buckets of water over their heads (R 103-104).

Accused, Masato Hada, testified under oath, and stated that he was assigned to the camp from 1 December 1943 to 30 April 1945 (R 10); received training in two Army schools as a medical orderly. When he was assigned to the camp there were about 250 prisoners. The dispensary and hospital were housed in two separate buildings. The dispensary was separated into an examination room, a treatment room and an office. Medical supplies were kept in the dispensary. The hospital at the camp was used for less seriously ill patients, those more seriously ill being sent to the Army hospital in Fukuoka City. When prisoners required dental care he took them to a local dentist in Fukuoka (R 110-112). Accused worked under the authority of the medical officer and the medical NCO, never having authority while at the camp to fill prescriptions without his superior so ordering him to do. (R 115). Accused never refused to fill a prescription which had been authorized by his NCO or medical orderly. If a request for medicine which was not in stock was received, he so informed the medical officer and would go to Fukuoka City to try to buy the medicine requested, and in such cases there would necessarily be a delay in filling the prescription. It was this that was referred to in the affidavits made by the various prisoners relative to their complaints that he would delay the filling of prescriptions. The delay was caused by the necessity of his going to the city to procure the medicine. Supplies of medicine on hand were inadequate (R 115-116). He did not have authority to admit prisoners to, or discharge them from the hospital, nor did he have authority to, nor did he ever overrule, the medical diagnosis of either a prison doctor or a Japanese doctor (R. 117). He cannot speak or read English or Latin. Allied medical officers wrote out requests for prescriptions on memo paper. Accused would then take such requests to the medical officer. Symbols were used for ordinary medicine, such as aspirin or stomach medicine. At no time was he authorized nor did he fill prescriptions nor give out medicines or medical equipment without direct authority of the medical officer. (R 118). He conducted calisthenics during August or September 1944, usually from 7:00 or 7:30 in the morning about twenty minutes of exercise being given, the type thereof being of the kind broadcast over the radio, that is, light exercises, the flexing of legs and arms, neck exercises, and bending of the body. He carried a "shinai", a stick used for fencing, once or twice while conducting exercises. He led exercises for about two months and carried the "shinai" only once or twice. The exercises were carried out by order of the medical officer, and not of his own volition. The prisoners who exercised were all healthy. He never forced patients to leave their beds in the hospital and go out and exercise. He used his "shinai" to push the prisoners of war in the back lightly to caution them, and never struck a prisoner of war with it. Only once, when a prisoner of war was late for exercises, did he make him hold a bucket half full of water over his head for about thirty minutes (R 119-121). Later, accused stated, upon questioning by the Commission, that he had caused two prisoners of war to hold buckets in the above manner because they were late (R 135). He struck Captain Ensing because he had complained to the medical officer that accused had not given him medicine, the accused being away at the time at the local pharmacy buying medicine. He struck Ensing with a celluloid stick about a foot long, hitting him four to five times on the shoulders. He never struck him in the face nor was Ensing knocked to the floor, nor did he suffer any ill after-effects. (R 122-124, 139) He never struck Colonel North (as he states in his affidavit, PX 8) (R 122-124). He never attended a roll call. At the time he took Kostecki to Fukuoka with him he had him carry a milk can but this can contained tobacco for the personnel at the dental office. He never had Kostocki carry cans of Red Cross milk for disposal in the city (R 125). In January 1945 Colonel Saunders, the senior prisoner of war officer, issued to the Japanese of the camp Red Cross supplies consisting of milk, tobacco, chocolate, raisins, and cheese or butter. This was the only Red Cross food he ever ate and other

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people saw him eat this food (R 126-127). He never had a secret fund with Kostecki for procuring medicines. Whenever Kostecki wanted medicines, he bought same for him and returned to him the balance of the money (R 128).

4. Opinion:

Upon the commencement of the trial, the charge and existing specifications were amended and the following additional specifications inserted, Defense Counsel stating that he had advised the accused of these amended and additional specifications (R 5).

Charge: Date changed from 1 May to 31 August. (The date in the charge is 1 May, however, the prosecution (R 5) erroneously stated "The date was changed from 31 March to 31 August in the charge.")

Specification 2: 31 March changed to 31 August. Words, "further injuring their health" deleted and there were substituted therefor the words, "contributing to the death of many of them".

Specifications 3 and 4: 31 March changed to 31 August.

Additional Specifications 1 to 9, inclusive, added.

The commission was constituted by proper authority and had jurisdiction of the accused and of the offenses alleged. There is no evidence that the accused was not sane on the occasions of the commission of the offenses alleged or at the time of trial.

The very able brief filed by the defense and reply thereto by the prosecution have been carefully considered, together with the points raised in the trial. It is concluded that no ruling of the commission adversely affected the rights of the accused.

It has been previously held that a commission has jurisdiction to try Japanese for offenses against Allied prisoners of war (US vs Yanaru, Case No. 184). Likewise, the reviewing authority has upheld the validity of the so-called "omnibus" specification. In U.S. vs Hashimoto (Case No. 168) it was stated:

"The Review Authority has heretofore held "omnibus" specifications in these cases were sufficient to give the Commissions jurisdiction to try the cases (Case No. 54, U.S.A. vs. Shiozawa, App. by Com. Gen.; Case No. 70, U.S.A. vs. Ogimoto, App. by Com. Gen.; Case No. 84, U.S.A. vs. Yanaru, App. by Com. Gen.). If, because of the generality of the specification, the accused needs more specific information to adequately prepare his defense, he should apply for same by motion for a Bill of Particulars. (Billingsley vs. U.S., 16 Fed. 2nd 754; Rinker vs. U.S. 151 Fed 755).

In Rinker vs. U.S. supra, it was said: "When an indictment sets forth the facts constituting the essential elements of the offense with such certainty that it cannot be pronounced ill upon motion to quash or demurrer, and yet is couched in such language that the accused is liable to be surprised by the production of evidence for which he is unprepared, he should, in advance of the trial, apply for a bill of the particulars; otherwise, it may properly be assumed as against him that he is fully informed of the precise case which he must meet upon the trial."

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However, in support of the "omnibus" specification, no evidence of the specific event described in another specification should be considered (U.S. vs Nichizawa, Case No. 46).

The reviewing authority has likewise heretofore upheld the allegation in a specification that conduct of an accused "contributed to the death" of a prisoner of war. This phrase has been defined in U.S. vs Kaneko (Case No. 76), wherein it was said:

"One who inflicts an injury on another is deemed by the law to be guilty of homicide if the injury contributes mediately or immediately to the death of such other. The fact that other causes contribute to the death does not relieve the actor of responsibility, provided such other causes are not the proximate cause of the death. Criminal responsibility for inflicting an injury which is the efficient cause of death is not lessened merely because the predisposed physical condition of the decedent, without which the blow or wound would not have to be fatal..... If, at the moment of death, it can be said that both injuries are contributing thereto, the responsibility rests on both actors. In such cases, the law does not measure the effects of the several injuries in order to determine which is the more serious, and which contributes in the greater measure to bring about the death."
26 Am. Jur., Sect. 48, P. 191, 192

In the U. S. vs Nichizawa (Case No. 46), the addenda by the Judge Advocate states:

"It is apparent that asserting that one has directly and proximately contributed to an homicide produces the same legal result as alleging that he has directly and proximately caused the death. War Crimes concepts are not concerned with such over-legalistic niceties as the defense urges on this point, but only with the fundamental and fair protection that civilized nations demand for those accused of crime."

The reviewing authority has also ruled against the contention that misappropriation of Red Cross supplies does not constitute a war crime, it being stated in U. S. vs Yanaru (Case No. 84):

"It is contended that theft of Red Cross supplies or food supplies furnished by the Japanese Government is not a crime against the laws and customs of war unless the effect is substantially injurious to the prisoners of war (P. 30).

Chapter 6, Prisoners of War, Article 37, Geneva Prisoner of War convention (1929) provides for the reception of parcels by mail containing foods and other articles for prisoners of war. Article 38 provides that parcels by post addressed to prisoners of war are exempted from postal duties. The Convention established the right of prisoners of war to receive packages and any deliberate prevention of their receipt thereof would logically be illegal. It is believed that the embezzlement of Red Cross food supplies, especially those intended for underfed prisoners of war, is embraced in the definition that ".... a war crime may be defined as those violations of the laws and customs of war which constitute offenses against person or property, committed in connection with military operations or occupation, which outrage common justice or involve moral turpitude", P. 85, note 11, J.A.G.S. Text No. 11."

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The defense contends that the introduction of testimony of the accused when a witness in the Sakamoto Case (No. 10) was fatal error, since it appears that in said case accused was not informed of his rights against self-incrimination, citing in support of its contention U. S. vs Namba (Case No. 149, Re-Trial):

Prosecution introduced this testimony in support of its case (R 36 - 40). The accused elected to testify in his own behalf and the testimony introduced by the prosecution was utilized to attack the credibility of the accused (R 128-135). It is familiar law that a defendant in a criminal case who voluntarily testifies in his own behalf waives completely his privilege against self-incrimination (Raffel vs U. S., 271 U. S. 494; Powers vs U. S., 223 U. S. 303; Wierick vs U. S. 139 Fed. 2d 847).

As to Specification 1: There is ample evidence to sustain the finding of guilty of this specification. The accused admitted the assault (R 122-124, 139) and whether he or Hashimoto was the principal perpetrator thereof is immaterial, for both were particeps criminis. "The gravamen of the offense is the assault and the common design renders all of the assaulting participants equally guilty" (6 C.J.S., Sec. 101, P. 959).

As to Specification 2: It is not considered that the evidence is sufficient as to that portion of the specification whereby it is alleged that the wrongful conduct resulted in the "contributing to the death of many of them." As previously stated, such an allegation has the same legal result as alleging that accused directly and proximately caused the deaths, (U. S. vs Nichizawa, supra) a grave charge requiring substantial evidence in support thereof. While the commission rightly found, on the basis of the evidence in the record, that accused was guilty of a willful and unlawful withholding and refusal, it being for the commission to determine who to believe as to the control over the issuance of medical supplies, there is a striking paucity of such a deprivation contributing to deaths. It should require no citation of authority for the proposition that whether or not deprivation of medical supplies contributed to death is a topic that laymen under ordinary experience are incapable of acquiring knowledge and forming opinions, and that such requires evidence by those learned in the field of medicine. The statement of Wolf (PX 1) reveals that he was a hut commander in the camp and fails to reveal any medical background whatsoever. He was on Wake Island at the time of capture and it can be inferred that his work was in administrative or construction fields. Likewise, the affidavit of Chilton (PX 7) reveals that he was a Lance Bombardier in the Royal Artillery. Neither of these men were qualified to state that the actions of the accused in this specification contributed to deaths and their testimony should have been totally disregarded by the Commission. It is true that Wallace (PX 6) was a medical officer and he states that by the refusal of accused to issue drugs, "He was directly responsible for the deaths of many men", however, little, if any, credence should have been placed thereon. He does not mention a single patient or incident, and most significantly, the statement of Kostocki (PX 2), also a doctor, which is most comprehensive, is completely silent in this regard; as were also the statements of the other two doctors, de Wijn (PX 10) and Ensing (PX 5).

Proof beyond a reasonable doubt is such proof as precludes every reasonable hypothesis except that which it tends to support. It is, accordingly, recommended that those words following "suffering" in this specification be stricken.

As to Specification 3: The testimony of Colonel Beecher (PX 3) was valueless and should have been disregarded. However, Kostocki (PX 2), Lucas (PX 9), and de Wijn (PX 10) all mention accused by name and there is ample evidence to support the finding of guilty.

As to Specification 4: As above stated, in the case of "omnibus" specifications no evidence of a specific event described in another specification

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should be considered (U.S. vs Nichizawa, Case No. 46).

Kostecki (PX 2) states that the calisthenics were a contributing factor in the death of some of the prisoners and he then proceeds to name those prisoners who are the subject matter of the additional specifications herein. Wallace (PX 6) states that three men died as a result of strenuous exercises. He mentions no names, however, and since he was a fellow physician of Kostecki, it can reasonably be inferred that these three deceased are included among those named by Kostecki, and named in the additional specifications. De Wijn (PX 10), another doctor, explicitly states that none of the exercises caused deaths; and see statement of Colonel Beecher (PX 3). Accordingly, while the evidence is sufficient to sustain the finding of guilty relative to the mistreatment and abuse alleged, it is not believed to be sufficient, and it was erroneously found by the commission to have resulted in the "contributing to the death of a number of them". These quoted words should be stricken. The duplication involved herein is contrary to good practice and should be avoided.

As to Additional Specifications 1 to 8, inclusive: One uncorroborated affidavit may be sufficient to support a specification. It rests with the commission, as a fact-finding body, to determine the credibility thereof, and the commission may, if it so chooses, base a finding of guilty thereon (U. S. vs Takahashi et al, Case No. 91). Kostecki, a doctor, engaged in ministering to PW patients, was fully qualified by background, training, and experience to give his conclusions as to the contributing factors. Accused and witnesses in his behalf testified that accused had no authority to decide upon the prisoners of war to be exercised (R 59-60, 120). Kostecki states that accused "made the decision as to which patients were able to get up from their beds and engage in the exercises". It was for the commission to determine who to believe, not only with reference to the foregoing, but also relative to the authority of accused in admitting patients into the hospital and in discharging them therefrom.

As to Additional Specification 9: As the defense points out (Brief, p 36) evidence by Carey (PX 20) as to his opinion of the cause of death was ordered stricken by the commission, and properly so. As to this specification the record is barren of testimony stating that accused contributed to William's death. For the reason set forth in the discussion of Specification Two, above, it is here likewise recommended that the words following "sick" be stricken. As to the remainder, it was within the commission's province to base a finding of guilt on one statement, said statement being rendered by one in a position to know the facts, an eye witness.

In conclusion, it is desired to state that lay witnesses are incompetent to render an opinion as to cause of death (or contributing thereto) in the absence of special study, knowledge or experience.

In the addenda by the Judge Advocate in U. S. vs Takagi, Case #170, the following is stated: "The test as to whether expert medical testimony is required is whether the matter involved is within the common experience and knowledge of a reasonable person. If it is, no medical expert is needed. The law employs common sense and is not more ignorant than an ordinary reasonable person. In measuring the proof in the instant case, the standards of reasonable knowledge of an ordinarily reasonable and intelligent person and the common experience of mankind are employed. To do otherwise would be to throw away reason and to bring the law and justice into disrepute."

As an abstract statement, the foregoing is undoubtedly true. However, testimony as to cause of death (or contributing thereto) that is, medical matters, is beyond the common experience and knowledge of a reasonable person. (22 CJ sec 640, p 545). This is not akin to the situation where a lay witness testifies as to a person appearing ill, looked pale, was suffering, etc. These deal with external appearance and not the "internal actuality" the latter of which, involved here, requires a medical expert (Wignore, secs 658, 1975).

Lay testimony permitted to be introduced in this case was the type which,

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according to human experience, is unreliable, of no probative value and should have been disregarded by the commission. In *Jordan vs Glickman* (N.C.) 14 SE (2) 40, it was held that a boy's mother could not testify that in her opinion his death was caused by injury sustained in a collision with an automobile (from 32 CJS sec 480, p 135, and see Anno: 136 AIR 965). Findings of guilty of contributing to deaths of "many of them", "a number of them" based upon statements of lay witnesses such as "Many men had died" (PX 1). "I consider he was responsible for the deaths of many men," by a Lance Bombardier (PX 7), particularly in a case where four doctors testified for the prosecution, would result, to advert to the foregoing addenda by the Judge Advocate, "to throw away reason and to bring the law and justice into disrepute."

The complete record shows that accused had a fair trial and that he was well represented by competent counsel. He took the stand and testified in his own behalf. A careful scrutiny of the entire record fails to reveal any error which injuriously affected the rights of the accused or any failure to accord him a fair trial. The record is legally sufficient to support the findings of the commission, except as hereinabove discussed.

5. Recommendations: The commission sentenced the accused to confinement at hard labor for life. The sentence is legal.

However, since the commission erroneously found that, for all ostensible purposes, the accused "contributed" to the death of practically every weak or ill decedent whom he exercised or deprived of medical supplies, a sentence of 20 years would be more compatible with the ends of justice.

In consonance with the foregoing opinion, the following deletions in the specifications are recommended: -

Specification 2: Delete the words following "suffering".

Specification 4: Delete the words following "pain".

Additional Specification 9: Delete the words following "sick".

Accused was confined 24 December 1945, went to trial 28 January 1947, and was sentenced on 3 February 1947. Pursuant to established policy, it is recommended that ten and one-half (10½) months of the sentence imposed be remitted. Sugamo Prison, Tokyo, Honshu, Japan, is the appropriate place of confinement.

6. Action:

Attached is a form of Action designed to effectuate the foregoing recommendations.

GEORGE GUROW
Reviewer
Judge Advocate Section

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I concur in general except as hereafter mentioned.

Overlapping allegations appear as between Specification 4 and additional specifications 2-8 inclusive with reference to deaths of prisoners. The finding of guilty as to Specification 4 insofar as it concerns the allegations of contributing to deaths should be disapproved as a duplication.

The charge of contributing to the deaths of prisoners (directly and proximately contributing) laid under additional specifications 2, 3, 4, 5, and 8 is established by the evidence in the case including medical evidence from sources qualified by experience and observation to have knowledge of the facts at issue. A summarization of this evidence appears at page 5 of the foregoing review under the heading for Specifications 2, 3, 4, 5, and 8.

The proof of the allegations under Specification 2 is adequate. This evidence including the statement of a physician is summarized on page 3 and at the top of page 4 of the foregoing review. It must be remarked generally that the evidence of non-medical witnesses as to the apparent fatal effect of mistreatments need not necessarily be disregarded if the surrounding facts indicate that it has probative value to a reasonable person. It may well be of such character as to be sufficient upon which to base a proper finding that wrongful actions were the direct and proximate cause of death. For examples and instances, compare those referred to in the review of U.S. versus Nichizawa, Case Docket 46 and U.S. versus Murakami, Case Docket 55, page 45. From the review in the latter case, the following is quoted:

"A reasonable person not possessing specialized medical knowledge but employing only that common knowledge with which all reasonable persons are endowed would be able to determine beyond a reasonable doubt from the evidence properly admitted that the deaths mentioned above directly and proximately resulted from acts charged in which the respective accused were participants. Although death resulted from a combination of causes, it is plain that the acts charged were efficient producing ones which directly and proximately caused the fatalities. ***It is common knowledge that forcing persons in the physical condition of those prisoners mentioned *** to do manual labor would be likely to result in such an aggravation of their sickness as to produce death. In the case of ***, it is clear that his recovery was halted and his demise precipitated by an arbitrary and wilful withdrawal of vitally needed available food. In the case of ***, the callous disregard of his compelling need of treatment added to his enforced employment for a period undoubtedly accelerated his death."

See also the review, U. S. versus Takagi, page 18, Case Docket No. 170 cited in the foregoing review in the instant case.

The review by the Board of Review in the office of Brigadier General Franklin P. Shaw, Judge Advocate, Far East Command, in U.S. versus Nakajima, Case Docket 128 contains the following pertinent discussion:

"The evidence is legally sufficient to sustain the Commission's findings of guilty *** (several death sentences). Teas's death was proximately caused by a deliberate, brutal and demoniacal course of conduct which included repeated inhumane beatings and abuses over a period of time, personally administered by the four accused *** and when the victim was in a weakened physical state caused by malnutrition and disease. That the resulting death *** was foreseeable and intended was obvious from the course of conduct described by the evidence. *** the deaths of Burks, Francis (etc) *** follow in the pattern of Teas's death. Each of the accused *** participated in one or more vicious beatings of the victims as alleged with the deaths following soon thereafter without independent intervening causation."

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The following is quoted from the review of the Staff Judge Advocate, 8th Army in the above case 128, page 43: "Careful examination of the facts *** compels a view that certain deaths *** were directly and proximately caused by the mistreatment *** alleged. In considering the proof, the law does not restrict itself to such refinements of proof as would make the proper accomplishment of justice impossible. It does not throw away its own common sense. It retains and uses the knowledge that ordinary reasonable persons have. It utilized the common experience of mankind. To do otherwise would justify the charge of the Dickens character when he said: 'The law is a idiot, a ass.' In cases in which a death occurs from a cause which cannot be determined by use of the above reasonable tests of common experience and common knowledge of mankind, expert testimony to aid the court is ordinarily required; otherwise it is not.

*** where the facts are sufficient that they can be placed before and understood by the jury, and where they are such matters of common observation and experience that the jurors are just as competent to draw inferences therefrom as the witness, there is no necessity for receiving the opinion of either an ordinary or a skilled witness***. (23 CJS Section 858 pp 64,67, citing cases from 21 States)."

With respect to Specification 9, it is believed that the proof was adequate to support the finding of guilty. The evidence by a Staff Sergeant of the United States Army (Ex 20, page 2) was as follows:

"Williams was suffering from malnutrition, his legs were badly swollen and he was unable to get around by himself. I believe Williams had taken pneumonia. Several other prisoners and myself helped Williams over to the medical dispensary at the camp in order to get him admitted to the hospital. When we got to the dispensary, we told HADA that we wanted to get Williams admitted to the hospital. HADA flew into a rage and struck Williams several times in the face with his fists. HADA knocked Williams to the ground and then stomped and kicked Williams with his hobnail shoes. HADA then turned and struck me in the face with his fists and kicked me. When he kicked me, I was knocked down and then Hada stomped and kicked me. Both Williams and I had to be helped back to the barracks by the other prisoners that were with us. The next day a group of we prisoners went back to the dispensary and begged Hada to admit Williams to the hospital as we knew Williams was dying. Hada cursed us and refused to admit Williams to the hospital and slapped one of the other prisoners several times in the face. On the third day another group of prisoners and myself went to the dispensary to try and get Hada to admit Williams to the hospital. Hada again flew into a rage but a Japanese doctor happened to come in at that time and he admitted Williams to the hospital but it was too late to save his life. Williams was admitted to the hospital at 7:00 PM and died at 11:00 PM the same night. I was present on all three days when we tried to get Williams into the hospital and saw what happened."

Evidence like this requires no expert to establish that the causes of death were the wrongul actions of the accused as alleged.

It is apparent from the foregoing that the Commission was extremely lenient in assessing only life imprisonment in the face of a clear record of direct responsibility on accused's part for the deaths of many prisoners.

To summarize, it is recommended that the findings be approved less that part of Specification 4 which relates to contributing to the death of a prisoner; it is recommended that the sentence of imprisonment for life at hard labor be approved. A proposed action to implement these recommendations is attached.

ALIAN R. BROWNE
Lt Col, JAGD
Army Judge Advocate

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

Yokohama, Japan
19 February 1948

UNITED STATES OF AMERICA VS HAJIME HONDA

Review of the Staff Judge Advocate

1. The attached record of trial of Hajime Honda at Yokohama, Japan, from 12 May to 14 May 1947 by a Military Commission appointed by paragraph 19, Special Orders No. 108, Headquarters Eighth Army, dated 9 May 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Hajime Honda
AGE: 31
RESIDENCE: Kumamoto Prefecture,
Kamimashiki-gun, Hiroyasu-mura,
Manizu No. 618
MARITAL STATUS: Married
RELATIVES: Wife, father, mother,
five brothers and sisters
EDUCATION: Primary school
VOCATION: Storekeeper
MILITARY CAREER: Imperial Japanese
Army from 10 January 1938 to
7 May 1942

DATE OF CONFINEMENT: 9 April 1946
DATE OF ARRAIGNMENT: 12 May 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 12 to 14 May 1947
DATE OF SENTENCE: 14 May 1947
SENTENCE: Death
CLEMENCY RECOMMENDED BY
COMMISSION: No

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

<u>Charge and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Accused, a civilian employed by and serving with the Imperial Japanese Army, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: In or about January 1945, accused did willfully and unlawfully mistreat William Ivarson and Roy Heath, American PW's; by beating and otherwise abusing them, thereby contributing to the death of William Ivarson.	NG	G	Yes, in part
Sp 2: In or about December 1944 or January 1945, accused did willfully and unlawfully mistreat C. J. Chernie, James Ackerman and other unidentified American PW's and an unidentified Dutch PW by beating and otherwise abusing them, thereby contributing to the death of said Dutch PW.	NG	G	Yes, in part

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*179-
Affirmed by MacArthur
Executed 3 July 48*

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<u>Charge and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Sp 3: On or about 10 August 1944, accused did willfully and unlawfully mistreat George W. Dowling, an American PW, by beating him into unconsciousness with a gun and fists and otherwise abusing him.	NG	G	Yes
Sp 4: On or about 20 August 1944, accused did willfully and unlawfully mistreat Gomer Henry Condit, an American PW, and numerous other American and Allied PW's by beating and otherwise abusing them.	NG	G	Yes
Sp 5: In or about September 1943, accused did willfully and unlawfully mistreat James Leonard Monk, a British PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 6: Between 1 May 1943 and 30 June 1945, accused did willfully and unlawfully mistreat numerous American and Allied PW's by beating and otherwise abusing them, thereby contributing to the death of many of them.	NG	Guilty, except the words "thereby contributing to the death of many of them"; of the excepted words, not guilty.	Yes (as modified)

Sentence imposed: Death

Maximum legal punishment: Death

3. Summary of the Evidence:

a. For the Prosecution:

As to Specification 1: PW Nevill stated that just before Christmas 1944 between 6:00 and 6:30 in the evening, Iverson and Heath, American PW's, were sitting on a bunk in the barracks smoking. They did not see the accused come in and were slow in saluting and bowing. The accused became enraged and hit and slugged Iverson and then Heath, knocking them down across their beds. He then jabbed Iverson across the small of his back with the butt of his rifle. He then told Iverson and Heath to follow him outside. Iverson had on only a shirt and pants cut off above the knees. The temperature was between 0 and 10 degrees. The accused took them about thirty feet behind the barracks. The witness stated he was standing in back doorway of barracks where he could closely watch the actions of the accused. The accused made them assume the "push up" position. He took a stick about five feet long and whenever Iverson could no longer hold the push up position, he struck him across the back and legs. Each blow across the back made Iverson fall to the ground. In about twenty-five minutes he dismissed Heath, and for the next thirty minutes he continued to beat and kick Iverson. He left Iverson lying on the snow which had turned red from his blood. About an hour and a half elapsed from the time the accused came into the barracks until the time he quit beating Iverson. The witness and one or two others carried Iverson back into the barracks and put him to bed unconscious. His nose was bleeding, his skin was split in several places, and there were blood clots on the back of his legs. The next morning Iverson was conscious but refused to eat anything. That night when witness came in from work he saw Iverson unconscious. He never saw him regain consciousness. He lived about sixty hours and died without leaving his bed (Ex. 2).

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PW Bull described the beating of Ivarson by the accused. He stated that the beating occurred in about February 1945. He stated that Ivarson was not able to walk after the beating and in a few days he contracted pneumonia and died. (It is not clear whether the affiant was testifying from personal knowledge or hearsay). (Ex. 3).

PW Heath stated that he believed it was about 26 January at about 8:00 AM when the accused took him and Ivarson out and ordered them to do "push ups" for several minutes because they had received a cigarette from another PW. He beat each of them severely with a pole for about forty minutes until a new guard came on duty. The accused conferred with the new guard and the latter continued the beating about thirty minutes. Each guard used the same pole. They centered their blows on the small of their backs and the rear of their legs. As a result they received welts the size of their fists. An order to line up for parade terminated the beatings. Another PW helped them to their feet, and with assistance of other PW's they marched in the parade. After the parade Ivarson was confined to his hut, and was not able to do camp duties. Heath visited Ivarson several times after that and saw Ivarson passing blood through his urine. Approximately four days after the beating Heath contracted pneumonia and was unconscious in hospital for almost five days. After regaining consciousness he was informed by PW Bull that Ivarson had died from the beating by the accused and the other guard (Ex. 20).

PW Kostecki, Major, Medical Corps, U. S. Army, Camp Surgeon, stated that Ivarson's physical condition had been fair, other than he showed evidence of starvation and malnutrition. He was called about 2:00 AM one day in February 1945 to give Ivarson medical treatment. He found Ivarson unconscious; his pulse was very rapid and he looked as if he were going to die. By the time he could make arrangements to hospitalize him, Ivarson was dead. At the time he heard from fellow PW's, whom he knew were reliable, that Ivarson had received a serious beating from the accused. From his personal experience and observation (not of this incident), he had no doubt but that the accused had beaten Ivarson (Ex. 4). The death certificate (Ex. 26) and the individual record card (Ex. 27) of Ivarson were introduced in evidence by the prosecution. The death certificate shows Ivarson died on 8 February 1945 from beriberi. The death certificate appears to have been signed by Major Kostecki (Ex. 27). However he stated that he signed the death certificates under duress. Upon the death of an individual, the Japanese made up their own clerical records without any knowledge of the patient's illness, and insisted he sign these records to which death certificate was attached. Since the records were in Japanese script, he could not read them. When ordered to sign them, he did so, practically on threat of death. There were approximately one hundred deaths of PW's while he was in the camp. He examined bodies prior to signing death certificates, but at no time was he permitted to keep his own clerical records or any writing materials. From recollection he knew the main cause of death was malnutrition, and secondary to malnutrition was pneumonia, diarrhea or dysentery, and, in a number of cases, beatings (Ex. 4).

As to Specification 2: PW Cherne, an American PW, testified that about the end of December 1944, during the dinner hour, he, American PW Ackerman, and two others were required to assume the "push up" position and each was beaten by the accused, "who could really swing that club", with a bamboo pole about the legs and back for about forty-five minutes, after which they were permitted to rejoin a group of PW's. He ate his meal of rice, and all went back to work. He kept moving that afternoon so his legs would not be too sore to march the six miles back to camp that night. That night after work all went to the American doctor, Major Kostecki, and showed their bruises. They all stayed in bed the next day; three got out of bed the following day, but the fourth, the PW Dutchman from Java, did not. He was removed to the hospital that night and died within forty-eight hours. In the opinion of the witness the beating the Dutchman had received was directly responsible for his death. (Ex. 10).

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PW Johnson also described the beating. He states the four men beaten by the accused were three Americans and one Dutchman. He beat them with a pole for about three hours. The Dutchman died and the three Americans had to go to the hospital (Ex. 1).

PW Krysan stated he saw the accused beat a Dutchman with a club about February 1945. He died in a few days. (Ex. 11, 12).

PW French stated that he saw the accused about the end of December 1944 or early January 1945 bash a Dutchman into unconsciousness. The accused would allow no one near him. When the Dutchman recovered, he bashed him again using butt of rifle. The accused forced the Dutchman to march the ten miles to camp through snow about a foot deep. On arrival at camp, the Dutchman was put in the hospital but died two days later (Ex. 22).

PW Mayo stated sometime in January 1945, the accused and another guard beat two Dutchmen, one Javanese and two American PW's. One of the Americans was Corporal Turner. They beat the men into unconsciousness with bamboo poles for about one and one-half hours (Ex. 24).

As to Specification 3: PW Dowling, an American PW, stated that about 10 August 1944, just because his cap was not on to suit him, the accused beat him over the head with a gun until the blood ran down his face. He then smacked him in the face with his fist and knocked him out (Ex. 14).

As to Specification 4: PW Condit, an American PW, stated that about 20 August 1944 the accused stood out by the latrine and stopped every PW that came along and asked his nationality. The Dutch he allowed to pass; the English he slapped with his fist; the Americans he made stand at attention and beat them with his fists, or a club, or the butt of his rifle. On this occasion he slapped the witness in the face with his hand and struck him on the right side of his chest with the butt of his rifle, knocking him down and fracturing two ribs. He then made him stand at attention for about twenty minutes while he continued to slap and abuse other men. (Three affidavits of affiant Condit, Ex. 17, 18, 21).

As to Specification 5: PW Chalkley stated that about September 1943 during the lunch hour, the accused and another guard shouted for the men to start work. PW Monk, a British PW, shouted they hadn't completed their dinner hour. The two guards ordered Monk to report to them, and they both beat him with their fists about the head and body and threw him over their shoulders in jujitsu fashion. They continued this treatment for about forty-five minutes until they were stopped by the British Regimental Sergeant Major. Monk's face was badly cut and swollen (Ex. 5).

As to Specification 6: PW Kostecki, Major, Medical Corps, U. S. Army, camp surgeon, stated the accused beat him; he also frequently and regularly came into the hospital and gave severe beatings to patients under his care (Ex. 4). PW Chilton, British Army, stated the accused had very strong sadistic tendencies, and he thought he was a little unbalanced. He was fond of beating PW's and would do it under the slightest pretext. He invariably used the butt of his rifle or a bamboo pole for these beatings. The accused beat the witness several times. He knew he had administered several severe beatings to other PW's. He came though the barracks and if PW's did not spring to attention, he used to bang them on the head with the butt of his rifle. The witness saw him do this many times (Ex. 6). PW Newman, British Army, stated the accused beat PW's on slightest provocation. About June 1945 the accused asked the witness to make him a pair of clogs, and on telling him he was not allowed to do so, the accused struck him across his back about six times with a stick. At about the same time while on a working party, the accused made an American PW assume the "push up" position and every time the PW's body sagged, the accused struck him across the back with a bamboo (Ex. 7). PW Rogee, U. S. civilian employee,

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testified the accused beat him with his fists two or three times, usually for some minor infraction as failing to salute or to bow (Ex. 8). PW de WIjn, Medical Officer, Dutch Army, stated there were many beatings by the guards of which the accused was one; he was mentally deranged; he lacked all vestige of control. He maltreated many in the camp, especially with his gun. If someone failed to salute to satisfy, he would ram wildly with it. As far as the witness knew, his acts of maltreatment left no lasting injuries, although those ill treated had to be admitted to the hospital for treatment (Ex. 9). PW Krysan, U. S. civilian employee, stated the accused was very brutal with all PW's. He beat just about everyone in camp (Ex. 12). PW Forsberg, U. S. civilian employee, stated the accused was continually beating the men (Ex. 13). PW Thayer, U. S. civilian employee, stated the accused went through the barracks calling attention. Some men were too sick to get up. He would jerk them up on their feet and beat them to insensibility. This happened on innumerable occasions (Ex. 15). PW Barney, U. S. civilian employee, stated the accused was apparently mentally deranged. He saw him hit innumerable prisoners because they had gone into their huts without removing their hats. On occasions too numerous to mention the accused swung on prisoners without provocation (Ex. 16). PW Condit, a U. S. civilian employee, stated the accused was continuously knocking someone down for not saluting him when he was standing in the dark where he could not be seen. He would stand PW's at attention and slap them or hit them with the butt of his rifle with or without provocation (Ex. 17, 21). PW White, a U. S. civilian employee, stated the accused beat a PW with part of the shovel handle the PW had broken until he was completely unconscious. The accused appeared to be crazy (Ex. 23). PW Mayo, U. S. Army, stated the accused hit a seventy-five year old man over the head with a hammer and knocked him unconscious. He participated in the beating of three Americans, two Dutchmen, and one Englishman because they had stolen some peanut oil (Ex. 24). PW Pitochelli, a U. S. civilian employee, stated at times the accused did not seem to be himself, and during such times he treated the prisoners very badly. At such times he would strike PW's with his hands, fists, club, rifle, or anything he could get his hands on. There were numerous such occasions (Ex. 25). PW Chalkley, British Army, stated that on orders of Sakamoto, the Camp Commandant, PW Marshal was tied to a telegraph pole and beaten for taking Red Cross supplies. He saw the accused and seven or eight other guards beat him with bamboo poles for three hours. He was then put in a cell for about ten days and then brought back to his hut. He was in bad physical condition then, and died a month or two later at another camp, undoubtedly as a result of this brutal treatment (Ex. 5);

b. For the Defense (as to all specifications):

(1) Takeo Katsura testified he was interpreter at the camp. Part of his job was carrying requests from PW officers to the camp commander. Major Kostocki complained once that the accused had beaten someone in the hospital. He never saw the accused strike any PW's. The accused was a very nice man (R. 23 to 25).

(2) Hitoshi Fuchise testified he was a guard at the camp from October 1943 to February 1945 (R. 28, 31); he never saw the accused strike any PW's; later he heard that the accused had beaten some PW's lightly. He did not know of any PW's beaten to death by anyone in the camp; he heard of none that required hospitalization (R. 29). He stated the Japanese considered the rifle was issued by the Emperor, and if a soldier damaged his weapon in the slightest way, he was subject to heavy guardhouse confinement, and because of this the guards were particularly careful in taking care of their rifles and not scuffing them up (R. 30). He did not know if any PW's had died in camp (R. 32). The accused's right shoulder was disabled, but he was able to use a rifle in his right arm (R. 34). He saluted mostly with his left arm (R. 35).

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(3) Yuhichi Sakamoto testified he was a captain, camp commander from January 1943 to May 1945 (R. 37). Major Kostecki or no other Allied officer every complained to him that the accused had beaten any PW's to death or that he had beaten any PW's so severely as to require hospitalization. The accused was injured in his shoulder and this hindered movements of his arm. About 120 to 130 PW's died while the witness was camp commander. The accused was relieved from camp at his own request. He had not received any complaints concerning the mistreatment of PW's by the accused (R. 38). He had no recollection of the death of Iverson; he did not know the cause of death of PW's (R. 39). Had he ever received information that a PW had been beaten to death, he would have conducted a thorough investigation (R. 40).

(4) Masato Hada testified he was medical orderly at the camp from December 1943 to 30 April 1945, on duty at the hospital. He did not at any time recall that an American PW had been beaten to death. Major Kostecki never complained to him that the accused had beaten a PW to death (R. 41).

(5) Hajime Honda, the accused, having been advised of his rights (R. 2), was sworn and testified in his own behalf. He stated he had been in the Japanese Army from 10 January 1938 until 7 May 1942. He received an injury in battle and had difficulty using his right arm; he saluted with his left hand and carried his rifle on his left shoulder. He arrived at the camp on 23 May 1943, and was a civilian guard for one year and ten months (R. 43). He never beat any PW so severely that he died as a result of the beating. He did not recall PW's Iverson, Heath, Chernie, Ackerman, Dowling, Condit, or Monk. He never struck any PW with the butt of his gun or a club. He admitted hitting five or six PW's with his fist two or three times; none were knocked to the ground; none lost consciousness. He did not think it was wrong to beat PW's, as it was the usual practice in the Japanese Army to beat and reprimand a person. Some PW's requested they be slapped instead of being put in the guardhouse; two PW's whom he caught stealing food requested they be slapped instead, and he slapped them (R. 44-46). Previously he had told investigators he had beaten a PW one time, but while in Sugamo, he recalled several more (R. 49). He beat one for not turning out for calisthenics; one for stealing lunch from some laborers; one for smoking during prohibited hours; and one for having kindling wood in his possession. He denied he ever hit Major Kostecki or any PW in the sick bay (R. 50). The accused demonstrated the lateral movement of his right forearm, swinging from the elbow which he used when he beat prisoners. (R. 51).

4. Errors and Irregularities:

The defense contended that the ruling of the Law Member in regard to objections by the defense to evidence offered by the prosecution was prejudicial to the accused and denied him a fair trial (Defense Motion, p. 16). The ruling made by the Law Member at the outset of the trial (R. 7) was:

"In my opinion, objections avail the defense very little from my experience in preceding trials. All evidence will be evaluated by the Commission for what it is worth. If it is not worth such, it can be pointed out by the defense and a value will be put on it by the Commission. I have seen lots of time wasted at trials by useless objections. I might say along this line that this board of members is going to recommend that objections by the defense be restricted to almost nil for the reason that they don't see how the defense, that is objections by the defense, can help the trial." (Emphasis added)

The Law Member, however, added (R. 7):

"If you have substantial reasons for the objection, all right. If not, don't object because it is just delaying the trial."

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This ruling, though highly improper, did not create an atmosphere in which the defense was confronted with a hopeless situation in safeguarding the rights of the accused. It does not appear from the entire record that the accused was in any way prejudiced by the ruling. In spite of the ruling, the defense continued to interpose objections throughout the trial whenever it deemed proper, and the Commission ruled on the objections based on their merits. Many of these rulings favored the defense (R. 8, 15, 17, 20, 25, 32, 39, 40, 49). Nowhere does it appear that the defense failed to make objection, or was denied opportunity to make objection where the circumstances warranted an objection. The accused received a very fair trial throughout.

5. Opinion:

a. As to the legal sufficiency of the record to support the findings, a discussion of each specification follows:

(1) Specification 1: PW Nevill stated he was an eyewitness to the beating of Iverson and Heath. He does not mention anyone except the accused doing the beating. He stated the accused beat the two PW's for about twenty-five minutes and then dismissed Heath and continued beating Iverson for about half an hour. The accused left Iverson lying in the snow, and the witness and others carried him to bed unconscious. Heath, one of the victims, stated that the accused beat him and Iverson for about forty-five minutes and then another guard relieved the accused and continued beating them both for thirty minutes. Another PW helped them to their feet and, with the assistance of other PW's, he and Iverson marched in a parade. It is believed that Heath's testimony has greater probative value than Nevill's since Heath was on the spot and was in a better position to know what happened than Nevill. There is nothing in Heath's statement to establish whether the mortal blow or blows (if they were mortal) were inflicted by the accused, or by the guard that relieved the accused, or by both. In the absence of such testimony any determination as to which of the two may have caused the death (if they did) is speculative and conjectural and the evidence is insufficient to support the finding that the accused contributed to the death. Since Heath states both he and Iverson were able to march in a parade after the beating, he raises a reasonable doubt as to whether either of the perpetrators inflicted blows upon Iverson that were in fact mortal. Major Kostecki, the medical officer, who saw Iverson just before the latter died, does not state the cause of his death; he does state that Iverson had previously shown evidence of starvation and malnutrition. PW Bull stated Iverson had died of pneumonia. The entry on the death certificate that shows beriberi as the cause of Iverson's death has no probative value because the certificate was signed by Major Kostecki without knowledge of its contents and under duress. Thus there is no convincing evidence to show the causal connection between the acts of the accused and the death of Iverson. The finding that the accused contributed to the death of Iverson has not been established beyond a reasonable doubt, and the finding in that regard should be disapproved. However, there is compelling evidence that the accused did commit an aggravated assault upon both Iverson and Heath.

(2) Specification 2: PW Cherne states he was one of four PW's beaten by the accused with a bamboo pole for about forty-five minutes during the dinner hour. He states that after the beating all rejoined the group of PW's; he ate lunch, and all went back to work. After work apparently all marched back to camp about six miles. Although he does not mention the Dutchman as being one of the four that the accused had beaten, he stated that three of them were able to get out of bed on the second day, but the Dutchman stayed in bed, was moved to the hospital, and died there in a couple of days, apparently from the beating he had received. It is clear that Cherne meant the Dutchman was one of the four men beaten. PW French corroborates Cherne's testimony that the Dutchman marched several miles to camp through snow a foot deep. PW's Mayo and French state the Dutchman was beaten into unconsciousness, but Cherne, one of the victims of the beating, does not indicate that any of the four were beaten into unconsciousness. PW Mayo states that the beatings were inflicted by the accused and another. Thus it has not been established

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beyond a reasonable doubt whether the mortal blow or blows (if they were mortal) were inflicted upon the unidentified Dutch PW by the accused, or by the other guard, or by both, and whether the inflicted blows were in fact mortal. There is no convincing evidence to show the causal connection between the acts of the accused and the death of the unidentified Dutch PW. The finding that the accused contributed to the death of the Dutch PW has not been supported, and the finding in that regard should be disapproved. The evidence is not sufficient to support the finding that the accused mistreated American PW's other than Cherne and Ackerman. However, there is sufficient competent evidence to support a finding that the accused committed an aggravated assault upon Cherne, Ackerman and an unidentified Dutch PW.

(3) Specifications 3, 4, 5: The evidence is legally sufficient to support the findings as to these specifications.

(4) Specification 6: The evidence is legally sufficient to support only so much of the findings of this specification as provides that the accused did willfully and unlawfully mistreat numerous American and Allied prisoners of war, in instances other than those alleged in Specifications 1 to 5 inclusive, by beating and otherwise abusing them.

The record is legally sufficient to support the charge. The Commission was constituted by proper authority and had jurisdiction of the accused and of the offenses alleged. There are no irregularities which injuriously affect any substantial rights of the accused.

b. The defense contended that some of the affiants in referring by nickname to the Japanese who inflicted the beatings, did not identify the nickname with the accused. The identity of the accused was clearly established by the affiants by nickname and photographs (Ex. 11, 12 (Krysan); 17, 18, 21 (Condit); 19, 20 (Heath); 22; 24); by nicknames and proper name (Ex. 2, 3, 4, 14); by nicknames only (Ex. 5, 8, 10, 13, 15, 16, 23, 25); by proper name only (Ex. 1, 6, 7, 9). The identity of the accused was further established by the incidents and the description of the accused contained in the affidavits.

c. The defense contended that in the reply to the United States Secretary of State made through the Swiss Minister, 4 February 1942, to wit:

"Although not bound by the Convention relative treatment of prisoners of war, Japan will apply mutatis mutandis provisions of that Convention to American prisoners of war in its power",

it was not expected that the Japanese Government would strictly observe the provision of the Geneva Convention against corporal punishment, since it was in direct conflict with the practice of the Japanese Army and the culture and traditions of the Japanese people. (Defense Motion, p. 10). This contention is without merit, as no such reservation is contained in the reply either expressed or implied. The phrase, "mutatis mutandis", means "with the necessary changes in points of detail". (underscoring supplied) (Black's Law Dictionary). As applied to the Geneva Prisoner of War Convention, it meant that Japan agreed to abide by the provisions of that Convention except for such changes in details as were necessary to make the provisions effective. The preamble of the Convention recognizes that ". . . in the extreme case of war it will be the duty of every Power to diminish, so far as possible, the unavoidable rigors thereof and to mitigate the fate of prisoners of war. . ." Article 2 declares that prisoners of war "are in the power of the hostile Power, but not the individual or corps who have captured them" and that they must at all times "be humanely treated and protected, particularly against acts of violence, insults, and public curiosity". Article 46 declares that "any corporal punishment, . . . and, in general, any form of cruelty, is forbidden". These provisions prescribe very definite policies in regard to the treatment of prisoners of war, and are binding upon all contracting powers and other powers that have adhered to or agreed to apply the provisions of the Convention. The Japanese Government is

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thus bound by the spirit of the provisions as set forth in the Convention. It may not by agreeing to apply them "mutatis mutandis" alter or abrogate the provisions. Were it permitted to do so, its declared intention to apply them, would amount to a nullity. Whether corporal punishment was practiced in the Japanese Army upon Japanese personnel is beside the point. As to its own personnel Japan had power to administer in such matters, but the defense may not plead the practice in the Japanese Army as a justification for practicing corporal punishment on prisoners of war. "If a government could set up its own municipal law as the final test of its international rights and obligations, then the rules of international law would be but the shadow of a name, and would afford no protection either to states or to individuals. It has been constantly maintained and also admitted by the Government of the United States that a Government can not appeal to its municipal regulations as an answer to demands for the fulfillment of international duties. This proposition seems now to be so well understood and so generally accepted, that it is not deemed necessary to make citations or to adduce precedents in its support." (Secretary of State Bayard to Cornery, November 1, 1887, U. S. Foreign Relations (1887) p. 753, The Law of Nations, Cases, Documents and Notes, Briggs, p. 53). In binding itself by the provisions of the Convention, the Japanese Government was under an obligation to enact whatever legislation was necessary to implement the provisions of the Convention prohibiting corporal punishment upon prisoners of war. ". . . a State is under a duty to enact whatever legislation may be necessary to insure the execution of its treaty obligations, and, consequently, . . . it may not plead the lack of such legislation as a justification for its failure to perform those obligations . . . The Permanent Court of International Justice in its opinion in the Case relative to the Exchange of Greek and Turkish populations (1925) declared it to be a 'self-evident' principle that 'a State which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to insure the fulfillment of the obligations undertaken.'" (Publications of the P.C.I.J., Series B, No. 10, p. 20, The Law of Nations, Cases, Documents and Notes, Briggs, p. 434).

d. The defense further contended in its motion that the first and third provisions of Article 46, Geneva Convention were in conflict. They read as follows:

1. Punishments other than those provided for the same acts for soldiers of the national armies may not be imposed upon prisoners of war by the military authorities and courts of the detaining Power.
3. Any corporal punishment, any imprisonment in quarters without daylight and, in general, any form of cruelty, is forbidden."

The defense insisted that by implication and reasonable construction the first provision authorizes the imposition upon prisoners of war such punishments as might be imposed upon soldiers of the Japanese Army; that since corporal punishment was the usual punishment imposed for minor offenses in the Japanese Army, the first provision would seem to justify similar punishments for like offenses when committed by prisoners of war; and that in agreeing to apply the provisions, "mutatis mutandis", Japan was authorized to determine which of the two conflicting provisions of Article 46 would be followed. This contention is likewise without merit as the punishments provided in the first provision of Article 46 are limited by the third provision of that article which prohibits any corporal punishment. Thus punishments provided in the Japanese Army may be imposed upon prisoners only if those punishments do not violate the third provision. The first and third provisions of the Article are not in conflict, the latter being merely a limitation on the former.

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e. The defense contended the Commission erred in overruling the defense motion for a finding of not guilty on Specifications 1 and 2 at the close of the evidence for the prosecution (R. 21, 22, and Defense Motion, p. 15) on the grounds that the prosecution failed to show the causal connection between the acts of the accused and the deaths of Iverson and the Dutch prisoner of war. The Commission properly overruled this defense motion. The prosecution introduced ample evidence to support a charge of aggravated assault, by the accused on Iverson and the Dutch prisoner of war, a lesser included offense of Specifications 1 and 2 (Manual for Courts-Martial, 1928, par. 71d).

f. The prosecution introduced its evidence by means of numerous affidavits of former prisoners of war, American, British, Dutch, who were interned in the camp at the time of the alleged offenses and were in a position to know the facts of the matters in issue. From these, the testimony of defense witnesses, and the admissions of the accused, the guilt of the accused to the extent advised herein has been clearly established.

g. The accused was ably represented by counsel, both Japanese and American, and cooperated fully in his defense. He was given adequate opportunity to present any matters he desired in his own defense. He took the stand in his own behalf and produced witnesses in his own defense.

h. The question of sanity of the accused, although not raised by the defense at any time during the trial, was raised by the defense in a supplemental defense motion for a modification of the findings and sentence. The defense contended that the evidence does not show beyond a reasonable doubt that the accused was sane at the time he is alleged to have committed the offenses charged against him. The defense cited the evidence contained in prosecution exhibits 6, 16, 23, 25, 9, included in the evidence above in support of Specification 6 and in the supplemental defense motion. These five affiants testified in effect as indicated by the prosecution in its opening statement concerning the accused:

"He so mistreated prisoners of war that he was thought to be demented; Numerous affidavits will state that the prisoners of war thought him to be off his mind." (R. 3).

"He had very strong sadistic tendencies, and I think he was a little unbalanced" (Ex. 6). "He was apparently deranged. . . and beat innumerable prisoners" (Ex. 16). "He beat the American soldier. . . and appeared to be crazy" (Ex. 23). "He received a combat head injury. . . There were times he did not seem to be himself and during those times he treated the prisoners very badly. . . I considered him mean and ornery rather than vicious or really brutal" (Ex. 25). "There were many beatings by the accused who was mentally deranged. . . he lacked all vestige of control" (Ex. 9). It will be observed that the first four affidavits (Ex. 6, 16, 23, 25) are by laymen who were not qualified to express an expert opinion. The fifth affidavit (Ex. 9) of Jan Frederic de Wijn, Netherlands Army, shows only that the affiant was a doctor. There is nothing in his affidavit to show what qualifications he possessed or that he had any training or skill in mental diseases, enabling him to give an expert opinion. "If his [a physician's] opinion is based on observation, and he has no special skill fitting him to give such opinion, he is in the same position as any intelligent person who has had the same facilities for observation, and is not an expert." (McKelvey on Evidence, Third Edition, p. 292. Underscoring supplied). It thus appears that none of the five affiants was qualified to state whether the accused had any defect or disease of the mind.

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All men are presumed to be sane until the contrary appears, and the defendant who sets up the plea of insanity must introduce evidence to rebut the presumption (Clark, Criminal Law, Third Edition, p. 74). The defense is not required to establish the insanity beyond a reasonable doubt, but it must introduce evidence sufficiently persuasive to impair the presumption of sanity. Although little is required to raise the issue of insanity, the evidence on such issue must disclose more than a mere doubt to overthrow the existing presumption (Approved opinion of the Judge Advocate General in U.S. v. Barbera 46 BR 212). "If insanity is relied on and evidence given tending to establish that unfortunate condition of mind, and a reasonable well-founded doubt is thereby raised of the sanity of the accused, every principle of justice and humanity demands that the accused shall have the benefit of the doubt". (Davis v. U.S. 160, U.S. 469. Underscoring supplied). In the instant case it is not believed the evidence cited by the defense establishes the required reasonable, well-founded doubt.

Insanity, in its legal sense, is any defect or disease of the mind which renders a person incapable of entertaining criminal intent. (Clark, Criminal Law, Third Edition, p. 64). The actions of the accused do not indicate he was suffering from any mental disease, defect, or derangement which made it impossible for him to distinguish between right and wrong when inflicting the beatings, or knowing that they were wrong, which made it impossible for him to desist from inflicting them. His actions indicate moral perversion and passion. "The expression 'moral insanity' is often used, but strictly speaking, it is not insanity at all. It is merely a perverted or abnormal condition of the moral system, where the mind is sound. It is well settled that there is no exemption from responsibility merely because of moral insanity, or because of ungovernable passion, sometimes called 'emotional insanity'" (Clark and Marshall, Crimes, 4th Edition, par. 87). The five affiants in referring to the accused as "unbalanced", "deranged", or "crazy" were using these terms not in the technical sense employed by psychiatrists but in the colloquial sense regularly used by laymen. These affiants at most intended to attribute to the accused only moral or emotional insanity arising from a moral depravity or callous nature. Such moral degeneration, emotional insanity, or temporary frenzy or passion arising from excitement or anger do not excuse the accused from criminal responsibility.

The accused elected to testify. The Commission had ample opportunity to observe his demeanor while on the stand. On being asked the extent of his injuries received in the service, he stated he was unable to use his right arm. No where did he state that he had received any head injury, as one affiant had apparently erroneously stated (Ex. 25), which could have affected his mind. He admitted he had beaten prisoners on various occasions, and he described five incidents clearly. There was nothing in his testimony that indicated a diseased mind; nor did any of the defense witnesses relate any incidents of insane conduct on the accused's part. Had the accused been suffering from any mental disease at the time of the alleged offenses, this matter would certainly have been brought out by the defense while the witnesses were on the stand. The tenor of the petitions of clemency, signed by hundreds of villagers who had known the accused since childhood, indicated that the accused had a keen mind, a strong sense of responsibility, and that he always acted deliberately in everything.

All the evidence discloses the accused was a perfectly normal individual in every respect except for the misconduct of which he stood convicted. "The common man does not readily believe that occasional and impulsive misconduct of a particular character by one who, in every other respect, demonstrates sane conduct and ordinary behavior, springs from such defect, disease or derangement of the mind as hopelessly deprives him of the will to refrain from doing what he knows is wrong, and in this he has the respectable company of many medical and juridical authorities. . ." (Approved opinion of the Judge Advocate General in U.S. v. Barbera, 46 BR 217). In the complete absence of any expert opinion to establish a diseased mind, the only reasonable and logical conclusion to be reached in the instant case, considering the entire conduct of the accused, is that he was sane. "Moreover members of military courts, as well as juries in civil life, bring into their deliberations their own common sense founded upon knowledge of the everyday behavior and experiences of men in the routine affairs

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of life, and they are not only entitled to use this knowledge in weighing the evidence but are specifically charged to do so." "To command respect criminal law must not offend against the common belief that men who talk rationally are in most cases morally responsible for what they do." (Approved opinion of the Judge Advocate General in U.S. v. Barbera, 46 BR 217). The Commission was satisfied beyond a reasonable doubt that the accused was sane at the time he is alleged to have committed the offenses charged against him. Their findings and sentence should not be set aside on the ground of insanity.

i. Other contentions raised by the defense in its motions for modification of the findings and sentence have been previously discussed in several reviews. The objections raised in the motions have been held to be either not erroneous or not of sufficient consequence to prejudice the rights of the accused. They have not been discussed again herein.

6. Recommendations:

a. The insufficiently supported findings of contributing to the death contained in Specifications 1 and 2 should be disapproved. The evidence is not sufficient to support the findings in Specification 2, that the accused mistreated American PW's other than Cherne and Ackerman, and that part of the findings referring to other unidentified American Prisoners of War should be disapproved. Only so much of the findings of Specification 6 as provides that the accused did willfully and unlawfully mistreat numerous American and Allied prisoners of war, in instances other than those alleged in Specifications 1 to 5 inclusive, by beating and otherwise abusing them, should be approved.

b. Clemency was not recommended by the Commission. The defense filed two motions for modification of the findings and sentence. Several petitions for clemency signed by relatives and friends of the accused were thoroughly examined. In general they emphasize the devotion of the accused to the prisoners of war intrusted to his care and his self-sacrifice in safeguarding their welfare even to the extent of being branded as unpatriotic by his own people. They point out the excellent reputation enjoyed by the accused in his local community prior to the war. Notwithstanding the assertions contained in the petitions, the evidence from prisoners of war of three different nationalities, American, British and Dutch, who were present in the camp and suffered the tortures inflicted upon them by the accused is so compelling as to clearly establish the guilt of the accused to the extent advised. For the commission of these offenses, justice demands that the accused should be adequately punished.

c. For the offenses for which he is to be sentenced, a period of confinement at hard labor for twenty-five years would be justified, and is recommended. In accordance with the established policy, owing to the length of time the accused spent in confinement prior to date of sentence, it is recommended that ten months of the sentence be remitted.

d. It is recommended that except to the extent advised herein, in all other respects the two motions of the defense for a modification of the findings and sentence be denied.

7. Action:

Attached hereto is a form of action designed to carry into effect the above recommendations.

F. R. UNDRITZ
Lt. Col. Inf.
Asst. Staff Judge Advocate

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I concur with the conclusions in the foregoing review, except where the following statements indicate a different view. A general statement as to the philosophy and law pertaining to War Crimes trials is appropriate here.

Strict pleading is not a requisite in War Crimes trials. It is enough if the charges are sufficiently clear so that a reasonable person can comprehend their essence and prepare a defense, and so that adjudication will bar future prosecution for the same offenses. A charge or a finding of "contributing to death", though inartificial is plainly intended to charge or find when considered with the evidence presented that the acts referred to, proximately and directly contributed to the death. Where it is determined that the accused was guilty of contributing to death, it is considered that the essential proof which supported the charge was available to the accused before the trial so that he was cognizant of the fact that he was being charged with directly and proximately contributing to a death and therefore was not misled as to the offenses charged. It is apparent that asserting that one has directly and proximately contributed to a homicide produces the same legal result as alleging that he has directly and proximately caused the death. War crimes concepts are not concerned with over-legalistic niceties, but only with what will afford the "fair protection that civilized nations provide for those accused of crimes" (26, Amer. Jurisprudence, p. 191, Homicide, Sec. 48, 49).

Careful examination of the facts in evidence compels a view that certain deaths, as alleged, were directly and proximately caused by the mistreatment, etc., as pleaded and as herein discussed. In considering the proof the law does not restrict itself to such refinements of proof as would make the proper accomplishment of justice impossible. It does not throw away its own common sense. It retains and uses the knowledge that ordinary reasonable persons have. It utilizes the common experience of mankind. In cases in which a death occurs from a cause which cannot be determined by use of the above reasonable tests of common experience and common knowledge of mankind, expert testimony to aid the court is customarily required; otherwise it is not. "Where the facts are such that they can be placed before and understood by the jury, and where they are such matters of common observation and experience that the jurors are just as competent to draw inferences therefrom as the witness there is no necessity of either an ordinary or skilled witness" (23, C.J.S., Sec. 853, pp. 64, 67, citing cases from 21 States).

In considering responsibility for a death it is not necessary to find a conspiracy in order to hold each of two or more accused; if they were accessories, hence principals, aiding each other in accomplishing the death, each may be held. "If, at the moment of death it can be said that both injuries are contributing thereto the responsibility rests on both actors. In such cases the law does not measure the effect of the several injuries in order to determine which is the more serious, and which contributes in greater measure to bring about the death. So, one of two persons who caused the death of another by shooting is guilty of homicide if the wound inflicted by him contributes or hastens the death, although it might not be fatal" (26, Amer. Jurisprudence, p. 192, Homicide, Sec. 48). If both the act charged and disease directly and proximately contribute to cause of death the person who performs the illegal act may be held for the homicide (26, Amer. Jurisprudence, p. 195, Homicide, Sec. 52).

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In fact, where one inflicts a fatal injury and another thereafter inflicts an injury which accelerates death it is held "that the person who inflicts the first injury may be convicted if it appears that the injury or wound inflicted by him would have caused the death if there had been no intervening act of another. In other words if, after one inflicts mortal injuries, another, while the injured person is still living, inflicts, by a villainous act, injuries which in fact cause death, both assailants may properly be said to have contributed to his death and may be convicted thereof" (Amer. Jurisprudence, p. 123, Homicide, Sec. 50, and citations thereto. See also Sec. 45).

Specification 1:

It is considered that the finding of guilty of this specification should be approved. The evidence, summarized on pp. 2 and 3 of the foregoing review, conclusively establishes beyond a reasonable doubt that the victim, Ivanson, was so brutally beaten and abused by accused that his death was directly and proximately caused thereby. He was struck with a club across the back and legs, knocked from a push-up position to the ground, beaten and kicked for at least 30 minutes and left lying unconscious, his blood staining the snow. He regained consciousness in the morning but lapsed into unconsciousness and died within about 60 hours. Even if the evidence were to be accepted that he walked in a parade with the assistance of others, afterwards being confined to his hut, circumstances herein shown in evidence indicate that the death is chargeable in law to the accused. The responsibility of the latter is not lessened because another guard may have succeeded him in the beating. It is clear that in that event each aided and abetted the other and that a combination of the actions of the two directly resulted in the death. It is noted that after a conference between the accused and a guard who replaced him, the latter took up the beating where the former left off (Ex. 20).

Specification 2:

It is believed that the death of the unidentified Dutch prisoner of war is compellingly proved as having been directly and proximately contributed to by the accused, to the extent that the accused is chargeable therewith. The participation by another person in the mistreatment charged in this specification is subject to the same reasoning as that applied under Specification 1. The finding of guilty under this specification should be approved, except as to the words "and other unidentified American Prisoners of War".

Under the facts as compellingly established in this case, it is felt that there is no escape from approving the sentence adjudging the extreme penalty. In judging War Crimes cases, no element of vindictiveness or revenge should be allowed to enter. This outstanding basic consideration is of the greatest importance--is the sentence legal and appropriate under all the facts in evidence, considering the requirement for a fair trial of the accused and the guarantee in the Potsdam Declaration that war criminals would be properly charged with their offenses as a deterrent against future

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War Crimes? Measured by the standards of civilized nations, the war crimes of which this accused was convicted place him in the category of felons for whom the death sentence is expected by people of good conscience everywhere. The callousness, brutality and disregard of human life evidenced by him and the tragic results thereof stamp him as one who should be removed from the fellowship of mankind.

That a fair trial was granted him is evidenced by the following quotation from a clemency petition submitted by his wife: "Relating to the trial of Hajime Honda, I have heard that the proceedings were extremely fair in contrast to Japanese courts and we know no bounds in expressing our appreciation and thanks to members of the court."

Proposed actions to implement the recommendations in the foregoing review, as modified by these addenda, are attached.

ALLAN P. BROWNE
Lt. Col. JAGD
Army Judge Advocate

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