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United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
31 March 1948

UNITED STATES OF AMERICA VS SACHIO EGAWA
UNITED STATES OF AMERICA VS TOKURO FUKUDA
UNITED STATES OF AMERICA VS DENKICHI ORITO
UNITED STATES OF AMERICA VS FUKUICHI WATANABE

Review of the Staff Judge Advocate

1. The attached record of trial of Sachio Egawa, Tokuro Fukuda, Denkichi Orito, and Fukuichi Watanabe at Yokohama, Japan, from 23 May 1947 to 2 June 1947, by a Military Commission appointed by paragraph 1, Special Orders Number 116, Headquarters Eighth Army, dated 19 May 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Sachio Egawa
AGE: 37
RESIDENCE: Nagasaki-Ken, Nagasaki-Shi,
Kyushu
MARITAL STATUS: Widower
RELATIVES: One brother, two sisters
EDUCATION: Two years of commercial
school
VOCATION: Barber
MILITARY CAREER: Navy from 10 October
1932 to 30 November 1934. Recalled
into Navy 12 September 1939 and
served until 24 August 1945. Rank:
Chief Petty Officer when last dis-
charged.

DATE OF CONFINEMENT: 5 June 1946
DATE OF ARRAIGNMENT: 23 May 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 23 May 1947 to
2 June 1947
DATE OF SENTENCE: 2 June 1947
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Tokuro Fukuda
AGE: 45
RESIDENCE: Fukuoka-Ken, Maeda-Shi,
Kyushu
MARITAL STATUS: Married
RELATIVES: Mother, sister
EDUCATION: Graduated higher primary
school
VOCATION: Office worker
MILITARY CAREER: Navy from 1 December
1923 until 30 November 1926. Recalled
into Navy 2 December 1941 and
served until end of war. Rank:
Chief Petty Officer upon discharge.

DATE OF CONFINEMENT: 14 January 1946,
Fukuoka City. Released 20 January
1946. Reconfined 13 January 1947,
Sugamo Prison.
DATE OF ARRAIGNMENT: 23 May 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 23 May 1947 to
2 June 1947
DATE OF SENTENCE: 2 June 1947
SENTENCE: CHL for 20 years
CLEMENCY RECOMMENDED BY COMMISSION:
No

NAME: Denkichi Orito
AGE: 48
RESIDENCE: Kagoshima-ken, Kumage-gun,
Nakatane-cho, Sakae 317
MARITAL STATUS: Married
RELATIVES: One brother, three sisters,
one child
EDUCATION: Graduated higher primary
school

DATE OF CONFINEMENT: 25 January 1947
DATE OF ARRAIGNMENT: 23 May 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 23 May 1947 to
2 June 1947
DATE OF SENTENCE: 2 June 1947
SENTENCE: CHL for natural life
CLEMENCY RECOMMENDED BY COMMISSION:
No

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VOCATION: Farmer

MILITARY CAREER: Navy from 1 June 1919 to 30 October 1934, discharged as Chief Warrant Officer. Re-entered the Navy 12 August 1937 as Chief Warrant Officer and served until 30 May 1940. Re-entered the Navy again 5 September 1941 and served until 1 September 1945. Rank: Lt. Sr. Grade when discharged.

NAME: Fukuichi Watanabe

AGE: 58

RESIDENCE: Oita-ken, Hazami-gun, Fujiwara-mura 3576

MARITAL STATUS: Married

RELATIVES: Two brothers, two sisters, five children

EDUCATION: Graduated higher primary school

VOCATION: Farmer

MILITARY CAREER: Navy from 1 June 1907 to November 1923. Recalled 10 December 1940 and served until 21 February 1944. Rank: Ensign.

DATE OF CONFINEMENT: 11 October 1946, Fukuoka. Released 30 October 1946. Reconfined 4 November 1946, Sugamo Prison.

DATE OF ARRAIGNMENT: 23 May 1947

PLACE OF TRIAL: Yokohama, Japan

PERIOD OF TRIAL: 23 May 1947 to 2 June 1947

DATE OF SENTENCE: 2 June 1947

SENTENCE: CHL for natural life

CLEMENCY RECOMMENDED BY COMMISSION: No

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

<u>Charges and Specifications:</u>	<u>Pless</u>	<u>Findings</u>	<u>Legally Sustained</u>
<u>EGAWA</u>			
Charge: (as amended R. 4) Between 1 October 1942 and 29 February 1944, at Fukuoka POW Camp No. 18-B, Sasabo, Kyushu, Japan, accused, then a petty officer in the Armed Forces of Japan, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: On or about 5 January 1943, accused did willfully and unlawfully mistreat and abuse Fred Zay (Zeh), an American PW, by violently and brutally beating him.	NG	G	Yes
Sp 2: In or about the months of June or July 1943, accused did willfully and unlawfully mistreat, abuse and torture Lawrence E. Medin, an American PW, by beating him with a long wooden pole and immediately thereafter forcing him to do a handstand for 45 minutes.	NG	G	Yes
Sp 3: In or about August 1943, accused did willfully and unlawfully mistreat and abuse Walter T. Thompson, an American PW, by beating him with a large club.	NG	G	Yes
Sp 4: In or about the month of August 1943, accused did willfully and unlawfully mistreat and abuse Frank Burns, Jerry Rodgers, John Barney and John Smalljohn, American PW's, by beating them with clubs.	NG	G	Yes

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Sp 5: (as amended R. 4) Between 1 October 1942 and 29 February 1944, accused, with others, did willfully and unlawfully contribute to the death of George T. Bailey and Lester T. Meyers by brutally beating and otherwise mistreating and abusing them.

NG

Guilty with the exception of the words "numerous American and Allied Prisoners of War"; substituting therefor the names "George E. Bailey and Lester T. Meyers"; of the excepted words Not Guilty, of the substituted words Guilty.

No

Sp 6: (as amended R. 4) During the period between 1 October 1942 and 29 February 1944, accused did willfully and unlawfully mistreat and abuse numerous American and Allied PW's by beating and otherwise mistreating them.

NG

G

Yes

FUKUDA

Charge: Accused, chief seaman, 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 June or July 1943, at Fukuoka POW Camp No. 18-B, in the vicinity of Sasebo, Kyushu, Japan, accused did willfully and unlawfully mistreat Lawrence E. Medin, an American PW, by beating him with a wooden pole and otherwise abusing him.

NG

G

Yes

Sp 2: In or about the month of August 1943, accused did willfully and unlawfully mistreat and abuse Edgar Franklin Burns, an American PW, by beating him into unconsciousness.

NG

G

Yes

Sp 3: In or about the spring of 1944, accused did willfully and unlawfully mistreat and abuse Edgar Franklin Burns and Harry Reed, American PW's, by forcing them to lie in a prone position, with their weight supported by their fingers and toes, and then by beating them.

NG

G

Yes

Sp 4: Between 1 November 1942 and 30 April 1944, accused did willfully and unlawfully mistreat and abuse numerous American PW's by beating and otherwise mistreating them.

NG

G

Yes

ORITO

Charge: Accused, chief warrant officer, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.

NG

G

Yes

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Sp 1: Between 1 October 1942 and 31 March 1943, at Fukuoka POW Camp No. 18-B, Sasebo, Kyushu, Japan, accused did willfully and unlawfully mistreat and abuse numerous seriously sick and physically unfit American P's, who were at that time hospitalized or sick in quarters, by forcing them to exercise daily, thereby retarding their recovery and contributing to the disability and death of many of them. NG NG ---

Sp 2: Between 1 October 1942 and 31 March 1943, accused did willfully and unlawfully disregard and fail to discharge his duty as commander of said camp, by failing and neglecting to provide American P's with adequate quarters, heat, food, clothing, medical care and sanitation, thereby contributing to the serious illness, disability and deaths of American P's. NG NG ---

Sp 3: Between 1 October 1942 and 31 March 1943, accused did willfully and unlawfully compel American P's to perform arduous manual labor while ill, diseased and physically unfit to perform such labor, thereby contributing to the serious illness, disability and deaths of American P's. NG NG ---

Sp 4: Between 1 October 1942 and 31 March 1943, accused did willfully, wrongfully and unlawfully disregard and fail to discharge his duty as camp commander, by failing to restrain members of his command and other persons under his supervision and control, by permitting them to commit the following atrocities and other offenses against American P's: NG G Yes

a. On or about 26 October 1942, the willful and unlawful mistreatment of Frederick E. Dyer, an American P, by an unknown Japanese guard, by slapping him. NG G Yes

b. On or about 9 November 1942, the willful and unlawful mistreatment of Frederick E. Dyer, an American P, by an unknown Japanese guard, by beating him with a club. NG G Yes

c. On or about 11 November 1942, the willful and unlawful mistreatment of Pete Peterson, an American P, by an unknown Japanese guard, by beating him with a shovel until he became unconscious. NG G Yes

d. On or about 18 November 1942, the willful and unlawful mistreatment of four unknown, sick American P's, by unknown Japanese guards, by beating them. NG NG ---

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- e. On or about 21 November 1942, the willful and unlawful mistreatment of sick American PW's, by unknown Japanese guards, by beating them. NG NG ---
- f. On or about 6 December 1942, the willful and unlawful mistreatment of American PW's, by unknown Japanese guards, by beating them. NG NG ---
- g. On or about 16 December 1942, the willful and unlawful mistreatment and abuse of Frederick E. Dyer, an American PW, by an unknown Japanese guard, by beating him. NG G Yes
- h. On or about 12 January 1943, the willful and unlawful maltreatment of the dead body of Mark B. Franklin, a former American PW, by Japanese guards and Japanese officers, by slapping and making fun of the dead body. NG G Yes
- i. On or about 18 January 1943, the willful and unlawful mistreatment and abuse of three American PW's, by unknown Japanese guards, by beating them. NG NG ---
- j. In or about the month of October 1942, the mistreatment by Sachio Egawa and six unknown Japanese guards of Kenneth B. Hall, an American PW, by beating and kicking him. NG G Yes
- k. On or about 25 October 1942, the willful and unlawful mistreatment and abuse of Joseph P. Donovan, an American PW, by a Japanese guard, nicknamed "Easel Face", by beating him. NG G Yes
- l. On or about 15 December 1942, the willful and unlawful mistreatment and abuse of George W. Dowling, an American PW, by a Japanese guard, nicknamed "Nobby", by beating him and jumping on his stomach, thereby causing a ruptured diaphragm. NG G Yes
- m. On or about 20 December 1942, the willful and unlawful mistreatment and abuse of Walter Gell, an American PW, by a Japanese guard nicknamed "Goofy", by dragging him from his bed at a time when he was sick and kicking him. NG NG ---
- n. On or about 14 February 1943, the willful and unlawful mistreatment and abuse of Leonard Roy Ward and his squad, all American PW's, by unknown Japanese guards by forcing them to stand at attention one whole day, without food or water, and thereafter beating them. NG G Yes

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Additional Sp 1: Between 1 October 1942 and 31 March 1943, the accused did willfully, wrongfully and unlawfully disregard and fail to discharge his duty as camp commander, by failing to restrain members of his command and other persons under his supervision and control, by permitting them to mistreat and abuse numerous American PW's, other than as alleged in Specification 1 through 4n, inclusive.

G

Yes

WATANABE

Charge: Accused, chief petty officer, 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: Between 1 March 1943 and 31 October 1943; at or near Fukuoka POW Camp No. 18-B, Sasebo, Kyushu, Japan, the accused, then commander of said camp, did willfully and unlawfully mistreat and abuse numerous seriously sick and physically unfit American PW's, who were at that time hospitalized or sick in quarters, by forcing them to perform strenuous physical exercise daily, when they were physically unfit to do so, thereby contributing to the serious illness, disability and death of numerous American PW's.

NG

NG

Sp 2: Between 1 March 1943 and 31 October 1943, accused did unlawfully disregard and fail to discharge his duty as commander of said camp by failing and neglecting to provide American PW's with adequate quarters, heat, food, clothing, medical care and sanitation, thereby contributing to the serious illness, disability and death of numerous American PW's.

NG

NG

Sp 3: Between 1 March 1943 and 31 October 1943, accused, then commander of said camp, did willfully and unlawfully compel American PW's, to perform arduous manual labor while ill, diseased and physically unfit to perform such labor, thereby contributing to the serious illness, disability and death of numerous American PW's.

NG

NG

Sp 4: Between 1 March 1943 and 31 October 1943, accused, then commander of said camp, did willfully and unlawfully mistreat numerous American PW's by causing said prisoners to be beaten and by otherwise abusing them.

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|---|-----|
| Sp 5: Between 1 March 1943 and 31 October 1943, accused did unlawfully disregard and fail to discharge his duty as commander of said camp to control and restrain members of his command and persons under his supervision and control, by permitting them to commit the following atrocities and other offenses against American PW's: | NG | G | Yes |
| a. On or about 18 April 1943, the unlawful mistreatment and abuse of three (3) American PW's by beating them. | NG | G | Yes |
| b. On or about 23 May 1943, the unlawful mistreatment and abuse by Japanese guards of ten (10) American PW's by beating them. | NG | G | Yes |
| c. On or about 10 June 1943, the unlawful mistreatment and abuse by Japanese guards of American PW's by beating them. | NG | G | Yes |
| d. On or about 12 August 1943, the willful and unlawful mistreatment and abuse by Japanese guards of numerous American PW's by beating them. | NG | G | Yes |
| e. On or about 18 August 1943, the unlawful mistreatment and abuse by Japanese guards of numerous American PW's by beating them. | NG | G | Yes |
| f. On or about 12 September 1943, the unlawful mistreatment and abuse by Japanese guards of a squad of American PW's by beating them. | NG | G | Yes |
| g. In or about August 1943, the unlawful mistreatment by Japanese guards of Edgar Franklin Burns, Jerold K. Rogers, John F. Barney, Harry Reed, George W. Scheljohn and Fred Zeh, American PW's, by beating them with clubs and otherwise abusing them. | NG | G | Yes |
| h. In or about April 1943, the unlawful mistreatment by Japanese guards of Lester T. Meyers, an American PW, by beating him until he became unconscious and by otherwise abusing him, thereby contributing to his death. | NG | G | No |
| i. In or about June or July 1943, the unlawful mistreatment and abuse by Sechio Egawa and Tokuro Fukuda, Japanese guards, of Lawrence E. Medin, an American PW, by beating him and immediately thereafter forcing him to assume a handstand position for approximately 45 minutes. | NG | G | Yes |

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j. In or about September 1943, the unlawful mistreatment and abuse of Terren Otto Rogge, Drew Foss and another, all American PW's, by beating them and afterwards forcing Benjamin J. Marsh, an American PW, to strike them with his fists.	NG	G	No
k. In or about September 1943, the unlawful mistreatment and abuse by Sachio Egawa and others, of Edgar Franklin Burns, an American PW, by beating him into insensibility.	NG	G	Yes
l. In or about August 1943, the unlawful mistreatment and abuse by a guard known as "Grandma" of Frank D. Thayer, Clayton Walden and another, all American PW's, by beating them with a shovel.	NG	NG	---
m. In or about April 1943, the unlawful mistreatment and abuse by a Japanese guard of Owen C. Thomas, an American PW, by kicking him in the face and stomach until he lost consciousness, thereby contributing to his death.	NG		Yes
n. In or about April 1943, the unlawful mistreatment and abuse by Sachio Egawa of Ardel Letcher, an American PW, by forcing him to do a handstand in the mud and snow and thereafter forcing him to walk through the snow without shoes at a time when the said Letcher was physically unfit to do so.	NG	G	Yes
o. On or about 8 July 1943, the unlawful mistreatment by Sachio Egawa of Leonard Roy Ward, an American PW, by beating him with a club.	NG	G	Yes
p. Between 1 March 1943 and 31 October 1943, the unlawful mistreatment of numerous American PW's by beating and otherwise abusing them, other than as alleged in Specification 5-a through 5-o, inclusive.	NG	G	Yes

3. Summary of the Evidence:

a. For the Prosecution:

ECANA

This accused was a naval petty officer at Fukuoka Prisoner of War Camp Number 18, located at Sasebo, Japan.

As to Specification 1: Prisoner Zey (Zeh), whose normal weight was approximately 180 pounds, because of sickness and malnutrition weighed only 90 pounds. Accused had a dislike for Zey because of his inability to work. In early January 1943 accused discovered him and other American prisoners picking up onions and other scraps of food from the garbage pile at the camp. He thereupon beat Zey with a club until he became unconscious and then revived him by throwing water on him and beat him again. This beating lasted approximately an hour and one-half (Ex. 9, 21, 24, 36, 49, 63).

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As to Specification 2: In June or July 1943 prisoner Wedin was given twenty-five blows with a wooden pole by accused and accused Fukuda because he complained about the loss of some of his bread. The beating resulted in three of his teeth being knocked out. Subsequent to the beating they forced him to do a handstand for forty-five minutes (Ex. 5).

As to Specification 3: Accused ordered a beating of prisoner Thompson and others. The beating was administered with clubs and was so violent that Thompson was bleeding for three days thereafter. The prisoners were charged with eating extra bread when, in fact, a Japanese cook made the mistake in issuing it to them (Ex. 11).

As to Specification 4: In August 1943 accused charged that prisoners had stolen vegetables from farms that surrounded the camp. There were about two hundred prisoners in the barracks at the time and accused forced them to line up in two rows facing each other. From this group he picked prisoners Burns, Rodgers, Barney and Smalljohn to be punished. He ordered about ten guards to beat them with clubs. Each man was struck about forty blows. Whenever one of these prisoners fell to the floor in an unconscious state, the guards poured water on him and when he regained consciousness, they continued the beating. Accused actively participated in the beatings (Ex. 4, 12, 23, 45, 46).

As to Specification 5: Prisoner Bailey, while working, was hit on the head by an airline hose which was dislodged from a cliff above him. While he was resting from the effect of this blow, accused made an inspection. He placed his gloved hand on Bailey's head and told him he had no fever and to go back to work. Two days later Bailey died (Ex. 24, 63). Bailey died from pneumonia (Ex. 35, 45).

The exhibits introduced set forth the evidence as follows: Accused allowed Meyers to be kicked to death (Ex. 13). In the spring of 1943 Meyers lost his glasses, could not work well. Accused thought he was loafing on the job and ordered his guards to punish him. The guard hit him over the head and body with a wooden club. He was taken to the hospital and died that night (Ex. 14). At 25 April 1943 Meyers lost his glasses and failed to salute the guard, apparently he did not see him. The guard knocked him off the bench with his gun butt, kicked him in the ribs and his body and crushed his face with a gun butt. He became unconscious and died in the hospital that night. The guard's name was Fukuo (Ex. 15, 16). In the spring or early summer 1943, Meyers had broken his glasses. On the way to the latrine he passed a guard by the name of Kokami. He failed to salute him whereupon the guard knocked him down and kicked him, thereafter carried him to the guardhouse and threw him on the ground and reported to accused Egawa. Egawa clubbed him until he became unconscious, thereafter he allowed several prisoners to carry him to the hospital. When Meyers regained consciousness, he was totally insane and unable to care for himself. He died three or four days later (Ex. 24, 63). Meyers was slow witted. He lost his glasses. Accused Egawa did not like him and caused him to be beaten on several occasions for infraction of the rules. In June 1943, Meyers went completely crazy and died soon after (Ex. 36). On 27 April 1943 Meyers died. Meyers became insane. Accused sent him to the parade ground and forced him to remain there in the sun without a hat until he became unconscious. Egawa had the prisoners take him to the barracks where he died (Ex. 35). Meyers died in March 1943 from starvation, but the beatings from Egawa and under the orders of Egawa caused mental deterioration and death (Ex. 49). Meyers died from dysentery, malnutrition, lack of medicine and from the beatings he received (Ex. 43).

As to Specification 6: Accused ordered the guards on many occasions to beat prisoners. He oftentimes participated in them. He used a club about the size of a baseball bat. He caused mass beatings on numerous occasions. For minor infractions of the rules he often put the prisoners on half rations. On one occasion he slapped about sixty percent of the prisoners who failed to bow deeply and thank him in Japanese for a clothing issue. On inspections he ordered all of the sick prisoners to the parade ground. Many were so ill they had to be carried. They were exposed to the inclement weather.

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Other sick prisoners were forced to run around the parade ground and if they slowed up or fell to the ground, he had his guards beat them. His object in doing this was to cause them to prefer going to work rather than to sick call. Prisoners were often beaten to unconsciousness (Ex. 5, 6, 8-11, 25, 27-31, 33, 35, 36, 38, 40-43, 45, 48-52, 55, 60-62).

WATANABE

As to Specifications 1, 2, 3 and 4: Not Guilty.

Specification 5 and subspecifications thereunder are based on command responsibility.

As to Specification 5a: The diary of prisoner Dyer states: "April 18. Barracks detail. Cleaned up. Three prisoners beaten for eating garbage" (Ex. 3, page 3).

As to Specification 5b: The diary continues: "May 23, Ordered back to work. Very weak. Ten men badly beaten for trading" (Ex. 3, page 24).

As to Specification 5c: From the diary: "June 10. Cook served two rations. 'All squads clubbed for eating same" (Ex. 3). Prisoner Thompson states that the Japanese cook made the mistake of serving bread with rice and soup and Igawa (sic) and the guards conducted a mass beating of the prisoners with clubs (Ex. 11).

As to Specification 5d: From the diary: "August 12. Another orgy of beating prisoners. Brutal. Japs enjoy this" (Ex. 3, page 25).

As to Specification 5e: From the diary: "August 18. Another exhibition of Jap cruelty: all the barracks got beaten" (Ex. 3, page 26).

As to Specification 5f: From the diary: "September 12, 1943. Number 3 squad got a beating for protesting the scarcity of food" (Ex. 3, page 26).

As to Specification 5g: (Same as Egawa, Specification 4). From the evidence introduced it is considered that this is the same incident as is related in the Egawa, Specification 4, with the exception that prisoners Reed and Zeh are added as victims under this subspecification. The evidence so introduced adequately supports both.

As to Specification 5h: (Same as the last three paragraphs, Egawa, Specification 5).

As to Specification 5i: (Same as Specification 2, Egawa and Specification 1, Fukuda).

As to Specification 5j: (Note: There apparently was no evidence presented to support this specification).

As to Specification 5k: In September 1943 prisoner Burns and others were beaten by accused Egawa and others with a pick handle and fists until he became unconscious and had to be helped to his bunk by other prisoners. It is thought he had ridiculed a Japanese sailor (Ex. 45, 52, and possibly Ex. 17).

As to Specification 5l: Not Guilty.

As to Specification 5m: In February or March, 1943, a guard, by the name of Woya, kicked prisoner Thomas in the face and stomach until he became unconscious. Because he was old, sick and weak, he was unable to work and the guard told him he "would die anyway" (Ex. 38).

As to Specification 5n: The affidavit in support of this specification states that about April 1943, prisoner Letcher had beriberi to such a degree that he could hardly walk. "Egawa forced Letcher to do a handstand in

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the mud and snow on the parade grounds. Then Letcher could not do the handstand, Egawa forced him to walk through the mud and snow with no shoes and a guard following him with a club" (Underscoring supplied) (Ex. 35).

As to Specification 5c: On 8 July 1943, accused Egawa beat prisoner Ward with a club. He was accused, with several others, of trading with Japanese coolies (Ex. 38).

As to Specification 5p: There were three mass beatings of the two hundred and fifty prisoners; one in April, one in May and one in the autumn of 1943. The prisoners were beaten with hardwood swords between the knees and hips (Ex. 27).

In the spring of 1943 there was a mass beating of about eighteen or twenty prisoners. After the beating some of them could not walk. Accused Egawa did not permit them to receive any medical attention because he stated they had committed an infraction of the rules (Ex. 36).

In October 1943 about two hundred prisoners were beaten because three of them had made cigarette lighters out of salvaged materials. The mass beating was administered despite the fact that the three guilty prisoners admitted having done the act (Ex. 37).

In April or May 1943 accused Egawa beat prisoner Gates with a club about the size of a baseball bat. The beating lasted ten or fifteen minutes. As a result his legs were bruised and black and blue. It is thought this beating was for a minor infraction of the rules (Ex. 52).

On four occasions during August and September accused Egawa beat prisoner Kelly. He beat him with a club until he became unconscious. The beatings were in front of all of the prisoners in Kelly's barracks, after they were forced to assume the position of attention (Ex. 56).

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This accused, as camp commander between 1 October 1942 and the latter part of March 1943, is charged with the following acts of his subordinates:

As to Specifications 1, 2 and 3: Not Guilty.

As to Specification 4a: The diary of prisoner Dyer states: "October 26. Monday...Slapped by guard. Harsh treatment toward aged and sick. . . ." (Ex. 3, page 13).

As to Specification 4b: The diary further states: "November 9. Hospital POWders. . . Guards got licking and I won hunger strike. Got two swats with a club from the guard" (Ex. 3, page 15).

As to Specification 4c: The diary further states: "November 11, 1942. . . Pete Peterson with infected foot beaten with a shovel and knocked cold at 2 p.m." (Ex. 3, page 15).

As to Specifications 4d, e and f: Not Guilty.

As to Specification 4g: Dyer's diary further states: "Dec. 16. Tough day. Got a beating for not working hard. Feet stiff and sore, but not downhearted" (Ex. 3, page 17).

As to Specification 4h: Another excerpt from Dyer's diary is as follows: "January 12, 1943. Bitter cold wind, freezing hard. One more passed away at 8:15 p.m., Mark Franklin, age 46. Prince of a good fellow. His death is a disgrace to Japan. Guards and officers drunk—slapping the dead and making fun of him. Patients all peeved but we can do nothing" (Ex. 3, page 19).

As to Specification 4i: Not Guilty.

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As to Specification 4j: About 22 October 1942 prisoner Hall went on sick call with a cold and accused Egawa ordered him to work, saying that his illness was not severe enough to cause him to remain in the barracks. He argued with Egawa, and when he refused to work, he ordered a six man detail to beat him. They used 2x2 timbers, striking his back and body with them and hit him in the face with their fists until he was knocked down. While on the ground, they kicked him in the ribs and on the arms. He sustained no permanent injuries (Ex. 25).

As to Specification 4k: About 25 October 1942 a guard, nicknamed "Easel Face", ordered prisoner Donovan to carry a slab of concrete down a mountain. Donovan was sixty-five years old and was sick, weak and stiff from his recent long and difficult trip from Wake Island. Because of this he fell down. "Easel Face" beat him with a club until his body became black and blue and he was hardly able to walk for several days (Ex. 27).

As to Specification 4l: About 15 December 1942 a guard nicknamed Nobby mistreated prisoner Dowling because he was too ill to work. He was forced to stretch on his hands and toes and was beaten while in this position. He was beaten until he received a permanent injury to one of his kidneys. He turned Donovan over on his back and jumped on his stomach which caused a ruptured diaphragm from which he was still suffering at the time he made his affidavit in August 1946 (Ex. 29).

As to Specification 4m: Not Guilty.

As to Specification 4n: Prisoner Ward states in his affidavit that he and the other members of his squad were forced to stand at attention by the officer in charge one complete day without food or water. Thereafter they all received a beating. The squad was accused of having lost a blanket (Ex. 38).

As to additional Specification 1: To support the numerous atrocities, exclusive of those set forth in the subspecifications above, the following was introduced in evidence:

In the opinion of prisoner Wodin the deaths that were caused through this accused's and the subsequent commanders' periods of command were caused by malnutrition, overwork and constant beatings (Ex. 5).

On 6 February 1943 accused Egawa cut the prisoners' rations to 400 grams. On 1 March he cut them to 350 grams of rice.

From the first of January 1943 until October 1943 when the Army took over the camp, all who became ill were put on half rations (Ex. 35).

The Zay incident took place when accused was in command. (See evidence and citations under Egawa, Specification 1).

By April, the sixty-six prisoners who had died in the camp came to their deaths because of starvation, malnutrition, pneumonia and abuse (Ex. 39).

The Bailey incident, set forth in Specification 5, Egawa, took place during the period accused was in command.

About February or March 1943 accused Fukuda burned the feet of Prisoner Franklin with a lighted cigarette to see if he was still alive (Ex. 48).

The guards were harsh on the old prisoners, especially when they were sick and could not work. The prisoners were beaten and starved. For the first two or three days they were beaten with fists but subsequent to that time, they were beaten with clubs. When they were on the ship coming to Japan many of the prisoners contracted diverse kinds of stomach ailments. Because of their weakened condition when they arrived at the camp, they were unable to work and this resulted in the guards beating and clubbing them. Later, for any small infraction of the rules, they were beaten with clubs (Ex. 51).

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In January 1943 a Japanese labor foreman came into the barracks and demanded a ring that Prisoner Hubbard was wearing. He refused to give it to him and he slapped Hubbard with his open hand for about fifteen or twenty minutes. He then made him stand on his toes and hands. Whenever Hubbard relaxed, the guard hit him over the kidneys with a club shaped like a wooden sword. Upon Hubbard's further refusal to give him the ring, he forced him to hold his hands over his head and then beat him with the club on the back and shoulders. This lasted about two hours when a guard came to relieve the foreman (Ex. 55).

The following is from Exhibit 3: "Nov. 13. Sick call at 8 a.m. and kept on parade ground until 11 a.m. . . . Nov. 30. Cold day. Tough session on parade ground for the sick. . . Jan. 8. 'The Purge'--all sick men--42 in number to report for work on the 11th. . . Feb. 8. Snowing hard and worked in cement shed. Two sick men were made to work in the snow, but had to be carried back home again."

FUKUDA

's to Specification 1: (Same as Specification 2, Egawa).

's to Specification 2: In August 1943 a group of sailors, headed by accused Egawa, went into the prisoners' barracks and beat prisoner Burns and others. A short time later the group returned and accused Fukuda administered a beating to Burns with a club. He struck him about thirty-four blows before he became unconscious. He was urged to beat him by accused Egawa. Burns thinks he was beaten because of being suspected of stealing food stores (Ex. 23).

's to Specification 3: In the spring of 1944 accused charged that prisoners Burns and Reed were not working fast enough to satisfy him. He ordered them to assume a prone position and support themselves solely by their fingers and toes. When in this position, he struck them about ten blows with a club. This was particularly hard on Reed because he was a hunchback and was crippled (Ex. 23).

's to Specification 4: Accused participated in many beatings and clubbings of the prisoners. He slapped sick prisoners and sent them to work. At times when prisoners who were sick and overworked would fall to the ground exhausted, accused burned their feet with a lighted cigarette to determine if they were still alive. In many instances after the beating, the victim would be in a cut, bruised and bleeding condition. He beat prisoners for minor infractions of the rules (Ex. 5, 6, 23, 34, 40, 51, 53, 54, 60).

Patricia Dwyer, daughter of prisoner Dwyer, took the stand under oath and testified that the diary introduced in evidence as Exhibit 3 was written in her father's handwriting (R. 15-13).

b. For the Defense:

Kiyoteru Nakamura, initial witness for the defense, was sworn and took the stand. The gist of his relevant testimony is as follows:

During the war he was a civilian attached to the navy. He was the construction engineer in charge in the building of the reservoir for the Sasebo Naval Construction Division. Among the laborers on that job were American prisoners of war (R. 56). He directed the work of the prisoners. The guards' job was merely to guard the prisoners while they worked and when they had returned to their barracks. If a prisoner complained of ill health, the guards would escort him to the company dispensary (R. 56).

On cross-examination he testified that the guard unit was in charge of the camp. Accused Orito was in charge of the guard unit at first and later accused Watanabe was in charge. Accused Orito and Watanabe, during their respective commands, lived near the camp in their quarters and served

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twenty-four hours a day when they were on duty. The prisoners were under accused Watanabe's protection (R. 57) and accused Orito's protection. He was positive that accused Egawa was "under" accused Orito. As for accused Fukuda, he thought he was "under" either accused Watanabe or accused Orito. In case a prisoner was to be punished, he thought the guard unit took care of the matter (R. 58). There was no dispensary in the camp but there was one thirty meters from the camp (R. 61). In the spring of 1943 a doctor came three or four times a week (R. 62). He would not have known if a prisoner needed medical attention (R. 63). When a prisoner was too sick to work, he stayed at the camp. He did not hear of any mass punishment at the camp (R. 64). No prisoner ever complained to him about conditions at the camp. If a prisoner had a complaint, he would make it to accused Orito or accused Watanabe (R. 65). The many deaths among the prisoners were caused by an epidemic of pneumonia (R. 66). When a prisoner had pneumonia, the medical officer would try to get more medical supplies from the hospital and would warm up the sick bay by building a fire and applying water to it to raise steam in the room. No prisoner died on the job (R. 67).

Under questioning by the President, the witness stated that he was the boss on the job and, in that capacity, he walked around and saw the prisoners daily. He, at no time, saw a guard slap or kick a prisoner of war. If a prisoner violated regulations, he reported it to the commanding officer of the guard unit (R. 69).

Nomura Tomekichi, former Rear Admiral in the Japanese Navy, testified under oath that he was stationed at the Sasebo Naval Base from May 1941 to May 1943. The construction company furnished housing, food, clothing and medical attention to the prisoners, while the guard was furnished by the Navy (R. 72). On cross-examination he stated that it was the duty of the guard unit and not the company to punish prisoners for infractions of the rules (R. 75). He knew of no prisoner who was beaten (R. 76).

The gist of the pertinent part of the testimony of Hiroshi Kodama, who next took the stand under oath, is as follows:

He was a naval guard at the camp. Accused Egawa was attached to the same unit to which he was attached (R. 81). He did not at any time see accused Egawa beat prisoners, nor did he hear of his ordering anyone else to beat them. His reputation among the prisoners was good. It was at accused Egawa's request that a sick bay was erected. He was at the camp for ten months (R. 81). He did not ever witness accused Fukuda hitting a prisoner. The reputation he had among the guards at the camp was that he was a good soldier. He was liked by his fellow soldiers (R. 83).

Masaru Takahashi testified under oath that he was a guard in the naval unit at the camp (R. 89). He recalled that accused Egawa slapped two prisoners two or three times for eating garbage because it would have been "a very bad situation if they got sick from eating garbage." He did not see accused Fukuda strike a prisoner (R. 90). Accused Egawa "was a quiet and serious man, and did not drink, smoke or fool around with women" (R. 91). He tried to do as much as possible to keep the prisoners from working overtime. Through the efforts of accused Orito, Watanabe, Fukuda and others of the staff, a bakery was established (R. 93). Accused Orito instructed this witness to treat the prisoners kindly and not to hit a prisoner. He was a very quiet, sensible person. Accused Watanabe handled the prisoners in a kind and sincere manner and he instructed the guards to treat them squarely (R. 93).

On cross-examination he stated that he heard of no mass beatings while the camp was under the command of accused Watanabe (R. 94).

Hollit B. Frisbie, attorney for the war crimes defense, took the stand and testified that Toroki Mizutani, whose affidavit is Exhibit 1, speaks English "to some degree" and reads and writes English. He made his own corrections on the affidavit which the witness had drawn (R. 100). Defense Exhibit 1 of Mizutani, medical officer, which describes the medical situation

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and health of the prisoners at the camp in their earlier days of captivity, was admitted in evidence (R. 101).

Accused Ecawa, after having been sworn, took the stand to testify in his own behalf. A synopsis of his pertinent testimony is as follows:

From 17 September 1942 to 7 February 1944 he was a naval guard at the camp (R. 102). He had no authority over the labor performed by the prisoners. He went to accused Orito in an effort to try to prevent the prisoners from having to work overtime. Accused Orito was sympathetic with this and he sent requests to the staff headquarters to reduce the number of hours of work. For a short while the prisoners did not have to work overtime, but later it was resumed (R. 104). He went to superiors in an endeavor to get more food for the prisoners. Finally, during the time accused Watanabe was in command, an order was received that when prisoners had to work overtime, bread would be given them, and large amounts of it were supplied to them thereafter under those conditions (R. 104-105). Concerning Specification 1, he stated that he had no recollection of beating prisoner Zay, nor could he recall any similar incident. At the time this prisoner was allegedly beaten by him, he was continually occupied with work, sickness and being on a pass (R. 105). He denied the accusations made against him under Specification 2. Concerning Specification 3, he did not recall prisoner Thompson and denied that he and accused Fukuda beat him (R. 106). He described one incident when there was a double distribution of bread and rice, as the only one of which he had knowledge (R. 106-107). He did not recall the names of the victims of the beating alleged under Specification 4, and denied ever ordering accused Fukuda to beat anyone. He denied beating prisoner Meyers. He was not in camp in April 1943. He was on leave. Fukuda, who is alleged in prisoner Barnett's affidavit as having reported to him concerning the first beating of Meyers, could not have made such a report because he and Fukuda were on different guard details and never were on duty at the same time (R. 107). He ordered the prisoners not to eat any of the garbage, especially because of an epidemic of dysentery that was prevalent at the time. When he once discovered a prisoner violating this order, and he denied eating the garbage, he struck him three times with a stick across the buttocks and hit the other prisoners lightly. He did not hit them because of hatred. He realized at the time of trial that it was wrong. On another occasion the prisoners were ordered to remove the excreta from a latrine and to dig a hole and bury it. He discovered a company employee beating seventeen or eighteen prisoners, because they had put the excreta into a ditch which was used for conveying mountain water used for drinking purposes (R. 108). He did not consider it a sneaky act but rather a blunder on the part of the prisoners. He, therefore, stopped the company employee and, in order to satisfy him, he feigned striking the prisoners with his club, just enough to scare them. There were no other occasions on which he slapped or hit a prisoner (R. 109). He heard of beatings of prisoners by one Iwashita, who was on another guard detail (R. 110). On cross-examination he stated that the plight of the prisoners was pitiful and that accused Orito was concerned about it, but did not have authority to do anything about it, and this distressed him (R. 112). Sick prisoners were not required to take exercises; however, they sometimes took such exercises (R. 116). Whenever the guards reported to accused Watanabe that something should be done to improve the conditions for the prisoners, he gladly did whatever he could to better the situation (R. 117).

Accused Fukuda then chose to testify under oath. He was a chief petty officer and served with the guard unit at the camp from 17 November 1942 until 17 April 1944. Concerning Specification 1, he did not recall prisoner Modin and denied the accusations made thereunder. As to Specification 2, he stated that one evening two or three sailors ran up to him and told him a prisoner had been caught eating garbage, or had stolen food. When he arrived at the scene, the prisoners had been beaten. He warned the prisoners that they would be beaten if they ate garbage. Then the sailors hit the prisoners and "this prisoner fell down. He was made to get up and then he hit him again and he fell down." He did not lose consciousness. He did not know the names of the young sailors, but since he was watching and did not prevent the beating, he (at the trial) assumed responsibility (R. 120). Prisoner Burns was one who

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was beaten in this incident. He did not recall anything concerning the allegations embodied in Specification 3. He slapped two prisoners with his open hand twice for fighting on one occasion. Another time he slapped two or three prisoners with his open hand when they refused to do calisthenics. Those two were the only times he ever slapped or hit a prisoner.

After the termination of hostilities, from ten to twenty prisoners visited his home. They left army uniforms, boxes of chocolates, tobacco and shoes. They came many times thereafter and always brought something, such as the gifts mentioned above (R. 121). There was a newspaper item concerning their visits (Defense Exhibit B).

On cross-examination he denied beating prisoner Burns, as Burns alleges in his affidavit, but admitted being present at the time. He did not recall even hearing of a hunchback (Roed) being beaten. In September 1943 some of the company employees were beating about seventeen or eighteen prisoners. Egawa watched for awhile and then took the stick from one of them and joined in beating them (R. 124). As to his statement in Exhibit 60, he testified that the interpreter told him that, even if he showed it to him, he would not understand it and that it was written as he had told it. When he asked why it was not read back to him, the interpreter replied that something was wrong with his head. He believed what he was told and signed it (R. 126).

Accused Orito took the stand under oath and testified that he was stationed at the camp from 12 October 1942 to 24 March 1943. He was commander of the naval unit at the camp (R. 129).

On cross-examination he stated that when calisthenics were necessary, the prisoners were made to engage in them (R. 130). The medical officer from the construction company determined whether the prisoners were fit to work. Accused Egawa and Fukuda did not force any prisoners to work (R. 131). When he made his written statement, it was not translated back to him before he signed it (R. 132). No complaints were ever made to him by the prisoners (R. 133). He did not see any prisoner beaten, nor did he hear of such an occurrence. Prisoners were not beaten when they were under his command. He did not recall the name of Mark Franklin (R. 134).

Accused Watanabe testified under oath that he was stationed at the camp from 24 March 1943 to 5 December 1943 (R. 135). On cross-examination he stated that he was commanding officer of this guard unit. After roll call the prisoners were turned over to the construction company representatives and the guard unit would check the number to remain in camp. He believed the prisoners were being treated correctly. He understood that the proper care of prisoners was his responsibility. Even when at work, his guards were placed in strategic positions and that was his responsibility. He walked around the working area once in the morning and once in the afternoon (R. 136). He did not see a prisoner beaten or slapped. During morning roll call, he saw them pushed or pulled lightly in line to straighten out the file (R. 137). Egawa told him about a beating resulting from the prisoners making lighters. He did nothing to punish him. He thought at that time such punishment was all right (R. 138). The document he signed was read back to him but he did not hear of the matters that the prosecutor states were in it over his signature (R. 139). The discipline and order of the guards was the responsibility of the guard commandant (R. 140). Under questioning by the Commission, he stated that Egawa and Fukuda were under his command and he was responsible for their actions.

Accused at this point explained that his statement was merely read back to him and was not written.

Accused Egawa was recalled and testified that there was no camp commander (R. 142). There was merely a unit guard commander.

Accused Fukuda was recalled and testified that if anything went wrong, it was reported to accused Orito or Watanabe (R. 144).

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Mr. Fred Smith took the stand as a prosecution witness and stated he took the statements from the four accused and was present when they were translated back to them by the interpreter, as stated by the certificate on each statement (R. 144).

4. Opinion:

The record is legally sufficient to support the findings of the Commission relative to the accused, except as will be hereinafter discussed in this opinion. The Commission was constituted by proper authority and had jurisdiction of the accused and of the offenses alleged.

The prosecution introduced evidence by means of affidavits and statements of former prisoners who had been interned in the camp and were in a position to know the facts of the matters in issue. The daughter of a deceased prisoner also testified as to the handwriting of her father in a diary he kept concerning activities at the enclosure.

As was pointed out by the President of the Commission, the main specification against the accused Leave is Number 5 (R. 112). The sentence "to be hanged by the neck until dead" was, without a doubt, predicated upon the finding of guilt thereunder. Four affidavits were offered as proof of the cause of the death of prisoner Bailey. Exhibits 24 and 63 merely state that accused placed his gloved hand on Bailey's head and then told him he had no fever and to go back to work. Two days later Bailey died. Exhibit 36 merely states that he died from pneumonia. Exhibit 45 states that because Bailey was lagging in his work, accused ordered him to stay on the job. Bailey was not capable of working because he had pneumonia. He dropped from exhaustion and thereafter died.

There is nothing in the statements above that could satisfy the elements necessary to prove homicide. Conspicuously absent is a showing of intent to commit homicide. All that is alleged is that accused ordered him to continue working at a time when he had pneumonia and that he died two days later of this illness. There is no evidence that accused knew he was sick. There is no proof offered that accused did not consider him to be deliberately loafing on the job. There is nothing presented to establish proximate cause or relationship between the working and the death. The necessity for such evidence is well expressed in the following:

"Proximate relationship between an act and the subsequent death of the person upon whom the act was committed, in order to support a charge of homicide, must be established beyond a reasonable doubt. If there is a reasonable doubt that the unlawful act was the proximate cause of death, or if there is only an obscure or probable connection between them, the jury should acquit" (Underlining supplied) (26 Am. Jur., par. 283, Homicide, and references thereunder).

Under the above reasoning it is difficult to understand how accused could be found guilty of contributing to the death of prisoner Bailey.

The prosecution evidence introduced to show the guilt of accused in contributing to the death of prisoner Leave is not only highly confusing but, on its face, it is physically impossible that the acts alleged could have happened. The cause of his death is given in the affidavits as follows: He was kicked to death (Ex. 13). He was clubbed to death with a wooden club (Ex. 14). He was beaten with a gun butt (Ex. 15, 16). He was knocked down, kicked and later clubbed (Ex. 16, 63). He was beaten on several occasions (Ex. 36). He was forced to sit in the sun without a hat until he "passed out" (Ex. 35). He died because of starvation and beatings (Ex. 47). He died from dysentery, malnutrition, lack of medicines and beatings (Ex. 43).

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The act took place when he was sitting on a bench (Ex. 15, 16), when he was on his way to the latrine (Ex. 24, 63), and when he was on the parade ground (Ex. 35).

Accused Egawa is alleged to have committed the act (Ex. 35), to have ordered it (Ex. 14, 49), to have caused it (Ex. 36), and to have known about it (Ex. 43). Fukuo is alleged to have committed it (Ex. 15, 16). Kokami and Egawa are alleged to have done it (Ex. 24, 63).

Immediately after the abuse, Meyers was allegedly simultaneously taken to the hospital (Ex. 14-16), the guardhouse (Ex. 24, 63), and to the barracks (Ex. 35).

He died in the hospital (Ex. 14-16, 24, 63), in the barracks (Ex. 35) that night (Ex. 14-16), three or four days later (Ex. 24, 63), in the spring or summer (Ex. 14, 24, 63), in March (Ex. 49), April (Ex. 15, 16, 35, 43), and June (Ex. 36).

Because of the conflicting statements and because two other guards, Fukuo and Kokami, are alleged to have committed the act, it is obvious that there must be a reasonable doubt as to the guilt of the accused in contributing to Meyer's death. If the findings were to be approved, it would be difficult to determine upon what evidence they would rest.

As to both the Bailey and Meyers incidents, there is nothing that supports the finding of guilt as to this accused beyond a reasonable doubt.

It is considered that the findings under the other specifications against accused Egawa were arrived at, fairly and properly.

Concerning the evidence against accused Watanabe, it should be noted that the affidavits which the prosecution announced in open court as in support of specifications 5c to f do not support them. However supporting evidence is found in the diary of prisoner Dyer (Ex. 3). Nothing could be found in the evidence presented to support Specification 5j.

The acts of accused Orito's subordinates, for which he was found guilty, were so frequent that he either knew that they were taking place or with the exercise of ordinary diligence he could have known about them. He testified that it was after accused Egawa had beaten prisoners for making a cigarette lighter that he told him about it. He did not punish accused Egawa for this act (p. 138). It is considered that the findings were arrived at properly and legally.

The findings of guilty of accused Fukuda were likewise arrived at properly and legally.

The motion for modification of the sentence and new trial in behalf of accused Orito, Watanabe and Fukuda, as presented by the defense for consideration by the Reviewing Authority, states that there is no evidence that accused Orito was camp commander (p. 2, 10). This is not a correct statement. There is ample evidence to support the fact that he was the commander (R. 57, 72, 83, 93, 143; Ex. 58, 59, 62).

The motion states that, under the Orito Specification 5n, the forcing of prisoners to stand at attention is not *per se* a war crime. This is a true statement. However, when prisoners are forced to stand in the position of attention for long periods of time as a means of punishment, it is in violation of the convention rule against the administration of corporal punishment to prisoners of war.

The defense argument in the motion (p. 17, 19) against *ex parte* affidavits has been pressed on by the Reviewing Authority in many cases in the past and will not be discussed at this time. (United States v. Lane, Docket No. 9; United States v. Kawakami et al, Docket No. 13; United States v. Nakamatsu,

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Docket No. 19; United States v. Yamuchi, Docket No. 27; United States v. Ishige, Docket No. 28; United States v. Shimoda, Docket No. 29; United States v. Abe, Docket No. 32; United States v. Yasada, Docket No. 34; United States v. Nagakura, Docket No. 35; United States v. Hosotani et al, Docket No. 40; United States v. Watanabe et al, Docket No. 43; United States v. Mineno, Docket No. 47; United States v. Kimura, Docket No. 51; United States v. Shiozawa, Docket No. 54; United States v. Kaneko-Uchida, Docket No. 76; United States v. Kimura, Docket No. 86; United States v. Aoki, Docket No. 129).

In the defense motion it is stated that it was error to deny the defense's request for an adjournment after receipt of the additional specification (p. 19, 20), and it cited a case heretofore passed on by the Reviewing Authority in support thereof. However, the quotation from this former review, found on page 20 of the defense motion, should have read "could" rather than "would" amount to error. This is a typographical error and should be corrected.

In the present case, defense counsel stated that he would have no objection to proceeding to identify the diary (Ex. 3) and asked an adjournment until the following Tuesday morning (R. 9). However, the next Monday morning, 26 May 1947, when the Commission convened there was no request made for a continuance (R. 21). The presumption logically follows that the defense felt that, at the time, it was properly prepared to proceed with the trial.

It is contended in the motion on behalf of accused Egawa that a single, uncorroborated affidavit is insufficient to support the findings of the Commission, especially in view of the denial of accused (p. 5). There is no rule to support such a contention. The Commission, in weighing and evaluating the evidence, chose, as was its prerogative, to believe the contents of the affidavit rather than the denial of accused.

The prosecution asked a witness how prisoners were punished for disobedience in the Japanese Army. The President, who was also the law member, would not permit the question to be answered on the grounds that the Japanese have an "unwritten law" against corporal punishment and yet they violate it. He further stated that such a question never received a satisfactory answer in any of the trials in which he participated in the past (R. 75, 76). Although, this in no way was prejudicial to the accused, it might have hindered the case of the prosecution. It is considered that even though the question was unsatisfactorily answered in past cases, there is reason to believe that it might have been correctly answered in the present case. It would have been more proper if the President had reserved his ruling until after an attempt, at least, was made to answer it.

Objection was made by the prosecutor to the admission in evidence of Defense Exhibit 4 (R. 96, 97). He contended it was in the language of Major Burton K. Phillips, Chief of the Defense Section, and that it could not have been written by the Japanese who signed the instrument. As to this first objection, it is generally well known that most lawyers write affidavits and instruments for their clients. However, the principal thing to consider is whether the affiant states on oath that the facts embodied therein are the truth. Major Phillips, as one authorized to administer oaths, merely affixed his signature below the statement that it was subscribed and sworn to before him on a certain date. The prosecution further objected that there was nothing to show that it had been read back to the affiant in Japanese. It is presumed that the affidavit was read to the affiant in the language he understands. When Major Phillips placed his signature on the affidavit which stated that it was subscribed and sworn to by the affiant, it was necessarily apparent to Major Phillips that the affiant knew the contents of the instrument to which he swore to be true. It is considered that the statement of the prosecutor, "For all you know, someone pointed to this spot and said sign here" (R. 98), is an unfair and unfounded statement. If the prosecutor had knowledge that such was the case, he could have, and should have, presented such evidence. If he was basing his argument on that might be a mere possibility, he had no right to make such a derogatory statement.

(p. 19, WATTA et al, Case #94)

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"The presumption is that a duty established by law or custom will be duly discharged" (Powell Bros. Truck Lines v. Piatt, 92 F. (2d) 879).

"In the absence of evidence to the contrary, the presumption is that every person performs his duties" (31 C.J.S. 840)

It is considered that the case of the accused was in no way prejudiced by the above remark of the prosecution. The affidavit was admitted as a defense exhibit.

All of the contentions and arguments submitted to the Reviewing Authority in the motions have been carefully studied and considered in making the recommendations that will be set forth in subsequent paragraphs.

Except as noted above, the complete record discloses that all of the accused had a fair trial and that they were ably represented by competent counsel. They took the stand and testified in their own behalf. A careful scrutiny of the entire record fails to disclose any error, other than that pointed out above, which injuriously affected the substantial rights of accused or any failure to accord them a fair trial in every respect. There is no evidence that accused were not sane at the time of the commission of the alleged acts and at the time of trial.

5. Recommendations:

There are no letters of clemency from any members of the Commission. The motions presented by the defense for all of the accused have been read and considered. The letter of accused Egan to Father Ryan has been read and considered.

EGAN

The Commission sentenced this accused to be hanged by the neck until dead. The sentence is legal.

For the reasons set forth in the above opinion, relative to Specification 5 namely, lack of proof of proximate cause of the deaths of Bailey and Meyers, conflicts of statements relative to the cause of each of their deaths, the difference of opinion in the kind of death that Meyers underwent, the uncertainty as to the perpetrator thereof and other conflicts obviously based on hearsay, rumor and imagination, and the failure to prove guilt beyond a reasonable doubt, it is recommended that the finding of the Commission relative to this specification be disapproved. A careful study of the offenses of which this accused would be found guilty, if this recommendation be followed, when compared with findings of other war crimes commissions and sentences imposed for similar offenses, results in the opinion that the sentence of death is excessive. It is, therefore, recommended that the sentence be changed to confinement at hard labor for a period of ten (10) years. It is further recommended that, in all other respects, the motion for modification of sentence and for a new trial be denied.

Accused was confined 5 June 1946, went to trial 23 May 1947 and was sentenced 2 June 1947. Under established policy, owing to the length of time accused has spent in confinement prior to the date of sentence, it is further recommended that nine (9) months of the confinement at hard labor thus imposed be credited. Sugamo Prison, Tokyo, Hanshu, Japan, is the appropriate place of confinement.

YAMANE

The Commission sentenced this accused to confinement at hard labor for the period of his natural life. The sentence is legal.

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Apparently there was no evidence to support Specification 5j. It is recommended that the findings of the Commission relative to this specification be disapproved. For the reasons set forth in the opinion above under Specification 5, Egawa, it is recommended that the findings of the Commission relative to Specification 5h as concerns this accused be disapproved. If these recommendations are followed, accused would be found guilty under his responsibility as a commander, for the beatings and abuse of prisoners by his subordinates under fourteen subspecifications. When compared with the sentence imposed by other war crimes commissions for similar offenses, it is considered that the sentence as to this accused is excessive. After a careful study of the offenses of which accused has been found guilty, it is further recommended that only so much of the sentence as provides for confinement at hard labor for twenty-one (21) years be approved. It is further recommended that, in all other respects, the motion of the defense be denied.

Accused was confined 11 October 1946, released 30 October 1946 and reconfined 4 November 1946. He went to trial 23 May 1947 and was sentenced 2 June 1947. Under established policy, owing to the length of time accused has spent in confinement prior to sentence, it is further recommended that five (5) months of the confinement at hard labor be remitted. Sugamo Prison, Tokyo, Honshu, Japan, is the appropriate place of confinement.

OKITO

The Commission sentenced this accused to confinement at hard labor for the period of his natural life. The sentence is legal.

This accused was found guilty, under his responsibility as a commander, for the beatings and abuse of prisoners by his subordinates, under a specification and nine subspecifications. When compared with sentences imposed by other war crimes commissions for similar offenses, it is considered that the sentence as to this accused is excessive. After a careful study of the offenses of which the accused has been found guilty, it is recommended that only so much of the sentence as provides for confinement at hard labor for a period of fifteen (15) years be approved. It is further recommended that in all other respects, the motion of the defense be denied.

Accused was confined 25 January 1947, went to trial 23 May 1947 and was sentenced 2 June 1947. Under established policy, owing to the length of time accused has spent in confinement prior to sentence, it is further recommended that two and one-half (2 1/2) months of the confinement at hard labor be remitted. Sugamo Prison, Tokyo, Honshu, Japan, is the appropriate place of confinement.

FUKUDA

The Commission sentenced this accused to twenty (20) years confinement at hard labor. The sentence is legal.

This accused was found guilty of four specifications of beatings and abuse of prisoners of war. When compared with sentences imposed by other war crimes commissions for similar offenses, it is considered that the sentence as to this accused is excessive. After a careful study of the offenses of which accused has been found guilty, it is recommended that only so much of the sentence as provides for confinement at hard labor for a period of eight (8) years be approved. It is further recommended that, in all other respects, the motion of the defense be denied.

(p 21, EGAWA et al, Case #94)

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Accused was confined 14 January 1946, released 20 January 1946, reconfined 20 January 1947, went to trial 23 May 1947 and was sentenced 2 June 1947. Under established policy, owing to the length of time accused has spent in confinement prior to sentence, it is further recommended that one and one-half (1½) months of the confinement at hard labor be remitted. Sugamo Prison, Tokyo, Honshu, Japan is the appropriate place of confinement.

6. Action:

Attached hereto are forms of actions designed to carry into effect the above recommendations.

PAUL E. SPURLOCK
Reviewer
Judge Advocate Section

I concur in general with the statements in the foregoing review except as hereafter mentioned.

Certain general principles should be noted with reference to pleading that wrongful acts contributed to a death. The matter has been fully discussed and disposed of by the Reviewing Authority in a number of cases previously reviewed (Docket No. 46, Michizawa et al, and No. 130, Muta et al).

It should be noted that accused Egawa was described as a Petty Officer and as Executive Officer of the camp, that Orito was a Lieutenant Senior Grade and Commander of the guard unit which contained Egawa and Fukuda. He also had the prisoners of war under his custody and protection (R. 57, 58, 82). The same was true of Watanabe (R. 57, 58, 82, 136, 138, 139, 140, 142). Watanabe was an Ensign. Fukuda was a Chief Petty Officer or Chief Seaman.

Egawa-Specification 5. In considering this specification, it must be borne in mind that the gravamen of the offense is not common law or statutory murder but breach of the rules of the laws of civilized nations. It was also intended to charge that the death of Meyers and Bailey directly resulted therefrom. It is not fatal to the proof that witnesses differ as to minutiae of the occurrence. Ordinarily it is rare for witnesses to have the same version of any occurrence. The important point is whether the evidence is consistent as to the main factors in the crime, the essential elements thereof. Did the wrongful actions of Egawa directly and proximately contribute to (cause) the injury and death of Meyers and Bailey? The witnesses compellingly establish as to Meyers that they did. A witness said he was kicked to death, another that he was clubbed to death with a wooden club, another that he was beaten with a gun butt, another that he was knocked down and later kicked and clubbed, others that he died from beatings administered or directed by Egawa. The responsibility for the death was placed by a number of witnesses upon Egawa. It is plain and a reasonable person is forced to conclude from the evidence that Egawa is legally responsible for the violation of the laws of civilized nations which directly resulted in the mistreatment and death of Meyers. (Exhibits 14, 15, 16, 24, 26, 43, 49, 63). The finding of guilty of Specification 5, Meyers, therefore should be approved. In the light of the evidence supporting this specification as to Meyers, no other action is believed appropriate than to approve the sentence, withholding execution until confirmation by the Supreme Commander for the Allied Powers. It is so recommended. Alternate action to implement this recommendation is attached.

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As to Bailey under Egawa Specification 5, the proof establishes that Bailey was sent to work after an inadequate inspection by Egawa as to the severity of an injury he had received. However, the causal connection between that dereliction on Egawa's part and the death of Bailey (or, in fact, his illness preceding death) is not established beyond a reasonable doubt. Under these circumstances, it is believed that under the peculiar facts pertaining to this element of Specification 5, approval of the finding of guilty of Specification 5 should exclude the portion involving Bailey.

Watanabe-Specification 5h. This specification concerns command responsibility for the death of Meyers alleged to be caused in the first instance by wrongful actions of Egawa (Egawa-Specification 5). Since it was proved in addition to the evidence of wrongful killing of Meyers by Egawa and the pattern of such types of wrongdoings under Watanabe that Watanabe had the responsibility for the protection of the prisoners (including Meyers) and had control of Egawa, the allegations in Specification 5h were established that Watanabe was guilty as charged (Exhibits 14, 15, 16, 21, 24, 57, 61, 63; R. 57, 58, 82, 136, 138, 139, 140, 142). The proof of this occurrence was accompanied by proof of many other similar though less severe illegal acts to the extent that a pattern of cruelties was established. Thus, knowledge and responsibility are imputed to Watanabe, the commander. Conviction justifies the sentence of life imprisonment. It is recommended that the findings and sentence be approved. Action to implement this recommendation is attached.

Orito-Specification 4-1 and Additional Specification. The proof under Specification 4-1 showed a type of mistreatment which resulted in injuries which apparently are of a lasting and disabling nature. Jumping on the stomach of a helpless prisoner directly resulted in internal injuries from which the victim had by no means recovered at the time of his testimony. Compelling evidence in Additional Specification 1 established many brutalities including the atrocious 7ay incident resulting from the wrongful actions of Egawa (charged under Specification 1, Egawa). A harsh rule by the sufferance of the commander Orito directly resulted in multiple abuses which would justify confinement for more than the life expectancy of this accused. It is believed that the findings of guilty and the sentence of life imprisonment should be approved. Action to implement these recommendations is attached.

A careful study of the record, the clemency papers, the able briefs of defense counsel and other matters involved establishes that the commission was fair in its decisions (ruling for the prosecution or the defense as the facts warranted), that defense counsel presented available evidence, and arguments supporting it, fully and ably and that the accused all received a fair trial. The additional affidavit of one of defense counsel inclosed in the clemency papers has been fully considered in these recommendations insofar as it aids the accused. No prejudice is discovered from failure to grant the defense more time. It should be noted that the defense stated in the record at the close of prosecution's case (P. 54): "Defense: The defense is ready to proceed with its case, Sir." In reviewing this case and all war crime cases the viewpoint has been taken and must be taken that the accused are to be judged by their actions by the same measure as that employed for any other person accused of offenses against the laws of civilized nations without regard to nationality, race or creed. No element of emotion or bias, hatred or vindictiveness should be allowed to enter. The offenses should be appraised in the light of the proof alone as tempered by considerations of clemency where such appear. In the instant case, brutalities attended by such tragic results as in the case of Pastor Meyers and the others who survived but will bear lasting marks both

(p 25, 30, 31 et al, Case '94)

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physical and mental of the atrocities inflicted upon them cannot be condoned but merit and demand the punishments recommended. It is the obligation of civilized nations in accordance with the Potsdam Declaration to adjudge and execute appropriate punishments for the proved commission of war crimes. A concurrent obligation is that all accused must have a fair trial and that the results shall reflect justice to all parties. These recommendations have been made with those principles in mind.

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Staff Judge Advocate.

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