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

Yokohama, Japan
4 May 1948

UNITED STATES OF AMERICA VS JUNSAURO TOSHINO
UNITED STATES OF AMERICA VS SHUSUKE WADA
UNITED STATES OF AMERICA VS KAZUTANE AIHARA.
UNITED STATES OF AMERICA VS SHIN KAJIYAMA.
UNITED STATES OF AMERICA VS SUKETOSHI TANOUÉ.
UNITED STATES OF AMERICA VS JIRO UEDA
UNITED STATES OF AMERICA VS HISAO YOSHIDA
UNITED STATES OF AMERICA VS RISAKU KOBAYASHI
UNITED STATES OF AMERICA VS SHO HATTORI.

Review of the Staff Judge Advocate

1. The attached record of the common trial of Junsaburo Toshino, Shusuke Wada, Kazutane Aihara, Shin Kajiyama, Suketoshi Tanoue, Jiro Ueda, Hisao Yoshida, Risaku Kobayashi, and Sho Hattori at Yokohama, Japan, from 10 March 1947 to 9 May 1947, by a Military Commission appointed by paragraph 32, Special Orders No. 41, Headquarters Eighth Army, United States Army, dated 18 February 1947, as amended by paragraph 15, Special Orders No. 56, same headquarters, dated 8 March 1947, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Junsaburo Toshino
AGE: 45
RESIDENCE: 198 Kita Sava, Matsuyama
City, Ehime-Ken, Shikoku Island,
Japan
MARITAL STATUS: Married
RELATIVES: Two children
EDUCATION: Graduated physical education
school
VOCATION: Physical education instructor
MILITARY CAREER: Army since 1941,
Captain in Infantry
DATE OF CONFINEMENT: 28 July 1946
DATE OF ARRAIGNMENT: 10 March 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 10 March 1947
to 9 May 1947
DATE OF SENTENCE: 9 May 1947
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY COMMISSION:
No

NAME: Shusuke Wada
AGE: 43
RESIDENCE: Sakae-Machi, Hojo-Machi,
Osen-Gun, Ehime-Ken, Shikoku Island,
Japan
MARITAL STATUS: Married
RELATIVES: Stepmother and two children
EDUCATION: Graduated business school
VOCATION: Businessman
MILITARY CAREER: Civilian employee
of army, as interpreter, from 1942 on
DATE OF CONFINEMENT: 21 June 1946
DATE OF ARRAIGNMENT: 10 March 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 10 March 1947
to 9 May 1947
DATE OF SENTENCE: 9 May 1947
SENTENCE: CHL for life
CLEMENCY RECOMMENDED BY COMMISSION:
No

NAME: Kazutane Aihara
AGE: 36
RESIDENCE: 645 Minami-Yoshi-Mura,
Osen-Gun, Ehime-Ken, Shikoku Island,
Japan
MARITAL STATUS: Married
RELATIVES: Not shown
EDUCATION: Graduated middle school
VOCATION: Teacher and farmer
MILITARY CAREER: Soldier since 1941
DATE OF CONFINEMENT: 16 April 1946
DATE OF ARRAIGNMENT: 10 March 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 10 March 1947
to 9 May 1947
DATE OF SENTENCE: 9 May 1947
SENTENCE: Death by hanging
CLEMENCY RECOMMENDED BY COMMISSION:
No

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NAME: Shin Kajiyama
AGE: Not shown
RESIDENCE: Not shown
MARITAL STATUS: Not shown
RELATIVES: Not shown
EDUCATION: Not shown
VOCATION: Ship captain
MILITARY CAREER: Not shown

DATE OF CONFINEMENT: 19 April 1946
DATE OF ARRAIGNMENT: 10 March 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 10 March 1947
to 9 May 1947
DATE OF SENTENCE: Not guilty

NAME: Suketoshi Tanoue
AGE: 30
RESIDENCE: 716 Hisasue, Kasuga-machi,
Kumamoto-Shi, Kumamoto-Ken, Kyushu
Island, Japan
MARITAL STATUS: Married
RELATIVES: Wife, daughter, parents,
brother and sister
EDUCATION: Nine years of schooling
VOCATION: Bookkeeper
MILITARY CAREER: Army since 1939.
Attained rank of sergeant.

DATE OF CONFINEMENT: 8 October 1946
DATE OF ARRAIGNMENT: 10 March 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 10 March 1947
to 9 May 1947
DATE OF SENTENCE: 9 May 1947
SENTENCE: CHL for 25 years
CLEMENCY RECOMMENDED BY COMMISSION:
No

NAME: Jiro Ueda
AGE: 35
RESIDENCE: 2160-1, Kokuga, Robi-Shi,
Yamaguchi-Ken
MARITAL STATUS: Married
RELATIVES: Wife and one child
EDUCATION: Nine years of schooling
VOCATION: Worked on railroad
MILITARY CAREER: Army since 1941

DATE OF CONFINEMENT: 4 October 1946
DATE OF ARRAIGNMENT: 10 March 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 10 March 1947
to 9 May 1947
DATE OF SENTENCE: 9 May 1947
SENTENCE: CHL for 20 years
CLEMENCY RECOMMENDED BY COMMISSION:
No

NAME: Hisao Yoshida
AGE: 37
RESIDENCE: 3986 Kominato-Hakarazaki-
Machi, Hawanabe-Gun, Kogoshima-Ken
MARITAL STATUS: Married
RELATIVES: Wife and one son
EDUCATION: Eleven years of schooling
VOCATION: Office worker
MILITARY CAREER: Army since 1941

DATE OF CONFINEMENT: 10 October 1946
DATE OF ARRAIGNMENT: 10 March 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 10 March 1947
to 9 May 1947
DATE OF SENTENCE: Not guilty

NAME: Risaku Kobayashi
AGE: Not shown
RESIDENCE: 1502 Aza-Fukasa-Mura,
Sunto-Gun, Shizuoka-Ken
MARITAL STATUS: Not shown
RELATIVES: Not shown
EDUCATION: Not shown
VOCATION: Not shown
MILITARY CAREER: Army since 5 December
1942

DATE OF CONFINEMENT: 4 October 1946
DATE OF ARRAIGNMENT: 10 March 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 10 March 1947
to 9 May 1947
DATE OF SENTENCE: Not guilty

NAME: Sho Hattori
AGE: 38
RESIDENCE: 1877 Shibukawa-Machi,
Jumma-Gun, Jumma-Ken
MARITAL STATUS: Not shown
RELATIVES: Not shown
EDUCATION: Not shown
VOCATION: Not shown
MILITARY CAREER: Army since 1942

DATE OF CONFINEMENT: 24 February 1946
DATE OF ARRAIGNMENT: 10 March 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 10 March 1947
to 9 May 1947
DATE OF SENTENCE: 9 May 1947
SENTENCE: CHL for 10 years
CLEMENCY RECOMMENDED BY COMMISSION:
No

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

<u>Charges and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
<u>TOSHINO</u>			
Charge: Accused, 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 13 December 1944 and 15 December 1944, inclusive, aboard the Japanese Troop Transport "Oryoko-Maru", the accused, Junsebuo Toshino, then and there having custody of approximately 1,619 American and Allied PW's, as PW guard commander, did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to: Lt. Col. John P. Adams, Maj. Wesley W. Bertz, Lt. Col. Arden R. Boellner, Maj. Lawrence A. Bosworth, Lt. Col. Edward H. Bowes, Lt. Col. John B. Brettell, Maj. James V. Bradley, Lt. Col. Jasper E. Brady, Jr., Capt. Walter J. Buboltz, Paymaster Otis A. Carmichael, Maj. Coleman T. Caruthers, Maj. Howard M. Cavender, Maj. Robert E. Chrisman, Lt. David L. Coale III, Maj. Wade R. Cochran, Maj. Harold Cogswell, Lt. Col. Francis S. Conaty, Thomas J. Coolidge, Lt. Courtney R. Draper, Lt. Col. Willis H. Drummond, Maj. John Filozof, Capt. Eugene Forquer, Maj. William A. Gay, Maj. John G. Goldtrap, Lt. Shields Goodman, Maj. Robert F. Haggerty, Maj. George B. Hart, Maj. Samuel Heisinger, Chief Pharmacist's Mate Dudley A. Henson, Maj. Richard F. Hill, Maj. Stanley Holmes, Maj. Samuel C. Jones, Maj. Dale J. Kirnee, Maj. John V. King, Lt. Leslie W. King, Maj. Irving R. Mandelson, Lt. Col. Cyril Q. Marron, Pharmacist's Mate First Class Richard H. Mayberry, Maj. John S. Miner, Maj. Lloyd C. Moffitt, Maj. George A. Muzzey, Maj. John Neiger, Lt. Col. Howard R. Perry, Jr., Lt. Col. Thomas N. Powell, Sr., Maj. Thomas N. Powell, Jr., Maj. Leslie G. Ross, Maj. Ralph E. Rumbold, Lt. Col. Norman B. Simmonds, Maj. Charles B. Sneed, Maj. Campbell H. Snyder, Maj. Joseph O. Stensland, Lt. Col. Allen Thayer, Maj. John W. Turner, Jr., Maj. Gordon A. Utke, Maj. Miller P. Warren, Lt. Col. Alvin T. Wilson, Lt. Col. John P. Woodbridge, American PW's, by neglecting and refusing to provide adequate quarters, food, drinking water, ventilation, sanitary and hygienic facilities, and medical attention and by neglecting and refusing to provide reasonable measures for protection from the hazards of war.	NG	Guilty, except for the words "Lt. Col. Thomas N. Powell, Sr.", and the words "adequate quarters, food", and the words "sanitary and hygienic facilities", and the words "and by neglecting and refusing to provide reasonable measures for protection from the hazards of war". Of the excepted words, Not Guilty.	Yes, in part

(p 3, Toshino et al, Case #154)

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Sp 2: Between 13 December 1944 and 15 December 1944, inclusive, aboard the Japanese Troop Transport "Oryoko Maru", the accused, Junsaburo Toshino, then and there having custody of approximately 1,619 American and Allied PW's, as PW guard commander, did willfully and unlawfully cause the deaths of: Capt. Verne A. Cleveland, Lt. Dean H. Craft, Lt. Gerald L. Darling, Lt. Col. Walter L. Dencker, Lt. Earl D. Eggers, Second Lt. Orman L. Fitzhu, Maj. Eugene H. Mirdlinger, Capt. Ted E. Parker, Maj. Paul W. Schurtz, American PW's, by neglecting and refusing to restrain military personnel under his control from shooting them, and by neglecting and refusing to arrange for the safe debarkation of the said PW's from the said vessel.

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Sp 3: On or about 15 December 1944, aboard the Japanese Troop Transport, "Oryoko Maru", the accused, Junsaburo Toshino, did willfully and unlawfully kill Second Lt. William H. Brewster, an American PW, by shooting him.

NG

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Yes

Sp 4: Between 15 December 1944 and 22 December 1944, inclusive, aboard the Japanese Troop Transport "Oryoko Maru" and at the Olongapo Naval Base, Philippine Islands, and at San Fernando, Pampanga, Philippine Islands, the accused, Junsaburo Toshino, then and there having custody of approximately 1,350 American and Allied PW's, as PW guard commander did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to Corp. Eugene Specht, an American PW by:

NG

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- a. Neglecting to restrain Japanese military personnel subject to his control from shooting the said Corp. Eugene Specht.
- b. Neglecting and refusing to provide the said Corp. Eugene Specht with adequate quarters, food, water, clothing, sanitary and hygienic facilities and medical attention.

Sp 5: Between 13 December 1944 and 15 December 1944, inclusive, aboard the Japanese Troop Transport "Oryoko Maru", the accused, then and there being the PW guard commander, did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, temporary insanity, impairment of health, injury and death to numerous other American and Allied PW's by neglecting and refusing to provide adequate quarters, food, drinking water, ventilation, sanitary and hygienic facilities, and medical attention; by neglecting and refusing to

NG

Guilty, except for the words "a. neglecting and refusing to provide adequate quarters"; and the words "b. neglecting and refusing to provide adequate food"; and the words "e. neglecting and refusing to provide adequate sanitary and hygienic facilities"; and the words "g. neglecting and refusing to provide reasonable measures for

Yes,
in
part

(p 4, Toshino et al, Case #154)

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provide reasonable measures for protection from the hazards of war; by shooting them; by ordering military personnel under his command to mistreat, abuse, beat and shoot them and neglecting to restrain military personnel under his command from mistreating, abusing, beating and shooting them; and by neglecting and refusing to make reasonable provisions for the safe debarkation of the said prisoners.

protection from the hazards of war"; and the words "ordering military personnel under his command to mistreat, abuse, beat and shoot them and"; and the words "j. neglecting and refusing to make reasonable provisions for the safe debarkation of the said prisoners". Of the excepted words, Not Guilty.

Sp 6: Between 15 December 1944 and 22 December 1944, inclusive, at Olongapo Naval Base, Philippine Islands, the accused, then and there having custody of approximately 1,350 American and Allied PW's as PW guard commander; did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to Capt. Dwight H. Gribbon and Lt. William F. Hogaboom, American PW's, by neglecting and refusing to provide adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention.

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Sp 7: Between 15 December 1944 and 22 December 1944, inclusive, at the Olongapo Naval Base, Philippine Islands, the accused, then and there being the PW guard commander, did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to numerous other American and Allied PW's by neglecting and refusing to provide adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention.

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Sp 8: Between 21 December 1944 and 24 December 1944, inclusive, at San Fernando, Pampanga, Philippine Islands, the accused, then and there having custody of approximately 1,350 American and Allied PW's, did willfully and unlawfully cause the death of Lt. Col. Harry J. Harper, an American PW, by neglecting to provide adequate quarters, food, drinking water, medical attention, and clothing, and sanitary and hygienic facilities.

NG

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Sp 9: On or about 23 December 1944, at San Fernando, Pampanga, Philippine Islands, the accused, then and there having custody of approximately 1,350 American and Allied PW's as PW guard commander, did willfully and unlawfully order and permit his Japanese military subordinates to kill Lt. Dwight D. Edison, Lt. John W. Elliot,

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Guilty, except for the word "permit", substituting therefore the word "supervise"; Of the excepted word, Not Guilty; of the substituted word, Guilty.

Yes,
in
part

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Lt. Col. Samuel W. Freeny, Pharmacist's Mate Deenah R. McCurry, Lt. Col. Ulysses J. L. Peoples, Jr., Second Lt. Herman W. Sherman, Maj. Wendell F. Swanson and eight other unidentified American PW's, by stabbing and decapitating them.

Sp 10: Between 21 December 1944 and 24 December 1944, inclusive, at San Fernando, Pampanga, Philippine Islands, the accused, then and there being the PW guard commander, did willfully and unlawfully mistreat, abuse, cause intense physical and mental suffering, impairment of health and death to numerous other American and Allied PW's by neglecting and refusing to provide adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention; and by neglecting and refusing to restrain military personnel under his command, from mistreating, abusing and beating them.

NG

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Sp 11: On or about 24 December 1944, at San Fernando, Pampanga, Philippine Islands, the accused, then and there being responsible for the transportation of approximately 1,350 American and Allied PW's to San Fernando, La Union, Philippine Islands, did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, and impairment of health to numerous American and Allied PW's by neglecting to provide adequate travel facilities, food, drinking water, sanitary and hygienic facilities.

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Sp 12: Between 25 December 1944 and 27 December 1944, inclusive, at San Fernando, La Union, Philippine Islands, the accused, then and there having custody of approximately 1,350 American and Allied PW's as PW guard commander, did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to Lt. Col. Howard J. Edmonds, an American PW, by neglecting and refusing to provide adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention.

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Sp 13: Between 25 December 1944 and 27 December 1944, inclusive, at San Fernando, La Union, Philippine Islands, the accused, then and there being the PW guard commander, did willfully and unlawfully mistreat and abuse and cause intense mental and physical suffering, impairment of health and death to numerous other American and Allied PW's by neglecting and refusing to provide adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities,

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(p 6, Toshino et al, Case #154)

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medical attention; and by neglecting and refusing to provide reasonable measures for protection from the hazards of war.

Sp 14: Between 27 December 1944 and 6 January 1945, inclusive, aboard the Japanese Troop Transport "Brazil Maru", the accused, then and there being the P^W guard commander, did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to numerous American and Allied P^W's by neglecting and refusing to provide adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention; by neglecting and refusing to provide reasonable measures for protection from the hazards of war; and by neglecting and refusing to restrain his subordinates from beating and otherwise mistreating the said P^W's.

NG

Guilty, except for the words "a. neglecting and refusing to provide adequate quarters"; and the words "d. neglecting and refusing to provide adequate clothing"; and the words "e. neglecting and refusing to provide adequate sanitary and hygienic facilities"; and the words "f. neglecting and refusing to provide adequate medical attention"; and the words "g. neglecting and refusing to provide reasonable measures for protection from the hazards of war"; and the words "h. neglecting and refusing to restrain his subordinates from beating and otherwise mistreating the said P^W's". Of the excepted words, Not Guilty.

Yes,
in
part

Sp 15: Between 27 December 1944 and 13 January 1945, inclusive, aboard the Japanese Troop Transport "Enoura Maru", the accused, then and there having custody of approximately 1,350 American and Allied P^W's, as P^W guard commander, did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, injury, impairment of health and death to Capt. Willibald C. Bianchi, Maj. Charles J. Browne, Lt. Commander Frank A. Davis, Capt. Thomas H. Delamore, Capt. William N. Foster, Pharmacist's Mate First Class Roland E. Going, Lt. Commander Edward R. J. Griffin, Pvt. Orall L. Huling, Lt. Earl M. Hulsey, Jr., Pvt. James D. Kittredge, Maj. James C. Knowles, Lt. William F. Lovegreen, Lt. Col. John C. Luikart, Lt. Commander Leonard L. Lyons, Jr., Maj. Andrew J. Mathiesen, Capt. Philip H. Meier, Lt. Joseph C. Milligan, Capt. Gordon R. Myers, Lt. James A. Phillips, Commander Warner P. Portz, Maj. Lawrence F. Pritchard, Maj. Wilfred Rotherham, First Lt. Lester A. Schade, First Lt. Robin C. M. Swan, Capt. Marvin A. Tannehill, Lt. Commander Herbert H. Taylor, Lt. Chester H. Tucker, Lt. Col. William S. Van Nostrand, Anthony G. Volney, Maj. Max Weil, Lt. Col. Oliver B. Witten, First Lt. Robin M. Yearsley, American and Allied P^W's, by neglecting and refusing to provide adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities, medical attention

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Guilty, except for the word "clothing" and the words "and reasonable measures for protection from the hazards of war". Of the excepted words, Not Guilty.

Yes,
in
part

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and reasonable measures for protection from the hazards of war.

Sp 16: Between 27 December 1944 and 13 January 1945, inclusive, aboard the Japanese Troop Ship "Enoura Maru", the accused, then and there being the PW guard commander, did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health, injury and death to numerous other American and Allied PW's by neglecting and refusing to provide adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention; by neglecting and refusing to provide reasonable measures for protection from the hazards of war; and by neglecting and refusing to restrain his subordinates from beating and otherwise mistreating the said PW's.

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Guilty, except for the words "d. neglecting and refusing to provide adequate clothing"; and the words "g. neglecting and refusing to provide reasonable measures for protection from the hazards of war"; and the words "h. neglecting and refusing to restrain his subordinates from beating and otherwise mistreating the said PW's". Of the excepted words, Not Guilty. Yes

Sp 17: Between 13 January 1945 and 30 January 1945, inclusive, aboard the Japanese Troop Ship "Brazil Maru", the accused, then and there having custody of approximately 1,000 American PW's as PW guard commander, did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to Capt. Jack F. Bachelor, Maj. Daniel J. Perry, Maj. Howard M. Basson, Lt. Col. John G. Bennett, Capt. George T. Breitling, Lt. Francis J. Bridgett, George F. Burwell, Lt. Col. Arthur B. Carlton, Capt. Richard E. Cabbery, Capt. John W. Clark, Lt. Commander James A. Connell, Capt. William M. Cummings, First Lt. William T. Cummings, Lt. Col. Maurice F. Daly, Capt. William E. W. Farrell, Capt. Stephen R. Franks, Lt. Col. Joseph Ganahl, Maj. Robert O. Glassburn, Maj. Horace Greeley, Pharmacist's Mate Ernest M. Hogan, Lt. Col. Charles I. Humber, Capt. Howard Humphreys, Lt. Robert H. G. Johnson, Commander Maurice Jones, Capt. James Kabakow, Lt. Col. Edwin V. Kerr, Maj. William J. Letimer, Jr., Lt. Col. Ronald G. MacDonald, Lt. Col. William H. Maverick, Maj. Winsion R. Maxwell, Maj. James T. McClellan, Lt. Col. William H. Maguire, Pharmacist's Mate Jack R. Morgan, Capt. Lloyd G. Murphy, Maj. Robert V. Nelson, Lt. Col. Kenneth S. Olson, Lt. Col. Leo C. Paquet, Capt. John F. Presnell, Jr., Lt. Col. William L. Robinson, Lt. Jay A. Ryan, Lt. Col. Frederick G. Saint, Maj. Max W. Schaeffer, Lt. Abe Schwartz, Capt. Otto F. Shamblin, Chief Pharmacist's Mate Dorris P. Simmons, Capt. Robert F. Tokoly, Capt. George J. Treacy, Pharmacist's Mate Jess Turnispeed, Lt. Col. Melvin E. Underwood, Commander Ernest M. Wade, Capt. Cecil R. Welchko, Capt. Mathias E. Zeefas, American PW's, by neglecting and refusing

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Yes,
in
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to provide adequate quarters, food, drinking water, medical attention, sanitary and hygienic facilities, and clothing.

Sp 18: Between 13 January 1945 and 30 January 1945, inclusive, aboard the Japanese Troop Transport "Brazil Maru", the accused, then and there being the PW guard commander, did willfully and unlawfully mistreat, abuse and cause intense physical and mental suffering, impairment of health and death to numerous other American and Allied PW's by neglecting and refusing to provide adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention; and by neglecting and refusing to provide reasonable measures for protection from the hazards of war.

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Guilty, except for the words "g. neglecting in and refusing to provide reasonable measures for protection from the hazards of war". Of the excepted words, Not Guilty.

Yes,
in
part

WADA

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

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Yes

Sp-1: Between 13 December 1944 and 15 December 1944, inclusive, aboard the Japanese Troop Transport "Oryoko Maru", accused, Shusuke Wada, then and there being the assistant of and the official interpreter for the PW guard commander, did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering and death to Lt. Col. John P. Adams, Maj. Wesley W. Bertz, Lt. Col. Arden R. Poellner, Maj. Lawrence A. Rosworth, Lt. Col. Edward H. Bowes, Lt. Col. John B. Brettell, Maj. James V. Fredley, Lt. Col. Jasper E. Brady, Jr., Capt. Walter J. Buboltz, Paymaster Otis A. Carmichael, Maj. Coleman T. Caruthers, Maj. Howard M. Cavender, Maj. Robert P. Chrisman, Lt. David L. Coale III, Maj. Wade R. Cochran, Maj. Harold Cogswell, Lt. Col. Francis S. Conaty, Thomas J. Coolidge, Lt. Courtney R. Draper, Lt. Col. Willis H. Drummond, Maj. John Filozof, Capt. Eugene Forquer, Maj. William A. Gay, Maj. John C. Goldtrap, Lt. Shields Goodman, Maj. Robert F. Haggerty, Maj. George B. Hart, Maj. Samuel Heisinger, Chief Pharmacist's Mate Dudley N. Henson, Maj. Richard F. Hill, Maj. Stanley Holmes, Maj. Samuel C. Jones, Maj. Dale J. Kirnee, Maj. John V. King, Lt. Leslie W. King, Maj. Irving R. Mandelson, Lt. Col. Cyril Q. Marron, Pharmacist's Mate First Class Richard H. Mayberry, Maj. John S. Miner, Maj. Lloyd C. Moffitt, Maj. George M. Muzzey, Maj. John Neiger, Lt. Col. Howard R. Perry, Jr., Lt. Col. Thomas N. Powell, Sr.,

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Guilty, except for the words "by refusing on his own responsibility and", and the words "and refusing", and the words "and reasonable measures for protection from the hazards of war". Of the excepted words, Not Guilty.

No

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Maj. Thomas N. Powell, Jr., Maj. Leslie G. Ross, Maj. Ralph E. Rumbold, Lt. Col. Norman B. Simmonds, Maj. Charles B. Sneed, Maj. Campbell H. Snyder, Maj. Joseph O. Stensland, Lt. Col. Allen Thayer, Maj. John W. Turner, Jr., Maj. Gordon A. Utke, Maj. Miller P. Warren, Lt. Col. Alvin T. Wilson, Lt. Col. John P. Woodbridge, American P^W's, by refusing on his own responsibility and by neglecting and refusing to transmit to his superiors requests for adequate quarters, food, drinking water, ventilation, sanitary and hygienic facilities, medical attention and reasonable measures for protection from the hazards of war.

Sp 2: Between 15 December 1944 and 22 December 1944, inclusive, aboard the Japanese Troop Transport "Oryoko Maru", accused did willfully and unlawfully cause the death of Corp. Eugene Specht, an American P^W by:

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- a. Neglecting to restrain Japanese military personnel subject to his supervision and control from shooting the said Corp. Eugene Specht;
- b. Refusing on his own responsibility and neglecting and refusing to transmit to his superiors, requests for adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities, and medical treatment.

Sp 3: Between 13 December 1944 and 15 December 1944, inclusive, aboard the Japanese Troop Transport "Oryoko Maru", accused did willfully and unlawfully mistreat and abuse and cause injury and death to numerous American and Allied P^W's by ordering Japanese military personnel subject to his supervision and control to shoot the said P^W's, and by neglecting and refusing to restrain Japanese military personnel subject to his control and supervision from shooting the said P^W's.

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Sp 4: Between 13 December 1944 and 15 December 1944 aboard the Japanese Troop Transport "Oryoko Maru", accused did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to numerous other American and Allied P^W's by refusing on his own responsibility and by neglecting and refusing to transmit to his superiors requests for adequate quarters, food, drinking water, ventilation, sanitary and hygienic facilities, medical attention and reasonable measures for protection from the hazards of war.

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Guilty, except for the words "by refusing on his own responsibility and", and the words "and refusing", and the words "and reasonable measures for the protection from the hazards of war". Of the excepted words, Not Guilty. No

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Sp 5: Between 15 December 1944 and 22 December 1944, inclusive, at Olongapo Naval Base, Philippine Islands, accused did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to Capt. Dwight H. Gribbon and Lt. William F. Hogaboom, American PW's, by refusing on his own responsibility and by neglecting and refusing to transmit to his superiors, requests for adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention.

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Sp 6: Between 15 December 1944 and 22 December 1944, inclusive, at Olongapo Naval Base, Philippine Islands, accused did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to numerous other American PW's by refusing on his own responsibility and by neglecting and refusing to transmit to his superiors, requests for adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention.

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Sp 7: Between 21 December 1944 and 24 December 1944, inclusive, at San Fernando, Pampanga, Philippine Islands, accused did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health, and death to Lt. Col. Harry J. Harper, an American PW, by refusing on his own responsibility and by neglecting and refusing to transmit to his superiors, requests for adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention.

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Sp 8: On or about 23 December 1944 at San Fernando, Pampanga, Philippine Islands, accused did in conjunction with other persons, willfully and unlawfully cause the deaths of Lt. Dwight D. Edison, Lt. John W. Elliot, Lt. Col. Samuel W. Freeny, Pharmacist's Mate Second Class Deenah R. McCurry, Lt. Col. Ulysses J. L. Peoples, Jr., Second Lt. Herman V. Sherman, Maj. Wendell F. Swanson and eight other unidentified American PW's by ordering, directing and supervising Japanese military personnel subject to his control in stabbing and decapitating them.

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Sp 9: Between 21 December 1944 and 24 December 1944, inclusive, at San Fernando, Pampanga, Philippine Islands, accused did willfully and unlawfully

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mistreat, abuse and cause intense mental and physical suffering, impairment of health, and death to numerous other American PW's by refusing on his own responsibility and by neglecting and refusing to transmit to his superiors, requests for adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention.

Sp 10: Between 25 December 1944 and 27 December 1944, inclusive, at San Fernando, La Union, Philippine Islands, accused did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to Lt. Col. Howard J. Edmonds, an American PW, by refusing on his own responsibility and by neglecting and refusing to transmit to his superiors, requests for adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention.

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Sp 11: Between 25 December 1944 and 27 December 1944, inclusive, at San Fernando, La Union, Philippine Islands, accused did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to numerous other American PW's by refusing on his own responsibility and by neglecting and refusing to transmit to his superiors, requests for adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention.

NG

Guilty, except for the words "and death", and the words "other", and the words "by refusing on his own responsibility and", and the words "and refusing". Of the excepted words, Not Guilty.

No

Sp 12: Between 27 December 1944 and 13 January 1945, inclusive, aboard the Japanese Troop Transport "Encoura Maru", accused did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to Capt. Willibeld C. Bianchi, Maj. Charles J. Browne, Lt. Commander Frank A. Davis, Capt. Thomas H. Delemore, Capt. William N. Foster, Pharmacist's Mate First Class Roland E. Going, Lt. Commander Edward R. J. Griffin, Pvt. Orall L. Huling, Lt. Earl H. Hulsey, Jr., Pvt. James D. Kittredge, Maj. James C. Knowles, Lt. William F. Lovegreen, Lt. Col. John C. Luikart, Lt. Commander Leonard L. Lyons, Jr., Maj. Andrew J. Mathiesen, Capt. Philip H. Meier, Lt. Joseph C. Milligan, Capt. Gordon R. Myers, Lt. James A. Phillips, Commander Warner P. Portz, Maj. Lawrence F. Pritchard, Maj. Wilfred Rotherham, First Lt. Lester A. Schade, First Lt. Robin C. M. Swan, Capt. Marvin A. Tannehill, Lt. Commander Herbert H. Taylor, Lt. Chester H. Tucker, Lt. Col. William S. Van Nostrand, Anthony G. Volney, Maj. Max Weil, Lt. Col. Oliver B. Witten, and First Lt. Robin W. Yearsley, American

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Guilty, except for the words "by refusing on his own responsibility and", and the words "and refusing", and the words "and reasonable measures for protection from the hazards of war". Of the excepted words, Not Guilty.

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and Allied PW's, by refusing on his own responsibility and by neglecting and refusing to transmit to his superiors, requests for adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities, medical attention and reasonable measures for protection from the hazards of war.

Sp 13: Between 27 December 1944 and 13 January 1945, inclusive, aboard the Japanese Troop Transport "Encoura Maru", accused did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to numerous other American and Allied PW's by refusing on his own responsibility and by neglecting and refusing to transmit to his superiors, requests for adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities, and reasonable measures for protection from the hazards of war.

NG

Guilty, except for the words "by refusing on his own responsibility and", and the words "and refusing", and the words "and reasonable measures for protection from the hazards of war". Of the excepted words, Not Guilty.

No

Sp 14: Between 13 January 1945 and 30 January 1945, inclusive, aboard the Japanese Troop Transport "Brazil Maru", accused did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to Capt. Jack F. Bechelor, Maj. Daniel J. Berry, Maj. Howard M. Batson, Lt. Col. John H. Bennett, Capt. George T. Breitting, George F. Burwell, Lt. Col. Cornelius Z. Byrd, Lt. Col. Arthur B. Carlton, Capt. Richard E. Casberry, Capt. John W. Clark, Lt. Commander James A. Connell, Capt. William T. Cummings, Lt. Col. Maurice F. Daly, Capt. William E. W. Ferrell, Capt. Stephen R. Franks, Lt. Col. Joseph Genahl, Maj. Robert O. Glassburn, Maj. Horace Greeley, Pharmacist's Mate Ernest W. Hogan, Lt. Col. Charles I. Humber, Capt. Howard Humphreys, Lt. Robert H. G. Johnson, Commander Maurice Jones, Capt. James Kabakow, Lt. Col. Edwin V. Kerr, Maj. William J. Latimer, Jr., Lt. Col. Ronald G. MacDonald, Lt. Col. William H. Maverick, Maj. Winsion R. Maxwell, Maj. James T. McClellan, Lt. Col. William H. Maguire, Pharmacist's Mate Jack R. Morgan, Capt. Lloyd G. Murphy, Maj. Robert V. Nelson, Lt. Col. Kenneth S. Olson, Lt. Col. Leo C. Pequet, Capt. John F. Presnell, Jr., Lt. Col. William I. Robinson, Lt. Jay A. Ryan, Lt. Col. Frederick G. Saint, Maj. Max W. Schaeffer, Lt. Abe Schwartz, Capt. Otto F. Shamblin, Chief Pharmacist's Mate Dorris P. Simmons, Capt. Robert F. Tokoly, Capt. George J. Treacy, Pharmacist's Mate Jess Turnispeed, Lt. Col. Melvin E. Underwood, Commander Ernest W. Wade, Capt. Cecil R. Welshko, Capt. Mathias E. Zeeffas, American PW's, by refusing on his own

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Guilty, except for the words "by refusing on his own responsibility and", and the words "and refusing". Of the excepted words, Not Guilty.

No

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responsibility and by neglecting and refusing to transmit to his superiors, requests for adequate quarters, food, drinking water, clothing, sanitary and hygienic facilities and medical attention.

Sp 15: Between 13 January 1945 and 30 January 1945, inclusive, aboard the Japanese Troop Transport "Brazil Maru", accused did willfully and unlawfully mistreat, abuse, and cause intense mental and physical suffering, impairment of health and death to numerous other American PW's by refusing, on his own responsibility and by neglecting and refusing to transmit to his superiors, requests for adequate quarters, food, drinking water, clothing, medical attention, sanitary and hygienic facilities, and reasonable measures for protection from the hazards of war.

NG

Guilty, except for the words "by refusing on his own responsibility and", and the words "and refusing", and the words "and reasonable measures for protection from the hazards of war". Of the excepted words, Not Guilty. No

Sp 16: Between 13 December 1944 and 30 January 1945 aboard the Japanese Troop Transport "Oryoko Maru", at the Olongapo Naval Base, Philippine Islands, San Fernando, Pampanga, Philippine Islands; San Fernando, La Union, Philippine Islands, aboard the Japanese Troop Transport "Encoura Maru" and aboard the Japanese Troop Transport "Brazil Maru", accused did willfully and unlawfully mistreat and abuse numerous American PW's by beating them, by ordering Japanese military personnel subject to his supervision and control to beat them, and by neglecting to restrain Japanese military personnel subject to his supervision and control from beating them.

NG

Guilty, except for the words "aboard the Japanese Troop Transport "Oryoko Maru"; at the Olongapo Naval Base, Philippine Islands; San Fernando, Pampanga, Philippine Islands; San Fernando, La Union, Philippine Islands"; and the words "by ordering Japanese military personnel subject to his supervision and control to beat them, and by neglecting to restrain Japanese military personnel subject to his supervision and control from beating them". Of the excepted words, Not Guilty. Yes

AIHARA

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

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G

Yes

Sp 1: Between 13 December 1944 and 15 December 1944, inclusive, aboard the Japanese Troop Transport "Oryoko Maru", accused did willfully and unlawfully mistreat and abuse numerous American and Allied PW's by beating them.

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Yes

Sp 2: On or about 15 December 1944, aboard the Japanese Troop Transport "Oryoko Maru", accused did willfully and unlawfully kill Captain Ted Parker, an American PW by shooting him.

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(p 14, Toshino et al, Case #154)

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Sp 3: Between 13 December 1944 and 15 December 1944, inclusive, aboard the Japanese Troop Transport "Oryoko Maru", accused did willfully and unlawfully injure and kill numerous American and Allied P's by shooting them. NG G No

Sp 4: On or about 24 December 1944, at San Fernando, Pampanga, Philippine Islands, accused did, in conjunction with other persons, willfully and unlawfully kill Lt. Dwight D. Edison, Lt. John W. Elliot, Lt. Col. Samuel W. Freeney, Pharmacist's Mate Deenah R. McCurry, Lt. Col. Ulysses J. L. Peoples, Jr., Second Lt. Herman V. Sherman, and Maj. Wendell F. Swanson, and eight other American P's by stabbing and decapitating them. NG Guilty, except for the words "willfully and", and the words "eight other American P's", substituting therefore "eight other unidentified American P's". Of the excepted words, Not Guilty; of the substituted words, Guilty. Yes

Sp 5: Between 27 December 1944 and 30 January 1945, aboard the Japanese Troop Transport "Enoura Maru" and "Brazil Maru", accused did willfully and unlawfully mistreat and abuse numerous American and Allied P's by beating them. NG G Yes, in part

KAJIYAMA

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

Sp 1: Between 27 December 1944 and 30 January 1945, inclusive, aboard the Japanese Troop Transport "Brazil Maru", accused did willfully and unlawfully mistreat, abuse and cause intense mental and physical suffering, impairment of health and death to Capt. Jack F. Bachelor, Maj. Daniel J. Barry, Maj. Howard M. Batson, Lt. Col. John H. Bennett, Capt. George T. Breitling, Lt. Francis J. Bridgett, George F. Burwell, Lt. Col. Cornelius Z. Byrd, Lt. Col. Arthur B. Carlton, Capt. Richard E. Cabberry, Capt. John W. Clark, Lt. Commander James J. Connell, Capt. William V. Cummings, First Lt. William T. Cummings, Lt. Col. Maurice F. Daly, Capt. William E. W. Farrell, Capt. Stephen R. Franks, Lt. Col. Joseph Ganahl, Maj. Robert O. Glassburn, Maj. Horace Greeley, Pharmacist's Mate Ernest M. Hogan, Lt. Col. Charles I. Humber, Capt. Howard Humphreys, Lt. Robert H. G. Johnson, Commander Maurice Jones, Capt. James Kabakow, Lt. Col. Edwin V. Kerr, Maj. William J. Latimer, Jr., Lt. Col. Ronald G. MacDonald, Lt. Col. William H. Maverick, Maj. Winsion R. Maxwell, Maj. James T. McClellan, Lt. Col. William H. Maguire, Pharmacist's Mate Jack R. Morgan, Capt. Lloyd G. Murphy, Maj. Robert V. Nelson, Lt. Col. Kenneth S. Olson, Lt. Col. Leo C. Paquet, NG NG

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Capt. John F. Freshell, Jr., Lt. Col. William L. Robinson, Lt. Jay A. Ryan, Lt. Col. Frederick G. Saint, Maj. Max W. Schaeffer, Lt. Abe Schwartz, Capt. Otto F. Shamblin, Chief Pharmacist's Mate Dorris P. Simmons, Capt. Robert F. Tokoly, Capt. George J. Treacy, Pharmacist's Mate Jess Turnispeed, Lt. Col. Melvin E. Underwood, Commander Ernest M. Wade, Capt. Cecil R. Walsko, Capt. Mathias E. Zeefas, American P.W.'s, by neglecting and refusing to provide adequate quarters, food, drinking water, sanitary and hygienic facilities and medical supplies.

Sp 2: Between 27 December 1944 and 30 January 1945, inclusive, aboard the Japanese Troop Transport "Brazil Yaru", accused did willfully and unlawfully mistreat and abuse and cause intense mental and physical suffering, impairment of health and death to numerous other American P.W.'s by: neglecting and refusing to provide adequate quarters, food, drinking water, sanitary and hygienic facilities, and medical supplies; and neglecting and refusing to provide reasonable measures for protection from the hazards of war and the hazards of the sea.

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TANOU

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

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Yes

Sp: On or about 23 December 1944, at or near San Fernando, Pampanga, Luzon, Philippine Islands, accused did, in conjunction with other persons, willfully and unlawfully kill Lt. Dwight D. Edison, Lt. John W. Elliot, Lt. Col. Samuel W. Freeny, Pharmacist's Mate Second Class Deenah R. McCurry, Lt. Col. Ulysses J. L. Peoples, Jr., Second Lt. Herman W. Sherman, Maj. Wendell F. Swanson, and eight other unidentified American P.W.'s by stabbing and decapitating them.

NG

Guilty, except for the words "willfully and". Of the excepted words, Not Guilty.

Yes, in part

USD

Charge: Accused, at the times and places set forth in the specification hereto attached, and during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.

NG

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Yes

Sp: On or about 23 December 1944, at or near San Fernando, Pampanga, Luzon, Philippine Islands, accused did, in conjunction with other persons, willfully

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Guilty, except for the words "willfully and". Of the excepted words, Not Guilty.

Yes, in part

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and unlawfully kill Lt. Dwight D. Edison, Lt. John W. Elliot, Lt. Col. Samuel W. Freeny, Pharmacist's Mate Second Class Deenah R. McCurry, Lt. Col. Ulysses J. L. Peoples, Jr., Second Lt. Herman W. Sherman, Maj. Wendell F. Swanson, and eight other unidentified American PW's by stabbing and decapitating them.

YOSHIDA

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

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Sp: On or about 23 December 1944, at or near San Fernando, Pampanga, Luzon, Philippine Islands, accused did, in conjunction with other persons, willfully and unlawfully kill Lt. Dwight D. Edison, Lt. John W. Elliot, Lt. Col. Samuel W. Freeny, Pharmacist's Mate Second Class Deenah R. McCurry, Lt. Col. Ulysses J. L. Peoples, Jr., Second Lt. Herman W. Sherman, Maj. Wendell F. Swanson, and eight other unidentified American PW's by stabbing and decapitating them.

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KOBAYASHI

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

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Sp: On or about 23 December 1944, at San Fernando, Pampanga, Philippine Islands, accused did, in conjunction with other persons, willfully and unlawfully cause the deaths of: Lt. Dwight D. Edison, Lt. John W. Elliot, Lt. Col. Samuel W. Freeny, Corp. Martin L. Johnson, Pharmacist's Mate, Second Class, Deenah R. McCurrey, Lt. Col. Ulysses J. L. Peoples, Second Lt. Herman W. Sherman, Pfc. Lewis O. Steele, Sgt. James E. Strickland, Maj. Wendell F. Swanson, Pvt. Jacob Van Tassel, American and Allied PW's, and four other unidentified American and Allied PW's, by stabbing and decapitating them.

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HATTORI

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

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No

Sp 1: Between 13 December 1944 and 15 December 1944 inclusive, aboard the Japanese Troop Transport "Oryoko Maru", accused did willfully and unlawfully mistreat and abuse numerous

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American and Allied PW's by beating them, by ordering Japanese military personnel subject to his supervision and control to beat them, and by neglecting and refusing to restrain Japanese military personnel subject to his supervision and control from beating them.

Sp 2: Between 13 December 1944 and 15 December 1944 inclusive, aboard the Japanese Troop Transport "Oryoko Maru", accused did willfully and unlawfully cause serious injury and death to numerous American and Allied PW's by shooting them, by ordering Japanese military personnel subject to his supervision and control to shoot them and by neglecting and refusing to restrain Japanese military personnel subject to his supervision and control from shooting them.

NG

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Sp 3: On or about 23 December 1944, at San Fernando, Pampanga, Philippine Islands, accused did, in conjunction with other persons, willfully and unlawfully cause the deaths of: Lt. Dwight D. Edison, Lt. John W. Elliot, Lt. Col. Samuel W. Freeny, Corp. Martin L. Johnson, Pharmacist's Mate Second Class Deenah B. McCurry, Lt. Col. Ulysses J. L. Peoples, Second Lt. Herman W. Sherman, Pfc. Lewis J. Steele, Sgt. James E. Strickland, Maj. Wendell F. Swanson, Pvt. Jacob Van Tiel, American and Allied PW's and four other unidentified American and Allied PW's, by stabbing and decapitating them.

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Sp 4: Between 13 January 1945 and 30 January 1945, aboard the Japanese Troop Transport "Brazil Maru", accused did willfully and unlawfully mistreat and abuse numerous American PW's by depriving them of drinking water, by ordering and directing Japanese military personnel subject to his supervision and control to beat them and by neglecting and refusing to restrain Japanese military personnel subject to his supervision and control from beating them.

NG

Guilty, except for the words "by ordering and directing Japanese military personnel subject to his supervision and control to beat them and", and the words "and refusing". Of the excepted words, Not Guilty.

3. Summary of the Evidence:

a. For the Prosecution:

(1) First Lt. Junsaburo Toshino was appointed, by competent Japanese authority, as Guard Commander in charge of about 1619 PW's who were to be transferred from Manila, P. I., to Moji, Japan. Toshino was in direct charge of the PW's; if he was not satisfied with the accommodations, diet and water supply for the PW's, it was his duty to confer with the shipmaster to obtain changes (Ex. 62, 63, 66); if the shipmaster refused, then to confer with the liaison officer to get the changes (Ex. 77). The defendants, Wada, a civilian interpreter for the army; Hattori, sergeant and second in command; Kobayashi, medical corpsman; Mihara, leading corporal and third in command;

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Ueda, private; and Yoshida, private, were part of the guard troops of his command and remained under his command during the period 13 December 1944 to 30 January 1945 (R. 682; Ex. 80). The PW's consisted of about 1590 American PW's (mostly officers) and 30 Allied PW's (R. 80; Ex. 1). The PW's were loaded on the Oryoko Maru, a Japanese ship, between 1500 and 1800, 13 December 1944, about 550 in the after hold, a group of about 600 men in the forward hold and about 400 in a cargo hold amidships (R. 85, 86). The ship also carried about 1700 to 2000 Japanese women, children, and sailors from sunken ships. The Oryoko Maru was bombed and strafed by Allied airmen from about 0800 on 14 December until dark, and was beached near Olongapo Naval Base during the night. The ship was evacuated, except for the PW guards and the PW's, by dawn (0545) on 15 December 1944. The ship was again bombed about 0800 and shortly after 0830 the order was given to the PW's to abandon ship (R. 104; Ex. 80). There were other attacks during the evacuation but the planes later recognized the PW's and abandoned the attack (R. 109). The PW's were forced to swim ashore or make impromptu rafts and as a result had to abandon most of their possessions. As they reached the beach, they were marched to an enclosed tennis court for safekeeping (R. 108-111; Ex. 80). The PW's were kept here until 21 December when part were taken to San Fernando Pampanga, the rest following on 22 December; here they were quartered in a jail and a theatre building (Ex. 80). On the 25th of December the PW's were moved by train to San Fernando La Union, arriving the same day, where they were kept in the open until they boarded the ships, Enoura Maru and Brazil Maru, in the early morning hours of 27 December (R. 128, 129; Ex. 80). About 300 of the PW's were put aboard the Brazil Maru at the last minute; no military personnel except five Formosan guards accompanied them on the boat; Toshino and the other military defendant members of his party went on the Enoura Maru with the remainder of the PW's. They sailed for Formosa, arriving at Takao on or about 1 January (R. 710; Ex. 80). The two ships remained in the harbor, the PW's on the Brazil Maru going to the Enoura Maru about 6 January. Here about 60 percent of the PW's were in the lower hold, about 40 percent in the upper hold (R. 135). The thirty British left the group on 8 January at Takao (Ex. 80). The Enoura Maru was bombed on 9 January and many PW's were killed (R. 139; Ex. 80). The survivors were transferred to the Brazil Maru on 13 January and sailed for Moji, Japan, arriving on 30 January where 581 PW's were debarked (R. 145; Ex. 1, 80).

TOSHINO

(2) The accused Toshino was found not guilty of Specifications 2, 4, 6, 7, 8, 10, 11, 12 and 13.

(3) As to Specification 1 (Toshino): Due to the crowding of the PW's into the holds of the Oryoko Maru and the heat, the PW's needed water and air to live; on the 13th there were no wind socks or ventilators to supply air; a half-gallon of water for 200 men in the middle hold (Ex. 8), no water in the aft hold (Ex. 9), one "G.I." tablespoon of water per man in the forward hold (R. 92), no water or fresh air during the day or night of the 14th for the men in the aft or forward holds (R. 93, 101; Ex. 8, 10); the temperature in the forward hold was from 100 to 120 degrees (R. 96). Early on the morning of the 14th, the hatch of the forward hold was battened down for about an hour; the temperature rose to 120 degrees (R. 96). After the small issue of water on the 13th, no water was received until the afternoon of the 15th (R. 93; Ex. 8). Toshino knew of the conditions (R. 687, 688). PW Beecher, the senior PW officer, made complaints and requests for air and water and informed that the men were dying of suffocation; but no relief was received (R. 98, 102, 199, 182, 227). Many men fainted; others went out of their minds and caused disturbances by fighting and slashing other PW's to drink blood (R. 98, 99, 102, 103); some crazed men drank urine (R. 258); about 50 PW's died of suffocation and dehydration (Ex. 10). The following died of suffocation and/or dehydration either on the 13th or 14th of December 1944: Crabtree (R. 258), Coolidge, Persons, Rogers (R. 227), Rathblot (ph) (R. 227), an English NCO (R. 227), Chrisman, Caruthers, Hill, Stensland, Moffitt, Miner, Boellner, Marron, Boves, Major T. Powell, Bosworth, Carmichael, Cavender, Coale, Draper, Filozof, Goldtrap, Goodman, Haggerty, Hart, Heisinger, Holmes, Jones, Kirnee, King, Mandelson, Muzzey, Snyder, Utke (R. 121), Brettell (Ex. 14), Bradley (R. 98), Drummond (Ex. 8), Mayberry (Ex. 39), Neiger (Ex. 20), Sneed (R. 185), Gay (R. 185).

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Wilson (R. 185), Henson (Ex. 38), Bertz (R. 360). Capt. Forquer went raving mad and had to be killed by the P's, as Wada had threatened to shoot into the hold if the man was not quieted down (Ex. 14). Brady either was killed by a bomb (Ex. 8) or died of suffocation (Ex. 20); Buboltz was killed by a bomb 15 December 1944 (Ex. 8); Coale III either died on 9 January 1945 (Ex. 61) or on 13-14 December 1944 (R. 121); Cochran died on 28 January 1945 (Ex. 61); Cogswell died on 4 February 1945 (Ex. 61); Conaty died of asthma caused by straw on the floor of the hold within an hour after arriving on the Oryoko Maru; requests were shouted up to the deck to allow Conaty to come up, but as there were no results from these requests, he died (R. 353); J. V. King died at Takao 9 January 1945 (Ex. 61) or 13-15 December 1944 (R. 121, 185); Perry, Jr. died in January 1945 (Ex. 61); Ross died 13-15 December 1944 (R. 121) or 27 December 1944 (Ex. 61) and was buried at Takao (Ex. 2); Rumbold either died on 13-14 December 1944 (R. 121) or was buried at Takao (Ex. 2); Simmonds either died 13-14 December 1944 (R. 121), 27 December 1944 (Ex. 61), or was buried at Takao (Ex. 2); Thayer died 22 January 1945 (Ex. 61); Turner died of suffocation (R. 121) or was killed by a bomb (Ex. 54); Utke died 13-14 December 1944 (R. 121) or 9 January 1945 and was buried at Takao (Ex. 2, 61) and Woodbridge either died 13-14 December 1944 (R. 121) or 9 January 1945 and was buried at Takao (Ex. 2, 61).

(4) As to Specification 3 (Toshino): On the morning of 15 December 1944, while the P's were evacuating the Oryoko Maru, the witness (Capt. Alsobrook) was going from the port side of the ship to the starboard side, preparatory to leaving the ship. He met Toshino who was armed with a sabre and a small pistol in his right hand. Toshino followed Alsobrook around the ship. Alsobrook observed eight or ten men standing near "what appeared to be a galley", eating food. This group left when they saw Toshino approaching, but as Alsobrook passed by the galley he saw Brewster inside eating candy; there were two or three other men in the galley with him. Alsobrook continued past the galley, then stopped about 15 feet from the door, waiting for Brewster. "As I turned around, Lieutenant Brewster was starting to make an exit at which time Lieutenant Toshino apprehended him. Lieut. Toshino was stating something in Japanese and motioned to Lieutenant Brewster to turn around, using his pistol, and as Brewster turned around Lieutenant Toshino cocked his pistol and fired one time, striking Lieutenant Brewster in the back of the head. Lieutenant Brewster fell face forward". Later the witness was told by two or three P's that they had seen the dead body of Brewster in the galley (R. 184, 185). At the time of the shooting Toshino was about three feet from Brewster (R. 210). "You could hear the thud as he hit the floor" (R. 212). Alsobrook saw blood on the back of Brewster's neck (R. 213).

(5) As to Specification 5c (Toshino): See paragraph 3a (3) above.

(6) As to Specification 5d (Toshino): See paragraph 3a (3) above.

(7) As to Specification 5f (Toshino): See paragraph 3a (3) above.

(8) As to Specification 5h (Toshino): Some American P's entered the dining room of the Oryoko Maru before leaving the ship on the morning of 15 December 1944 and were picking up American Red Cross canned food when Toshino shot some of them. P' Chunn states further that Toshino was in a rowboat pulling some P's into the boat and shooting others (Ex. 14). P' told the affiant (Iewin) that he saw Toshino shoot an American P' who was coming down a passageway with food (Ex. 20). Japanese lieutenant with a tommy gun was firing at P's as they came out of the holds of the Oryoko Maru (Ex. 18). Toshino was shooting with a pistol at P's coming out of the hold of the Oryoko Maru (Ex. 17).

(9) As to Specification 5i (Toshino): P' Volney went up on the deck of the Oryoko Maru to steal water, a guard saw him and fired, wounding Volney on the arm (R. 230). Just before the bombing on the 15th, the P's were warned to stay in the holds (R. 231). Four guards fired several shots into the hold just after the bombing (Ex. 20). On the morning of 14 December 1944, after the first bombing, some P's tried to get out of the aft hold and the guards

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fired, killing several PW's including PW Wilson and wounding PW Bridgett (Ex. 17, 24, 30). The last of the PW's boarding the Oryoko Maru were brutally beaten by the guards (Ex. 25, 26). Aihara and several Formosan guards fired from the rear of the Oryoko Maru at the PW's in the water during the evacuation of the ship. The witness saw the shots strike the water and some PW's sink from sight (R. 183, 203). While the witness was swimming to the shore, a PW Fitzhugh swimming in front of him was killed by a shot from the ship (R. 185). Just prior to the bombing on the 15th, a guard fired into the PW's in the aft hold (R. 231). At the loading of the Oryoko Maru, a soldier (PW) was struck by a guard and fell into the hold (R. 256). Three PW's tried to get out of the forward hold after being warned that if they did so before being ordered out, they would be shot, and they were killed by Aihara and two other guards (R. 260, 278). A PW Specht told PW Schwartz "that he had been shot through the arm while in the rear hold by a Japanese guard at the top of the hatch" (R. 364). PW's Shreeves and Montgomery were struck by Aihara with a shovel while loading on the Oryoko Maru, as were several others (R. 86, 87, 120; Ex. 50). The Jap guards watched while the PW's swam to the beach and shot those they thought were escaping (Ex. 56). Aihara fired into the after hold after the bombing on the 15th, killed one and wounded several (R. 119; Ex. 46). Aihara fired at PW's after the bombing (Ex. 30); Aihara killed a crazy man who was trying to get to the deck on the night of 13 December (Ex. 50); after the bombing on the 15th the PW's tried to rush to the deck, Aihara killed four, which stopped the rush (Ex. 50, 57).

(10) As to Specification 9 (Toshino): Toshino arrived at San Fernando Pampanga on 22 December 1944 with the last group of PW's from Olongapo. About dusk on 22 December 1944, Urabe, Toshino and Wada were in his (Kimura's) office. Urabe said to Toshino something like "condemning the prisoners of war who would not be able to withstand the journey to capital punishment": Toshino did not oppose this statement. Urabe and Wada discussed the death certificates. Urabe called in Tanoue and ordered him to kill the PW's with his sword. Tanoue objected and Urabe stated that it was an order, and later Tanoue and Toshino left. Later Tanoue and Toshino both returned and informed Urabe that the job was done (Ex. 66). In an early affidavit Tanoue stated that he received his orders from Toshino (Ex. 85). Toshino ordered Wada to "round up" fifteen of the sickest PW's by telling the PW medical officers to select the sickest to be sent back to Manila (R. 729). On 5 August 1946 Wada stated he received the above orders from Toshino (Ex. 84). At the trial both Wada and Toshino testified that Wada had already received the orders from Urabe to select the sickest PW's but that Urabe had not mentioned that the PW's were to be executed (R. 730, 787). Fifteen PW's were selected for the trip, three from the jail and twelve from the theatre (R. 787). Lt. Col. Dwight D. Edison, Lt. Col. Ulysses J. L. Peoples, Lt. Col. Samuel W. Freeny, Second Lt. Herman W. Sherman, Major Wendell F. Swanson (R. 409-412), Lt. John W. Elliot (R. 125) and Pharmacist's Mate Deenah R. McCurry (Ex. 49) were among the fifteen PW's selected. Toshino ordered Hattori to select a squad and dig a grave, and after the grave was dug, to guard the cemetery (R. 825). Toshino, with Tanoue, Aihara and Ueda brought the fifteen PW's to the cemetery in San Fernando Pampanga by truck about 2030 (R. 637, 704). Toshino gave the order to Tanoue to decapitate the PW's, and he decapitated about seven PW's (R. 574, 705). Toshino also gave the order to bayonet the PW's; Aihara bayoneted three PW's (R. 658) and Ueda bayoneted one (Ex. 88); others than the accused bayoneted the rest of the PW's (R. 705). Toshino waited in the cemetery until the grave was covered over, then returned to his quarters where he reported that the executions were completed. Toshino never reported the executions to anyone else (R. 706).

(11) As to Specification 14b and c (Toshino): The diary of PW Bodine (Ex. 8) states that on 27 December 1944, 236 PW's boarded the Brazil Maru after waiting to board the Enoura Maru; five Formosan guards to take care of them; no food and water on the 27th; no food on board for them; no water on the 28th; no water on the 29th; half a cup of water on the 30th; arrived at Takao on 31 December 1944; three-quarters of a cup of water per man on this date; canteen cup of water per man on 1 January 1945; no water on 2 January 1945; two buckets of water for entire group on 3 January; eight spoonsful of water per man on 4 January; on 5 January 1945 half a cup of water per man;

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6 January 1945 moved to Enoura Maru; one man died on the voyage; two died on 1 January 1945; a total of five men died on the Brazil Maru on the trip to Takao (Ex. 18). P^{vt} Montgomery testified that there was no food on the 27th or 28th; food on the 29th; no food on the 30th or 31st; a sack of hardtack for the group on 1 January 1945, five rolls per man; after that a messkit of rice for three men except one day (R. 133); on the 27th and 28th no water; 29th, one-quarter of a cup of water per man per day (R. 133); four men died (R. 134); P^{vt} Threatt testified that on 27 and 28 December only left-over food from the guards--not more than two messkits for the group; after that about a quarter messkit of rice a day; averaged four spoonful of water a day (R. 239); between eight and ten men died (R. 240); the First Mate of the Brazil Maru stated there should have been about one gallon of water per man per day for the trip; that he ordered the steward to supply one gasoline drum of water per day for the P^{vt}s; there were only Formosan guards aboard for the trip but they "contacted" Toshino by semaphore several times a day (Ex. 74). P^{vt}s Cleatsco, Andreason, Anderson and Cahil died on the Brazil Maru between 27 December and 6 January (R. 251).

(12) As to Specification 15 (Toshino): P^{vt} Speck states in his diary (Ex. 9) that he boarded the Enoura Maru on 27 December 1944 with about 1100 P^{vt}s--that the hold they were put in had just been used to transport horses and had not been cleaned; there were thousands of blowflies, open buckets for latrines; many men had dysentery, which spread rapidly; actually had room to sit down and stretch their legs--not nearly as crowded as the Oryoko Maru; some food from nothing at all to a cup of rice and some soup each day, some raw millet seeds left over from the horses; they ate that; only a few spoonful of water a day on the trip to Takao. The food and water situation did not improve while in the harbor at Takao; fifteen to thirty P^{vt}s died daily at Takao. There was a direct hit on the forward hold by an American Bomb on 9 January. The affiant was injured--broken leg. The P^{vt} doctors would not help him; he had to set his own leg with the help of friends. A Japanese medical detail came into the hold on 11 January and dressed the minor wounds; did not go into the forward hold. The affiant was transferred to the Brazil Maru on 13 January. About 300 P^{vt} bodies were taken ashore at Takao to be cremated. P^{vt} Bohne states in his diary (Ex. 8) that the P^{vt}s were transferred to the Enoura Maru on 6 January; there were 1300 P^{vt}s in one hold. They received hot food and tea. The hold was about 70 by 90 feet end about 50 feet high; a 15-foot balcony around the hold about 30 feet up. It was very crowded. During the night of 6-7 January feces and urine dripped from the balcony where the hospital was. Two men fell from the balcony and killed one of those below. Four-fifths cup barley, one-fifth cup cabbage soup, one-fifth cup tea for two men on 7 January; repeated in the evening. Thirty-five P^{vt}s died on the Enoura Maru; three or four died the night of 6-7 January. The flies were terrible; the floor sticky with feces; only six buckets for a thousand men to use as a latrine. Some chow and tea on 8 January. Men divided; over 700 in the same hold; 500 to a forward hold; old hold filled with sacked sugar up to the balcony; more crowded than ever. Riots during the night as half-crazed men tried to steal water and food. Most crowded conditions of the trip. Very cold during the night. 9 January: One-sixth cup of water and barley for breakfast; ship bombed about 1000--direct hit on ship; hatch cover planks, men, and tubs of water fell onto the floor of the hold; many men wounded; about sixteen killed; 75-100 wounded, not counting minor wounds; little medicine; no water and dressings available. In forward hold more than 50 percent of the 500 killed or dying. Men started stealing sugar. Dead piling up. One loosely packed cup of barley and some salty pickle for each three men to eat; no water or tea. 10 January: Very cold; hatch covers finally put on; little warmer; about thirty bodies now in hold. 11 January: five Jap medical corpsmen and one doctor came into the hold today; treated minor wounds with mercurochrome; would not treat serious cases; heard they would not enter the other hold and that about two-thirds were dead there; two issues of barley and soup and water and tea; liquids amounted to about five-eighths of a cup per man; the cooked barley is very bad--almost impossible to eat; bodies smelling very bad. 12 January: chow early; bodies being removed by a detail; diarrhea increasing; clothes taken off the dead to bandage the living or for wearing; area around latrine covered with feces; urine from hospital area ran into the sleeping area; nine died last night; 150 men cremated; buried in a single container; 200 men came from the forward hold; good supper--barley,

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fish, cabbage, "salad"--about two spoonful per man. 13 January: moved to Brazil Maru. The affidavit of P^W Beecher (Ex. 10) states that aboard the Enoura Maru on the trip to Takao the rations were one-half canteen cup of water, one-half cup rice and soup per day per man. The ship's galley was willing to give more water; the guards drove the P^W's away before they could get the water; Toshino responsible. One or two P^W's a day died while in Takao harbor up to 9 January. The bomb on the morning of 9 January caused many casualties in both holds; about 250 killed in all. Asked Toshino to let them go into the "after" hold to help but he refused; dead and dying received no help from the Japs for 36 hours, then some Jap medical personnel arrived to help; would not go into the "after" hold where the largest number of casualties were. Affidavit of P^W Pyzik (Ex. 11) to same effect. P^W Montgomery testified that he arrived on the Enoura Maru on 6 January. Food twice a day until 9 January; one-third to one-half cup of tea or water per day. Latrine area dirty but better than the other vessels. Straw in the hold was saturated with animal manure and urine; many flies. Conditions were very crowded. Five to six hundred men moved to forward hold to make room for sugar. Bomb hit on the morning of 9 January. He was in aft hold. Twenty killed outright, 80-90 seriously wounded; about 300 wounded in all. Collected clothing and towels for bandages; P^W's out of medical supplies. Beecher asked for medical help; none received until 12 January, then only minor wounds were treated. Dead bodies stacked up in hold; not removed until 12 January; were decomposing by that time. Message from the forward hold through a hold in the wall stated about 300 were killed; many wounded; needed medical supplies. Defense admits that P^W's suffered mental and physical suffering (R. 135-143). P^W Isobrook testified that on the Enoura Maru from 27 December to 9 January the P^W's received food twice a day--one canteen cup of rice to five men, cup of vegetable soup to six or eight men, three or four spoonful of water per man. The hold was covered with hay, horse urine and manure; flies on the walls of the ship. Thirty men died on the trip. Beecher asked for medical supplies after the bombing on 9 January; "ada" said none were available (R. 190-193). P^W Threath testified that he was in the forward hold at the time of the bombing of 9 January; that there were 200-250 dead; the bodies were not removed until 12 January; the Jap medical man did not enter the forward hold; he was lightly wounded and P^W doctor dressed it on 13 January; the bandage was Japanese gauze (R. 241, 242). P^W Mittenthal testified that between fifty and sixty men died on the Enoura Maru between San Fernando and Takao; cause of death was mostly dysentery, malnutrition, dehydration; about twenty men died of wounds. Dead bodies remained in the hold for about three days. Beecher would ask about removing the dead bodies; "ada" would say he would see what he could do about it. Some Jap medical men came aboard ship and took care of minor wounds (R. 265-267). P^W Schwartz testified that there were about twenty or thirty serious cases loaded on the Enoura Maru when it left San Fernando for Takao, all suffering from starvation, dehydration, and some had diarrhea; three men died on 27 December. He saw five cases of Red Cross medical supplies on board. Hospital established on the 'tween deck level. Floor of hold covered with manure, "millions" of flies; wooden buckets for latrine area insufficient; patients from the hospital fell into the hold and were injured or killed; requests to clean up the hold were made but not granted; Red Cross medical supplies furnished twice, two burlap sacks; sulfa drugs had been taken out; no dressing material available; about two or three deaths a day on the trip; Jap medical men came on board ship, treated only minor cases, told Schwartz they had no material to treat serious wounds, did not have splints; food and medical supplies still on ship when they left on 13 January (R. 368-373). P^W Portz died from dehydration, exhaustion and dysentery (R. 374, 409); P^W's Rianchi (Ex. 34), Going (Ex. 38), Huling (Ex. 52), Kittredge (Ex. 52), Myers (Ex. 54), Tucker (Ex. 54) and Volney (R. 374) died from the bombing on 9 January; P^W's Brown, Davis, Delamore, Lovegreen, Lukehart, Meier, Milligan, Phillips, Schade, Swan, Tannehill, Taylor, Van Nostrand and "itten died on 9 January, no cause shown (Ex. 34, 61; R. 144, 191); Foster died at Takao, no cause shown (R. 144; Ex. 34) or on 21 January 1945 (Ex. 61); Griffin, Knowles, Lyons, Jr., Pritchard and Rotherhan died, no cause shown, on the Enoura Maru between 27 December and 13 January (R. 144; Ex. 61); Hulsey died on the Enoura Maru between 27 December or 13 January (R. 144) or on 25 January 1945 (Ex. 61); Mathieson either between 27 December and 13 January (R. 144) or on 16 January (Ex. 61); "eill on 15 December 1944 (Ex. 61); Yearsley died on the trip to Moji from Takao (R. 270; Ex. 61).

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(13) As to Specification 16 (Toshino): See paragraph 3a (11) above, PW's Cleatsco (ph), Andreason (ph), Anderson, and Cahil died from malnutrition, dehydration and exposure on the Enoura Maru between 27 December and 13 January (R. 240); also PW Shurtz (Ex. 34).

(14) As to Specification 16a (Toshino): See paragraph 3a (12) above.

(15) As to Specification 16b (Toshino): See paragraph 3a (12) above.

(16) As to Specification 16c (Toshino): See paragraph 3a (12) above.

(17) As to Specification 16e (Toshino): See paragraph 3a (12) above.

(18) As to Specification 16f (Toshino): See paragraph 3a (12) above.

(19) As to Specification 17 (Toshino): PW Montgomery testified (R. 145-150) that the Brazil Maru left Takao the night of 13 January and arrived at Moji, Japan, on 29 January; about one thousand PWs boarded the ship at Takao and between 450 and 500 debarked at Moji. Space was crowded; however there was enough space to lie down if everyone cooperated. The food issue consisted usually of two issues a day; one canteen cup of rice to three or four men. For at least two days there was no food or water at all; the water issue was never more than one-half canteen cup per day, sometimes less. There were occasional issues of a teaspoon per man of miso paste (soybeans and salt). The men were quartered in a cargo hold with temporary troop accommodations standard on Japanese vessels. Food, water and cigarettes were available to the PWs by trading personal items for them. Latrines were suspended over the side of the ship; on the way to the latrine men would attempt to steal water from a steam winch on deck; if detected, PWs would be "rapped very soundly with a rifle butt"; this happened many times to Montgomery. The latrines on the side of the ship for those strong enough to climb out, and wooden buckets for the weak in the hold made up the latrine facilities. The climate grew very cold as the ship proceeded to Japan; salvaged clothing from the dead was issued to the PWs by PW North; men huddled together to get warm; PWs stole some Japanese mats; after threats by the Japanese, some were returned. About 15 to 40 men died each day; the bodies were stacked under the hatch covering; when sufficient had accumulated, they were thrown overboard. The witness lost between 35 and 45 pounds on the trip; some PWs had to be carried off the boat.

PW Alsbrook testified (R. 195-197) about the trip from Takao to Moji; that he was stealing water from the winch and was caught by the Formosan guard who beat him and PW Langlois with the barrel of a rifle three or four times; he let Langlois go and beat the witness for two hours; during this beating the witness' nose was broken. The weather was cold; sleet was falling and snow was on the deck during the beating; the witness was clothed only in underwear shorts and a thin blue jacket. PW Beecher asked Wada for more food and water; the answer was always no. The witness lost between 35 and 45 pounds on this trip.

PW Threatt testified about the trip from Takao to Moji (R. 243-245). He stated that he had no shoes during the trip, that he acquired a blouse also from a dead PW; that his group of five men had some rice sacks to help them keep warm--these were stolen from a pile of about a thousand; guards would not let the PWs have any; about a hundred were stolen. Water came by spoonsful--four to ten spoons at a time once a day, occasionally twice a day; one-fourth canteen cup of food per man per day; an occasional spoon of bean paste. Twenty to thirty-five PWs died per day--only five percent from wounds; the dead were stripped for their clothes; bodies piled up until there were 25 to 50, then taken up on deck. The witness lost 55 pounds on the trip; 20 percent left the ship at Moji under their own power; 60 percent had to be helped and 20 percent carried. The only medical supplies received were from the medical detail in Takao harbor.

PW Mittenenthal testified (R. 268-271) that at the start of the trip from Takao to Moji his clothing was an undershirt and a pair of drawers; stole five grass mats as everybody else had them and used them on the trip to keep warm. PW Beecher asked Wada many times for food and water; most of the time Wada answered these requests on the spot. Water was obtained by stealing from

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the winch and getting icicles; sometimes the guards let them alone, sometimes they would give the P's a butt stroke or chase them into the hold. P's Swan and Yearsley died on this trip, not from wounds; Lt. Pola died of a wound and gangrene. On arrival at Moji the P's were suffering from dysentery, dehydration, malnutrition, exposure, wet beriberi and dry beriberi. He lost 104 pounds on the trip.

The affidavit of P' Bodine (Ex. 8) states that about a thousand P's boarded the Brazil Maru on 13 January--sailed on 14 January. There were two meals on 14 January--one-fourth cup red rice and one-third cup rice, no water. Five men at a time may go to the deck to the latrine; conditions are crowded; weather cold and windy. On 15 January the P's were given two meals--one-third cup of red rice each time, one-half teaspoon of salty soybean paste, seven spoonful of tea in the morning, one-fourth to three-fourths cup of tea in the evening. Many men suffering from severe diarrhea and do not want to eat. Men dying continuously; twice a day the bodies were stripped, then thrown overboard. On 16 January the affiant arose at dawn to go on deck; dead and dying were everywhere, feces over everything; the bodies were cleared out before the food came down. Usual two meals--one-third cup of rice, 8 spoonful of tea; the tea was very salty, made from brackish water. On 17 January P's Van Horn and Aton died; 30 people died yesterday. Most of the badly wounded have died. The usual rice, 8 spoonful of liquid in the morning; none at night. 18 January: usual rice and 8 spoonful of tea in morning. Stole some water from the winch; when too many P' tried it, guard stopped it; everyone stealing; men almost crazy. 19 January: double issue of tea in the morning (salty), usual chow and tea in evening. 20 January: for supper, rice and one-half spoonful of soybean paste, no liquid. 21 January: P' Nelson died. Rice and tea issued; 24 men did not get any because of short supply; usual rice but no liquid in evening. Affiant getting terribly dehydrated. Diarrhea killing many P's. Much trading of personal items to Japs for food and water. Usual rice and 3 slices of radish-pickle for supper. Hot water running from winches; guards will not let P's get it; no water today. 22 January: P' Swaska died; 35 P's died last night; lack of water plus diarrhea is causing many deaths; P' Hudgins died. After two days without water, got some tea in the evening. 23 January: snowed this date; came into the hold; slowly freezing to death; 6 P's under one straw mat; less than half of the 30-man squad now alive. Chow, but no liquid at 1400. 24 January: beaten three times with a rifle butt for stealing water from the winch; later got kicked for trying to get some snow from the dirty deck. No tea issued in the morning. Clothing of P's full of fecal matter and body lice. Very cold day. Rice, but only 5 spoonful of tea water in the evening. 25 January: snow in drifts on the deck. Twenty-five to thirty deaths. Some chow but no water in the afternoon. 26 January: rice but no water in the morning; rice and 7 spoonful of water after dark. Still 630 alive. 27 January: very cold day. No chow or water for breakfast; small issue of rice in evening. P's Cummings, Kowalsky, Morgan and Uglo have died. Eight spoonful of water today. 28 January: 4 spoonful of tea and some water for breakfast; water ran short; fairly big rice issue in the evening but no water. 29 January: rice but no water; rice in evening, but no water; only 8 spoonful of water in last 36 hours. 30 January: clothes issued; ran out before witness got any. Plenty of water but no food; finally in afternoon got cold food that had been waiting all day. Kajiyama, captain of the Brazil Maru, testified that on the trip from Takao to Moji no requests were made to him for food, water, clothing, medical supplies, change of quarters or heat by anyone, including Toshino, Hattori or the liaison officer. He informed Toshino at Takao that it was his responsibility to get clothing, food, and medical supplies. Toshino, when asked by him, stated the P's were getting enough food and water, and Toshino told him the P's were warm enough because they were getting heat from the engines. If he (Kajiyama) had known that the P's were cold he could have helped. The rice mats belonged to the army and were available for use as bedding by the P's. Water was available to keep the holds sanitary. When he wished to put into Shanghai for help, Toshino stated that everything was satisfactory and that the P's were satisfied. He offered additional space for the use of the P's and Toshino refused it. He was never asked for the ship's medical supplies and the supplies were not given to the P's (R. 867-871). P's Bridgett, Cummings, T.T., and Simmonds died on this voyage from dysentery (R. 150; Ex. 38); P's Joses, Morgan, Turnipseed and

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and Wade died from starvation (R. 150, 197; Ex. 38); P's Burwell, Connell and Hogan died from wounds (Ex. 38, 61); P's Bachelor, Barry, Batson, Bennett, Breitling, Carlton, Cabbery, Clark, Cummings, J. M., Daly, Farrell, Franks, Glassburn, Greeley, Humber, Humphries, Johnson, Kabakow, Kerr, Latimer, MacDonald, Maverick, Maxwell, Maguire, Murphy, Nelson, Olson, Presnell, Robinson, Ryan, Saint, Schreffer, Shamblin, Underwood, Welchko, died on the trip, no cause being shown (R. 150, 197; Ex. 19, 38, 56, 61); P Byrd died after 30 January (Ex. 61) or on the trip from Takao to Moji (R. 150); P Ganahl died at Moji (Ex. 61); P McClellan died on 9 January at Takao (Ex. 61) or on the trip from Takao to Moji (R. 150); P Paquet died on 10 January (Ex. 61); P Schwartz died on 1 January (Ex. 61) or on the trip to Moji (R. 150); P Tokoly died on 15 December 1944 (Ex. 61) or on the trip from Takao to Moji (R. 150); P Zerfas was killed in the bombing at Takao (Ex. 8, 61) or died on the trip to Takao (R. 150). P Treacy died but no date or cruise is shown (Ex. 61).

(20) As to Specification 18 (Toshino): See paragraph 30a (19) above. P's Swan, Yearsley died, but not from wounds (R. 270) and P Pola died from gangrene that set in from wounds (R. 170); P's Van Horn and Aton died from causes other than wounds (Ex. 8); P's Swaska and Hudgins died, cause not stated (Ex. 8); P's Kowalsky, Morgan and Uglo died, cause not shown (Ex. 8).

WADA

(21) The accused Wada was found not guilty of Specifications 2, 3, 5, 6, 7, 8, 9 and 10.

(22) As to Specification 1 (Wada): See paragraph 3a (3) (Toshino) above. P Beecher complained of the crowded conditions on the Oryoko Maru on 15 December to Wada, who replied "It is no concern of yours". No action taken as a result of the complaint (R. 91, 257). About 2400, 13 December P Beecher asked Wada for water, saying that men would die if they did not get water and Wada said "If they die it is all right with me" or words to that effect (R. 93, 182); at the same time Beecher complained about the sanitary facilities and Wada stated that he would do nothing at that time (R. 95). Wada said "No" when he was asked to give permission for men who had fainted to be taken on deck (R. 98); after 1000 on 14 December, Beecher told Wada that men would die if they did not get water. Wada said that it was all right with him, and he did not give them water (R. 102). Wada made on-the-spot decisions (R. 107, 182, 259). P Bridgett asked for relief from the conditions in the hold, and Wada said that the Japanese civilians were bad off and that they were P's and could expect little help (R. 119, 229). Various P's would ask for food and water, and Wada would say "Shut up; I don't care if you all die" (R. 259).

(23) As to Specification 4 (Wada): See paragraph 3a (22) above.

(24) As to Specification 11 (Wada): The P's were on the beach at San Fernando La Union from the night of 25 December 1944 to the morning of 27 December 1944 (R. 129). P Beecher asked the Japanese guards and Wada for water, food, and improvement of the living conditions, and Wada said "No" (R. 120). P Beecher stated that he had asked Wada for food and water and Wada stated no water was available and no food was received (R. 190). P Beecher asked Wada for food, water and medical supplies on the 25th of December, got three-fourths messkit of rice, 10-12 spoonful of water as a result (R. 238). At the beach at San Fernando La Union, Beecher asked Wada for food, clothing, medicines, and Wada replied we did not know where to get it and that there was not enough supplies (R. 265). Nothing was done to improve conditions (R. 265). The P's suffered from the shortage of food, water, medical supplies, proper clothing and shelter while at the beach (R. 129, 130, 239, 264; Ex. 10, 11, 14, 15).

(25) As to Specification 12 (Wada): See par. 3a (12) (Toshino) above. Between 9 and 12 January 1945, P Beecher asked for the dead bodies to be removed from the Enoura Maru; Wada said permission would be granted in due time (R. 141, 193, 267). Beecher asked Wada for medical supplies on 9 January, Wada said none were available (R. 192). Senior officer in forward hold asked Wada for medical aid, first aid, clothing, and permission to remove the dead; Wada denied requests on the spot (R. 193, 194). Wada denied a request of Beecher

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to send men to the forward hold to help after the bombing (R. 194). PW Pyziek asked Wada for a bucket of salt water to be used in cleaning the hold, Wada refused (R. 300). Many requests were made of Wada by Beecher, Olsen, Bridgett, Englehart, Schwartz and North for food, water, medical supplies and salt water to clean the ship between 31 December and 13 January; two or three times a bucket of salt water was obtained, other requests denied (Ex. 11).

(26) As to Specification 13 (Wada): See par. 3a (25) above.

(27) As to Specification 14 (Wada): See par. 3a (19) (Toshino) above. PW Beecher asked Wada for more food and water, complained that the men were dying and Wada stated that he did not care if all the PW's died and he could see no reason to help enemies of Japan (R. 269).

(28) As to Specification 15 (Wada): See paragraphs 3a (19) (Toshino), 3a (20) (Toshino), and 3a (27) above.

(29) As to Specification 16 (Wada): On 30 January 1945, Wada pushed PW Schwartz around with his hands (R. 376). Wada slapped PW McManus on 9 January 1945 and beat men who took the water from the winches (Ex. 20). Wada beat PW's with ropes and sticks (Ex. 27). Wada slapped PW's who took sugar from the holds (Ex. 23); beat PW Granston with a club on 30 January 1945 (Ex. 45).

AIHARA

(30) This accused was found not guilty of Specification 2.

(31) As to Specification 1 (Aihara): Aihara struck PW Montgomery and several other American PW's with a rifle butt while loading the Oryoko Maru on 15 December (R. 86, 87). He was rough and brutal during the loading in his treatment of PW's (R. 120). Aihara struck PW's Shreves during the loading (R. 182) and he struck many PW's during the loading with a shovel (Ex. 2, 50).

(32) As to Specification 3 (Aihara): Aihara fired into the after holds of the Oryoko Maru after the bombing and killed one, two or three PW's (R. 119, 185; Ex. 15). Accused shot at PW's in the water on the starboard side of the Oryoko Maru (R. 183). Accused shot a PW trying to leave the forward hold of the Oryoko Maru after the bombing and after the PW's had been told they would be shot if they tried (R. 278). Accused shot at PW's leaving the hold after the bombing of the Oryoko Maru (Ex. 30, 46). Accused killed a crazy man on the night of 13 Dec 1944 who was trying to get out of the hold of the Oryoko Maru to the decks (Ex. 50). After the bombing of the Oryoko Maru on 15 Dec 1944 when the PW's tried to get to the decks, Aihara killed four which stopped the rush (Ex. 50, 57).

(33) As to Specification 4 (Aihara): See paragraphs 3a (10) (Toshino) above.

(34) As to Specification 5 (Aihara): Aihara struck a PW with a rifle for moving sugar sacks and others over on the Enoura Maru on 13 January 1945 (R. 195).

TANOUE

(35) As to the Specification: See paragraph 3a (10) (Toshino) above.

UEDA

(36) As to the Specification: See paragraph 3a (10) (Toshino) above.

HATTORI

(37) Accused found not guilty of Specifications 1, 2 and 3.

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(38) As to Specification 4: See paragraph 3a (19) (Toshino) above. At the start of the beating of Alsobrook and Langlois, the accused was standing behind a smokestack on the ship, about 40 to 50 feet away (R. 196, 219); Hattori forbade the PW's to pick up snow that was contaminated (R. 835). Once a guard beat a PW who was caught taking water from a winch (Ex. 8, 79).

b. For the Defense:

TOSHINO

(1) The accused Toshino took the stand in his own defense; a summary of his testimony follows: Admitted that some statements in Ex. 80 were untrue; he received his original orders as Guard Escort Commander from Gen Kou--written orders; regulations as to his duty were shown him; he read the report and diary of a previous Guard Escort Commander and followed that. Urabe issued the loading orders on the Oryoko Maru after receiving them from the 3rd Shipping Commander and the Anchorage Commander; he could permit the PW's to come on deck and did so on 13 December as a result of complaints from Hattori and Wada; also had installed a ventilator. He inspected the holds after the PW's were in them every two hours from the top. Hattori was second in command of the Guard. Wada carried out Toshino's orders as his representative. He asked for the food ration to be upped from 450 grams a day to 700 grams a day. Also asked for as much water to be issued as possible; the purser did not carry out his orders. He then requested the Liaison Officer to take action (all on the evening of the 13th). The water system on the Oryoko Maru was put out of order by bombing about 1000, 14 December. He then could not provide food or water to the PW's; he knew about the need for water by the PW's on the night of the 13th; tried to get purser and Liaison Officer to take some action; got a little but not enough; did not allow PW's on deck at this time; was afraid that they would be hurt by the 1000 rescued Jap seamen. He only had 25 buckets to use for latrine purposes; they brought 80 cases of medicines aboard. These were made available to the PW's; denied shooting Brewster; he never fired his pistol or any weapon aboard the Oryoko Maru. He never heard of any of his men mistreating PW's on the Oryoko Maru; denied that Aihara and two others shot 3 PW's coming out of the holds of the Oryoko Maru on the 15th. Did not believe a grenade was thrown into the hold of PW's; the firing from the shore, if any, was not under his command. He left the ship about 1200; two boxes of Red Cross medical supplies were taken ashore; the American bombing stopped the removal of the rest. The decapitations took place by orders of the main camp commander; he received the order from Lt. Urabe; Urabe upon his arrival at San Fernando Pampanga told Toshino that he was passing orders to Toshino from the Main Camp Commander; at about 1900 on 21 December, Urabe in the presence of Kimura told Toshino that it was the order of the Main Camp Commander that the very sick be killed; that he protested but Urabe stated that Gen Kou said it was necessary; he again asked if they could be sent to Bilibid, but he was told the order must be obeyed; he was ordered to get a truck by 2000 and to have Tanoue do the job; he ordered Hattori to prepare the grave; only Wada and Hattori knew of the impending executions other than Urabe and Kimura at this time. Tanoue visited him in his quarters prior to the executions; all accused were at the cemetery that night. Yoshida was on guard at the entrance to the cemetery; he did not see Kobayashi, Yoshida nor Wada near the grave during the executions; Ueda, Aihara, Tanoue and Hattori (for a moment) were near the grave. Tanoue decapitated the PW's; he gave the order to Tanoue at the grave, the original order came from Urabe; he (Toshino) gave the order to bayonet. He did not know if Ueda or Aihara actually bayoneted anyone. After the executions were over and the grave filled, he went back and saw Urabe and Kimura. He reported to Urabe that the job was done; that the testimony he now offered was true where it differed from Ex. 80. All PW's were to ship on the Brazil Maru, at the time of embarkation he was ordered onto the Enoura Maru, all PW's except about 300 went to the Enoura Maru; he was not given an opportunity to inspect the Brazil Maru, or to put guards on the Brazil Maru; that he had no knowledge about the conditions aboard the Brazil Maru until the arrival at Formosa; none of the accused were aboard the Brazil Maru at this time. A representative of Anchorage Headquarters allotted the PW's space on board the Enoura Maru; food and water to be furnished by the ship. He was responsible for the distribution; all food cooked on board the Enoura Maru

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for PW's was given them; there was plenty of water. He inspected the quarters of the PW's on the Enoura Maru after loading; he inspected the 'tween decks every day, but not the hold. PW's could use the deck latrines. What medical supplies were aboard was made available to the PW's. He had conversations about water with Col. Beecher; he asked for 9 "liters" per PW per day; got about one-fifth less. No one under his command mistreated PW's on the Enoura Maru; he tried to have the PW's taken off both ships at Takao (in Formosa) but was refused; not even the guards were allowed off the ship. He was aboard the Brazil Maru once between the 1st and 6th of January; he tried to have the PW's from the Brazil Maru brought to the Enoura Maru but was refused until 6 January. The death rate on the Enoura Maru was low from San Fernando La Union to Takao, but increased after the arrival at Takao; this was caused by the fatal results of the bombing of the Oryoko Maru and sickness. The Enoura Maru was bombed at about 1600 or 1700 on 9 January; a direct hit was made on No. 1 hold. With the help of all ship's personnel they tried to clean out holds 1 and 2; Anchorage Headquarters would not allow them to move the dead bodies on the 10th; however first aid was sent later; about 400 PW's were buried at Takao. They got permission to move the dead on the 11th, buried them on the 12th and 13th. The living were moved from No. 1 hold to No. 2 hold on the afternoon of the 10th; that the move had been delayed at the request of the PW's; Beecher did not request the move of the PW's from No. 1 hold; all PW's went to the Brazil Maru on the 13th; the Brazil Maru was selected for the move to Japan by Anchorage Headquarters. He requested clothing from Anchorage Headquarters, Fortress Command, the Supply Depot, Taiwan Army Headquarters and the Taiwan PW Camp. Nothing was supplied. He was afraid that the PW's could not stand the cold trip to Japan; 75 to 114 PW's died from Formosa to Japan. All food prepared on the Brazil Maru was given to the PW's; none was wasted. He thought the water was enough; however through the Liaison Officer he asked for more water. He asked many times, but got very little extra water. PW's could use the deck latrines on the Brazil Maru. There was no Jap medical officer on the Brazil Maru; the only medical supplies were those brought from San Fernando La Union and those provided for the ship's crew, which was also used for PW's; he never knew of any of his subordinates mistreating PW's. Wada spoke to Beecher as a result of Toshino's orders. Cross-examination. He denied making some previous statements that differed from his present one, and stated that as to others he was too sick to make a long statement. He told Wada that the PW's were to be executed before Wada left to get them; denied his previous statements that Kobayoshi or Wada led the PW's to the grave; that Yoshida bayoneted anyone; admitted receiving protests from Col. Beecher about conditions on the various ships--he asked for food and water on board the Brazil Maru; received some in addition (R. 681, 763).

(2) As to Specifications 1 and 5: A Japanese passenger on the Oryoko Maru stated that during the night of 13 December the Oryoko Maru remained at anchor--sailed at dawn; a poor supper, got water from the kitchen. Many Japanese were wounded on 14th of December, including women and children (Ex. E). A Japanese sailor stated that Japanese sailors were put in the third class hold of Oryoko Maru on 13 December; there was no room to lie down, six men to an area two meters square. The ceiling was so low they had to crawl instead of walk. Water was furnished by buckets on the evening of the 13th; and there was no water from the morning of the 14th until they landed on the 15th. Two children suffocated, others died from the conditions (R. 526, Ex. F). A canvas ventilator was placed in the aft hatch to help the ventilation, by order of Toshino (R. 548). A bomb destroyed the water tank and pumping machinery on the Oryoko Maru, thus there was no water available after 0900 (R. 536, 538).

(3) As to Specification 3: Toshino denied that he shot Brewster (R. 690).

(4) As to Specifications 5c, d, f, h and i: See paragraph 3b (2) above.

(5) As to Specification 9: See paragraphs 3b (1) above and 3b (13) (Wada) and 3b (28) (Tanoue) post. Lieutenant Urabe issued the orders for the decapitation, Toshino did not object; Urabe issued the orders to Tanoue

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also, Tanoue objected and was told by Urabe it was an order (R. 335-336, Ex. 66).

(6) As to Specifications 14b and c: See paragraph 3b (1) above. There were no supplies aboard the ship for the P's, but some food and water were provided (R. 240, Ex. 75; 79). The 230 P's were loaded aboard the Brazil Maru without previous notice to Toshino or the ship's captain; the orders to embark were issued just as the ship was ready to sail by Lieutenant Colonel Nozawa, Anchorage Commander (R. 404, 405; Ex. 74).

(7) As to Specification 15: See paragraph 3b (1) above. P North obtained medical supplies twice from Wada while the P's were on the Enoura Maru (R. 371). The accused requested medical aid on 10 January (R. 714), and requested medical supplies as soon as he arrived in Takao from all military Headquarters (R. 715). The accused received no prior notice of boarding the Enoura Maru at San Fernando, La Union, Philippine Islands (R. 709).

(8) As to Specifications 16a, b, c, e and f: See paragraph 3b (7) above.

(9) As to Specification 17: See paragraph 3b (1) above. Toshino tried to send a telegram to Prisoner of War Information Bureau in Tokyo requesting help and time to rest but Taiwan Army Headquarters refused to send it (R. 757). The food supplies received from the Army were "very short" (R. 871).

(10) As to Specifications 18a, b, c, d, e, and f: See paragraph 3b (9) above.

(11) A stipulation by the prosecution and the defense that fifty (50) good character witnesses would appear for Toshino, if called, was accepted by the court (R. 847). One Futagami, the elder brother of Toshino, testified that Toshino was a good man who followed the Emperor's orders (R. 845).

WADA

(12) The accused Wada was found not guilty of Specifications 2, 3, 5, 6, 7, 8, 9 and 10 (R. 891, 892).

(13) The accused Wada took the stand in his own defense and testified as follows: Urabe told him to select sick P's to go to Manila. This was around 1800 on either the 22nd or 23rd of December. His previous statement that Tanoue and Kobayashi were with him when he returned to get the P's about 1900 was mistaken. Toshino ordered him to get on the truck; Toshino was also on the truck; Tanoue and Kobayashi were also on the truck; Toshino stopped the truck at the Kempeitai Unit--later they went to the cemetery--he stayed at the front of the truck during the executions. He did not have authority to order P's or Japanese military personnel to do anything--that he transmitted all requests made by the P's to Toshino--he stopped three P's who were caught stealing sugar--Toshino called him down for the action. Cross-examination: Toshino ordered him to move about 500 P's from No. 2 hold to No. 1 hold on the Enoura Maru while in Takao harbour. He was not present during the transfer of the sick P's from the Enoura Maru to the Brazil Maru, but he had arranged with the boatswain to use the winch and a board in a landing net as a hoisting device from the hold. Toshino did not send him to consult with Urabe about the embarkation of the P's on the Oryoko Maru at Manila--that day he first saw Toshino at the pier. He and Urabe and about 20 P's went from the main camp direct to the pier. He was very busy as an interpreter during the embarkation on the Enoura Maru. He received no requests for food or water during the night of 13 December. He spoke to the P's many times between 2100 on the 13th and 0800 on the 14th. He told Toshino about Beecher's complaint about 200 extra P's being ordered into the hold on the 13th--and Toshino said that they would have to follow the main camp orders. Denied the tarpaulin incident on the Enoura Maru--denied the rice mat incident on the Brazil Maru--this latter was by Sgt. Hattori who was ordered to do so by a member of the ship's crew--that Toshino objected and the order was countermanded. He never refused to transmit P's requests to Toshino. The P's did not receive any water on the 14th (R. 785-823).

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(14) PW Beecher, the senior PW officer stated "To the best of my recollection Wada never made any on-the-spot decisions refusing my requests for food, water or medicine. Every time I made a request to Wada he always said, 'I will have to refer it to Lieutenant Toshino and I will let you know' and feel that on many occasions Wada failed to transmit my requests to Lieutenant Toshino. XXX I did talk directly to Lieutenant Toshino and also through Wada, requesting water, food, etc. These requests were denied by Lieutenant Toshino. XXX Wada performed his duties faithfully from the Japanese viewpoint; however, I feel that on some occasions he failed to transmit my requests to Lieutenant Toshino or put his own interpretation to my request."

(15) As to Specification 1: See paragraphs 3b (13) and 3b (14) above. Toshino testified that he received complaints from the PW's through Wada on 13 December (R. 685); that he knew on the 13th that insufficient food and water had been furnished the PW's (R. 687, 688); that he knew there were only 25 buckets for sanitary purposes (R. 689).

(16) As to Specification 4: See paragraph 3b (15) above.

(17) As to Specification 11: See paragraphs 3b (13) and 3b (14) above. Toshino stated that Wada reported Beecher's complaints about lack of water at San Fernando La Union (738b), that he was aware of the conditions of the PW's and that he talked with Beecher about them (R. 709).

(18) As to Specification 12: See paragraphs 3b (13) and 3b (14) above. Toshino stated that he had several conversations on the Enoura Maru with Beecher about the conditions of the PW's (R. 713) and that he was fully aware of the conditions of the PW's at all times on the Enoura Maru, up until the 13th of January 1945 (R. 715).

(19) As to Specification 13: See paragraph 3b (18) above.

(20) As to Specification 14: See paragraphs 3b (13) and 3b (14) above. Toshino stated that he was fully aware of the conditions of the PW's on the trip from Takao to Moji; that Wada was under his orders when he talked to Beecher (R. 718); that Wada always reported to him what went on, even if Wada had taken action before so reporting (R. 737); that he did not believe that the PW's were getting enough food and water; that he learned this from his own observation as well as reports from Wada and Hattori (R. 745); and that he shared a room with Wada on the Brazil Maru and talked every day about conditions (R. 746).

(20a) As to Specification 16: See paragraph 3b (13) above.

AIHARA

(21) The accused Aihara was found not guilty of Specification 2.

(22) The accused Aihara took the stand in his own defense and testified in substance: denied he ever struck PW's with a rifle and that he had hurried PW's into the hold. He did strike PW's lightly on the butt with a shovel to get them into the Oryoko Maru. He swam ashore from the Oryoko Maru--went back in a boat to get Toshino. Toshino asked him at that time if all of the PW's were ashore. Denied ever firing a shot or throwing a grenade into the hold where there were PW's. Did not shoot at swimming PW's. He was shot at. Toshino ordered him to go to the cemetery. He saw Toshino, Tanoue, Hattori, Ueda, Yoshida and Wada there; did not see Kobayashi. He bayoneted three PW's. He did not see Ueda bayonet anyone. Toshino ordered the bayoneting. He never received orders from Wada. Denied mistreating PW's aboard the Enoura Maru or Brazil Maru. While he did not fire into the hold, a Formosan guard did; Hattori and Toshino knew this. On cross-examination: Explained a prior unsigned statement that Wada gave them orders by saying that they treated Wada's orders as those of Toshino; Toshino ordered Tanoue to decapitate the PW's; he also ordered the bayoneting of the PW's; Ueda was there; he did not see the actual decapitations by Tanoue; Tanoue decapitated the first group of PW's; he bayoneted three

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of the first seven P.W.'s. After this he retired to the background; did not know who did the rest of the actual executions; he helped fill up the grave with earth. He never mistreated P.W.'s; he did not see Wada at the grave. He knew nothing about Hattori at the cemetery (R. 654-677).

(23) As to Specification 1: See paragraph 3b (22) above.

(24) As to Specification 3: See paragraph 3b (22) above. Some American P.W.'s were looting the ship (Oryoko Maru) on 15 December (Ex. 8, 9, 19). Toshino ordered the guards to shoot any P.W. that attempted to escape from the holds (Ex. 49). The accused shot at and killed P.W.'s who were escaping from the Oryoko Maru (Ex. 30, 50, 56, 57). One P.W. stated that he tried to escape but was fired at and so changed his mind (Ex. 53). Wada had notified the P.W.'s that anyone who tried to leave the holds before being ordered to would be shot and that three men who violated the orders were shot (R. 278).

(25) As to Specification 4: See paragraph 3b (22).

(26) As to Specification 5: See paragraph 3b (22) above.

(27) It was stipulated that 500 witnesses could be called by the defense to testify to the good character of the accused Aihara (R. 847).

TANOUE

(28) The accused Tanoue took the stand in his own defense and testified in substance that just prior to 23 December he received orders to take medical supplies to Toshino; and to remain under his orders--took 15 boxes of Red Cross medical supplies. Lt. Kimura accompanied him--about 30 soldiers. Lt. Urabe came the next day; went from San Fernando to San Fernando Pampanga; put prisoners in theatre and jail. Urabe so ordered; Kimura executed the order. Medical supplies went to P.W.'s. Wada interpreted. He treated sick P.W.'s himself. Kimura was in charge of the food. On 23 December at Lt. Urabe's quarters he saw Toshino and Kimura. Toshino left the room. Urabe ordered him to supervise the execution; to use his sword. He objected and asked that the P.W.'s be sent to Bilibid. Urabe said it could not be done; orders will be received from Toshino. Kobayashi to accompany Tanoue. Lt. Urabe repeated that the executions were an order. He went to see Toshino to get him to intervene. Toshino stated he had already tried to change Urabe's order; it could not be done. Toshino and Wada were present at the loading of the truck. The truck stopped at the Kempeitai headquarters. Toshino was not present. The truck then went to the cemetery. He reported to Toshino. Toshino ordered the executions to proceed; grave was already dug. He again protested--again ordered. The P.W.'s were brought to the grave. He decapitated either seven or eight; the later ones might have been bayoneted. His mind was in a daze. He then told Toshino he could not continue. He sat behind Toshino; did not see any more of the executions. He helped cover the grave with earth. He returned to San Fernando Pampanga on the truck; reported to Urabe. He later reported the affair to Captain Nogi at his regular post of duty. If he refused to obey an officer's orders he would be tried and killed; that he always did his best as a medical NCO for P.W.'s. Under cross-examination: it was Kimura's duty to arrange for quarters in San Fernando Pampanga. He gave camphor shots to some sick on the trip from Olongapo to San Fernando Pampanga. The man with the amputated arm died at San Fernando Pampanga. Urabe was in command; Toshino was under Urabe (he had earlier stated in an affidavit that Urabe was under Toshino). He stated that he had confused Toshino and Urabe; that there were six soldiers, one civilian at the grave when they arrived. He had previously stated that Yoshida, Aihara, Wada, Toshino and himself had participated. He stated that most of the answers given in a talk to the prosecution had been wrong; the old statement had put the blame on Toshino, the oral evidence on Urabe. He stated that Toshino, Hattori, Wada, Kobayashi, Yoshida, Ueda and Aihara were all present in the cemetery (R. 561-612).

(29) The testimony of Tanoue is confirmed by prosecution and defense witnesses as to his reluctance to do the job assigned and his protesting to his superiors, and that he finally obeyed only because it was an order (R. 335; Ex. 72, 80).

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(30) It was stipulated that 350 witnesses could be called to testify to the good character of the accused Tanoue (R. 847).

HATTORI

(31) The accused Hattori was found not guilty of Specifications 1, 2 and 3.

(32) The accused Hattori took the stand in his own behalf and testified in substance: that about 1900 on 22 December 1944 he received orders from Toshino to have a grave dug; after the grave was dug, he was to use his men to guard the cemetery. Yoshida was with his group; he ordered Yoshida to stand at the gate and guide the truck in. He saw Toshino, Tanoue, Ueda near the hole after the arrival of the PW's. He checked his guards during the period of the execution. He never authorized, permitted or knew of any mistreatment of PW's on any of the ships mentioned in the specifications (Oryoko Maru, Enoura Maru, Brazil Maru). Cross-examination: when he previously stated Wada was at the grave, he was in error--he saw PW's eating snow and drinking winch water--he did not stop them but went and asked for more water for them. He had told the guards not to let the PW's eat contaminated snow--had received orders from Toshino on the Brazil Maru not to let unauthorized people contact the PW's. He never saw PW food left over at the galley. The PW's on the deck of the Oryoko Maru on the 13th were sent back to the hold about 2300 on Toshino's orders (R. 824-838).

(33) Prosecution witness Threatt stated that the accused Hattori was supply sergeant at a PW camp in the Philippines, he had always given the PW's the best weight that he could, had never been harsh, seemed to do the best he could, had advised Threatt to get a life preserver before leaving the Oryoko Maru (R. 254). PW Alsobrook testified that he had never heard of Hattori striking or abusing PW's on the trip from 13 December to 30 January (R. 199). PW Mittenha also testified as to Hattori's good conduct (R. 275).

(34) It was stipulated that 250 witnesses could be called who would testify as to the good character of the accused Hattori (R. 852).

UEDA

(35) The accused Ueda took the stand in his own defense and testified in substance: that he was drafted into the army in 1941; had been a railroad worker; arose to the rank of superior private by 1944. On the evening of 23 December 1944, he was called to act as a guard on a truck that was to take prisoners to Manila. Tanoue, Wada, Kobayashi and Aihara were on the truck; Toshino was present. He did not know that the prisoners were to be executed. Toshino met the truck in the cemetery. Toshino told him and four other guards that the prisoners were to be executed. Under Toshino's command they proceeded to the grave. Toshino ordered the guards to "thrust" the prisoners; he hesitated, then thrust at one prisoner and missed. Tanoue then decapitated the PW. He thrust at the second PW and did not touch him. In his affidavit he said that he bayoneted the PW so that he would not be thought a coward. After missing the second PW, Toshino abused him in a low voice. Toshino ordered another soldier to take his place. He then stood by a tombstone and prayed for the PW's. After the grave was filled, Toshino gave the order to present arms. They got on the truck and returned to quarters. He had always been friendly with the PW's and just could not stab them. On cross-examination: Toshino told Wada to tell the PW medical officer to select the sick PW's to go to Manila. Wada was not present at the time Toshino stated that the PW's were to be killed. It was a dark night. When Toshino ordered the guards to "thrust" the prisoners, he pointed a finger at him. That is why he was first. He did not recognize anyone at the grave except Tanoue and Toshino at this time (R. 624-654).

(36) Prosecution witness Alsobrook testified that Ueda was liked by all the PW's at Cabanatuan, that he went out of his way to help the PW's to get extra food; helped them smuggle mail and medicine into the camp; took the PW's to shows in Manila and did these acts over a period of a year and a half

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and that he had gone out on a bamboo raft to rescue PW's trying to swim from the Oryoko Maru (R. 198-199); Prosecution witness Threatt confirmed this (R. 254). Defense witness Goto, a fellow guard at Cabanatuan, confirmed the above and testified further that the other Japanese guards talked about these acts and that such acts were violations of regulations (R. 559).

(37). It was stipulated that 2000 witnesses could be called to testify as to the good character of the accused Ueda.

4. Errors and Irregularities:

a. The Commission was constituted by proper authority and had jurisdiction of the accused and of the offenses alleged. The special plea of the defense based upon an alleged lack of venue in the Commission to try Aihara on Specification 4; Hattori on Specification 3; Kobayashi on Specification 1; Tanoue on Specification 1; Toshino on Specifications 6, 7, 8, 9, 10, 11, 12 and 13; Ueda on Specification 1; Yoshida on Specification 1; and Wada on Specifications 5, 6, 7, 8, 9, 10 and 11 was properly denied (R. 10, 852).

The objection of the defense to the introduction into evidence of depositions and affidavits, unless the prosecution could show that the deponent or affiant was either dead or too ill to appear, was properly denied (R. 27). The request of the defense that the Commission refuse to accept copies of the prosecution affidavits for independent study by the members thereof was refused by the court (R. 28). The defense contended that the action of the prosecution in effect gave the Commission a "canned case" for study, while the defense was unable to follow suit. The record shows that the prosecution used 91 exhibits and the defense 35; that the prosecution used 18 witnesses who appeared before the court, the defense 21. Under the circumstances of the case the action of the Commission cannot be said to be in error or to have prejudiced the rights of the accused in any way.

At the opening of the trial the defense stated that it had not had sufficient time to translate all of the affidavits to all of the defendants, but that the important parts of the affidavits had been taken up by the defense attorneys with the accused concerned. The offer of the court to have the affidavits interpreted as they were introduced was waived by the defense, it being stated that the monitors for the defense would give the accused a running summary of the evidence which would be sufficient (R. 28, 29, 36, 57). As long as the accused were made aware of the evidence against them, the accused cannot be said to have been prejudiced by the action of the defense attorneys in waiving the translation in open court.

The prosecution presented an affidavit of one Masaji Kurahashi, a Japanese national, stating that the witness had been present for several days outside the courtroom waiting to be called, but could not be found at the time he was desired. Over the objection of defense counsel, the Commission allowed the affidavit to be entered in evidence (R. 452, 453). The action of the Commission was consistent with paragraph 2, Section 1 of the "Rules of Procedure and Outline of Procedure for Trials of accused War Criminals", published by the Eighth Army, dated 5 February 1946. It is noted that the witness was later called to the stand where he was available for cross-examination (R. 507). It is noted that when the Commission convened on 8 April 1947, the defendant Toshino was not present in court. However, at this time the Commission took no action except to adjourn until 9 April 1947 (R. 455). When the Commission met on 9 April 1947, the defendant Toshino was again absent on a plea of sickness (R. 456). The defense was willing to proceed; however the prosecution requested a recess as to Toshino, and this was granted by the Commission (R. 457, 458). The rest of this day's procedure was taken up by the offering of certain affidavits into evidence, and the prosecution rested (R. 461). The defense moved for a finding of not guilty for some of the defendants, not including Toshino; then proceeded to outline its defense, and introduced certain exhibits (R. 470-477) and called one Japanese witness (ex-Colonel Odashima) after which the Commission adjourned (R. 493). The accused Toshino was still absent on 10 April 1947 when the Commission met, and the prosecution moved for a continuance. The Commission

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reserved its decision until 14 April 1947 and adjourned (R. 496). The accused Toshino was still absent on 14 April 1947, and after some argument, the motion of the prosecution was granted until 15 April 1947. On assembling the court on 15 April 1947, Toshino was present when, upon agreement with the defense, the trial proceeded, adjourning at 1225, 15 April 1947 until 0900, 16 April 1947 to give the defense time to acquaint Toshino with the testimony offered in his absence (R. 527). The Commission met on 16 April 1947, and the accused Toshino, by counsel, stated in open court that he was aware of the testimony offered in his absence, and that he and his attorney waived any objections to proceedings conducted in his absence (R. 528). The Commission, at the suggestion of the prosecution, had the remarks interpreted back to the accused Toshino. The actions of the Commission and the prosecution were consistent with a desire to be fair to the accused Toshino, and to protect his rights before the Commission, and he cannot be said to have been prejudiced thereby.

The action of the Commission in denying the motion of the defense for a finding of not guilty for Kobayashi and Yoshida at the close of the prosecution (R. 469), and finding them not guilty at the end of the case (R. 894-895) was not inconsistent. There was evidence that, if believed, might have connected the two with the specifications alleged against them, therefore the denial of the motion was not in error. The motion for a finding of not guilty of Hattori of Specifications 1, 2, and 3 should have been granted for the reasons stated in the defense argument (R. 465-466), but this error was rectified by the later finding of not guilty of the indicated specifications (R. 894). As to Specification 4 against the accused Hattori, there was sufficient evidence for a prima-facie case, and the motion for a finding of not guilty was properly denied. The denial of the defense motion for a finding of not guilty as to the accused Kobayashi at the close of the defense, and before the prosecution had an opportunity to offer rebuttal evidence was proper, as the record discloses the motion was premature (R. 854).

b. There is no evidence that the accused who were found guilty were not sane at the time the alleged acts were committed or at the time of the trial.

c. The accused Tanoue (R. 561), Ueda (R. 624), Aihara (R. 654), Toshino (R. 651), Yoshida (R. 763), Ueda (R. 785), and Hattori (R. 824), took the stand in their own defense. Advisory counsels defended the cases with vigor and have filed motions in the matters of Ueda, Toshino and Aihara that have been considered in this review.

5. Opinion:

a. The record is legally sufficient to support the findings of the Commission, except as hereinafter indicated.

b. Motions supported by briefs, requesting that the findings of the Commission be modified and that the sentence imposed be modified have been submitted on behalf of the accused Toshino, Ueda and Aihara. The prosecution (Mr. Goodman) states that no reply brief will be submitted in this matter. There is merit in some of the contentions of the defense:

c. In General: The charges against the accused Tanoue and Ueda, and Specification 4 against the accused Aihara alleged that the individuals concerned, in conjunction with others, did unlawfully kill some seven named and eight unidentified American P's. The Commission found in all three cases that the killing of the P's was not "willful", thus removing the charge of murder, and substituting a finding of manslaughter (Par. 149, MC, 1928). In all three instances the proof is overwhelming that the three accused participated to a greater or lesser degree in the executions as alleged, and that under SCAP Rules a finding of guilty as charged is the only finding that the Commission could properly make. However, SCAP Rules also provide that where the accused pleads the defense of "superior orders", such plea, if proved, may be taken into consideration when pronouncing sentence. It is believed that in the matter of Tanoue and Ueda, and as to Specification 4 of Aihara, the punishment assessed by the Commission is excessive. The accused Ueda, a private, participated

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because he was ordered to, there is no evidence to show any prior knowledge of the design of his superior officers for killing the P's concerned; and as Mr. Justice Jackson has stated in the Opening Statement of the Nurnberg Case, "A conscripted private on a firing squad cannot expect to hold an inquest on the validity of the execution." The accused Aihara must be judged in the same manner, as the record fails to produce evidence to the contrary. The accused Tanoue is also deserving of clemency. While it is shown that he knew of the executions beforehand, it is equally well proved that he protested the decision of his superiors as much as could be expected, and that his participation was reluctant and against his will. Under these circumstances, and in the absence of sufficient proof to the contrary, it must be considered that Tanoue, Ueda and Aihara were acting under compulsion and without independent "moral choice".

d. (1) As to the accused Ueda: There is ample evidence to support the finding of guilty of the specification and charge and the finding should be approved except for the word "Lieutenant" preceding "Dwight".

(2) As to the accused Hattori: The finding of guilty of Specification 4 should be disapproved. There is no direct evidence against the accused in the record on any allegation of the specification. The evidence is as follows: "men would attempt to steal water from a steam winch on deck; if detected P's would be rapped very soundly with a rifle butt"; that a Formosan guard beat P's Alsobrook and P's Langlois and that the accused at the start of the beating was behind a smokestack 40 or 50 feet away, (but the witness could not say that the accused saw the beating) and that the accused admitted that he had given orders not to let the P's eat contaminated snow. The witness who testified to the beating of himself and Langlois testified that he had never heard of Hattori striking or abusing P's on the whole trip and two other prosecution witnesses testified as to the accused's good conduct on the trip (par. 3b (33) supra). The prosecution has failed to present convincing evidence that the accused either knew or should have known of the beatings as alleged or that he was on duty when such actions took place, and produced no evidence as to the alleged deprivation of drinking water. The evidence of the prosecution witnesses as to the many good deeds and his personal good behavior indicates that he would not tolerate mistreatment of P's by soldiers under his control. This, with the presumption of innocence, clearly shows that the prosecution has failed to prove its case beyond a reasonable doubt.

(3) As to the accused Tanoue: There is ample evidence to support the finding of guilty of the specification and charge and the finding should be approved except for the word "Lieutenant" preceding "Dwight".

(4) As to the accused Aihara:

(a) As to Specification 1: The finding of guilty should be approved as the allegations of the specification were proved beyond a reasonable doubt by both oral testimony and affidavits.

(b) As to Specification 3: The finding of guilty should be disapproved. There is no doubt that the accused Aihara shot at certain P's and that as a result some of the P's were injured and others died. The only question is whether or not the accused was justified in his actions. The law to be applied in this type of case is clear. The article on Homicide, 30 Corpus Juris, pages 42-43, states "a homicide committed by a soldier without malice in the performance of his duty, as where he xxx kills under the order of a superior officer, which does not expressly and clearly show its illegality on its face, is justifiable" (par. 204), and "where a convict tries to escape; or where the circumstances are such as to lead his guard, as a reasonable man, honestly to conclude that the convict is trying to escape and that it is necessary for him to shoot and kill in order to prevent the escape, it is justifiable homicide" (par. 198). In this regard see WCM, 1928, par. 148a. This rule is followed in our own army to the extent that a guard who does not take all the necessary action to stop an escape is tried by court-martial (A" 73). To a military man it is evident that the circumstances on the Oryoko Maru prohibited any action on the guards' part that might result in a loss of control over the P's. Although the evidence offered by the prosecution shows that specific orders were

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issued to the guards to shoot anyone attempting to leave the holds and escape, it is not considered necessary that such orders be proved, as the primary reason for the guards is the control of the PW's and the prevention of their escape. With the above principles in mind, a dispassionate review of the evidence indicates that the prosecution has failed to prove beyond a reasonable doubt that the accused Aihara killed or injured any PW except in the performance of his duty as a guard.

(c) As to Specification 4: The finding of guilty should be approved except for the word "Lieutenant" preceding "Dwight".

(d) As to Specification 5: The finding of guilty should be approved excepting the words "27 December 1944 and 30 January 1945", substituting therefore the words "on or about 13 January 1945", and excepting the words "and 'Brazil Maru'" and the words "and Allied". The only apparent evidence in the record to support this allegation is that the accused Aihara beat some prisoners on board the Enoura Maru on 13 January 1945. There is a great deal of testimony in the record about beatings of PW's on the two ships by "the guards", but no further mention of the accused by name or description during the period specified in the allegation. The Allied PW's had been removed from the Enoura Maru on or about 8 January 1945, and so the words "and Allied" should be stricken from the specification.

(5) As to the accused Wada:

(a) As to Specifications 1, 4, 11, 12, 13, 14 and 15: The findings of guilty of the accused Wada of the named specifications should not be approved. The gist of the offense alleged in each of the said specifications is that the accused caused certain PW's to be abused and mistreated by "neglecting to transmit to his superiors requests" for relief from the unbearable conditions that existed in the various places and at the various times as alleged. He was found not guilty of refusing the requests on his own responsibility or of refusing to transmit the requests to his superiors. There are only two people in the world today who can possibly testify as to the truth or falsity of the allegations, one the accused Wada, and the other his superior Toshino. Wada, testifying in his own behalf denied that he neglected to perform his duty; Toshino, testifying against his own interest, stated that Wada performed his duties, that he (Toshino) knew at all times the conditions and desires of the PW's and that he conferred daily on the Brazil Maru with Wada as to the conditions of the PW's. Lt. Col. Beecher, the senior PW, and as such, their representative, stated that Wada did his duty from a Japanese point of view faithfully, but that he (Beecher) felt that on some occasions Wada failed to transmit his requests. At the most, Wada's duty was as interpreter between Toshino and Beecher, or Beecher's representatives in the other holds (Articles 42, 43 and 44 of the Geneva Convention of 27 July 1929; 47 Stat. 2021), he owed no legal duty to the individual PW undergoing the tortures of the trip. Wada was not in the chain of command and therefore had no command responsibility. Further, if it be conceded that Wada neglected to inform Toshino of each and every request, it is *damnum absque injuria* in that Toshino knew of the conditions that existed at all times and places and alleged, and therefore the fact that the conditions did not improve can only be charged to the failure of Toshino to act and not the alleged failure of Wada to continue to carry the repeated requests for help.

(b) As to Specification 16: The finding of guilty should be approved.

(6) As to the accused Toshino:

(a) As to Specification 1: The finding of guilty should be approved excepting the words "Lieutenant Colonel John P. Adams"; "Lieutenant Colonel Jasper E. Brady, Jr."; Captain "Alter J. Buboltz"; "Lieutenant David L. Coale, III, Major Wade R. Cochran, Major Harold Cogswell, Lieutenant Colonel Francis S. Conaty"; "Captain Eugene Forquer"; "Major John V. King"; "Lieutenant Colonel Howard R. Perry, Jr., Lieutenant Colonel Thomas N. Powell, Sr."; "Major Leslie G. Ross, Major Ralph E. Rumbold, Lieutenant Colonel Norman B. Simmonds"; "Lieutenant Colonel Allen Thayer, Major John W. Turner, Jr., Major Gordon A. Utke, Major Miller P. Warren", and "Lieutenant Colonel John P. Woodbridge".

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The cause of death and the place or time that the deaths occurred of the named individuals cannot be definitely ascertained from the evidence in the record.

(b) As to Specification 3: The finding of guilty should be approved.

(c) As to Specification 5: The finding of guilty should be approved with the following exceptions: "5i. xxx neglecting to restrain military personnel under his command from xxx shooting them." In this regard see paragraph 5d, 4(b) (Aihara) above. The evidence in the record pertaining to this allegation is confusing, to say the least. There is no doubt that the guards shot at PW's who were on the Oryoko Maru and who were swimming away from the ship. There is also no doubt that some of the PW's attempted to escape and that others looted the ship after it was beached. There were about 30 guards to control about 1500-1600 PW's, who were in friendly territory, who could feel the coming liberation in the air and who would have felt no compunction in taking over the ship and escaping to areas held by friendly natives. The ship had been, and still was, under the intermittent bombing of the United States Air Forces. Who can say at this time that the order given to the PW's to stay in the holds on the fear of being shot was illegal or unnecessary? The prosecution failed to prove beyond a reasonable doubt that any shooting was wanton, willful or unlawful, and therefore the finding of the Commission should not be approved.

(d) As to Specification 9: The finding of this specification should be approved, excepting the words "willfully and" and the word "Lieutenant" preceding "Dwight". The evidence is clear that the accused did "order and supervise" his subordinates as alleged, but convincing proof that the act was willful is lacking.

(e) As to Specification 14: The finding of guilty should be approved, except the figure "27" substituting therefore the figure "31". The evidence clearly shows that the PW's were placed on the Brazil Maru against the desire of the ship captain and without giving Toshino a chance to procure extra food and water for them, or to provide for their care while on the ship. Proper authority separated Toshino from the physical control of the PW's, and made it impossible for him to exercise supervision over the Brazil Maru while the ship was enroute to Takao. The evidence fails to show that Toshino was aware of, or could reasonably have found out the conditions on board during the period 27-30 December. To hold a man responsible under conditions where it is not shown that he knew of the alleged conditions, or reasonably could have discovered them or could have taken any action to rectify them if he knew them, is not only unlawful but unreasonable. However, when the ships anchored in Takao harbour, the PW's returned to the control and supervision of Toshino, and he should be held responsible for their mistreatment and abuse.

(f) As to Specification 15: The finding of guilty should be approved except the words "Captain Willibald C. Bianchi, Major Charles J. Browne, Lieutenant Commander Frank A. Davis, Captain Thomas H. Delamore, Captain William N. Foster, Pharmacist's Mate First Class Roland E. Going, Lieutenant Commander Edward R. J. Griffin, Private Orall L. Huling, Lieutenant Earl H. Hulsey, Jr., Private James D. Kittredge, Major James C. Knowles, Lieutenant William F. Lovegreen, Lieutenant Colonel John C. Luikart, Lieutenant Commander Leonard L. Lyons, Jr., Major Andrew J. Mathiesen, Captain Philip H. Meier, Lieutenant Joseph C. Milligan, Captain Gordon R. Myers, Lieutenant James A. Phillips"; "Major Lawrence F. Pritchard, Major Wilfred Rotherham, First Lieutenant Lester A. Schade, First Lieutenant Robin C. M. Swan, Captain Marvin A. Tannehill, Lieutenant Commander Herbert H. Taylor, Lieutenant Chester H. Tucker, Lieutenant Colonel William S. Van Nostrand, Anthony G. Volney, Major Max Weil, Lieutenant Colonel Oliver B. Witten, and First Lieutenant Robin W. Yearsley" and "and Allied". The proof of the cause of death or the time and place of death of the above-named individuals does not conform with that alleged in the specification.

(g) As to Specification 16: The finding of guilty should be approved.

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(h) As to Specification 17: The finding of guilty should be approved except the words "Captain Jack F. Bachelor, Major Daniel J. Barry, Major Howard M. Patson, Lieutenant Colonel John C. Bennett, Captain George T. Breitling;" "Lieutenant Colonel Arthur B. Carlton, Captain Richard E. Cabbery, Captain John W. Clark"; "Captain William M. Cummings": "Lieutenant Colonel Maurice F. Daly, Captain William E. W. Farrell, Captain Stephen R. Franks, Lieutenant Colonel Joseph Ganahl, Major Robert O. Glassburn, Major Horace Greeley" "Lieutenant Colonel Charles I. Humber, Captain Howard Humphreys, Lieutenant Robert H. G. Johnson"; "Captain James Kabakow, Lieutenant Colonel Edwin V. Kerr, Major William J. Latimer, Jr., Lieutenant Colonel Ronald G. MacDonald, Lieutenant Colonel William H. Maverick, Major Winsion R. Maxwell, Major James T. McClellan, Lieutenant Colonel William H. Maguire"; "Captain Lloyd G. Murphy, Major Robert V. Nelson, Lieutenant Colonel Kenneth S. Olson, Lieutenant Colonel Leo C. Paquet, Captain John F. Presnell, Jr., Lieutenant Colonel William L. Robinson, Lieutenant Jay A. Ryan, Lieutenant Colonel Frederick G. Saint, Major Max W. Schaeffer, Lieutenant Abe Schwartz, Captain Otto F. Shamblin"; "Captain Robert F. Tokoly, Captain George J. Treacy"; "Lieutenant Colonel Melvin E. Underwood"; "Captain Cecil R. Welchko, Captain Mathias E. Zeefas" and "and clothing". The cause of death and the time or place of death of the above-named individuals cannot be ascertained beyond a reasonable doubt from the evidence in the record. The prosecution in proving the lack of clothing on this trip proved a prima-facie case, and it then became the burden of the defense to prove that Toshino had done all that was possible to provide the necessary clothing. This he has done, and, as the prosecution has failed to rebut the affirmative evidence presented by the defense, a finding of not guilty should be found on this allegation.

(i) As to Specification 18: The finding of guilty of this specification should be approved excepting the subparagraph referring to clothing for the reasons set out in the preceding paragraph.

6. Recommendations:

a. Requests for clemency have been filed on behalf of the accused Toshino, Wada, and Aihara from members of their families and well-wishers. These have all been read and carefully considered.

b. As to the accused Hattori:

As to Specification 4 and the Charge: It is recommended that the findings of guilty of the specification and the charge be disapproved.

c. As to the accused Ueda:

As to the Specification: It is recommended that the finding of guilty be approved. However, clemency with regard to the sentence is recommended in the instant matter because the accused Ueda was an enlisted man acting under the direct orders of his superiors. While a criminal liability for manslaughter has been established, as he was found guilty of the unlawful but not willful killing of the individual concerned, it is felt that the evidence presented in his favor by the prosecution which indicates that he actively helped the prisoners of war over a long period of time and performed everything in his power to alleviate their conditions justifies the recommendation that the sentence be reduced to three years' confinement at hard labor. In this regard it should be noted that the maximum sentence for involuntary manslaughter, as given in the Manual for Courts-Martial, is three years. In consonance with present policy, due to the length of time the accused Ueda has been in confinement, it is further recommended that four months of the sentence be remitted.

d. As to the accused Tanoue:

As to the Specification: It is recommended that the findings be approved. The evidence produced by the prosecution and the confession of the accused prove beyond a reasonable doubt the criminal responsibility of the accused for the acts alleged, i.e., involuntary manslaughter. Yet the same evidence also irrefutably proves the positive actions taken by the accused to

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get his superiors to rescind the order of death for the prisoners of war. His participation in the crime was reluctant and against his own desires, and upon his return to his permanent station, Tanoue reported to his commanding officer that he had participated in the incident. The Commission, in sentencing the accused to twenty-five years instead of death, evidenced their belief that Tanoue was not morally responsible for his actions, and as a consequence the words "willfully and" have been stricken from the specification and he has been found guilty only of manslaughter. Considering the maximum sentence recommended by the Manual for Courts-Martial for involuntary manslaughter, it is believed that the sentence should be reduced to three years' confinement at hard labor and that in consonance with present policy, due to the length of time Tanoue has been in confinement, that four months of the sentence be remitted.

e. As to accused Wada: It is recommended that the findings of guilty of Specifications 1, 4, 11, 12, 13, 14, and 15 be disapproved. It is further recommended that the findings of guilty of Specification 16 be approved. It is believed that in consideration of the above recommendations, the sentence should be reduced to two years' confinement at hard labor, and that in consonance with present policy, due to the length of time Wada has been in confinement, that seven and one-half months of the sentence be remitted.

f. As to accused Aihara: It is recommended that the finding of guilty of Specification 3 be disapproved. It is further recommended that the findings of guilty of Specifications 1 and 4 be approved; and that only so much of the finding of guilty of Specification 5 as alleges mistreatment of prisoners of war on board the Enoura Maru on or about 13 January 1945 be approved. In view of the above recommendations, it is believed that the sentence should be commuted to confinement at hard labor for seven years, and in consonance with the present policy that ten months thereof be remitted.

g. As to the accused Toshino: It is recommended that the findings as to Specifications 3 and 16 should be approved.

As to Specification 1: It is recommended that only so much of the finding of guilty of this specification be approved as charges willful and unlawful mistreatment, abuse, and causing intense mental and physical suffering, injury, impairment of health and death to Maj. Wesley W. Bertz, Lt. Col. Arden R. Roellner; Maj. Laurence A. Bosworth; Lt. Col. Edward H. Rowes; Lt. Col. John B. Brettell; Maj. James V. Bradley, Paymaster Otis A. Carmichael, Maj. Coleman T. Caruthers, Maj. Howard M. Cavener, Maj. Robert T. Chrisman, Thomas J. Coolidge; Lt. Courtney R. Draper, Lt. Col. Willis H. Drummond, Maj. John Hilosof, Maj. William A. Gay, Maj. John C. Goldtrap, Lt. Shields Goodman, Maj. Robert H. Haggerty, Maj. George B. Hart; Maj. Samuel Heisinger, Chief Pharmacist's Mate Dudley A. Hason, Maj. Richard H. Hill, Maj. Stanley Holmes, Maj. Samuel C. Jones, Maj. Dale J. Kirnee, Lt. Leslie W. King, Maj. Irving R. Mandelson, Lt. Col. Cyril O. Marron, Pharmacist's Mate First Class Richard H. Mayberry, Maj. John S. Miner, Maj. Lloyd C. Moffett, Maj. George A. Mussey, Maj. John Neiger, Maj. Thomas N. Powell, Maj. Charles B. Sneed, Maj. Campbell H. Snyder, Maj. Joseph O. Stensland, Lt. Col. Alvin T. Wilson.

As to Specification 5: Only so much of the finding of guilty of the specification should be approved as charges that the accused willfully and unlawfully mistreated and abused and caused intense mental and physical suffering, temporary insanity, and the impairment of health, injury and death to numerous American and Allied prisoners of war by neglecting and refusing to provide drinking water, adequate ventilation, adequate medical attention, by shooting them, and by neglecting to restrain military personnel under his command from mistreating, abusing, and beating them.

As to Specification 9: Only so much of the finding of guilty should be approved as charges the accused did unlawfully order and supervise his Japanese military subordinates in killing the named and other unidentified prisoners of war by stabbing and decapitating them.

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As to Specification 14: Only so much of the finding of guilty of this specification should be approved as charges that the accused between the dates of 31 December 1944 and 6 January 1945, inclusive, aboard a Japanese Troop Transport, the Brazil Maru, did willfully and unlawfully mistreat, abuse, and cause intense mental and physical suffering, impairment of the health and death to numerous American and Allied prisoners of war by neglecting and refusing to provide adequate food and drinking water.

As to Specification 15: Only so much of the finding of guilty of this specification should be approved as charges the accused did willfully and unlawfully mistreat, abuse, and cause intense mental and physical suffering, injury, impairment of health and death to Commander Warner P. Portz, an American prisoner of war, by neglecting and refusing to provide adequate quarters, food, drinking water, sanitary and hygienic facilities and medical attention.

As to Specification 16: The finding of guilty should be approved.

As to Specification 17: Only so much of the finding of guilty of this specification should be approved as charges that the accused did willfully and unlawfully mistreat, abuse, and cause intense mental and physical suffering, impairment of health and death to Lt. Francis J. Bridgett, George F. Burwell, Lt. Cmdr. James A. Connell, 1st Lt. William T. Cummings, Pharmacist's Mate Burns M. Hogan, Cmdr. Maurice Joses, Pharmacist Jack R. Morgan, Chief Pharmacist's Borris P. Simmons, Pharmacist's Mate Jess Turnipseed, and Cmdr. Ernest M. Wade, American prisoners of war, by neglecting and refusing to provide adequate quarters, food, drinking water, medical attention, and sanitary and hygienic facilities.

As to Specification 18: Only so much of the finding of guilty of the specification should be approved as charges that the accused did willfully and unlawfully mistreat and abuse and cause intense physical and mental suffering, impairment of health, and death to numerous other American prisoners of war by neglecting and refusing to provide adequate quarters, food, drinking water, sanitary and hygienic facilities and medical attention.

The accused Toshino is proved guilty of one specification alleging deliberate killing of a prisoner of war; one specification of unlawfully ordering and supervising his subordinates in the execution of fifteen American prisoners of war; and seven specifications of command responsibility for the death of numerous American and Allied prisoners of war by neglecting to carry out his responsibility to provide the bare necessities of life for the prisoners of war under his care. The evidence taken in its entirety proves beyond a shadow of a doubt that the accused Toshino deliberately neglected and failed to provide the prisoners of war under his care with the means of keeping themselves alive during a period and time of stress and such failure indicates a cold, cruel and inhuman disregard for human life, and therefore, it is recommended that the sentence of death by hanging be approved and the record be forwarded to the Supreme Commander for the Allied Powers for confirmation.

It is finally recommended that in all other respects the motions to amend and set aside the findings and sentences be denied.

7. Action:

Forms of action designed to carry out these recommendations are attached.

WINSTON L. FIELD
Lt. Col. JAGD
Reviewer

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I concur in general with the statements in the foregoing review, except as hereafter mentioned. Certain facts are outstanding as follows:

At the tennis courts, where raw rice was given the prisoners to eat, the guards had cooked rice and fish (R 280). When the prisoners were first embarked on the Oryoko Maru, they were all well enough to have survived a normal voyage (R 350). In the one hold which was not crowded, no deaths occurred (R 399). One hundred tons of water remained on the Brazil Maru upon arrival in Formosa (R 406). On the trip from San Fernando la Union to Formosa, aboard the Brazil Maru, only one Japanese civilian died and that was from injuries (R 418, Ex. 75). On the Brazil Maru there was food left over at its destination and plenty of water (R 514, 518, 519). On previous trips, no troops had died because of overcrowding (R 539). Passengers could get water on the Oryoko Maru (R 540). Captain Toshino says there was plenty of water from San Fernando to Takeo, Formosa (R 711). The ship's captain, Kajiyama, said the use of water was never restricted on the Brazil Maru from San Fernando to Moji (R 865, 866, 878). The holds were dirty and could have been clean (R 868).

WADA denied requests for water and other necessities on the spot, so that it was clearly established that he failed to transmit requests for help, as charged (R 86, 90, 107, 111, 119, 122, 137, 234, 351, 675, 737, 820). Even though Toshino refused some requests for necessities, Wada's arbitrary and willful failure to transmit orders reduced the pressure to act which would have been brought to bear by continued frantic requests. It cannot be said that Toshino might not have eventually succumbed to the pressure, granted additional necessities to the prisoners, and thus have saved lives. The actions of Wada in transmitting requests would therefore not have been futile and his failure to fulfill this duty was not damnum absque injuria as urged by the defense.

AIHARA. The murderous action of Aihara in wantonly and cruelly shooting into the hold jammed with helpless people calls for approval of his conviction. The 2 or 3 prisoners who first mounted the ladder from the hold in an effort to reach the deck were shot from the ladder. Additional shots were fired into the crowd below, without reason or cause, and several were killed. No question of escape appears, as claimed by the defense, to justify this unnecessary killing (See R 120, 171, 183, 185, 203, Ex. 10, p. 2; Ex. 15, p. 3; Ex. 22, p. 2; Ex. 30, p. 4; Ex. 39; Ex. 46, p. 2; Ex. 50).

TANOUE was a Master Sergeant who knew the order to behead sick prisoners at the cemetery near San Fernando was illegal (Ex. 86, p. 5). He had heard the discussion and participated in it, during which he advocated sending the prisoners to a Manila hospital. However, it was decided that the secret murder should be accomplished (Ex. 66). In the Japanese army, as everywhere, an illegal order is invalid (Ex. J, p. 2, 3). An experienced master sergeant may be presumed to have known this. Even if it were a valid order, the penalty for resisting was only 10 years in a locale such as this, where they were not in the face of the enemy (R 884). Therefore, Tanoue may be said to have made the moral choice to participate as the active executioner on his own responsibility (See Ex. 80, p. 8). Strong mitigation, however, is apparent, from the fact that he urged against the execution. Nevertheless, he chose to participate rather than put an order to the test which he knew to be illegal and thus should be held to account for his actions.

UEDA was in a different position from Tanoue. He did not participate in the preliminary discussion and was merely a private soldier ordered to bayonet the sick prisoners. This was an illegal act.

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The defense of superior orders is not valid except in mitigation in War Crimes cases. However, mitigation is strong in a strictly "firing squad" type of action, as this was, with respect to Ueda. Furthermore, it is not established that his "passes" at the two prisoners involved resulted in their death. He is therefore guilty only of an assault against two unidentified prisoners of war. On other occasions he is credited with acts of kindness for which due allowance should be made.

HATTORI was dubbed second in command. His most serious offense was voluntarily and on his own responsibility stopping prisoners from saving their lives by eating snow on the decks (R 835). The flimsy excuse that the snow might be contaminated can mean nothing as a defense because the mere fact that the prisoners were so desperate for water as to try to eat snow must have told Hattori that their need was dire. He then had but to step to a water faucet and satisfy that need. His duty as the person in charge on the spot at the time required such action. The low sentence received is doubtless due to evidence of previous agreeable contacts with prisoners on other occasions (R 246, 254).

The facts, established compellingly by the evidence in this tragic and shocking tale of human depravity and bestiality, are such as have rarely been set out in history, or indeed, in fiction. The wanton intentional cruelty of the Army captain, Toshino, his interpreter and actually right-hand man, Wada, the bitterly cruel and vicious Formosa-raised Aihara, write a chapter in human relations which attains a new high in barbarity. Persons against whom such acts are proved would be meted out the most severe punishment available in any land and before any court.

The sentences of death by hanging as to Toshino and Aihara should be approved but execution withheld pending confirmation by the Supreme Commander for the Allied Powers.

The sentence of life imprisonment at hard labor in the case of Wada is deemed inadequate but should be approved and ordered executed.

The sentence of 25 years in the case of Tanoue should be reduced to 10 years, in view of the facts previously related.

The sentence of 20 years in the case of Ueda should be reduced to 3 years and the further execution thereof suspended, in view of certain acts of kindness to prisoners, as mentioned in evidence.

The sentence of 10 years in the case of Hattori should be approved and ordered executed.

Proposed actions to implement these recommendations are attached.

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

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