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

Yokohama, Japan
4 April 1949

UNITED STATES OF AMERICA VS NAKAKICHI ASOMA
UNITED STATES OF AMERICA VS MASAMORI NISHI
UNITED STATES OF AMERICA VS CHIKAYOSHI SUGETA
UNITED STATES OF AMERICA VS TOSHIHIRO OBARA
UNITED STATES OF AMERICA VS JAMES K. SASAKI
UNITED STATES OF AMERICA VS BUNICHI MORI
UNITED STATES OF AMERICA VS SASHIZO YOKURA

Review of the Staff Judge Advocate

1. The attached record of trial of the case of Nakakichi Asoma, Masamori Nishi, Chikayoshi Sugeta, Toshihiro Obara, James K. Sasaki, Bunichi Mori and Sashizo Yokura, at Yokohama, Japan, tried from 3 March 1948 to 30 April 1948, by a Military Commission appointed by paragraph 3, Special Orders No. 46, Headquarters Eighth Army, United States Army, APO 343, dated 27 February 1948, as amended by paragraph 2, Special Orders No. 58, same Headquarters dated 12 March 1948, as further amended by paragraph 1, Special Orders No. 75, same Headquarters dated 1 April 1948, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Nakakichi Asom
AGE: 26
RESIDENCE: 670-2 Oaza Sasakubo, Wado
Village, South Saitama, Saitama
Prefecture.
MARITAL STATUS: Married
RELATIVES: One child, wife, three
sisters
EDUCATION: Graduate of primary
school
VOCATION: Agriculture
MILITARY CAREER: 10 January 1943 to
28 August 1948, Seaman, Japanese
Imperial Navy.

DATE OF CONFINEMENT: 2 February 1946
DATE OF ARRAIGNMENT: 3 March 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 3 March 1948 to
30 April 1948
DATE OF SENTENCE: 30 April 1948
SENTENCE: CHL for twelve (12) years
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Masamori Nishi
AGE: 24
RESIDENCE: 1381 Nakano, Kuroiwa mura,
Takaoka Gun, Kochiken
MARITAL STATUS: Single
RELATIVES: Father, mother, three
brothers
EDUCATION: Middle school
VOCATION: Farming
MILITARY CAREER: 1 May 1943 to 24
August 1945, Seaman, Japanese
Imperial Navy.

DATE OF CONFINEMENT: 26 April 1946
DATE OF ARRAIGNMENT: 3 March 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 3 March 1948 to 30
April 1948
DATE OF SENTENCE: 30 April 1948
SENTENCE: CHL for fifteen (15)
years
CLEMENCY RECOMMENDED BY COM-
MISSION: No

Indicted
NAME: Chikayoshi Sugota
AGE: 21
RESIDENCE: 928 Goten cho, 1 Chome,
Kasugi, Kawasaki-shi, Kanagawa
Prefecture
MARITAL STATUS: Single
RELATIVES: Father, mother, sister
EDUCATION: Primary school
VOCATION: Student
MILITARY CAREER: 1 May 1943 to 25
August 1945, Seaman, Japanese
Imperial Navy.

DATE OF CONFINEMENT: 1 April 1946
DATE OF ARRAIGNMENT: 3 March 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 3 March 1948 to 30
April 1948
DATE OF SENTENCE: 30 April 1948
SENTENCE: CHL for ten (10) years
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Toshihiro Obara
AGE: 24
RESIDENCE: Kami Nakagaya, Meisei mura,
Minami Azumi Gun, Nagano Prefecture
MARITAL STATUS: Married
RELATIVES: Mother, wife
EDUCATION: Elementary school - eight
years, agriculture school - two
years
VOCATION: Farming
MILITARY CAREER: 1 May 1943 to 1
September 1945, Seaman, Japanese
Imperial Navy.

DATE OF CONFINEMENT: 28 February 1947
DATE OF ARRAIGNMENT: 3 March 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 3 March 1948 to 30
April 1948
DATE OF SENTENCE: 30 April 1948
SENTENCE: CHL for five (5) years.
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: James K. Sasaki
AGE: 49
RESIDENCE: Not shown
MARITAL STATUS: Married
RELATIVES: Two children (12 and 13),
father, mother, one brother, one
sister
EDUCATION: Graduate of University of
Southern California
VOCATION: Social worker
MILITARY CAREER: None - Civilian
Interpreter for the Japanese Naval
General Staff

DATE OF CONFINEMENT: 7 December 1945
DATE OF ARRAIGNMENT: 3 March 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 3 March 1948 to 30
April 1948
DATE OF SENTENCE: 30 April 1948
SENTENCE: CHL for eighteen (18) years
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Bunichi Mori
AGE: 26
RESIDENCE: Senzu Kami, Kawane Mura
Haibara Gun, Shizuoka Prefecture
MARITAL STATUS: Single
RELATIVES: Father, 2 brothers
EDUCATION: Higher elementary school
VOCATION: Farming
MILITARY CAREER: 15 May 1944 to 25
August 1945, Seaman, Japanese
Imperial Navy

DATE OF CONFINEMENT: 30 March 1946
DATE OF ARRAIGNMENT: 3 March 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 3 March 1948 to 30
April 1948
DATE OF SENTENCE: 30 April 1948
SENTENCE: CHL for eight (8) years
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Sashizo Yokura
AGE: 39
RESIDENCE: *232, 4 Chome, Kamicshaki,
Shinagawa, Tokyo
MARITAL STATUS: Married
RELATIVES: 3 children, mother
EDUCATION: Graduate Japanese Naval
Academy
VOCATION: Naval Officer
MILITARY CAREER: 1 April 1927 to
14 August 1945, Commander, Japanese
Imperial Navy

DATE OF CONFINEMENT: 19 February 1948
DATE OF ARRAIGNMENT: 3 March 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 3 March 1948 to
30 April 1948
DATE OF SENTENCE: 30 April 1948
SENTENCE: CHL for twenty-five (25) years
CLEMENCY RECOMMENDED BY COMMISSION: No

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

<u>Charges and Specifications:</u>	<u>Pleas:</u>	<u>Findings:</u>	<u>Legally Sustained:</u>
<u>ASOMA</u>			
Charge: Accused, 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	G	Yes
Sp 1: At divers times between about 1 October 1944 and 28 March 1945, the accused, with others, did willfully and unlawfully mistreat Norman Emil, an American PW, by beating and otherwise abusing him, thereby contributing to his death on or about 10 March 1945 (As amended, R 6).	NG	G	Yes
Sp 2: At divers times between 1 December 1944 and 1 September 1945, the accused did willfully and unlawfully mistreat W. H. Walker, an American PW, by beating and otherwise abusing him, thereby contributing to his death on or about 3 September 1945 (As amended, R 6).	NG	G	Yes
Sp 3: Between 1 June 1944 and 8 June 1944, the accused did willfully and unlawfully mistreat Ernest P. Peschau, an American PW, by beating and otherwise abusing him, thereby contributing to his death on 8 June 1944.	NG	NG	- -
Sp 4: Between 1 July 1945 and 2 August 1945, the accused did willfully and unlawfully mistreat William Zimmer, an American PW, by beating and otherwise abusing him, thereby contributing to his death on 2 August 1945.		Nolle Prosequi (R 6)	

Not Guilty

Sp 5: On or about 6 November 1944, the accused, with others, did willfully and unlawfully mistreat and abuse John A. Fitzgerald, Daniel T. Galvin, George E. Brown, William F. Harris, Oscar D. Long, George C. Bullard, Charles Kaufman and Glenn McConnell, American Prisoners of War, by beating them.	NG	G	Yes
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Sp 6: Between 1 September 1944 and 28 February 1945, the accused did willfully and unlawfully misappropriate Red Cross supplies and rations intended for the use and benefit of Allied Prisoners of War.		Nolle Prosequi --- (R 6)	
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Sp 7: In or about July 1944, the accused did willfully and unlawfully mistreat and abuse A. Holman, an American Prisoner of War, by beating him with fists.	NG	NG	---
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Sp 8: At divers times between 1 July 1944 and 1 September 1945, the accused did willfully and unlawfully mistreat numerous American and Allied Prisoners of War by beating and otherwise abusing them.	NG	G	Yes
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NISHI

Charge: Accused, during a time of war between the United States of America, its Allies and Dependencies, did violate the Laws and Customs of War.	NG	G	Yes
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Sp 1: Between about 1 November 1944 and 1 April 1945, the accused, with others, did willfully and unlawfully mistreat Kenneth Flynn, an American Prisoner of War, by beating and otherwise abusing him (as amended, R 7).	NG	G	Yes
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Sp 2: At divers times between 1 November 1944 and 1 April 1945, the accused, with others, did willfully and unlawfully mistreat and abuse Arthur Gill, an American Prisoner of War, by beating him, thereby contributing to his death on 5 July 1945 (as amended, R 7).	NG	G, except the words: "thereby contributing to his death on 5 July 1945". Of the excepted words, Not Guilty.	Yes
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Sp 3: At divers times between about 1 November 1944 and 10 March 1945, the accused, with others, did willfully and unlawfully mistreat Norman Emil, an American Prisoner of War, by beating and otherwise abusing him, thereby contributing to his death on or about 10 March 1945 (as amended, R 7).	NG	G	Yes
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Sp 4: At divers times between 1 December 1944 and 1 April 1945, the accused did willfully and unlawfully mistreat W. H. Walker, an American Prisoner of War by beating and otherwise abusing him, thereby contributing to his death on 3 September 1945 (as amended, R 7).	NG	G	Yes
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Sp 5: At divers times between 18 October 1944 and 26 December 1944, the accused did willfully and unlawfully mistreat and torture John A. Fisher, an American Prisoner of War, by pouring hot water on him and by kicking, beating and otherwise abusing him.	NG	G	Yes
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Sp 6: On or about 24 December 1944, the accused did willfully and unlawfully mistreat and abuse one Lieutenant Douglas and one Seaman Robinson, Allied Prisoners of War, by beating them.	NG	G	Yes
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Sp 7: On or about 6 November 1944, the accused, with others, did willfully and unlawfully mistreat and abuse John A. Fitzgerald, Daniel T. Galvin, George E. Brown, William F. Harris, Oscar D. Long, George C. Bullard, Charles Kaufman and Glenn McConnel, American Prisoners of War, by beating them.	NG	G	Yes
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Sp 8: At divers times between 7 October 1944 and 26 December 1944, the accused did willfully and unlawfully mistreat and abuse Irving S. Newman, an American Prisoner of War, by beating him.	NG	G	Yes
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Sp 9: At divers times between 1 October 1944 and 30 August 1945, the accused did willfully and unlawfully mistreat numerous American and Allied Prisoners of War by kicking them; by beating them with clubs and other weapons; and by otherwise abusing them.	NG	G	Yes
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SUGETA

Charge: Accused, 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	G	Yes
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Sp 1: Between about 1 November 1944 and 1 April 1945, the accused did willfully and unlawfully mistreat and abuse Arthur Gill, an American Prisoner of War, by beating him, thereby contributing to his death on 5 July 1945 (as amended, R 14).	NG	NG	---
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Sp 2: At divers times between about 1 November 1944 and 10 March 1945, the accused did willfully and unlawfully mistreat Norman Emil, an American Prisoner of War, by beating and otherwise abusing him, thereby contributing to his death on or about 10 March 1945 (as amended, R 6). NG G Yes

Sp 3: At divers times between 1 January 1945 and 23 August 1945, the accused did willfully and unlawfully mistreat Kenneth Flynn, an American Prisoner of War, by beating and otherwise abusing him (as amended, R 544). NG G Yes

Sp 4: At divers times between 17 October 1944 and 26 December 1944, the accused did willfully and unlawfully mistreat and torture John A. Fisher, an American Prisoner of War, by beating him, by rubbing a jointed bamboo stick across his clipped head, by pouring hot water on him, by forcing him to assume painful and unnatural postures for long periods of time, by burning him and by otherwise abusing him. NG G Yes

Sp 5: On or about 6 November 1944, the accused, with others, did willfully and unlawfully mistreat and abuse John A. Fitzgerald, Daniel T. Galvin, George F. Brown, William F. Harris, Oscar D. Long, George C. Bullard, Charles Kaufman and Glenn McConnel, American Prisoners of War, by beating them. NG NG ---

Sp 6: Between about 1 December 1944 and 31 January 1945, the accused did willfully and unlawfully mistreat and abuse G. G. Johnson, an American Prisoner of War, by beating him. NG G Yes

Sp 7: At divers times between 1 August 1944 and 31 March 1945, the accused did willfully and unlawfully mistreat and torture numerous American and Allied Prisoners of War by beating, kicking and otherwise abusing them. NG G Yes

OBARA:

Charge: Accused, 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 G Yes

Sp 1: At divers times between about 1 November 1944 and 10 March 1945, the accused did willfully and unlawfully mistreat Norman Emil, an American Prisoner of War, by beating NG G Yes

and otherwise abusing him, thereby contributing to his death on or about 10 March 1945.

Sp 2: Between 1 November 1944 and 31 April 1945, the accused did willfully and unlawfully mistreat and abuse Arthur Gill, an American Prisoner of War, by beating him, thereby contributing to his death on or about 5 July 1945. NG

G, Yes
except the words
"thereby contributing
to his death on or
about 5 July 1945".
Of the excepted
words, Not Guilty.

Sp 3: Between 1 November 1944 and 31 April 1945, the accused did willfully and unlawfully mistreat Frederick Flynn, an American Prisoner of War, by beating and otherwise abusing him (as amended, R 6). NG

NG

Sp 4: On or about 25 December 1944, the accused did willfully and unlawfully mistreat Richard Hunt, an American Prisoner of War, by beating him, thereby contributing to his death on or about 25 February 1945.

Nolle Prosequi
(R 6)

Sp 5: Between 1 November 1944 and 31 March 1945, the accused did willfully and unlawfully mistreat H. A. Walker, an American Prisoner of War, by beating and otherwise abusing him, thereby contributing to his death on or about 4 September 1945. NG

G

Yes

Sp 6: Between about 1 April and 10 April 1945, the accused did willfully and unlawfully mistreat numerous unidentified American and Allied Prisoners of War by beating them; by forcing them to maintain painful postures for a long period of time; by forcing them to stand at attention for a long period of time; and by otherwise abusing them. NG

NG

Sp 7: On numerous occasions between about 1 November 1944 and 31 July 1945, the accused did willfully and unlawfully mistreat, torture, abuse and beat numerous American and Allied Prisoners of War. NG

G

Yes

SASAKI

Charge: Accused, 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

G

No

Sp 1: On or about 1 January 1945, the accused, then a member of the 3rd Division, 5th Section, Japanese Naval General Staff, did willfully and unlawfully mistreat H. A. Walker, NG

G,

No

as amended by
adding after the
word "thereby" the
words "with others".

an American Prisoner of War, by ordering and causing Japanese personnel of said Camp to beat and mistreat him, which order was executed on or about 1 January 1945, thereby causing his death on 4 September 1945 (as amended, R 9).

Sp 2: On or about November 1, 1943, the accused, then a member of the 3rd Division, 5th Section, Japanese Naval General Staff, while conducting an interrogation of David J. Andrews, an American Prisoner of War, did willfully and unlawfully threaten said Andrews with unpleasant or disadvantageous treatment, and did willfully and unlawfully order, cause and knowingly permit Japanese personnel of said Camp to mistreat and torture said Andrews by beating him with clubs and otherwise abusing him.

NG

NG

Sp 3: Between about 1 June 1943 to 1 September 1945, the accused, then an interpreter and interrogator with the 3rd Division, 5th Section, Japanese Naval General Staff, did willfully and unlawfully threaten numerous American and Allied Prisoners of War with unpleasant or disadvantageous treatment, and did willfully and unlawfully order, cause and knowingly permit Japanese personnel of said Camp to mistreat, torture and abuse numerous American and Allied Prisoners of War.

NG

G

No

MORI

Charge: Accused, 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

G

Yes

Sp 1: Between about 1 December 1944 and 31 April 1945, the accused did willfully and unlawfully mistreat W. H. Walker, an American Prisoner of War, by beating and otherwise abusing him, thereby contributing to his death on or about 3 September 1945 (as amended, R 6).

NG

G

Yes

Sp 2: Between 1 December 1944 and 31 December 1944, the accused did willfully and unlawfully mistreat Kenneth Flinn, an American Prisoner of War, by beating and otherwise abusing him.

NG

NG

Sp 3: At divers times between 1 November 1944 and 10 March 1945, the accused did willfully and unlawfully mistreat Norman Imol, an American Prisoner of War, by beating and otherwise abusing him, thereby contributing to his death on or about 10 March 1945 (as amended, R 6).

NG

G

Yes

Sp 4: At divers times between 1 November 1944 and 1 September 1945, the accused, did willfully and unlawfully mistreat, torture and abuse numerous American and Allied Prisoners of War by forcing a toothbrush through their tightly joined fingers, thereby injuring said fingers.

NG

G

Yes

Sp 5: At divers times between 1 November 1944 and 1 September 1945, the accused, did willfully and unlawfully misappropriate Red Cross supplies intended for the use and benefit of American Prisoners of War.

Nolle Prosequi
(R 6)

Sp 6: On or about 2 April 1945, the accused, with others, did willfully and unlawfully mistreat and torture numerous American Prisoners of War by forcing them to do arduous exercises for a long period of time, and by beating and otherwise abusing them.

NG

NG

Sp 7: At divers times between 1 November 1944 and 1 September 1945, the accused, did willfully and unlawfully mistreat and torture numerous American Prisoners of War by pouring hot water on them, by beating them, by refusing them water for long periods of time, by refusing to allow them to relieve themselves and by otherwise abusing them.

NG

G

Yes

YOKURA

Charge: Accused, 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

G

No

Sp 1: Between about 27 December 1944 and 30 August 1945, the accused, a Commander in the Imperial Japanese Navy and an Interrogation Officer of the 5th Section, 3rd Division of the Japanese Naval General Staff, Intelligence Division, did willfully and unlawfully cause, order and permit Japanese personnel on duty in said Camp to mistreat, abuse and torture William H. Walker, an American Prisoner of War, thereby with others causing the death of said William H. Walker on 30 August 1945.

NG

G

No

Sp 2: Between 25 January 1945 and on or about 25 February 1945, the accused, a Commander in the Imperial Japanese Navy and an Interrogation Officer of the 5th Section, 3rd Division of the Japanese Naval General Staff, Intelligence Division, did unlawfully prevent American and Allied Prisoners of War to aid and assist in the care of

NG

NG

Richard Hunt, a sick American Prisoner of War at said Camp, who by reason of physical disability was unable to feed and care for himself and who was not fed or cared for by other personnel, thereby contributing to his death on or about 25 February 1945.

Sp 3: Between 1 September 1943 and 1 September 1945, the accused, a Commander in the Imperial Japanese Navy and an Interrogation Officer of the 5th Section, 3rd Division of the Japanese Naval General Staff, Intelligence Division, did willfully and unlawfully cause, order and permit the Japanese personnel on duty in said camp to mistreat, abuse and torture numerous American and Allied Prisoners of War.

NG

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3. Summary of the Evidence:

a. For the Prosecution:

ASOMA:

As to Specification 1: Between 1 October 1944 and 28 March 1945, at Ofuna PW Camp, Honshu, Japan, the accused, a guard at said camp, did willfully and unlawfully mistreat Norman Emil, an American PW, by beating and otherwise abusing him, thereby contributing to his death on or about 10 March 1945.

PW Emo (Emil) who was swabbing down the deck was beaten so severely by Asoma, Nishi, Obara and Sugeta that he was rendered unconscious and paralyzed from the waist down. The victim was beaten with clubs about the size of a baseball bat. After about three weeks of regular beatings the PW died (Ex 1). From Thanksgiving until January 1945, Asoma was one of the guards who beat Emil almost constantly with a club the size of a baseball bat (Ex 10). On the morning of 9 March 1945, Asoma, Nishi, Sugeta and Obara were feeling particularly nasty. They took PW Emil from his cell and made him swab the deck (Kampan soji). After two trips he collapsed and lost consciousness due to numerous beatings. He was picked up and bodily thrown into his cell and died the next day (Ex 79). (Also see Ex 8, 14, 22, 73, 86 and R 232).

As to Specification 2: At divers times between 1 December 1944 and 1 September 1945, at Ofuna PW Camp, Honshu, Japan, the accused did willfully and unlawfully mistreat W. H. Walker, an American PW, by beating and otherwise abusing him, thereby contributing to his death on or about 3 September 1945. On or about 1 January 1945, Walker was forced to do kampan soji for about one or two hours by Asoma, Nishi, Sugeta, Obara and Mori. During this ordeal Walker was beaten many times and was knocked unconscious at least once. When he was returned to his cell he was a beaten and broken man (R 233). Walker was beaten on many occasions by the accused because he would not disclose military information (R 476). Walker died on 30 August 1945 (Ex 125).

As to Specification 3: Not Guilty.

As to Specification 4: Nolle Prosequi (R 6).

As to Specification 5: On or about 6 November 1944, at Ofuna PW Camp, Honshu, Japan, the accused did unlawfully and willfully mistreat and abuse

Selected

John A. Fitzgerald, Daniel T. Galvin, George E. Brown, William F. Harris, Oscar D. Long, George C. Bullard, Charles Kaufman and Glenn McConnell, American PW's, by beating them. The victims were beaten because they did not bow deep enough to the guards and had not been showing them proper respect. The PW's were forced to stand at attention with their arms extended over their heads and they were beaten with baseball bats by Asoma, Nieshi (Nishi), and Sageta until the guards were exhausted (Ex 1). Lt. Commander Fitzgerald was administered twenty-seven (27) blows and was out on his feet about half way through this torture when he was knocked to the ground (Ex 8). Both Harris and McConnell were knocked unconscious and all the victims remained black and blue for fully two weeks (Ex 48). (Also see Ex 54, 58 and R 78).

As to Specification 6: Nolle Prosequi (R 6).

As to Specification 7: Not Guilty.

As to Specification 8: At divers times between 1 July 1944 and 1 September 1945, at Ofuna PW Camp, Honshu, Japan, the accused did willfully and unlawfully mistreat numerous American and Allied PW's by beating and otherwise abusing them. The accused beat Allied PW's day after day. He took great delight in administering these beatings, both with his fists and with a wooden club the size of a baseball bat. He took pride and delight in administering any so-called punishment, humiliation or belittlement (Ex 6). Asoma enforced kampan soji and took a hand in the beatings (Ex 47). The PW's would beg the guards to let them quit but they were only beaten more. Asoma, Nishi, Sugeta and Obara were the ones who seemed to enjoy this very much (Ex 79). (Also see Ex 4, 5, 11, 14, 25). The accused also hit and knocked PW Johnston down for failing to take off his shoes before he entered his cell (R 194).

NISHI:

As to Specification 1: Between 1 November 1944 and 1 April 1945, at Ofuna PW Camp, Honshu, Japan, the accused, a guard at said camp, with others, did willfully and unlawfully mistreat Kenneth Flynn, an American PW by beating and otherwise abusing him.

Flynn was in solitary confinement and on one occasion the accused and Obara beat him (Ex 1). In February 1945, the accused caught Flynn talking loud enough for the person in the next cell to hear. He entered Flynn's cell and beat him with a bat 3½" in diameter and 3' long about ten times, slugged him with his fists, then hit him with the sole of rubber tennis shoes and made him stand at attention without clothes for approximately four (4) hours (Ex 14, 22). On one occasion when Flynn was returning from a bath the accused contended that Flynn was talking and as punishment beat him with his fists and made him stand at attention for over an hour (R 474). The accused also beat Flynn during kampan soji (R 491).

As to Specification 2: At divers times between 1 November 1944 and 1 April 1945, at Ofuna PW Camp, Honshu, Japan, the accused did willfully and unlawfully mistreat and abuse Arthur Gill, an American PW, by beating him, thereby contributing to his death on 5 July 1945. Gill, a corporal in the Army was a model prisoner and was seldom bothered by the guards because he was so small in stature, being only about five feet two inches in height. One night about the first of May 1945, Nishi and Sugeta entered Gill's cell and severely beat him as he lay on his blankets. Gill was injured internally by the beating and was never able to digest his food thereafter (Ex 79). (Also see Ex 56). PW Gill died at Omori PW Camp on 5 July 1945 (Ex 120).

As to Specification 3: At divers times between 1 November 1944 and 10 March 1945, at Ofuna PW Camp, Honshu, Japan, the accused did willfully and unlawfully mistreat Norman Emil, an American PW, by beating and otherwise abusing him, thereby contributing to his death on or about 10 March 1945. (See Specification 1, Asoma, *supra*). The accused would visit Emil's cell on numerous occasions and severely beat him with a club, throw water into his blanket, deprive him of the privilege of going to the toilet, slug and thump him on the head and make him stand in the cold with the window and door open

(R 214). The accused severely beat PW Emil with a club because his benjo box leaked; on another occasion the accused savagely punched and knocked down Emil for an incident connected with the camp barber and on another occasion the accused deprived Emil of his rice because he was accused of looking at another prisoner (R 477). He gave Emil a particularly vicious beating while forcing him to do kampan soji on Christmas or New Year's Eve (R 491).

As to Specification 4: At divers times between 1 December 1944 and 1 April 1945, at Ofuna PW Camp, Honshu, Japan, the accused did willfully and unlawfully mistreat W. H. Walker, an American PW, by beating and otherwise abusing him, thereby contributing to his death on 3 September 1945. On numerous occasions the accused would go into the PW's room and severely beat him with a club the size of a baseball bat, pour water on him and on his blanket, open the window and make him stand at attention in the nude for long periods of time (R 208). Shortly after Walker arrived in Ofuna the accused severely beat him, hitting him at least twenty (20) times with his fists and knocked him down several times (R 474). Also the accused beat Walker on many other occasions because he would not disclose military information to the Japanese Intelligence (R 476). He also beat Walker during kampan soji (R 491).

As to Specification 5: At divers times between 18 October 1944 and 26 December 1944, at Ofuna PW Camp, Honshu, Japan, the accused did willfully and unlawfully mistreat and torture John A. Fisher, an American PW by pouring hot water on him, and by kicking, beating and otherwise abusing him. Nishi, Sugeta, Obara and Mori seemed to get particular delight in having the PW's in solitary confinement hold their cups with both hands and ask for water. On one occasion Nishi was pouring hot water over the hands of PW Fisher and when he could no longer stand it Fisher dropped his cup. The accused then kicked him and beat him about the head and face for about five minutes. Nishi claimed Fisher threw a cup of water on him and used this as an excuse to beat him for about the next two weeks (Ex 1). Fisher states in his affidavit that the accused would beat him for the slightest reason and if there wasn't one he would create his own (Ex 47). Accused would also burn the victim with cigarettes and make him stand in the cold in the nude for periods of thirty minutes to an hour (R 205). Accused would also strike Fisher with a baseball bat as hard as he could during kampan soji (R 212). He beat Fisher on numerous occasions and would burn him with boiling water (R 472).

As to Specification 6: On or about 24 December 1944, at Ofuna PW Camp, Honshu, Japan, the accused did willfully and unlawfully mistreat and abuse Lt. Douglas and Seaman Robinson, Allied PW's by beating them. British PW's Douglas and Robinson were severely beaten by the accused with a baseball bat, each receiving fifteen full swings across the legs and back. They were black and blue and lame from this beating two weeks later (Ex 8).

As to Specification 7: On or about 6 November 1944, at Ofuna PW Camp, Honshu, Japan, the accused did willfully and unlawfully mistreat and abuse John A. Fitzgerald, Daniel T. Galvin, George E. Brown, William F. Harris, Oscar D. Long, George C. Bullard, Charles Kaufman, and Glenn McConnell, American PW's, by beating them. (See Specification 5, Asoma, supra).

As to Specification 8: At divers times between 7 October and 26 December 1944, at Ofuna PW Camp, Honshu, Japan, the accused did willfully and unlawfully mistreat and abuse Irving S. Newman, an American PW, by beating him. The PW was beaten by the accused with a wooden club approximately three feet long from two to three times a week. These beatings would sometimes occur in the afternoon but more often in the middle of the night when the victim was asleep (Ex 18).

As to Specification 9: At divers times between 1 October 1944 and 30 August 1945, at Ofuna PW Camp, Honshu, Japan, the accused did willfully and unlawfully mistreat numerous American and Allied PW's by kicking them; beating them with clubs and other weapons and otherwise abusing them. Nishi had a mean streak in him and would beat the PW's on his own volition as well

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as on orders from higher authority. The accused had a habit of thrusting a tooth brush between two fingers of a PW and then squeeze the hand so hard that the PW lost the use of his hand for about an hour. This usually occurred at mealtime. When the PW asked for a drink of water, it was Nishi's trick to bring a cup of scalding hot water, which he would spill on the PW, burning him, then the water would cool and freeze. Also the accused would awaken PW's in the night, take their blankets from them and make them stand in the cold for varied periods of time (Ex 22). He would also take their food away and dump it on the floor to torment and starve them (Ex 47). (Also see Ex 54, 58, 73, 86, 88). Accused beat PW Godwin on the head because he was slow in returning to his cell during an air raid (R 76). Accused struck PW Balch a number of times while doing kampan soji (R 103). The accused beat PW O'Gara on numerous occasions (R 467). He would also punch PW Carmichael around and run a bamboo stick across his shaved head until welts were raised (R 471).

SUGETA:

As to Specification 1: Not Guilty.

As to Specification 2: At divers times between 1 November 1944 and 10 March 1945, at Ofuna PW Camp, Honshu, Japan, the accused, a guard at said camp, did willfully and unlawfully mistreat Norman Emil, an American PW, by beating and otherwise abusing him, thereby contributing to his death on or about 10 March 1945. (See Specification 1, Asoma, supra). The accused would also enter Emil's cell and severely beat him with a baseball bat (R 215). On numerous occasions the accused beat Emil (R 485, 493).

As to Specification 3: At divers times between 1 January and 23 August 1945, at Ofuna PW Camp, Honshu, Japan, the accused did willfully and unlawfully mistreat Kenneth Flynn, an American PW, by beating and otherwise abusing him. On one occasion accused beat Flynn 26 times with a bat $3\frac{1}{2}$ " in diameter and 3' in length for refusing Sugeta the prunes from his Red Cross box. Accused also put a tooth brush handle between each one of Flynn's fingers and then squeezed his hand as hard as he possibly could. Sugeta also poured hot water over Flynn's hands (Ex 14).

As to Specification 4: At divers times between 17 October and 26 December 1944, at Ofuna PW Camp, Honshu, Japan, the accused did willfully and unlawfully mistreat and torture John A. Fisher, an American PW, by beating him, by rubbing a jointed bamboo stick across his clipped head, by pouring hot water on him, by forcing him to assume painful and unnatural positions for long periods of time, by burning him and by otherwise abusing him. The accused beat Fisher every evening. Usually the clubs that were used were approximately 2" thick and were cut from limbs of trees. Sugeta had a bamboo stick with five (5) joints which he would rub across Fisher's clipped head until bumps were raised. This treatment occurred at least twenty times while Fisher was confined at Ofuna. Another form of torture Fisher was forced to undergo by the accused was to bend his knees to a half bend, raise his arms straight above his head, and stay in this position anywhere from five (5) to fifteen (15) minutes at a time (Ex 46). The accused threatened Fisher's life with a bayonet and pistol and also beat him with his bayonet (Ex 47). (Also see Ex 59; R 214, 484).

As to Specification 6: Between 1 December 1944 and 31 January 1945, the accused did willfully and unlawfully mistreat and abuse G. G. Johnson, an American PW, by beating him. PW Johnson described the accused as one of the worst of the guards and stated that during the period in question the accused severely beat him with a wooden club as he was returning from the latrine about 2:00 o'clock in the afternoon. Also the accused beat him on many other occasions and particularly at night thereby preventing him from resting (Ex 41; R 207). Accused would come into his cell and beat him across the ankles, legs, hips, thump him on the forehead and nose and kick him while he was in his blanket (R 215). Accused would also beat him while he was doing kampan soji (R 218).

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As to Specification 7: At divers times between 1 August 1944 and 31 March 1945, the accused did willfully and unlawfully mistreat and torture numerous American and Allied PW's by beating, kicking and otherwise abusing them (Ex 1, 6, 14, 25, 27, 54, 59, 61, 73, 79, 85, 91). Accused hit PW Balch in the face with his fists and chipped one of his teeth for not closing the door to the latrine (R 101). Accused also struck Balch with a stick while the PW did kampan soji (R 102). The accused beat and kicked PW O'Gara because his towel was hanging out of the window of his cell. The accused beat PW Schott on at least four (4) occasions (R 481). The accused also practiced wrestling on PW Carmichael. He would throw him heavily to the floor and beat him with a thin bamboo stick (R 483).

OBARA:

As to Specification 1: At divers times between 1 November 1944 and 10 March 1945, at Ofuna PW Camp, Honshu, Japan, the accused, a guard at said camp, did willfully and unlawfully mistreat Norman Emil, an American PW, by beating and otherwise abusing him, thereby contributing to his death on 10 March 1945. (See Specification 1, Asoma, Supra.)

As to Specification 2: Between 1 November 1944 and 31 April 1945, the accused did willfully and unlawfully mistreat and abuse Arthur Gill, an American PW, by beating him, thereby contributing to his death on or about 5 July 1945. Around March 1945, the accused came into the room of PW Gill and beat him with a club while he was supposed to be asleep for the night (Ex 56).

As to Specification 3: Not Guilty.

As to Specification 4: Nolle Prosequi (R 6).

As to Specification 5: Between 1 November 1944 and 31 March 1945, at Ofuna PW Camp, Honshu, Japan, the accused did unlawfully and willfully mistreat H. A. Walker, an American PW, by beating and otherwise abusing him, thereby contributing to his death in or about 4 September 1945. The accused severely beat PW Walker with a stick the size of a baseball bat on at least three occasions. The accused would take a full swing with the bat and hit the PW across his hips, buttocks or legs (R 202). The accused severely beat Walker on many occasions because he would not disclose military information (R 476).

As to Specification 6: Not Guilty.

As to Specification 7: On numerous occasions between 1 November 1944 and 31 July 1945, the accused did willfully and unlawfully mistreat, torture, abuse and beat numerous American and Allied PW's at Ofuna PW Camp, Honshu, Japan, (Ex 1, 12, 47, 73, 79). PW Balch was struck by the accused many times while doing kampan soji (R 103). PW Fisher received four severe beatings by the accused with his fists and a number of beatings with a club during kampan soji. Accused also mistreated PW Upton a number of times by hitting him on the nose and forehead (R 197, 198). Accused also kicked, jumped on and sat on the heads of PW's Johnson and Upton at midnight after the change of guards (R 203). The accused beat numerous PW's during kampan soji (R 494).

SASAKI:

As to Specification 1: On or about 1 January 1945, at Ofuna PW Camp, Honshu, Japan, the accused, a civilian interpreter of the Naval General Staff, did willfully and unlawfully mistreat H. A. Walker, an American PW, by ordering and causing Japanese personnel of Ofuna PW Camp to beat and mistreat him, which order was executed on or about 1 January 1945 to on or about 4 September 1945, thereby with others causing his death on 4 September 1945. PW Upton states that on or about 15 or 20 December 1944, the accused was responsible for the beating and starvation of PW Walker. The reason for the beating was that Walker refused to disclose requested information. The beating was administered by the guards at the direction of the accused and the method of beating was by the use of clubs (Ex 82). Arakawa, a former guard at Ofuna

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testified that in November 1944 the accused told Iida, the camp commander that Walker was uncooperative in interrogation and that he should be beaten. PW Boyington was present when the accused made this statement to Iida (R 355). The co-accused Asoma states he was ordered by Sasaki to beat Walker and not to give him any food (Ex 99).

As to Specification 2: Not Guilty.

As to Specification 3: Between 1 June 1943 and 1 September 1945, the accused did willfully and unlawfully threaten numerous American and Allied PW's with unpleasant or disadvantageous treatment, and did willfully and unlawfully order, cause and knowingly permit Japanese personnel of Ofuna PW Camp to mistreat, torture and abuse numerous American and Allied PW's. PW Turnbull in his affidavit states that he was told by the guards on many occasions that the Gunreibu had ordered certain prisoners to be beaten, their meals withheld for not answering questions satisfactorily and it was common knowledge within the camps that all beatings ordered or not ordered were condoned by Sasaki and all other interrogators and intelligence officers that came to the camp (Ex 14). PW O'Gara testified that PW Frellsen told him that the accused ordered him to be beaten because he was not cooperative in giving information (R 501).

MORI:

As to Specification 1: Between 1 December 1944 and 31 April 1945, at Ofuna PW Camp, Honshu, Japan, the accused, a guard at said camp, did willfully and unlawfully mistreat W. H. Walker, an American PW, by beating and otherwise abusing him, thereby contributing to his death on or about 3 September 1945. The accused would slug Walker with his closed fist because of the strange method in which Walker ate. He would also rub a bamboo stick across his head until the PW would beg for mercy. Also the accused would give him the tooth brush treatment; make him stand with his blanket over his head with his knees bent and if he relaxed or let his heels touch the floor, he would be beaten with a baseball bat; throw water on his bed; deprive him of the privilege of going to the latrine and beat him for any trivial incident that might occur (R 220). The accused beat Walker on many occasions because he would not disclose military information (R 476). He also beat him during kampan soji (R 495).

As to Specification 2: Not Guilty.

As to Specification 3: At divers times between 1 November 1944 and 10 March 1945, the accused did willfully and unlawfully mistreat Norman Emil, an American PW, by beating and otherwise abusing him, thereby contributing to his death on or about 10 March 1945. The accused slugged Emil with his fists and beat him with a baseball bat for asking permission to go to the bathroom. The accused would also throw water on Emil's bed; make him stand at attention for long periods of time with the window and door open and on one occasion made the PW stand in the snow outside of his cell (R 221). The accused also savagely beat Emil during kampan soji (R 495).

As to Specification 4: At divers times between 1 November 1944 and 1 September 1945, the accused did willfully and unlawfully mistreat, torture, and abuse numerous American and Allied PW's by forcing a toothbrush through their tightly joined fingers, thereby injuring said fingers (Ex 47, 84; R 218, 219).

As to Specification 5: Nolle Prosequi (R 6).

As to Specification 6: Not Guilty.

As to Specification 7: At divers times between 1 November 1944 and 1 September 1945, the accused did willfully and unlawfully mistreat and torture numerous American PW's by pouring hot water on them, by beating them, by refusing them water for long periods of time, by refusing to allow them to

relieve themselves and by otherwise abusing them (Ex 1, 6, 14, 47, 52, 54, 62, 65, 84). The accused struck PW Balch a number of times while doing kampan soji (R 103). Also the accused would burn said PW on the face and head with lighted cigarettes (R 106). The accused also beat, mistreated and abused PW's Upton, S. M. Johnston and G. G. Johnson (R 220).

YOKURA:

As to Specification 1: Between 27 December 1944 and 30 August 1945, the accused a Commander in the Imperial Japanese Navy and an interrogation officer of the Japanese Naval General Staff, Intelligence Division, did willfully and unlawfully cause, order and permit Japanese personnel of Ofuna PW Camp to mistreat, abuse and torture William H. Walker, an American PW, thereby with others causing the death of Walker on 30 August 1945. The accused ordered a meal withheld from Walker because he was unwilling to cooperate during his interrogation (Ex 100, 103). Iwabuchi, No. 1 gocho at Ofuna from 7 March 1944 to 10 February 1945 states he was ordered by the accused to skip one of Walker's meals and make him do kampan soji (Ex 104). Aramaki a former guard at Ofuna PW camp states that the accused ordered the guards to skip one of Walker's meals and to make him mop the corridor alone until he was exhausted but not to beat him as this would make him more stubborn (Ex 105).

As to Specification 2: Not Guilty.

As to Specification 3: Between 1 September 1943 and 1 September 1945, the accused did willfully and unlawfully cause, order and permit the Japanese personnel of Ofuna Camp to mistreat, abuse and torture numerous American and Allied PW's. No evidence introduced by the Prosecution in substantiation thereof.

b. For the Defense:

Asoma, Nishi, Sugeta, Obara and Mori:

Mitsugi Iwabuchi, witness for defense, testified that he served at Ofuna PW Camp from 7 March 1944 to 10 February 1945. He left Ofuna with Asoma, Sugeta and Nishi. While at Ofuna he was a chief petty officer. Kampan soji was a daily routine in the Japanese Navy and had as its aim sanitation (R 657). It was not a punishment in the Japanese Navy and was conducted at Ofuna in the same manner (R 658). The witness did not see or hear of Obara or Mori strike any PW at Ofuna. He did see Nishi beat some PW's in November in the presence of Kitamura and Iida (R 659). He also saw Asoma and Sugeta participate in the same beating (R 660).

Kakuzo Iida testified that he was a chief petty officer and administrator of Ofuna PW Camp and the highest ranking officer at the camp. Nishi, Sugeta and Asoma left Ofuna around 10 February 1945. All three were guards except Sugeta who also worked in the kitchen from around the middle of January until 10 February 1945 (R 662). Mori arrived at Ofuna around 10 November 1944 and left the beginning of March 1945. Obara left Ofuna around 10 March 1945. Witness recalled Nishi, Sugeta and Asoma beating PW's in November 1944 (R 663).

Suehara Kitamura, witness for defense, testified that he served at Ofuna PW Camp from 7 March 1944 to 31 August 1945 and that he was the pharmacist's mate at Ofuna. Asoma and Nishi beat some PW's on 6 November 1944 on orders from Iida but Sugeta did not beat them (R 667). No PW's were treated by the accused for injuries between fingers or scalds on the hands sustained while at Ofuna (R 669). PW Emil contracted acute pneumonia about a week before his death (R 670). When PW Gill was transferred from Ofuna his physical condition was normal, there were no signs of beatings on him and he did not have beriberi (R 670). Witness accompanied Gill to the new camp and the PW did not complain of any beatings (R 671). The witness testified he never received any orders from Yokura to punish any PW's (R 677).

Juzaburo Yamada testified that he was a seaman first class and served at Ofuna PW Camp from 8 February 1945 to 15 May 1945. Asoma, Nishi and Sugeta were transferred from Ofuna 10 February 1945. PW Emil died of acute pneumonia in the early part of March 1945 (R 680). Ichiro Fukasawa testified that he was a superior seaman and was stationed at Ofuna PW Camp as a guard from 26 January 1945 to 10 March 1945. Asoma, Nishi and Sugeta were transferred to the Yokosuka Guard Squadron on 10 February 1945 (R 681). PW Emil died of acute pneumonia about 9 March 1945 and during the week preceding his death, he did not participate in kampan soji. Obara was on leave the day Emil died and was transferred from Ofuna on 10 March 1945 (R 682). When PW Emil was being redressed for burial he had no bruises on his body (R 683).

Bunichi Mori, one of the accused, after being warned of his rights as an accused, took the witness stand and testified on his own behalf (R 687). He testified that he was stationed at Ofuna PW Camp from 9 November 1944 to 28 March 1945. While assigned at Ofuna the accused struck two PW's, one of them was Walker and the other one is unknown to him. Around the end of December the accused struck Walker two blows with a stick across the buttocks on orders from Asoma. Walker was also struck by Asoma and Nishi. Asoma told the accused that Walker was being beaten on orders from someone from the Gunreibu (R 688). This occurred several days after Walker arrived at Ofuna. The accused stated he never received any orders from Yokura to punish any PW. On another occasion he also struck another PW with his open hand because there was writing on the walls of his room but he does not recall the PW's name or the date of the incident. On one occasion around the beginning of February the accused discovered one of the PW's talking in violation of camp regulations and as punishment therefore inserted a toothbrush between the joints of the index finger and middle finger and turned it several times (R 689). The accused testified that PW Emil died of acute pneumonia and that he never beat Emil nor any other PW not heretofore mentioned (R 690).

Toshihiro Obara, one of the accused, after being warned of his rights as an accused, took the witness stand and testified on his own behalf (R 696). He stated he served as guard at Ofuna PW Camp from 9 November 1944 to 10 March 1945 (R 697). The accused denied he ever struck PW Emil (R 698). The accused was not on duty the day PW Emil died (R 699). PW Emil did not do kampan soji while he was ill. The accused testified that he never had a club while he was at Ofuna but was armed with a pistol and a sabre. While on duty as a sentry he carried a rifle but not the pistol. Accused denied he ever beat PW's Gill or Walker. He did beat one PW with his open hand about the middle of December on orders from one of the gochos because the PW wrote his name on the wall of his room (R 700). At the end of February or early March 1945, the accused discovered two PW's talking and made them stand by the door of their rooms and struck them with his open hand, two times each (R 701). Other than the occasions mentioned the accused never struck any PW's and never received any orders of any kind from the accused Yokura (R 701). Also the accused never received any orders from Sasaki and the latter first wore a purple button which was changed to a red button around the end of December or the beginning of January 1945 (R 702).

Masamori Nishi, one of the accused, after being warned of his rights as an accused, took the witness stand and testified on his own behalf (R 709). He testified he was stationed at Ofuna PW Camp from 9 October 1944 to 10 February 1945. The accused stated he did not remember a PW by the name of Flynn. On either 22 or 23 January 1945, the accused struck PW Gill two or three times with a stick because the PW violated camp regulations by smoking at inspection time. The PW was not sick at this time nor was he injured by the beating (R 711). On or about 10 January 1945, the accused struck PW Emil two or three times with his open hands because the PW was watching other PW's exercising which was in violation of the gocho's orders. Emil at this time was not sick and performed exercise like the other PW's. At the end of December 1944, the accused beat PW Walker three or four times with a stick on the orders of Asoma (R 712). At the end of November or the early part of December 1944, the accused heard PW Fisher talking in a loud voice in violation of regulations and he struck him with

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a stick three or four times. Accused testified he never beat PW's Douglas and Robinson (R 713). On or about 6 November 1944, seven or eight PW's were lined up by Camp Commander Iida and ordered to be beaten because they were bad. Kitamura ordered the accused to beat the PW's and he struck each of them three times with a stick. Suzuki, Asoma, Kitamura and the accused participated in the beatings but Sugeta did not (R 714). In November 1944, PW Newman was beaten because he violated regulations by talking (R 715). The accused admitted beating other PW's but never did so unless they violated camp regulations or disobeyed the orders of the gochos. The accused testified he never received any orders from Yokura nor heard of any other guard receiving orders from him (R 716). The accused testified that the statement he made concerning Sasaki giving orders was false and that in truth Sasaki had never given orders to beat Walker (R 717).

Nakakichi Asoma, one of the accused, after being warned of his rights as an accused, took the witness stand and testified on his own behalf (R 728). He testified that he was stationed at Ofuna PW Camp from 19 July 1944 until 10 February 1945, as a guard. He worked two four-hour shifts a day. During the period when there were air raids, guards had one day off in about twelve. At other times they had a day off in perhaps four or six days, however, no definite schedule was set (R 729). In the middle of December 1944, the accused slapped PW Emil for conversing with PW Johnson in violation of regulations (R 730). Emil was not sick at that time and was not sick when the accused was transferred from Ofuna. On 6 November 1944, the accused was ordered by Camp Commander Iida to beat a group of PW's because they had been bad (R 731). Other than the incidents mentioned, the accused testified he never beat any other PW's. The accused stated that he never received any kind of order at any time from Yokura (R 732).

Chikayoshi Sugeta, one of the accused, after being warned of his rights as an accused, took the witness stand and testified that he was stationed at Ofuna PW Camp from 9 October 1944 to 10 February 1945. The accused was a guard from 9 October 1944 until 10 January 1945 and thereafter worked in the kitchen until he was transferred from Ofuna. The accused stated he never struck or beat PW Emil (R 734). The accused did not remember PW Flynn. The accused stated that in the middle of December 1944, PW Fisher tried to drink some tea which was spilled on a dirty table and when he refused to cease the accused slapped him twice (R 735). Also in the early part of November 1944, the accused punished PW Fisher by placing a toothbrush between his fingers because he found urine in a Red Cross can under the PW's bed (R 736). The accused testified he did not beat PW G. G. Johnson. Also testified that he never received any orders from Sasaki or Yokura (R 737).

James K. Sasaki, one of the accused, after being warned of his rights as an accused, took the witness stand and testified on his own behalf (R 631). He testified he was employed in the 5th Section of the 3rd Division of the Naval General Staff as a civilian interpreter. His duties consisted of reading English magazines and newspapers, listening to short wave broadcasts from America, translating and interpreting (R 632). He was stationed in Tokyo and only a small percentage of his time was spent at Ofuna PW Camps (R 633). In September or October 1944, the accused was promoted from the grade of shokutaku to kotokan but did not wear this red button until the early part of 1945. He was known as a civilian at Ofuna and did not have any command authority (R 633). He could not give orders to the guards or other personnel at Ofuna. When PW Walker was interrogated in November or December of 1944 by Yokura, the PW was arrogant and refused to give his name, rank and serial number. Said information was secured from PW Rebecki (R 634). Yokura ordered that Walker was to miss one meal (R 635). The accused merely acted as an interpreter during the interrogation and he did not order any guard to beat Walker or punish him in any way. Also he did not suggest that the same should be done (R 635). The accused did not order any PW's placed in solitary confinement and never ordered that they be deprived of their food. Furthermore, he had no authority to give such orders (R 636). The accused stated that although he knew about the food situation and the beatings taking place at Ofuna he could

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only report the matter to Captain Sanematsu and Commander Yokura as he had no authority to take action thereon. The accused stated he was constantly under the surveillance of the Japanese military police and the Japanese secret police as he had resided in the United States for twenty-five years (R 637).

Kazuo Kawai, a witness for the defense on behalf of Sasaki and present editor in chief of the Nippon Times and former instructor at the University of California in Los Angeles, testified he first met the accused in 1928 or 1929 in California. The accused enjoyed a very reputable reputation while he was secretary of the Japanese Association in Monita, California. Witness stated he again met the accused in Japan in December 1943 or January 1944, and Sasaki told him he tried to make the Japanese naval officers who interrogated the American PW's have respect for them and treat them kindly (R 621). Witness also said the accused was pro-American and during a visit with him in the winter of 1943-1944, Sasaki told him Japan was bound to lose the war and advised him to move out of Tokyo as the same was bound to be bombed and destroyed by the U. S. air force (R 622). Witness testified that Sasaki was disgusted with his job in the naval intelligence but was under government orders to remain at his job (R 623).

The accused, Mori, testified on behalf of Sasaki and stated that he never received any orders from Sasaki (R 594). Also he never heard that Sasaki ever ordered any guard to mistreat any PW (R 595).

Yokura, one of the accused, appeared as a witness on behalf of Sasaki and testified that Sasaki was a civilian interpreter having no command responsibility and that he did not hear Sasaki give any orders or instructions concerning Major Walker (R 599).

Iwabuchi, one of the guards at Ofuna PW Camp, stated that Sasaki was an interpreter who visited Ofuna. He never gave anyone orders, had no direct connection with the personnel of Ofuna and he never saw or heard of Sasaki beating any of the PW's. He did not hear that Sasaki ordered Asoma to beat Walker (Ex C). Sato stated that during the times he visited Ofuna with Sasaki he never heard him make any threats to the PW's (Ex E). Lt. Col. Boyington, a PW at Ofuna from 17 March 1944 to 6 April 1945, states that Sasaki befriended him and other American PW's during his stay at Ofuna and is one Japanese who deserved commendation from the American authorities rather than censure and/or punishment (Ex G). Boyington also states that Sasaki did everything he could for the PW's and that he saved Boyington's life by pleading with his superiors that an operation be performed on his leg (Ex H). Boyington also stated that he sincerely and honestly believes that Sasaki is anything but a war criminal (Ex I). 1st. Lt. Rebicki, a PW at Ofuna from 8 January 1945 to 15 July 1945 and from 18 August to 23 August 1945, states that he does not know of any instance of Sasaki beating, participating in the mistreatment of, or ordering the mistreatment of American PW's at Ofuna during his confinement there (Ex M). Commander O'Kane, U. S. Navy, a PW at Ofuna from 3 November 1944 to 1 July 1945, states that he does not know of any occasion where Sasaki personally mistreated any PW nor does he know of any instance when he ordered the mistreatment of any PW. With regards to several affidavits filed in the Legal Section, SCAP, which adversely affected Sasaki, O'Kane stated: "I realize that the testimony of one sworn witness would generally be given equal weight with that of another, as likewise would equal weights be given to sworn affidavits unless, of course, there was good reason to doubt one witness or one affidavit. In this case, however, I believe there will be affidavits in James Sasaki's favor from Commander Whiting, a decorated U. S. naval officer and by reputation one of our finest submariners; from Commander Fitzgerald, U. S. Navy, who with other decorations wears the Navy Cross, and is now a Submarine Division Commander; from Colonel Boyington who received our government's highest award during hostilities, the Medal of Honor, and those from myself who received that decoration after repatriation."

"I doubt that anyone of us, or any one of those who are present when these affidavits are read could, if accused of a military crime, muster better support or character witnesses." (Ex N).

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Commander Fitzgerald, U. S. Navy, a PW at Ofuna from 1 May 1943 to 15 January 1945, stated that Sasaki was normally Sanematsu's interpreter during interrogations and that "I do not know of any member of the U. S. Submarine Grenadier who was beaten for any reason attributable to James K. Sasaki, nor do I know of any one who was threatened with such treatment by Sasaki."

"While Sasaki had no apparent authority over those in command, he was decent to the prisoners of war confined at the Naval Interrogation Center, Ofuna, Japan." (Ex R).

Commander Whiting, U. S. Navy, a PW at Ofuna from May 1943 to January 1945, stated that to his knowledge no PW was beaten for any reason attributable to Sasaki and that "Sasaki apparently did what he could to help the prisoners of war despite his lack of authority over those in command." (Ex S).

Louis S. Zamperini, a PW at Ofuna from 18 September 1943 to November 1944, stated he first knew Sasaki in 1937 at the University of Southern California and later at Ofuna as a civilian interpreter during his period of incarceration. Sasaki distributed a few cigarettes to the PW's and affiant heard Sasaki criticize Hideki Tojo's policies as Premier of Japan. Affiant states: "In my opinion, Sasaki was fair in his interpretations concerning prisoners and treated us friendly, civil and sympathetic. I know that I was never wronged or otherwise mistreated by him during my stay at Ofuna, and I have no knowledge of him being unfair in his dealings with any other prisoner. I had lied to the Japanese authorities at Ofuna during interrogations and Sasaki was obviously aware that I had, because, upon my departure from this camp, he advised me to stick to my story and be careful of what I said during future interrogations at the next camp." (Ex X).

Commander Condit, U. S. Navy, a PW at Ofuna from 5 September 1943 until 31 September 1944, states that Sasaki was the only Japanese the PW's were anxious to see around the camp. He definitely helped the morale of the PW's by giving them cigarettes, news etc. He was never the cause of anyone getting beaten or mistreated and apparently had no authority at the camp (Ex Y).

Lt. Commander Perabo, USNR, a PW at Ofuna stated that Handsome Harry (Sasaki), a civilian, not a guard, visited camp occasionally and never mistreated any PW's (Ex Z).

Former 1st Lt. Boline, a PW at Ofuna from 24 May until 7 August 1945, stated that Handsome Harry (Sasaki) was very nice to us (Ex AA).

Sashizo Yokura, one of the accused, after being warned of his rights as an accused, took the witness stand and testified on his own behalf (R 799). He testified he graduated from the Japanese Naval Academy in 1930 and the Naval College in 1943. He was attached to the Naval General Staff from 22 June 1943 to 20 June 1945 (R 802). He had charge of U. S. air intelligence (R 803). The only command authority the accused had was over his direct subordinates who worked in the same section with him. He had no relationship with the Ofuna PW Camp other than to interrogate PW's there. He visited Ofuna from September 1943 to March 1945 approximately three times a month. He interrogated PW Walker twice. The first time he interrogated him was around the end of December 1944. He refused to write his name, rank and serial number in accordance with international law. During the interrogation Walker was given a cigarette, tea and sweet potatoes but when he would not answer any questions, the accused ordered his noon meal held up but did not order that the meal be missed (R 815). Accused did not order that Walker do kampan soji (R 806). The accused interrogated Walker for the second time the next day. At this interview Walker gave the accused his serial number and was more cooperative. After the interrogation the accused went to the gochos room where Camp Commander Iida and gochos Aramaki and Iwabuchi were present. He handed the

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paper containing Walker's name, rank and serial number over to them for recording and having heard that Walker missed a meal the previous day told them to make it up by giving him a treat. Walker at this time was in average physical condition (R 110). PW Walker in his second interrogation with the accused did not tell him he had been beaten nor did he show any signs of having been beaten. Subsequent to the second interrogation the accused had nothing further to do with PW Walker (R 808). The accused never ordered the guards or personnel at Ofuna to do anything and had no authority to do so. The camp commander at Ofuna was attached to the Yokosuka Naval Guard Squadron (R 809). The accused did not see any PW's beaten but did hear of three cases where PW's were beaten because they violated camp regulations (R 814). The accused told Camp Commander Iida that for intelligence purposes it was very bad to beat PW's and therefore not to mistreat the PW's. The accused did not order or cause Walker to be beaten and he had no knowledge thereof. Accused testified he did not cause or order any Japanese personnel at Ofuna to mistreat any PW nor did he consent thereto (R 817). The accused had no authority to take any action on complaints received from PW's. He did all he could but because of conditions prevalent at that time there was much that he could not do (R 831). Neither the accused nor Sasaki informed Ofuna personnel as to the results of interrogations (R 832).

Magoto Takita, a former lieutenant commander in the Japanese Navy who was assigned to the Naval General Staff from 1 March 1945 to the end of the war, testified for the defense on behalf of Yokura. The witness was trained by Yokura on how to interrogate PW's. Yokura instructed the witness to be friendly with the PW's, to respect international law and not to use third degree methods on them or mistreat them (R 743). The witness accompanied Yokura on three or four interrogations and saw him give cigarettes and tea to the PW's. He was very friendly to them and never browbeat, intimidated or threatened them (R 744). Yokura went on a lecture tour the first of April through May and upon return did no further interrogation work at Ofuna (R 744). Members of the Naval General Staff did not have authority to give orders at Ofuna (R 745). The commanding officer of Yokosuka Naval Station had command authority over the Ofuna PW Camp and he in turn received his orders from the Navy Minister (R 746).

Takeji Oono, a witness for the defense on behalf of Yokura was formerly a rear admiral in the Japanese Navy, and from March 1944 until March 1945 was division chief of the 3rd Division, Naval General Staff. The witness testified that the 3rd Division was concerned with intelligence (R 747). Also Naval General Staff officers did not have the authority to issue any orders. There was no connection between the Naval General Staff and Ofuna PW Camp except the General Staff could use the PW's in order to obtain information (R 749).

Kaoru Takeuchi, a witness for the defense and formerly a rear admiral in the Japanese Navy served with the Naval General Staff from 10 July 1942 until the termination of the war as section chief of the 5th Section in the 3rd Division. Sasaki was one of the translators in the 5th Section (R 752). Ofuna was maintained as a temporary camp for PW's captured by the Japanese Navy before they were turned over to the Army. It was not built as an interrogation center (R 754). Naval General Staff officers could not give orders at Ofuna as staff officers in the Japanese Navy did not have command authority. Ofuna was under the command of the commanding officer of the Yokosuka Naval Station. Officers who interrogated PW's were required to read a pamphlet entitled "How to interrogate Prisoners of War" which was drafted by Yokura. Its main points were to respect international law and not mistreat PW's. Many other officers not connected with the 5th Section visited Ofuna for the purpose of interrogating PW's (R 755). The 5th Section had nothing to do with the administration of Ofuna (R 764). Ofuna administrative personnel did not have to accept any advice regarding conditions in the camp from Naval General Staff officers. If General Staff officers saw mistreatment of PW's they had no authority to take any action (R 770).

Juji Enomoto, a witness for defense, was the civilian legal advisor of the Naval Ministry from 1915 to the termination of the war. He testified that Ofuna PW Camp was under the jurisdiction of the Yokosuka Naval Station. The commanding officer of the naval station was directly responsible to the

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Emperor and received orders directly from him. The naval station and the Naval General Staff were independent organizations and there was no command responsibility between the two (R 774). Matters concerning naval PW's were handled by the Navy Ministry and under the Japanese system the Naval General Staff had nothing to do with PW's (R 779).

Sasaki, one of the accused, testified on behalf of Yokura and stated that Yokura never threatened any PW's with punishment (R 740).

Iwabuchi, one of the chief guards at Ofuna PW Camp, stated that Yokura was one of the interrogators who visited Ofuna and he did not give orders to anyone. On one occasion he told the affiant that PW's were not to be beaten as it was bad for interrogation purposes (Ex D).

As to Specification 3: At the close of the prosecution's case the attorney for defense made a motion for directed verdict as to this specification on the grounds that no evidence had been introduced by the prosecution in support thereof. At the time of the motion the defense counsel asked the prosecution if there was any evidence available to support this specification and the prosecuting attorney replied "No, I haven't any." (R 555). The prosecution moved to nolle prosequi this specification (R 565) but the motion was denied by the commission (R 566). Thereafter no further evidence in support thereof was introduced by the prosecution.

4. Opinion:

The Commission was constituted by proper authority and had jurisdiction over the accused and of the offenses charged. There is no evidence that the accused were not sane at the time of the commission of the alleged acts or at the time of the trial.

The accused were ably represented by American and Japanese counsel and they fully cooperated in their own defense, produced witnesses on their own behalf and all of the accused took the witness stand in their own defense.

Motion for Severance:

The defense made a motion for a severance. Defense stated the reason for requesting the severance was that the defenses of the accused were mutually antagonistic and the accused definitely did not consent to being tried together in a common trial (R 10). The motion was denied by the Commission (R 20). Granting or denying a severance is a matter within the sound discretion of the Commission. There does not appear to have been any abuse of its discretion on the part of the Commission. Here the Commission felt that the interests of each of the accused could be properly safeguarded, and a fair and impartial trial insured to all, without a severance. Individual counsel were provided for the accused in addition to advisory counsel. The rights of the accused were not prejudiced by denying the severance.

Objections to the Admissibility of Evidence:

The various objections made by the defense to the admissibility of ex parte affidavits, hearsay evidence, and conclusions and opinions on matters by non-experts have been passed upon by the Reviewing Authority heretofore and will not be discussed herein (U. W. & Oota, Case 129), etc. The rulings of the law member on these objections were not in error.

Asoma, Nishi, Sugeta, Obara and Mori:

The record is legally sufficient to support the findings of the Commission. It is considered that no ruling of the Commission affects adversely the substantial rights of the accused.

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Sasaki and Yokura:

Command Responsibility:

Evidence shows that the chain of command relating to Ofuna PW Camp stems from the commanding officer of Yokosuka Naval Station. The Navy Ministry issued instructions that the supervision of PW's was in the Army and the Navy was to administer them until they were turned over to the Army. Yokosuka Naval Station administered Ofuna PW Camp. The administrator or commanding officer of Ofuna was appointed by the commanding officer of the Minor Naval Station which was under the jurisdiction of the Yokosuka Naval Station. Yokosuka Naval Station reported matters pertaining to PW's to the War Ministry in accordance with regulations for handling PW's. The Naval Station and the Naval General Staff were independent organizations and there was no command responsibility between the two. The only authority the accused Yokura, a member of the Naval General Staff, could exercise at Ofuna was to interrogate PW's when he visited the camp several times a month. The accused Sasaki, a civilian interpreter for the Naval General Staff, possessed even less authority at Ofuna as evidence indicates he could not and did not interrogate PW's but merely acted as an interpreter for Yokura and other officers of the Naval General Staff. The evidence does not indicate that the accused Yokura and Sasaki had legally conferred command authority at Ofuna PW Camp nor does it establish beyond a reasonable doubt that they actively and consistently assumed or exercised such authority while visiting said camp.

Sasaki:

The evidence introduced by the prosecution against the accused Sasaki is very meager and highly conjectural and supposititious. It is heavily outweighed by the evidence presented by the defense on behalf of the accused and especially to be noted are affidavits from such men as Lt. Col. Boyington, Commander O'Kane, Commander Fitzgerald and Louis S. Zamperini, all high ranking PW's at Ofuna for long periods of time and persons in a position to know the true conditions existing at Ofuna and the persons responsible therefore. The accused is presumed to be innocent until every element of the offense charged has been established by competent evidence beyond a reasonable doubt and inasmuch as the evidence presented by the prosecution does not meet this test the findings of the Commission are against the weight of the evidence and the same should be set aside and vacated and the sentence should be disapproved.

Yokura:

As to Specification 1: The evidence submitted by the prosecution in support of this specification is wholly insufficient to sustain a finding of guilty thereon and the same should be set aside and vacated as the finding of the Commission is against the weight of the evidence. The only element of the specification proved by the prosecution was that the accused ordered that one meal be withheld from PW Walker when he refused to cooperate during his interrogation. This incident occurred a day or two after he arrived at Ofuna and the evidence indicates he was in average physical condition at the time. The accused testified that he ordered the meal held up until he finished interrogating the PW but did not order that it be withheld entirely. It would appear unreasonable to hold that the withholding of one meal from a PW in average physical condition is such an act of mistreatment, abuse and torture as to constitute a war crime.

As to Specification 3: At the close of the prosecution's case the defense made a motion for a finding of not guilty as to this specification on the grounds that the prosecution had failed to produce any evidence in support thereof. The prosecution admitted that there was no evidence in support of this specification and moved to nolle prosequi the same. Defense objected on the grounds that a motion for a finding of not guilty as to the specification was already before the Commission and the motion to nolle prosequi was denied (R 566). Motion of the defense for a finding of not guilty was also denied (R 582). Thereafter the prosecution failed to introduce any evidence in support

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of the specification and the accused was found guilty thereof (R 922).

The action of the Commission in denying the motion of the prosecution to nolle prosequi this specification was proper as neither the prosecution nor the Commission on their own motion without authority of the convening authority may nolle prosequi a charge or specification and where the accused has been arraigned upon and pleaded to the charges, in the absence of a legal withdrawal, he is entitled to a verdict and the proper course of the Commission is to acquit upon the charge or specification in question (16 CJ 434 and U. S. vs Noguchi, Case #181). The action of the Commission in not sustaining the defense motion for a finding of not guilty as to this specification was erroneous and the finding of guilty should be set aside and vacated and the sentence as to the accused should be disapproved.

The defense has submitted a brief in support of its motion for disapproval of the findings and modification of the sentences of Yokura and Sasaki. The brief and the arguments contained therein have been carefully examined. Most of the objections raised therein have been answered in the foregoing opinion.

5. Recommendations:

There are no letters of clemency from any members of the Commission. The letters and petitions from others, filed herein, have been read and considered however, they reflect no new or additional evidence.

Sasaki: The Commission sentenced this accused to confinement at hard labor for a period of eighteen (18) years. The evidence is deemed legally insufficient to support the finding of guilty by the Commission for reasons stated in the foregoing opinion.

Yokura: The Commission sentenced this accused to confinement at hard labor for a period of twenty-five (25) years. The evidence is deemed legally insufficient to support the finding of guilty by the Commission for reasons stated in the foregoing opinion.

It is recommended that the findings and sentences be disapproved.

Asoma: The Commission sentenced the accused to confinement at hard labor for a period of twelve (12) years. The sentence is legal and is not excessive.

It is recommended that the sentence be approved. In compliance with established policy, owing to the length of time the accused has spent in confinement prior to the date of sentence, it is recommended that twenty-four (24) months of the confinement at hard labor imposed be remitted. Accused was confined 2 February 1946; he was sentenced 30 April 1949.

Nishi: The Commission sentenced the accused to confinement at hard labor for a period of fifteen (15) years. The sentence is legal and is not excessive.

It is recommended that the sentence be approved. In compliance with established policy, owing to the length of time the accused has spent in confinement prior to the date of sentence, it is recommended that twenty-one (21) months of the confinement at hard labor imposed be remitted. Accused was confined 26 April 1946; he was sentenced 30 April 1948.

Sugeta: The Commission sentenced the accused to confinement at hard labor for a period of ten (10) years. The sentence is legal and is not excessive.

It is recommended that the sentence be approved. In compliance with established policy, owing to the length of time the accused has spent in

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confinement prior to the date of sentence, it is recommended that twenty-two (22) months of the confinement at hard labor imposed be remitted. Accused was confined 1 April 1946; he was sentenced 30 April 1948.

Obara: The Commission sentenced the accused to confinement at hard labor for a period of five (5) years. The sentence is legal and is not excessive.

It is recommended that the sentence be approved. In compliance with established policy, owing to the length of time the accused has spent in confinement prior to the date of sentence, it is recommended that eleven (11) months of the confinement at hard labor imposed be remitted. Accused was confined 28 February 1947; he was sentenced 30 April 1948.

Mori: The Commission sentenced the accused to confinement at hard labor for a period of eight (8) years. The sentence is legal and is not excessive.

It is recommended that the sentence be approved. In compliance with established policy, owing to the length of time the accused has spent in confinement prior to the date of sentence, it is recommended that twenty-two (22) months of the confinement at hard labor imposed be remitted. Accused was confined 30 March 1946; he was sentenced 30 April 1948.

Sugamo Prison, Tokyo, Honshu, Japan, is the appropriate place of confinement for the accused Asoma, Nishi, Sageta, Obara and Mori.

6. Action:

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

JOHN H. VOGEL
Reviewer
Judge Advocate Section

It is considered that the findings and sentences as to accused Sasaki and Yokura, as well as to the other accused, should be approved.

Compelling evidence in the case establishes that the named accused, Sasaki and Yokura, upon occasions when they would visit Ofuna Camp to interrogate prisoners, individually and jointly participating, both ordered and suggested to camp personnel that prisoners who had not answered freely ("no sneako") would be beaten, suffer ration reductions, or do the infamous, brutal, and exhausting kampan soji, accompanied by beatings with clubs. The evidence establishes that there is a distinction without a difference in result under these facts between ordering with command authority and ordering without command authority from the line of command. When personages such as the two named accused descended from the top echelon of the Naval General Staff and made suggestions, these suggestions were enthusiastically accepted by the camp personnel and carried into execution. Sasaki and Yokura, being men of high educational qualifications and considerable intelligence, had every reason to know and to expect that the normal result of a suggestion from a person in their position would be the execution of that suggestion with as much certainty and celerity as if it were an order from one in the chain of command. The actual results justify this conclusion. It is manifest from the evidence that camp personnel vied with each other in their zealous efforts to implement the expressed desires of representatives of the Naval General Staff.

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In the case of Major Walker, in particular, a beating of destructive severity, withholding of food and kampan soji, resulted from his proper refusal to divulge military information, immediately after his arrival at camp. At the instigation of the two named accused, the mistreatments were initiated. Their scope was continuously increased for several months until the result reasonably to be anticipated, namely, the victim's death, was accomplished. This was indeed a typical case of killing a human being "by inches". (Cf Case Docket 46 Nichizawa, Case Docket 128 Nakajima, Case Docket 25 Ikegami, Case Docket 253 Kitamura, Case Docket 130 Muta)

Excerpts from the evidence which stand out with respect to the cases involving Sasaki and Yokura, are set out below:

"Q Did Sasaki interrogate you alone?

A Both alone and with another man.

Q Did Yokura interrogate you alone or with somebody?

A Always with somebody.

Q Was that an interpreter with him?

A It was.

Q Who interrogated you the first time that you remember?

A The man Sasaki and a fellow we knew as 'The Little Captain'.

Q Did Sasaki say anything to you at that time?

A Yes. Do you want to know what he said? The 'Little Captain' was just sitting and looking through a pile of papers, a briefcase full of information, and Sasaki told me that--he explained to me that I wasn't a registered prisoner of war, that I was a special prisoner of the Greater East Asia Co-Prosperity Sphere and was, as far as the Japanese were concerned, still a combatant." (R 99)

"Q What did Sasaki question you about when he questioned you alone?

A On different occasions he questioned me both alone and with the 'Little Captain' on time of flights." (R 100)

"Q Did the Japanese personnel around Ofuna Camp show respect to Yokura and Sasaki?

A Yes.

Q In what way?

A They always snapped to attention when any of these interrogation officers entered the camp, the guard on the gate and the guards around the compound always came to attention when they came by, when they passed, and they generally appeared to respond to their orders or requests or whatever they were. Of course, they spoke in Japanese and I don't know what they said." (R 101)

"I think that WALKER was questioned. After the questioning was finished, on his way back in front of the interrogation room, SASAKI gave me, the guard who was on duty, the order, "Beat him", and SASAKI returned to headquarters. I remember that after duty in the barracks I told my colleagues that SASAKI had given me the order. I think that colleagues most surely know that. Reluctantly, following orders and with confused respect to my superior, I carried out the beating. * * * *

Q After you received this order from Sasaki did you tell anyone else about this order and that you received it from Sasaki?

A After I received this order, I went back to my room and thought it over. I decided I had better carry it out because I might be reprimanded if I did not obey it. I spoke to a group of men in the off duty room about it -- among the group were Arakawa, Nishi, Sugata and Obara might have been there. I told them Sasaki had ordered me. As I was telling him this, Arakawa came in and said he heard Sasaki telling Iida to have Walker beaten.

Q Was there an order also given that Walker was not to be fed?

A Yes - Sasaki said - 'Have this prisoner beaten - and don't give him any food.'

* * * * *

Q What did Iwabuchi or Aramaki say when you told them Sasaki had given you this order to beat Walker?

1. They said it was a Naval General Staff order and it would have to be obeyed.

Q. Was it your understanding that you follow all the orders given by the Naval General Staff?

A. I was under that impression all along that the Naval General Staff was telling my superiors what to do. I was only a guard and I did not know the chain of command.

Q. How was Sasaki dressed the day he gave you this order to beat Walker?

A. All Naval General Staff wore civilian clothes with a red button in their label denoting them as officers. Sasaki wore a red button in his label denoting that he was the rank of an officer. The button was worn to denote the fact that the wearer was in the course of official business.

Q. Did you know that Sasaki was a civilian?

A. No -- Whenever the members of the Naval General Staff passed a guard we gave them a rifle salute -- if he was a civilian he would say it was not necessary but if he was an officer he would acknowledge the salute. According to regulations, the button in the label denoted the wearer as an officer -- Sasaki always acknowledged the salute -- that is he returned the salute by nodding his head. If an officer was in uniform he saluted. Every now and then Sasaki wore a "Sento-Bo" - military cap - when he did - he always returned the rifle salute with a hand salute.

Q. Was there ever a time when you doubted Sasaki was an officer?

A. No." (Exhibit 99, pages 1 and 2)

The above accused, Asama, testified that there were some questions and answers in Exhibit 99 that were not translated when he signed (p. 313, 314) but he does not know which ones they were (p. 326). He nowhere repudiated the evidence set out.

"Comdr. Yokura seemed to be fretted at Major Walker's refusal to cooperate with him as to his identity which could have been easily shown if his leather jacket were not kept in such a way as unable to read them.

"Comdr. Yokura ordered a petty officer on duty of that day not to give a meal to Major Walker because of his unwillingness to cooperate." (Exhibit 100)

"Q. Do you recall Sasaki coming into the kitchen after first interrogation of Walker and saying Walker was very uncooperative and should be punished?

A. Approximately late November 1944 in the afternoon, 4 P.M., I was bringing in coal with Major Boyington to the kitchen and Iida and Sasaki were smoking by the stove and Sasaki was saying that Major Walker was not telling the truth to the Naval General Staff interrogators and ordered Iida to cut off Walker's food and to beat him and verified this statement when Asama was telling Shingyan, Ohara and other guards in the barracks." (Exhibit 102).

"Q. Did Commander Yokura ever order you to mistreat the prisoners?

A. I recall Commander Yokura ordering me not to feed the prisoners on at least two occasions -- I recall that one of these prisoners was Major Walker but I cannot recall the name of the other one at this time. Commander Yokura said not to feed Major Walker his evening meal.

Q. Did you pass the order on not to feed Walker?

A. Yes, I told Iwakuchi, the number one corporal of the guard, not to feed Walker his evening meal.

Q. Did Sasaki speak to you in regard to Walker?

A. Yes, I was standing by the kitchen when Sasaki came over to me and said that Major Walker would not answer any questions and to have him beaten up. Sasaki seemed to be very angry.

Q. Describe the circumstances around Yokura's order to withhold the evening meal of Major Walker?

A. Yokura met me in the front of the interrogation room just before he left at about 4:00 o'clock in the afternoon -- he called me over and said, 'No matter how we question Major Walker, he will not answer -- I

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want tonight's meal cut off'. Both Commander Yokura and Sasaki seemed to be very angry with Major Walker.

* * * * *

Q: Do you think Asoma would have been justified in following an order from Sasaki to beat Major Walker?

A: I would have followed if I had been in his place.

Q: Why do you think Asoma would have been justified in following Sasaki's order to beat Major Walker?

A: First because, we had been told to cooperate with the Naval General Staff and Asoma probably thought Sasaki was an officer because Sasaki sometimes came down alone to interrogate the prisoners and also because he dressed the same as Captain Sanematsu and Commander Yokura -- that is he wore the red badge on the lapel of his coat, indicating he was of officer rank. The guards before being assigned to Ofuna, were told to cooperate with the Naval General Staff." (Exhibit 103, pages 1 and 2).

Q: Did you receive an order from Yokura to punish Major Walker?

A: I did receive an order.

Q: What was the order?

A: The order he gave me was that Major Walker did not say the truth and that he was rather silent since Yokura came to investigate him. With that, Yokura further stated that, do not give any food to the Major until tomorrow and that he should be made to do kampan soji.

Q: Was that an order given directly to you?

A: Yes, I received it from him directly." (Exhibit 104, page 1).

Q: Was Walker punished in any other way?

A: Yes. Yokura also said to have Walker mop the corridor alone until he is exhausted -- this may change his mind about talking -- do not beat him as this will only make him more stubborn. I do not know whether Iwabuchi passed the order on but he must have. This mopping detail was given to Walker in addition to having his food cut because he would not answer the questions asked of him by Yokura and Sasaki." (Exhibit 105, page 1).

Q: First time you met Major Walker, was it for the purpose of interrogating him?

A: No, I had heard from Sasaki that he and Yokura had worked on Major Walker for hours and they couldn't get anything out of him--that he was a very tough case, and he also said, 'We told the guards not to feed him!'. (Exhibit 106, page 1).

Q: Would it have been possible for a guard to believe that Sasaki was an officer?

A: Yes.

Q: Could Sasaki give orders to the guards at Ofuna?

A: Yes, if Sasaki gave an order to a guard the guard would have obeyed him. Sasaki had the civilian rank of a Lieutenant and was known as the confidant and spokesman of Captain Sanematsu, Chief Interrogator of the 5th Section, and therefore his words carried a great deal of weight." (Exhibit 106, page 3).

Q: Could Sasaki give orders to the Ofuna personnel concerning the prisoners?

A: Sasaki was equivalent rank to Lieutenant (s.g.) so his orders would be obeyed.

Q: What kind of orders did Sasaki give in regards to the prisoners?

A: Sasaki gave orders frequently to bring in a prisoner for interrogation, blindfold them and put them in solitary. I have been told by Japanese Naval attorney in Yokohama that it was not in the regulation for the Naval General Staff Member to give orders to a unit commander, however, it was a practice in Ofuna for the Naval General Staff interrogators to tell the Ofuna personnel what to do regards to the prisoners. Sanematsu, Yokura and Sasaki all gave orders to the guards -- Iida, camp

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commander, could not tell these Naval General Staff interrogators that they could not give orders to the Ofuna personnel as Iida was of lower rank than any of them." (Exhibit 107, pages 1 and 2)

"Q What was the visible effect of this treatment on WALKER?

A The visible effect was not physical but rather a mental effect.

* * * * *

Q As a result of these beatings and forced exercise you would say that his mental condition was impaired?

A The beatings he received undoubtedly contributed greatly to his death." (Exhibit 7, page 3).

"Major Walker weighed 44 kilos on admission to the Shinagawa Hospital. He exhibited the most extreme case of malnutrition that I have seen. He was nothing but skin and bones with a slight degree of puffiness around his ankles. He had no control over the muscles controlling his head and neck. The muscles normally used in keeping the head upright were so wasted and paralyzed that when he sat up with assistance, his head fell back, so that he was unable to look straight ahead. With the help of his hands he would push his head forward, in which position he was just able to feed himself. * * * * * He was considered to be the most ill patient in Shinagawa Hospital, and he was taken on board the American Naval Hospital Ship, 'Benevolence', as a priority case where he rallied at first but died some 36 hours after his arrival on board the Benevolence." (Exhibit 126, pages 1 and 2).

"Q You are the James K. Sasaki who has previously testified in this case as a witness in your own behalf, are you not?

A Yes.

* * * * *

Q Now, you have testified in connection with that that Yokura ordered the petty officer on duty that day not to give a meal to Major Walker, is that correct?

A Yes." (R 739)

"Q Are you now sure, Mr. Sasaki, that Yokura ordered the petty officer to skip one meal for Walker?

* * * * *

A Yes, as I recall, that was right." (R 645)

"While at the Ofuna Interrogation Center he became familiar with the person whose photograph appears on the reverse side hereof, and whom he knew as (Handsome Harry, apparently had position as being in charge of all interrogation).

"That on or about 15 or 20 December 1944 I know that this Japanese was responsible for the beating and starvation of Major William Walker of U.S. Army Air Forces resident of Salt Lake City, Utah. The reason for the beating was due to the refusal of prisoner to disclose requested information. The beating of the prisoner was administered by the guards at the direction of 'Handsome Harry' and the method of beating was by the use of clubs.

"'Handsome Harry' continually promised the prisoners better food and a general betterment of living conditions however, such promises never materialized." (Exhibit 82)

"Q Arakawa, did you hear any remarks made so as to form a basis for the fact that Walker was supposed to be very uncooperative?

A I did.

Q Will you tell the Commission briefly what that basis was as you knew it?

A It was around the end of November 1944. It was in the afternoon and was getting slightly dark. Boyington and I had brought in some coal. At that time Commander--the camp commander named Iida and Sasaki were standing in front of a stove and at that time I accidentally overheard

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Sasaki telling the camp commander that Walker was interrogated that day but that he did not cooperate; also that Walker was no good. He also was telling the camp commander that if Walker were to be made to suffer a bit he might talk; he either was telling the camp commander to beat Walker or was asking the camp commander to have Walker beaten." (R 355).

"A Well, I recall one time when he came to my cell by himself and told me in a very polite fashion that I would shortly be sent to a good camp where I would have more adequate food and where the treatment of the guards would be much better and that I would not have the abuse which I undoubtedly had there. I, of course, was in a position where I would grasp at straws at that time and I was very happy and related the incident to the prisoners around me, one of whom was Doc Frellsen, who told me not to put too much confidence in what he said, inasmuch as he knew that the same man, Sasaki, had ordered him to be beaten previously for not being cooperative with answers to his questions." (R 501).

"A May I answer the question in the following fashion: I did not hear Sasaki give any orders to beat any prisoners, Frellsen included; I did not hear any guards say that Sasaki had given them orders; I cannot trace from my own observation any beatings which I know to have been made pursuant to Sasaki's orders. I merely testify to what I know on the matter: that Frellsen told me that Sasaki had ordered him beaten and also deprived of his food for one meal." (R 503).

"Asoma then brought out Major Walker into the passageway and he said that I do not know who, but someone from the Gunreibu had ordered that Major Walker be beaten, so we are going to beat Major Walker. I, therefore, gave Major Walker two blows with a stick on the buttocks." (R 688).

"On about 10 November 1944, I refused to answer some questions he asked me during an interrogation, and 'Handsome Harry' ordered a guard to have my rations stopped for a period of three days. This order was subsequently carried out." (Exhibit 51)

"I do not intend to shirk my responsibility. This incident happened because I interrogated Major Walker, and on this point, if I had done things more carefully, I believe that such a problem would not have arisen. The guards had no criminal intent. They just beat mechanically. I therefore would like to bear the responsibility." (R 816, Yokura's Statement).

"Ex-Naval Petty Officer, 2nd Class, NISHI Masanori, made the following replies when he interviewed me (AGANE) in April 1946 (Japanese Man) at the Second Demobilization Bureau.

A Have you ever beat POWs at OFUNA Camp?

N (N hereinafter means NISHI) I once beat Major WALKER around January 1946.

A Why did you beat him?

N Because I was ordered to do so by an interpreter of the Naval General Staff in front of the 'Guards' Room.'

A Did you take what the interpreter said for an order?

N Since the interpreter was a personnel of Naval General Staff, I thought that what he said might well be taken for an order. Moreover, a member of the Naval General Staff was present that day at the OFUNA Camp for examination.

* * * * *

A Are you sure that the interpreter of the Naval General Staff told you to beat the POW?

N Yes, I'm sure." (Exhibit 114, page 2)

"Q Is it your testimony that Walker was beaten the morning after he arrived in camp?

A. I think I saw him on or about the morning of the first or second day after he arrived in camp." (A 277)

"Q. Did Walker tell you he had refused to say anything?

A. I think that was the guards who said that, not Walker." (A 278)

"However, Major Walker informed me shortly after he came to (fun), in a brief conversation that we had while I was sweeping up the corridor, that a number of the guards had visited his cell at night and had given him a severe beating with clubs. * * * * *

Walker told me on that occasion that the guards kept saying to him, "No speako," and I gathered that his impression was that they had heard that he had given incorrect answers to interrogations, because he told me that he had been questioned and that he had a lot of information which he had every intention of concealing; and he asked my advice on how best he could answer interrogations and satisfy them enough that he would avoid the concomitant beatings." (A 276).

"Q. Do you know whether or not Major Walker was able to satisfy his interrogators?

A. I can only assume, sir, that he did not satisfy his interrogators at all.

* * * * *

A. Yes, sir, I did. He never told me any specific interrogators who had questioned him, but he said that he was not going to tell them anything, because he had too much that he considered secret, and that he couldn't in all conscience tell them about. And he coupled the beating he had received shortly after he had arrived there with his failure to satisfy the interrogators, because he said that the guards when they were beating him, they roared at him, "No speako." (A 527).

"The afternoon after his arrival Asama told me in front of the soldiers' quarters that he was told by Sasaki to beat Walker. * * * * *

When I arrived there, Asama told me that since this was an order from the Gunreibu I would have to beat Walker too. I therefore got the stick from Asama and beat Walker two or three times." (A 737).

"Q. Before you went to Sugamo Prisoner, were you told at the Second Demobilization not to testify against the Naval General Staff?

A. Yes.

Q. Were you told at the Second Demobilization to take all blame for beatings personally?

A. Yes.

* * * * *

Q. Proceed.

A. This is in the matter concerning Sasaki which I previously mentioned. I am definitely sure that Sasaki was a civilian. However, he was not an ordinary civilian. During the war he had the duty of gathering advantageous information for the Japanese forces. As such, he was a member of the Gunreibu, and whatever he said we took it as words of the Gunreibu. Moreover, when I went to the prisoner of war camp, I was told by Commander Iida to obey the orders of the Gunreibu. He acted accordingly." (A 739)

"Q. How many times were you interrogated by Sasaki?

A. I do not remember the exact number, but there were several times.

Q. Did he act as interrogator or as interpreter on these occasions?

A. At times he would be the interpreter for Captain Sanematsu, 'The Little Captain,' at times he would be the interpreter for 'The Commander,' and at times he has questioned me by himself and no one else was present." (A 223).

"A (Continued) It has 'Reserve Room No. 2' written by it. And 'Handsome Harry' was in there alone. He told me, 'Mr. Sable, the Captain and the Commander have lost all patience with you. They are tired of traveling over these muddy and wet roads to question you. The Captain is out here today and I would advise you to go in and tell an entirely new and true story. If not, I am afraid of what will happen to you.'" (A 224).

"A (Continued) Captain Sanematsu and 'Handsome Harry,' I know, were there. I gave them complete information, to the best of my knowledge, to any and every question, except a few pertaining to radar, that I knew. I was presented with a package of American Red Cross cigarettes and one cigar. I returned to my cell and all the guards told me I was a 'joto furyo,' a good prisoner." (A 225).

"Q Did Walker ever do kaman soji?

A Yes, he did.

Q On how many occasions?

A He did kaman soji off and on all winter, and off and on all summer. It would be a very rough estimate that I could give of the number of times he did kaman soji. I would say 25 times." (A 232).

"A Walker was brought out of his cell, out of cell 37, directly across from me, and after much discussion on how kaman soji was done, he began pushing the mop up and down the floor. I would estimate that this kaman soji started at approximately 8:30 in the morning. This kaman soji lasted for an extended time. My estimation would be from one to two hours. The guards took turns of following him up and down the passageway. I saw many blows just outside of my cell. I saw Walker lying face down flat on the floor just outside of my cell, and just outside of his cell.

"I could see him coming past my line of view on his knees, not his feet, but on his knees, with his elbows and his hands on the deck, just crawling. It would take maybe five minutes for him to get from one end of the passageway to the other. I would estimate that I saw at least ten blows outside of my cell. I counted more than thirty-five that I could hear.

"I know that he passed out at least one time, because I saw them help him stand back up just outside of my cell. I saw it begin and I saw it end. Then they put him back into his cell he was a very broken and beaten man. The result of that beating left him with a very bad, I will call it, spine or back. He was deathly afraid of the guards. That was shown by his actions later on." (A 233)

"Lt. Max E. Frellsen, USNR, presently stationed at Sand Point, near Seattle, Washington, told me that he had been deprived of his rations for about 3 days as a result of his refusal to cooperate in an interrogation by 'Handsome Harry'.

"Subsequent to interrogation by 'Handsome Harry', Major William Walker, U. S. Army Air Forces deceased, formerly operation officer in a B-29 group based on Saipan suffered frequent beatings at the hands of Japanese guards whose names or descriptions I do not remember on instructions of 'Handsome Harry'. It is my opinion that these beatings were a contributing factor in the death of Major Walker aboard the USS Benevolence." (Exhibit 64).

"Q Were you familiar with a Japanese known as SASAKI?

A Yes. He was the interrogator and intelligence officer at the center. He interrogated the prisoners and was responsible for the punishment and general treatment of the prisoners. He grilled the prisoners

for hours and tried to break them down to obtain information. He was supposed to inform the prisoners of their rights while interned and what was expected of them. It was the general opinion that he was the one who ordered the punishment. I did not hear SASAKI give any orders that were concerning the punishment of the prisoners because they were given in Japanese, but upon return from the office used by SASAKI the prisoners were beaten and mistreated in general. He was the only one who had any contact with the prisoners, so far as conversation was concerned. SASAKI had lived in the United States for a number of years, in the vicinity of Los Angeles, California, and had mastered the English language. The manner in which the Japanese addressed SASAKI made us think that he was a high ranking person at the center. He was highly respected." (Exhibit 70, page 1).

"While at the Ofuna Internment Center he became familiar with the person whose photograph appears on the reverse side hereof, and whom he knew as JIMES (SASAKI (phonetic)), interrogator.

"That SASAKI was responsible for the general punishment of prisoners at Ofuna, in attempts to break them down to obtain information. His job was to inform the prisoners of their rights and what was expected of them while interned. The treatment was general and everyone was subject to it at one time or another." (Exhibit 72).

"While at the Ofuna Internment Center, he became familiar with the person whose photograph appears on the reverse side hereof, and whom he knew as Sasaki (phonetic), the head interrogator of the Ofuna Center from October 1944 to September 1945.

"That on various occasions, the identified Sasaki ordered prisoners to go without food for not answering questions administered by the identified. Among these prisoners made to go without food was one Max E. Frollsen whose home address is Baslin, La." (Exhibit 83).

"A. Yes, it was. It was very important to lose a meal. Whether it made such a tremendous, or had such a tremendous effect on the physical condition of the men for a man to lose a meal, or a series of meals, as a form of punishment, or for any other reason in Ofuna Prison Camp had a very serious effect on his mental condition. These men, as has been brought out by Mr. Braun on cross examination, were in a state of malnutrition, and they were fear crazed. They were actually fear crazed, because they realized they were starving to death. It is a sensation you can never get from being hungry. You can only get it from being in a starved condition." (Exhibit 89).

"A. If a man has been starved to the extent that his body is wasted away, and he is in a state of malnutrition, of course it is a medical question, but I should say to miss a meal, or a series of meals would be a very serious matter where his health is concerned, as well as his mental wellbeing." (Exhibit 150).

"Q. Did Yokura give any orders to the personnel at Ofuna?

A. No, he did not give any orders. One day following his first interrogation of Major Walker, he told me that Walker was being deceptive and I should cut his meals until the following morning. This was not an official order but he told it to me when he was leaving the camp, and I took it as an order." (Exhibit 1, page 1).

From the above and the other evidence in the case, it can plainly be seen that the proof was adequate to establish that Sasaki and Yokura were participants and, in fact, in the number of ^{the} instigators of the mistreatments which were among the direct and proximate causes which in combination directly resulted in the death of

Major Walker. They set the stage and called the tune. Now justice requires them to pay the fiddler. Other mistreatments at the instigation of Sasaki as alleged in Specification 3 appear from the evidence set out in the foregoing review.

As to Specification 3, Yokura, the finding of guilty is not sustained by the proof. There is no substantial evidence to establish the allegations. This the prosecution itself admitted (R 555).

The improper restriction by the commission of the right of the defense to cross-examine Balch concerning his allegedly poor eyesight is noted. In making the recommendations hereafter stated, undersigned has disregarded the evidence of Balch as far as it relates to his assertion of having seen Yokura in Camp Ofuna in June or July 1945. Under these circumstances, the error cannot be said to have harmed the accused Yokura.

Defense urges that the addition of the phrase "with others" in the findings concerning Specification 1, Sasaki, enlarged the issue. This assertion cannot be sustained since the specification did not originally restrict the criminal actions against the victim to the accused nor allege that he was the sole actor causing the death of Major Walker.

Statements of commendation by responsible witnesses as referred to in the foregoing review, pages 19 and 20, were fully presented to the commission and must have been considered in its lenient sentence with respect to Sasaki, the object of the statements. A sentence of much greater severity is justified against him for the malignant actions in which he was a willing participant. It is apparent that because of the close confinement in which the prisoners of war were held at Ofuna (solitary confinement in the interrogation stages), the prisoners themselves would have little opportunity freely to observe such actions as those of Sasaki which a plethora of evidence established as the cause of the mistreatments of which he was convicted. It is also clear from the evidence that he was catering to prisoners who talked and encouraging viciousness against those who "no speak". He evidenced that his experience during his long stay in America created doubts in his mind as to the ability of Japan to win the war. This would normally influence a person in his position to try to play "both sides against the middle" and have a friend in either camp. In this he seems to have succeeded. In these statements, no disparagement of any kind is made or intended against any of the character witnesses supplied by Sasaki. Without a shadow of a doubt they believed that he had good qualities. He showed his best side to them. It is believed that regardless of his motive, such actions as that on the occasion when he secured a badly needed operation for Colonel Boyington should be additionally recognized by clemency over and above the leniency shown by the commission. To that end it is recommended that his sentence of eighteen years at hard labor, be approved but that nine years and ten months of the sentence be suspended and, additionally, that the customary allowance be made for unavoidable pre-trial confinement (two years, two months, in this case).

It is recommended that the finding of guilty of Specification 3, Yokura, be disapproved, but that the sentence of twenty-five years confinement at hard labor, be approved, less customary allowance for pre-trial confinement.

Proposed alternate actions to implement these additional recommendations are attached.

ALLAN R. BRADNE
Lt Col, JAGC
Army Judge Advocate

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

Yokohama, Japan
8 November 1948

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UNITED STATES OF AMERICA VS MASAYOSHI MURATA

Review of the Staff Judge Advocate

1. The attached record of trial of Masayoshi Murata at Yokohama, Japan, on 12 January 1948, by a Military Commission appointed by paragraph 1, Special Order No. 7, Headquarters Eighth Army, dated 9 January 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Masayoshi Murata	DATE OF CONFINEMENT: 27 February 1947
AGE: 26	DATE OF ARRAIGNMENT: 12 January 1948
RESIDENCE: Yamanashi-ken, Kitakoma, Hinoharu Mura, Nagasaka, Kami-Jo 2035	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 1 day
RELATIVES: Brother, wife (R. 16)	DATE OF SENTENCE: 12 January 1948
EDUCATION: Graduate commercial school	SENTENCE: CHL for four (4) years
VOCATION: Not stated	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Served in Japanese Navy from 1 December 1943 to 1 August 1945. Highest rank: Petty Officer, second class.	

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

<u>Charge and Specifications</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Accused at times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: On or about 5 August 1944, at Ofuna PW Camp, accused did willfully and unlawfully mistreat William McFerren, Jr., an American PW, by forcing him to assume an unnatural position for a long period of time, by beating him and by otherwise abusing him.	NG	NG	---
Sp 2: On or about 5 September 1944, accused did willfully and unlawfully mistreat George E. Brown, an American PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 3: In or about July 1944, accused did willfully and unlawfully mistreat numerous American and Allied PWs by forcing them to assume unnatural positions for a long period of time and by otherwise abusing them.	NG	Not pressed (R. 3)	---

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Sp 4: On or about 13 July 1944, on an occasion other than as described in Sp 3, accused did willfully and unlawfully mistreat numerous American and Allied PWs by forcing them to assume unnatural positions for a long period of time and by otherwise abusing them. NG

Nol prossed
(R. 3)

Sp 5: At divers times between 1 May 1944 and 31 November 1944, accused did willfully and unlawfully mistreat numerous American and Allied PWs by beating and otherwise abusing them. NG

G except for the words "and Allied" and of the excepted words, NG Yes

3. Summary of the Evidence:

a. General.

The defendant, Masayoshi Murata, a Petty Officer in the Imperial Japanese Navy, during all times covered by the charge and specifications, was a guard at the Ofuna Interrogation Center, a Prisoner of War Camp at Ofuna, Honshu, Japan. His nicknames were "The Termite" and "Bird-brain." (R. 10, 16; Ex. 1, 2, 3, 4, 5).

b. For the Prosecution:

As to Specification 1: Captain James Gowan Godwin, NZ Forces, a PW at Ofuna from 29 June 1944 to 15 January 1945, testified, in person, that about the middle of September 1944, early in the afternoon he saw Murata hit Lieutenant George E. Brown, USN, another PW, across the back with a club 3-1/2 feet x 2-1/2 inches at least six times with such force as to stagger Brown. This occurred near the corner of Barracks #3 at the Ofuna Camp and in the presence of two or three people who were with Murata (R. 12, 13). Commander John Allison Brown, USN, PW Commander at Ofuna, states in an affidavit (Ex. 5, p. 5) that on 5 September 1944 Murata found P Brown sleeping in a vacant room and took him out behind the barracks and struck him six times with a club the size of a baseball bat in the presence of two male guests of Murata.

As to Specification 5: PW Godwin testified in person:

(a) That in October 1944, while the PWs were waiting in the cell passage for evening inspection, the "Termite" slugged Lieutenant Arbuckle, USN, a PW, in the face with his fist three times (R. 10, 11).

(b) That at the end of August or in early September, 1944, at five or six o'clock in the evening, outside the PW barracks, the "Termite" made Lieutenant Colonel Walker, AC, a PW, stand at least one-half hour in an unnatural position known as the Ofuna crouch (described at R. 12), during which time he slugged PW Walker across the face with his closed fist at least four times, causing PW Walker to totter back against the barracks (R. 11, 12).

In an affidavit (Ex. 1) Captain William McFerren, AC, a PW at Ofuna from 6 January to 1 October 1944, states:

(c) That on 5 August 1944 Murata put him in the push-up position for two hours and when he showed signs of sagging hit him with a club 1-1/2 inches in diameter, finally kicked him in the groin and slugged him in the face.

(d) That on 29 August 1944, Murata slugged four prisoners and jabbed Lieutenant Nyrady, a PW, with a bayonet.

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(e) That on 19 July 1944, Murata slugged Lieutenant Harmon P. Sherry, a PW, with his fists and struck him eleven times with a baseball bat two inches in diameter.

(f) 1st Lieutenant Louis S. Zamperini, a PW at Ofuna from 18 September 1943 to October 1944, in an affidavit (Ex. 2) states he saw Murata hit PW's with his fist on six or seven occasions, not very hard and only once on each occasion.

(g) Kenneth O. Kelberg, ACN, USN, a PW at Ofuna from 5 September 1943 to 10 September 1944, in an affidavit (Ex. 3), states that Murata and four other guards were the meanest at Ofuna and he felt many of their beatings.

(h) Major Donald W. Boyle, USMC, a PW at Ofuna from 5 March 1944 to 15 January 1945, states that "Birdbrain" participated in many beatings of PW's and that he lined PW's at attention and went up and down behind the rank beating the PW's with a baseball bat.

Commander Fitzgerald, a PW at Ofuna from 1 May 1943 to 15 January 1945, in an affidavit (Ex. 5), states:

(i) That on 4 July 1944 all PW's were made to do the Ofuna crouch punishment for 25 minutes and that Murata caused the trouble.

(j) That Murata almost daily would beat one PW or another.

(k) That on 13 July 1944 Murata made all the PW's of one barracks do the Ofuna crouch for twenty minutes because a piece of soap belonging to a guard was missing.

c. For the Defense:

The accused was advised of his rights by defense counsel and, in open court, by the Law Member, and elected to be sworn and testify in his own defense. He testified as follows:

As to Specification 1: Accused knew Lieutenant Brown and was warned that Brown was hard to handle and to be careful of him. That, while he was C.Q., he caught PW Brown sleeping in a vacant room and questioned him. Brown said he was not feeling well. Accused asked him why he did not report on sick call and PW Brown gave evasive answers. Accused reported the matter to Mori, a Petty Officer, Second Class, who was also acting as C.. Mori asked accused to get him a stick. Mori struck the PW twice with the stick and, later, accused struck Mori twice with the stick. There was no one present at the time except Mori (R. 16, 17, 45).

As to Specification 5: Answering specifically the evidence brought out by the Prosecution in support of the specification, as set forth above, the accused testified:

(a) That he did not know PW Arbuckle and that he did not recall any commotion in the cell passage while PW's were awaiting inspection as testified to by Captain Godwin (R. 19).

(b) That he did not remember PW Walker. That he did not make PW Walker do the Ofuna crouch and slug him with his fist across the face four or five times as testified to by Captain Godwin (R. 19).

(c) That he knew PW McFerren. That he never made McFerren assume the push-up position for two hours or hit him with a club or kick or slug him. That he never saw PW McFerren beaten while he was a guard (R. 16).

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(d) That he wore a bayonet as part of his equipment (R. 17). That he did not jab Lieutenant Nyrady with a bayonet as PW McFerren stated.

(e) That he knew PW sherry but never struck him as PW McFerren stated (R. 18).

(f) That he did not strike six or seven men as PW Zamperini stated (R. 18).

(g) Not answered specifically.

(h) Not specifically answered.

(i) Not specifically answered.

(j) Accused stated that he never beat any PW except PW Brown (R. 23).

(k) Accused admits that, on orders of an NCO, Watanabe, a PC 2/c, his superior at the time, when it was discovered that a piece of soap had been stolen by a PW, he made the PW's assume the Ofuna crouch position for ten minutes (R. 19, 20, 21, 22).

4. Opinion:

The Commission was constituted by proper authority and had jurisdiction of the accused and the offenses alleged in the charge and specifications. The accused was sane at the time of the offenses alleged in the charge and specifications and at the time of the trial before the Commission. That the accused was ably defended by assigned defense counsel, cooperated in his own defense and, after proper advice by defense counsel and the Law Member of the Commission, testified in his own defense.

As to Specification 1, the beating of PW Brown is amply proved by the testimony of Captain Godwin (R. 10-13) and the affidavits of Commander Fitzgerald, PW Commander (Ex. 5, p. 5). The accused admitted beating Brown and, testifying in his own defense, the accused made no pretense that the beating he gave PW Brown was administered on direction of a superior officer (R. 17).

As to Specification 5, the reviewer has entirely discounted the affidavits of Captain McFerren (Ex. 1) and 1st Lieutenant Zamperini (Ex. 2). The affidavit of Captain McFerren attributes the jabbing of PW Nyrady with a bayonet and the slugging of four PW's to Murata. Commander Fitzgerald, who was PW Commander, whose affidavit (Ex. 5) seems to be a more detailed and considered document, attributes the jabbing of PW Nyrady, on a different date, to one Sukimoto. It is barely possible that this same PW was jabbed by both Murata and Sukimoto on two different occasions, but the similarity of the two events, as related in the two affidavits, raises a reasonable doubt as to whether Captain McFerren's recollection of the occurrence is correct. 1st Lieutenant Zamperini's affidavit is very general and seems to minimize the beatings administered by the accused. It is not only possible but entirely probable that in arriving at the sentence which it imposed on the accused, the Commission also disregarded this evidence. There remains, however, after discounting these affidavits, sufficient evidence in the testimony of Captain Godwin and the other affidavits received in evidence to show a pattern of continued cruel and unwarranted abusive treatment of PW's by the accused.

5. Recommendations.

There are no recommendations for clemency. The findings of guilty as to the specifications and the charge upon which the accused was tried are supported by the evidence and the sentence imposed by the Commission is not excessive. Accused was confined on 27 February 1947 and was tried and sentenced on 12 January 1948 to confinement at hard labor for a period of four (4) years. Under existing policy, due to the length of time the accused had been confined

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prior to the date of sentence, it is recommended that seven and one-half months of the sentence imposed be remitted. Sugamo Prison, Tokyo, Honshu, Japan is the appropriate place for confinement.

6. Action.

A form of action to carry out these recommendations into effect is hereto attached.

HARRY G. EVANS
Reviewer
Judge Advocate Section

I concur in general. The sentence of four years for serious mistreatments of more than a dozen persons reveals the exercise by the commission of leniency by comparison with those adjudged by other commissions in cases involving similar facts. Nevertheless, pre-trial confinement is in no way to be considered as confinement served in expiation for offenses of which an accused is later convicted. Therefore a reviewing authority should consider such restraint entirely separately from that adjudged by a commission. The blackest rogue is entitled to an early trial under the enlightened rules of civilized nations. When trials are postponed, as this one was, because of the great number of those awaiting justice, fair allowances should be made for undue pre-trial confinement regardless of the inadequacy of a sentence. This is all the more true since commissions are instructed that pre-trial confinement is not to be considered in adjudging sentences.

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

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