COPY HEADQUARTERS EIGHTH ARMY

United States Army

Office of the Staff Judge Advocate

APO 343

Yokohama, Japan

28 May 1946

Case #15

UNITED STATES OF AMERICA VS YAICHI RIKITAKE

Review of the Staff Judge Advocate

1. The attached record of trial of Yaichi Rikitake at Yokohama, Japan, from 7 March 1946 to 22 March 1946, by a Military Commission appointed by paragraph 2, Special Order No. 59, (Corrected copy), Headquarters, Eighth Army, United States Army, dated 3 March 1946, having been referred to the staff Judge Advocate this review is submitted to the Commanding General, Eighth Army.

Personnel Data Concerning Accused

NAME: Yaichi Rikitake

AGE: sixty-two (62)

RESIDENCE: Saga City, Saga Prefecture, Japan

MARITAL STATUS: Married, 4 children

RELATIVES: Not shown

EDUCATION: Not shown

VOCATION: Professional soldier

MILITARY SERVICE: Joined Imperial Japanese Army 1905; commissioned 26 December 1917; retired 11 May 1933; assumed Command of Prisoner of War Camp No. 3, Kokura, Fukuoka, Kyushu, Japan on 6 March 1944.

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

Legally

Charge and Specifications Pleas Findings Sustained

Yes

NG G, except the word "commit“ in line four, substituting therefor the word "permit“ and adding the words "to be committed: between the words "offenses“ and "against: in line four, and except the words "by permitting them to commit cruel and brutal atrocities against certain PWs confined at the camp“ in lines nine and ten. Of the excepted words, NG, of the substitued and added words, Guilty.

Charge: Violation of the Laws and Customs of War between 1 March 1944 and 15 August 1945 as Commanding Officer of PW Camp No. 3, Kokuro, Fukuoka, Kyushu, Japan, by commiting cruel and brutal atrocities against PW’s, and failing to control, and permitting members of his command to commit cruel and brutal atrocities and other offenses agains PWs.

Legally

Charge and Specifications Pleas Findings Sustained

Yes

NG G, except

The words "conditions“ approximately one hundred fifty said: substituing therefor the words "a number of“. Of the excepted words, not guilty, of the substituted words, Guilty.

Sp 1: Failed to provide adequate medical care for American and Allied PW’s, by compelling PWs to perform arduous labor when ill, as a result of which aproximately one hundred fifty died.

NG NG

Sp 2: Failed to provide PWs with adequate and proper living quarters, which were inadequately heated and infested with lice and other vermin..

NG NG

Sp 3: Failed to provide PWs with proper sanitation and bathing facilities.

NG NG

Sp 4: Failed to provide PWs with proper and adequate food.

NG NG YES

Sp 5: Failed to provide PWs with proper and adequate clothing

NG NG

Sp 6: Compelled American and other Allied PWs to engage in the manufacture of munitions and war material, to wit, hand grenades and bomb shell cases.

NG G YES

Sp 7: Failed to discharge his duty as C.O. to control and restrain Persons under his command and control by permitting them to commit the following cruel and brutal atrocities against PWs:

NG G YES

Sub-Sp 7-a: About 14 May 1944, mistreat and torture Bill Cash, one Woodall and Thomas Armitage, American PWs, by beating with clubs, „water cure“, and lighted cigarettes against cuticle of ingers.

YES

NG G, except the words "for about four hours: and "throughout said period“. Of the execepted words, not guilty.

Sub-Sp 7-b: About December 1944, mistreat and torture Onells, Ray Wheeler and other American PWs.

Sub-Sp 7-c: About January 1945, mistreat and torture Don Kennelly.

NG NG

NG NG

Sub-Sp 7-d: About January 1945, mistreat and torture five American PWs by beating with clubs.

Legally

Charge and Specifications Pleas Findings: Sustained

Sub-Sp 7-f: About February 1945, mistreat and torture Robert Snyder..

Sub-Sp -7-e: About February 1945, mistreat and torture two American and two Dutch PWs by beating them.

NG G YES

Sub-Sp 7-f: About 10 March 1945, mistreat and torture Joseph Carbonare.

NG G YES

NG G YES

NG NG

Sub-Sp 7-h: About March 1945, mistreat and torture E.B. Inge, Alfred Hunts, and one Matte.

NG G YES

Sub-Sp 7-i: About April 1945, torture and cause the death of Ray Wheeler by forcing him to work when he was seriously ill.

NG G YES

Sub-Sp 7-j: May 1945, brutally mistreat Sullivan, by beating and kicking him.

Sub-Sp 7-l: June 1945, mistreat one McCoy, American PW.

words“ and throwing about twenty five buckets of water upon him“. Of the excepted words, not guilty.

NG G, except the

Sub-Sp 7-k: May or June 1945, mistreat and torture Jim Martin, American PW, by beating and kicking him.

YES

NG G YES

Sub-Sp 7-p: Mistreat and tortue pickle, July 1945; Donald, June or July 1944: Berg, June 1945: Barham, January 1945, Garman, June 1945; Martin, Septimber 44.

NG NG

Sub-Sp 7-o: Between 1 March 1944 and 15 August 1945 mistreat H.E. Brooker, a British PW, by beating and kicking..

NG G YES

Sub-Sp 7-n: Between 1 March 1944 and 15 August 1945 mistreat Frank Destefan, American PW, by beating.

NG NG

Sub-Sp 7-m: Between 1 March 1944 and 15 August 1945 mistreat Con Holerman, American PW.

NG NG

NG NG

Sub-Sp 7-q: Between 1 March 1944 and 15 August 1945, mistreat PWs Hy beating and abusing prisoners reporting to sick call..

Legally

Charge and Specifications Pleas Findings: Sustained

Sub-Sp -7-r: Between 1 March 1944 and 15 August 1945, mistreat American and other Allied PWs by beating when they attempted to exchange worn out clothing.

NG NG

NG G YES

Sub-Sp 7-s: Between 1 March 1944 and 15 August 1945 mistreat PWs by punishing groups of prisoners for the alleged offenses of individuals

NG G YES

Sub-Sp 7-t: Between 1 March 1944 and 15 August 1945 convert and use Red Cross packages delivered for use of American and other Allied PWs.

NG G YES

Sub-Sp 7-u: June 1945, mistreat Pvt. Robert Tussing by beating.

NG G YES

Sub-Sp 7-v: February 1945 mistreat Pvt. Browing by beating with stick.

Sub-Sp 7-w: March 1945, mistreat M/Sgt. Jacob Greewald by beating, which caused a broken chestbone

NG G YES

NG G YES

Sub-Sp 7-x: February 1945 mistreat Tonnie Vinson, S2/c US Navy by beating.

NG NG

Sp 8: From 1 March 1944 to 15 August 1945, accused failed to discharge his duty as C.O. to provide for proper treatment and well being of PWs by forcing them to work at Yawata Steel Mills where they were sujected to the following butalities by civilain employees and guards:

NG NG

Sub Sp 8-a: May 1944, mistreat one Woodall, American PW, by kicking.

NG NG

Sub Sp 8-b: 1 September 1944, mistreat one Stafford, American PW, by beating and kicking.

Sub Sp 8-c: 1 3 October 1944, mistreat one George H. Lindig, American PW, by beating

NG NG

Sub Sp 8-d: 5 November 1944, mistreat and contribute to death of one Neuse, American PW, by beating with heavy tongs.

NG NG

NG NG

Sub Sp 8-e: May 1945 mistreat Frank Pacing and George Tidwell, American PWs by beating.

Legally

Charge and Specifications Pleas Findings: Sustained

NG NG

Sub Sp -8-f: 15 July 1945, mistreat Vernon Crabtree, American PW by beating.

NG NG

Sub Sp -8-g: 1 August 1945, mistreat Edward F. Wilson, American PW by beating.

Sub Sp -8-h: Between 1 March 1944 and 15 August 1945, mistreat Bill Sutherland, American PW by beating.

NG NG

Sub Sp -8-1: November 1944 Mistreat Corporal E.C. Oliver by beating.

NG NG

Sp 9: Between 1 March 1944 and 15 August 1945, accused failed to discharge his duties as C.O. by permitting American and other Allied PWs to be exposed to bombing by Allied planes, and restraining them from taking shelter during air raids causing the death of Francis Rickey and serious injury to one Paws, American PWs.

NG NG

Sentence imposed: To be confined at hard labor for 15 years.

Maximum punishment: Death

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1. Scope of the review:

Summarized, the record discloses a trial on 42 specifications (23 of them sub-specifications under specification 7 and 9 of them sub-specifications under specification 8) laid under one general charge of committing cruel and brutal atrocities against prisoners of war, and of failing to discharge accused's duty as Camp Commander to control and restrain members of his command, permitting them to commit cruel and brutal atrocities against prisoners of war. Accused was found guilty of 20 specifications and not guilty of 22, and guilty of so much of the charge as involved permitting cruel and brutal atrocities to be committed against prisoners of war. Only the 20 specifications of which the accused was found guilty will be discussed in this review.

Analyzed, the accused was found guilty of failing to provide adequate medical care and treatment for prisoners of war and of compelling and permitting prisoners to work when ill, diseased and physically unfit to work as a result of which a number of them died (Sp 1); of failing to provide proper and adequate clothing for prisoners of war (Sp 5); of failing to control his subordinates and permitting them to torture and beat Cash Woodall and Armitage (Sub-7-a), Onells, Wheeler and others (Sub-sp 7-b), two American and two Dutch prisoners of war (Sub-Sp 7-o), Snyder (Sub-Sp 7-f), Carbonaro (Sub-Sp 7-g), Sullivan (Sub-Sp 7-j), Berg, Braham, German and Martin Sub-Sp 7-p), Tussing (Sub-Sp 7-u), Browing (Sub-Sp 7-v), Greenwald (Sub-Sp 7-w), Vinson (Sub-Sp 7-x); permitting them to torture and cause the death of pf Wheeler by forcing him to work when seriously ill (Sub-Sp 7-1); permitting them to impose collective punishment on prisoners (Sub-Sp 7-s) and permitting Japanese guards to convert and use Red Cross packages intended for the Prisoners' use (Sub-Sp 7-f).

1. Summary of Evidence.

For the Prosecution. Prior to the time covered by the charge in this case the Japanese Government agreed to apply mutatis mutandis, the provisions of the Geneva Prisoner of War Convention of 27 July 1929 to American prisoners, in its power (Nxs 1a, 1B). The accused was Camp Commander of Fukuoka POW Camp No. 3 from 6 March 1944 to 15 August 1945 (R 39, Ex 2). During this period of time the accused failed to provide proper medical care for prisoners who were sick by refusing them the use of medicines and surgical instruments which were available at the camp. American medical officers were helpless to treat sick prisoners and were required to perform operations with hack saws and other crude tools when proper medicines and surgical instruments were supplied by the Red Cross and were in fact, stored in the warehouses in the camp. Prisoners were required to perform "heavy" work when they were diseased and unfit to perform any work. As a result of these two causes, many prisoners of war died during the accused's tenure of office (Exs 3, 4, 5, 6, 8, 9, 11,12, 13, 17, 19 20, 22, 30, 39, 63, 71, 89. 91, 92). Prisoners were required to live and work in wholly inadequate clothing as a result of which many were contracted pneumonia and died. Additionally clothing was available and was found stored in the warehouse subsequent to the surrender. On 3 days each month prisoners were permitted to exchange worn out clothing. At the exchange line, a Japanese guard stood and regularly beat and mistreated prisoners who were waiting to exchange clothing so that the prisoners, in time, came to go without rather than withstand the beatings. (Exs 3, 7, 8, 28, 29, 30, 92). The accused witnessed these beatings in the clothing exchange line but took no step to stop them (Ex. 26, 29).

Prisoners were beaten daily by the guards with their fists and sticks; were required to stand at attention for long periods of time and to stand in cold water or have cold water thrown on them during the winter time (Exs 3, 4, 8, 14, 15, 16, 17, 21, 22, 24, 26, 29, 32, 41, 42, 45, 46, 47, 51, 59, 64, 88, 90). While some of the beatings took place in the accused's absence (Exs 4, 5), he witnessed many of them and took no steps to correct the existing situation Exs 17, 28, 29, 41, 51, 59, 64). The accused personally slapped or hit the prisoners with his fists (Exs 14, 85, 92).

Cash, Woodell and Armitage, American prisoners of war were severely beaten by camp guards and given the "water cure". The beatings were administered with clubs and each of the prisoners was knocked to the ground several times. The water cure consisted of lashing a prisoner to a stretcher and them propping the stretcher against a wall so that the prisoners head was down and his feet extended toward the ceiling. Water would then be poured in the prisoner's nostrils until he lost consciousness after he would be revived and beaten further (Exs 12, 16, 37, 38, 39, 40, 56, 61, 68). Hot pokers and lighted cigarettes were applied to various parts of Cash's body (ex. 37).

In December 1944, Onells, Wheeler and two other prisoners were found playing cards in the barracks in violation of orders. They were stripped of clothing, taken in front of the guard house and required to hold a 65-100 pound weight over their heads while they underwent severe beatings for 4 hours. They were struck and kicked about the legs and groin and cold water was thrown on them (Exs 41, 48, 49).

In February 1945, 2 American and 2 Dutch prisoners of war were found with food that they had purchased from a Japanese civilian. All four prisoners were stripped of clothing and made to stand in a tank of cold water for 3 hours during which time they had to stand on their toes in order to keep their noses above water. They were then put in the guard house for several days and, upon their release, they gave evidences of having been beaten while in confinement (Ex 44).

In January 1945, Synder, and American prisoner of war who, at that time, was on the sick list was caught talking to an officer at night outside his barracks. Snyder was taken outside the guard house and required to sit on his feet and hold a heavy iron bar over his head while, for 1 ½ hours, he underwent a severe beating with sticks and axe handles. Lighted cigarettes were placed in his nostrils and ears. At that time Snyder had a fever about 102 degrees and the temperature was below freezing (ex 46).

In early 1945, Carbonere, and American prisoner of war, was caught attempting to trade a watch for food. He was stripped of clothing and beaten with clubs. Cold water was thrown on his naked body after which he was put in the guard house for 10 days (Exs 46, 47, 86).

Wheeler, an American prisoner of war, was required to work while he was sick and running a fever. He collapsed on the job and died two days later (Exs 46, 92).

In May 1945, Sullivan, an American prisoner of war failed to salute a Japanese mess sergeant. As a consequence thereof he was severely beaten knocked down and kicked until his body and face were swollen and bruised. (Ex 49).

In May of June 1945, Jim Martin, an American prisoner of war, refused to give a ring which he owned to a Japanese guard. He was beaten with a club, knocked down several times and kicked. He was then thrown into a water tank in water about five feet deep and additional water thrown on him. The accused watched this beating but did nothing to prevent or stop it. (Ex 51, 52).

In June 145, McCoy, an American prisoner of war, was beaten about the head with sticks until he was unconscious (Ex 53).

Destefen, an American prisoner of war, who was at the camp during the accused's tenure of office, was severely beaten on three occasions for no reason. (Exs 21, 90).

During the time the accused commanded the camp the following American prisoners of war were beaten and tortured: Pickle, in July 1945 (Ex 54); Donald, in June or July 1944 (Ex 55); Berg in June 1945 (Exs 69, 83); Derham, in January 1945 (Exs 28, 57); Garman in June 1945 (Ex 85), and Martin in September 1944 (Ex 87).

While the accused was commander of the camp the prisoners of war were frequently punished collectively and punished for infractions of rules committed by individuals. This punishment included reduction of rations on a camp-wide scale (Exs 50, 60, 61, 62, 64, 92).

On several occasions during the time covered in the charge, Japanese camp personnel, particularly a Japanese medical officer stole and used Red Cross packages which had been sent to the camp for the prisoners' use and comfort (Exs 3, 8, 17, 38, 39, 50).

In about June 1945, Private Robert Tussing, an American prisoner of war, was found with butter and chocolate in his possession at inspection. He was beaten and kicked in the presence of the accused until his face was cut and bleeding but the accused took no steps to prevent or stop the beating (Ex 64).

In February 1945, Browning, an American prisoner of war was beaten, kicked and knocked to the ground by Japanese guards until his whole body was bruised and swollen (E65).

In March 1945, Greenwald, an American prisoner of war, failed to salute a Japanese Sergeant as a result of which he was beaten about the head and face. Greenwald was then required to find a stick with which he was further severely beaten. Greenwald's chest bone was broken as a consequence of the beating Ex 66).

In February 1945, Vinson, an American prisoner of war, was found with beans in his possession. He was forced to a strip and stand in water up to his chest while he was beaten about the head with bamboo poles (Ex 67).

The accused, as camp commander, was responsible for the administration of the camp and the conduct of the Japanese military and civilian personnel at the camp and at the factory where the prisoners worked (R 48, Ex 35).

b For the Defense. The defense introduced the testimony of Colonel Menjiro Fukumoto, Fukuoka Camp Commandant from 19 July 1944 to September 1945 and the accused's immediate superior officer who testified that the accused was a very efficient officer and a man of common sense and moderation in all things. In the Japanese army, superiors slap or strike juniors (it is considered preferable to the disgrace attendant upon courts-martial). The agreement with the plant at which the prisoners worked was made by the war ministry and the accused did not have authority to punish civilian overseers employed there. The main camp furnished rations in accordance with army regulations and auxiliary rations were purchased by the accused with funds furnished by the army. The accused had camp gardens planted, installed salt making machinery and personally drove as far as fifty kilometers to obtain food for the camp. Prisoners of war were given the same ration of food and clothing as Japanese soldiers in base camps. The barracks were adequate and, in fact, better and more spacious than those furnished Japanese soldiers. The hospital was large and afforded good facilities; for this reason sick prisoners were sent to accused's camp upon debarkation in Japan. Two categories of Red Cross supplies were sent to accused's camp. One category consisted of those sent for dispersion purposes to protect them against air raids and the accused was not authorized to distribute these to prisoners. The other category consisted of those for distribution in accused's camp and Colonel Fukumoto directed that a part of those be withheld for Christmas 1945. After the surrender all the supplies were distributed to the prisoners. Colonel Fukumoto made several inspections of accused's camp and observed no mistreatment of prisoners. Guards at the camp were not authorized to beat prisoners, to burn them or require them to stand at attention for long periods of time (R 106-131).

The defense introduced the testimony of the medical officer of the Main Camp. Due to a large number of deaths at Camp No. 3 in December 1943 and January, February and March 1944, the medical officer was required to make several inspections of that camp in February and March 1944. The camp was uncompleted at that time and there were patients in the hospital. Camp No. 3 was nearest the port of debarkation so weak and sick prisoners were sent there. In August and September 1944 he made several trips to the camp because of the influx of prisoners there. They had been shipped from the Philippines, subjected to intense air raids and transferred from ship to ship and hence their condition was not satisfactory. Of the 100 that came in on that shipment, 26 died. The medical officer complained of all these sick prisoners being sent to Camp No 3 and was assured the condition would be corrected. Camp No 3 had competent medical personnel. Barracks were adequate and better than these used by Japanese soldiers. Sanitation and bathing facilities were better than in Japanese army camps. Relief medical supplies were sent to camp No 3 (R 132-150). In March 1945 orders were sent out to hold back one-half of the Red Cross medical supplies but it was not intended thereby to deprive any prisoner of proper medical supplies or care; it was merely a protection against air raids. Prisoner officers were not required to work (R 151-157).

The defense introduced the testimony of the medical officer at Camp No 3 from March 1943 to 30 May 1944. He testified as to the size of the barracks and the number of prisoners confined therein. He visited barracks once a day and each two days made a complete round of all prisoner barracks. There were lice and bedbugs in the barracks. The medical officer did all he could by way of spraying and other measures to get rid of the vermin. Prisoner of war medical officers held sick call; the Japanese doctors held sick call; and prisoners were instructed to notify the overseer of their illness if they became ill at work. No prisoners were ever sent to work who were not physically able to work. Fitness to work was decided by a set of standards arrived at by agreement between the prisoner and Japanese medical officers (R 157-182).

The defense introduced the testimony of the Japanese medical officer who was on duty at Camp No 3 from 27 April 1945 to 25 July 1945. The prisoner of war doctor conducted sick call at 0539 each day; the prisoner of war doctor and the Japanese medical officer conducted sick call at 0900 each day; a sick call was also held at 1730 each day. No prisoner of war was ever sent to work if the prisoner of war medical officer said he was unfit to work. He gave medicines to the prisoner of war doctors as the case called for He inspected prisoners frequently and he has seen burns, many wound and bruises on prisoners who worked at the factory. The burns occurred at the factory (R 183-192).

The defense introduced the testimony of Captain Keizaburo Ogami who was the medical officer at Camp No 3 from 10 May 1944 to May 1945. There were lice and bedbugs in the barracks and the camp personnel did all it could to rid the camp of the vermin. Sick call was at 0530 and at 0900. No prisoner was ever sent to work who was unfit for work. Sometimes prisoners would be sent for light duty when the doctors had decided he was not fit for heavy work. In January or February 1943, 100 prisoners, mostly officers, arrived at the camp. They were in bad shape and 24 died. Approximately 80 prisoners died from May 144 to May 145, many from pneumonia. Pneumonia was caused by unfamiliarity with Japanese climate and food and the differences in construction between Japanese and foreign buildings. There was a shortage of medicines for a short time but it was corrected from Red Cross and other supplies. There were 10 prisoner medical officers at camp No. 3, more than at any of the other camps in that vicinity. Red Cross medical supplies were received but they were ordered by the main camp to withhold some for later distribution. Surgical instruments were issued to prisoner medical officers. The accused was interested in the prisoners' health and in sanitary conditions at the camp. He knows of one case where a prisoner was beaten by a civilian guard at the factory where the prisoners worked (R 192-211).

The defense also introduced the testimony of the medical officer at the camp from 1 August 1945 to 25 September 1945. During this period there were two sick calls per day. No prisoner was ever sent to work when he was physically unfit to work. There was practically no shortage of medicine while the witness was at the camp. Prisoner medical officers never complained of a lack of surgical instruments. On 17 August 1945 all Red Cross supplies were turned over to the prisoners (R 211-219).

The defense introduced the testimony of the president of the Yawata Steel Mills where the prisoners worked. Thirty-five to forty thousand people were employed at the mills of which approximately 900 were prisoners. The agreement for the use of prisoners was made with the War Ministry. Civilian overseers were in charge of the prisoners after they reached the mills and the accused had no control over the overseers. He never saw any mistreatment of prisoners at the mills. The accused never complained of the treatment the prisoners were receiving. at the mills (R 219 – 227).

The accused notified the overseers on several occasions that the prisoners were to be treated fairly and were not to be slapped or struck as is the customary in the Japanese army. The accused personally obtained a truck and secured the area for food for the prisoners (R 249).

The defense introduced the testimony of the Chief Secretary of the POW Information Bureau. He was at the camp when the 100 prisoners arrived in January 1945. 1,620 prisoners had started from Manila. As a result of air raids, exposure and malnutrition all but 550 died enroute. All the 550 were in very bad shape, of the 100 sent to Camp No. 3, thirty subsequently died. He was the remaining prisoners later at camp No 3 and their health was restored; they were most grateful to the accused for the good treatment accorded them (R 251 – 257).

The defense produced as a witness the civilian interpreter at the camp who testified that the accused warned the camp personnel that no prisoners were to be slapped or struck. He saw several prisoners slapped by guards but they were not hurt thereby. Prisoners complained to him that they were being beaten by guards and he passed the word on to the accused. The 76 prisoners that lived of the group of 100 that arrived in January 1945 in such bad condition, were very grateful to the accused and told him they should notify their government of the good treatment received at his hands. On one or two occasions prisoners who had been sent to the mills for work were returned as being to weak to work. (R258 – 267).

The accused, after being duly warned of his rights as a witness, elected to testify in his own behalf (R 269, 270). He is 62 years of age, married and has four children. He entered the army in 1905 and was commissioned in 1917. Because of the existing conditions at camp No. 3 he was sent there even though it was a Captain's position. He reported to the camp on 6 March 1944 and immediately called a meeting of the camp personnel. He told them that the prisoners had been taken on the battlefield, in honor, and that it was not the individual's fault that he was captured. The prisoners had to be protected especially from the civilian population who were not familiar with treaties and who would consider the prisoners as enemies. He testified as to the various department heads at the camp. The military guard detail was changed every 20 days and he had no authority to punish them. He had authority to punish the civilian guards employed at the camp. The accused testified as to conditions at the camp when he arrived and steps taken by him to better the conditions. He always gave prisoners the maximum permissible food ration. Red Cross food supplies were brought to the camp and were under the full control of the prisoner of war officers. Additional supplies were sent to the camp for protection against air raids and the accused had no authority to use them. After the surrender, however, he turned them over to the prisoners. On at least one occasion the senior prisoner of war officer, on behalf of the prisoners, made a gift of Red Cross supplies to the accused and personnel of the camp in appreciation of the excellent treatment given them. The letter of appreciation was introduced into evidence. Clothing was issued to the prisoners in accordance with regulations; this included overcoats. He took all possible precautions to assure that sick or unfit prisoners were not sent to work and no prisoner ever complained that such was the case. He categorically denied any knowledge of any of the matters mentioned in the sub-specifications under specification 7 and none of them were ever brought to his attention by the prisoners. He knows of one case when a prisoner was slapped by a civilian at the mills and he complained about it to the mill authorities. The accused's son is in the Japanese army and has not been heard from; the accused was therefore deeply sympathetic toward the prisoners under his charge.

1. Comment

The record is legally sufficient to sustain the findings and sentence of the commission. The commission was constituted by proper authority and had jurisdiction over the accused and the offenses. The prosecution introduced the testimony, by way of affidavits, of several American officers who were prisoners in the camp and who were in a position to know the facts. Their testimony is in agreement that adequate and proper medical care was not furnished to the prisoners although medicines and surgical instruments were available in the camp. Their testimony is also in agreement that prisoners were required to work when they were ill, diseased and physically unfit to work. There was ample testimony to sustain the allegation of failing to provide adequate clothing. The American officer in charge of the prisoners testified that in order to obtain clothing, which was furnished by the Red Cross, it was necessary to "donate" a certain percentage to the Japanese. The American medical officer testified that while the prisoners were without adequate clothing the Japanese personnel all were wearing Red Cross clothing. Each allegation of mistreatment and beating specification 7 and its sup-specifications was sustained by competent evidence. Beating of both officers and enlisted men were a daily occurrence at the camp. The accused participated in some of the beatings and witnessed others. The beatings were regular, vicious and sadistic, and the accused could not but have known they were taking place. The deaths of at least several prisoners must be attributed to lack of medicines, lack of clothing and being required to work when unfit to do so. For those the accused may properly be considered as responsible.

The testimony of the accused and other defense witnesses strongly contested each allegation made against the accused. The commission received this conflict in testimony in favor of guilt and, upon all the evidence in the case it was warranted in doing so. There are no errors of irregularities which injuriously affect any substantial rights of the accused.

1. Recommendations

The commission sentenced the accused to be confined at hard labor for fifteen (15) years. The sentence is legal.

At this time the commission imposed the sentence the president announced that five members of the commission would sign a recommendation for clemency urging that the execution of the sentence be suspended. That recommendation is in the record and, among other things, states that no evidence was adduced that the accused personally committed an atrocity and that the accused (subordinates generally committed the atrocities during the accused's absence from camp. In this the commission was in error. There is evidence that the accused personally slapped prisoners and other evidence that the accused personally witnessed several beatings and took no steps to prevent or stop them

The prosecution strongly opposes clemency for the accused. Its opposition from the American officer in charge of the prisoners is quoted. In the affidavit the American officer states that he has seen the accused beat prisoners with a sabre and slap them and has seen the accused stand by while prisoners were beaten by other Japanese camp personnel. This new affidavit may properly be considered on the question of clemency.

The accused not only permitted the torture and mistreatment of defenseless prisoners of war but actually participated in them. The commission recommended clemency because of the accused's age and because his "inadequacy" is shown by the fact that though a field grade officer he was given a company grade officer's command. Responsibility for crime does not rest on inadequacy or age and age or inadequacy do not offer any cloak of immunity for criminal acts.

The accused's offenses were violative of the prisoner of war convention and of the fundamental concepts of human decency. There seem to be no mitigating or extenuating circumstances. The sentence imposed on the accused is a modest one for the offense of which he was convicted. It is recommended that the sentence be approved and ordered executed. The Sugamo Prison, Tokyo, Honshu, Japan, or elsewhere as the Supreme Commander of the Allied Powers or other proper authority may direct, is the appropriate place of confinement.

1. Action

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

I Concur, However, I believe the sentence is /a/ Howard H. Conaway

Inadequate for the crimes of which was HOWARD H. CONAWAY

found guilty. Captain, JAGD

Asst Staff Judge Advocate

ALLAN R BROWNE

Lt. Col. JAGD

Army Judge Advocate

HEADQUARTERS EIGHTH ARMY

United States Army

Office of the Commanding General

APO 343

June 1946

In the foregoing case of Yaichi Rikitake, no justifiable basis for clemency appears in the record and allied papers. Because of the several deaths of prisoners of war directly attributable to the acquiescence of the accused, as Commanding Officer of a Prisoner of War Camp, in cruel and barbarous atrocities committed by his subordinates, as well as his personal participation in brutalities against prisoners of war, I feel that the evidence warranted a more severe sentence that was imposed. In order that the accused may not escape punishment, the sentence, though inadequate, is approved and will be duly executed. The Sugamo Prison, Tokyo, Honshu, Japan, or elsewhere as the Supreme Commander for the Allied Powers of other proper authority may direct, is designated as the place of confinement.

R.L. EICHELBERGER

Lieutenant General, United States Army

Commanding